Document:-
A/CN.4/SR.1567

Summary record of the 1567th meeting

Topic:
State responsibility

Extract from the Yearbook of the International Law Commission:-
1979, vol. I

5. As every year, the members of the Committee would take an active part in the course on international law to be given in Rio de Janeiro in July and August under the Committee's auspices, to which eminent lawyers were invited. Mr. Barboza, a member of the Commission, had been invited that year.

6. The Committee was to hold its next session in July and August 1979. The main items on its agenda were: torture as an international crime (on which subject a draft convention was to be prepared in collaboration with the Inter-American Commission on Human Rights); transnational corporations and a code of conduct; revision of the inter-American conventions on industrial property; legal aspects of co-operation in transfer of technology; the principle of self-determination and its sphere of application; measures to promote the accession of non-autonomous territories to independence within the American system; jurisdictional immunity of States; and settlement of disputes relating to the law of the sea.

7. The CHAIRMAN thanked Mr. Herrarte González, Vice-Chairman of the Inter-American Juridical Committee, for his account of the Committee's work. He emphasized that co-operation between the Commission and regional bodies should be maintained and further strengthened. It was particularly important that the views of regional bodies should lead to concrete achievements, so that the Commission could take them into account in the codification and progressive development of international law, which it was pursuing at a universal level.

8. The Inter-American Juridical Committee was the first intergovernmental regional body responsible for codifying international law with which the Commission had established co-operative relations, in accordance with article 26, paragraph 4, of its statute. The Committee's achievements and the range and diversity of the subjects on its agenda showed the importance attached by OAS to the codification and progressive development of international law and to the work of its principal legal organ. Latin American lawyers had always been in the front rank of those who strove for the progress of international law in the service of peace and the promotion of friendly relations between States and peoples based on respect for the principle of sovereignty, as evidenced by their contribution to the development of the principle of non-intervention, the law of the sea and the right of asylum. The Commission was itself indebted to them on several counts. For example, it was on the basis of a draft submitted to the General Assembly by the delegation of Panama that the Commission had prepared, in 1949, a draft declaration on the rights and duties of States. And it was the system of reservations originating in Latin America that had prevailed in the Commission during the preparation of the draft articles on the law of treaties which had formed the basis of the Vienna Convention on the Law of Treaties.

9. He hoped that the Inter-American Juridical Committee would continue its work with the same success as in the past, in the interests of Latin America and of the rest of the world.

10. Mr. FRANCIS said that the work of the Inter-American Juridical Committee, like that of the other regional juridical committees, was an essential tributary to the mainstream of the codification process in which the Commission was engaged. The Committee was also a source of that process, as was clear from Mr. Herrarte González's account of its contribution to both public and private international law.

11. As one who came from the Caribbean region, he wished to convey to the members of the Committee his personal regards and his best wishes for the success of its 1979 session. He trusted that co-operation between the Committee and the International Law Commission would continue to flourish.

The meeting rose at 11.20 a.m.

1567th MEETING

Tuesday, 10 July 1979, at 10.40 a.m.

Chairman: Mr. Milan ŠAHOVIĆ

Members present: Mr. Barboza, Mr. Dadzie, Mr. Díaz González, Mr. Francis, Mr. Njenga, Mr. Pinto, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Tabibi, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta.

Also present: Mr. Ago.

State responsibility (*continued*)* (A/CN.4/318 and Add.1–3, A/CN.4/L.297)

[Item 2 of the agenda]

Draft articles proposed by the Drafting Committee

Articles 28, 29 and 30

1. The CHAIRMAN invited the Chairman of the Drafting Committee to introduce draft articles 28, 29 and 30 adopted by the Drafting Committee (A/CN.4/L.297), which read:

Article 28. Responsibility of a State for an internationally wrongful act of another State

1. An internationally wrongful act committed by a State in a field of activity in which that State is subject to the power of direction or control of another State entails the international responsibility of that other State.

* Resumed from the 1545th meeting.

2. An internationally wrongful act committed by a State as the result of coercion exerted by another State to secure the commission of that act entails the international responsibility of that other State.

3. Paragraphs 1 and 2 are without prejudice to the international responsibility of the State which has committed the internationally wrongful act, under the other articles of the present draft.

Article 29. Consent

1. The consent validly given by a State to the commission by another State of a specified act not in conformity with an obligation of the latter State towards the former State precludes the wrongfulness of the act in relation to that State to the extent that the act remains within the limits of that consent.

