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Summary record of the 1290th meeting

Topic:
Succession of States with respect to treaties

Extract from the Yearbook of the International Law Commission:-
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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.

gested, in particular by the Czechoslovak Government in its written comments (A/CN.4/275), that the reference to cases of military occupation was out of place and should be deleted; it had, indeed, been maintained, with some justification, that that case had nothing in common with succession of States. In his opinion, however, that was in itself a very good reason why the Commission should make it clear that it was not dealing with that kind of situation in the present draft articles.

3. Mr. HAMBRO said he very much regretted that he could not agree to the inclusion of article 31. In his opinion, cases of military occupation came into the category of what he would call the pathology of international relations; he would much prefer that such cases should be referred to, if at all, in article 6.

4. Mr. TABIBI said that, like Mr. Hambro, he considered the question of military occupation to be outside the context of the present draft articles. To include a reference to that question would be to go further than the Vienna Convention and it could in any case be covered by article 6.

5. Mr. AGO said that in his opinion any relationship between draft article 31 and article 73 of the Vienna Convention on the Law of Treaties was far more apparent than real. The latter article—although its drafting was rather vague and confused—was understandable in the context of the Vienna Convention, for the Commission had wished to exclude expressly from the scope of that Convention the questions of succession of States in respect of treaties, State responsibility and the effects of war on treaties. But obviously article 31 could not contain a reservation concerning succession of States, since that was precisely the subject of the draft articles.

6. Article 31 lumped together references to military occupation, international responsibility and the outbreak of hostilities. The last two questions probably had little to do with the case of a succession of States in respect of treaties; in any case one should speak of succession, not just of treaties when referring to them. The question which, on the other hand, would properly have a place in a clause of that kind was that of military occupation, since the occupation of a territory raised problems that had some connexion with succession of States: the occupier might be required to respect certain treaties of the State under military occupation.

7. Article 31 would be justified if it were confined to stating that the draft articles did not prejudge the effects of a military occupation on the treaties of the occupied State.

8. Mr. KEARNEY said he had been impressed by Mr. Ago's view that there was no substantial reason for excluding the question of State responsibility from that of State succession. The Commission had perhaps been unnecessarily influenced by the Vienna Convention in that respect. He was, however, less sure that the same applied to outbreak of hostilities, as he could imagine circumstances in which an outbreak of hostilities might involve questions of succession.

9. It was the provision for an exception for cases of military occupation which seemed to arouse the strongest objections by members of the Commission. He thought that attitude was a reflexion more of the nobility of their intentions than of the keenness of their analysis, since it seemed to him that it would be very difficult to exclude such a provision. What was involved was the responsibility of a State for the foreign affairs of a territory which was under its military occupation. During the military occupation of Germany, for example, many treaties had been entered into by the military governments concerned on behalf of Germany and that had been considered a legitimate exercise of their authority. Such cases did not fall under the normal rules of succession, since the occupying Power was not exercising its own national authority, but rather that of the occupied State.

10. On the whole, therefore, he thought it would be better to have an article specifically excluding cases of military occupation from the application of the draft, though he fully realized the difficulty of establishing whether a given military occupation was illegal under present international law or not. There certainly were a number of possible exceptions, particularly in connexion with cases of aggression and the reaction to aggression. But in his opinion, the present state of international law was not sufficiently firm to justify the possibility of a military occupation being disregarded, and it seemed to him that prudence dictated the inclusion of a reference to that possibility in the draft articles.

11. Mr. USHAKOV said that, in regard to the international responsibility of a State and the outbreak of hostilities between States, article 31 reproduced article 73 of the Vienna Convention word for word. It also referred to the case of military occupation, which had not been provided for by the Vienna Convention. Military occupation was, undoubtedly, prohibited by contemporary international law, but unfortunately it continued to occur. It was therefore necessary to add the case of military occupation to the other two cases, for although it was not a case of State succession, it was closely connected with the question of treaties. He was therefore in favour of retaining article 13.

