Document:-
A/CN.4/SR.1416

Summary record of the 1416th meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
1977, vol. I

Mr. Ushakov Special Rapporteur for the topic of the most-favoured-nation clause.

It was so agreed.

8. The CHAIRMAN said the Enlarged Bureau recommended that Mr. Schwebel be appointed Special Rapporteur for the topic of the law of the non-navigational uses of international watercourses, to replace Mr. Kearney.

9. Mr. SCHWEBEL said he would be pleased to accept the appointment, on the understanding that he would be allowed all the time necessary for the topic, but he was fully confident that that would be the case.

10. The CHAIRMAN said that, if there was no objection, he would take it that the Commission agreed to appoint Mr. Schwebel Special Rapporteur for the topic of the law of the non-navigational uses of international watercourses.

It was so agreed.

11. The CHAIRMAN said that the Enlarged Bureau had considered the question of relations between States and international organizations. Mr. El-Erian, the Special Rapporteur, had been requested to prepare a preliminary report,[1] which would be available shortly. It would be possible to allot two or three meetings to the topic, probably under item 9 of the agenda, organization of future work. If there was no objection, he would take it that the Commission agreed to that procedure.

It was so agreed.

12. The CHAIRMAN said that the special meeting to pay tribute to the memory of Mr. Edvard Hambro would probably be held on Monday, 16 May 1977. The Ambassador of Norway was now in the process of contacting Mr. Hambro's widow, for the Enlarged Bureau considered that she should have the opportunity to attend the meeting if she so wished.

13. The Enlarged Bureau had taken the view that it would not be fitting to proceed to fill the casual vacancy caused by the death of Mr. Hambro until after the special meeting had taken place. All pertinent information, including letters from the Asian Group, any communications from Governments indicating their choice, together with the curriculum vitae of the persons concerned and a copy of the so-called gentlemen's agreement, would be distributed to the members of the Commission. It was not customary to engage in a public wrangle on the choice of a candidate to fill a casual vacancy of the kind in question and he sincerely hoped that the Commission's practice in that regard would continue to be followed and that the matter could be settled in the course of the coming week. The best course would be for the Enlarged Bureau to decide as to the date on which the Commission should proceed to fill the vacancy.

It was so agreed.

14. In reply to a question from Mr. CASTAÑEDA, the CHAIRMAN said that, in view of the heavy programme of work, it was likely that only part of a meeting could be devoted to the topic of the law of the non-navigational uses of international watercourses, chiefly for the purpose of bringing to the attention of Mr. Schwebel, the new Special Rapporteur, any points that the Commission might deem necessary.

The meeting rose at 12.50 p.m.

[1] *Yearbook ... 1976*, vol. II (Part Two), p. 164, document A/31/10, para. 173.

1416th MEETING

Wednesday, 11 May 1977, at 10.10 a.m.

Chairman: Mr. José SETTE CÂMARA

Members present: Mr. Ago, Mr. Bedjaoui, Mr. Calle y Calle, Mr. Castañeda, Mr. Dadzie, Mr. Díaz González, Mr. El-Erian, Mr. Francis, Mr. Njenga, Mr. Pinto, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Šahović, Mr. Schwebel, Mr. Sucharitkul, Mr. Tsuruoka, Mr. Ushakov, Mr. Verosta, Mr. Yankov.

Succession of States in respect of matters other than treaties (A/CN.4/301 and Add.1)

[Item 3 of the agenda]

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR

ARTICLE O (Definition of State debt)

1. The CHAIRMAN invited the Special Rapporteur to introduce his ninth report on succession of States in respect of matters other than treaties (A/CN.4/301 and Add.1), and more particularly chapter I of the report and draft article O, which read:

Article O. Definition of State debt

For the purposes of the present articles, "State debt" means a financial obligation contracted by the central Government of a State and chargeable to the treasury of that State.