2. Paragraph 1 does not apply if the obligation arises out of a peremptory norm of general international law. For the purposes of the present draft articles, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

Article 30. Countermeasures in respect of an internationally wrongful act

The wrongfulness of an act of a State not in conformity with an obligation of that State towards another State is precluded if the act constitutes a measure legitimate under international law against that other State, in consequence of an internationally wrongful act of that other State.

2. Mr. RIPHAGEN (Chairman of the Drafting Committee) said that, in its consideration of articles 28 to 30 and of the title of chapter V, the Drafting Committee had been privileged to have the active participation of Mr. Ago, and had taken account of the Commission's discussion of the topic and of the formal proposals contained in documents A/CN.4/L.289/Rev.1 and A/CN.4/L.290–295. The Committee had also had before it written proposals and suggestions by some of its members and had kept in mind the need to maintain consistency of terminology throughout the draft.

3. Article 28 had been the subject of a formal reservation in the Drafting Committee. The word "indirect" had been deleted from the title proposed by Mr. Ago (A/CN.4/318 and Add.1–3, para. 47), in order to take account of the Commission's views. Whereas the original text of the article had been divided into two paragraphs, the text adopted by the Drafting Committee contained three paragraphs. Paragraph 1, which concerned the "stable relationship" aspect of the rule, corresponded to paragraph 1 of the original article, but a number of drafting changes had been introduced to make the rule clearer. First of all, the negative formulation of the original text, which had placed the emphasis on the absence of international responsibility of the State committing the wrongful act, had been changed to a positive formulation stressing the international responsibility of the State exercising the power of direction or control over the State that committed the act. Thus the last part of the original paragraph, which had read "does not entail the international responsibility of the State committing the wrongful act but entails the indirect international responsibility of the State which is in a position to give directions or exercise control", had been amended to read "entails the international responsibility of that other State", a formulation expressing the same idea in a more succinct manner. In addition, the expression "in law or in fact" had been deleted, and the words "the power of" had been inserted before the words "direction or control", it being understood that, for the purpose of invoking responsibility under article 28, paragraph 1, it was not necessary to establish that that power had in fact been exercised to secure the commission of the internationally wrongful act. The words "not in possession of complete freedom of decision, being" had been deleted, as unnecessary.

4. Paragraph 2 of article 28, which concerned the "coercion" aspect of the rule, corresponded to paragraph 2 of the original text, although some drafting changes had been made for the sake of greater precision and clarity. The new text included a change similar to the one made in paragraph 1, the negative formulation "does not entail the international responsibility of the State which acted under coercion but entails the indirect international responsibility of the State which exerted it" having been replaced by the positive wording "entails the international responsibility of that other State". Again, as in the case of paragraph 1, the reference to "indirect" responsibility had been omitted. Moreover, the words "under coercion" had been replaced by the words "as the result of coercion", to stress the direct causal connexion between coercion and the commission of the internationally wrongful act. The expression "to that end" had been amended to read "to secure the commission of that act", to emphasize the purpose of the coercion.

5. Paragraph 3 of article 28 had been inserted in order to separate the question of the possible responsibility of the State committing the wrongful act from that of the responsibility of the State which exercised the power of direction or control, or which had coerced the State committing the act. Paragraph 3 thus made it clear that the rules in paragraphs 1 and 2 did not necessarily exclude any responsibility that the State committing the wrongful act might incur under other articles of the draft. It also left open the possibility that the State committing the act might incur joint and several responsibility with the dominant State.

6. Article 29 was entitled "Consent". The words "of the injured State", used in the original title (A/CN.4/318 and Add.1–3, para. 77), had been deleted as not being entirely accurate or necessary. The article was set out in two paragraphs, which corresponded to the two sentences of the single paragraph of the original text. In paragraph 1, taking due account of the Commission's discussion, the Drafting Committee had inserted the word "validly", to qualify the consent given by a State. That word had been included in some of the formal proposals submitted to the Commission, notably in documents A/CN.4/L.291, L.292 and L.293, and it was to be understood in relation to international law. To circumscribe the application of the rule more clearly, the word "specified" had also been inserted to qualify the word "act", an idea that

had been reflected in document A/CN.4/L.293. For the same reason, the phrase "to the extent that the act remains within the limits of that consent" had been added at the end of the paragraph. In addition, as in the proposal contained in document A/CN.4/L.292, the words "in relation to that State" had been inserted after the words "precludes the wrongfulness of the act", to emphasize that the rule was without prejudice to the possible wrongfulness of the act in relations with third States. Lastly, for the sake of *elegantia juris*, the phrase "with what the first State would have the right, pursuant to an international obligation, to require of the second State" had been replaced by the more succinct phrase "with an obligation of the latter State towards the former State". The words "in question", appearing at the end of the first sentence of the original text, had been deleted as unnecessary.