12. Mr. YASSEEN said that if the articles of the Vienna Convention, the general principles of international law and article 31 were correctly interpreted, it must be concluded that that article was unnecessary. As Mr. Ago had observed, article 31 had little connexion with succession of States. It might prove useful, however, in so far as the interpretation of certain articles or of certain principles could give rise to differences of opinion. Military occupation was prohibited by the principles of contemporary international law, as Mr. Ushakov had pointed out, but the modern world was familiar with cases of prolonged military occupation, to which it was impossible to shut one's eyes. Prolonged military occupation might, indeed, incite certain States to transform a *de facto* situation into a *de jure* situation. He therefore considered it prudent to retain article 31 and not to delete the reference to military occupation.

13. Mr. MARTÍNEZ MORENO said that arguments had been put forward during the discussion for both the retention and the deletion of article 31. It was his own considered opinion that if the article was retained, a

clear distinction should be made between cases of unlawful military occupation and cases in which such occupation was supported by international law. If the article was deleted, however, the Commission should, in the commentary, remove all doubt on the question whether it had prejudged cases of military occupation. He would like to hear further arguments for the retention of article 31; but what he regarded as of greater importance was that the Commission should take its earlier discussion of article 29 into account and make it clear that the draft articles did not prejudge any question relating to the validity or otherwise of a boundary treaty.

14. Mr. TSURUOKA said he would like to know what were the links between military occupation and the outbreak of hostilities between States. Did military occupation include the occupation of a territory by United Nations forces? Did it result from the defeat of a State in a war? He shared the concern expressed by Mr. Martínez Moreno and thought that if the Commission wished to retain the reference to military occupation in article 31, it should explain in the commentary what it meant by that expression.

15. Mr. AGO said he must repeat that article 31 lumped together entirely separate questions and that the only question which really arose in regard to effects on treaties was that of military occupation, since it raised problems regarding the observance of treaties which might resemble certain problems of State succession, even though there was no succession. That point could be illustrated by reference to Germany, which had occupied the city of Rome during the Second World War and had been required to respect the treaties concluded by the Italian State with the Vatican City State. That was a case which, though not one of State succession in the strict sense, was nevertheless related to State succession in some ways, for since there had been replacement, not of one sovereignty by another, but of one authority by another over a territory, there could be an obligation to respect existing treaties.

16. Where the two other cases were concerned, on the other hand, there was no justification for reproducing the terms of the Vienna Convention, since the present reference should not be to treaties, but to succession of States in respect of treaties. There was in fact no need to refer to State responsibility or the outbreak of hostilities. If the Commission nevertheless wished to mention those two questions, it should rather say that "The provisions of the present articles shall not prejudge any question that may arise in regard to a succession of States in respect of 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". Otherwise, the Commission would be reproducing a rule in the Vienna Convention without indicating that in the present draft it did not refer to treaties, but to succession of States in respect of treaties.

17. Another point was that military occupation was not always illegal, for it might be occupation of the territory of an aggressor State by United Nations forces, ordered as a sanction by the Security Council. But even where military occupation was unlawful under international law, the occupying State had to fulfil certain international obligations. In his opinion, the Commission should emphasize that point and should not concern itself with the lawful or unlawful nature of the military occupation.

18. Mr. SETTE CÂMARA said he had no objection to the retention of article 31; but agreed with Mr. Ago that some changes were needed in its wording. As Mr. Ago had shown, the cases of State responsibility and the outbreak of hostilities had no place in the article and the Drafting Committee should try to reduce it to the bare essentials of the saving clause which had been decided on in 1972.

19. Mr. ELIAS said that, in his opinion, article 31 should be retained in some form or other, if only to make the draft complete. The article could be reworded on the lines suggested by Mr. Ago, but he thought its substance should be retained in order to keep it in line with article 73 of the Vienna Convention, as suggested by the Special Rapporteur. If the Commission wished to clarify further the question of international responsibility it was, of course, free to do so; but in any case he considered article 31 necessary and important.