2. Mr. BEDJAOUI (Special Rapporteur) said that, in taking up the report before it, the Commission was leaving the study of State property and passing on to that of State debts. Its consideration of the draft articles relating to State property had been only provisional, and it had placed certain articles, and certain expressions used in the articles, between brackets. The questions of State debts was the third aspect of the subject of State succession, the other two being treaties and State property. The Commission had already dealt with the question of succession of States in respect of treaties in a set of draft articles [1] which had been considered by the Plenipotentiary Conference which had met at Vienna from 4 April to 6 May 1977. The question of succession in respect of State property had been dealt with in articles which he had submitted at an earlier stage.[2] The Commission should confine itself to those three main aspects of the topic of succession of States.

[1] *Yearbook ... 1974*, vol. II (Part One), p. 174, document A/9610/Rev.1, chap. II, sect. D.

[2] For the text of the articles adopted so far by the Commission, see *Yearbook ... 1976*, vol. II (Part Two), pp. 127-128, document A/31/10, chap. IV, sect. B, sub-sect. 1.

3. The present report, which he had been anxious to submit within the agreed time limit, despite serious health difficulties, comprised five chapters. Chapter 1 defined the scope of the subject; chapter 2 dealt with the problem of the third State, and chapter 3 with the non-transferability of "odious" debts. Finally, chapters 4, 5 and 6 studied succession to State debts in the different cases of succession which the Commission had already had occasion to distinguish. Two chapters would be added later: one on succession to State debts in cases of the dissolution of unions of States, and the other on succession to State debts in cases of the separation of one or more parts of a State.

4. The reason why the draft articles presented in the ninth report were not numbered, but identified by letters which did not even appear in alphabetical order, was because he had wished to emphasize the provisional nature of his conclusions and to show that he had not yet taken any firm position regarding the final sequence of the articles or even the necessity for some of them.

5. Since members of the Commission would be able to express their views on the general question of State debts when commenting on chapter I, there seemed no need for a debate on the report as a whole; chapter I dealt with the subject-matter of the study of State debts and with the definition of State debt. He had begun his report by excluding non-State debts and debts contracted by a State other than the predecessor State, before going on to propose a definition of State debt and to draw attention to certain problems raised by succession of States in that regard.

6. The object of the report was to study debts contracted by the predecessor State and the fate of such debts in the event of a succession of States, as well as the guarantees given by the predecessor State for a debt of another party, and the fate of such guarantees. It was therefore appropriate to exclude non-State debts, which were debts contracted by territorial authorities, such as provinces, *départements*, regions, counties, cantons, cities and municipalities, by private enterprises or even by public enterprises possessing legal personality and financial autonomy in relation to the State. The study did not therefore deal in any way with private debts and as far as public debts were concerned it dealt only with State debts.

7. In order to delimit more precisely the concept of State debt and to bring out the distinctions traditionally made by the writers, he had successively contrasted State debts with debts of local authorities, general debts with special or localized debts, State debts with debts of public enterprises, public debts with private debts, financial debts with administrative debts, political debts with commercial debts; external debt with internal debt, contractual debts with delictual or quasi-delictual debts, secured debts with unsecured debts, guaranteed debts with unguaranteed debts, and, lastly, State debts with régime debts termed "odious" debts. Each of those comparisons brought closer the definition of State debt. Since terminology in that field was somewhat fluid, it was important that the Commission should be in a position to take an informed decision on the use of terms.

8. In the light of the comparison between State debts and debts of local authorities, State debt might be defined as a debt contracted by a State as opposed to a local authority, whose territorial jurisdiction was necessarily less extensive than that of the State. In order to contract a debt, a local authority must possess a measure of financial autonomy. Local debts might therefore be defined as debts contracted by an authority possessing such autonomy, They might further be defined as debts proper to the territorial authority which had contracted them or debts proper to the transferred territory, if the authority concerned formed the subject of the territorial transfer giving rise to the succession of States. Debts of that kind, or debts proper to the transferred territory, did not fall within the subject under consideration. It could even be said that they did not, strictly speaking, belong to the subject of State succession, since they were the responsibility of the detached or transferred territory, both prior to and after succession. Having never been assumed by the predecessor State, they could not be assumed by the successor State; they did not concern the State legal order, and the occurrence of a succession of States could not alter that situation.

