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Summary record of the 1418th meeting

Topic:
Succession of States in respect of matters other than treaties

Extract from the Yearbook of the International Law Commission:-
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in the final analysis, the successor State should express its will, regardless of the legal aspects of the problem.

The meeting rose at 1.10 p.m.

1418th MEETING

Friday, 13 May 1977, at 10.35 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.

Organization of work (*continued*)*

1. The CHAIRMAN said that the Enlarged Bureau had recommended that the special meeting to pay tribute to the memory of Mr. Edvard Hambro should be held on Monday, 16 May 1977, at 3 p.m. Unfortunately, Mrs. Hambro would not be able to attend, but the Norwegian Ambassador would be present at the meeting.

2. Mr. QUENTIN-BAXTER suggested that the participants in the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, currently being held in Geneva, be informed of the special meeting, which they might well wish to attend.

3. The CHAIRMAN said that arrangements would be made to inform the secretariat of the Diplomatic Conference. If there were no objections, he would take it that the Commission agreed to the recommendation of the Enlarged Bureau.

It was so agreed.

4. The CHAIRMAN said the Enlarged Bureau had also recommended that the Commission should hold a closed meeting at 10 a.m. on Thursday, 19 May 1977, for the purpose of filling the casual vacancy caused by the death of Mr. Hambro. If there were no objections, he would take it that the Commission agreed to that recommendation.

It was so agreed.

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

[Item 3 of the agenda]

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR (*continued*)

ARTICLE O (Definition of State debt) [1] (*continued*)

5. Mr. YANKOV congratulated the Special Rapporteur on a very scholarly report which contained many thought-provoking ideas and reflected great breadth of vision.

6. He agreed with the principal preliminary conclusions and, in general terms, with the definition contained in draft article O, which he regarded not as the final outcome of the Special Rapporteur's analysis but as a valid and stimulating basis for further discussion. While he concurred with the Special Rapporteur's premise, set forth in paragraph 2 of the report (A/CN.4/301 and Add.1), that "a debt might be viewed as a legal obligation upon a certain subject of law, called the debtor, to do or refrain from doing something for the benefit of a certain party, called the creditor", it was difficult to see why such a very broad concept had been reduced in the Special Rapporteur's proposed definition, to a financial obligation chargeable to the treasury of the State. The question arose of other obligations, to do or to refrain from doing something, which did not derive from international treaties and were not expressed in financial terms. In other words, the basic concept appeared to be much wider than the actual definition, which contained several elements, namely, the financial nature of the debt, the fact that it should be contracted in some way and the fact that it should be chargeable to the treasury of the State. He could accept for the moment the restrictive definition of State debt, but certain matters still had to be clarified. As a new member, he was not acquainted with the background of the earlier discussion of the topic, but he wondered whether the Special Rapporteur should not also consider other instances of obligations to do or to refrain from doing something for the benefit of a certain party, which were not of a financial nature and, therefore, were not chargeable to the treasury of the State.

7. His doubts concerning the harmony between the basic premise contained in paragraph 2 and the definition itself were reinforced by other parts of the report, more particularly paragraph 61, in which the Special Rapporteur introduced a broader concept of State debt. There were several possible courses of action. Either the general concept should be restricted so as to be in keeping with the Special Rapporteur's conclusion, as crystallized in the proposed definition, or the Special Rapporteur might for the time being focus his attention on financial obligations but keep open the possibility of studying wider obligations of the predecessor State towards the successor State or a third State. For example, how would the fishing or transit rights granted to a third State under a municipal law of the predecessor State with respect to a particular territory be affected if the territory in question were transferred to the successor State as a consequence of a succession of States?

8. The Commission was, of course, dealing with the realm of international law and, in the present instance, the subject must be the State. Like Mr. Ushakov,[2] he experienced some difficulties in clearly differentiating between the situations regarding local and localized debts. The arguments advanced by the Special Rapporteur were convincing, yet there appeared to be some lacunae and it would be useful if more light could be shed on that aspect of the problem.

* Resumed from the 1415th meeting.