7. Paragraph 2 of article 29 corresponded to the second sentence of the original text and concerned the inapplicability of paragraph 1 when the obligation was one of *jus cogens*. The word "rule" had been replaced by the word "norm", which was the term used in the Vienna Convention on the Law of Treaties.[1] In view of the new structure of the article, the initial words of the second sentence of the original text ("Such an effect shall not, however, ensue") had been amended to read "paragraph 1 does not apply". The word "concerned" had been deleted as superfluous. Paragraph 2 also included a definition of a peremptory norm, namely, that given in article 53 of the Vienna Convention, and specified, following the example of that Convention, that the reference was to "the present draft articles", more particularly because article 18, paragraph 2, of the draft already included a reference to a "peremptory norm".[2]

8. In article 30, the reference to a "sanction", appearing in the original text (A/CN.4/318 and Add.1–3, para. 99), had been deleted, in view of the divergence of opinion in the Commission as to the precise meaning of that term in the context of chapter V of the draft and, in particular, to make it clear that the rule was not limited to sanctions that were mandatory under the Charter of the United Nations. The word "countermeasures", employed in both the title and the text of article 30, thus extended to other legitimate measures (such as the application of the *exceptio non adimpleti contractus* under aticle 60 of the Vienna Convention) which, in the context of multilateral or bilateral relations, might in a broad sense amount to a sanction under general international law. In the text of the article, the phrase "was committed as the legitimate application of a sanction" had been replaced by the words "constitutes a measure legitimate under international law". The replacement of the words "was committed as" by the word "constitutes" was intended to prevent any attempt at a subjective inference in the application of the rule. In addition, the expression "under international law", which qualified the word "legitimate", had been inserted for further precision in regard to the term "measure". For the wrongfulness of an act in regard to another State to be precluded, that act must constitute a measure legitimate under international law against that other State. Further, the word "international", used at the beginning of the original text to qualify "wrongfulness", had been deleted to ensure consistency with other provisions of the draft. For similar reasons, and to make the text more precise, the words "of a State" had been inserted to qualify the word "act" at the beginning of the paragraph. Finally, much as in the case of article 29, the somewhat cumbersome phrase "with what would otherwise be required of a State by virtue of an international obligation towards another State" had been replaced by the phrase "with an obligation of that State towards another State".

9. The CHAIRMAN invited the members of the Commission to consider, one by one, the articles proposed by the Drafting Committee.

ARTICLE 28[3] (Responsibility of a State for an internationally wrongful act of another State)[4]

10. Mr. USHAKOV said that the Drafting Committee had not adopted article 28 unanimously and that he himself was opposed to it. He therefore wished to state his position to the Commission again.

11. Paragraph 1 of the article referred to an internationally wrongful act committed by a State. That an act was an act of the State and that it was an internationally wrongful act could be established on the basis of the articles in chapters I to III of the draft. A certain conduct must be attributable to a State and that conduct must constitute a breach of an international obligation of that State. Such an act then entailed the international responsibility of the State in question. But contrary to those general principles, paragraph 1 of article 28 asserted that the internationally wrongful act of one State could entail the international responsibility of another State. Admittedly, as the Chairman of the Drafting Committee had pointed out, the international responsibility of the State that had committed the act could also be entailed, but the fact remained that the State that had not committed the wrongful act was held responsible in the first instance, which was both inexplicable and unacceptable. It was contrary to the articles already adopted to lay down the principle that the responsibility of one State could be entailed by the wrongful act of another State.

12. According to paragraph 2 of article 28, an internationally wrongful act of a State entailed the international responsibility of the State wich had coerced it.

[1] See 1533rd meeting, foot-note 2.

[2] See 1532nd meeting, foot-note 2.

[3] For consideration of the text initially submitted by Mr. Ago, see 1532nd to 1537th meetings, paras. 1–24.

