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Summary record of the 1449th meeting

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

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

1449th MEETING

Wednesday, 29 June 1977, at 10.10 a.m.

Chairman: Sir Francis VALLAT

Members present: Mr. Ago, Mr. Bedjaoui, Mr. Calle y Calle, Mr. Dadzie, Mr. Díaz González, Mr. El-Erian, Mr. Francis, Mr. Quentin-Baxter, Mr. Reuter, Mr. Šahović, Mr. Schwebel, Mr. Sette Câmara, Mr. Sucharitkul, Mr. Tabibi, Mr. Tsuruoka, Mr. Ushakov, Mr. Verosta.

Succession of States in respect of matters other than treaties (*continued*)* (A/CN.4/301 and Add.1, A/CN.4/L.254, A/CN.4/L.256 and Add.1, A/CN.4/L.257)

[Item 3 of the agenda]

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE (*continued*)

ARTICLE 21 [1] (Transfer of part of the territory of a State) [2]

1. Mr. REUTER said that article 21 was acceptable. The arrangements for the passing of the State debt, referred to in paragraph 2, would be dealt with in the final clauses.

2. The CHAIRMAN said that the point raised by Mr. Reuter would be mentioned in the commentary.

3. If there was no objection, he would take it that the Commission approved the title and text of article 21 as proposed by the Drafting Committee.

It was so agreed.

ARTICLE 22 [3] (Newly independent States)

4. Mr. TSURUOKA (Chairman of the Drafting Committee) said that the Drafting Committee proposed for article 22 the text contained in document A/CN.4/L.256/Add.1, which read:

Article 22. Newly independent States

When the successor State is a newly independent State:

1. No State debt of the predecessor State shall pass to the newly independent State, unless an agreement between the newly independent State and the predecessor State provides otherwise in view of the link between the State debt of the predecessor State connected with its activity in the territory to which the succession of States relates and the property, rights and interests which pass to the newly independent State.

2. The provisions of the agreement referred to in the preceding paragraph should not infringe the principle of the permanent sovereignty of every people over its wealth and natural resources, nor should their implementation endanger the fundamental economic equilibria of the newly independent State.

5. In his ninth report, the Special Rapporteur had proposed three articles concerning newly independent States.[4] The Commission had, however, considered that subject on the basis of a new article which the Special Rapporteur had introduced to replace the original three articles.[5] The Drafting Committee had based its work on that consolidated article and on proposals put forward during its discussions by the Special Rapporteur and the members of the Committee, reflecting their various points of view. After a long and detailed debate, the Drafting Committee had decided by seven votes to three to propose the text which was now before the Commission.

6. That text comprised two paragraphs, which, the Committee felt, embodied the basic principles set out in the article proposed by the Special Rapporteur. The Committee had agreed with what had appeared to be the general trend of thought within the Commission, that the article should not be too detailed but should reflect the essential elements, in particular those contained in paragraphs 2, 3 and 6 of the Special Rapporteur's consolidated text.

7. Paragraph 1 stated the basic rule: "No State debt of the predecessor State shall pass to the newly independent State". But it also provided that the predecessor State and the newly independent State might agree otherwise, in view of the link between the State debt of the predecessor State, which was connected with its activity in the territory to which the succession of States related, and the property, rights and interests which passed to the newly independent State. The Commission would note that, in speaking of the predecessor State's activities, the paragraph employed the phrase "connected with its activity in the territory", which was also to be found in article 11 in part I, relating to the passing of debts owed to the State.[6] In other articles of part I, the Commission had used the phrase "connected with the activity of the predecessor State in respect of the territory".

8. Paragraph 2 was a safeguarding clause establishing the criteria with which the provisions of the agreement between the predecessor State and the newly independent State, referred to in paragraph 1, and their implementation must comply. In some respects, the paragraph had drawn inspiration from article 13, paragraph 6, relating to succession by newly independent States to State property.

9. While the French and Spanish versions of paragraph 2 employed the same tense as had been used in article 13, paragraph 6, the English version used the auxiliary "should", in order better to convey in English the intention behind paragraph 2, which was to provide guidelines in relation to the agreements referred to in paragraph 1. The paragraph did not speak of the agreement itself but rather of its provisions and their implementation.

