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Summary record of the 1289th meeting

Topic:
Succession of States with respect to treaties

Extract from the Yearbook of the International Law Commission:-
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would be psychologically more effective if it was included in the text of the draft.

66. The Commission could not, of course, rectify boundary situations which, in the opinion of some, were not fair. That was certainly not the purpose of the draft articles. The Commission was not at present engaged in writing frontier law, but only succession law. It could not go beyond the formulation of provisions on succession of States.

67. That being said, he wished to deal with some drafting points. The first related to the phrase "régime of a boundary" in sub-paragraph (*b*) of article 29. That formula had been criticized as being too vague, but it would be very difficult to make it any more precise without going into excessive detail. In fact, the formula was in fairly common use and was usually taken to mean a set of attributes which accompanied a boundary. One example was that of means established for the delimitation and determination of the actual boundary line; a set of agreed technical rules for the purpose of determining the exact site of the boundary would constitute part of the régime of the boundary.

68. The United States Government, in its comments, had suggested the elimination from paragraph 1 of article 30 of the requirement that rights and obligations had to attach to a particular territory in the State concerned (A/CN.4/275). As he saw it, the purpose of that suggestion was to reduce possible argument on the question whether the rights related to a particular territory or to the State as a whole. If one took the example of a land-locked State which had certain rights of transit or the right to use a seaport in another State, those rights clearly benefited the entire land-locked State. Cases of that kind should be covered by the draft articles.

69. He accordingly urged that the Drafting Committee should give careful consideration to that suggestion which, if accepted, would make the application of article 30 clearer, simpler and less productive of disputes.

The meeting rose at 1.05 p.m.

1289th MEETING

Wednesday, 3 July 1974, at 10.10 a.m.

Chairman: Mr. Endre USTOR

Present: Mr. Ago, Mr. Bilge, Mr. Calle y Calle, Mr. El-Erian, Mr. Elias, Mr. Hambro, Mr. Kearney, Mr. Martínez Moreno, Mr. Ramangasoavina, Mr. Šahović, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Yasseen.

Succession of States in respect of treaties

(A/CN.4/275 and Add.1 and 2; A/CN.4/278 and Add.1-6; A/CN.4/L.205; A/8710/Rev.1)

[Item 4 of the agenda]

(continued)

DRAFT ARTICLES ADOPTED BY THE COMMISSION: SECOND READING

ARTICLE 29 (Boundary régimes) and

ARTICLE 30 (Other territorial régimes) (*continued*)

1. The CHAIRMAN invited the Commission to continue consideration of articles 29 and 30.

2. Mr. EL-ERIAN said that the Commission had decided in 1972 to include articles 29 and 30 in the draft in order to cover certain categories of treaties, or rather certain situations which had their origin in treaties of a "territorial" character, known also as "dispositive" or "localized" treaties. The Commission had taken that decision in full awareness of the complexity of the undertaking; it had recognized in paragraph (1) of the commentary (A/8710/Rev.1, chapter II, section C) that the question of territorial treaties was "at once important, complex and controversial".

3. It had been asked whether the subject-matter of articles 29 and 30 really belonged to succession of States in respect of treaties or to the other part of the topic of State succession, for which Mr. Bedjaoui was Special Rapporteur. That question had been raised in the Sixth Committee by the Egyptian delegation, whose comments were summarized in the Special Rapporteur's report (A/CN.4/278/Add.6, para. 417). During the present discussion, the majority of members had seemed to consider it desirable to include the two articles in the draft. If the Commission decided to retain them, it would be necessary to find a formulation that would allay the misgivings and prevent the misinterpretations to which the present text of the articles had given rise.

