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Summary record of the 1692nd meeting

Topic:
<multiple topics>

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30. Referring to draft article 3, he wondered whether it was advisable to include substantive rules in a definitions article. For example, in subparagraph 1 (1), the words “and is accorded by the receiving State or the transit State facilities, privileges, and immunities in the performance of his official functions” gave the impression that situations in which such facilities, privileges and immunities were not accorded would not be covered by the definition. Similar comments could be made about subparagraphs (2) and (3) and, to some extent, subparagraph (7). Also, the wording of subparagraph (7) appeared to have no precedent. Although the relevant multilateral conventions on diplomatic law contained provisions concerning a visa where such was necessary, the effect of those provisions was not the same as that of subparagraph 1 (7), which required the consent of the transit State.

31. A further point about subparagraph 1 (1) was that, while it was certainly possible to use the diplomatic courier for the transmission of official oral messages, in such circumstances the diplomatic courier would himself constitute the diplomatic bag, in which case the words referring to the transmission of an official oral message would appear to be inconsistent with some of the earlier wording of that subparagraph.

32. In subparagraph 1 (3), it seemed a little strange to apply the words “in the performance of its official function” to the diplomatic bag. Moreover, some clarification was needed as to whether the words “dispatched through diplomatic courier or the captain of a ship or a commercial aircraft or sent by post, overland shipment or air freight” were meant to refer to an unaccompanied diplomatic bag or to a bag carried by the captain of a ship or aircraft.

33. With regard to draft article 6, subparagraph 2 (b), wording similar to that had admittedly been used in the Convention on Special Missions, but he doubted whether it would have any point in regard to the present topic, since the agreements it contemplated were essentially bilateral, not multilateral; it was difficult therefore to imagine their affecting the enjoyment of the rights or the performance of the obligations of third States.

34. He observed, lastly, that the use of the words “may apply” in draft article 3, paragraph 2, called for clarification.

35. Mr. ALDRICH said that the Special Rapporteur’s oral presentation had done much to alleviate his uncertainty as to why the General Assembly and the Commission had considered the topic of such importance, given the body of law which already existed. However, while there were advantages in having one set of rules to cover all official communications, it might not be possible to achieve that result except by diminishing the protection accorded to such communications by existing law. Moreover, it remained to be seen whether Governments would agree that the privileges and immunities it currently

accorded to official communications with diplomatic missions should be extended to communications with consular posts and other missions.

36. He had reservations about the exclusion from the scope of the topic, under draft article 2, of couriers and bags used for official purposes by international organizations. While he realized that the inclusion of international organizations within the scope of the draft articles might present some difficulties, the extent of those difficulties should be ascertained before any firm decision was taken on the subject.

37. The use of the expression “third States” in draft article 6, subparagraph 2 (b) was not advisable, since it was a defined term; it would be preferable to use a term such as “other States”.

38. Mr. USHAKOV said that he wholeheartedly approved the contents of the report, which set forth clearly certain basic data. The Special Rapporteur had succeeded in showing that under contemporary international law the various types of courier used by the sending State and its missions abroad had identical status, and that a global approach could therefore be adopted in defining that status.

39. The report also showed that, with one exception, the consular bag, the legal status of the diplomatic courier was uniform. Under article 35 of the 1963 Vienna Convention, however, consular posts were authorized to use the diplomatic courier and bag. The Commission should therefore seek to prepare a draft that was applicable to all types of courier and bag.

40. The proposed article 1 was the logical consequence of the Special Rapporteur’s analysis. It suffered from a certain ambiguity, however, in that paragraph 1 provided that the draft would apply to “communications of States . . . employing diplomatic couriers and diplomatic bags”, while paragraph 2 stipulated that it also applied to communications with certain missions enumerated. That formulation seemed to indicate that the expression “diplomatic courier” did not cover all couriers and that different articles should be drafted for the various categories—which seemed to contradict the idea of a global approach. The notion of the diplomatic courier itself should therefore be defined at the beginning of the draft articles, so as to indicate clearly what its scope was.

The meeting rose at 1 p.m.

1692nd MEETING

Thursday, 16 July 1981 at 10.05 a.m.

Chairman: Mr. Doudou THIAM

Present: Mr. Aldrich, Mr. Barboza, Mr. Bedjaoui, Mr. Calle y Calle, Mr. Dadzie, Mr. Díaz González, Mr. Francis, Mr. Njenga, Mr. Quentin-Baxter, Mr.

Reuter, Mr. Riphagen, Mr. Šahović, Mr. Sucharitkul, Mr. Tabibi, Mr. Ushakov, Mr. Verosta, Mr. Yankov.