10. The use of the expression "not infringe the principle of the permanent sovereignty of every people over its

* Resumed from the 1447th meeting.

[1] For the consideration of the text originally submitted by the Special Rapporteur, see 1427th and 1428th meetings.

[2] For text, see 1447th meeting, para. 3.

[3] For the consideration of the text originally submitted by the Special Rapporteur, see 1443rd to 1445th meetings.

[4] A/CN.4/301 and Add.1, paras. 364, 374 and 388.

[5] 1443rd meeting, para. 1.

[6] See 1416th meeting, foot-note 2.

wealth and natural resources" reproduced language which already appeared in article 13, paragraph 6, and was consistent with United Nations usage in regard to that very important principle. The expression "endanger the fundamental economic equilibria of the newly independent State" had been used in place of the expressions "gravely compromising the economy" of that State or "retarding its progress", which had been suggested in the consolidated article proposed by the Special Rapporteur, because it was felt that it reflected more fully the idea that was intended.

11. Mr. SCHWEBEL said that the alternative version of the article which he had introduced in the Drafting Committee the previous day and which was now before the Commission in document A/CN.4/L.257, drew heavily both on the consolidated article which had been proposed by the Special Rapporteur, particularly its second and third paragraphs, and on terminology which had been suggested by other members of the Commission in the Drafting Committee.

12. The main difference between paragraph 1 of his text and that of the Drafting Committee was that his proposal did not absolutely exclude the passing of a State debt from a predecessor State to a newly independent State otherwise than by agreement between them. While in practice a State debt might pass between such States only by agreement, it seemed to him preferable, as a matter of principle, to admit the possibility that it could be transferred in some other way, although it should be noted that his article very severely limited such transfer to the type of debt and the proportion mentioned in the second half of paragraph 1. There was in that respect much common ground between his proposal and that of the Drafting Committee.

13. Paragraph 2 of his proposal differed only slightly from the corresponding paragraph of the Drafting Committee's text. One difference between the two provisions lay in the way they referred to permanent sovereignty over natural wealth and resources. The terminology of his proposal (sovereignty over its natural wealth and resources) was in line with that of two international treaties, namely, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights,[7] the wide support for which was still increasing, and of General Assembly resolution 1803 (XVII); the terminology of the Drafting Committee's proposal (sovereignty over its wealth and natural resources) was in line with that of more recent resolutions, such as the Charter of Economic Rights and Duties of States.[8] While the Commission had already decided, with regard to article 13, to follow the latest formulations of the General Assembly, he felt it worthwhile to raise anew the question of an alternative wording, not only because he felt that treaties in force should be given their full weight by comparison with texts, such as the Charter of Economic Rights and Duties of States, which did not enjoy universal support, but also because it did not make sense to him to speak of the "permanent sovereignty" of a people over its "wealth", for that wealth would include, for example, manufactures which the people produced for export.

14. For those reasons, and because the Drafting Committee's text could have the effect of discouraging loans to the remaining colonial territories, he preferred his own version of the article. The impression he had gained from the Drafting Committee's discussions the previous day was that some members shared in whole or in part his doubts concerning certain aspects of the Drafting Committee's text, and thus his preference. He hoped those points and his text would be appropriately recorded in the Commission's report.

15. Mr. ŠAHOVIĆ said that he had not participated in the discussion on the draft article submitted by the Special Rapporteur on newly independent States because his impression had been that the Commission as a whole agreed with the Special Rapporteur's views and conclusions, which were based on a detailed analysis of succession to State debts within the context of the decolonization process. But the fact that Mr. Schwebel had now proposed an article, in addition to the article proposed by the Drafting Committee, indicated that there was now a considerable divergence of views.

16. For his part, he fully supported the text adopted by the Drafting Committee in the light of the explanations provided by its Chairman. It not only accorded with the Special Rapporteur's views, but was also in keeping with both past and existing practice in regard to State debts. It was incumbent on the Commission to draw up rules that would reflect existing law and contribute to the solution of future problems.

