Document:-
A/CN.4/SR.1591

Summary record of the 1591st meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
1980, vol. I

1591st MEETING

Wednesday, 14 May 1980, at 10.10 a.m.

Chairman: Mr. C. W. PINTO

Members present: Mr. Barboza, Mr. Calle y Calle, Mr. Díaz González, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Šahović, Mr. Schwebel, Mr. Tabibi, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat.

Question of treaties concluded between States and international organizations or between two or more international organizations (*continued*) (A/CN.4/327)

[Item 3 of the agenda]

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

ARTICLE 69 (Consequences of the invalidity of a treaty)

1. The CHAIRMAN invited the Special Rapporteur to introduce Section 5 of the draft articles, entitled "Consequences of the invalidity, termination or suspension of the operation of a treaty", and more particularly draft article 69 (A/CN.4/327), which read:

Article 69. Consequences of the invalidity of a treaty

1. A treaty the invalidity of which is established under the present articles is void. The provisions of a void treaty have no legal force.

2. If acts have nevertheless been performed in reliance on such a treaty:

(*a*) each party may require any other party to establish as far as possible in their mutual relations the position that would have existed if the acts had not been performed;

(*b*) acts performed in good faith before the invalidity was invoked are not rendered unlawful by reason only of the invalidity of the treaty.

3. In cases falling under articles 49, 50, 51 or 52, paragraph 2 does not apply with respect to the party to which the fraud, the action of corruption or the coercion is imputable.

4. In the case of the invalidity of the consent of a State or an organization to be bound by a multilateral treaty, the foregoing rules apply in the relations between that State or that organization and the parties to the treaty.

2. Mr. REUTER (Special Rapporteur) said that Section 5, which dealt with the consequences of the invalidity, termination or suspension of the operation of a treaty, contained provisions which differed only in drafting from the corresponding provisions of the Vienna Convention.[1] Article 69, concerning the consequences of the invalidity of a treaty, closely followed article 69 of the Vienna Convention. Paragraph 1 implied that there was no case of invalidity other than those provided for in the draft articles. Paragraph 2, read in conjunction with article 73 of the draft,[2] showed the continuing importance of good faith; it reserved the problem of responsibility and stated that invalidity in itself did not render acts unlawful. Paragraph 4 concerned the special case of multilateral treaties.

3. Mr. USHAKOV said that, in his opinion, in adjusting the language of the Vienna Convention to the present context another drafting change should be made in article 69: in paragraph 4, the word "other" should be inserted before the word "parties" in the phrase "in the relations between that State or that organization and the parties to the treaty".

4. From the point of view of substance, a distinction should be made between the relations established before the invalidity of the treaty was invoked—acts performed in good faith before the invalidity was invoked were not rendered unlawful by reason only of the invalidity of the treaty—and the situation after its invalidity had been invoked, at which point legal relations ceased to exist.

5. Mr. RIPHAGEN doubted whether it would be correct to refer to the "other parties" to the treaty since, in the event of the invalidity of the consent of a State or an organization to be bound by the treaty, that State or organization would *ipso facto* not be a party to the treaty. It might be better, therefore, to refer simply to "the parties".

6. Mr. CALLE Y CALLE, agreeing with Mr. Riphagen, pointed out that paragraph 4 dealt not with the case of a void treaty, which was covered by the terms of paragraph 1 of the draft article, but with a defect in the consent of a State or an organization such as to prevent that State or organization from being a party to a treaty that remained in being.

7. Mr. ŠAHOVIĆ pointed out that paragraph 4 of article 69 of the Vienna Convention referred to the consent of a "particular" State, and that consequently it would be logically necessary to mention, in paragraph 4 of draft article 69, the consent of a particular State or of a particular organization.

8. The CHAIRMAN said that, if he heard no objections, he would take it that the Commission decided to refer draft article 69 to the Drafting Committee.

It was so decided.[3]

ARTICLE 70 (Consequences of the termination of a treaty)

9. The CHAIRMAN invited the Special Rapporteur

[1] See 1585th meeting, foot-note 1.

[2] See para. 22 below.

