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Summary record of the 1295th meeting

Topic:
Succession of States with respect to treaties

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1295th MEETING

Wednesday, 17 July 1974, at 10.15 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. Quentin-Baxter, Mr. Ramangasoavina, Mr. Reuter, Mr. Šahović, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat.

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.3; A/8710/Rev.1)

[Item 4 of the agenda]

(resumed from the previous meeting)

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE

1. The CHAIRMAN invited the Commission to resume consideration of the draft articles proposed by the Drafting Committee (A/CN.4/L.209/Add.3).

ARTICLE 22¹

2. Mr. HAMBRO (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following titles and text for section 4 of part III and article 22:

SECTION 4. PROVISIONAL APPLICATION

Article 22

Multilateral treaties

1. If, at the date of the succession of States, a multilateral treaty was in force in respect of the territory to which the succession of States relates and the newly independent State gives notice of its intention that the treaty should be applied provisionally, that treaty shall apply provisionally between the newly independent State and any party which expressly so agrees or by reason of its conduct is to be considered as having so agreed.

2. Nevertheless, in the case of a treaty which falls under article 12, paragraph 3, or article 13, paragraphs 2 and 4, the consent of all the parties to such provisional application is required.

3. If, at the date of the succession of States, a multilateral treaty not yet in force was being applied provisionally in respect of the territory to which the succession of States relates and the newly independent State gives notice of its intention that the treaty should continue to be applied provisionally, that treaty shall apply provisionally between the newly independent State and any contracting State which expressly so agrees or by reason of its conduct is to be considered as having so agreed.

4. Nevertheless, in the case of a treaty which falls under article 12, paragraph 3, the consent of all the contracting States to such continued provisional application is required.

5. Paragraphs 1 to 4 do not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the newly independent State would be incompatible with its object and purpose or would radically change the conditions for the operation of the treaty.

3. The Drafting Committee had made no change in the title of article 22 or in the title of section 4 (Provisional application).

4. The text of article 22² had consisted of two paragraphs, both of which related exclusively to multilateral treaties which, at the date of the succession of States, were in force in respect of the territory to which the succession related. The text now proposed by the Drafting Committee consisted of five paragraphs, paragraphs 1 and 2 of which corresponded to the two paragraphs of the 1972 text, except for a few drafting changes.

5. One such change related to the words "the successor State notifies the parties or the depositary" appearing in paragraph 1 of the 1972 text. Many other articles of the draft specified that notification should be made to the depositary or to the States concerned. Some of those articles referred to "notification of succession", a term which was defined in article 2 and which was the subject-matter of article 17; others referred to notifications of another kind. To avoid all misunderstanding, the Committee proposed that the word "notification" should be used exclusively for notifications of succession, and that other notifications should be designated by the term "notice". A separate article would be devoted to the procedure by which such "notice" had to be given.³ In paragraph 1, the Committee had accordingly replaced the words he had quoted by the words "the newly independent State gives notice". The French and Spanish translations of the words "gives notice" were only provisional and would be reviewed by the Drafting Committee at the final editing stage. The substitution of the words "newly independent State" for "successor State" was in line with the decision already taken in regard to other articles; that change would, of course, be made throughout the draft.

6. Paragraphs 3 and 4 of the new text extended the rules set out in paragraphs 1 and 2 to the case of a treaty which was not yet in force at the date of the succession of States, but which was being applied provisionally—a case that had not been covered by the 1972 text.

7. Paragraph 5 was a new provision, based on paragraph 2 of article 12 and on paragraph 3 of article 13, as approved by the Commission. A number of other articles contained similar provisions, with differences in wording for which there appeared to be no good reason. In the interests of consistency, the Drafting Committee had therefore adopted for all the provisions in question a single model based on paragraphs 2(a) and 3(a) of article 25. The wording of paragraph 5 of article 22 was the first instance of the use of that model.

