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Summary record of the 1675th meeting

Topic:
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ARTICLE 33 (Interpretation of treaties authenticated in two or more languages)

49. The CHAIRMAN invited the Special Rapporteur to introduce articles 31 to 33, which constituted Section 3 (Interpretation of treaties) of Part III of the draft articles, and which read:

Article 31. General rule of interpretation

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

(*a*) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;

(*b*) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context:

(*a*) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions.

(*b*) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

(*c*) any relevant rules of international law applicable in the relations between the parties.

4. A special meaning shall be given to a term if it is established that the parties so intended.

Article 32. Supplementary means of interpretation

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:

(*a*) leaves the meaning ambiguous or obscure; or

(*b*) leads to a result which is manifestly absurd or unreasonable.

Article 33. Interpretation of treaties authenticated in two or more languages

1. When a treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail.

2. A version of the treaty in a language other than one of those in which the text was authenticated shall be considered an authentic text only if the treaty so provides or the parties so agree.

3. The terms of the treaty are presumed to have the same meaning in each authentic text.

4. Except where a particular text prevails in accordance with paragraph 1, when a comparison of the authentic texts discloses a difference of meaning which the application of articles 31 and 32 does not remove, the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted.

50. Mr. REUTER (Special Rapporteur) remarked that draft articles 31, 32 and 33 reproduced the corresponding articles of the Vienna Convention without modification. As the Sixth Committee had made no comments on the articles and no written comments had been received from Governments, he suggested that the title of Section 3 and the three articles should be referred to the Drafting Committee.

51. Mr. CALLE Y CALLE said he agreed that the articles should be referred to the Drafting Committee, although he considered the text should be retained unaltered.

52. Mr. ALDRICH also agreed that articles 31 to 33 should be referred to the Drafting Committee. He noted, however, that in accordance with what he had said (1673rd meeting) in connection with article 27, paragraph, 2, where as he saw it, the problem was one of the interpretation, not the observance, of treaties, he might make some suggestions in the Drafting Committee concerning article 31 in order to deal with the problem to which article 27 gave rise.

53. The CHAIRMAN suggested that the Commission should refer the title of Section 3 (Interpretation of treaties) and articles 31, 32 and 33 to the Drafting Committee.

It was so decided.

The meeting rose at 1 p.m.

1675th MEETING

Friday, 19 June 1981 at 10.10 a.m.

Chairman: Mr. Robert Q. QUENTIN-BAXTER

Present: Mr. Aldrich, Mr. Barboza, Mr. Calle y Calle, Mr. Dadzie, Mr. Díaz González, Mr. Evensen, Mr. Francis, Mr. Jagota, Mr. Pinto, Mr. Reuter, Mr. Riphagen, Mr. Šahović, Mr. Sucharitkul, Mr. Ushakov, Mr. Verosta.

Question of treaties concluded between States and international organizations or between two or more international organizations (*continued*) (A/CN.4/339 and Add.1–7, A/CN.4/341 and Add.1)

[Item 3 of the agenda]

DRAFT ARTICLES ADOPTED BY THE COMMISSION: SECOND READING (*continued*)

ARTICLE 34 (General rule regarding third States and third international organizations),

ARTICLE 35 (Treaties providing for obligations for third States or third international organizations),

ARTICLE 36 (Treaties providing for rights for third States or third international organizations), *and*

ARTICLE 36 *bis* (Effects of a treaty to which an international organization is party with respect to third States members of that organization)

1. The CHAIRMAN invited the Special Rapporteur to introduce Section 4 (Treaties and third States or third international organizations) of Part III of the draft articles, and in particular the first texts of that section, articles 34 to 36 *bis*, which read:

Article 34. General rule regarding third States and third international organizations

1. A treaty between international organizations does not create either obligations or rights for a third State or a third organization without the consent of that State or that organization.

2. A treaty between one or more States and one or more international organizations does not create either obligations or rights for a third State or a third organization without the consent of that State or that organization.

Article 35. Treaties providing for obligations for third States or third international organizations

1. [Subject to article 36 *bis*,] an obligation arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to be the means of establishing the obligation and the third State expressly accepts that obligation in writing.