[1] For text, see 1416th meeting, para. 1.

[2] 1417th meeting.

9. Lastly, in the definition, it might be preferable to replace the word "contracted" by a more general term, such as "assumed", thereby taking into account other justified lawful obligations which were not necessarily based on contract.

10. Mr. RIPHAGEN said that he wished first to congratulate the Chairman and the officers on their election and also the Special Rapporteur on an excellent report.

11. He was inclined to share the view of Mr. Šahović [3] that it was perhaps premature at the present stage to hold a lengthy discussion, let alone take a decision on the definition of State debts. It was not yet known whether and to what extent the rules of general public international law had or might, in terms of their progressive development, have anything very definite to say on the subject under consideration. In practically all cases of State succession, the question arose whether the fact that jurisdiction over territory, together with State property, passed from the predecessor State to the successor State should also entail some passing to the successor State of the burden of government, in particular, the financial burden. The passing of jurisdiction over territory from one State to another normally involved the possibility of levying taxes, which were one of the most important sources of State income. Again, some of the State property which passed, without compensation, to the successor State might, economically speaking, be the counterpart of a debt contracted by the predecessor State. Accordingly, the question also arose as to whether some of the financial burden of the predecessor State, which was rightly deprived of some of its powers of taxation and some of its State property, should not in some measure be shared or taken over by the successor State. Moreover, the predecessor State might simply disappear. However, such cases involved the rights and interests of the creditor rather than the relationship between the predecessor and the successor States, although the extent to which that was a matter of concern for rules of general public international law remained to be discussed.

12. For the moment, he had some doubts as to whether rules of general international law should, or even could, give abstract answers to the questions that arose in respect of the effects of State succession on State debts. It seemed significant that a number of articles proposed by the Special Rapporteur were couched in negative terms, for they said quite a great deal about what State succession did not entail in the matter of State debts. The negation of unjust, unreasonable or inequitable so-called rules or principles sometimes posited by Governments or writers was in itself a positive contribution to the task in hand, but it would be desirable to see something even more positive, if that were possible.

13. In any event, he also agreed with Mr. Šahović that the Commission should proceed empirically, on the basis of modern State practice, although some points might cause difficulty because they lay somewhat outside the scope of lawyers. For instance, in more modern cases of State succession, the final solution appeared to have been based not so much on the legal character of the State debts involved as on considerations relating to the over-all financial position of the States concerned, more particularly their capacity to pay. After all, a debt of State A was an asset to the creditor only in so far as State A was able to pay, but capacity to pay often depended upon the internal and external economic policy followed by the State in question. Like individuals, Governments to some extent determined their own capacity to pay their debts by choosing the ways in which they spent their income and/or their capital. Municipal law fully resolved the problem in the case of individuals, but it was not such an easy matter at the international level. Another troublesome question was the possible monetary, as opposed to financial, aspect of State debts. It could be claimed that he was seeing problems where none existed, but the fact remained that the solution adopted in some modern instances of State succession might have been based, at least partly, on considerations of monetary policy.

14. At an earlier meeting, Mr. Ago had referred to financial obligations contracted by the central bank of a State.[4] In many countries, the central bank had a very special position and function. Its assets and debts were not of quite the same character as the assets and debts of the central Government. Consequently, the fate of its debts and assets in a case of State succession might call for special treatment—treatment different from that applicable to State property and State debts in general. The definition proposed by the Special Rapporteur allowed for that possibility, but it was a point that could be studied further.

15. Mr. THIAM said that he shared most of the views expressed by the Special Rapporteur in his ninth report, which was a worthy successor to his previous reports. In the present report, the Special Rapporteur studied succession in respect of State debts and, naturally, had begun by attempting to define the scope of that concept. At the current stage of his work, the Special Rapporteur had reached the logical conclusion that a State debt was, in the strict sense of the term, the debt of a State, and that the subject-matter should be limited to debts of the predecessor State. He had reached that conclusion after drawing a number of distinctions designed to determine what debts were State debts; thus, he had reviewed local, localized, delictual, odious and other forms of debts. Those various categories of debts were not very clearly defined and it was often difficult to determine the category to which a particular debt belonged. Thus, it was permissible to ask whether local debts contracted by decentralized authorities were really the debts of those authorities. It was not always easy to establish in what capacity the governor-general of an overseas territory acted, since he performed the duties both of head of the local executive and of representative of the central Government. When a governor-general wished to contract a loan, he had first to approach the authorities of the central Government. A debt contracted in that manner, in the interests of a local authority but through a procedure involving the central Government, might be considered by some as a local debt and by others as a State debt.