[4] For text, see para. 1 above.

In his view, a State that applied coercion was responsible for the coercion, but not for the wrongful act committed by the coerced State. According to the text of the proposed provision, however, if an act of aggression was committed by one State under the coercion of another, it was the international responsibility of that other State that was entailed, so that the coercion absolved from all responsibility the State that was subjected to it and that had committed the internationally wrongful act. Moreover, paragraph 2 of article 28 covered any coercion, however slight it might be and however serious its consequences, applied by one State in regard to another to secure the commission of an internationally wrongful act. As the provision stood, therefore, it would be necessary to establish the *animus* of the State applying the coercion to determine whether or not it had intended to secure the commission of the act in question. But to adopt that course was unthinkable.

13. Reverting to paragraph 1, he observed that the expression "power of direction or control" was very vague and could not be clarified by any commentary. A State that was entirely subject to the power of direction of another State did not itself commit an internationally wrongful act. Since it was no longer a sovereign State, it was not in a position to commit such an act. It was the State to whose power of direction it was subject that committed the internationally wrongful act, and it was the international responsibility of that State that was entailed. In the wrongful legal situations to which article 28 might be applied, the State subjected to the power of direction of another State could not commit an internationally wrongful act, since it was not able to act itself. To admit that it could do so would be contrary to the preceding articles of the draft.

14. The wording of paragraph 3 of article 28 gave the impression that a State could commit an internationally wrongful act "under the other articles of the present draft".

15. Mr. REUTER found draft article 28 acceptable, but doubted whether the expression "pouvoir de direction ou de contrôle" was correctly rendered in English. In French, there was a slight difference in meaning between "pouvoir de direction" and "pouvoir de contrôle", the former implying a greater ascendancy than the latter. A State exercising "pouvoir de direction" over another State almost substituted itself for that State. The expression "pouvoir de contrôle" had a much more restricted meaning, which did not seem to be true of the English expression "power of control".

16. In accepting draft article 28, he was well aware that the problems referred to in paragraph 3 of that article were duly reserved and would have to be considered later. Those problems arose from the fact that several States could participate in the same international offence in different capacities, for example, as accomplices or co-authors. Unlike Mr. Ushakov, he believed that article 28 was necessary, because his conception of sovereignty was less exclusive.

17. Mr. DIÁZ GONZÁLEZ, referring to paragraph 2 of article 28, said that an internationally wrongful act could of course be committed as a result of coercion, but that coercion need not necessarily have been used to secure the commission of the act. Hence it would be much more logical to replace the words "to secure" ("para provocar" in the Spanish version) by the words "to induce" ("para inducir")—a broader formulation that more accurately reflected what the provisions of paragraph 2 sought to establish. In other respects the article raised no difficulties.

18. Mr. TSURUOKA understood the concern expressed by Mr. Díaz González, but thought the meaning of the verb "provoquer" was consistent with the spirit of paragraph 2. No coercion was so strong that it left no freedom of action at all to the State subjected to it.

19. Subject to closer concordance between the words "provoquer" and "to secure", he was willing to accept the article.

20. Sir Francis VALLAT said that paragraphs 1 and 2 of article 28 embodied two essential principles of international law and, in general, reflected the views of the Commission. The difficulty was to give expression to those principles, particularly as they related to the possible responsibility of the State that had committed the act, as opposed to the responsibility of the State that had not committed the act.

21. The relationship between paragraphs 1 and 2, on the one hand, and paragraph 3, on the other, caused him considerable misgivings. Paragraph 3 referred to "the other articles of the present draft", and under those articles the State to which the act was attributable was the responsible State. The provision therefore seemed to reflect the idea of dual responsibility: that of the State which committed the act and that of the State which exercised the power of direction or exerted coercion. That, however, was not his understanding of the general sense of the Commission, for while the Commission had accepted that the act brought about by the dominant State would normally be regarded as the act of that State, a number of speakers had recognized that, in some circumstances, the subordinate State could not escape responsibility altogether by invoking the responsibility of the dominant State. For example, if, under a treaty provision, the dominant State had power of control over the armed forces of the subordinate State, and if the subordinate State used its armed forces, that case would fall *prima facie* within the terms of paragraph 1. But what would be the effect of paragraph 1 read in conjunction with paragraph 3 if, in those circumstances, the subordinate State used its armed forces, possibly in disregard of the wishes of the dominant State, in a way that was internationally wrongful? To put the problem in a slightly different way, if the subordinate State committed an act of aggression under the direction or control of the dominant State, was the subordinate State to be free of all responsibility? For his part, he could not subscribe to any such proposition. He considered that there was a certain relationship between paragraphs 1

and 2, on the one hand, and paragraph 3, on the other, which was not brought out by the draft. Perhaps, however, that would be corrected by subsequent provisions.