9. A distinction, should, however, be drawn between debts of that kind and debts contracted by the State but having local implications. The State could incur debts either for the general good of the national community as a whole, or for the benefit of only one part of its territory, which might subsequently be the subject of a transfer and give rise to a succession of States. Thus, a distinction must be drawn between general State debts and special, specialized or localized debts.

10. He had used the term "local debt" to describe a debt contracted by a local authority and not by a State, and the term "localized debt" to describe a debt contracted by a State for the benefit of a particular part of its territory. In distinguishing State debts from other types of debt, the deciding factors were the involvement of the State and the commitment it entered into at the time the debt originated. The fact that the debt was for the benefit of all or only part of the territory was of no consequence.

11. In some cases, it was difficult to determine whether a debt fell into the category of "local debt" or "State debt". In paragraphs 16 to 23 of the report, he had set forth the criteria to be used for distinguishing between localized State debts and local debts. Those criteria, which were not absolutely sure guides, were the degree of financial autonomy of the local authority, the intended purpose and use of the funds, the existence of a special security in the transferred territory, and, above all, the personality of the debtor—whether local authority or central Government.

12. Only limited reliance could be placed on the criterion of financial autonomy. While as a general rule a debt contracted by a local authority in virtue of its financial autonomy could be imputed to that local authority, there had been cases where, despite the existence of such financial autonomy, certain "sovereignty expenditures" covered by a loan had been charged by the central Government to the budget of a colony. Such a device could not conceal the fact that debts of that kind were State debts. That was why, in paragraph 28 of his

report, he had expressed the opinion that a local debt could be said to be a debt contracted by a territorial authority inferior to the State, to be used by that authority in its own territory, which territory had a degree of financial autonomy, with the result that the debt was identifiable.

13. Before turning to the definition of State debt, he wished to specify what States the Commission ought to deal with. A succession of States concerned only the debts of the predecessor State. Debts owed to the predecessor State by the successor State or debts of a third State should not be considered.

14. A third State might contract debts vis-à-vis another third State, the successor State or the predecessor State. In the first case, clearly the succession had no bearing on its debts. In the second case, the fate of its debts was obviously not affected by the fact of the creditor State's becoming a successor State. The fact the the succession had the effect of modifying, by enlarging, the territorial jurisdiction of the successor State did not affect, and should not in future affect, debts contracted with it by a third State. If the successor State did not possess statehood at the time when the third State contracted a debt to it, it was clear that the acquisition of statehood would not cause the successor State to forfeit its debt-claim against the third State. The third case, in which the third State contracted a debt to the predecessor State, involved a debt-claim of the predecessor State against the third State. Such debt-claims were property, and had already been considered by the Commission in the context of succession in respect of State property.

15. Debts of the successor State to a third State or to the predecessor State must also be excluded from the subject-matter under consideration. When a successor State contracted a debt to a third State after it had already acquired the status of successor, its debt was unconnected with the succession of States and could not be considered to form part of the present subject-matter. The only debts of that kind which should be considered were debts resulting from the very fact of the succession of States; strictly speaking, however, those were not debts contracted directly by the successor State itself, but debts transferred to it indirectly as a result of the State succession.

16. Debts which the successor State might assume vis-à-vis the predecessor State could either have no connexion with the succession or could result from the succession. In the former case, they would obviously not come within the subject-matter under consideration; similarly in the latter, since they had been incurred after the succession.

17. Accordingly, only debts of the predecessor State were germane to the present subject. It was the territorial change affecting the predecessor State that set in motion the phenomenon of State succession, which was reflected in a change in the territorial jurisdiction of the debtor State. The whole problem of succession of States in respect of debts was whether that change had any effects, and if so what effects, on debts contracted by the State in question. Such debts might have been contracted to a third State or to the future successor State. In the latter case, it was clear that the debt was non-transferable, since transferring it would mean extinguishing it.