4. For those reasons, it was essential to make it abundantly clear what the articles were intended to cover, what their provisions actually meant and, particularly, what they did not mean. In the latter connexion, he drew attention to the statement in the Special Rapporteur's report that "the draft articles should deal only with matters relating to the effects of a succession of States and should not attempt to reiterate rules such as those relating to the validity of treaties". The Special Rapporteur had then gone on to stress the need to make it "absolutely clear that article 30 does not prejudice any grounds that there may be fore invalidating or terminating a treaty" (A/CN.4/278/Add.6, para. 453). There was general agreement that the Commission did not intend articles 29 and 30 to prejudice the question of the validity of the treaties concerned. Article 6 of the draft was particularly relevant to that matter, since it stipulated that the present articles applied only to "the effects of a succession of States occurring in conformity with international law and, in particular, the principles of international law embodied in the Charter of the United Nations", and the provisions of articles 29 and 30 were obviously subordinated to those of article 6.

5. He accordingly supported the suggestion made by Mr. Elias and Mr. Kearney that the position should be made absolutely clear in that respect,[1] primarily for

[1] See previous meeting, paras. 44 and 65.

psychological reasons, in order to remove the misapprehensions to which the present text of the articles had given rise. He endorsed the idea of including a provision to the effect that articles 29 and 30 did not prejudice in any way the question whether a treaty was or was not valid.

6. Mr. YASSEEN drew the Commission's attention to a question of methodology connected with the alternative texts suggested by the Special Rapporteur during the first reading of the draft articles,[2] namely, the question whether article 29, as now worded, concerned a succession in respect of treaties or a succession in respect of matters other than treaties. The wording of the article appeared to indicate that it referred not to the treaty itself, but to the boundary established by the treaty. Thus the question dealt with in article 29 did not relate solely either to treaties or to boundaries: it was a mixed question, pertaining to both succession of States in respect of treaties and succession of States in respect of matters other than treaties. There could therefore be some slight overlap between the two subjects. He believed, however, that the Commission had already gone too far to reverse its course and that in spite of what Mr. Bedjaoui had said, it would be preferable to retain articles 29 and 30.

7. He supported the principle underlying the two articles, which was generally accepted, for he considered that the stability inherent in the notion of a boundary should be preserved in the interests of the international community. He therefore understood the reasons which had led the Commission to adopt draft articles 29 and 30 on first reading; but he also understood the objections which certain governments and some members of the Commission had made to those articles. In his view, however, the Commission could not abandon its starting point and depart from the fundamental principle of the stability of boundaries.

8. It was necessary to stress, however, that it was a succession of States "as such" which did not affect a boundary established by a treaty. The succession could not, indeed, have any effect on the treaty itself. It could not, for example, remedy the defects of a treaty, because the treaty remained as it had been before the succession. A succession could neither validate a treaty that was invalid, nor invalidate a treaty that was valid. There could, of course, be more or less convincing reasons in favour of a boundary change. Article 29 did not prohibit the States concerned from seeking such a change, but they could do so only by the lawful means available to them under international law. Some members of the Commission feared, however, that it might be deduced from article 29 that a succession did not allow States to dispute a boundary even if they had good grounds for doing so. The Drafting Committee should therefore amend the wording of the article so as to make its meaning clear and dispel any misunderstanding.

9. Mr. CALLE Y CALLE said that he had not been present during the 1972 discussion, but he gathered from the summary records that the principle embodied in articles 29 and 30 had received strong support.

10. Acceptance of the clean slate principle involved, as a logical consequence, the exceptions set forth in articles 29 and 30. Treaties which established the boundaries of the territory of a successor State, thereby defining the territorial content of the succession, should have the character of permanency. It had originally been proposed that the exceptions should be formulated in negative terms. In his first report, the former Special Rapporteur had proposed an article 4 (Boundaries resulting from treaties)[3] which read:

> Nothing in the present articles shall be understood as affecting the continuance in force of a boundary established by or in conformity with a treaty prior to the occurrence of a succession.

A somewhat different formulation had been put forward in 1972 by the then Special Rapporteur in articles 22 and 22 *bis* (alternative A) in his fifth report.[4] That formulation also specified, but in positive terms, that the "continuance in force" of a boundary treaty or a territorial treaty was not affected by the occurrence of a succession of States; it thus referred to the status of the treaties in question, and the matter fell strictly within the limits of the topic of succession of States in respect of treaties. Following the 1972 discussion, however, the Commission had reached agreement on the more flexible text now under consideration.

