Document:-
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**Summary record of the 1569th meeting**

Topic:
**<multiple topics>**

Extract from the Yearbook of the International Law Commission:-
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67. Mr. TABIBI said that he had had the honour of representing the Commission at the Committee's twentieth session, in Seoul. He had been greatly impressed by the work of the Committee and the organization of its secretariat. In his opinion, one of the principal reasons for the success of the Commission was the co-operation extended to it by such valuable regional bodies. Indeed, the rules of the Asian-African Legal Consultative Committee provided that the Committee should discuss items on the Commission's agenda. The Committee had succeeded in establishing two important centres for commercial arbitration that would be of great assistance to the countries in the region, and its study of the topic of the law of the sea would make a great contribution to the negotiations at the forthcoming resumed session of the Third United Nations Conference on the Law of the Sea.

68. He was most grateful for the extremely warm welcome given him by the secretariat of the Committee and for the generous hospitality of the Government of the Republic of Korea.

*The meeting rose at 1 p.m.*

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## 1569th MEETING

*Monday, 16 July 1979, at 3.10 p.m.*

*Chairman:* Mr. Milan ŠAHOVIĆ

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

*Also present:* Mr. Ago.

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### State responsibility (*continued*)* (A/CN.4/318 and Add.1–4)

[Item 2 of the agenda]

DRAFT ARTICLES SUBMITTED BY MR. AGO (*continued*)**

ARTICLE 31 (*Force majeure*) *and*

ARTICLE 32 (Fortuitous event)

1. The CHAIRMAN invited Mr. Ago to present section 4 (*Force majeure* and fortuitous event) of chapter V (Circumstances precluding wrongfulness) of his eighth report on State responsibility and, in particular, articles 31 and 32 (A/CN.4/318 and Add.1–4, para. 153), which read:

***Article 31.*** **Force majeure**

**1. The international wrongfulness of an act of a State not in conformity with what is required of it by an international obligation is precluded if it is absolutely impossible for the author of the conduct attributable to the State to act otherwise.**

**2. The international wrongfulness of an act of a State not in conformity with what is required of it by an international obligation is likewise precluded if the author of the conduct attributable to the State has no other means of saving himself, or those accompanying him, from a situation of distress, and in so far as the conduct in question does not place others in a situation of comparable or greater peril.**

**3. The preceding paragraphs shall not apply if the impossibility of complying with the obligation, or the situation of distress, are due to the State to which the conduct not in conformity with the obligation is attributable.**

***Article 32. Fortuitous event***

**The international wrongfulness of an act of a State not in conformity with what is required of it by an international obligation is precluded if, owing to a supervening external and unforeseeable factor, it is impossible for the author of the conduct attributable to the State to realize that its conduct is not in conformity with the international obligation.**

2. Mr. AGO said that *force majeure* and fortuitous event were circumstances frequently invoked as precluding the wrongfulness of an act of a State. However, the expressions "*force majeure*" and "fortuitous event" were not always used in the same sense by writers, and still less by Governments, judges and arbitrators. Sometimes, for example, the expression "state of emergency" ("état de nécessité") was used as a synonym for "*force majeure*". It should be made clear that neither of those concepts was used in its "natural" meaning; it was only by a convention that they were used to designate certain situations and to distinguish them from others. It was important, therefore, to define them at the outset, so as to avoid any misunderstanding.

3. In the first place, *force majeure* and fortuitous event differed from the other circumstances precluding wrongfulness dealt with in article 29 (Consent)[1] and article 30 (Countermeasures in respect of an internationally wrongful act).[2] In the case of *force majeure* or fortuitous event, the previous conduct of the State subjected to an act not in conformity with an international obligation was not at issue, as it was in the cases dealt with in articles 29 and 30: the State had neither given its consent to the commission of the act nor previously engaged in conduct that constituted an international offence.

4. The distinction between *force majeure* and state of emergency was less easy to draw, but practice and

* Resumed from the 1567th meeting.

** Resumed from the 1545th meeting.

[1] See 1567th meeting, para. 1.