8. Sir Francis VALLAT (Special Rapporteur) pointed out that the words "or article 13, paragraphs 2 and 4" had been included in paragraph 2 by mistake and should be deleted.

9. The words "which falls under article 12, paragraph 3", in the same paragraph, were not altogether

² *Ibid.*

³ See next meeting, para. 44.

¹ For previous discussion see 1280th meeting, para. 26.

appropriate and he suggested that they should be replaced by the words: "which falls within the category mentioned in article 12, paragraph 3".

10. Mr. USHAKOV proposed that the words "in respect of its territory" should be inserted after the words "should continue to be applied provisionally" in paragraph 3.

11. Sir Francis VALLAT (Special Rapporteur) accepted that change, which was in conformity with the language adopted throughout the draft. He proposed that the same words should also be inserted after the words "should be applied provisionally", in paragraph 1, so as to make the intention absolutely clear.

12. The CHAIRMAN said that, if there were no further comments, he would take it that the Commission approved the title of section 4 of part III and the title and text of article 22, as proposed by the Drafting Committee, with the changes proposed by Mr. Ushakov and the Special Rapporteur.

It was so agreed.

ARTICLE 23⁴

13. Mr. HAMBRO (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following title and text for article 23:

Article 23 *Bilateral treaties*

A bilateral treaty which at the date of a succession of States was in force or was being provisionally applied in respect of the territory to which the succession of States relates is considered as applying provisionally between the newly independent State and the other State concerned if:

(a) they expressly so agree; or

(b) by reason of their conduct they are to be considered as having agreed to continue to apply the treaty provisionally.

14. Article 23 dealt with the provisional application of bilateral treaties. Like article 22, article 23 of the 1972 draft⁵ had related exclusively to treaties which were in force at the date of the succession. As in the case of article 22, the Drafting Committee proposed that the scope of article 23 should be enlarged to cover treaties which were provisionally applied at the date of the succession. It had also made some minor drafting changes in the text of the article.

15. The CHAIRMAN said that, if there were no comments, he would take it that the Commission approved the title and text of article 23, as proposed by the Drafting Committee.

It was so agreed.

ARTICLE 24⁶

16. Mr. HAMBRO (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following title and text for article 24:

Article 24

Termination of provisional application

1. Unless the treaty otherwise provides or it is otherwise agreed, the provisional application of a multilateral treaty under article 22 may be terminated:

(a) by reasonable notice of termination given by the newly independent State or the party or contracting State provisionally applying the treaty, and the expiration of the notice; or

(b) in the case of a treaty which falls under article 12, paragraph 3, or under article 13, paragraph 4, by reasonable notice of termination given by the newly independent State or the parties or, as the case may be, the contracting States, and the expiration of the notice.

2. Unless the treaty otherwise provides or it is otherwise agreed, the provisional application of a bilateral treaty under article 23 may be terminated by reasonable notice of termination given by the newly independent State or the other State concerned, and the expiration of the notice.

3. Unless the treaty otherwise provides or it is otherwise agreed, reasonable notice of termination shall be twelve months' notice from the date on which it is received by the other State or States provisionally applying the treaty.

4. Unless the treaty otherwise provides or it is otherwise agreed, the provisional application of a multilateral treaty under article 22 shall be terminated if the newly independent State gives notice of its intention not to become a party to the treaty.

17. Article 24 related to termination of the provisional application of treaties. The Drafting Committee had observed that some of the provisions of the 1972 text⁷ belonged to the law of treaties rather than to the law of State succession. Paragraph 1(a), for instance, stipulated that the provisional application of a treaty terminated if the States provisionally applying it so agreed. A similar provision appeared in paragraph 2(a). The Committee had decided that such provisions had no place in article 24, which should deal only with the grounds for termination of provisional application that belonged to the law of State succession strictly speaking. It had accordingly reworded the opening clauses of paragraphs 1 and 2 to make it clear that those paragraphs did not attempt to give an exhaustive list of grounds for such termination.