17. The rule laid down in paragraph 1 summarized general practice and took due account of the existing needs of newly independent States. The principle of the non-transferability of the State debts of the predecessor State to the newly independent State had rightly been taken as the starting point. By underlining the part played by an agreement between the newly independent State and the predecessor State in the settlement of questions relating to State debts, the Drafting Committee had opted for the solution which should constitute the basis for the settlement of all social, economic and political problems between newly independent States and predecessor States. In so doing, the Drafting Committee had affirmed the sovereign right of newly independent States to contribute to the solution of those problems.

18. For that reason, he preferred article 22 as proposed by the Drafting Committee. Article 22 as proposed by Mr. Schwebel he found unacceptable because, unlike the Drafting Committee's text, it did not rest on the principles of the non-transferability of debts and agreement between the States concerned. The basis of paragraph 1 of Mr. Schwebel's text seemed to be somewhat mechanical in that it did not take account of the vital interests of the successor State.

19. The Drafting Committee's wording could probably be improved but, for first reading, it was only required to prepare a text that was generally acceptable.

20. Mr. REUTER said that article 22 as proposed by the Drafting Committee was quite unacceptable. Its main defect was perhaps that it was an amalgam of the

[7] General Assembly resolution 2200 A (XXI), annex.

[8] General Assembly resolution 3281 (XXIX).

provisions originally proposed by the Special Rapporteur. In the Drafting Committee, he had asked a question to which he had still not received a satisfactory answer: why should a newly independent State be asked to sign an agreement with the predecessor State? In his opinion, there were only two possible answers: either there was a total misunderstanding of its interests on the part of the State or it was not entirely its own master and had to be protected against pressure. In his view, the question was whether there was the slightest legal ground for signing an agreement, the slightest obligation. The Drafting Committee seemed to have denied the existence of any such obligation. It followed that the article 22 which it now proposed was much stricter than one which simply provided that no State debt of the predecessor State should pass to the newly independent State. In paragraph 2 of the article, a provision had been added which was designed to limit the scope of the agreement which the predecessor State might sign.

21. He would have liked to see an article that stated a number of genuine legal rules. There seemed to be general agreement on the need to lay down, first, the principle that no State debt of a predecessor State passed to the newly independent State. But equity required that, in certain cases, an exception, no matter how limited, should be made to that principle. In those cases, the passing of the State debt was effected in accordance with the procedure normally adopted when two States were faced with a difficulty, namely, by agreement. From that standpoint, the two conditions laid down in paragraph 2 of the article were justified; the agreement must not infringe the principle of permanent sovereignty, and the implementation of the agreement must not endanger the fundamental economic equilibria of the newly independent State. An article drafted on those lines he could accept, even if the exception was couched in extremely restrictive terms. But the Drafting Committee's text did not allow for even the smallest exception and, what was more, it mixed questions of principle with questions relating to the settlement of disputes, and gave pride of place to the latter.

22. Mr. SUCHARITKUL said the Drafting Committee had produced a text which represented a happy compromise between differing views. Paragraph 1 began by endorsing a principle which had been put forward by the Special Rapporteur and Mr. Ushakov, namely, that there should be no passage of the State debt of the predecessor State to the successor State if the latter was newly independent. That principle was, he felt, generally acceptable and was, moreover, subject to the higher principle of the sovereign freedom of States to contract as they saw fit. The "agreement" to which the paragraph referred was an agreement concluded not before but after the emergence of the newly independent State as a sovereign entity. The requirement that account be taken of "the link between the State debt of the predecessor State connected with its activity in the territory to which the succession of States relates and the property, rights and interests which pass to the newly independent State" would protect the newly independent State by ensuring that the debt only passed in the "equitable proportion" which was directly mentioned in paragraph 1 of Mr. Schwebel's alternative text. As to the question what happened to the debt if there was no agreement between the newly independent State and the predecessor State, he had no doubt that the debt would remain with the latter, which was, after all, the entity which had contracted it.