[2] *Idem.*

doctrine showed that those concepts, although similar, presented marked differences. Both, it was true, were characterized by the irrelevance of the prior conduct of the State against which the act to be justified had been committed. It was equally true that in both cases there was a factor that caused the State to act—*in spite of itself,* as it were—in a manner not in conformity with what was required of it by an international obligation. However, closer examination of those concepts showed that the reference was rather to a state of emergency when the State adduced, as a justification of its acts not in conformity with an international obligation, the alleged necessity of saving the very existence of the State from a grave and imminent danger, a danger which, of course, did not emanate from that State and could not be avoided by any other means. Sometimes the objective invoked was not that of saving the very existence of the State but that of safeguarding some of its vital interests: for instance, ensuring the survival of part of its population overtaken by a natural disaster by requisitioning foreign means of transport or supply, or preventing the State's bankruptcy by deferring payment of a State debt. The concept of a state of emergency in any case comprised two elements: first, the impossibility of otherwise protecting the State or its vital interests from a grave and imminent danger and, secondly, the undeniably intentional nature of the conduct not in conformity with an international obligation engaged in for that purpose.

5. *Force majeure,* on the other hand, was generally invoked to justify *unintentional* conduct. An external factor that made it *materially impossible* for the State to act otherwise than it did was then adduced. That was the case, for example, when an aircraft was obliged, by reason of a storm or of damage, to violate the air space of another State, deliberately but involuntarily. Similarly, property that a State was required to hand over to another State might be destroyed by uncontrollable natural causes, or by causes resulting from human action beyond State control, so that the State was prevented from discharging its obligation.

6. Among cases of impossibility of acting in conformity with an international obligation, cases of "absolute" impossibility could be distinguished from cases of "relative" impossibility. There were cases where it was beyond all doubt "materially" impossible for a State to act in conformity with its obligation. The impossibility might, however, be less definite. For instance, a ship might violate the maritime space of a State not because it was really materially impossible to avoid such violation but in the knowledge that, if it acted in conformity with its international obligation, it would run the risk of sinking. In such a situation, however, where the material impossibility was only relative, the person acting for the State could not be considered to enjoy real freedom of choice, one of the alternatives before him being one that he could not reasonably be required to choose. Consequently, such cases were assimilated to cases of absolute material impossibility. It was necessary to emphasize that such cases must be distinguished from cases of "state of emergency". When there was a state of emergency, conduct not in conformity with what was required by an international obligation was adopted in order to protect the State, or a fundamental interest of the State, from danger. On the other hand, when there was *force majeure* due to the relative impossibility of acting in conformity with an international obligation, the grave and imminent danger determining the action was a personal danger to the organs of the State or to the individuals under its responsibility.

7. In accordance with the dominant opinion, he had limited the concept of *force majeure* to cases in which the organ that took action was placed in a situation of absolute and material impossibility of acting otherwise, and to cases in which it could not act otherwise without incurring very grave danger to its own existence or to persons placed under its responsibility.

8. Although related to the concept of *force majeure,* the concept of fortuitous event, according to prevailing opinion, differed therefrom in an important respect. In both cases an external factor intervened, but whereas in cases of *force majeure* the State organ was aware that it was acting in a manner not in conformity with an international obligation, in cases of fortuitous event it was not so aware. Examples of the first case would be situations where the pilot of an aircraft caught in a storm was impelled by irresistible air currents into the air space of another State, despite his efforts to avoid it (absolute impossibility), or where the same pilot decided, rather than court death, to penetrate the foreign air space (relative impossibility). Examples of the second case would be situations where the pilot of an aircraft whose flight instruments had ceased functioning, and which was caught in a fog, unwittingly entered air space in which he was not authorized to fly, or where a frontier patrol, in similar circumstances, unwittingly found itself in foreign territory. *Force majeure* affected the will of the organ that acted, fortuitous event the awareness of that organ.

9. Leaving the area of semantics, he turned to a legal analysis of the concepts of *force majeure* and fortuitous event, beginning with *force majeure.* In the case of absolute impossibility of acting otherwise, the external factor that intervened could be a natural event or a human action. For example, a State that had undertaken to hand over certain property to another State might be unable to fulfil its obligation either because the property had been destroyed by a cataclysm or because it was situated in territory which, at a given point, had ceased to be under its sovereignty or control. The impossibility of acting in conformity with a certain international obligation could be permanent or temporary; in the latter case, the act regarded as internationally lawful obviously became wrongful once the temporary situation ended.