Question of treaties concluded between States and international organizations or between two or more international organizations (concluded)* (A/CN.4/339 and Add.1-7, A/CN.4/341 and Add.1, A/CN.4/327/Add.1 and 2)

[Item 3 of the agenda]

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE (concluded)

ARTICLE 2, SUBPARA. 1(c), AND ARTICLES 7, 9 AND 17 (concluded)

1. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that, in response to the request made by the Commission at its 1682nd meeting, the Drafting Committee had considered a number of drafting suggestions made by a member of the Commission.

2. On the basis of those suggestions, the Committee had made a number of drafting changes (see A/CN.4/L.327/Add.1) to the four articles under consideration. In addition to ensuring greater conformity with the wording of articles adopted subsequently, the changes brought the texts concerned closer to the text of the corresponding articles of the Vienna Convention.¹

3. In article 2, subparagraph 1 (c),² the words “between one or more States and one or more international organizations” had been deleted, as had the word “such” before the words “a treaty” in the latter part of the subparagraph.

4. In article 7, subparagraph 2 (b),³ the expression “international conference” had been qualified by the addition of the words “of States in which international organizations participate”, as in article 9. In addition, the words “one or more” before the words “States” and “international organizations” had been deleted.

5. In subparagraph 2 (c) of the same article, the words “between one or more States and” had been replaced by “within”, in view of the adoption of the new article 5.

6. Finally, in subparagraphs 2 (d) and (e) of article 7, the words “one or more” before “States” had been replaced by “the accrediting”.

7. In article 9, paragraph 2,⁴ the words “one or more” had been deleted.

8. In article 17, paragraph 1,⁵ the words “or, as the case may be, the other contracting organizations and the contracting States” had been inserted before the words “so agree”.

Article 2, subpara. 1 (c), and articles 7, 9 and 17, as amended, were adopted.

ARTICLE 2, SUBPARA. 1 (d), ARTICLE 5, AND ARTICLES 19 TO 26 (A/CN.4/L.327/Add.2)

9. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the general considerations he had explained at the beginning of the discussion of the articles proposed by the Committee (see 1681st meeting, paras. 1-4) were also of relevance to the articles under consideration.

ARTICLE 5⁶ (Treaties constituting international organizations and treaties adopted within an international organization)

10. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee proposed the following text for article 5:

Article 5. Treaties constituting international organizations and treaties adopted within an international organization

The present articles apply to any treaty which is the constituent instrument of an international organization and to any treaty adopted within an international organization, without prejudice to any relevant rules of the organization.

11. The title and text of the draft article reproduced those of article 5 of the Vienna Convention, with the exception of the words “Convention applies”, which had been replaced by the words “articles apply”.

12. During the first reading of the draft, the Commission had not considered the inclusion of such a provision to be necessary in regard to treaties to which international organizations were parties. However, at the present stage in the Commission’s work, and for the sake of completeness, the Committee had concluded that it might be useful to insert such a provision, even though the eventualities to which the article referred might not, in practice, occur with any great frequency. The possibility should not be altogether excluded of an international organization being a party to a treaty which was the constituent instrument of another international organization, or the possibility of an international organization being a party to a treaty adopted within an international organization.

Article 5 was adopted.

ARTICLE 2 (Use of terms), subpara. 1 (d) (“reservation”)

* Resumed from the 1682nd meeting.

¹ See 1644th meeting, footnote 3.

² For text, see 1681st meeting, para. 6.

³ *Idem*, para. 21.

⁴ *Idem*, para. 24.

⁵ *Idem*, para. 54.

⁶ See 1646th meeting, paras. 41-44.

13. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee proposed the following text for article 2, subparagraph 1 (d):

Article 2. Use of terms

1. For the purposes of the present articles:

...

(d) "reservation" means a unilateral statement, however phrased or named, made by a State or by an international organization when signing, ratifying, formally confirming, accepting, approving, or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State or to that organization.

14. The Drafting Committee had decided to revert to the corresponding text of the Vienna Convention in connection with the meaning of the term "reservation" and had simply added, by means of the words "formally confirming", a reference to the act by which an international organization expressed its consent to be bound by a treaty.