18. Like paragraph 1 of the 1972 text, paragraph 1 of the Drafting Committee's text dealt with termination of the provisional application of multilateral treaties. It reproduced, with a number of drafting changes, the corresponding provisions of the 1972 text, but without subparagraph (a).

19. Paragraph 2 dealt with the termination of the provisional application of bilateral treaties and corresponded to paragraph 2 of the 1972 text, again without subparagraph (a). Paragraph 3 reproduced the corresponding provisions of the 1972 text in a simplified form.

20. Paragraph 4 was a new provision which was obviously necessary, since it would be unfair to propose the continuation of the provisional application of a treaty once the new independent State had given notice of its intention not to become a party to the treaty.

⁴ For previous discussion see 1280th meeting, para. 73.

⁵ *Ibid.*

⁶ For previous discussion see 1281st meeting, para. 1.

⁷ *Ibid.*

21. Mr. RAMANGASOAVINA said that during the debate on article 24 he had pointed out that the newly independent State could decide to accede definitively to the treaty before the termination of provisional application.⁸ He would have liked article 24 to contain a provision under which the newly independent State could accede definitively to the treaty by a notification of succession during the period of provisional application. Could he take it that that provision was implicit in the present text of the article?

22. Mr. USHAKOV proposed that following the decision taken regarding article 22, the words "or under article 13, paragraph 4" should be deleted from paragraph 1(b). The phrase "which falls under article 12, paragraph 3" in the same paragraph, should be replaced by the new wording suggested by the Special Rapporteur for article 22, paragraph 2.

23. Sir Francis VALLAT (Special Rapporteur) said he accepted those proposals. In reply to Mr. Ramangasoavina, he explained that the Drafting Committee had considered it unnecessary to add any provision to cover the case in which provisional application terminated as such because the treaty came fully into force. The reason was that article 24 had been recast so as not to give the impression of being exhaustive. The article did not contain a complete list of grounds of termination, and the one mentioned by Mr. Ramangasoavina was one of those not mentioned.

24. Mr. RAMANGASOAVINA observed that paragraph 4 provided that the provisional application of a multilateral treaty should be terminated if the newly independent State gave notice of its intention not to become a party to the treaty. He thought it might also have been indicated that the provisional application of the treaty terminated if the newly independent State made a notification of succession. He would not press that suggestion, but would like the commentary to make it clear that a notification of succession could terminate the provisional application of the treaty.

25. Mr. USHAKOV said that if the newly independent State made a notification of succession to the treaty, the application of the treaty did not terminate, but continued on a different basis, which was no longer provisional, but definitive, since the treaty then entered into force.

26. The CHAIRMAN said that the commentary would make that point clear. He assumed that it would also explain that the enumeration in article 24 was not exhaustive. He would like to know, however, how that point was made in the text of the article itself.

27. Sir Francis VALLAT (Special Rapporteur) said that article 24 was cast in a purely permissive form. Both paragraph 1 and paragraph 2 used the words "may be terminated", which made it plain that there could be other cases of termination.

28. The CHAIRMAN said that, if there were no further comments, he would take it that the Commission

approved article 24, as proposed by the Drafting Committee, with the changes proposed by Mr. Ushakov.

It was so agreed.

ARTICLE 25⁹

29. Mr. HAMBRO (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following titles and text for section 5 and article 25:

SECTION 5. NEWLY INDEPENDENT STATES FORMED FROM TWO OR MORE TERRITORIES

Article 25

Newly independent States formed from two or more territories

1. Articles 12 to 24 apply in the case of a newly independent State formed from two or more territories.

2. When a newly independent State formed from two or more territories is considered as or becomes a party to a treaty by virtue of articles 12, 13 or 19 and at the date of the succession of States the treaty was in force, or consent to be bound had been given, in respect of one or more, but not all, of those territories, the treaty shall apply in respect of the entire territory of that State unless:

(a) it appears from the treaty or is otherwise established that the application of the treaty in respect of the entire territory would be incompatible with its object and purpose or would radically change the conditions for the operation of the treaty;

(b) in the case of a multilateral treaty not falling under article 12, paragraph 3, or under article 13, paragraph 4, the notification of succession is restricted to the territory in respect of which the treaty was in force at the date of the succession of States, or in respect of which consent to be bound by the treaty had been given prior to that date;

(c) in the case of a multilateral treaty falling under article 12, paragraph 3, or under article 13, paragraph 4, the newly independent State and the other States parties or, as the case may be, the other contracting States otherwise agree; or

(d) in the case of a bilateral treaty, the newly independent State and the other State concerned otherwise agree.

3. When a newly independent State formed from two or more territories becomes a party to a multilateral treaty under article 14 and by the signature or signatures of the predecessor State or States it had been intended that the treaty should extend to one or more, but not all, of those territories, the treaty shall apply in respect of the entire territory of that State unless:

(a) it appears from the treaty or is otherwise established that the application of the treaty in respect of the entire territory would be incompatible with its object and purpose or would radically change the conditions for the operation of the treaty;

(b) in the case of a multilateral treaty not falling under article 14, paragraph 4, the ratification, acceptance or approval of the treaty is restricted to the territory or territories to which it was intended that the treaty should extend; or

(c) in the case of a multilateral treaty falling under article 14, paragraph 4, the newly independent State and the other States parties or, as the case may be, the other contracting States otherwise agree.

30. Article 25 was the only article in section 5. In the 1972 draft (A/8710/Rev.1, chapter II, section C), the section had been entitled "States formed from two or more territories", whereas the title of the article itself had been "Newly independent States formed from two or more territories". The Drafting Committee had

⁸ *Ibid.*, para. 17.

⁹ For previous discussion see 1281st meeting, para. 20.

retained the title of the article and had inserted the words "Newly independent" before the words "States" in the title of the section, in order to emphasize that it belonged to part III of the draft.

31. The 1972 text of article 25 had consisted of a general rule, set out in an introductory clause, and of four exceptions to it, set out in sub-paragraphs (a), (b), (c) and (d). The Drafting Committee had observed that the general rule applied exclusively to treaties that were in force at the date of the succession. The rule was thus restricted to treaties to which the newly independent State became a party by virtue of article 12 or article 19. Under the provisions of sections 2 and 3 of part III, however, the right of a newly independent State to inherit a treaty was not limited to treaties that were in force at the date of the succession of States.

32. Thus, under article 13, paragraph 2, a newly independent State could establish its status as a party to a multilateral treaty which entered into force after the date of the succession of States if the predecessor State was a contracting State in respect of the territory to which the succession related; and under article 14, paragraph 1, a newly independent State could, under certain conditions, become a party to a multilateral treaty which the predecessor State had signed subject to ratification, acceptance or approval. The Drafting Committee had come to the conclusion that there was no valid reason to exclude from the scope of article 25 the situations covered in articles 13 and 14, and it had redrafted article 25 accordingly.

33. Paragraph 1 of the new text stated that articles 12 to 24 applied in the case of a newly independent State formed from two or more territories. That provision was required in order to make it clear that such a State had, *inter alia*, the right to become a party to a treaty under articles 13 and 14.

34. Paragraph 2 of the new text set out the provisions applicable to a treaty to which a newly independent State formed from two or more territories became a party by virtue of articles 12, 13 or 19. It reproduced, with some changes, the general rule and the exceptions to that rule contained in the 1972 text of article 25.

35. Paragraph 3 applied to a treaty to which a State became a party by virtue of article 14. Its provisions were an adaptation of the 1972 text to that particular situation.

36. Sir Francis VALLAT (Special Rapporteur) proposed that, at the end of the opening clause of paragraph 3, the words "the entire territory of that State" should be amended to read: "the entire territory of the newly independent State."

It was so agreed.