10. Although the preparatory work for the Conference for the Codification of International Law (The Hague, 1930) had not expressly dealt with *force majeure* or fortuitous event, interesting information on those two cases was to be found in the answers given by certain Governments to the question of State responsibility for acts of the executive. The Swiss Gov-

ernment, for instance, had made two reservations on State responsibility for acts of the executive; the case of fortuitous event and the case of *force majeure*.[3] It should be noted that the Conference had been especially concerned with State responsibility for injury caused to the person or property of foreigners, and had consequently been concerned in particular with failure to fulfil obligations of prevention. That was why it had frequently been asserted that a State must be held responsible for conduct consisting in failure to exercise prevention, unless reasons of *force majeure* had made it absolutely impossible for the State to take the necessary measures of prevention.

11. As early as 1966, the Commission had regarded *force majeure,* in the sense of real impossibility of fulfilling an obligation, as a circumstance precluding State responsibility. In its commentary to article 58 of the draft articles on the law of treaties, it had emphasized that the disappearance or destruction of an object indispensable for the execution of a treaty could be invoked as a ground for terminating the treaty, or suspending its operation, if they rendered its execution permanently or temporarily impossible.[4]

12. As practical examples of absolute impossibility of acting in conformity with an international obligation, he referred first to the case, mentioned in his report, of the dispute between the United States of America and Yugoslavia following overflights of Yugoslavia by United States aircraft.[5] From an exchange of correspondence between the two States it had appeared that cases of material impossibility of fulfilling an international obligation would be regarded as a circumstance precluding wrongfulness. Article 14 of the 1958 Convention on the Territorial Sea and the Contiguous Zone affirmed the right of innocent passage of ships of all States through the territorial sea of a foreign State, but specified that such passage included stopping and anchoring only in so far as they were incidental to ordinary navigation or were rendered necessary by *force majeure* or by distress.[6] "*Force majeure*" must be taken to mean absolute material impossibility, "distress", relative impossibility. Article 18, paragraph 2, of the Informal Composite Negotiating Text/Revision 1, drawn up in April 1979 for the eighth session of the Third United Nations Conference on the Law of the Sea, contained a similar provision, in which the expression "relâche forcée" had been replaced by "*force majeure*".[7]

13. In addition to obligations to abstain, absolute impossibility of fulfilling an international obligation could relate to obligations to act, to engage in certain positive conduct. For instance, under the Treaty of Versailles, Germany had undertaken to deliver a certain quantity of coal annually to France. In 1920, however, the quantity of coal supplied by Germany had been much less than that provided for. Germany had claimed that domestic needs had made it materially impossible for it to meet its obligation. France had denied the existence of absolute impossibility in that particular case, while recognizing implicitly that in the case of absolute impossibility the conduct not in conformity with the international obligation in question would not have been wrongful, because there would have been *force majeure*.[8] In the case of the dispute between Greece and Bulgaria, to which he had referred in his report,[9] the existence of *force majeure* had eventually been recognized.

14. The role of *force majeure* as a circumstance precluding the wrongfulness of conduct not in conformity with an international obligation had also been taken into consideration in regard to failure to pay a public debt. In his report, he had mentioned three cases brought before the Permanent Court of International Justice: that of the *Serbian loans,* that of the *Brazilian loans* and that of the *Société commerciale de Belgique*.[10] In none of those cases had the parties questioned the principle that a real situation of *force majeure,* or at least the absolute impossibility of fulfilling an international obligation, constituted a circumstance precluding the wrongfulness of failure to fulfil the obligation.

15. *Force majeure* as a circumstance precluding wrongfulness had also been invoked in regard to a special category of obligations to act, termed obligations of prevention. In that connexion he referred members of the Commission to the comments he had made in his report on the *Corfu Channel* case and the *Prats* case.[11]

16. Generally speaking, writers were unanimous in recognizing that the wrongfulness of a State's conduct was precluded if it had been absolutely and materially impossible for the State to act differently in a particular case in which its conduct had not been in conformity with an international obligation incumbent upon it.

17. As to codification drafts, mention should be made of the draft prepared for the Commission by García Amador and the draft prepared by Graefrath and Steiniger. According to a provision of the former draft,

> An act or omission shall not be imputable to the State if it is the consequence of *force majeure* which makes it impossible for the State to perform the international obligation in question and which was not the consequence of an act or omission of its own organs or officials.[12]

The latter draft provided that the obligation to indemnify did not apply in cases of *force majeure* or a state of emergency.[13]

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[3] See A/CN.4/318 and Add.1-4, para. 108.