22. With regard to the expression "subject to the power of direction or control", in paragraph 1, he understood broadly what was intended, but thought it was for scholars of French rather than of English to say whether it was an exact reflection of the French text. He very much doubted, however, whether the word "direction" added anything to the word "control" in that context, since a power of control necessarily implied a power of direction. He also wondered whether the words "subject to the power" reflected the notion originally conveyed by the expression "in law or in fact", as had been intended by the Drafting Committee. If a State became "subject to the power" by the *de facto* exercise of force, then that case fell more properly within the terms of paragraph 2 than of paragraph 1; and if it was a question of a legal right, which would normally be established by agreement, paragraph 1 seemed to go too far. Again, he would have difficulty in accepting the proposition that if a State, which was legally subject to some measure of control by virtue of a treaty, chose to ignore that treaty obligation and to act independently, it was relieved of responsibility for its act. The Commission should not be seen to provide such a cloak for wrongdoing.

23. Lastly, to avoid ambiguity, the phrase "under the other articles of the present draft", which appeared at the end of paragraph 3, should be placed after the words "international responsibility".

24. As it would be difficult to improve on the draft at that stage, the points he had raised could perhaps be reflected in the commentary and in the report.

25. Mr. RIPHAGEN (Chairman of the Drafting Committee) said that, as he had mentioned in his introductory remarks, article 28 had been the subject of a formal reservation in the Drafting Committee. That reservation reflected the point raised by Mr. Ushakov.

26. The expression "power of direction or control", in paragraph 1 of the English text, had been considered at some length by the Drafting Comittee, which had concluded that it was the correct rendering of the French expression "pouvoir de direction ou de contrôle". Mr. Díaz González had suggested, if he had understood aright, that the word "secure" ("provocar"), in paragraph 2, should be replaced by the word "induce" ("inducir"). There again, the wording had been agreed by the Drafting Committee only after full discussion.

27. The expression "under the other articles of the present draft" had been included in paragraph 3 because it had been thought advisable to embody a general reference at that point, although the Committee had been well aware that a problem remained. That problem could perhaps be resolved either in the context of part II of the draft, which would deal with the consequences of an internationally wrongful act, or in some subsequent article on *force majeure*.

28. Mr. AGO observed that there was a fundamental difference of opinion between Mr. Ushakov and the other members of the Commission regarding the situation of a State under military occupation. According to Mr. Ushakov, the occupied State lost its character as a sovereign State, so that any act committed by its organs must be attributed to the occupying State. According to the other members of the Commission, on the contrary, the sovereignty of the occupied State normally remained unchanged, so that an act committed by the organs of the occupied State remained attributable to that State; on the other hand, an act entailed the responsibility of the occupying State if it had been committed under the direction of that State or in a sphere of activity controlled by that State. That was the difference of opinion that was at the root of the problem raised by Mr. Ushakov. In fact, the two positions were not as divergent as they appeared, since in the most important cases they both led to the conclusion that the occupying State must be considered responsible.

29. With regard to the question put by Sir Francis Vallat concerning the relationship between paragraphs 1 and 2 and paragraph 3 of article 28, he pointed out that the responsibility of the dominant State, which was the subject of paragraphs 1 and 2, was a "necessary" responsibility, whereas the responsibility of the subordinate State, which was the subject of paragraph 3, was only a "possible" responsibility. Paragraph 3 did not mean that if there was responsibility of the dominant State there was necessarily also responsibility of the subordinate State. The question of the responsibility of the subordinate State must be settled in each specific case in accordance with the circumstances.

30. As to the terms "direction" and "control", used in paragraph 1, "direction" was more active than "control" and was imposed in advance, whereas control was exercised after the event. Personally, he was willing to delete the words "the power of", as proposed by Sir Francis Vallat. He thought that the problem raised by Mr. Díaz González concerning the use of the word "provocar" was merely a matter of translation.