20. Mr. USHAKOV said he thought the formula: "The provisions of the present articles shall not prejudge any question that may arise in regard to a treaty..." was broad enough to cover questions which might arise in regard to the effects of a succession of States in respect of treaties. In his view, it was less dangerous to reproduce the terms of the Vienna Convention than to modify them.

21. Mr. KEARNEY said that the reference to the "outbreak of hostilities" in article 73 of the Vienna Convention had been included only because of the possible effect of such an outbreak on the breach or suspension of a treaty. In the case of State succession, however, that situation could arise only if there was an outbreak of hostilities between the predecessor State and a third State party to the treaty. He did not think that such an outbreak of hostilities should in any way affect the right of the successor State to notify the fact of its succession.

22. Sir Francis VALLAT (Special Rapporteur), summing up the discussion, said it seemed clear that a majority of the Commission considered it necessary to include an article to provide for cases of military occupation, and that there was no substantial majority in favour of deleting article 31. Serious consideration should, of course, be given to the proposal made by Mr. Ago.

23. Referring to the question asked by Mr. Tsuruoka, he said that there were situations in which a military occupation might be distinct from an outbreak of hostilities; for as Mr. Kearney had pointed out, the military occupation might be related to the cessation of hostilities, or, conceivably, a State might not wish to offer any resistance to a military occupation. The theoretical margin between the outbreak of hostilities and military occupation might therefore be rather difficult to define.

24. The CHAIRMAN suggested that article 31 should be referred to the Drafting Committee.

It was so agreed.[2]

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE

25. The CHAIRMAN invited the Commission to consider the title of part II of the draft articles, the title and text of article 10, the titles of part III and section 1, the title and text of article 11, the title of section 2 and the titles and texts of articles 12 to 14, as proposed by the Drafting Committee (A/CN.4/L.209/Add.1).

ARTICLE 10[3]

26. Mr. HAMBRO (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following titles and text for part II and article 10:

PART II

SUCCESSION IN RESPECT OF PART OF TERRITORY

Article 10

Succession in respect of part of territory

When a part of the territory of a State or any other territory for the international relations of which a State is responsible becomes part of the territory of another State:

(*a*) treaties of the predecessor State cease to be in force in respect of the territory in question from the date of the succession of States; and

(*b*) treaties of the successor State are in force in respect of the territory in question from the same date, unless it appears from the treaty or is otherwise established that the application of the treaty to that territory would be incompatible with its object and purpose [or would radically change the conditions for the operation of the treaty].

27. The Drafting Committee had made a number of small changes in the text of article 10, which was the only article in part II. In doing so, it had taken into account the criticisms made of the opening phrase of the 1972 text: "When territory under the sovereignty or administration of a State becomes part of another State:".

28. The first of those criticisms was based on a statement in the commentary (A/8710/Rev.1, chapter II, section C), which correctly pointed out that article 10 did not apply to the case of what was somewhat inadequately termed "total absorption". It had been argued that that point was not made sufficiently clear in the opening phrase of the article. The second criticism was that the words "territory under the ... administration of a State" were ambiguous and should be replaced by an expression based squarely on the definition of succession of States given in article 2. In order to take those criticisms into account, the Drafting Committee had amended the opening phrase to read: "When a part of the territory of a State or any other territory for the international relations of which a State is responsible becomes part of the territory of another State:".

29. That amendment involved consequential changes in the titles of part II and of article 10 itself. Those titles would now both read "Succession in respect of part of territory" instead of "Transfer of territory". Another consequential change was the substitution of the words "the territory in question" for the words "that territory" in both sub-paragraphs.

30. The Drafting Committee had also replaced the words "the succession" in sub-paragraph (*a*) by the expression "the succession of States", which was defined in article 2 and used throughout the draft. No other changes had been made in that sub-paragraph.