11. There could be no doubt that the fact of succession, that was to say the replacement of one State by another in the responsibility for the international relations of territory, constituted a change of circumstances and that that change was fundamental in character. Unless, therefore, an exception was made, the successor State might argue that the boundary or territorial treaty was no longer operative. The exception would have the same effect as that embodied in article 62, paragraph 2(*a*), of the Vienna Convention on the Law of Treaties,[5] which had been adopted by the Vienna Conference by an overwhelming majority. That being said, he fully agreed that articles 29 and 30 should not be construed as purporting in any way to validate a boundary or territorial treaty that was invalid or, conversely, to invalidate such a treaty that was valid.

12. Lastly, he urged that the commentary should be as full and as balanced as possible. In particular, it should cover the State practice which was not at present mentioned, that was to say the numerous cases in which there had been no dispute between the States concerned, because the continuity of boundary treaties had been accepted as a natural process.

13. Mr. USHAKOV, replying to an observation by Mr. Elias, said that what mattered was not the validity or invalidity of the treaty, but the territorial situation it created; for territorial changes could be justified by an intolerable situation created by a perfectly valid treaty. For instance, in the case of Somalia, it was the situation of a people divided among several States which could

[2] See *Yearbook ... 1972*, vol. I, p. 247.

[3] See *Yearbook ... 1968*, vol. II, p. 92.

[4] See *Yearbook ... 1972*, vol. II, p. 44.

[5] See *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations Publication, Sales No. E.70.V.5), p. 297.

justify a boundary change, irrespective of the validity of the treaty which had created that situation. Sometimes, on the other hand, a treaty could be invalid—for example, because of an error made when it was concluded—whereas the situation created by it was perfectly acceptable and did not call for any change of boundary. The situation could then be confirmed by a new and valid treaty. The point at issue, therefore, was not whether the treaty was valid or invalid, but whether the situation it had created was acceptable or not.

14. He thought the expression "succession of States" might give rise to misunderstanding, for in speaking of a "succession of States", one did not generally have in mind the succession as such, but the effects of that succession. It would therefore be preferable, in his view, not to use that expression in article 29, but to say instead that "Replacement of one State by another in the responsibility for the international relations of territory shall not as such affect...". That wording would avoid all misunderstanding.

15. He also considered that it would be better not to use the word "treaty" in sub-paragraph (*a*) of article 29, since in fact it was not a treaty, but a boundary which was in question. He therefore proposed that the phrase "a boundary established by a treaty" should be replaced by the words "a boundary existing between two States", which seemed to him clearer. In that connexion, he pointed out that the Special Rapporteur for the topic of succession of States in respect of matters other than treaties would not deal with the effects of succession on territories, because a territory and its population were not subject-matter of succession and hence were not within the scope of the general topic of succession of States.

16. The question of the validity or invalidity of treaties did not arise in connexion with articles 29 and 30, any more than it did in connexion with the other articles of the draft. Hence articles 29 and 30 did not affect the validity or otherwise of the treaties in question, and did not in any way affect the possibility of settling territorial disputes between States by peaceful means.

17. In that connexion, he stressed that article 29 did not perpetuate established boundaries. It was obvious that a treaty establishing a boundary could, like the other treaties mentioned elsewhere in the draft, be denounced or invalidated in accordance with the law of treaties. States could always agree among themselves to alter boundaries by peaceful means. Hence articles 29 and 30 did not perpetuate any particular state of affairs any more than the other articles of the draft.