31. In conclusion, he thought it would be useful to place the words "under the other articles of the present draft", in paragraph 3, after the words "international responsibility", as Sir Francis Vallat had proposed. It should be emphasized in the commentary that the international responsibility of the State that had committed the internationally wrongful act was a possible, not a necessary, responsibility, and that the problem raised by such responsibility could be resolved only in each specific case.

32. Mr. VEROSTA supported the proposal made by Sir Francis Vallat and endorsed by Mr. Ago concerning the position of the words "under the other articles of the present draft", in paragraph 3. He proposed that

in paragraph 2 the verb "provoquer" should be replaced by a verb corresponding more closely to the verb "secure" in the English text.

33. Mr. REUTER said that he too had doubts about the use of the verb "provoquer", which had a criminal connotation in French, but he did not really see what other verb could be used to replace it. He would have preferred paragraphs 1 and 2 to speak of *an* international responsibility. However, he understood that Sir Francis Vallat wished to place the accent on substitution of responsibility, by stressing that the responsibility of the State committing the offence was only subsidiary.

34. Sir Francis VALLAT did not think the difficulty could be overcome, as far as the English text was concerned, simply by substituting the indefinite article for the definite article before "international responsibility", although some such phrase as "without prejudice to any international responsibility" could perhaps be introduced to suggest the idea of possibility. His main point had been that the question should be dealt with in the commentary, since it would be better not to change the draft at that stage.

35. Mr. USHAKOV emphasized that, in his opinion, the State referred to in article 28 as committing the internationally wrongful act was neither completely sovereign nor completely under military occupation. He knew that in Nazi-occupied States, during the Second World War, there had been collaborationist national organs which had been responsible for the crimes they committed; but that, in his opinion, was another type of responsibility, because the States in question had been completely occupied by the Nazis, and consequently had not been free.

36. Mr. RIPHAGEN (Chairman of the Drafting Committee) explained that the Drafting Committee had decided, after long deliberation, to add the words "power of" in paragraph 1, in order to distinguish the situation dealt with in that paragraph from the situation dealt with in paragraph 2. Paragraph 1 concerned the "stable relation" aspect of the rule, and the power did not actually have to be exercised for the purposes of the internationally wrongful act.

37. Sir Francis VALLAT suggested that the point would be met if Mr. Riphagen's remarks as Chairman of the Drafting Committee were reflected in the report.

38. The CHAIRMAN said that if there were no objections he would take it that the Commission decided to replace the text of paragraph 3 of draft article 28, as proposed by the Drafting Committee, by the following text:

> "Paragraphs 1 and 2 are without prejudice to the international responsibility, under the other articles of the present draft, of the State which has committed the internationally wrongful act."

It was so decided.

39. The CHAIRMAN said that if there were no objections he would take it that the Commission decided to approve the text, as amended, of draft article 28 proposed by the Drafting Committee.

It was so decided.

ARTICLE 29 [5] (Consent) [6]

40. Mr. REUTER proposed that the title should be made more precise by adding the word "prior" before the word "consent". He wondered whether the consent referred to in article 29 was a conventional act or a unilateral act. In the former case the tautological character of article 29 would be accentuated, since it would be tantamount to saying that there was no violation of an international obligation if there was no longer any obligation.

41. Mr. AGO considered that the consent referred to in article 29 always constituted, in the final analysis, participation in a voluntary agreement between two States. But the article was not as tautological as it appeared, because the obligation at issue remained; it was rendered inoperative only in a particular case.

42. Mr. USHAKOV observed that Mr. Reuter's question no longer arose since the Drafting Committee had added the word "specified" before the word "act" in paragraph 1. Consent did not remove the obligation as such, but suspended its application in regard to a specified act.

43. Sir Francis VALLAT was a little doubtful about amending the title of the article to read "prior consent". In practice, what was often involved was not a single act but a continuing course of conduct, so that in a sense it was not a question of prior consent but of simultaneous consent. Moreover, the Commission should follow the normal practice of not using language in the title that did not appear in the body of the article.

44. Although he also had certain doubts about the words "specified" and "remains", he thought it would be inadvisable to reopen those questions, and that the draft should be accepted.

45. Mr. FRANCIS considered that the consent of a State whose territory was affected by an act must be given before that act was committed. Since that was made clear in Mr. Ago's report, he would not press for any change in the title of the article. Perhaps it would satisfy Sir Francis Vallat if his point were also reflected in the commentary.