18. Before giving his proposed definition of State debt, he wished to say that in his report he had felt bound to challenge the definitions given by some writers and by the International Law Association. In his opinion, a simple definition should emphasize the fact that the debt was contracted by the central government and was assumed by it; the use to which it was put was of little importance, since it might benefit all or only a part of the national territory. The definition which he proposed in article O would later be supplemented by definitions of general debt and of special or localized debt. In his definition, he had sought to avoid the difficulties which the Commission had encountered in defining State property, when it had had in mind only property of the predecessor State; since it sometimes proved necessary to refer to the property of other States, the Commission had been obliged to use expressions such as "third State property" and "State property of the successor State", with the result that next year it would have to look again at its definition of State property.

19. With regard to any guarantees which the predecessor State might have given with respect to a debt of another party, the present subject did not concern only debts contracted by the predecessor State, but also other financial obligations it might be under as the result of legal commitments it had undertaken in the form of guarantees. He had not, however, considered it necessary to give a difinition of a State guarantee of a debt of a third party.

20. In studying the problems raised by succession in respect of State debts, he had kept to the classification of succession which the Commission had adopted for State property. Those problems were extremely complex, both because of the inherent difficulties of the subject and also because of the diversity of theoretical opinions. Certain theories were favourable to the transfer of State debts and were based on legal principles or concepts such as respect for acquired rights, the theory of benefit (had the debt really benefited the territory?), considerations of justice and equity, common sense, the maxim "*res transit cum cuo onere*" and the theory of unjust enrichment. Other theories, opposed to the transfer of State debts, were based in part on an argument derived from State sovereignty: the successor State did not gain possession of the sovereign rights of the predecessor State; it was a matter, rather, of one sovereignty being replaced by another in a territory. They were also based on the nature of the debt, stressing the personal relationship between the debtor and the third-party creditor, which could be not only a State but also an international organization or an individual. Such theories, opposed to the transfer of State debts, had received judicial confirmation in the arbitral award made on 18 April 1925 by Eugène Borel in the case concerning repartition of the Ottoman public debt.[3]

21. The divergences among historical precedents could be explained by differences as regards (1) the recognition, contained in the solution adopted, of a rule of law; (2) the era concerned; (3) the political circumstances in which

[3] See A/CN.4/301 and Add.1, paras. 76 and 195, United Nations, *Reports of International Arbitral Awards*, vol. I (United Nations publication, Sales No. 1948.V.2), p. 529.

the territorial change had taken place; (4) the ratio of forces; (5) the solvency of the parties; and (6) the interests involved and the character and nature of the debts. Those historical precedents would be studied in relation to each type of succession.

22. In this report, he had taken the view that the absence of a treaty stipulating a succession to public debts must be interpreted as a refusal by the successor State to assume such debts. However, the converse was not necessarily true; acceptance of a debt in a treaty "spontaneously and voluntarily" or "as an act of grace" did not mean that that treaty confirmed a rule of succession. As proof of that, he need only mention the treaties concluded between Spain and the Latin American republics which had become independent during the nineteenth century, and certain treaties expressing considerations of expediency or moral obligations, such as the treaties of Versailles, Neuilly-sur-Seine, the Trianon and Saint-Germain-en-Laye.

23. Account must also be taken of the problem of the date of historical precedents. Did a change of practice always nullify the previous practice? Was it necessary, because annexation and colonization were no longer tolerated, to set aside completely the practice relating to the fate of debts in those two cases? Although such cases of succession were in flagrant contradiction with the principles of contemporary international law, some might consider acceptable the solutions to which they had given rise, which amounted to a rejection of State debts. Again, historical circumstances and the ratio of forces between the parties concerned also played an important role. When a territorial change took place peacefully, succession to debts sometimes followed different rules from when it occurred as the result of violence. While there was no doubt that the ratio of forces had a definite influence on the solutions adopted, so also did the "ratio of weakness" resulting from the insolvency of a State. On an entirely different level, even where the fate of State debts was regulated by treaties, the latter might not be respected or implemented. There was also the question of the free consent of the successor State, which must be genuine.

