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Summary record of the 1329th meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
1975, vol. I

experts should be left to the Special Rapporteur. It was the Commission's practice to leave Special Rapporteurs free to decide what kind of assistance they required from the Secretariat.

28. He had himself taken part in negotiations concerning the uniting of States and the dissolution of unions. That experience showed how desirable it was that the draft should contain a residuary rule offering guidance to States. It was not at all easy for the States concerned to settle all the complex problems which arose in situations of that kind, so the existence of residuary rules would be very helpful.

29. He supported the general approach. The Commission should not undertake the drafting of a series of detailed provisions, which would be better suited to a contract than to a codifying convention. The draft should contain only general norms and should not go into such matters as would be covered by an instrument settling a particular succession.

30. The CHAIRMAN suggested that, in view of the short time left for the consideration of the topic of succession of States in respect of matters other than treaties, all the articles in section 2 of the draft (A/CN.4/282) should be referred to the Drafting Committee.

It was so agreed. [17]

The meeting rose at 12.20 p.m.

[17] For resumption of the discussion on article 12 see next meeting, para. 46.

1329th MEETING

Friday, 13 June 1975, at 10.10 a.m.

Chairman: Mr. Abdul Hakim TABIBI

Members present: Mr. Ago, Mr. Bedjaoui, Mr. Bilge, Mr. Calle y Calle, Mr. Kearney, Mr. Pinto, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Šahović, Mr. Sette Câmara, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor.

Eleventh session of the Seminar on International Law

(resumed from the 1316th meeting)

1. The CHAIRMAN said that at the close of the Seminar on International Law, he had been asked to express the gratitude of Mr. Raton, the Senior Legal Officer in charge, to the members of the Commission who had given lectures. The Seminar not only provided instruction for young jurists from different continents, but also afforded an opportunity for members of the Commission to hold a useful exchange of views with the younger generation. He wished the participants every success in their careers and hoped to see them again at other United Nations meetings.

Succession of States in respect of matters other than treaties

(A/CN.4/282; [1] **A/CN.4/L.226 and Add.1)**

[Item 2 of the agenda]

(resumed from the previous meeting)

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE

ARTICLE 9 [2]

2. The CHAIRMAN invited the Chairman of the Drafting Committee to introduce article 9 as proposed by the Drafting Committee, which read:

Article 9

General principle of the passing of State property

Subject to the articles of the present Part and unless otherwise agreed or decided, State property which, on the date of the succession of States, is situated in the territory to which the succession of States relates, shall pass to the successor State.

3. Mr. QUENTIN-BAXTER (Chairman of the Drafting Committee) said that in the light of the discussion in the Commission, the Drafting Committee had decided not to retain in article 9 the phrase "State property necessary for the exercise of sovereignty" originally proposed by the Special Rapporteur, and had found that the phrase "State property used for the exercise of governmental authority" did not constitute an adequate alternative. The article, as adopted by the Committee, referred simply to "State property", which had been defined in article 5 (A/CN.4/282). The word "all" had been deleted from the title in order to bring it into line with the text. The Committee had added the introductory phrase "Subject to the articles of the present Part and unless otherwise agreed or decided"; in order to stress the residual nature of the article, in accordance with the general trend of the Commission's discussion. It was the belief of the Committee that, in an article of very general scope, it was preferable to use the formula "State property which, on the date of the succession of States, is situated in the territory to which the succession of States relates". The Committee had recognized that the question of property situated outside that territory and the general question of distinguishing between movable and immovable property would have to be considered in more specific contexts at a later stage.

4. Mr. USHAKOV said that he accepted the text of article 9 proposed by the Drafting Committee, subject, however, to a reservation concerning the word "situated", which was unsuitable for movable property. As a matter of drafting he suggested that the opening words of the article should read "Subject to the provisions of the articles of the present Part . . .".