18. Mr. BILGE said he could agree to the two exceptions provided for in articles 29 and 30, but wished to make it clear that he accepted them only as exceptions, since he was opposed to any widening of the scope of those two articles. He recognized the exception stated in article 29 as a necessity. The Special Rapporteur had decided, after long hesitation, to retain that article, because he had considered it necessary to give every successor State a preliminary base for the exercise of its authority. He (Mr. Bilge) was in favour of retaining the article, but thought its retention would raise a number of important questions and affect the vital interests of States which had frontier problems. He understood the concern of those States, but thought that, as the Special Rapporteur had explained it in his report, article 29 did not impair their rights. No doubt the explanations given by the Special Rapporteur did not satisfy the States which had frontier problems, but the members of the Commission seemed to be in agreement in recognizing, first, that article 29 did not impair the rights of those States and did not purport to impose the *status quo* on them, and secondly, that it was necessary to allay the concern of those States by dispelling all possible misunderstanding. He thought the point should be made clear either in a reservation to article 29 or, as Mr. Elias had proposed, in a separate article. Failing that, the position taken by the Commission should be clearly explained in the commentary.

19. On the question whether article 29 should refer to boundary régimes or to treaties establishing boundaries, he reminded the Commission that Sir Humphrey Waldock had justified his decision to refer to boundary régimes by invoking the modern trend in legal writing.[6] The new Special Rapporteur, Sir Francis Vallat, had justified that choice by practical considerations and had drawn the Commission's attention to peace treaties, which might contain not only boundary provisions, but also financial, commercial and other provisions that had no connexion with boundary problems (A/CN.4/278/Add.6, para. 444). He (Mr. Bilge) had difficulty in following that reasoning. The notion of a frontier had evolved in the course of history. The frontier, which had first been an uninhabited area, a sort of belt between States, had become a disputed area; then, with the formation of modern States, it had become a line delimiting the area over which the States in question could exercise their authority. Hence he thought it would be better to refer to treaties establishing boundaries than to boundary régimes.

20. Since he was anxious that articles 29 and 30 should remain exceptions, he would be most reluctant to agree to the scope of article 30 being widened, as Mr. Tammes had suggested,[7] to cover treaties relating to minorities and to the protection of human rights in general; in his view, the law governing those treaties was very different from the law governing territorial treaties. There was, indeed, a new trend in treaties relating to human rights: an attempt was now being made to extend those treaties to the whole world, for it was no longer a question of protecting the rights of a minority in a given territory, but of securing universal protection of human rights. Thus the Covenants on Human Rights were intended for universal application. To include treaties relating to human rights in the exceptions set out in article 30 would go against that trend, and he thought it would be difficult to extend the article in that direction.

21. The CHAIRMAN, speaking as a member of the Commission, said that the doubts which had been expressed about articles 29 and 30, both in the Commis-

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[6] See commentary to articles 22 and 22*bis* in *Yearbook ... 1972*, vol. II, p. 44 *et seq.*

[7] See 1287th meeting, paras. 33-35.

sion and outside it, had been largely dispelled by the present discussion.

22. The main problem lay in article 29. As he saw it, however, the validity of the rule embodied in that article was inherent in the very concept of succession of States. In paragraph 1(*b*) of article 2 (Use of terms), the expression "succession of States" was defined as "the replacement of one State by another in the responsibility for the international relations of territory". The term "territory" implied delimitation in space; when the successor State took over the territory, it did so within the limits, or boundaries, of that territory. It was also absolutely clear that other matters, such as the unsatisfactory character of certain boundary situations, were completely distinct from succession of States. When a succession took place, the successor State was placed in the same position as the predecessor State; it would inherit all the rights accruing to that State from the treaty. In particular, it could avail itself of any grounds for the invalidation, termination or suspension of the operation of the treaty that were available to it, either under the terms of the treaty itself or under the general law of treaties. In all respects, moreover, the successor State could behave as a sovereign State within its own boundaries from the date of succession. For those reasons, the idea of dropping articles 29 and 30 was completely unacceptable. Their absence would leave a gap in the draft, which would make for very great difficulties.

23. It had been suggested during the discussion that it should be specifically stated that the successor State succeeded to all the rights conferred by the treaty upon the predecessor State. That point belonged to the general question of the relationship between the present draft and the Vienna Convention on the Law of Treaties.

24. A convincing case had been made for the proposition that the rule embodied in article 29 applied to any boundary or frontier, whether established by treaty or otherwise. That idea was acceptable to him, but he believed that if article 29 were redrafted in general terms it would go beyond the strict confines of the topic of succession of States in respect of treaties.