2. An obligation arises for a third international organization from a provision of a treaty if the parties to the treaty intend the provision to be the means of establishing the obligation in the sphere of its activities and the third organization expressly accepts that obligation.

3. Acceptance by a third international organization of the obligation referred to in paragraph 2 shall be governed by the relevant rules of that organization and shall be given in writing.

Article 36. Treaties providing for rights for third States or third international organizations

1. [Subject to article 36 *bis*,] a right arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to accord that right either to the third State, or to a group of States to which it belongs, or to all States, and if the third State assents thereto. Its assent shall be presumed so long as the contrary is not indicated, unless the treaty otherwise provides.

2. A right arises for a third international organization from a provision of a treaty if the parties to the treaty intend the provision to accord that right either to the third organization, or to a group of organizations to which it belongs, or to all organizations, and if the third organization assents thereto.

3. The assent of the third international organization, as provided for in paragraph 2, shall be governed by the relevant rules of that organization.

4. A State or an international organization exercising a right in accordance with paragraph 1 or 2 shall comply with the conditions for its exercise provided for in the treaty or established in conformity with the treaty.

**[*Article 36* bis. *Effects of a treaty to which an international organization is party with respect to third States members of that organization*

Third States which are members of an international organization shall observe the obligations, and may exercise the rights, which arise for them from the provisions of a treaty to which that organization is a party if:

(a) the relevant rules of the organization applicable at the moment of the conclusion of the treaty provide that the States members of the organization are bound by the treaties concluded by it; or

(b) the States and organizations participating in the negotiation of the treaty as well as the States members of the organization acknowledged that the application of the treaty necessarily entails such effects.]**

2. Mr. REUTER (Special Rapporteur) said that articles 34, 35 and 36 had not been the subject of comment in the Sixth Committee or of written observations by Governments or international organizations. Article 36 *bis*, however, had been very fully discussed. It had been the subject of particularly long and difficult debates in the Commission, and the solution adopted was exceptional in that the article had been held in abeyance, between brackets, pending a final decision to be taken at a later stage.

3. The first three articles merely provided, with respect to the treaties covered by the draft, for the solutions adopted under the Vienna Convention,[1] together with a reminder of the obligation incumbent on an international organization to respect the relevant rules of the organization when it accepted a right or an obligation conferred upon it under a treaty to which it was not party.

4. He had only some drafting suggestions to make regarding those three articles. In the first place, he would propose that, to take account of the observations of Governments, article 34 should be recast as a single paragraph, to read (A/CN.4/341 and Add.1, para. 91):

"A treaty does not create either obligations or rights for a third State or a third organization without the consent of that State or that organization."

5. In the case of articles 35 and 36, the Commission would have to decide whether to retain the proviso "Subject to article 36 *bis*," which was placed in square brackets in both articles.

6. For a number of reasons, article 36 *bis*, unlike those three articles, had been the subject of extensive comment in the Sixth Committee and in the written observations of Governments and international organizations (A/CN.4/339 and Add.1–7). In the first place, there was a general political question to which some members of the Commission had referred and which was based on the view that the article seemed to be directed towards the problems encountered and solutions adopted in the context of one particular entity, the EEC. The Community itself had observations (A/CN.4/339) on that point.

7. That view was open to two interpretations, which followed from the facts themselves and did not involve any value judgements. It was apparent, first, that had the special entity directly in question not concerned

[1] See 1644th meeting, footnote 3.

Europe, some of the matters in dispute would certainly have aroused less interest. If the European Community was considered to have special characteristics that removed it from the category of international organizations and if article 36 *bis* in fact addressed problems peculiar to the Community, there were legitimate grounds for suspecting that an attempt was being made to apply to international organizations generally problems and solutions belonging to a completely different order of organizations and that developments that would totally change the character of the generality of international organizations were thus being instigated and encouraged. Without ruling out any evolution of international organizations, it might be desirable to set limits, to define a threshold beyond which an entity was no longer an international organization. He noted in passing that the European Community had described itself on occasion as a quasi-State, a supranational organization or even an international organization of a special character.