5. Mr. BEDJAOUI (Special Rapporteur) said he accepted the drafting change suggested by Mr. Ushakov.

6. Mr. USTOR said that his support for article 9 as proposed by the Drafting Committee was provisional, since its exact form would depend on that of subsequent articles. The effect of the phrase "Subject to the articles

[1] *Yearbook . . . 1974*, vol. II, Part One, pp. 91-115.

[2] For previous discussion see 1318th meeting, paras. 7 *et seq* and following meetings.

of the present Part" was that the provisions of articles 12 to 15 would prevail. Those articles provided that certain types of property situated in the territory of the predecessor State on the date of succession would pass in a specified proportion to the successor State. That implied *a contrario* that other property likewise situated in that territory—mostly movable property like railway rolling stock and arms—would not pass to the successor State in any proportion whatsoever. The attention of States should be drawn to that point by a note in the commentary.

7. Mr. QUENTIN-BAXTER (Chairman of the Drafting Committee) said he would gladly take note of Mr. Ustor's comment, which reflected a concern that had been expressed in the Commission and had been very much in the minds of the Drafting Committee.

8. The CHAIRMAN said that if there was no objection he would take it that the Commission approved article 9, subject to the comments made at that meeting.

It was so agreed.

ARTICLE 11[3]

9. The CHAIRMAN invited the Chairman of the Drafting Committee to introduce article 11 as proposed by the Drafting Committee, which read:

Article 11

[Passing of debts owed to the State]

[Subject to the articles of the present Part and unless otherwise agreed or decided, the debts owed (*créances dues*) to the predecessor State by virtue of its sovereignty over, or its activity in, the territory to which the succession of States relates shall pass to the successor State.]

10. Mr. QUENTIN-BAXTER (Chairman of the Drafting Committee) said that the title and text of article 11 had been placed in square brackets because the Drafting Committee had not felt that it was on firm enough ground to dispose of all the questions to which the proposed article might give rise. Outstanding problems included the question of the difference in nature and substance between movable and immovable property; the fact that in certain legal systems the term "debts" (*créances*) might give rise to difficulties; doubts about the adequacy of the word "pass" in the context of article 11 to indicate clearly to debtors of the predecessor State exactly their obligations were; and concern that even in its new version the draft article might not cover all the possible cases it was intended to cover.

11. Textual changes included the addition of the saving clauses "Subject to the articles of the present Part" and "unless otherwise agreed or decided", which already appeared in article 9. The Committee had considered that, unless there was some difference in scope between the French term "*créances*" and the English notion of "debts", it would be wise to include, after the words "debts owed" in the English version of the article, the French expression "*créances dues*", to indicate that it was the concept of *créances* which had guided the Commission. The article had been reworded to avoid the phrase "shall become the beneficiary" and the French term "*redevable*", which some members had considered ambiguous. On the other hand, the phrase "by virtue of its sovereignty over, or its activity in, the territory to which the succession of States relates" had been retained, as it had been thought necessary to specify the essential links between the debts owed to the predecessor State and the territory.

12. The CHAIRMAN observed that the drafting amendment to article 9 proposed by Mr. Ushakov would also apply to article 11.

13. Mr. KEARNEY said he could agree that the Commission should simply state a general principle in an article like article 9, but he could not accept a like procedure in article 11, which dealt with a specific category of obligations. While the proposed text also had other deficiencies, his greatest concern was what was meant by the "passing of debts". Most of the members of the Commission seemed to believe that article 11 would have the magical effect of ensuring the legal transfer to the successor State of the title to debts owed to the predecessor State, but he thought the language of the article was too imprecise to achieve that object. In the first place, what would be the possible consequences of the article for States whose constitutions provided that treaties seen as self-executing became part of internal law by virtue of ratification, without implementing legislation? He also wondered whether other States would really be prepared to amend their internal law relating to trade, negotiable instruments and sales in order to implement the article. He hoped that States would make it clear in their comments whether they considered that a general article of the type proposed was sufficient.