25. The discussion had clearly shown the importance of the commentary. The ideas compressed into the short provisions of the articles needed to be explained in detail and as lucidly as possible. For example, it was necessary to explain the difference between the wording of articles 29 and 30 and that of other articles of the draft. The notion of continuity had been mentioned in earlier sections of the draft, but the language used in articles 29 and 30 was different. The reasons for that difference were to some extent explained in paragraphs (18) and (19) of the commentary, but that explanation needed some amplification. Lastly, the commentary should stress the fact that the stability of frontiers was closely bound up with the maintenance of peace and security.

26. Mr. TABIBI said that, as a citizen of a small country, he fully recognized the necessity of maintaining the stability and permanence of boundaries. The question he had raised in his previous statement[8] was the altogether different one of disputed frontiers. It was essential to rectify boundary situations established contrary to the wishes of the people concerned, by colonial or unequal treaties. Those boundary treaties were invalid because they violated established principles of international law, such as the right to self-determination and the principles embodied in the Charter of the United Nations. While it was true that the Commission was not called upon to act as a tribunal for individual cases, it was nevertheless engaged in drafting an international instrument on the basis of actual cases, and in that legislative work it should study all aspects of existing disputes throughout the world.

27. It had been suggested during the discussion that the Commission should be concerned only with States and not with peoples. He could not accept that approach. Times had changed since a sovereign could disregard the people and Louis XIV could say: "*L'Etat c'est moi*". Those who negotiated and signed treaties nowadays received their authority from the people. The rights of peoples, and not merely those of States, were enshrined in the Charter of the United Nations, and those rights should not be ignored.

28. He could not accept the propositon that a succession of States could not affect a boundary situation. The replacement of a predecessor metropolitan Power by a successor State did in fact affect the boundary situation in certain cases. He had in mind cases in which a boundary took the form of what used to be called a "zone of influence", intended for the protection of a colonial possession. A treaty concluded for the purpose of maintaining such a zone of influence around a colony would not be inherited by that colony when it became an independent State.

29. He could not agree that an illegal treaty could be validated because the factual situation created by it was claimed to be satisfactory. There could be no question of validating an invalid or unequal treaty; all that could happen was that the States concerned might conclude a new treaty confirming the situation.

30. During the discussion, some speakers had used the term "frontier" instead of the term "boundary". He would welcome some clarification of that point by the Special Rapporteur, bearing in mind in particular the confusion created by the "zones of influence" to which he had referred. Examples of such zones were the so-called "free tribal areas" and the settlement area of the former North-West Frontier Province, both of which were mentioned in the Treaty of Kabul[9] of 22 November 1921, which had been validly terminated by a notification dated 21 November 1953.

31. Where the right of self-determination was concerned, he fully agreed with the Special Rapporteur that that right existed for the peoples on both sides of a boundary. It was precisely for that reason that, for example, a metropolitan Power could not, on the attainment of independence of a former colony, dispose of the fate of the inhabitants of an area in dispute with a neighbouring State. To take another example, the

[8] *Ibid.*, paras. 11-28.

[9] League of Nations, *Treaty Series*, vol. XIV, p. 67.

Somali people, which had been divided under arrangements made by former colonial Powers, was claiming self-determination for the inhabitants of the area in dispute with Ethiopia, but the right of self-determination of the Ethiopian people could not stand in the way of that legitimate claim.

32. In conclusion, he urged that, if the Commission decided to retain articles 29 and 30 in any form, it should also adopt a saving clause, in the form either of a separate article or of provisos in the two articles. The purpose of the saving clause would be to safeguard the right to challenge a boundary or territorial treaty.

33. Mr. AGO said that, like the Chairman, he thought the question under discussion was connected with definitions. While it was true that under article 2, paragraph 1(*b*), a succession of States meant the replacement of one State by another in the responsibility for the international relations of a given territory, that replacement could only take place in the actual territory formerly held by the predecessor State. It was that particular, unremarkable in itself, which was the main feature of articles 29 and 30. However, those provisions also had the purpose of stating an exception to article 11, which established the application of the clean slate principle to newly independent States.