46. Mr. USHAKOV shared Sir Francis Vallat's doubts as to the need to add the adjective "prior" to the word "consent" in the title. An act could comprise several constituent acts.

47. Mr. AGO thought, on reflection, that the title of article 29 was sufficiently clear and did not necessarily require amendment. He pointed out that in French the

[5] For consideration of the text initially submitted by Mr. Ago, see 1537th meeting, paras. 25 *et seq.*, 1538th, 1540th, 1542nd and 1543rd meetings, and 1544th meeting, paras. 5–7.

[6] For text, see para. 1 above.

word "fait" could mean an action or an omission, a "simple" act or a "continuous", "composite" or "complex" act, and that in English the word "act" had always been used in the draft as the equivalent of the word "fait" in French. On the other hand, the word "specified", in the English text of paragraph 1, might be taken to imply that the act referred to was a single act. He wondered whether it would not be better to replace it by the word "given".

48. Mr. NJENGA said that, since the article referred to a specified act subject to consent, it was only rational for the consent to precede the act. He would have difficulty in accepting the notion of simultaneous or subsequent consent—which was not what the Commission had in mind. However, he was prepared to agree that the title should be left unchanged on the understanding that it referred to prior consent.

49. The CHAIRMAN said that if there were no objections he would take it that the Commission adopted the text of article 29 proposed by the Drafting Committee, as well as the title of chapter V: "Circumstances precluding wrongfulness".

It was so decided.

ARTICLE 30 [7] (Countermeasures in respect of an internationally wrongful act) [8]

50. Mr. USHAKOV said that the article was very clear and could be adopted by the Commission without difficulty.

51. Mr. REUTER welcomed the fact that the Drafting Committee had introduced the word "countermeasures" in the title.

52. The CHAIRMAN said that if there were no objections he would take it that the Commission adopted the text of article 30 proposed by the Drafting Committee.

It was so decided.

The meeting rose at 12.30 p.m.

[7] For the text initially submitted by Mr. Ago, see 1544th meeting, paras. 8 *et seq.*, and 1545th meeting, paras. 3 *et seq.*

[8] For text, see para. 1 above.

1568th MEETING

Friday, 13 July 1979, at 10.15 a.m.

Chairman: Mr. Milan ŠAHOVIĆ

Members present: Mr. Barboza, Mr. Dadzie, Mr. Díaz González, Mr. Njenga, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Tabibi, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta, Mr. Yankov.

Succession of States in respect of matters other than treaties (*continued*)* (A/CN.4/322 and Corr.1 and Add.1 and 2, A/CN.4/L.299/Rev.1)

[Item 3 of the agenda]

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE

ARTICLES 1–23

1. The CHAIRMAN invited the Chairman of the Drafting Committee to present the results of the Committee's work on the first 25 articles of the draft,[1] which the Commission had provisionally adopted at its twenty-fifth session and from its twenty-seventh to thirtieth sessions, and which it had referred to the Drafting Committee at the current session (1560th meeting, para. 30) for review as a whole on completion of the first reading.

2. The results of the Drafting Committee's work were presented in document A/CN.4/L.299/Rev.1, which contained the titles of part I, of part II and sections 1 and 2 thereof, of part III and sections 1 and 2 thereof, and the titles and texts of articles 1 to 23.

3. The texts proposed by the Drafting Committee read:

PART I

INTRODUCTION

Article 1. Scope of the present articles

The present articles apply to the effects of succession of States in respect of matters other than treaties.

Article 2 [3].*[2] *Use of terms

1. For the purposes of the present articles:

(*a*) "succession of States" means the replacement of one State by another in the responsibility for the international relations of territory;

(*b*) "predecessor State" means the State which has been replaced by another State on the occurrence of a succession of States;

(*c*) "successor State" means the State which has replaced another State on the occurrence of a succession of States;

(*d*) "date of the succession of States" means the date upon which the successor State replaced the predecessor State in the responsibility for the international relations of the territory to which the succession of States relates;

(*e*) "newly independent State" means a successor State the territory of which immediately before the date of the succession of States was a dependent territory for the international relations of which the predecessor State was responsible;

(*f*) "third State" means any State other than the predecessor State or the successor State.

* Resumed from the 1565th meeting.

[1] See 1560th meeting, foot-note 1.

[2] The number in square brackets refers to the number of the corresponding article in the original draft (for reference, see 1560th meeting, foot-note 1).