23. Paragraph 2 of the Drafting Committee's text provided further safeguards which, although they would presumably be applicable to all newly independent States, were in all probability designed to protect the least developed countries in particular. Those safeguards were couched in terms which were less absolute than those employed in the Special Rapporteur's consolidated article, but were none the less very persuasive. No one could quarrel with the statement that the provisions of the type of agreement referred to in paragraph 1 of the article "should not infringe the principle of the permanent sovereignty of every people over its wealth and natural resources" or that the implementation of such an agreement should not "endanger the fundamental economic equilibria of the newly independent State". He was very satisfied with those safeguards, which met contemporary requirements. In fact, not only must the developing countries, which had very different opinions about their economic needs and priorities, be allowed to determine themselves what constituted their "fundamental economic equilibria", but there was also an essential need in general to promote their economic development and maintain their creditworthiness, which could not be divorced from their capacity to repay their debts.

24. The text proposed by Mr. Schwebel was a very encouraging effort. Its first paragraph differed very little from paragraph 1 of the Drafting Committee's article, except for the absence of any allusion to the freedom of States to contract according to their sovereign will. The incorporation of such an allusion in the Drafting Committee's article represented a better means of expressing the principle of self-determination than the direct reference thereto, which had been made in paragraph 6 of the Special Rapporteur's consolidated text. Paragraph 2 of the Drafting Committee's article was preferable to the corresponding provision of Mr. Schwebel's draft in that it retained from the Special Rapporteur's proposal both the notion of sovereignty over natural resources and the caveat concerning the effects of an agreement between the predecessor and successor States. He would accept the text proposed by the Drafting Committee.

25. Mr. FRANCIS said that, although he was grateful for the Drafting Committee's efforts and recognized that members of the Commission must accept the harmonization of their views, he was disturbed by the fact that the article proposed by the Committee failed to contain certain fundamental principles which were of importance to metropolitan countries and even more so to developing countries, including those yet to become independent. The Drafting Committee's text should be viewed against the background of, on the one hand, the fact that current practice was for a successor State to assume the localized State debt of the predecessor State which related to its own territory and, on the other hand, the fact that there was now in progress, both within and outside the United Nations system, a continuous dialogue

between the developed and developing countries, with the latter calling for the liquidation of debts with which they were overburdened, including those whose fate the Commission was now trying to settle. It could thus be seen what the proposed article lacked: an explicit statement of the principle of equity; an explicit reference to the capacity of the newly independent State to pay any debts transferred to it; and a reference to the guarantee given by the predecessor State, all of which were essential elements and had appeared in the consolidated article proposed by the Special Rapporteur.

26. The extent to which that made the article defective could be judged from the fact that, even when the passage of State debt from the predecessor to the successor State was governed by an agreement between them, the content, if not the form, of that agreement would have been settled prior to the independence of the successor State so that the parties would not have contracted on equal terms. Furthermore, while paragraph 2 of the text stated that the implementation of such an agreement should not "endanger the fundamental economic equilibria of the newly independent State", it contained no such requirement with regard to the content of the agreement. Consequently, while the manner in which the agreement was implemented might be equitable, the agreement itself would not necessarily be so. The paragraph ought to state that any agreement of the type referred to in paragraph 1 should conform to equitable principles, taking into account, *inter alia*, the capacity of the newly independent State to pay the debt in question.

27. His point was well illustrated by the situation of certain countries in his own region which were associate States of the United Kingdom but which already required subsidies from that country in order to remain viable. Some of those States were shortly to become independent; would the Commission, through a rigid application of the principle of derived benefit, wish to transfer to them certain debts of the predecessor State, even though it was already perfectly clear that they would be unable to pay?

28. With regard to the text proposed by Mr. Schwebel (A/CN.4/L.257), he noticed that paragraph 1 lacked any reference to the essential element of the existence of an agreement between the newly independent State and the predecessor State. His misgivings in that respect had not been dispelled either by Mr. Schwebel's oral introduction of the article or by the presence in paragraph 2 of a reference to "any agreement" between those States, for that left open the possibility that there might not be such an agreement. Mr. Schwebel's text also lacked a reference to equitable considerations in relation to the newly independent State's capacity to pay, although it was less deficient in that respect than the article proposed by the Drafting Committee.