14. Mr. AGO said he thought that article 11, as proposed by the Drafting Committee, should be included in the draft; he agreed that the Commission should consult States on the text, for in his opinion it raised serious problems. For example, if the predecessor State had a claim against one of its provinces, which subsequently became the successor State, it would be absurd to say that the predecessor's claim passed to the successor State, for the successor State would itself be the debtor. The only solution would be to provide, if absolutely necessary, that the claim was simply extinguished, though it was open to question whether that would be equitable. Another possible situation was one in which the predecessor State had made a loan to a private person or enterprise in order to promote industry in one of its provinces, which subsequently seceded. Could it be held, in such a case, that the successor State inherited the claim, when most probably it was the savings of an entirely different province of the predecessor State which had made the loan possible? In his opinion, the attention of States should be drawn to those problems before a final position was taken on the subject.

15. It was true, as the Special Rapporteur himself had said, that the rule in article 11 was merely a residuary rule, applicable only in the absence of an agreement between the parties. But that was precisely where the main difficulty lay. For up to the present, in the absence of any formulation of the general rule on the subject, agreements had been freely made between the parties, so it might be asked whether the very existence of such a rule would not make the conclusion of agreements much more

[3] For previous discussion see 1322nd and 1323rd meetings.

difficult. The successor State, knowing that there was a rule applicable in the absence of an agreement, would be little disposed to conclude with the predecessor State an agreement departing from that rule, since any such departure would certainly be to its disadvantage. Thus instead of helping to clarify and facilitate the relations between the parties, the rule stated in article 11 might create additional difficulties. He hoped the Special Rapporteur would give some idea of those difficulties in the commentary, in order to draw the attention of States to the problems that arose and to enable them to express an informed opinion on the matter.

16. Mr. BEDJAOUI (Special Rapporteur) noted that article 11 had given rise to lively discussion in the Drafting Committee, as it had in the Commission. When the successor and predecessor States were dealing with each other, the passing of State property did not raise many difficulties, since only two partners were involved. But where certain classes of State property were concerned there was a third partner: the party liable for the debt contracted to the predecessor State. There was then a triangular relationship, which raised difficulties for Mr. Kearney.[4] Those difficulties should not be exaggerated, however. Admittedly, under some political systems difficulties might arise from the fact that, under the constitution, normally ratified treaties automatically became part of internal law. But even in the case of the triangular relationship which then existed between the successor State, the predecessor State and a third party—legal or natural—which was a debtor to the predecessor State, recourse could always be had to article 6, which provided that the succession of States entailed *ipso facto* the extinction of the rights of the predecessor State and the arising of the rights of the successor State to State property —that was to say, in the case in point, to State debt-claims. The idea of passing thus necessarily implied the transfer of the claim from the predecessor to the successor State. If the third party discharged its debt to the predecessor State, the problem of reimbursement should normally arise, particularly in the case of fiscal claims. He referred in that regard to the judgments of the Supreme Administrative Courts of Czechoslovakia and Poland.[5] In his opinion, therefore, the triangular relationship contemplated in article 11 should not cause excessive difficulties; the Commission's commentary should stress that there was no other solution than that proposed in article 11.

17. The case mentioned by Mr. Ago—that of a loan granted by the predecessor State to one of its provinces, which subsequently seceded to become a new State—was not strictly speaking within the scope of article 11, since it did not involve an act of sovereignty or direct activity of the predecessor State in the territory to which the succession related. The reason why State claims passed from the predecessor to the successor State was, precisely, that there was a link between the territory and the claim, and the link consisted in the fact that the predecessor State had carried out an activity, or exercised its *imperium*, in the territory in question. That link was the basis of the rule stated in article 11 and it must be shown to exist when the article was invoked.

18. The CHAIRMAN said that Mr. Ago's point would be mentioned in the commentary for the attention of States. If there was no objection, he would take it that the Commission approved article 11, with the amendment proposed by Mr. Ushakov.

It was so agreed.