8. He mentioned these matters because they had clearly attracted the attention of the Sixth Committee, as was shown by the number of comments on draft article 36 *bis* in the course of its discussions. The issues were wholly legitimate, but went beyond the strictly technical field to which the Commission's discussions should be restricted.

9. The views expressed on article 36 *bis* fell into three main groups. A first group considered that the provision had no place in the draft. The Byelorussian and Ukrainian Soviet Socialist Republics (A/CN.4/339), the Union of Soviet Socialist Republics (*ibid.*), the Council for Mutual Economic Assistance (*ibid.*), Czechoslovakia (A/CN.4/339/Add.3), Hungary (A/CN.4/339/Add.1), German Democratic Republic (A/CN.4/339/Add.6) and Yugoslavia (A/CN.4/339/Add.2) took that view. Others considered the article useful, even essential, and thought it should be retained. That was the position of the Federal Republic of Germany (A/CN.4/339) and the EEC (*ibid.*), among others. Finally, there was a third, less categorical position, whose supporters had no positive objection to article 36 *bis* but thought the wording was not sufficiently clear and that it was not completely certain that such an article was essential or apposite. That view was taken by Canada (*ibid.*) and perhaps by Romania (A/CN.4/339/Add.7), to which might be added the ILO (A/CN.4/339), which nevertheless indicated that it had no experience that could throw any light on the hypothetical cases envisaged. Some other views were more difficult to interpret and classify, among them that of the FAO (*ibid.*), whose comments gave the impression that it considered that there were practical situations in which problems were solved flexibly without raising difficulties.

10. The Commission would have to take a position on these issues in working on the draft articles and would be obliged to examine article 36 *bis* in order to assess its significance, utility and indeed, advisability.

11. To help the Commission decide, it might be useful to summarize the solutions adopted by the Vienna Convention, which the Commission had accepted and which were accurately reflected in draft articles 34, 35 and 36.

12. The first rule was that in the case of a treaty there were only two possibilities: an entity was either a contracting or a third party (*tertium non datur*). This general rule having been established, article 34 then stated that a treaty created neither rights nor obligations for a State or an international organization without its consent.

13. So far as assent was concerned, the Vienna Convention established an extremely flexible rule with regard to the creation of rights for third States, since it provided that assent was presumed. It would be remembered that the wording of that Convention was such that, in the view of some, the right was created before assent, since the theoretical explanation of a stipulation *pour autrui* was retained as the basis for article 36. The Convention was, on the other hand, very rigid with regard to obligations.

14. In the draft which served as the basis for the Vienna Convention, the Commission simply required express assent, and it was only on second reading that the United Nations Conference on the Law of Treaties modified the wording and provided that assent must be given expressly and in writing. That decision, which was the result of an amendment submitted by the representative of Viet Nam, was adopted by 44 votes to 19 with 31 abstentions,[2] in other words a minority of those voting. The provision was now incorporated in an international convention which was in force, and its interpretation was a matter for the parties alone. However, the parties might maintain on the basis of the statement made by the representative of Viet Nam to the Conference in support of his amendment that the method of acceptance intended was acceptance by means of an instrument. That interpretation would not of course bind the Commission in preparing its draft articles, but it would clearly carry great weight.

15. The Vienna Convention recognized certain limits. The rules it set out did not cover all eventualities. It was not true, for example, that a treaty could not create an obligation for a third State unless the third State expressly accepted it in writing. The Commission had been aware of the exceptions when it examined the draft articles. One of the exceptions was formally embodied in the draft articles the Commission was studying on the succession of States in respect of matters other than treaties; it dealt with the effects for third States of treaties relating to territorial changes.

[2] See *Official Records of the United Nations Conference on the Law of Treaties, Second session, Summary records of the plenary meetings and of the meetings of the Committee of the Whole* (United Nations publication, Sales No. E.70.V.6), pp. 59–60, 14th meeting, paras. 5 *et seq.*

16. Another exception related to the flexibility of the rules in respect of assent. It might be illustrated by the purposely absurd example of the charter establishing an international organization; the charter, being the instrument that created the organization, was clearly a treaty to which the organization was not a party. An international organization might conceivably claim that it had not accepted a certain obligation for the benefit of a member State which its constituent instrument imposed on it. He noted, by way of example, that the municipal law of certain countries contained rulings on whether a legal person was a third party in respect of the agreement establishing it. Admittedly, that was putting an extreme case, but nevertheless the difficulty must be recognized.