29. Since the Commission was now only at the stage of the first reading of the draft articles, he would be prepared to vote, if necessary, for the Drafting Committee's text. He would, however, spare no effort to ensure that the omissions to which he had referred were remedied in the provision finally adopted.

30. Mr. DADZIE said that, if Mr. Schwebel's article had simply stated that "No debt contracted by the predecessor State on behalf or for the account of a territory which has become a newly independent State shall pass to the newly independent State", or the article proposed by the Drafting Committee had read only "When the successor State is a newly independent State, no State debt of the predecessor State shall pass to the newly independent State", he would have been able to accept either.

31. As matters stood, it would seem that Mr. Schwebel did not appreciate that their debt burden led to the economic strangulation of present-day newly independent States and deprived their political independence of part or all of its meaning. He subscribed entirely to the reasons for rejecting Mr. Schwebel's article, advanced by Mr. Šahović. In addition, it might be asked who was to determine the alleged benefits to the newly independent State to which reference was made in paragraph 1 of the article. In his opinion, the activities of a metropolitan Power in a colonial territory could not be considered as having been exercised in any interests other than its own, and he therefore rejected the notion of any possible benefit to the entity which became the successor State. It might also be asked who would determine the "equitable proportion" mentioned in paragraph 1. He had already pointed out that property left by a predecessor to a successor State was often of more academic than real benefit to the latter, which found itself with something it could not use or, in some cases, even afford to maintain.

32. The Drafting Committee's text showed the results of the careful analysis which the Commission had made of the Special Rapporteur's consolidated article and which had led to the establishment of general rules supported by the majority of its members. With regard to the fact that the article permitted the passing of State debt from the predecessor to the successor State if those States agreed to such passage, he recalled that he had always been opposed to the conclusion of any agreement between the predecessor State and a successor State for any purpose whatsoever; more often than not the successor State was in a position of disadvantage when negotiating such an agreement and was therefore likely to find itself compelled to accept even unfavourable terms. However, after careful study of the provision and in a spirit of compromise, he was willing to accept the article proposed by the Drafting Committee, provided the agreement to which it referred was freely concluded.

33. He had been concerned for some time at the fact that the Drafting Committee submitted to the Commission proposals containing ideas which the Commission had not discussed. It seemed to him that the Committee should confine itself to couching in acceptable language the views arrived at after deliberation in the Commission, and that any member of the Commission who wished to raise a point at variance with a text which the majority were willing to send to the Drafting Committee should do so in the Commission itself.

34. The CHAIRMAN said that the Drafting Committee had traditionally been given a greater degree of latitude than, for example, the drafting committee of a conference. He was sure that virtually all members of the Commission would deplore any change in that practice. If, rather than

enjoying its present measure of flexibility, the Drafting Committee had had to work only on the basis of precise instructions from the Commission, the whole of the Commission's work would have been stultified and it would have been impossible for the Commission to achieve the results it had to date.

35. Mr. DÍAZ GONZÁLEZ said that the text of article 22 proposed by the Drafting Committee was a compromise solution designed to take account of the two basic trends that had emerged from the Commission's discussion of the question of the passing of the State debts of the predecessor State to a newly independent State. He fully supported that compromise solution because it established a balance between the position of the members of the Commission who had supported the clean-slate principle and the position of those who had maintained that a newly independent State might, in certain circumstances, be obliged to agree to the passing of the debts of the predecessor State. His only real objection to the text proposed by the Drafting Committee related to the use of the word "fundamental" in paragraph 2. That word should be deleted because it added nothing to the concept of the "economic equilibria of the newly independent State".

36. As he had said in the Drafting Committee, he could not support the text of article 22 proposed by Mr. Schwebel. His first difficulty with that text stemmed from the wording of paragraph 1. Indeed, he was of the opinion that no debt contracted by a predecessor State had ever been contracted on behalf or for the account of a territory which had become a newly independent State. Moreover, it would be impossible to know whether a territory had benefited from property, rights and interests created by a debt contracted by the predecessor State until that territory had become a newly independent State and had assumed sovereignty. That was so because agreements could be concluded only by sovereign States.