37. Mr. USHAKOV proposed that the references to article 13, paragraph 4, in paragraphs 2(b) and 2(c) should be deleted. In addition, the phrase "falling under article 12" should be replaced in each case by the new wording suggested by the Special Rapporteur for article 22, paragraph 2.

38. Sir Francis VALLAT (Special Rapporteur) suggested that those points should be left for the Drafting

Committee to decide at the stage of final editing. There was a difference between article 25 and article 22, in that article 25 really referred to the substance of the previous articles and not merely to a certain category of treaties.

39. The CHAIRMAN said that, if there were no further comments, he would take it that the Commission approved the title of section 5 of part III and the title and text of article 25, as proposed by the Drafting Committee, with the amendment adopted to paragraph 3 and subject to final editing.

It was so agreed.

Title of part IV

40. Mr. HAMBRO (Chairman of the Drafting Committee) said that, in the 1972 draft (A/8710/Rev.1, chapter II, section C), part IV consisted of articles 26, 27 and 28 and was entitled "Uniting, dissolution and separation of States". The word "dissolution" had been included in that title in order to cover article 27, the title of which had been: "Dissolution of a State". The Drafting Committee, however, had amended the title of article 27 to read "Succession of States in cases of separation of parts of a State", and had accordingly deleted the word "dissolution" from the title of part IV.

41. The CHAIRMAN said that, if there were no comments, he would take it that the Commission approved the title proposed by the Drafting Committee for part IV, which read: "Uniting and separation of States".

It was so agreed.

ARTICLES 26,¹⁰ 26 *bis* AND 26 *ter*

42. Mr. HAMBRO (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following titles and texts for article 26 and for two new articles numbered provisionally 26 *bis* and 26 *ter*:

Article 26

Effects of a uniting of States on treaties in force at the date of the succession of States

1. When two or more States unite and so form one successor State, any treaty in force at the date of the succession of States in respect of any of them continues in force in respect of the successor State unless:

(a) the successor State and the other State party or States parties otherwise agree; or

(b) it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be incompatible with its object and purpose or would radically change the conditions for the operation of the treaty.

2. Any treaty continuing in force in conformity with paragraph 1 shall apply only in respect of the part of the territory of the successor State in respect of which the treaty was in force at the date of the succession of States unless:

(a) in the case of a multilateral treaty other than one falling within the category mentioned in article 12, paragraph 3, the successor State gives notice in writing to the depositary or, if there is no depositary, to the parties that the treaty shall apply in respect of its entire territory;

(b) in the case of a multilateral treaty falling within the category mentioned in article 12, paragraph 3, the successor State and all the parties otherwise agree; or

¹⁰ For previous discussion see 1282nd meeting, para. 1.

(c) in the case of a bilateral treaty, the successor State and the other State party otherwise agree.

Article 26 bis

Effects of a uniting of States on treaties not in force at the date of the succession of States

1. Subject to paragraphs 3 and 4, a successor State falling within article 26 may, by giving notice in writing, establish its status as a contracting State to a multilateral treaty which is not in force if, at the date of the succession of States, any of the predecessor States, which have united, was a contracting State to the treaty.

2. Subject to paragraphs 3 and 4, a successor State falling within article 26 may, by giving notice in writing, establish its status as a party to a multilateral treaty which enters into force after the date of the succession of States if at that date any of the predecessor States, which have united, was contracting State to the treaty.

3. Paragraphs 1 and 2 do not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be incompatible with its object and purpose or would radically change the conditions for the operation of the treaty.

4. If the treaty is one falling within the category mentioned in article 12, paragraph 3, the successor State may establish its status as a party or as a contracting State to the treaty only with the consent of all the parties or of all the contracting States.