[4] *Ibid.*, para. 109.

[5] *Ibid.*, para. 112.

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

[7] *Ibid.*

[8] *Ibid.*, para. 114.

[9] *Ibid.*, para. 115.

[10] *Ibid.*, paras. 117-120.

[11] *Ibid.*, paras. 121 and 122.

[12] *Ibid.*, para. 124.

[13] *Ibid.*

18. It should be made clear that the situation of absolute impossibility of performing a certain international obligation must exist at the precise moment when the State adopted conduct not in conformity with that obligation. Just as the obligation must exist at the moment when the violation occurred, so the circumstance precluding wrongfulness of the conduct must exist at that moment. That condition was of particular importance in the case of a non-instantaneous act. When conduct was continuous, *force majeure* precluded the wrongfulness of that conduct as long as *force majeure* subsisted, but the conduct became wrongful as soon as *force majeure* ceased.

19. The situation of relative impossibility was sometimes called "distress"; it implied, as he had indicated, serious peril to the very life of the organ that was required to ensure fulfilment of an international obligation of its State. The incidents between Yugoslavia and the United States of America in 1946, which were recounted in paragraph 130 of his report, provided an illustration of a case of relative impossibility. The two Governments had considered that violations of air boundaries were justified when they were absolutely necessary or when their purpose was *to save the aircraft and its occupants*. The same principles had been affirmed in cases of violation of a sea boundary, as was shown by the dispute between the Government of the United Kingdom and the Government of Iceland, described in paragraph 131 of his report. Moreover, article 18, paragraph 2, of the aforementioned negotiating text on the law of the sea[14] provided, in regard to innocent passage, that ships might stop "for the purpose of rendering assistance to persons, ships or aircraft in danger or distress". In that provision, as in the Convention on the Territorial Sea and the Contiguous Zone, or in the international conventions for the prevention of pollution of the sea, distress was regarded as a circumstance precluding wrongfulness of conduct contrary to an international obligation.

20. It must also be stressed that the wrongfulness of an act or omission not in conformity with an international obligation could be precluded only if there was a certain value relationship between the interest protected by that act or omission and the interest which the obligation was intended to protect. It was not possible to justify conduct which, to save the life of one person or of a small group of persons, endangered the existence of a much greater number of human beings. That would be the case if a military aircraft carrying explosives took the risk of causing a disaster by making an emergency landing.

21. To sum up on the subject of fortuitous event, he said that the concept covered a situation in which, as a result of external and unforeseen factors, it was impossible for the State organ to realize that its conduct was not in conformity with what was required of it by an international obligation incumbent upon the State. He had given several examples of fortuitous events in his report.[15]

22. Draft article 31, relating to *force majeure*, was divided into three paragraphs. The first concerned absolute and material impossibility of acting in conformity with an international obligation; the second dealt with relative impossibility and emphasized the need for some proportion between the danger to which the person engaging in the conduct was subjected and the danger he caused; the third reserved the case in which the impossibility of complying with the obligation, or the situation of distress, were due to the State to which the conduct not in conformity with the obligation was attributable. Draft article 32, relating to fortuitous event, consisted of a single paragraph.

23. The CHAIRMAN congratulated Mr. Ago on his detailed and well documented presentation of the new articles he proposed.

## 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 (*continued*)

### Articles 1–23 (*continued*)

Article 16 (State debt)[16] (*concluded*)

24. Mr. NJENGA said that article 16, except for subparagraph (*b*), was an improvement on the version that had been referred to the Drafting Committee, since subparagraph (*a*) was confined to international financial obligations. On the other hand, the terms of subparagraph (*b*), which spoke of "any other financial obligation chargeable to a State", made it difficult to understand the scope of the article as a whole. For example, the salaries paid by a State to its civil servants constituted a financial obligation chargeable to the State. He did not wish to assert that financial obligations towards nationals or foreigners should not be met by the successor State, but he very much doubted whether a text codifying international law should include a provision so broad as to cover financial obligations of a domestic character, which were governed by other rules of law. The inclusion of subparagraph (*b*) would produce the same effect as the deletion of the word "international", which had been included in square brackets in the former article 18. Some clarification was required in regard to subparagraph (*b*), and if the explanations proved satisfactory they should be included in the commentary.

25. Mr. USHAKOV said that in principle State debts comprised not only a State's financial obligations

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

[15] *Ibid.*, paras. 138–149.