24. The situation was complicated by the variety of the interests involved. The diminished State would wish to pass its debts on to the successor State, but it would have no interest in losing its credit in the eyes of the international community. The taxpayers of the detached territory were not responsible for debts from which they had not profited, and neither were the taxpayers of the successor State, other than those living in the transferred territory. But in that case too, the successor State would have no interest in losing its credit. With regard to the creditor third State, there was between it and the debtor State a personal equation which ceased to exist if there was a change of debtor. However, the creditor State might gain from a change of debtor if the successor State was richer, or more disposed than the initial debtor to discharge its debt. Account must also be taken of the interest of the international community, as expressed by, for example, the World Bank. A sound international legal order required that debts be paid by those who had contracted them. But the international community had no interest in destroying a State for the sole reason that it ought to discharge its debts. That factor had been taken into account in the affair of the Ottoman public debt after the First World War. Indeed, one of the purposes of international law was to reconcile all the interests involved.

25. Those were the considerations which he had had in mind when defining State debt.

26. The CHAIRMAN said that he was sure he would be interpreting the wishes of all the members of the Commission if he congratulated the Special Rapporteur on his masterly presentation of chapter I of his ninth report.

27. Mr. VEROSTA congratulated the Special Rapporteur on his excellent report and said he was willing to adopt the terminology proposed. He wondered, however, whether the word "or" which appeared in the title, "General debts and special or localized debts", of chapter I, section B, subsection 2, of the report was appropriate, for there were general and special debts which were not localized and also special debts which were localized.

28. Mr. REUTER said he wished to join in the congratulations to the Special Rapporteur on his skilful approach to an extremely difficult subject. While he accepted the general lines proposed in the report, he wished to draw attention to a question which appeared to him to be fundamental, namely: should the factors to be taken into consideration include the legal nature of the source of the debt? As the Special Rapporteur had said in his report, a State debt could arise from a legal undertaking entered into towards not only a foreign State, but also an international organization, for example, the World Bank, or an individual. Such undertakings might be governed by international law: some might be treaties; others, without constituting treaties proper, might also be governed by international law, for they were not subject to the rules of a specific internal law—that was the case in particular in the matter of agreements concluded with an international bank.

29. There was therefore good reason to ask whether account should be taken of the legal source of the debt. When the debt arose from a treaty, could the question of its fate be decided independently of the succession to the treaty, or should it be regarded as being governed by the answer to the problem of succession of States in respect of treaties? In the latter case, it should not be forgotten that succession of States in respect of treaties related only to treaties in the strict sense of the term—namely, agreements in written form concluded between States and governed by public international law—and not to agreements governed by public international law concluded with international organizations, still less to transnational agreements which, though not governed by any specific national law, did not come under general international law.

30. The question to which he referred should be settled before the Commission began its consideration of the draft articles, since it was fundamental and until it was answered, members of the Commission would be obliged to reserve their positions on the solutions proposed.

31. Mr. PINTO said he wished to congratulate the Special Rapporteur on an excellent report which dealt with an extremely complicated subject. It had not been his

intention to speak so early in the debate but he, too, felt some of the misgivings expressed by Mr. Reuter with regard to a possible differentiation between the debt and the source of the debt, not only in relation to treaties, for which a régime was being elaborated elsewhere and with which the Commission's work would presumably have to be consistent, but also in relation to instances where the debt or obligation was contained in documents of other kinds. At the previous session, the Commission had adopted article 12,[4] which referred to immovable State property and movable State property. Securities, for example, might be governed by municipal law and, in many legal systems, were considered to be movable property. He wondered whether the régime to be elaborated for movable State property would be in keeping with the régime that the Commission was now proposing for debts.

32. Mr. USHAKOV said he joined with the other members of the Commission in congratulating the Special Rapporteur on his clear and concise report. With regard to the subject of "régime debts", which was discussed in the report (A/CN.4/301 and Add.1, para. 46), he would point out that the Soviet Union had not purely and simply "refused to honour Tsarist debts", as was stated in the report. With regard to the war debts, the Soviet Union would have been willing to recognize the claims of certain creditors, if they had themselves recognized its claims with regard to their own debts for the reparation of damage caused by armed intervention on Soviet territory. With regard to the other debts, the Soviet Union had also been willing to negotiate, and some of them had been settled by mutual agreement. It was therefore incorrect to say that the Soviet Union had refused to honour the Tsarist debts.