[3] For consideration of the text proposed by the Drafting Committee, see 1624th meeting, paras. 30 *et seq.*

to introduce draft article 70 (A/CN.4/327), which read:

Article 70. Consequences of the termination of a treaty

1. Unless the treaty otherwise provides or the parties otherwise agree, the termination of a treaty under its provisions or in accordance with the present articles:

(a) releases the parties from any obligation further to perform the treaty;

(b) does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination.

2. If a State or an international organization denounces or withdraws from a multilateral treaty, paragraph 1 applies in the relations between that State or that international organization and each of the other parties to the treaty from the date when such denunciation or withdrawal takes effect.

10. Mr. REUTER (Special Rapporteur) said that since article 70 of the Vienna Convention had been adopted unanimously, it should not be difficult to transpose its terms to the draft articles. The only drafting change he had made in that provision was to add a reference to the international organization to the reference to the State in paragraph 2.

11. Article 70 was important in that its subparagraph 1 (*b*) contained language dealing with certain problems of transitional or interim law: the termination of a treaty did not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination. The same language recurred in article 71, which concerned the special case of *jus cogens*. Subject to the Commission's views regarding article 71, he thought that preferably the general rule laid down in article 70 should be left as it stood.

12. The CHAIRMAN said that, if he heard no objections, he would take it that the Commission decided to refer draft article 70 to the Drafting Committee.

It was so decided.[4]

ARTICLE 71 (Consequences of the invalidity of a treaty which conflicts with a peremptory norm of general international law)

13. The CHAIRMAN invited the Special Rapporteur to introduce draft article 71 (A/CN.4/327), which read:

Article 71. Consequences of the invalidity of a treaty which conflicts with a peremptory norm of general international law

1. In the case of a treaty which is void under article 53 the parties shall:

(a) eliminate as far as possible the consequences of any act performed in reliance on any provision which conflicts with the peremptory norm of general international law; and

(b) bring their mutual relations into conformity with the peremptory norm of general international law.

2. In the case of a treaty which becomes void and terminates under article 64, the termination of the treaty:

(a) releases the parties from any obligation further to perform the treaty;

(b) does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination; provided that those rights, obligations or situations may thereafter be maintained only to the extent that their maintenance is not in itself in conflict with the new peremptory norm of general international law.

14. Mr. REUTER (Special Rapporteur) said that article 71 covered the special problem raised by *jus cogens* in two separate paragraphs. Paragraph 1 dealt with the simple case where a treaty was void *ab initio*; for that case, the Vienna Convention laid down a stricter rule than for that of ordinary invalidity, since it stipulated that the parties should eliminate the consequences of any act performed under a provision in conflict with the peremptory norm of general international law. Paragraph 2 dealt with the case of a treaty which had been validly concluded, but which, during its existence, came into conflict with a new peremptory norm of general international law.

15. The solution envisaged by the Commission and adopted at the United Nations Conference on the Law of Treaties was a compromise which gave rise to some problems of interpretation. For example, the beginning of the French text of paragraph 2 was curious from the point of view of legal vocabulary: "Dans le cas d'un traité qui devient nul et prend fin ...". However difficult it might be to interpret, he had not considered it advisable to change the text of the Vienna Convention.

16. Sir Francis VALLAT said that any criticism of draft article 71 was equally applicable to the corresponding provision of the Vienna Convention. Although the draft article was difficult to interpret, he considered that it would be unwise to tamper with the wording, since any attempt at clarification would only complicate the issue. It would be best to leave the draft article as it stood, subject to any recommendation which the Drafting Committee might wish to make.

17. Mr. USHAKOV said that he, too, did not think it necessary to change the text of draft article 71, in spite of the problems of interpretation that it raised—for example, concerning the obligation to eliminate the consequences of any act performed in reliance on any provision in conflict with a peremptory norm of international law, or the obligation to bring the mutual relations of the parties into conformity with the peremptory norm of general international law.

18. The CHAIRMAN said that, if he heard no objections, he would take it that the Commission decided to refer article 71 to the Drafting Committee.