[3] *Ibid.*, para. 41.

[4] 1417th meeting, para. 27.

16. With regard to localized debts, they were ultimately characterized by the use to which they were put, for they were debts contracted by the central Government in the interests of a local authority. There again, it was often difficult to establish which debts fell into that category. It might perhaps be preferable to speak of "State debts assigned to a local interest".

17. Delictual or quasi-delictual debts, which could more accurately be termed debts of delictual or quasi-delictual origin, raised a problem already mentioned by Mr. Ago. The draft articles on State responsibility already adopted by the Commission [5] provided that the internationally wrongful act of a territorial authority was the responsibility of the State, whereas, according to the report under consideration, debts of delictual or quasi-delictual origin should not be covered by the articles relating to succession of States in respect of matters other than treaties. That problem could be resolved in the definition of State debt. The definition proposed by the Special Rapporteur should be broadened, since he considered that delictual and quasi-delictual debts were still debts of the predecessor State.

18. To sum up, he was in broad agreement with the cautious approach adopted by the Special Rapporteur and had no doubt that the discussions to follow would enable the points which were still obscure to be elucidated.

19. Mr. TSURUOKA said he associated himself with the tributes paid to the Special Rapporteur for his admirable report. There was a great deal that he would wish to say on the many problems dealt with in that document, but as Chairman of the Drafting Committee, he would have occasion to express his views to that Committee.

20. Mr. SCHWEBEL said he wished to compliment the Special Rapporteur on an admirable report that was terse, stimulating and full of insights.

21. Paragraph 46 of the report (A/CN.4/301 and Add.1) stated that régime debts "may be repudiated". It was certainly true that, from time to time, such debts were repudiated, but he wondered whether the Special Rapporteur meant that régime debts could be repudiated legally. Again, he would like to enquire whether, in the statement in paragraph 81 to the effect that annexation and colonization were no longer tolerated by modern law, the Special Rapporteur was speaking in normative terms of positive law. Instances of annexation had occurred since the entry into force of the Charter of the United Nations, and colonies, although relatively few in number, still existed. In paragraph 92 of the report, the Special Rapporteur had very judiciously struck a balance between considerations of equity and the requirement of a sound international legal order that debts should be paid by the party responsible to the exact extent of its responsibility. In paragraph 93, on the other hand, after stating that international law had created a legal order without means of enforcement, the Special Rapporteur had concluded that it was therefore rather difficult to recognize a principle of succession to State debts as a rule of law. A grave deficiency of international law was the absence of adequate means of enforcement, but it did not necessarily follow that rules of law did not exist.

22. Lastly, he had been impressed by the force of Mr. Riphagen's remarks and shared his disquiet and unease. The Commission was perhaps missing some point but, in a field that was new to him, it was difficult to say at the present stage exactly what the point was.

23. Mr. DADZIE said that he would like, once again, to extend his congratulations to the Special Rapporteur on having produced an admirable report in circumstances of ill-health. In general, he had no difficulty in accepting the report as it stood, and his remarks were prompted simply by a spirit of brotherhood and co-operation and to assure the Special Rapporteur of his interest in what was a very difficult task.