SUB-PARAGRAPH (*e*) OF ARTICLE 3 AND ARTICLE X[6].

19. The CHAIRMAN invited the Chairman of the Drafting Committee to introduce sub-paragraph (*e*) of article 3 and article X as proposed by the Drafting Committee, which read:

Article 3 (Use of terms)

...

(*e*) "third State" means any State other than the predecessor State or the successor State;

Article X

Absence of effect of a succession of States on third State property

A succession of States shall not as such affect property, rights and interests which, on the date of the succession of States, are situated in the territory [of the predecessor State or] of the successor State and which, according to the internal laws of the territory in which they are situated, are owned by a third State.

20. Mr. QUENTIN-BAXTER (Chairman of the Drafting Committee) said that sub-paragraph (*e*) of article 3 corresponded to the article X proposed by the Special Rapporteur (A/CN.4/282). A few drafting changes had been made to clarify the text.

21. The CHAIRMAN said that, if there was no objection, he would take it that the Commission approved sub-paragraph (*e*) of article 3.

It was so agreed.

22. Mr. QUENTIN-BAXTER (Chairman of the Drafting Committee) said that the Drafting Committee had found merit in the proposal made by Mr.Tsuruoka[7] and other members that articles Y and Z, dealing with the determination and treatment of the property of a third State, should be combined, and had combined them in article X. Following the clear trend of the Commission's discussion, the Committee had not retained the qualification relating to the public policy (*ordre public*) of the successor State. The title of the proposed article read simply "Absence of effect of a succession of States on third State property"; some reservations had been expressed in the Committee about the absolute nature of the proposed rule.

23. Members of the Committee had differed as to whether or not the scope of the article should be confined to property situated in the territory to which the succession related; that was why the words "of the predecessor State or" appeared in square brackets.

[4] See 1323rd meeting, paras. 37 and 38.

[5] *Yearbook ... 1971*, vol. II, p. 186, paras. (5) and (6) and p. 189, para. (20).

[6] For previous discussion see 1324th meeting, para. 1.

[7] *Ibid.*, paras. 21 and 22.

24. Mr. TAMMES, referring to comments he had made in the Drafting Committee, said he was still not sure that the phrase "shall not as such affect" would produce the expected result in regard to the property of a foreign State which became a third State in a case of succession. It was an essential element of succession that the legal system of the old sovereign State was replaced by the legal system of the new sovereign State. If the new legal system restricted the ownership of property by another State in the new State's territory—a possibility mentioned in paragraph (6) of the commentary to article Z (A/CN.4/282, chapter IV)—the property of the third State, other than that required for its official representation, would automatically be affected by the succession. For that reason, he would have preferred the wording originally proposed by the Special Rapporteur in article Z to stand.

25. Mr. USHAKOV pointed out that Mr. Tammes himself had said that it was not the succession of States as such which could produce effects on the property of a third State, but the legislation of the successor State—in other words, its own internal law.

26. Mr. AGO said he had some reservations about the phrase "the internal laws of the territory in which they are situated", because it did not specify that the internal law recognizing the ownership of certain property by a third State must be the law in force at the time of the succession. He thought it would be better to refer to "the law in force at the place where the property was situated on the date of the succession of States".

27. Mr. BEDJAOUI (Special Rapporteur) said he could agree to specify that the law referred to was "the law in force in the territory on the date of the succession of States". He pointed out, however, that other articles referred to "internal law"; for example, article 5 defined State property "according to the internal law of the predecessor State".

28. Mr. AGO said he considered it necessary to refer to the place where the property of the third State was situated, for although no problem arose in regard to immovable property, which passed with the territory in which it was situated, there might be a problem in the case of movable property, which could be in the part of the predecessor State's territory which was not transferred. Hence the expression "internal law of the territory" would be ambiguous, for it could refer to the whole of the predecessor State's territory just as well as to the territory which passed to the successor State.