It was so agreed.[5]

[4] *Idem.*

[5] *Idem.*

ARTICLE 72 (Consequences of the suspension of the operation of a treaty)

19. The CHAIRMAN invited the Special Rapporteur to introduce draft article 72 (A/CN.4/327), which read:

Article 72. Consequences of the suspension of the operation of a treaty

1. Unless the treaty otherwise provides or the parties otherwise agree, the suspension of the operation of a treaty under its provisions or in accordance with the present articles:

(a) releases the parties between which the operation of the treaty is suspended from the obligation to perform the treaty in their mutual relations during the period of the suspension;

(b) does not otherwise affect the legal relations between the parties established by the treaty.

2. During the period of the suspension the parties shall refrain from acts tending to obstruct the resumption of the operation of the treaty.

20. Mr. REUTER (Special Rapporteur) said that, wishing to save whatever could be saved of a treaty, the Commission had attached much importance to the suspension of the operation of a treaty, a situation which occurred—albeit rarely—in practice. It had thought of suspension as a lesser evil than the invalidity or destruction of the treaty. The object of paragraph 2 of the draft article was to prescribe a mandatory line of conduct for the parties, requiring them to behave in such a way as to refrain from any act or any attitude which would worsen the situation of suspension by making the resumption of the operation of the treaty impossible.

21. The CHAIRMAN said that if he heard no objections he would take it that the Commission decided to refer article 72 to the Drafting Committee.

It was so decided.[6]

ARTICLE 73 (Cases of State succession, succession of international organizations, succession of a State to an international organization and succession of an international organization to a State, responsibility of a State or of an international organization and outbreak of hostilities)

22. The CHAIRMAN invited the Special Rapporteur to introduce part VI (Miscellaneous provisions) of the draft articles, and specifically draft article 73 (A/CN.4/327), which read as follows:

Article 73. Cases of State succession, succession of international organizations, succession of a State to an international organization and succession of an international organization to a State, responsibility of a State or of an international organization and outbreak of hostilities

The provisions of the present articles shall not prejudge any question that may arise in regard to a treaty from a succession of States, from a succession of international organizations or from a succession of a State to an international organization or of an international organization to a State, or from the international responsibility of a State or of an international organization, or from the outbreak of hostilities between States.

23. Mr. REUTER (Special Rapporteur) said that part VI of the draft articles comprised three articles which had little interrelationship except in so far as they were designed to allow for the consideration of certain problems raised at the Conference on the Law of Treaties.

24. Article 73 of the Vienna Convention stipulated that the provisions of the Convention should not prejudge any question that might arise in regard to a treaty from a succession of States or from the international responsibility of a State or from the outbreak of hostilities between States. It was understandable why the Conference should have made that reservation regarding the succession of States and the international responsibility of a State, since those questions had then been under consideration in the Commission. The case of the outbreak of hostilities, however, had not been dealt with by the Commission, on the grounds, first, that even in traditional international law the effect of a state of war on treaties was a controversial subject and, secondly, that since the adoption of the Charter of the United Nations and the development of international law, it was doubtful whether a state of war in the earlier meaning of the term could really be said to exist. The Conference had taken the view, however, that there was a problem in that respect and, not wishing to express a judgement, had withheld its opinion on the issue and used the broad expression "outbreak of hostilities".

25. The three subjects not dealt with in article 73 of the Vienna Convention were likewise omitted from the draft article 73 under consideration. The topic of State responsibility should be expanded to cover the responsibility of international organizations (that responsibility existed in certain cases, since international organizations were parties to conventions).

26. Similarly, he had considered it necessary to expand the reference to "succession of States" by mentioning other comparable situations, namely succession of international organizations, succession of a State to an international organization and succession of an organization to a State. He had used the term "succession" for the sake of convenience, though without intending to imply that a situation in which one international organization replaced another raised problems identical to those of a succession of States, where a specific element—territory—was involved. He did not think there were any rules applicable to the transition from one international organization to another, such as the transition from the League of Nations to the United Nations, from the Organisation for European Economic Co-operation to the Organisation for Economic Co-operation and Development, or from the International Institute of

[6] *Idem.*

Agriculture to the FAO. Nor was it clear that a customs union constituted as an international organization was bound by the tariff agreements concluded by its member States with third States. If the union was dissolved, did the tariff agreements concluded by it with third States lapse, or did its member States succeed to them and did they remain bound by them? In the light of those problems, he had felt constrained to use the formula proposed in the title and in the body of draft article 73.