[16] For text, see 1568th meeting, para. 3.

towards other subjects of international law; they also extended to other financial obligations chargeable to a State, such as debts contracted by a State to its own nationals or to foreign natural or legal persons. When a succession of States occurred, the question of such other State debts arose, but it was settled under internal law, not international law, since the rules of international law were applicable only to relations between subjects of international law. Hence the draft articles in preparation applied only to State debts understood as "any financial obligation of a State towards another State, an international organization or any other subject of international law", to the exclusion of other financial obligations chargeable to a State, which came under internal law.

26. A breach of the rules governing the passing of State debts gave rise to international responsibility, but there could be no international responsibility towards persons not subjects of international law. The articles on the passing of State debts must therefore relate solely to the financial obligations of a State towards other subjects of international law.

27. He willingly accepted the general provision in paragraph 1 of article 18 (formerly article 29),[17] which protected the rights of all creditors, but apart from that general provision he saw no need to deal with obligations other than those contracted by the State towards subjects of international law. He was therefore in favour of deleting subparagraph (*b*) of article 16.

28. Mr. RIPHAGEN (Chairman of the Drafting Committee) said that, in attempting to answer Mr. Njenga's comments, he might have to speak otherwise than as Chairman of the Drafting Committee.

29. Some members of the Commission considered that there was an obvious link between the passing of State property, as assets of the State, and the passing of State debts, as liabilities of the State. That link was established, for example, in article 19, paragraph 2,[18] which provided that an equitable proportion of the State debt of the predecessor State should pass to the successor State, and in that context referred to "property, rights and interests" which passed to the successor State in relation to that State debt. Article 20, paragraph 1,[19] and article 22, paragraph 1,[20] contained similar provisions. Again, except where the predecessor State disappeared, the draft articles provided that the passing of State debts to the successor State was not automatic, but was subject to agreement between the predecessor State and the successor State. Account should also be taken of the fact that the passing of State debts did not and could not affect the régime governing those debts. On the occasion of a succession of States, debts that constituted debts under a system of internal law remained debts under a system of internal law. The draft articles on State debts dealt with the passing of debts, not with the régime governing such debts; they were not concerned with the highly disputed question whether there were limitations in international law on the treatment by a State of its debts to foreigners.

30. Lastly, article 20, paragraph 2, provided that, in the case of a newly independent State, an agreement with the predecessor State should not infringe the principle of the permanent sovereignty of every people over its wealth and natural resources, nor should its implementation endanger the fundamental economic equilibria of the newly independent State, a provision that was particularly important if the agreement in question covered all State debts.

31. Mr. NJENGA expressed appreciation of the explanation given by the Chairman of the Drafting Committee. Nevertheless, he thought that subparagraph (*b*) of article 16 might give rise to practical difficulties, since it apparently sought to regulate by means of international law matters that fell under internal law. Perhaps the Drafting Committee might wish at a later stage to consider the possibility of transforming the subparagraph into a saving clause, by stipulating that the provisions of the first part of the article were "without prejudice to any other financial obligation chargeable to a State".

32. The CHAIRMAN proposed that it should be stated in the commentary that subparagraph (*b*) of draft article 16 had not met with the approval of all the members of the Commission.

*It was so decided.*

*Article 16 was adopted.*

ARTICLE 17 (Obligations of the successor State in respect of State debts passing to it)[21]

*Article 17 was adopted.*

ARTICLE 18 (Effects of the passing of State debts with regard to creditors)[22]

33. Mr. TSURUOKA said he was uncertain about the relationship between paragraph 1 and paragraph 2(*a*), the justification for which he failed to see. In particular, he was not sure what was meant by the words "consequences of that agreement" and "other applicable rules", in paragraph 2 (*a*), which seemed to him extremely ambiguous. He wondered why "consequences" were referred to instead of legal effects. Were they economic, social or political consequences? He also wondered what were the "other applicable rules" mentioned in subparagraph (*a*). Did they include the rule stated in paragraph 1? If so, and if the consequences of the agreement were not in accordance with the rule stated in paragraph 1 (in other words, if they affected the rights and obligations of creditors), could the agreement be invoked by the predecessor State or by the successor State or States, as the case might be, against a third State or an international organization asserting a claim?