24. Unlike Mr. Yankov,[6] he could not agree with the statement in paragraph 2 of the report that a debt could be viewed as a legal obligation upon a certain subject of law, called the debtor, to do or refrain from doing something, to effect a certain performance, for the benefit of a certain party, called the creditor. On the other hand, he experienced no difficulty with regard to the definition proposed in draft article O. The broader concept that Mr. Yankov considered should be included in the definition in order to accommodate all kinds of obligations would not be relevant, since a debt, at least in English, was essentially a financial obligation, one under which the debtor was obliged to pay a certain sum of money to the creditor. The reference in paragraph 2 to doing or refraining from doing something, or effecting a certain performance, touched on a contractual relationship which might not necessarily involve the payment of a debt. He could easily have accepted the view that a debt arose as a result of the performance of something by the creditor for the benefit of the debtor, who was then under a financial obligation to pay the creditor. Perhaps the Special Rapporteur could consider that point. The Commission was in fact dealing with debt situations, in other words, with something to be understood as nothing more than an obligation to make amends by payment of money. All the other considerations mentioned earlier might be the subject of other branches of international law, but the Commission would doubtless accept the fact that a debt was necessarily a financial obligation, and, for the purposes of the study, a financial obligation of the State. He had no objection to specifying which arm of the State was to pay the debt, although that was basically a matter for the State itself to decide.

25. The Commission was, therefore, concerned with the non-performance of an obligation, for non-performance would lead to condemnation of the State, which would be required to pay a sum of money, in other words, a debt and nothing more than a debt. Consequently, it would be unsatisfactory to encumber the definition by allowing it to encompass situations which did not involve a debt. Moreover, the financial obligation must be expressed in liquidated terms; the problems created by unliquidated debts were only too well known. Indeed, it was a rule that,

[5] *Yearbook ... 1976*, vol. II (Part Two), pp. 73-75, document A/31/10, chap. III, sect. B, subsect. 1.

[6] See para. 6 above.

even in the case of claims, problems arose if the debt was not liquidated. The parties had to agree to liquidate the debt before it lawfully became a debt. Consequently, the definition should refer to a financial obligation upon a State to pay a certain sum of money and, in his view, it must always be a liquidated sum of money. The Commission was not concerned with how a State incurred a debt; the point of departure was the existence of a State in the case of State succession, and the problem was to determine whether or not such a debt passed from the predecessor State to the successor State.

26. The Special Rapporteur had drawn valuable distinctions between different types of debt, but they should not, in his opinion, find a place in a definition. In the case of a guaranteed debt, the liability of the State was incurred only upon the failure of the debtor to meet the obligation. It would not be advisable to deal with the mechanics of the way in which the debt was incurred, or the intermediate stages, whether or how the State accepted liability. He had no objection to the concept of a local debt, because the territory concerned, after its separation from the State, would continue to be responsible for that debt. However, in the case of a localized debt earmarked for a particular locality, the criterion of benefit to the locality concerned would call for proof of non-abuse by the predecessor State before the successor State could become liable for the debt. That was especially true in the case of newly independent States. Everybody was aware that the predecessor State or former metropolitan State sought to pass on many kinds of liabilities to newly independent States. The newly independent State would have to be completely satisfied that its liability did not relate to benefits which had also been gained by the metropolitan State in general.

27. With regard to the lawful or unlawful nature of debts, commented on by previous speakers, it was obvious that, for a relationship to exist between the creditor and the debtor, the debt itself must be lawful and enforceable. Reference had also been made to the repudiation of régime debts. Again, it was quite obvious that a successor State would not agree to a debt incurred in circumstances that were inimical to it. Moreover, in many countries of the world, one régime was sometimes replaced by another régime that was completely different in concept and philosophy and which would naturally take steps to repudiate certain debts. He therefore hoped that the Commission would give further consideration to the very interesting subject of régime debts.

28. Finally, he took the view that delictual debts were important. If a State was condemned for a delict and damages were awarded to the other State, a debt situation arose and the responsible State was obliged to pay the debt. He ventured to suggest that the Special Rapporteur reconsider his decision to attach less importance to delictual debts.

29. Mr BEDJAOUI (Special Rapporteur) said that the questions raised during the debate related principally to the choice of subject and its scope and limits, and to the definition of State debt.