17. Another example drawn from practice was that of agreements on the privileges and immunities of international organizations in which the rights and obligations of member States—and, when necessary, of non-member States—were established by a treaty between member States only. It was clear in that case that the international organization had not accepted in practice the obligations imposed on it by means of a formal declaration in writing. The few examples cited demonstrated that the Vienna Convention had not envisaged all the cases which could occur in practice.

18. In the light of that analysis, it was easier to appreciate the purpose of article 36 *bis*. The real issue was not whether there was a departure from the unchallenged principle that a treaty could not create rights and obligations for a third party—whether a State or an international organization—without its consent, but whether the rule in article 35 (that acceptance should be given expressly and in writing) was not too rigid. If the members of the Commission unanimously considered there should be no exception to the rule, article 36 *bis* should be deleted. If on the other hand they thought that the answer was not so clear-cut, the Commission would have to analyse the situation envisaged in detail.

19. The Commission would have first to consider the general problem of the nature of an international organization, and decide whether it constituted a reality or a fiction, a simple mechanism or something more. In that connection, thinking oscillated between two answers: an international organization was merely a collective means of action for certain States, a procedure, but it was also a reality, for international organizations must possess legal personality if treaties could be concluded with them, otherwise the draft articles being worked out would be irrelevant.

20. Similar questions arose in municipal law, since the construction of legal entities was a feature of all legal systems although none attributed full existence to them. Thus, French law spoke of the "*transparence de la personne morale*", and common law of "lifting the veil". It was well known that there were cases in public international law in which legal personality might disappear. Draft article 73 was concerned with that possibility.[3] The Commission had reached a stage in its work when it must take a final decision on the fate of article 36 *bis*, which it had conditionally approved in first reading.

21. That article was intended to cover two specific hypothetical cases. The first was that in which the constituent instrument of an international organization provided that its member States were bound by agreements concluded by the organization. That exception to the rule in article 34 was the effect of the provisions of the constituent instrument on the relationship between the organization and its members, a matter which was governed by the relevant rules of the organization and was freely decided by each organization. On that assumption, the cases in which the rule applied in practice would be tolerably rare, since the instruments of association of most international organizations contained a rule requiring member States to co-operate with the organization and the degree of binding force of the rule would directly determine the extent of the effects for member States of treaties concluded by the organization.

22. The solution in that respect depended upon each organization, and no general rule could be established. It was a matter of relations between the parties to the treaty; if a State concluded a treaty with an international organization, it was certainly possible that the treaty would have direct effects on the relationship between that State and the States members of the international organization without express acceptance in writing so far as the rights created by the instrument were concerned.

23. The situation was different with regard to possible obligations created by the treaty, and the Commission must decide whether obligations could be created directly for member States without their express consent in writing. For example, if an international organization which administered a customs union and had the right to conclude tariff agreements under its constituent instrument concluded an agreement with a third State, the customs dues being levied and collected by the national services of the member States of the organization, the question would arise whether, if the national service of one member State claimed that it was not bound by the treaty concluded by the organization, the State with which the treaty had been made would have recourse not only against the organization but also against the member State failing to carry out the obligation. An affirmative answer would mean that the treaty had created direct obligations for a member State without its express consent in writing. The proponents of that solution considered that it must be assumed that the State concluding the agreement was aware of the rules of the organization binding member States. Member States were considered, in that case, to have given their consent *ex ante* and in general terms.

[3] See 1647th meeting, footnote 1.

24. The example was not necessarily theoretical. The State party to the treaty concluded with the international organization might have agreed with the member State not fulfilling the prescibed obligation to have recourse to arbitration and might wish to do so to facilitate the settlement of the dispute. The member State of the international organization could not readily claim to be a third party in respect of a treaty signed by the organization.

25. He believed that that analysis was acceptable and considered that although the provision was a departure from the principle of express consent in writing, it was not an exception to the rule of consent.