27. As far as the outbreak of "hostilities between States" was concerned, he said that the reference to States might be regarded as restrictive. Was it possible to think of hostilities to which an organization as such was a party? Should not certain acts attributed to States be attributed to international organizations? The problem had arisen in connexion with the United Nations Emergency Forces and with the hostilities in Korea, which, in the opinion of some, had implicated the United Nations as such. He had considered it wise to keep the text of article 73 of the Vienna Convention; his position in that connexion was not unrelated to article 75,[7] concerning the case of an aggressor State. It was hardly conceivable that an international organization could be styled an "aggressor". According to the Definition of Aggression adopted by the General Assembly[8] the expression "aggressor State" could cover the case of an international organization that committed an act of aggression. Whereas the problem was settled as far as article 75 was concerned, the same was not true of article 73 and its reference to the outbreak of hostilities between States.

28. Mr. SCHWEBEL said that he supported the use of an expression such as "outbreak of hostilities" in the draft article, since it was possible to envisage a case, quite apart from a state of war, where such an outbreak might affect treaties in force, including treaties to which international organizations were parties. Also, it would be advisable to follow the precedent set by the Vienna Convention. He agreed, however, that, for the reasons stated by the Special Rapporteur, the expression should not be expanded. It was true that under the Charter of the United Nations there could not, legally speaking, be a state of war, but at present there was no need to enter into the issue. It was also true that, while the probability of hostilities between international organizations was very remote, it was not inconceivable, but neither was there any need to be explicit in that regard. And it was likewise true that it was possible to contemplate hostilities to which international organizations were a party; for example, in the case of Korea, the Security Council had taken action that had led to the involvement of United Nations forces in the defence of an entity which had been the subject of aggression. There, too, there was no need to enter into detail.

29. He agreed entirely that international organizations could be responsible to other international entities, whether States or international organizations, as also to natural persons, for violations of international law. That was established by precedent and the possibility should therefore be provided for in the draft article.

30. He was in favour of including a provision to cover cases of "succession" of international organizations since, in his view, a case could be made out for the proposition that, in some respects, the United Nations was the successor to the League of Nations and the International Court of Justice the successor to the Permanent Court of International Justice, to cite but two examples. On the other hand, the expression "succession of a State to an international organization and succession of an international organization to a State" struck him as a little strange, although he had been impressed by the examples cited by the Special Rapporteur both in the commentary and in his introductory remarks. He suggested that perhaps the Special Rapporteur might elaborate somewhat in the commentary on the practical issues involved.

31. If he had understood aright, the Special Rapporteur held that, as a body of the United Nations, the Commission was bound by the Definition of Aggression adopted by the General Assembly. That definition, however, was so broad, and subject to so many exceptions, that the extent to which it bound anyone was questionable; and, in any event, it was no more than a recommendation by the Assembly. More generally, he considered that the Commission was not bound by the views of a United Nations organ on a point of law unless that organ was authorized to settle the law. Arguably, it might be bound by a decision of the International Court of Justice, though the Commission had not regarded itself as bound by the Court's opinion on reservations to treaties. The Commission was certainly not bound as to the content of the law by resolutions of the General Assembly. A United Nations organ could always make its views known to the Commission, and those views would be weighed on their merits. In the specific instance, he fully agreed that aggression might be committed not only by a State but also by a group of States, and such a group could embrace an international organization.

32. Sir Francis VALLAT said that saving provisions inevitably tended to create difficulties because of the need to be comprehensive. The Special Rapporteur had already referred to some of the difficulties involved in the wording and presentation of draft article 73.

33. He (Sir Francis) agreed with the general thought underlying the draft article and recognized the need for a provision corresponding to that in article 73 of the Vienna Convention. The reference to the international responsibility of an international organization was

[7] See 1592nd meeting, para. 31.