5. Any treaty to which the successor State becomes a contracting State or a party in conformity with paragraph 1 or 2 shall apply only in respect of the part of the territory of the successor State in respect of which consent to be bound by the treaty had been given prior to the date of the succession of States unless:

(a) in the case of a multilateral treaty not falling within the category mentioned in article 12, paragraph 3, the successor State indicates in its notice given under paragraph 1 or 2 that the treaty shall apply in respect of its entire territory; or

(b) in the case of a multilateral treaty falling within the category mentioned in article 12, paragraph 3, the successor State and all the parties or, as the case may be, all the contracting States otherwise agree.

6. Sub-paragraph 5(a) does not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the entire territory of the successor State would be incompatible with its object and purpose or would radically change the conditions for the operation of the treaty.

Article 26 ter

Effects of a uniting of States in the case of treaties signed by a predecessor State subject to ratification, acceptance or approval

1. Subject to paragraphs 2 and 3, if before the date of the succession of States one of the predecessor States had signed a multilateral treaty subject to ratification, acceptance or approval, a successor State falling within article 26 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. Paragraph 1 does not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be incompatible with its object and purpose or would radically change the conditions for the operation of the treaty.

3. If the treaty is one falling within the category mentioned in article 12, paragraph 3, the successor State may become a party or a contracting State to the treaty only with the consent of all the parties or of all the contracting States.

4. Any treaty to which the successor State becomes a party or a contracting State in conformity with paragraph 1 shall apply only in respect of the part of the territory of the successor State in respect of which the treaty was signed by one of the predecessor States unless:

(a) in the case of a multilateral treaty not falling within the category mentioned in article 12, paragraph 3, the successor State when ratifying, accepting or approving the treaty gives notice that the treaty shall apply in respect of its entire territory;

(b) in the case of a multilateral treaty falling within the category mentioned in article 12, paragraph 3, the successor State and all the parties or, as the case may be, all the contracting States otherwise agree.

5. Sub-paragraph 4(a) does not apply if it appears from the treaty or is otherwise established that the application of the treaty in respect of the entire territory of the successor State would be incompatible with its object and purpose or would radically change the conditions for the operation of the treaty.

43. Article 26 of the 1972 text¹¹ had been entitled "Uniting of States" and had consisted of three paragraphs. Paragraph 1 laid down, in its introductory clause, the rule that, on the uniting of two or more States in one State, any treaty in force at that date between any of those States and other States parties, continued in force between the successor State and such other States parties. There were two exceptions to that rule, set out in sub-paragraphs (a) and (b). The introductory clause of paragraph 2 laid down the rule that any treaty continuing in force in conformity with paragraph 1 was binding only in relation to the area of the territory of the successor State in respect of which the treaty had been in force at the date of the uniting of the States. Three exceptions to that rule were set out in sub-paragraphs (a), (b) and (c). Lastly, paragraph 3 specified that paragraphs 1 and 2 applied also when a successor State itself united with another State.

44. The Drafting Committee had decided to delete the provisions of paragraph 3, since they actually referred to two distinct and not simultaneous successions of States, each of which should be considered separately. It had reproduced the substance of paragraphs 1 and 2, with a number of drafting changes, in the new text of the article 26 it now proposed.

45. The Committee had amended the title of the article to read: "Effects of a uniting of States on treaties in force at the date of the succession of States", since article 26 related only to treaties which were in force at the date of the succession.

46. Because of that limitation of the scope of article 26, there was no provision in the draft articles that would enable a successor State which emerged from a uniting of States to become a party, or a contracting State, to a treaty which was not in force at the date of the succession, by procedures similar to those established by articles 13 and 14 for newly independent States. The Drafting Committee had come to the conclusion that there was no valid reason for such a difference in treatment between two categories of successor States, namely, the newly independent and those which emerged from a uniting of States. It had therefore prepared two new articles which it now proposed to the Commission.

47. The first article, provisionally numbered 26 bis, was entitled: "Effects of a uniting of States on treaties not in

¹¹ *Ibid.*

force at the date of the succession of States". Its paragraphs 1, 2, 3 and 4 were based on the same paragraphs of article 13. Under conditions similar to those applying to newly independent States, those provisions enabled a successor State emerging from a uniting of States to establish, by giving notice in writing, its status as a party or as a contracting State to a multilateral treaty which had not been in force at the date of the succession.