29. Mr. USHAKOV agreed with Mr. Ago. The expression "the internal laws of the territory in which they are situated" was meaningless in law. The reference should be to the internal law of the predecessor State or of the successor State, as the case might be.

30. Mr. BEDJAOUI (Special Rapporteur) proposed, as a compromise, the following text for the new article X:

Absence of effect of a succession of States on third State property.

A succession of States shall not as such affect property, rights and interests which, on the date of the succession of States, are situated in the territory [of the predecessor State or] of the successor State and which, on that date, are owned by a third State according to the internal law of the predecessor State or of the sucessor State, as the case may be.

31. Mr. KEARNEY said that formulas such as "according to the internal law of the predecessor State or of the successor State, as the case may be" might be a source of difficulties, because the words "of the predecessor State" had been placed in square brackets earlier in the article. He therefore suggested that the last phrase of the article should read "according to the applicable internal law", it being understood that the reference was to the internal law of the predecessor or of the successor State, depending on where the third State's property was situated.

32. Mr. BEDJAOUI (Special Rapporteur) found that amendment acceptable.

33. Mr. USHAKOV said the thought Mr. Kearney's proposal would give rise to further difficulties. If it saw fit, the Commission might put the second reference to the predecessor State in square brackets also.

34. Mr. CALLE Y CALLE said that he could accept the proposed redraft of article X, but requested that a full explanation of two points should be given in the commentary. The first point was the inclusion of a reference to property situated in the territory of the predecessor State; the second was the mention of the internal law of the successor State.

35. Article X had been introduced into the draft only to make it clear that, in all types of succession of States, when State property passed from the predecessor State to the successor State, there were some items of property which the predecessor State could not transfer because they belonged to third States. The question of ownership under the law of the predecessor State and the fate of the property under the legal system of the successor State were entirely different matters.

36. In his view, the third State's property covered by article X was the property of that State under the law of the predecessor State, and the predecessor State would continue to be answerable for it to the third State. Article X should specify simply that the succession—the replacement of one sovereignty by another in the territory—did not in any way affect the predecessor State's responsibility towards third States. It was inappropriate to make any reference in the article to the internal law of the successor State, since the rights of third States existed under the law of the predecessor State and of that State alone.

37. Mr. USHAKOV said that article X applied to all property of a third State wherever it was situated, in the territory of the predecessor State or the successor State. That was why it was necessary to mention both the predecessor State and the successor State. For example, a province of State A might secede and become part of State B; if assets of a third State were held in the central bank of State A, State B might contend that State A had not transmitted to it titles or claims to those assets and had appropriated them. The same charges might be brought by State A against State B, if the assets of the third State were held in the central bank of State B. Hence it was important to lay down the principle that the property of a third State situated in the territory of

the predecessor State or of the successor State was not affected by the relations between those two States. On the occasion of a succession of States, both the predecessor State and the successor State could unlawfully interfere with property of a third State situated in their territory.

38. Mr. KEARNEY said that despite the explanation given by Mr. Ushakov, he agreed with Mr. Calle y Calle, for he failed to see how a third State's property in the territory of the predecessor State could possibly be affected by the succession. After the succession, the property of a third State in the territory of the predecessor State remained under precisely the same legal régime as before the succession. No change in sovereignty or in legal régime had taken place in the territory of the predecessor State. Possibly some new claims might be made, but that was a problem to be settled under the law of the predecessor State.

39. In the light of those considerations, he suggested that the wording of the article should be simplified so as to eliminate the inaccurate references to the territory of the predecessor State and to the law of the successor State. It was the law of the predecessor State which determined what property belonged to a third State and it would merely confuse matters to make a totally unnecessary reference to the law of the successor State.

40. Mr. TSURUOKA said that if the Commission chose to use square brackets, it could put the words "or of the successor State, as the case may be" in square brackets.

41. Mr. USHAKOV noted that some members of the Commission wished the passages they found inappropriate to be placed in square brackets, whereas others would like the text to be retained in its entirety. He was not opposed to the use of square brackets, provided that the text could still be read in its final version.