[8] Resolution 3314 (XXIX), annex, explanatory note to article 1 of the Definition.

perfectly acceptable, since in its earlier deliberations the Commission had admitted that an international organization could incur such responsibility.

34. He did, however, have difficulty with other parts of the draft article. In the first place, while he agreed that the concept of an "outbreak of hostilities", as used in the Vienna Convention, was appropriate in the context of the draft, that expression did not necessarily mean aggression. If, for instance, the United Nations were to decide through the Security Council on enforcement action, there would undoubtedly be hostilities—on the assumption, of course, that armed force was used—but that would certainly not mean the Security Council had committed aggression. Further, it was obviously possible that, in the event of hostilities, treaty rights and obligations might be affected, including treaty rights and obligations of the United Nations. Consequently, if the draft article was to provide for the outbreak of hostilities between States, some language should be devised that would cover hostilities involving an international organization, which meant, first and foremost, the United Nations. He believed that the Drafting Committee could find some general wording which would preclude the somewhat ludicrous notion of a conflict between, say, the ILO and UNESCO.

35. Secondly, it was generally agreed that the definition of succession of States as laid down in the 1978 Vienna Convention[9] was of a very special character. It was also agreed that succession, in the sense normally understood in internal law, had little in common with the so-called succession of States, and even less with what might be regarded as a succession between international organizations, or a succession to which such an organization was a party. If, however, the draft article used the term "succession", it would inevitably create the impression, notwithstanding the definition in the 1978 Vienna Convention, that a succession of international organizations was being treated in much the same way as a succession of States, whereas the one thing that was quite clear was that a succession of international organizations could not fall into the same category as a succession of States as defined in that Convention.

36. He had always regarded succession of international organizations as a case not so much of succession as of a transfer of functions, effected either through the assumption of such functions by the new organization or by way of a treaty between the members. He well remembered, for instance, that, when the Constitution of WHO had been drafted, it had been clearly understood that there was no case of succession in the true sense of the term. Nor did he think that the United Nations had succeeded to the League of Nations in any general sense. Perhaps the Permanent Court of International Justice and the International Court of Justice came closest to a case of succession, but in that particular case there had been a treaty link which provided that the new Court should have certain functions formerly possessed by the old Court. That example, however, also served to underline the confusion which could arise if the transfer of obligations under pre-existing treaties was regarded as a succession. Accordingly, if the concept of succession was to be extended to cover international organizations, some much more general language should be found. Even then, he would be dubious. In any case, he did not think that one should speak of succession in the case of an international organization.

37. Mr. ŠAHOVIĆ said that the ideas behind draft article 73 were acceptable, but the text raised problems which should be clarified in the commentary. He was not unduly concerned about the issue of responsibility. The questions of succession and outbreak of hostilities, by contrast, deserved the Commission's full attention.

38. As far as succession was concerned, he inquired whether there was any connexion between draft article 73 and articles 3 and 4 of the 1978 Vienna Convention. Article 3 of that convention indicated the scope of the convention in the case of succession of States in respect of international agreements to which other subjects of international law were also parties. Article 4 dealt with treaties constituting international organizations and treaties adopted within an international organization. He inquired what, in the Special Rapporteur's opinion, would be the possible implications of those two articles for the draft article under consideration. As far as the outbreak of hostilities was concerned, he was not convinced that it was really necessary to discuss all the aspects in the commentary. In his view, the commentary might restate what the Commission had said more than once in the past, without going any further.

39. He added that more concise language should be devised to describe the various cases of succession mentioned in the title and in the body of article 73.

40. Mr. BARBOZA said that he agreed with previous speakers concerning the application of the reservation made in draft article 73 to the responsibility of a State or an international organization.

41. However, the expression "outbreak of hostilities", which was adopted by the United Nations Conference on the Law of Treaties, might give rise to a number of problems because it was quite broad and rather vague. The Commission would have to face the question whether hostilities could take place between an international organization and a State. As Sir Francis Vallat had said, it was perfectly conceivable and possible that the United Nations might—for example, by a decision by the Security Council under the provisions of Chapter VII of the Charter—find itself involved in military activities against a State. Under the broad terms of draft article 73, such activities could be characterized as "hostilities".