30. With regard to the choice of subject, Mr. Šahović had wondered why, in his ninth report, he (the Special Rapporteur) had left the question of State property, consideration of which had not been completed, and that of other types of property, consideration of which had not yet been started, and moved on to the question of State debts. He had asked what were the Special Rapporteur's intentions and plans in that regard, recalling that in its report on its twenty-eighth session, the Commission had referred to the possibility of considering also the question of archives and that of the procedure for the settlement of disputes.[7] He had not forgotten those questions, which he had already broached in his third, fourth, fifth and sixth reports,[8] relating not only to State property but also to other public property, and he could revert to them at a later stage if the Commission so wished. In 1973, however, the Commission had decided to restrict its study to State property [9] and in 1976 it had further decided, as he had suggested in his eighth report, to treat State property *in abstracto* and not *in concreto*,[10] thus abandoning the idea of making a distinction based on the specific nature of the property (currency, archives, treasury, etc.) and dealing with each of those types of property in a separate article. If the draft on succession of States in respect of matters other than treaties was to be completed in the reasonably near future and was not to become obsolete, the Commission must abide by its decision to limit its study to State property and exclude all other categories of public property.

31. He intended to turn to the question of State archives at a later stage, and would probably be submitting a report on that subject in 1978. He would also be returning to the question of the settlement of disputes, but before tackling that, it would be wiser to wait until State debts had been dealt with, so that the text to be adopted could apply both to State property and to State debts. In any case, the United Nations Conference on Succession of States in Respect of Treaties had not yet examined the question of the settlement of disputes, so the Commission could wait until the Conference had adopted the relevant article, which it could then adapt to the present draft. There was therefore no urgency over that question.

32. With regard to State succession in respect of other matters, a question on which Mr. Šahović wished to know his intentions, he said that, as was clear from his first report, in 1968,[11] his original plans had been very ambitious. At that time, he had contemplated the possibility of considering not only public property and public debts—subjects which had now been narrowed down to State property and State debts—but also the question of succession to the legislation and judicial organs of the predecessor State, the question of nationality and acquired rights, and the question of territorial régimes, referred

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[7] 1416th meeting, para. 34.

[8] *Yearbook ... 1970*, vol. II, p. 131, document A/CN.4/226; *Yearbook ... 1971*, vol. II (Part One), p. 157, document A/CN.4/247 and Add.1; *Yearbook ... 1972*, vol. II, p. 61, document A/CN.4/259, and *Yearbook ... 1973*, vol. II, p. 3, document A/CN.4/267.

[9] *Yearbook ... 1976*, vol. II (Part Two), p. 124, document A/31/10, para. 90.

[10] *Ibid.*, p. 130, document A/31/10, chap. IV, sect. B, introductory commentary to section 2 of part 1 of the draft, para. (7) of the commentary.

[11] *Yearbook ...* 1968, vol. II, p. 94, document A/CN.4/204.

to by Mr. Yankov, which had subsequently been included in the study of succession of States in respect of treaties. However, if the Commission was to respond as quickly as possible to the needs of the international community as expressed by the General Assembly, it would be wise to limit its consideration of succession matters to State property and State debts which, together with treaties, formed the three aspects of State succession. He had in fact announced his intention to proceed directly, in his ninth report, to the study of succession to public debts, in all probability confining this to succession to State debts; in so doing, he was merely conforming with the instructions of the General Assembly in its resolution 3315 (XXIX), as indicated in the Commission's report on its twenty-eighth session.[12]

33. Mr. Njenga had been right in emphasizing [13] the importance of debts contracted by entities such as public establishments or local authorities and in observing that those categories of debts were in part subject to State control. However, it was not always possible to assimilate them to debts of the State itself; on the other hand it was not possible to ignore them completely. In his opinion, the Commission should limit the scope of its study so as to avoid adding to the complexity of the subject; if it mixed debts of the State proper with debts of local authorities or enterprises, it would have great difficulty in obtaining a clear view of the subject. That was a problem which had not escaped him and which he had emphasized both in his report and in his oral statement.