31. Sub-paragraph (*b*) laid down a rule and an exception to that rule. The exception, set out in the clause beginning with the word "unless", was generally known as the "compatibility test". The Drafting Committee had observed, however, that in article 25, sub-paragraph (*a*), and in article 26, paragraph 1(*b*), the compatibility test was coupled with a second exception based on the concept of radical change, which was similar to that of fundamental change of circumstances in article 62 of the Vienna Convention on the Law of Treaties. In order to eliminate that apparent discrepancy, the Drafting Committee had added the words "or would radically change the conditions for the operation of the treaty" to sub-paragraph (*b*) of article 10. It had, however, placed those words between square brackets, since it would be necessary to review the matter in the light of the draft articles as a whole and, in particular, of the provisions which the Commission might adopt for article 25, sub-paragraph (*a*).

32. The Drafting Committee had also deleted the word "particular" before the word "treaty" in sub-paragraph (*b*) of article 10 as being unnecessary.

33. Mr. TAMMES said that the Drafting Committee had largely reverted to the formula proposed by the former Special Rapporteur in his second report as article 2 (Area of territory passing from one State to another).[4] That formula excluded the case in which one of the two States involved in the transfer of territory disappeared. The wording now proposed would thus exclude from the scope of the article a case which had been discussed at length by the Commission, namely, that of the peaceful and voluntary incorporation of one State in another. That case was not covered by article 26 (Uniting of States) either, as it now stood. For that reason, he had to reserve his position on article 10 until he knew what provision would be made for cases of "total succession".

34. The CHAIRMAN said that the Drafting Committee would deal with that point in connexion with the uniting of States.

35. Mr. CALLE Y CALLE drew attention to the need to explain in the commentary that article 10 related to cases in which a part of the territory of an existing State became part of the territory of another existing State. It did not deal with cases of union, fusion or emergence of a new State, but solely with the transfer of a portion of territory from one existing State to another.

36. He also suggested that the Spanish version of the phrase in square brackets in sub-paragraph (*b*) should

[2] For resumption of the discussion see 1296th meeting, para. 36.

[3] For previous discussion see 1268th meeting, para. 29.

[4] See *Yearbook ... 1969*, vol. II, p. 52.

be altered to read "*o hubieran cambiado radicalmente las condiciones para su aplicación*". A corresponding change would appear to be necessary in the French version. Both the Spanish and the French texts as they now stood stated that the "application of the treaty" to the territory in question would radically change the conditions for the "application of the treaty".

37. The CHAIRMAN said that the first point would be noted for purposes of the commentary. The second point would be taken into consideration when the Drafting Committee took a final decision on the phrase in square brackets.

38. In addition to explaining the reasons for the changes made in the 1972 text, the commentary would make it clear that the rule embodied in sub-paragraph (*a*) of article 10 was qualified by the rule set out in articles 29 and 30, which made an exception for the case of boundary and territorial treaties. He noted that the Drafting Committee had wisely decided to delete from article 11 the proviso which appeared in the 1972 text regarding other provisions of the present articles; consequently, no specific reference to articles 29 and 30 was necessary in article 10, but the commentary would point out that the rule set out in sub-paragraph (*a*) was qualified by the provisions on boundary régimes and other territorial régimes contained in those two articles.

39. Mr. KEARNEY proposed that the word "when" should be inserted before the words "any other territory" in the opening sentence of article 10.

40. Sir Francis VALLAT (Special Rapporteur) supported that proposal.

41. The CHAIRMAN said that, if there were no further comments, he would take it that the Commission approved the title of part II and the title and text of article 10 as proposed by the Drafting Committee, with the amendment proposed by Mr. Kearney and subject to the decision to be taken later on the words in square brackets at the end of sub-paragraph (*b*).

It was so agreed.

ARTICLE 11[5]

42. Mr. HAMBRO (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following titles and text for part III, section 1 and article 11:

PART III

NEWLY INDEPENDENT STATES

SECTION 1. GENERAL RULE

Article 11

Position in respect of the treaties of the predecessor State

A newly independent State is not bound to maintain in force, or to become a party to, any treaty by reason only of the fact that at the date of the succession of States the treaty was in force in respect of the territory to which the succession of States relates.