34. That exception was illustrated by the treaty concluded in 1935 between Italy and France[10] with a view to settling a question dating back to 1915, the year when Italy had entered the First World War. It had then been provided that in the event of a common victory giving France and Great Britain advantages in their colonial territories, compensation would be accorded to Italy, especially in the form of a rectification of frontiers.[11] The effect of the 1935 treaty had been to readjust the frontier between Libya, which had been an Italian colony at that time, and the French dependent territories of Tunisia and Algeria. The articles under consideration did not only mean that when Libya, Algeria and Tunisia had acceded to independence, their territories had been limited by the frontiers thus established, the articles also meant that those States could not have availed themselves of the possibility of setting the treaties aside provided by article 11.

35. Moreover, it should be noted that treaties like the Franco-Italian agreement generally also provided for a frontier régime which might be of great importance for the movement of caravans and tribes. The Commission would certainly not wish to make it possible for newly independent States to repudiate such provisions completely, by invoking article 11, and to claim that they were not bound by any obligation.

36. Thus articles 29 and 30 were not confined to recognizing the fact of the replacement of one State by another in the responsibility for the international relations of a certain territory; they stated an exception to article 11.

37. Sir Francis VALLAT (Special Rapporteur), summing up the discussion on articles 29 and 30, thanked those who had congratulated him and said that the discussion had been conducted on a very high level. He also wished to congratulate Mr. Tabibi, who had defended with great skill a view which had not been accepted by the majority.

38. Mr. Tabibi had favoured the omission of articles 29 and 30, but the majority of members had taken the view that the Commission should act in accordance with the principle of the continuity and stability of boundaries, as well as of allied obligations and rights, in all cases of succession. In that connexion, he wished to emphasize that the essential basis of his proposal was to be found in long-established customary law. The case-law on the subject was not very extensive because, in case after case of State succession, it had been taken for granted that territorial boundaries would remain unaffected. As Mr. Ushakov had pointed out, that had always been the normal case in the practice of States.

39. If that was so, it might be asked why it was necessary to express the idea in the draft articles. It was necessary to do so because otherwise cases might arise in which the draft articles would be relied on as a ground for disturbing the existence of treaty obligations and thereby indirectly disturbing the existence of boundaries.

40. Mr. Bedjaoui had raised the question whether it would not be better for articles 29 and 30 to be included in his own draft articles on succession of States in respect of matters other than treaties. He agreed that when the Commission came to consider Mr. Bedjaoui's draft, it might find it necessary to include similar provisions to articles 29 and 30, but in his opinion that was not a reason for omitting them from the present draft.

41. It had also been suggested that the Commission should reverse its approach and concentrate on the treaty aspects of boundary régimes rather than on boundary régimes themselves. Mr. Yasseen had pointed out, however, that that would mean reversing a position which the Commission had already adopted, and he himself thought it would be unwise to modify a decision which the Commission had taken on the basis of alternatives proposed by Sir Humphrey Waldock.

42. There were certain points he thought it necessary to stress in the light of the discussion. First, the Commission was dealing only with the effects of succession as such. Secondly, it was dealing only with situations established by treaty and not with situations created by usage or by other means. Thirdly, articles 29 and 30 were not intended to affect the question of the validity or invalidity of the treaty itself. That point, however, might need further elucidation in order to make it completely clear.

43. While many members thought that articles 29 and 30 were sufficiently clear in their present form, several had expressed a desire for some modification of the language used. As Special Rapporteur, he would remind the Commission that it should always aim at a consensus; on articles having a potential political impact, in particular, it was important that the Commission should be solidly united when presenting its final text. It would be the duty of the Special Rapporteur and the Drafting

[10] See *British and Foreign State Papers*, vol. CXXXIX, p. 948.

[11] *Op. cit.*, vol. CXII, p. 973.

Committee to make satisfactory adjustments in the language of the articles, especially article 29. That might be done by the addition of some neutralizing formula, such as had been suggested by Mr. Elias and Mr. Kearney,[12] but that was primarily a question of presentation, not of substance.