[9] See 1589th meeting, foot-note 2.

According to the present wording of the article, it would be hard to say what the potential effect of such hostilities would be on the treaties concluded by the United Nations and the State concerned, because, whereas the case of the outbreak of hostilities between States was precluded by the saving clause of the article, the outbreak of hostilities between an international organization and a State was not. This could mean that the matter was dealt with elsewhere, or that it would be in a future draft, but that was not the case. It therefore should be included in the saving clause of article 73.

42. With regard to the question of the three types of succession affecting international organizations referred to in draft article 73, he said he agreed with the Special Rapporteur that probably a purely drafting problem was involved. He explained, however, that the law of his country and that of many others knew two types of succession: "universal succession", which meant the transfer to the heir of all of the deceased's rights and obligations, and "specific succession", which meant simply the transfer of certain rights and obligations, as in the case where the buyer of a house acquired all the rights and obligations attaching to the house, but not any other of the seller's rights and obligations. No doubt the types of succession contemplated in the Special Rapporteur's draft article 73 were akin to specific succession, which entailed no legal consequences other than those arising out of the succession itself. Accordingly, he agreed with Sir Francis Vallat that the draft article under consideration might give rise to confusion and that it should therefore be discussed in greater detail by the Drafting Committee.

43. Mr. USHAKOV said that, in considering draft article 73, the Commission should steer clear of political questions, and in particular should not consider the issue whether in some particular case the United Nations was engaged in activities having the semblance of hostilities.

44. As in the case of many others of the draft provisions, the Commission, in considering draft article 73, should distinguish the position of States from that of international organizations. It should take account of article 3 of the Vienna Convention, which contained a saving clause regarding the applicability of the Convention to relations between States that were governed by international agreements to which other subjects of international law were also parties. Perhaps a new paragraph 1 might be inserted at the beginning of draft article 73, to read:

> "The provisions of the present articles shall not prejudge any question that may arise in regard to a treaty concluded between two or more States and one or more international organizations in consequence of a succession of States, or by reason of the international responsibility of a State or in consequence of the outbreak of hostilities between States."

45. The position of international organizations was entirely different from that of States. It was not possible, for example, to speak of hostilities between an international organization and another international organization or a State. Enforcement measures that might be taken in accordance with the Charter of the United Nations against a State or another subject of international law could not, even if they involved the use of armed force, be considered as hostilities. Similarly, as Sir Francis Vallat had observed, the notion of succession, as defined in the 1978 Vienna Convention, did not apply to international organizations. The notion of responsibility of international organizations was not yet very clear, but it had to be mentioned.

46. Some special cases should be taken into consideration, or should even be the subject of a saving clause in the draft articles. It could happen that a State member of an organization and party to a treaty with it withdrew from the organization. It could also happen that a State member of an organization was excluded from that organization and that a multilateral treaty existed to which that State was a party and which imposed on it as a member State obligations towards the organization. The State and the organization in question might be bound by a technical assistance treaty establishing relations between them by virtue of the State's membership of the organization concerned. It was also conceivable that an international organization might, in accordance with its constitution, take action vis-à-vis a member State or even vis-à-vis a non-member State. What would be the repercussions of such legitimate action on a treaty between the State and organization concerned? The question was related in part to article 27,[10] but it would be desirable to consider it in the context of draft article 73.

47. To avoid making article 73 too cumbersome, and in particular to avoid changing its title, the Commission might add, after article 73, an article dealing with the relationship between an international organization and one of its member States, or a non-member State, in cases where that organization had concluded a bilateral or multilateral treaty to which the State concerned was a party and where a situation arose which had consequences not covered by the relevant draft articles.

48. Mr. TSURUOKA said that, in his view, the three areas mentioned in the corresponding provision of the Vienna Convention should be excluded from the scope of the draft articles. Aside from the questions raised by Mr. Ushakov and Sir Francis Vallat, what was essentially required was to make drafting changes in article 73 of the Vienna Convention that would take account of questions concerning international organizations.