[17] *Idem.*

[18] *Idem.*

[19] *Idem.*

[20] *Idem.*

[21] *Idem.*

[22] *Idem.*

34. Sir Francis VALLAT suggested that the words "the succession", at the beginning of paragraph 1, should be replaced by the words "a succession", to ensure consistency with articles 9 and 17.

35. With regard to paragraph 2, he shared some of the difficulties mentioned by Mr. Tsuruoka, but thought there was one point that might help to explain the position. Whereas paragraph 1 of the article dealt with a succession of States as such, paragraph 2 dealt with an agreement between the predecessor and successor States. Consequently, as he understood it, paragraph 2 (*a*) referred not to the consequences of a succession of States as such, but to the consequences of the agreement; it therefore followed that the phrase "the other applicable rules of the articles in the present part" did not refer to paragraph 1, but to those provisions in the draft that related to the terms of a relevant agreement. He would like to know whether the Chairman of the Drafting Committee agreed with that view.

36. Mr. USHAKOV agreed that it would be better to use the indefinite article before the words "succession of States" in article 18, paragraph 1, as the phrase "*a* succession of States" was to be found in articles 11 and 12 of the 1978 Vienna Convention.[23]

37. He proposed that the words "with the other applicable rules of the articles", in paragraph 2 (*a*), should be replaced by the words "with the provisions of the other articles".

38. Mr. RIPHAGEN (Chairman of the Drafting Committee), referring to the point raised by Mr. Tsuruoka, said his own understanding of paragraph 2 of article 18 was that it dealt not with the position of creditors, which was covered by paragraph 1, but with the possibility of invoking an agreement on the passing of State debts against a third State or an international organization. However, that possibility would arise only if one of the two conditions laid down in subparagraphs (*a*) and (*b*) of paragraph 2 was satisfied. In the case of subparagraph (*a*), the consequences of the agreement had to be tested against the principles set out in the articles that followed article 18, including, for example, the principle of equitable proportion (article 19, paragraph 2, and article 22, paragraph 1), and the principles that the permanent sovereignty of every people over its wealth and natural resources should not be infringed and that the fundamental economic equilibria of the newly independent State should not be endangered (article 20, paragraph 2). In his view, it was to those principles that the phrase "other applicable rules", in paragraph 2 (*a*), referred.

39. As far as the wording of the article was concerned, he thought Sir Francis Vallat's proposed amendment to paragraph 1 would be an improvement. He could also accept the amendment to paragraph 2 (*a*) proposed by Mr. Ushakov.

40. Mr. TSURUOKA thanked the Chairman of the Drafting Committee for his explanations. He hoped, however, that the drafting of article 18 would be improved on second reading. His doubts would be partly removed if, in paragraph 2 (*a*), the words "with the other applicable rules" were replaced by the words "with all the applicable rules" or "with all the applicable provisions".

41. Mr. REUTER said that he had no objection to replacing the definite article by the indefinite article before the words "succession of States" in paragraph 1, but that it would be necessary to revert to the matter when the draft was finally adopted so as to harmonize articles 6, 9 and 17, which sometimes spoke of "*the* succession of Sates" and sometimes of "*a* succession of States".

42. Mr. USHAKOV observed that the provisions of articles 19, 22 and 23[24] were not applicable to the consequences of an agreement between the predecessor State and the successor State on the passing of State debts since, according to those provisions, any agreement was possible. The only provision limiting the scope of the agreement was that contained in article 20, paragraph 1.

43. Mr. VEROSTA failed to see the purpose of the word "other" in article 18, paragraph 2 (*a*).

44. Mr. QUENTIN-BAXTER said that the expression "other applicable rules" referred to rules other than the rule that the predecessor State and the successor State could make such agreements as they saw fit. It was necessary to exclude the latter rule by the use of the word "other" since, if the fact that the successor State and the predecessor State had concluded an agreement satisfied the requirement, there would in effect be no requirement. Possibly, therefore, the provision required further consideration.

45. The CHAIRMAN proposed that it should be stated in the commentary that some members of the Commission had criticized draft article 18.

*It was so decided.*

*Article 18 was adopted.*

*The meeting rose at 6.5 p.m.*

[23] See 1568th meeting, foot-note 3.

[24] For texts, see 1568th meeting, para. 3.

## 1570th MEETING

*Tuesday, 17 July 1979, at 10.10 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. Sucharitkul, Mr. Tabibi,