26. A second possibility needed to be considered. The subject-matter of an agreement might be such that the international organization's consent to the treaty entailed the assent of member States. In such situations, article 36 *bis* merely recognized that there were cases where the purpose of a treaty was such that its conclusion entailed the acceptance by member States of the obligations undertaken by the international organization.

27. With regard to form, he had proposed a simplified text (A/CN.4/341 and Add.1, para. 104) which might replace the draft adopted in first reading if the Commission decided to retain the provision. It read:

> "The assent of States members of an international organization to obligations arising from a treaty concluded by that organization shall derive from:
>
> "(*a*) the relevant rules of the organization applicable at the moment of the conclusion of the treaty which provide that States members of the organization are bound by such a treaty; or
>
> "(*b*) the acknowledgement by the States and organizations participating in the negotiation of the treaty as well as the States members of the organizations that the application of the treaty necessarily entails such effects."

28. In the new version, the introductory phrase was both simplified and modified, and was intended to make clear that article 36 *bis* sought to make the modalities of consent more flexible, not to discard the principle. The Commission's discussions of the first draft had shown there was no need to deal with rights in the article, since the situation with regard to rights was covered by article 36. The new text therefore no longer referred to rights.

29. While proposing subparagraph (*b*), which introduced the idea of entailed assent, he had put forward a variant, in the case that the Commission, although prepared to consider the possibility of an article 36 *bis*, objected to the idea of entailed assent. The variant (which he considered less satisfactory) read (*ibid.*):

> "(*b*) any unequivocal manifestation of such assent."

The variant would be sufficient to cover certain practical aspects which would otherwise be left unprovided for.

30. Mr. USHAKOV approved the Special Rapporteur's proposal to shorten article 34.

31. Turning to the basis of the article and its significance, he pointed out that article 2, subparagraph 1 (*h*)[4] defined the terms "third State" and "third international organization". The definition was unimpeachable, and it meant that a member State of an international organization, like a non-member State, was a third State in respect of a treaty concluded between an international organization and one or more other States. The question that had to be answered was what the term "international organization" meant. The Commission had not tried to provide a definition that was both theoretical and practical and covered all the possibilities. It was nevertheless clear, he believed, that an international organization was an entity which possessed a legal personality distinct from that of its members. Its legal personality was its own and it possessed its own will, distinct from the will of its members taken separately or collectively. It followed that a treaty concluded by an international organization committed the organization, but did not directly entail obligations for the member States. That was indeed the basis of the draft articles prepared by the Commission.

32. Mr. JAGOTA could see no objection to referring the new text of article 34 to the Drafting Committee. The Committee might wish to replace the words "third organization" by the more commonly used term "third international organization".

Succession of States in respect of matters other than treaties (*continued*)* (A/CN.4/338 and Add.1–4, A/CN.4/345 and Add.1–3)

[Item 2 of the agenda]

DRAFT ARTICLES ADOPTED BY THE COMMISSION: SECOND READING (*continued*)

ARTICLE 18 (Effects of the passing of State debts with regard to creditors) *and*

ARTICLE 19 (Transfer of part of the territory of a State)[5] (*concluded*)

33. Mr. USHAKOV said that he approved article 18, paragraph 1, in principle, but thought the safeguard clause it contained should be more general and should apply to the draft articles as a whole. The Drafting Committee might consider the possibility of extending it to all creditors, including private claimants or bodies corporate.

34. It was somewhat surprising that under article 18, paragraph 2, an agreement between the predecessor State and the successor State or between successor States could be invoked only against "a third State or

[4] See 1647th meeting, footnote 1.

* Resumed from the 1672nd meeting.

[5] For texts, see 1672nd meeting, para. 36.

an international organization asserting a claim" whereas article 16, subparagraph (*b*)[6] implicitly covered the State's financial obligations vis-à-vis private persons. In fact, private persons were not covered by article 18, paragraph 2, because they were not subjects of international law and an agreement between the predecessor and successor States or between successor States could not be invoked against them. Such an agreement could be invoked against a third State or an international organization, since they were subjects of international law, and they could reject it, as international law authorized them to do, if it was not in conformity with the rules of the draft articles. The apparent contradiction between article 18, paragraph 2, and article 16, subparagraph (*b*), had been the subject of much discussion, but it could not be eliminated.