43. Article 11 constituted section 1 of part III. It laid down a general rule concerning the position of newly independent States in respect of the treaties of the predecessor State. The Committee had made no change in the titles of part III or section 1. In accordance with its earlier decision, however, it had replaced the words "the predecessor State's treaties" by the words "the treaties of the predecessor State" in the English version of the title.[6] In the English version of the article, the Drafting Committee had decided to delete the commas before and after the phrase "at the date of the succession of States".

44. The only other change made by the Drafting Committee related to the opening clause: "Subject to the provisions of the present articles". During the Commission's discussion, several members had expressed the view that that proviso was unnecessary, because it reflected a general rule of interpretation of treaties, and that if it were retained in article 11, it would have to be added to other articles as well. The Drafting Committee had accepted that view and had deleted the clause.

45. The CHAIRMAN said that if there were no comments, he would take it that the Commission approved the titles of part II and section 1 and the title and text of article 11, as proposed by the Drafting Committee.

It was so agreed.

ARTICLE 12[7]

46. Mr. HAMBRO (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following titles and text for section 2 and article 12:

SECTION 2. MULTILATERAL TREATIES

Article 12

Participation in treaties in force at the date of the succession of States

1. Subject to paragraphs 2 and 3, a newly independent State may, by a notification of succession [made within a reasonable period from the date of the succession of States], establish its status as a party to any multilateral treaty which [at that date] was in force in respect of the territory to which the succession of States relates.

2. Paragraph 1 does not apply if the object and purpose of the treaty are incompatible with the participation of the newly independent State in that treaty.

3. When, under the terms of the treaty or by reason of the limited number of the negotiating States and the object and purpose of the treaty, the participation of any other State in the treaty must be considered as requiring the consent of all the parties, the newly independent State may establish its status as a party to the treaty only with such consent.

47. The Drafting Committee had made no change in the title of section 2 of part III. In the title of article 12 it had added the words "at the date of the succession of States" in order to bring that title into line with the text of paragraph 1. It had similarly amended the title of article 13 to read "Participation in treaties not in force at the date of the succession of States", in order to avoid any possible misunderstanding about the relationship between the two articles.

48. The main question discussed by the Drafting Committee in connexion with article 12 had arisen from the

[5] For previous discussion see 1269th meeting, para. 1.

[6] See 1286th meeting, para. 28.

[7] For previous discussion see 1269th meeting, para. 32.

fact that the 1972 text imposed no time-limit on the exercise by a newly independent State of its right to make a notification of succession to a multilateral treaty, but under article 18 of the draft, when a newly independent State made such a notification, the treaty was considered, under certain conditions, as being in force in respect of that State from the date of the succession of States.

49. The notification of succession could thus have retroactive effect. Several members of the Commission believed that that would create difficulties for other States parties and had suggested that article 12 should set a time-limit for the exercise by a newly independent State of its right to make a notification of succession. The Drafting Committee agreed with that view, but had considered it impossible to lay down a firm time-limit that would cover the great variety of particular situations arising in State succession. It had therefore inserted the words "made within a reasonable period from the date of the succession of States" after the words "a notification of succession" in paragraph 1 and, in consequence, had replaced the words "at the date of the succession of States" by the words "at that date". The Drafting Committee considered, however, that it would be necessary to review the whole matter when article 18 was examined and in order to emphasize the provisional character of the changes made, it had placed the proposed additional words in square brackets.

50. The Committee had also noted that while paragraph 1 of article 12 used the expression "newly independent State", the following two paragraphs referred to the "successor State", although the same State was meant in each case. In order to remove any possible doubt, the Drafting Committee had replaced the expression "successor State" in paragraphs 2 and 3 by the expression "newly independent State".

51. Lastly, the Drafting Committee had discussed certain questions relating to multilateral treaties and had decided to deal in the commentary with the particular cases of the ILO conventions and the Geneva humanitarian (Red Cross) conventions, but to make no further change in the article itself.