37. The words "unless that passage of debt is in equitable proportion to the benefits that the newly independent State has derived or derives from the property, rights and interests in question", in paragraph 1 of Mr. Schwebel's text, were equally unsatisfactory because they failed to take account of the fact that, if it was determined that a newly independent State had derived or would derive benefits from a debt contracted by the predecessor State, it also had to be determined whether, as was likely, the predecessor State had derived benefits from that debt. As the Special Rapporteur had pointed out, what had constituted a benefit for the predecessor State often became a liability for the newly independent State and might even be harmful to its economy. So far, international law had taken account only of the benefits derived by one element of the equation, namely, the territory that became a new State. It should, however, also take account of the incalculable benefits derived by the other element of the equation, namely, the predecessor State that had been a colonial Power. In all fairness, it could be said that the colonial Power had a debt to pay to the newly independent State as compensation for what had, at times, amounted to centuries of slavery.

38. Lastly, he noted that paragraph 2 of the article proposed by Mr. Schwebel provided that any agreement concluded between the predecessor State and the newly independent State "shall pay due regard to the newly independent State's permanent sovereignty over its natural wealth and resources in accordance with international law". In fact, the contrary was true, for it was contemporary international law that had to conform with the principle of sovereignty and with the inalienable right of every people to dispose of its natural wealth and resources.

39. Mr. USHAKOV said he could accept article 22 as drafted by the Drafting Committee but would have preferred to see it reduced to a single paragraph, reading: "No State debt of the predecessor State shall pass to the newly independent State". He believed that his point of view came very close to Mr. Reuter's.

40. Mr. SETTE CÂMARA said that, as a compromise, the text of article 22 proposed by the Drafting Committee was acceptable. He was not, however, entirely satisfied with it because it did not give clear expression to some of the important elements contained in the article introduced by the Special Rapporteur at the Commission's 1443rd meeting. One of those elements was the criterion of utility, which offered the advantage of placing the burden of proof on the shoulders of the predecessor State when it claimed payment of a debt. Another of those elements was the principle that a succession of States did not as such affect the guarantee given by the predecessor State for a debt assumed by the formerly dependent territory. Moreover, paragraph 6 of the Special Rapporteur's article was much more explicit than the article of the Drafting Committee in stressing the need to defend the economic situation of newly independent States which inherited the debts of a predecessor State.

41. He shared Mr. Dadzie's doubts concerning the inclusion in paragraph 1 of a reference to the concept of an agreement, because even an agreement concluded after the birth of the successor State would always have some of the characteristics of a devolution agreement. On that point, he agreed with Mr. Schwebel that it was better to avoid any reference to the concept of an agreement. He could, however, not support the text of article 22 proposed by Mr. Schwebel because it lacked the essential elements contained in paragraph 6 of the article proposed by the Special Rapporteur.

42. With regard to the wording of article 22 proposed by the Drafting Committee, he thought that, in paragraph 1, the use of the word "link" and of the word "connected" could easily be avoided by replacing the word "connected" by the word "concerning".

43. The CHAIRMAN said that the drafting comment made by Mr. Sette Câmara would be dealt with by the language services with the help of the Drafting Committee.

44. Mr. TABIBI said that he had originally been in favour of the consolidated article which the Special Rapporteur had introduced.[9] Paragraph 2 of that article had been particularly important because it had laid down the criterion of utility, which made it clear that, although a debt might apparently have been contracted for the benefit of a territory, the people of that territory might

[9] 1443rd meeting, para. 1.

not in fact have derived any benefit at all from it. Paragraph 6 of that article, which had embodied the principle that account should be taken of the newly independent State's capacity to pay, had also been very important, for one of the most serious problems now faced by the countries of the third world was that their financial capacity was severely limited by the weakness of their economies.

45. He was, however, able to support article 22 as proposed by the Drafting Committee because it was a well-balanced compromise which took account of the elements included by the Special Rapporteur in his article and of the proposal made by Mr. Schwebel (A/CN.4/L.257). His only concern with regard to article 22 as proposed by the Drafting Committee related to the use of the word "fundamental" in paragraph 2, and he agreed with Mr. Díaz González that it should be deleted.