33. Mr. SUCHARITKUL said he wondered whether the notion of "State debt" should be limited to a strictly financial obligation, as was the case in the definition proposed by the Special Rapporteur in article O. If by State debt was meant an exclusively financial obligation, would the Commission also study State succession in respect of non-financial obligations? If not, the definition of State debt should perhaps be expanded.

34. Mr. ŠAHOVIĆ said he wished to know whether the Special Rapporteur really intended to end his draft articles with the question of succession to State debts, as he had said in introducing his report. It was stated in the Commission's report on the work of its twenty-eighth session that the Commission intended to study other questions, such as those of archives and the peaceful settlement of disputes.[5] It would therefore be helpful to have some clarification of the Special Rapporteur's intentions with regard to the limits of his study.

35. Mr. DADZIE said he congratulated the Chairman and the officers of the Commission on their election and also the Special Rapporteur on his brilliant presentation of a comprehensive report.

36. The United Nations Conference on Succession of States in Respect of Treaties had been held very recently and the Commission was now dealing with the other aspect of the subject, namely, succession of States in respect of matters other than treaties. Many State debts arose out of treaty obligations and, if the Commission was tempted to embark on consideration of such debts, it would be venturing into a field that lay outside the limits of the present topic. Perhaps the Special Rapporteur could say whether the Commission should deal with such matters, and thus help the members to formulate their ideas on a subject that was rather unfamiliar. He looked forward to contributing to the discussion, once the boundaries within which the Commission was operating had been clarified.

37. The CHAIRMAN, speaking as a member of the Commission, said he noted that in his report the Special Rapporteur frequently referred to the predecessor State as a "diminished" State. Draft article O was intended as a general article applicable to all types of succession of States. However, it was questionable whether qualification of the predecessor State as a diminished State would be relevant in the case of a uniting of States, in which the predecessor State might not be diminished but enlarged by that type of succession.

38. Again, the definition contained in draft article O specified that a State debt meant "a financial obligation contracted by the central Government of a State and chargeable to the treasury of that State". In countries like his own, which had a federal system, financial debts were very often contracted by a federal State, which was the equivalent of a province in other countries, and guaranteed by the treasury of the State. Consequently, it might be preferable to refer to a financial obligation "contracted by the central Government of a State or chargeable to the treasury of that State".

39. Mr. NJENGA said he congratulated the Chairman and the officers of the Commission on their election and expressed his appreciation of the scholarly report produced by the Special Rapporteur in difficult personal circumstances.

40. He was somewhat concerned about the distinction made between local and localized debts. A local debt incurred by a municipality or an organized section of the community with local autonomy would, if backed by a guarantee from the central Government, be only one step removed from a State debt. In fact, in most cases the creditor would not extend the loan or credit without such a guarantee. The scope of the articles would be unduly restricted if local debts guaranteed by the State were precluded from the subject now under consideration. Moreover, a localized debt, which meant one incurred by the central Government for a particular part of the country, was very similar to a debt of a local community or entity guaranteed by the State. In other words, the financial autonomy used as a basis for the distinction made between a local debt and a localized debt was a matter of degree, for it was always subject to limitations imposed by the central Government. Consequently, the difference between a local debt and a localized debt, when such debts were guaranteed by the central Government, tended to be blurred.

41. The same argument applied in the case of debts of public enterprises that were guaranteed by the State.

[4] For text, see *Yearbook ... 1976*, vol. II (Part Two), p. 126, document A/31/10, chap. IV, sect. B.

[5] *Ibid.*, p. 126, document A/31/10, para. 103.

Under certain constitutional arrangements, public enterprises were sometimes completely autonomous, but more often a public enterprise was simply an arm of the central Government that had limited financial autonomy and was usually indirectly accountable to the central Government, which kept watch over its activities. The Special Rapporteur might wish to comment on those points so that ways and means could be found to incorporate that element of a guarantee from the central Government in the definition, and thus broaden the scope of the articles.