52. Mr. USHAKOV said that, at his request, the Drafting Committee had considered the possibility of supplementing the draft, later, with a few articles on treaties of a universal character, which constitute a corollary to article 12.

53. Mr. SETTE CÂMARA said that the words in square brackets would not have the effect of laying down any specific time-limit and would not solve any problems. They would, moreover, raise the problem of determining what was meant by a "reasonable period", and if they were retained it would be necessary to include an explanation in the commentary.

54. The CHAIRMAN, speaking as a member of the Commission, said that if the passage in square brackets were retained, it would also be necessary to explain the consequences of a notification of succession made after the "reasonable period" had expired.

55. Mr. YASSEEN said that the Commission had already considered that question and had concluded that the absence of a time-limit might cause practical complications. The idea of a "reasonable period" had been proposed as a compromise. Unlike Mr. Sette Câmara, he believed that the stipulation of a "reasonable period" would have some effect on the behaviour of States; they would feel called upon to decide for or against participation in the treaties which had been in force in respect of the territory to which the succession of States related. True, that provision did not solve the problem mathematically, but it would at least obviate the difficulties which would be caused by clearly overdue notifications.

56. The CHAIRMAN, speaking as a member of the Commission, said that the provision would be taken as having an exhortatory effect; it would serve to urge newly independent States not to delay making a notification of succession.

57. Mr. ELIAS suggested that the discussion on the words in square brackets should be adjourned until a decision had been taken on article 18.

58. Mr. BILGE said that he had already expressed his opposition to the inclusion of the phrase in square brackets and had not changed his opinion. The idea of a "reasonable period" added nothing to the article. Moreover, it was not specified whether it was the successor State or the other States parties which would decide whether the period was reasonable.

59. Sir Francis VALLAT (Special Rapporteur) said that, in using the word "reasonable", it had clearly been the Drafting Committee's intention to provide for an objective test. The position was similar to that resulting from a number of provisions in the Vienna Convention on the Law of Treaties, which required the application of an objective test. He therefore wished to make it clear that, although nothing was said on the question of adjudication, the question of what constituted a "reasonable period" was not left to the unilateral decision of either the successor State or the predecessor State.

60. The CHAIRMAN said that, if there were no further comments, he would take it that the Commission approved article 12, subject to a later decision on the passages in square brackets.[8]

It was so agreed.

ARTICLES 13[9]

61. The CHAIRMAN said that since the Chairman of the Drafting Committee had been unable to attend the meeting, of that Committee at which articles 13 and 14 had been drafted, he would invite Mr. Elias to introduce those two articles on behalf of the Committee.

62. Mr. ELIAS said that the Drafting Committee proposed the following title and text for article 13:

Article 13

Participation in treaties not in force at the date of the succession of States

1. Subject to paragraphs 3 and 4, a newly independent State may, by a notification of succession, establish its status as a contracting

[8] See 1294th meeting, para. 32.

[9] For previous discussion see 1270th meeting, para. 51.

State to a multilateral treaty which is not in force if at the date of the succession of States the predecessor State was a contracting State in respect of the territory to which that succession of States relates.

2. Subject to paragraphs 3 and 4, a newly independent State may, by a notification of succession [made within a reasonable period from the date of the entry into force of the treaty], establish its status as a party to a multilateral treaty which enters into force after the date of the succession of States if [at the latter date] the predecessor State was a contracting State in respect of the territory to which that succession of States relates.

3. Paragraph 1 does not apply if the object and purpose of the treaty are incompatible with the participation of the newly independent State in that treaty.

4. When, under the terms of the treaty or by reason of the limited number of the negotiating States and the object and purpose of the treaty, the participation of any other State in the treaty must be considered as requiring the consent of all the parties or of all the contracting States, the newly independent State may establish its status as a party or as a contracting State to the treaty only with such consent.

5. When a treaty provides that a specified number of contracting States shall be necessary for its entry into force, a newly independent State which establishes its status as a contracting State to the treaty under paragraph 1 shall be reckoned as a contracting State for the purpose of that provision.