34. Mr. Njenga had also been right to emphazise the role of the guarantee furnished by the State for a local debt contracted by a local organ. A guarantee of that kind was extremely important for the creditor, who had known the central Government particularly and reposed his confidence in it. Mr. Njenga had justifiably stressed that localized debt in a region came very near to local debt guaranteed by the State. The concern expressed by Mr. Njenga on that point was similar to that of Mr. Sette Câmara, who had pointed out [14] that, in a federal State like Brazil, debts contracted by the various States were guaranteed by the treasury of the federal State.

35. He had no intention of neglecting the role of the guarantee; in fact, he believed that that role should be examined and clarified in the context of succession of States. He had laid great emphasis on the importance of the guarantee in chapter V of his report, which dealt with succession to debts in the case of newly independent States. He had shown that the freedom of a colony to contract a loan in the exercise of its financial autonomy was, as Mr. Thiam had emphasized,[15] largely illusory, since the backing of the metropolitan Government was needed. Such loans were contracted by virtue of an act of the metropolitan parliament, as could be seen from the cases of the Indonesian and Malagasy loans which he had cited in his report.[16] The freedom of the colony to contract a loan was even more illusory when the administering Power offered its own guarantee to the creditors, as in the case of loans granted to dependent territories by international bodies such as the World Bank. That guarantee was very extensive; the guarantee agreements negotiated by the World Bank provided that the administering Power was responsible for the debt as "primary obligor, and not as surety merely".[17] That was why he had proposed an article—article G—providing that the predecessor State continued to be bound by the debt by reason of the guarantee which it had given.[18]

36. Mr. Njenga had felt that it was perhaps going too far to exclude from the study the debts of public enterprises, since such enterprises were controlled by the Government and could take no action without its agreement. As he had acknowledged in his report, it was extremely difficult to distinguish between a debt of an enterprise and a debt of the State, since the criterion of budgetary autonomy was not always a completely sure guide for differentiating between State debts and local debts or debts of public enterprises. Budgetary autonomy was a matter of degree, and the central Government limited it at its discretion.

37. With regard to the problem raised by the definition of State debt, Mr. Šahović [19] and, later, Mr. Riphagen [20] had expressed the view that it would be more prudent not to define State debt until its various aspects had been considered. On the other hand, other members had taken the view that the question of the definition should be dealt with immediately, and accordingly that the two fundamental problems it presented should be settled first, namely, the problem of the source or origin of the debt, raised by Mr. Reuter,[21] and the problem of the status of the State as a subject of international law in its relations with other subjects of international law, raised by Mr. Ushakov.[22]

38. Other members had wondered whether State debt should not be regarded as a strictly financial obligation. He agreed with Mr. Ushakov that, by definition, a debt could only be financial.[23] Obligations must not be confused with debts: an obligation could be either financial or non-financial, whereas a debt was always a financial obligation.

39. The problem of non-financial obligations had been largely resolved by the Commission during its consideration of succession of States in respect of treaties, when it had studied certain objective territorial régimes created for the benefit of one or more States. The obligations concerned were non-patrimonial obligations arising from

[12] *Yearbook ... 1976*, vol. II (Part Two), p. 126, document A/31/10, para. 103.

[13] 1416th meeting, paras. 40 and 41.

[14] *Ibid.*, para. 38.

[15] See para. 15 above.

[16] See A/CN.4/301 and Add.1, paras. 307-309 and 312-317 respectively.

[17] *Ibid.*, para. 274.

[18] *Ibid.*, para. 374.

[19] 1417th meeting, para. 41.

[20] See para. 11 above.

[21] 1416th meeting, para. 25.

[22] 1417th meeting, para. 7.