15. The definition of the term "reservation" in subparagraph 1 (d) had been adopted by the Commission in 1974, before its examination of draft articles 11 and 19. The Commission had decided to adopt provisionally the wording found in the first draft, which had included the phrase "or consenting [by any agreed means] to be bound by a treaty". In doing so, it had seen the two-fold advantage of a text simpler than the corresponding text of the Vienna Convention and of leaving in abeyance the question whether the terms "ratification", "acceptance", "approval" and "accession" could also be used in connection with acts whereby an organization expressed its consent to be bound by a treaty. Nevertheless, the Commission had stressed that the wording so adopted had been provisional, and had put the words "by any agreed means" in square brackets so as to indicate its intention to review the adequacy of such an expression at a later stage.⁷

16. The Commission had adopted article 11 and article 2, subparagraph 1 (b bis), which established that an "act of formal confirmation", in the case of international organizations, was the equivalent of ratification in the case of States. Hence, the Committee had seen no reason for retaining the text adopted on first reading and had thought it preferable to return to a text which followed more closely that of the corresponding definition in the Vienna Convention.

Article 2, subparagraph 1 (d), was adopted.

17. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said the Drafting Committee proposed that the title of Section 2 of Part II should remain unchanged, namely: "Section 2. Reservations".

The title of Section 2 was adopted.

18. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that Section 2 had been reduced from nine articles to five.

19. The original content of Section 2 had resulted from the Commission's desire to find a compromise solution to the opposing viewpoints of those who wished to extend to international organizations the same freedom to formulate reservations as was recognized for States in article 19 of the Vienna Convention and those who held that the rule should be to deny such freedom to international organizations. Nevertheless, according to both of those viewpoints, exceptions would be allowed so as to introduce the necessary flexibility.

20. The solution adopted by the Commission had been to establish a dual regime: a regime of freedom of reservations, not only in respect of States but also in respect of international organizations, in the case of treaties concluded between international organizations themselves, and a "mixed" regime of freedom and restraint in the case of reservations formulated by international organizations to treaties concluded between States and international organizations. That solution had, in the Commission's view, required the provisional adoption of articles 19 and 19 bis. Furthermore, the Commission had deemed it appropriate to include on first reading article 19 ter, concerning the formulation of objections to reservations, which had no equivalent in the Vienna Convention but justified the dual system for the formulation of reservations adopted in articles 19 and 19 bis.

21. In drafting articles 19, 19 bis and 19 ter, the Commission, by the very description of the treaties involved, had also appeared to intend to restrict the application of those treaties to multilateral treaties only, a question which was not dealt with in clear-cut terms in the Vienna Convention. On the second reading of the draft articles, the prevailing view within the Commission had been that the system regarding the formulation of reservations by international organizations should be assimilated to that relating to States, as contained in the Vienna Convention. That position of principle made it unnecessary to distinguish between treaties to which both States and international organizations were parties and treaties concluded exclusively between international organizations. The texts adopted by the Drafting Committee therefore marked a return to the corresponding texts of the Vienna Convention, which were more straightforward. As a result, the formulation of reservations by States and international organizations was dealt with in one article, instead of the original two. As a further consequence of that position, article 19 ter appeared to be unnecessary and had therefore been deleted. That position had also made it easier to merge former articles 20 and 20 bis and

⁷ See *Yearbook . . . 1974*, vol. II (Part One), p. 295, document A/9610/Rev.1, chap. IV, sect. B, art. 2, para. 1, paras. (3) and (4) of the commentary.

former articles 23 and 23 *bis* in a single article in each case.

ARTICLE 19⁸ (Formulation of reservations)

22. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for article 19:

Article 19. Formulation of reservations

1. A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless:

(a) the reservation is prohibited by the treaty or it is otherwise established that the negotiating States and negotiating organizations were agreed that the reservation is prohibited;

(b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or

(c) in cases not falling under subparagraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.

2. An international organization may, when signing, formally confirming, accepting, approving or acceding to a treaty, formulate a reservation unless:

(a) the reservation is prohibited by the treaty or it is otherwise established that the negotiating organizations or, as the case may be, the negotiating States and negotiating organizations were agreed that the reservation is prohibited;

(b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or

(c) in cases not falling under subparagraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.

23. The article set forth for States and international organizations, respectively, the rules laid down in article 19 of the Vienna Convention. The division into two paragraphs had been deemed necessary because of the reference to the act of formally confirming, which was applicable only to international organizations. In addition, the wording of subparagraphs 1 (a) and 2 (a) had been adjusted to reflect the type of treaty involved.

24. Mr. CALLE Y CALLE proposed that the word “o” between the words “*aceptar*” and “*aprobar*” in paragraphs 1 and 2 of the Spanish text of the draft article should be deleted, since it suggested that the two terms were alternatives, which was not the case. (The same observation also applied to article 2, subparagraph 1 (d).)

The proposal was adopted.

Article 19, as amended in regard to the Spanish text, was adopted.

ARTICLE 20⁹ (Acceptance of and objection to reservations).