63. The Chairman of the Drafting Committee had already explained the reasons for the change in the title of article 13.

64. With regard to the text of the article, the Drafting Committee had decided to split the first paragraph into two new paragraphs, and the remaining three paragraphs had been renumbered accordingly. The purpose of that change was to deal separately with the two categories of contracting States. The first consisted of contracting States which had expressed their consent to be bound at a time when the treaty was not yet in force. The second consisted of contracting States which had expressed their consent to be bound at a time when the treaty was already in force. The Drafting Committee had decided to use the term "party" to denote States in the second category, in accordance with the definition of the term "party" in paragraph 1 (1) of article 2 (Use of terms).

65. A clause, placed in square brackets, had been included in the new paragraph 2, specifying that notification had to be made "within a reasonable period from the date of the entry into force of the treaty". No similar clause had been included in paragraph 1 because that paragraph contained a built-in time-limit, namely, the date of entry into force of the treaty. Paragraphs 3, 4 and 5 of the new text of article 13 reproduced the wording of the former paragraphs 2, 3 and 4 with some terminological changes consequent on the use of the term "party" in the new paragraph 2.

66. In addition to those changes, the Drafting Committee, for the same reasons as in article 12, had replaced the expression "successor State", throughout the text, by the expression "newly independent State". It had also replaced the word "parties" in the phrase "a specified number of parties shall be necessary for its entry into force" at the beginning of the former paragraph 4, by the expression "contracting States", since before the entry into force of a treaty there were clearly no parties to it, but only contracting States.

67. Sir Francis VALLAT (Special Rapporteur) proposed that in the new paragraph 3, the opening words "Paragraph 1 does not apply" should be replaced by the words "Paragraphs 1 and 2 do not apply". That change was rendered necessary by the sub-division of the former paragraph 1 into two separate paragraphs.

68. Mr. SETTE CÂMARA said he doubted whether the new text was an improvement. When a treaty required a given number of participating States for its entry into force, it clearly stipulated the need for a specific number of ratifications, accessions or acceptances. It was therefore inappropriate to refer to the States concerned as "contracting" States as was done in paragraph 5 of the new text. States which ratified, accepted or acceded to a treaty were "parties" to it, not "contracting States".

69. Sir Francis VALLAT (Special Rapporteur) said that that point had been considered at length by the Drafting Committee. Ideally, both paragraphs 1 and 2 should refer to States which had "consented to be bound" by the treaty. It would, however, be intolerably cumbersome to replace the words "contracting State" and "party" by the full text of the definitions in paragraphs 1(*k*) and 1(*l*) of article 2. The term "contracting State" was used in the phrase "a specified number of contracting States" in paragraph 5, with the meaning given to that term in paragraph 1(*k*) of article 2. It would not be appropriate to use the word "parties" instead of "contracting States" in that context, because the reference to "parties" would imply that the treaty was already in force.

70. The CHAIRMAN said that, if there were no further comments, he would take it that the Commission approved article 13 with the amendment to paragraph 3 proposed by the Special Rapporteur, and subject to a later decision on the passages in square brackets.[10]

It was so agreed.

ARTICLE 14[11]

71. Mr. ELIAS, speaking on behalf of the Drafting Committee, said that the Committee proposed the following title and text for article 14:

Article 14

Participation in treaties signed by the predecessor State subject to ratification, acceptance or approval

1. Subject to paragraphs 3 and 4, if before the date of the succession of States the predecessor State signed a multilateral treaty subject to ratification, acceptance or approval and by the signature intended that the treaty should extend to the territory to which the succession of States relates, the newly independent State may ratify, accept or approve the treaty as if it had signed that treaty and may thereby become a party or a contracting State to it.

2. For the purpose of paragraph 1, unless a different intention appears from the treaty or is otherwise established, the signature by the predecessor State of a treaty is considered to express the intention

[10] See 1294th meeting, para.32.