[10] See 1585th meeting, foot-note 3.

49. He suggested that the phrase "from a succession of States, from a succession of international organizations or from a succession of a State to an international organization or of an international organization to a State" should be simplified by replacing it with the phrase "from a succession concerning a State or an international organization or a State and an international organization". He further suggested that the words "between States" at the end of the article should be deleted so as not to exclude cases concerning international organizations. If that was unacceptable, the words "between States" might be replaced by the words "between the parties to the treaty".

50. Mr. SCHWEBEL said that, unless a better term could be found, he would have no objection to the use of the term "succession of international organizations" in draft article 73. His recollection was that when the Commission had divided the topic of succession into various components, it had referred to the succession of international organizations,[11] and he did not think that that term had been challenged at that time. There were indeed cases of succession of international organizations, stellar examples of which were the succession of the International Court of Justice in substance to the Statute, rules of procedure and jurisprudence of the Permanent Court of International Justice, and the functional succession of the United Nations to the League of Nations.

51. He noted that the question of the responsibility of international organizations had been considered even in the most classical circumstances, such as in the case of *Reparation for Injuries Suffered in the Service of the United Nations*,[12] when the capacity of an international organization to maintain an international claim for damages against a State had been sustained, and in the case of *Certain Expenses of the United Nations*,[13] in which expenses authorized by the General Assembly and paid by the Secretary-General had been held to be expenses of the organization within the meaning of Article 17, paragraph 2 of the Charter.

52. In the circumstances, he thought that the addition of a draft article 73 *bis* in order to accommodate the singularities of international organizations would be reasonable.

53. Mr. RIPHAGEN said the Commission should bear in mind that, since the draft articles contained paragraph 3 of article 42,[14] which provided that the suspension of the operation of a treaty could take place only as a result of the application of the treaty or of the present articles, draft article 73 was, for purely legal reasons, absolutely essential. Without it, no other circumstance could ever lead to the suspension of the operation of a treaty, because it would not be governed by the draft articles.

54. In adapting the wording of article 73 of the Vienna Convention, the Commission should take account of treaties to which international organizations were parties and of the responsibility of those organizations. It should also consider the possibility of referring, in draft article 73, to the dissolution of an international organization since the Vienna Convention was, quite naturally, silent on the question of the effect of the dissolution of an international organization on a treaty between States.

55. Referring to the question of hostilities, he said he was of the opinion that an international organization, and in particular the United Nations, could be engaged in hostilities with a State, and that such hostilities might lead to the suspension of the operation of a treaty between that organization and that State. That point also had to be taken into account because of the existence of article 42.

56. He said he had the feeling that cases in which an international organization was a party to a treaty to which some of its member States were also parties might not always be treated in the same way as cases of treaties between an international organization and a State which was not a member of that organization.

Organization of work (*continued*)*

57. The CHAIRMAN announced that the Enlarged Bureau had drawn up the following tentative timetable for the Commission's consideration, in the order given, of the topics before it at the thirty-second session:

1.	Question of treaties concluded between States and international organizations or between two or more international organizations (item 3)	14 meetings
2.	Jurisdictional immunities of States and their property (item 5)	4 meetings
3.	Succession of States in respect of matters other than treaties (item 1)	5 meetings
4.	Law of the non-navigational uses of international watercourses (item 4)	5 meetings
5.	State responsibility (item 2); first part of the topic	13 meetings
6.	State responsibility (item 2): second part of the topic	4 meetings
7.	International liability for injurious consequences arising out of acts not prohibited by international law (item 7)	3 meetings
8.	Status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier (item 6)	3 meetings

The tentative timetable was approved.

The meeting rose at 1.05 p.m.

[11] See *Yearbook ... 1968*, vol. II, p. 214, document A/7209/Rev.1, para. 34.

[12] *Advisory Opinion, I.C.J. Reports 1949*, p. 174.

[13] *Advisory Opinion, I.C.J. Reports 1962*, p. 151.

[14] See 1585th meeting, foot-note 3.

* Resumed from the 1584th meeting.