35. Mr. JAGOTA said that the Special Rapporteur had proposed the deletion of paragraph 1 of article 18 (see A/CN.4/345 and Add.1–3, para.176) because it could give rise to doubts about the scope of the word "creditors" and also because it was inconsistent with articles 17 and 17 *bis*.[7] That contradiction would persist unless article 18 was related to article 16, a matter that could be resolved only by retaining article 16. The decision on the deletion of article 18, paragraph 1, therefore depended on the decision taken in regard to article 16.

36. The Special Rapporteur had raised the question whether the term "third State", as used in paragraph 2 of article 18, meant a State that was not a party to the instrument resulting from the articles or a State that was a party to the instrument but not to an agreement contemplated under article 18 (*ibid.*, para.179). If the third State was not a party to the instrument resulting from the articles, then obviously the terms of article 18 would not apply. He therefore suggested that, to make it quite clear that the term "third State" referred to States that were not parties to the agreement but were parties to the instrument resulting from the articles, the words "party to the articles" should be added after the words "against a third State" in paragraph 2 of article 18.

37. There was also the question of international organizations. Since an international organization could not become a party to the articles, why should it be bound by an agreement between the predecessor and successor States regarding debts? He was unable to answer that question, and considered that it was a matter to be decided by a plenipotentiary conference. The main point, however, was to ensure that loans granted by institutions such as the World Bank were protected.

38. A third point had been raised by the Special Rapporteur (1672nd meeting) in connection with subparagraph 2 (*a*), concerning the meaning of the terms "consequences" and "applicable rules". It had been said that it would give rise to controversy if those terms were not clarified. That seemed to him to be a very valid criticism and he therefore suggested that the subparagraph be redrafted to read:

> "(*a*) that agreement is not inconsistent with the applicable rules of the articles in the present Part;".

39. Mr. ALDRICH said that he was not very satisfied with article 18. He started from the assumption that article 16 would continue to include debts owed to persons as well as to States and international organizations because, if it did not, his interest in the whole draft would be minimal and the prospects for the future of the draft were, in his view, poor indeed. On that assumption, article 18 raised substantive issues.

40. Paragraph 2 of the article could be read to say that, if the rules governing agreements between predecessor and successor States as laid down in the draft were violated by the terms of an agreement the predecessor and successor States or among successor States, then States or international organizations, but not private persons, might assert claims that prevailed, since the rules had not been followed, unless those States and international organizations had, pursuant to subparagraph 2 (*b*), accepted the agreement which varied from the rules. There were, however, two ambiguities in the paragraph which might conceivably make it acceptable to private claimants and the States concerned about such claimants. One related to the use of the phrase "State or an international organization asserting a claim" which could perhaps be interpreted to mean a State which asserted a claim on behalf of its nationals who were creditors. That was not an altogether satisfactory arrangement for a creditor, who would have to get his State to object to the agreement that deviated from the rules, but at least it afforded some protection.

41. Perhaps a greater ambiguity derived from paragraph 1, since a creditor, reading that his rights and obligations were not affected, might think that he had nothing to worry about. However, paragraph 1 by itself seemed to be inconsistent with article 17 for, as the Special Rapporteur had pointed out, where the obligations of the predecessor State were extinguished and the obligations of the successor State arose, there was a novation. Consequently, while paragraph 1 of article 18 might give some satisfaction to the private creditor, it seemed a little weak owing to the inherent improbability built into its statement. He therefore considered that article 18 required careful consideration by the Drafting Committee.

42. The essence of article 18 could be expressed in a single sentence, built on paragraph 1, to the effect that a succession of States did not as such affect the rights and obligations of creditors except as provided under the articles. A second paragraph might be required to provide that variation from the rules would be permissible in certain cases if all the interested parties so agreed. He had no doubt, however, that the deletion

[6] For text, see 1671st meeting, para. 1.