[11] For previous discussion see 1271st meeting, para. 39.

that the treaty should extend to the entire territory for the international relations of which the predecessor State was responsible.

3. Paragraph 1 does not apply if the object and purpose of the treaty are incompatible with the participation of the newly independent State in that treaty.

4. When, under the terms of the treaty or by reason of the limited number of the negotiating States and the object and purpose of the treaty, the participation of any other State in the treaty must be considered as requiring the consent of all the parties or of all the contracting States, the newly independent State may become a party or a contracting State to the treaty only with such consent.

72. Article 14 applied to treaties in respect of which the predecessor State had not expressed its consent to be bound, but which it had signed subject to ratification, acceptance or approval. The Drafting Committee had changed the title of the article in order to align it with the titles of articles 12 and 13 as just approved. All three titles now began with the words "Participation in treaties".

73. During the Commission's discussion of article 14 in 1972[12] and at the present session, several members had taken the position that a newly independent State should not have the right to inherit the signature of a predecessor State to a treaty, and had suggested that the article should be deleted. The majority of the Commission, however , appeared to be opposed to that suggestion, and the Drafting Committee had decided to recommend that article 14 should be retained.

74. The Committee had, however, found several imperfections in the 1972 text of the article. Paragraph 1, which dealt exclusively with the ratification of a treaty by the successor State, contained cross-references to five other provisions of the draft articles and could be understood only after a careful reading of those provisions. Paragraph 2 contained a somewhat obscure reference to paragraph 1 in the phrase "under conditions similar to those which apply to ratification". In order to remedy those imperfections, the Drafting Committee had recast the whole article and now submitted a new text which it believed to be clearer than the 1972 version. The changes which had been made did not affect either the sense of the article or the principle underlying it.

75. Mr. KEARNEY said that although he had no basic objection to paragraph 2 of the article, he noted that that paragraph made use of a legal fiction. As a matter of practice, there was always considerable doubt as to whether the signature of the predecessor State really expressed the intention to extend the treaty to the entire territory for the international relations of which it was responsible.

76. The CHAIRMAN said that the purpose of paragraph 2 appeared to be to establish a presumption. Unless the predecessor State had signified that its signature applied to a certain part of its territory, it could be presumed to wish to bind the whole of the territory under its jurisdiction.

77. If there were no further comments, he would take it that the Commission approved article 14 as proposed by the Drafting Committee.

It was so agreed.

The meeting rose at 12.30 p.m.

1291st MEETING

Tuesday, 9 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. Ramangasoavina, Mr. Reuter, Mr. Šahović, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Yasseen.

Question of treaties concluded between States and international organizations or between two or more international organizations.

(A/CN.4/277; A/CN.4/279; A/CN.4/L.210)

[Item 7 of the agenda]

(resumed from the 1279th meeting)

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE

1. The CHAIRMAN invited the Commission to consider the title of the draft articles and of part I, the titles and texts of articles 1, 2, 3 and 4, the titles of part II and section 1, and the titles and text of article 6 adopted by the Drafting Committee (A/CN.4/L.210).

TITLE OF THE DRAFT ARTICLES AND OF PART I

2. Mr. HAMBRO (Chairman of the Drafting Committee) said that, in the title of the draft articles, the Drafting Committee proposed that the words "Question of" should be replaced by the words "Draft articles on". It also proposed that the words "or between two or more international organizations" should be replaced by the shorter and possibly clearer wording "or between international organizations". The new title would thus read: "Draft articles on treaties concluded between States and international organizations or between international organizations".

3. For part I, the Drafting Committee proposed that the Commission should retain the title "Introduction", used by the Special Rapporteur in his third report (A/CN.4/279), and in the Vienna Convention on the Law of Treaties,[1] on which the present draft articles were modelled.

ARTICLE 1[2]

4. For article 1, the Drafting Committee proposed the following title and text:

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[12] Then article 8 *bis*; see *Yearbook ... 1972*, vol. I, p. 212 *et seq.*

[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. 289.

[2] For previous discussion see 1274th meeting, para. 8.