[23] *Ibid.*, para. 9.

frontier, navigation or other treaties which had been the responsibility of the predecessor State and which could remain the responsibility of the successor State. Such non-financial obligations could be created not only by treaty but also by custom. They might be passive obligations, imposing a *non facere* requirement on the State to refrain from committing certain sovereign acts so as to respect the interests of one or more States, or positive obligations imposing a *facere* requirement on the State to accept acts of foreign States in its own territory. In his first report [24] he had proposed studying those obligations from the standpoint of objective territorial régimes, as a subject-matter of succession to be considered on the same basis as debts. Since that time the Commission had studied that question in the context of succession of States in respect of treaties. However, it had dealt with it only from the point of view of territorial régimes established by treaty—although such régimes could also be established by custom—as it had been considering the matter in connexion with succession of States in respect of treaties. The Commission had in fact exceeded the scope of succession of States in respect of treaties, since it had referred not only to treaties but also to frontier régimes and other territorial régimes created by treaties, thus confusing treaties as a matter susceptible of succession and treaties as an instrument of succession. The Commission had thus dealt with succession to objective régimes established by a treaty.

The meeting rose at 1 p.m.

[24] See foot-note 11 above.

1419th MEETING

Monday, 16 May 1977, at 3.10 p.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. Jagota, Mr. Njenga, Mr. Quentin-Baxter, Mr. Riphagen, Mr. Šahović, Mr. Schwebel, Mr. Sucharitkul, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Mr. Verosta, Mr. Yankov.

Tributes to the memory of Mr. Edvard Hambro

1. The CHAIRMAN, declaring open the special meeting which the Commission had decided to hold to honour the memory of its dear and distinguished friend, the late Ambassador Edvard Hambro, said that a tribute of silence had been paid to Mr. Hambro's memory at the first meeting of the current session on the proposal of the Legal Counsel of the United Nations. A similar tribute had been paid by the recent United Nations Conference on Succession of States in Respect of Treaties. On the proposal of the Senior Legal Officer in charge of the Seminar on International Law, the thirteenth session of that Seminar was to be entitled the "Edvard Hambro Session".

2. He had received a telegram from Sir Francis Vallat, in which Sir Francis expressed deep regret at his inability to attend the special meeting and, after recalling Mr. Hambro's close links with the United Kingdom, his sadness at his passing and his conviction that Mr. Hambro's work would be his monument. He had also received a telegram from Mr. Pinto, who was likewise unable to be present, in which he paid tribute to Mr. Hambro as an internationalist of vision and creativity, whose precise and incisive mind had no patience with needless verbiage and irrelevant detail, and as a warm and generous spirit. Through his untimely death, the Commission had lost an outstanding lawyer, a great gentleman and a great European. Mr. Pinto asked the Chairman to convey his message of condolence to Mrs. Hambro and the Permanent Representative of Norway to the United Nations Office.

3. Mr. Hambro's death had cast a shadow of sorrow over the first session of the new Commission. It had been at the beginning of a new and brilliant mission in Paris and a new term as member of the Commission, two tasks dear to his heart, that Mr. Hambro had been taken away by the irrevocable call of destiny. If ever there had been a life completely dedicated to the cause of international law and international relations, it had been that of Edvard Hambro. He had indeed been born into international life, for his father had also been one of Norway's most distinguished diplomats. Both men had headed supreme international bodies, for his father had been President of the League of Nations Assembly, while the Commission's late friend had been President of the twenty-fifth session of the United Nations General Assembly.

4. Edvard Hambro had been born in Oslo in 1911 and had obtained a law degree at the University of Oslo before going on to take a doctorate in political science at the Graduate Institute for International Studies of the University of Geneva. His curriculum vitae thereafter was so rich and so impressive that it was difficult to make even a summary of it. He had been Ambassador of Norway in important capitals and had undertaken numerous diplomatic and special missions; he had given countless lectures and courses at the Hague Academy of International Law and in nearly every important university throughout the world; he had held numerous honorary degrees and played an important role in scores of arbitration cases; and he was the author of a long list of books and articles. Mr. Hambro's life was well-known to all members of the Commission, because it was intertwined with the history of contemporary international life, of which it unquestionably constituted an important part. It was enough to single out the beginning and the end: as a young man of 35, he had been appointed Registrar of the International Court of Justice and had published the very first book of commentaries on the Charter of the United Nations, he had died as President of the Institute of International Law, the learned society to which he had been so devoted.

5. In the five years in which they had worked together, he had learned to admire in Mr. Hambro qualities which