42. Mr. SETTE CÂMARA said that article X would probably be the only article in the draft dealing with the protection of the interests of third States. In order to identify the property covered by the provisions of the article, a territorial criterion had been adopted. But a predecessor State might own, outside its territory, property encumbered by rights of a third State. That property might be a consignment of gold taken from its gold reserves and pledged to a third State as security for a loan made by that State. To deal with cases of that kind the draft articles should contain some provision protecting the rights of a third State in property deposited with it as security.

43. Mr. KEARNEY suggested that a suitable reference should be made to that question in the commentary to article X, and that the matter should be kept in mind in the discussion of article 15 and the other articles dealing with State property situated outside the transferred territory (A/CN.4/282).

44. The CHAIRMAN said that the Special Rapporteur would take note of that point for the purposes of article 15.

45. If there were no further comments, he would take it that the Commission agreed to approve article X as redrafted by the Special Rapporteur, the words "or of the successor State, as the case may be" being placed in square brackets, as suggested by Mr. Tsuruoka.

It was so agreed.

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR

ARTICLE 12 (Currency) [8] (*continued*)

46. The CHAIRMAN reminded the Commission that two different approaches to article 12 had been suggested by members. Mr. Ushakov had submitted a single article to replace articles 12 to 15, the text of which had been read out by the Special Rapporteur. [9] The other approach was to retain article 12 as a specific article on currency problems, and Mr. Kearney had proposed certain amendments, [10] with which the text of the article would read:

1. Gold and foreign exchange reserves stored by the predecessor State in the transferred territory and allocated to that territory shall pass to the successor State.

2. The assets of the central institution of issue in the predecessor State, including those allocated for the backing of issues for the transferred territory, shall be apportioned in the proportion which the average volume of currency in circulation in the transferred territory during the six months prior to the date of succession bears to the average volume of currency in circulation in the predecessor State as a whole during the same period.

3. Currency and monetary tokens of the predecessor State that are in circulation in the transferred territory on the date of succession shall be converted into the currency of the successor State at the exchange rate notified to the International Monetary Fund or, if there is no such exchange rate, at the average of the middle rate in the financial markets of the predecessor State and of the successor State on the date of succession. Currency and tokens acquired by the successor State in the conversion shall be delivered to the predecessor State together with any gold and foreign exchange reserves stored in the transferred territory but not allocated to that territory.

47. Mr. KEARNEY said that the suggested text read out by the Chairman did not constitute a formal proposal. It had been put forward merely to assist the Drafting Committee in its work.

48. Mr. USHAKOV explained that the draft of article 12 he had submitted to the Special Rapporteur was only a suggestion.

49. Mr. QUENTIN-BAXTER (Chairman of the Drafting Committee) said that the Drafting Committee had had very little time to examine the texts of article 12 drafted by Mr. Kearney and Mr. Ushakov. Consequently, he was not yet in a position to report on article 12 and would like to hear the views of the Special Rapporteur.

[8] For text see 1325th meeting, para. 6.

[9] See previous meeting, para. 10.

[10] See 1326th meeting, paras. 19-26.

50. Mr. BEDJAOUI (Special Rapporteur) said that many members of the Commission were wondering how the choice of the few classes of State property he had adopted for his draft could be justified before the General Assembly; they feared that his choice might appear arbitrary. He did not share that view. State property not specifically mentioned in his text, such as warships, merchant vessels and armaments, was State property covered by draft article 9. Moreover, such property was less important than that expressly covered by specific provisions of the draft, because not all States possessed such property, whereas they all possessed currency, a treasury and archives. Thus his choice was not arbitrary at all.

51. Under article 9 as adopted by the Drafting Committee (A/CN.4/L.226), all State property which, on the date of the succession of States, was situated in the territory to which the succession of States related, passed to the successor State "subject to the articles of the present Part and unless otherwise agreed or decided". Consequently, the classes of State property not mentioned in the draft and not covered by article 9 could form the subject of other specific provisions.