44. With regard to article 29, Mr. Tsuruoka and Mr. Tabibi had raised a question of the use of terms, namely, the distinction between the words "frontier" and "boundary". To his mind, the word "frontier" had a much looser meaning than the word "boundary", which implied an actual line of demarcation. The term "boundary régime" in article 29, therefore, would not seem to apply to a "frontier area". By way of illustration, he referred to the 1958 Convention on the Continental Shelf,[13] which provided that a State had rights over the area of the continental shelf adjacent to its coast; the Convention did not define the actual boundaries of the continental shelf, but left that to be decided by the coastal State and its neighbours. As he interpreted the situation, once a treaty defining the boundaries had been concluded, it would come under article 29.

45. Doubts had also been expressed about the word "régime", but that term had been carefully chosen by the Commission in 1972 and he would be surprised if a better one could be found. It might, however, be further clarified in the commentary.

46. Article 30 had given rise to less controversy than article 29, both in the General Assembly and in the Commission. The reasons for that were obviously political, though the drafting of article 30 presented greater difficulties, because of the problem of defining the exact types of rights, obligations and régimes that the article was intended to cover. He thought that the Drafting Committee should give careful consideration to the comment by the United States Government (A/CN.4/275) calling for the deletion of the words "specifically for the benefit of a particular territory of a foreign State" in paragraph 1(*a*). Serious consideration should also be given to Mr. Tammes's suggestion that the Commission should make it clear that the obligations and rights referred to in the article should be understood as relating not only to territory but also to people, as in the case of grazing rights.

47. Mr. USHAKOV stressed the fact that the clean slate principle did not apply solely to newly independent States. Under the terms of article 19, a bilateral treaty which at the date of a succession of States was in force in respect of the territory to which the succession of States related, was considered as being in force between a newly independent State and the other State party in conformity with the provisions of the treaty when both States had expressly so agreed or, by reason of their conduct, were to be considered as having so agreed. It followed from that provision that not only the newly independent State, but also the other State party to the bilateral treaty could refuse to recognize the boundaries established by such a treaty. The purpose of article 29, therefore, was to protect both the newly independent State and the other State party.

48. Mr. BILGE said that, in spite of the Special Rapporteur's explanations, he still thought that if the word "régime" was used in its broad sense, it might cause some overlapping between articles 29 and 30.

49. The CHAIRMAN said that was a point which could be dealt with by the Drafting Committee, to which he suggested that the Commission should refer articles 29 and 30.

It was so agreed.[14]

The meeting rose at 12.45 p.m.

[12] See previous meeting, paras. 44 and 65.

[13] United Nations, *Treaty Series*, vol. 499, p. 312.

[14] For resumption of the discussion see 1296th meeting, para. 30.

1290th MEETING

Friday, 5 July 1974, at 10.10 a.m.

Chairman: Mr. Endre USTOR

Present: Mr. Ago, Mr. Bilge, Mr. Calle y Calle, Mr. El-Erian, Mr. Elias, Mr. Hambro, Mr. Kearney, Mr. Martínez Moreno, Mr. Ramangasoavina, Mr. Šahović, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Yasseen.

Succession of States in respect of treaties

(A/CN.4/275 and Add.1 and 2; A/CN.4/278 and Add.1-6; A/CN.4/L.209/Add.1; A/8710/Rev.1)

[Item 4 of the agenda]

(continued)

DRAFT ARTICLES ADOPTED BY THE COMMISSION: SECOND READING

ARTICLE 31

1. The CHAIRMAN invited the Special Rapporteur to introduce article 31, which read:

Article 31

Cases of military occupation, State responsibility and outbreak of hostilities

The provisions of the present articles shall not prejudge any question that may arise in regard to a treaty from the military occupation of a territory or from the international responsibility of a State or from the outbreak of hostilities between States.

2. Sir Francis VALLAT (Special Rapporteur) said that article 31 corresponded to article 73 of the Vienna Convention on the Law of Treaties.[1] It had been sug-

[1] See *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), p. 299.