42. Mr. VEROSTA said that State succession in respect of State debts raised a question of principle. The draft articles should not, in theory, touch on questions of State succession in respect of treaties, which were the subject of another draft convention. But State debts were not always based on treaties governed by international law: they could also be based on contracts—concluded, for example, with consortia of banks—which were not governed by international law. For instance, after the dissolution of the Danubian monarchy, the financial and economic problems of Austria and Hungary had been settled by treaties—the 1922 Geneva Protocol and the 1931 Lausanne Protocol—governed by international law, whereas the financial and economic problems of Czechoslovakia and Yugoslavia had been settled by more or less private loans granted by a consortium of banks and guaranteed by the State, which were not governed by international law.

Organization of work

43. Mr. QUENTIN-BAXTER said that he wished, first of all, to congratulate the Chairman and the officers of the Commission on their election.

44. He was struck by the contrast between the present situation and the situation at the beginning of the previous five-year period, when the Commission had embarked on a substantial debate on its long-range programme, its methods of work and the balance of its obligations. The attendance of so many members of the Commission at the forthcoming conference on the law of the sea would indeed benefit the Commission itself and enrich the experience of the members concerned. However, it could follow from that, that in the course of the present session, it would be difficult at times to muster enough members to perform the normal work of the Commission. It was also clear that, since it had long been the custom of the Commission to deal early in its session with the difficult and fundamental question of State responsibility, a further strain would be imposed if it had to be dealt with at the end of the session. Experience showed that draft articles on that subject tended to require very lengthy consideration and the officers of the Commission would be faced with a challenge that did not have to be met in normal circumstances.

45. The Commission should never fail to keep under review its relationship with the General Assembly. The question of the length of the Commission's reports, touched on by Mr. Ago at the 1414th meeting, was but one example of the continuing need to seek a perfect understanding with the General Assembly. In recent years, speakers in the Sixth Committee had singled out for special praise the efforts made by the Commission to review its procedures and, despite the constraints of the present session, the Commission should not lose sight of the need to discuss its methods of work. Obviously, a successor was needed to Mr. Kearney in his capacity as the advocate of a planning committee.[6] He hoped that, with the attendance of a greater number of members at the end of the present session, some consideration could be given to the long-range programme, the character of the Commission and the way in which the General Assembly looked on its work.

46. The CHAIRMAN, speaking as a member of the Commission, said that he shared the concern expressed by Mr. Quentin-Baxter. The work of the informal planning group had been greatly appreciated in the General Assembly, for almost every speaker in the Sixth Committee had expressed satisfaction at the manner in which the Commission was endeavouring to improve its procedures and organize future work. The question of the informal planning group or committee would almost certainly be raised at the next meeting of the Enlarged Bureau.

47. Mr. EL-ERIAN said that a number of representatives in the Sixth Committee had raised the question of the possibility of issuing the Commission's report in two parts.[7] He hoped that it would be possible to do so, thus affording more time for Governments and delegations to study the report.

48. Mr. RYBAKOV (Secretary of the Commission) said that it would be possible to issue the report in two parts and, in so doing, facilitate study of the report by delegations in the Sixth Committee. It would mean that after the discussion of perhaps one item the draft articles and related commentaries by the Special Rapporteur would have to be available for approval by about the middle of the session.

The meeting rose at 12.55 p.m.

[6] *Yearbook ... 1976*, vol. I, p. 298, 1413th meeting, para. 19, and A/CN.4/L.252.

[7] See *Official Records of the General Assembly, Thirty-first Session, Annexes*, agenda item 106, document A/31/370, para. 243.

1417th MEETING

Thursday, 12 May 1977, at 10.10 a.m.

Chairman: Mr. José SETTE CÂMARA

Members present: Mr. Ago, Mr. Bedjaoui, Mr. Calle y Calle, Mr. Castañeda, Mr. Dadzie, Mr. Díaz González, Mr. El-Erian, Mr. Francis, Mr. Njenga, Mr. Quentin-Baxter, Mr. Riphagen, Mr. Šahović, Mr. Schwebel, Mr. Sucharitkul, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Mr. Verosta, Mr. Yankov.