52. To deal with the case of a succession affecting part of a territory, the Commission might also prepare only one general draft article. It might perhaps be necessary to add a specific article on one class of State property, such as currency, but a single general article might suffice. As the Commission was about to suspend consideration of the topic of the succession of States in respect of matters other than treaties, those questions could be considered by the Drafting Committee, before the Commission took them up again in a few weeks' time. To continue his work, he needed to know which solution the Drafting Committee and the Commission preferred.

53. Mr. USHAKOV said that it would be difficult for the Commission to take a decision on that question without knowing the Special Rapporteur's opinion.

54. Mr. USTOR said he hoped that the Special Rapporteur would be able to make proposals to the Drafting Committee and that a set of articles would result from the work of that Committee at the present session.

55. The CHAIRMAN said that, if there were no further comments, he would take it that the Commission agreed to await the Drafting Committee's report on article 12 and on the texts drafted by Mr. Kearney and Mr. Ushakov.

It was so agreed. [11]

The meeting rose at 12.50 p.m.

[11] For resumption of the discussion see 1351st meeting, para. 50.

1330th MEETING

Monday, 16 June 1975, at 3.10 p.m.

Chairman: Mr. Abdul Hakim TABIBI

Members present: Mr. Ago, Mr. Bedjaoui, Mr. Bilge, Mr. Calle y Calle, Mr. Kearney, Mr. Pinto, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Reuter, Mr. Šahović, Mr. Sette Câmara, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Francis Vallat.

Succession of States in respect of matters other than treaties

[Item 2 of the agenda]

(continued)

PRODUCTION OF RUSSIAN TEXTS OF ARTICLES

1. Mr. USHAKOV said he hoped that a document would soon be circulated containing the articles provisionally adopted on the topic of succession of States in respect of matters other than treaties. Whenever the Drafting Committee or the Commission adopted an article, he provided the Russian text in his capacity as a member of the Drafting Committee and of the Commission. Not infrequently, the Russian translation section at Geneva or New York took the liberty of changing his texts to such an extent that they became unrecognizable and even contained serious mistakes when published.

2. He thought that, to stop that practice, the Commission should adopt the following decision and bring it to the attention of those concerned at Geneva and New York: "The Russian translation section of the United Nations has no right to change the texts of articles drafted in the Russian version by Mr. Ushakov as a member of the Drafting Committee and of the Commission. No correction is permissible without his express authorization".

3. The CHAIRMAN said he felt sure the Commission was in full agreement with Mr. Ushakov on the question of the Russian texts. The Secretary to the Commission would bring the matter to the attention of the appropriate Secretariat authorities in New York and at Geneva.

Most-favoured-nation clause

(A/CN.4/266; [1] A/CN.4/280; [2] A/CN.4/286)

[Item 3 of the agenda]

INTRODUCTORY STATEMENT BY THE SPECIAL RAPPORTEUR

4. The CHAIRMAN invited the Special Rapporteur to report on the progress of his work on the most-favoured-nation clause.

5. Mr. USTOR (Special Rapporteur) said that in its 1973 report on the work of its twenty-fifth session, the Commission had restated the ideas which were to guide it in the study of the most-favoured-nation clause. In that report the Commission had said that "it understood its task as being to deal with the clause as an aspect of the law of treaties". [3] While recognizing the fundamental importance of the role of the clause in international trade, it had not wished to confine the study to its operation in that field, but "to extend the study to the operation of the clause in as many fields as possible". [4] Lastly, the Commission had said that it wished to devote special attention

[1] *Yearbook ... 1973*, vol. II, pp. 97-116.

[2] *Yearbook ... 1974*, vol. II, Part One, pp. 117-134.

[3] *Yearbook ... 1973*, vol. II, p. 211, para. 112.

[4] *Ibid.*, para. 113.