[7] For texts, see 1672nd meeting, para. 36.

of paragraph 1 as it stood and the retention of paragraph 2 would render the provision unacceptable to those concerned about the rights of private creditors. Yet to leave the article as drafted would oblige creditors to rely on its inherent inconsistencies and ambiguities, and it was highly doubtful that legal advisers to banks would regard that as the best basis of protection. He therefore urged the Commission to stipulate for clarity in the terms of article 18.

43. Mr. ŠAHOVIĆ regretted that the Special Rapporteur was not present, the more so as he was not sure he had correctly understood the Special Rapporteur's comments in paragraph 176 to 182 of his report. The fact that the Special Rapporteur made so few specific proposals suggested that he was basically in favour of deleting the article. Before going further, the Commission should therefore decide whether the provision should be discarded or not.

44. For his part, he had approved the article in the first reading as providing a general safeguard clause intended to protect creditors of all categories in a succession of States. From that point of view, article 18 seemed necessary. The drafting was perhaps unsatisfactory, but it was difficult to see how it could be substantially improved.

45. The Special Rapporteur proposed to delete paragraph 1 on the ground that it served no useful purpose and introduced the concept of novation to show that a succession of State debts affected the rights of creditors. At the same time, he stressed that the patrimonial right of the creditor must remain intact; in his (Mr. Šahović's) view, protecting that right was surely the purpose of paragraph 1. The replacement of one debtor by another was a technical aspect of the problem with which paragraph 1 did not deal. The final wording of the paragraph would depend on what was decided regarding article 16, paragraph (*b*) and the suggestion, which he considered acceptable, that paragraph 1 should become a general safeguard clause.

46. Article 18, paragraph 2, developed the principle enunciated in paragraph 1 and coupled it with the two conditions in subparagraphs (*a*) and (*b*). In that connection, the Special Rapporteur endorsed the position of the Government of Czechoslovakia in its written comments (A/CN.4/338/Add.2): an agreement between a predecessor State and a successor State (or between several successor States) could not be invoked against a creditor third State if the latter had not accepted it and was not a party to the future convention. Subject to that reservation, the Drafting Committee should be careful, in reviewing the text of article 18, not to upset the compromise which had led to its present wording.

47. Mr. USHAKOV said that paragraph 2 of article 18 was of little interest to creditors. Under the paragraph, a creditor third State or creditor international organization could oppose an agreement for the distribution of debts. However, the important point for a creditor was to get his money back—it hardly mattered from whom. In some cases it might even be preferable for responsibility for the debt to be shared between two States. Under article 18, the only ground on which a creditor third State or international organization could oppose such an agreement was that it was not in accordance with the rules of the draft articles, which essentially provided that the State debts of the predecessor State should pass to the successor State "in an equitable proportion". However, equity did not mean the same to creditors as it did to States participating in the succession.

48. The CHAIRMAN said that, if there was no further comment, he would take it that the Commission wished to refer article 18 to the Drafting Committee.

It was so decided.[8]

49. The CHAIRMAN said that, in the absence of any comment, he would take it that the Commission wished to refer article 19 to the Drafting Committee.

It was so decided.[9]

The meeting rose at 1 p.m.

[8] For consideration of the text proposed by the Drafting Committee, see 1692nd meeting, paras. 109–110.

[9] *Idem*, para. 111.

1676th MEETING

Monday, 22 June 1981, at 3.10 p.m.

Chairman: Mr. Robert Q. QUENTIN-BAXTER

Present: Mr. Aldrich, Mr. Barboza, Mr. Calle y Calle, Mr. Dadzie, Mr. Díaz González, Mr. Evensen, Mr. Francis, Mr. Pinto, Mr. Reuter, Mr. Riphagen, Mr. Šahović, Mr. Sucharitkul, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta.

Questions of treaties concluded between States and international organizations or between two or more international organizations (*continued*) (A/CN.4/339 and Add.1–7, A/CN.4/341 and Add.1)

[Item 3 of the agenda]

DRAFT ARTICLES ADOPTED BY THE COMMISSION: SECOND READING (*continued*)

ARTICLE 34 (General rule regarding third States and third international organizations),

ARTICLE 35 (Treaties providing for obligations for third States or third international organizations),