⁸ For initial consideration of the text at the current session, see 1648th meeting, paras. 24 *et seq.*, 1649th meeting, 1650th meeting, paras. 1–37, and 1651st meeting, paras. 2–46.

⁹ *Idem*, 1651st meeting, paras. 47 *et seq.*, and 1652nd meeting, paras. 1–26.

25. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee proposed the following text for article 20:

Article 20. Acceptance of and objection to reservations

1. A reservation expressly authorized by a treaty does not require any subsequent acceptance by the contracting organizations or, as the case may be, by the contracting organizations and contracting States unless the treaty so provides.

2. When it appears from the object and the purpose of a treaty that the application of the treaty in its entirety between all the parties is an essential condition of the consent of each one to be bound by the treaty, a reservation requires acceptance by all the parties.

3. In cases not falling under the preceding paragraphs and unless the treaty otherwise provides:

(a) acceptance of a reservation by a contracting State or by a contracting organization constitutes the reserving State or organization a party to the treaty in relation to the accepting State or organization if or when the treaty is in force for the author of the reservation and for the State or organization which has accepted it;

(b) an objection by a contracting organization or by a contracting State to a reservation does not preclude the entry into force of the treaty as between the objecting State or organization and the reserving State or organization unless a contrary intention is definitely expressed by the objecting State or organization;

(c) an act of a State or of an international organization expressing the consent of a State or of an organization to be bound by the treaty and containing a reservation is effective as soon as at least one other contracting State or one contracting organization or, as the case may be, one other contracting organization or one contracting State has accepted the reservation.

4. For the purposes of paragraphs 2 and 3 and unless the treaty otherwise provides, a reservation is considered to have been accepted by a State if it shall have raised no objection to the reservation by the end of a period of twelve months after it was notified of the reservation or by the date on which it expressed its consent to be bound by the treaty, whichever is later.

26. On the basis of the position of principle to which he had referred earlier, the Drafting Committee had found it possible to combine articles 20 and 20 *bis* in a single article modelled on the corresponding text of the Vienna Convention. The only differences in wording between the new text and that of article 20 of the Vienna Convention arose from the need to extend the rule to international organizations.

27. It would be noted that in paragraph 2 of the draft, unlike the corresponding paragraph of the Vienna Convention, no reference was made to “the limited number of the negotiating” entities. In omitting that reference, however, the Committee had simply followed a decision that had been taken by the Commission on first reading and was reflected in paragraph 2 of articles 20 and 20 *bis* of the original draft.

28. It would also be noted that, as in the case of the original articles 20 and 20 *bis*, the new text contained no paragraph corresponding to article 20, paragraph 3, of the Vienna Convention. However, it should be borne in mind that the Drafting Committee had proposed the inclusion of article 5 in the draft.

29. Paragraph 4 of the text was virtually identical to article 20, paragraph 5, of the Vienna Convention, in that it provided for acceptance of a reservation, when no objection to that reservation had been raised, only in the case of States, and no similar rule was established for international organizations. It would be recalled, however, that such a rule had been set forth in the text of articles 20 and 20 *bis* adopted on first reading. In proposing a new text that was silent on the point, the Drafting Committee had considered that it was faithfully interpreting the prevailing view within the Commission to the effect that inclusion of such a rule would create greater difficulties of application and interpretation than it would solve. The Committee had also taken the view that the absence of such an express rule would have no adverse effect on the development of a suitable practice for international organizations.

30. Mr. RIPHAGEN said that he was not convinced by the arguments of the Drafting Committee concerning the omission from article 20 of a paragraph corresponding to article 20, paragraph 3, of the Vienna Convention. The Commission had adopted article 5, and it would therefore be logical to include such a paragraph in article 20.

31. Again, he was not convinced by the explanations as to why paragraph 4 did not deal with the question of tacit acceptance of a reservation by an international organization. While he understood the difficulties involved, he believed that the paragraph should deal with that point.

32. Mr. REUTER (Special Rapporteur) said that the report of the Commission would reflect the matters taken into consideration by the Drafting Committee, as well as Mr. Riphagen's objection regarding the case in which the organization would necessarily have knowledge of reservations that had already been expressed at the time when it formulated its acceptance.

33. Reverting to article 5, he said that with its adoption the Drafting Committee, and indeed the Commission, had decided to reflect further on two remaining problems: that of the definition of an international organization—which the Commission would probably retain on final reading, since the intergovernmental nature of the organization was still the main element—and the problem which arose from the fact that there was no provision in the draft similar to article 20, paragraph 3, of the Vienna Convention, something which could only be dealt with on final reading, after any comments had been made by the Sixth Committee. The Drafting Committee had entered a reservation to that effect by adopting article 5, and a reference to it should be included in the Commission's report.