48. Paragraph 5 of article 26 *bis* reflected the provisions of paragraph 2 of article 26 as now proposed by the Drafting Committee. Paragraph 6 embodied the exception set out in paragraph 1(b) of article 26.

49. The second new article proposed by the Drafting Committee, provisionally numbered 26 *ter*, was entitled: "Effects of a uniting of States in the case of treaties signed by a predecessor State subject to ratification, acceptance or approval". Paragraphs 1, 2 and 3 of that article were based on paragraphs 1, 3 and 4 of article 14, but it would be noted that paragraph 1 of article 26 *ter* did not contain the proviso that the predecessor State intended by its signature "that the treaty should extend to the territory to which the succession of States relates". That proviso, which had its place in paragraph 1 of article 14, had clearly no relevance to a uniting of States. Since the provisions of paragraph 2 of article 14 related exclusively to that proviso, they had also been omitted from the text of article 26 *ter* now proposed.

50. The provisions of paragraphs 4 and 5 of article 26 *ter* were similar to those of paragraphs 5 and 6 of article 26 *bis*.

51. Mr. USHAKOV proposed that the opening words of the titles of all three articles should be redrafted to read: "Effects of a uniting of States in respect of treaties...".

52. Sir Francis VALLAT (Special Rapporteur) supported that proposal which was in line with the language consistently used throughout the draft.

53. Mr. USHAKOV said that the expression "other State party" used in article 26, was not altogether suitable in the case of a uniting of States, because of the way in which that term was defined in paragraph 1(m) of article 2. The concluding words of the definition: "a treaty in force . . . in respect of the territory to which that succession of States relates" made the term inappropriate.

54. He suggested that the Drafting Committee should solve that problem during the final editing, either by using different wording in article 26, or by amending the definition in paragraph 1(m) of article 2.

55. Sir Francis VALLAT (Special Rapporteur) said it would be very difficult to solve the problem by altering the passages containing references to the "other State party". It would be better to deal with the problem in article 2.

56. The CHAIRMAN suggested that, on the understanding that the Drafting Committee would deal with that point at the final editing stage, the Commission should approve articles 26, 26 *bis* and 26 *ter*, as proposed

by the Drafting Committee, with the amendment to the titles proposed by Mr. Ushakov and accepted by the Special Rapporteur.

It was so agreed.

The meeting rose at 11.15 a.m.

1296th MEETING

Thursday, 18 July 1974, at 3.10 p.m.

Chairman: Mr. Endre USTOR

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

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.4 and 5; A/CN.4/L.212, L.215, L.221 and L.222; A/8710/Rev.1)

[Item 4 of the agenda]

(continued)

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE

1. The CHAIRMAN invited the Commission to consider articles 27 to 31 *ter*, as proposed by the Drafting Committee (A/CN.4/L.209/Add.4). He then called on the Chairman of the Drafting Committee to introduce articles 27 and 28 together.

ARTICLES 27¹ AND 28²

2. Mr. HAMBRO (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following titles and texts for articles 27 and 28:

Article 27

Succession of States in cases of separation of parts of a State

1. When a part or parts of the territory of a State separate to form one or more States, whether or not the predecessor State continues to exist:

(a) any treaty in force at the date of the succession of States in respect of the entire territory of the predecessor State continues in force in respect of each successor State so formed;

(b) any treaty in force at the date of the succession of States in respect only of a part of the territory of the predecessor State that has become a successor State continues in force in respect of that successor State alone.

2. Paragraph 1 does not apply if:

(a) the States concerned otherwise agree; or

(b) it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be

¹ For previous discussion see 1283rd meeting, para. 17.

² For previous discussion see 1284th meeting, para. 1.