46. Mr. QUENTIN-BAXTER said that, although he shared the Chairman's view concerning the role of the Drafting Committee in dealing with problems which had not been solved during the Commission's discussions, he thought it regrettable that a text such as that of article 22 proposed by the Drafting Committee, which was so different from the previous text, should be dealt with only on the morning when it had been made available.

47. The fundamental principles identified by the Special Rapporteur in his original text had survived in the article proposed by the Drafting Committee, even though they had been tested almost to destruction during the Commission's discussions. Article 22 thus embodied the principle that the debts that passed to the newly independent State had to be related to the property that passed to it, as well as the principle that the measure of the indebtedness of a successor State which had recently become independent should be the actual benefit it had derived from the property that passed to it. The Commission's report to the General Assembly should reflect the Commission's unanimous support of those principles.

48. Although he agreed with Mr. Francis that the wording of paragraph 2 was not entirely satisfactory, he thought it did show that the paragraph was intended to embody the principle that account should be taken of the financial capacity of the newly independent State.

49. The majority of the Commission had been right in assuming that, since the application of the clean-slate principle to the case of newly independent States would be regarded as vitally important by the representatives of at least three quarters of the States Members of the United Nations, it would be advisable to draft a text that did not suggest that that rule was being weakened in any way. They had therefore agreed that the position that it was enough to say that there was no passing of State debts without an agreement between the States concerned would not reflect the general spirit of the draft articles, which were intended to provide rules that States might find useful in solving problems of succession. Nor would such a position be in the interests of newly independent States, particularly since nearly all the remaining dependent territories were very small, and their possibility of achieving the self-determination that was their right would depend on provisions enabling them to obtain generous assistance. The Commission had thus considered it important to indicate that it did not think that former colonies should be heavily burdened with debts. In his view, the text of article 22 proposed by the Drafting Committee did give such an indication and he would therefore support it.

50. Mr. VEROSTA said it was regrettable that the Drafting Committee had not paid sufficient attention to paragraphs 2 and 3 of the article proposed by the Special Rapporteur. Mr. Schwebel's proposed text simply reproduced those two paragraphs. They had not given rise to any marked opposition on the Commission's part and he (Mr. Verosta) had in fact proposed that they should be combined in a single paragraph.[10]

51. As a member of the Drafting Committee, he supported the new text proposed by the Committee but maintained his view, which was identical with that of Mr. Schwebel and Mr. Reuter, and endorsed the reservations expressed by the latter.

52. With regard to the drafting, he wondered whether it was correct to speak, in paragraph 2, of "fundamental economic equilibria", and whether it would not be better to use the singular.

53. The CHAIRMAN suggested that the secretariat be asked to decide whether the word "equilibria" should be in the singular or in the plural in paragraph 2. The discussion of that point and of the point raised by Mr. Díaz González and by Mr. Tabibi concerning the use of the word "fundamental" in the same paragraph would, in any case, be reflected in the commentary.

54. If there was no objection, he would take it that the Commission agreed to approve the title and the text of article 22 as proposed by the Drafting Committee,[11] on the understanding that the discussion of the text proposed by Mr. Schwebel (A/CN.4/L.257) would be fully reflected in the commentary and the text reproduced in a foot-note to the commentary.

It was so agreed.

The meeting rose at 1 p.m.

[10] 1444th meeting, para. 56.

[11] See para. 4 above.

1450th MEETING

Thursday, 30 June 1977, at 10.05 a.m.

Chairman: Sir Francis VALLAT

Members present: Mr. Calle y Calle, Mr. Dadzie, Mr. Díaz González, Mr. El-Erian, Mr. Francis, Mr. Quentin-Baxter, Mr. Reuter, Mr. Šahović, Mr. Schwebel, Mr. Sette Câmara, Mr. Sucharitkul, Mr. Tabibi, Mr. Tsuruoka, Mr. Ushakov, Mr. Verosta.