34. Mr. USHAKOV said that he withdrew his earlier proposals regarding articles 19 and 20 (see 1648th meeting, para. 40). He noted that the Drafting Committee and the Commission had decided to leave

open the question of reservations to bilateral agreements and had not taken a final decision on the question of the machinery for the acceptance of reservations by international organizations.

35. Mr. REUTER (Special Rapporteur) reminded the Commission that when it came to adopt its report it would have to decide whether to indicate that articles 19 and 20 as proposed by the Drafting Committee had been adopted by the majority of the Commission or by the Commission as a whole. The draft report that had already been prepared (A/CN.4/L.331/Add.3) spoke of "the majority of the Commission", but if Mr. Ushakov accepted articles 19 and 20, it would be possible, and more accurate, to state that the Commission had adopted those articles.

Article 20 was adopted.

ARTICLE 21¹⁰ (Legal effects of reservations and of objections to reservations)

36. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee proposed the following text for article 21:

Article 21. Legal effects of reservations and of objections to reservations

1. A reservation established with regard to another party in accordance with articles 19, 20 and 23:

(a) modifies for the reserving State or international organization in its relations with that other party the provisions of the treaty to which the reservation relates to the extent of the reservation; and

(b) modifies those provisions to the same extent for that other party in its relations with the reserving State or organization.

2. The reservation does not modify the provisions of the treaty for the other parties to the treaty *inter se*.

3. When a State or international organization objecting to a reservation has not opposed the entry into force of the treaty between itself and the reserving State or organization, the provisions to which the reservation relates do not apply as between the author of the reservation and the objecting State or organization to the extent of the reservation.

37. Article 21, in its new form, represented a return to the text of article 21 of the Vienna Convention, the only drafting changes being those necessitated by the inclusion of references to international organizations.

Article 21 was adopted.

ARTICLE 22¹¹ (Withdrawal of reservations and of objections to reservations)

38. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee proposed the following text for article 22:

¹⁰ *Idem*, 1652nd meeting, paras. 27–29.

¹¹ *Idem*.

Article 22. Withdrawal of reservations and of objections to reservations

1. Unless the treaty otherwise provides, a reservation may be withdrawn at any time and the consent of a State or of an international organization which has accepted the reservation is not required for its withdrawal.

2. Unless the treaty otherwise provides, an objection to a reservation may be withdrawn at any time.

3. Unless the treaty otherwise provides, or it is otherwise agreed:

(a) the withdrawal of a reservation becomes operative in relation to another contracting State or a contracting organization or, as the case may be, another contracting organization or a contracting State only when notice of it has been received by that State or that organization;

(b) the withdrawal of an objection to a reservation becomes operative only when notice of it has been received by the State or international organization which formulated the reservation.

39. The text of the article had been considerably simplified by the use of drafting techniques employed in previous articles. As a result, paragraphs 3 and 4 had been combined and the wording simplified throughout, thus achieving greater conformity with the text of article 22 of the Vienna Convention.

Article 22 was adopted.

ARTICLE 23¹² (Procedure regarding reservations)

40. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee proposed the following text for article 23:

Article 23. Procedure regarding reservations

1. A reservation, an express acceptance of a reservation and an objection to a reservation must be formulated in writing and communicated to the contracting States and contracting organizations and other States and organizations entitled to become parties to the treaty.

2. If formulated when signing the treaty subject to ratification, an act of formal confirmation, acceptance or approval, a reservation must be formally confirmed by the reserving State or international organization when expressing its consent to be bound by a treaty. In such a case the reservation shall be considered as having been made on the date of its confirmation.

3. An express acceptance of, or an objection to, a reservation made previously to confirmation of the reservation does not itself require confirmation.

4. The withdrawal of a reservation or of an objection to a reservation must be formulated in writing.

41. Article 23 embodied in a single text the rules originally contained in articles 23 and 23 *bis*. The text differed from article 23 of the Vienna Convention only in its references to international organizations and their act of formal confirmation.

Article 23 was adopted.

42. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee proposed that the title of section 3 of Part II remain

unchanged, namely: "Section 3. Entry into force and provisional application of treaties".

The title of Part II, Section 3, was adopted.

ARTICLE 24¹³ (Entry into force) and

ARTICLE 25¹⁴ (Provisional application)

43. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee proposed the following texts for articles 24 and 25:

Article 24. Entry into force

1. A treaty enters into force in such manner and upon such date as it may provide or as the negotiating organizations or, as the case may be, the negotiating States and negotiating organizations may agree.

2. Failing any such provision or agreement, a treaty enters into force as soon as consent to be bound by the treaty has been established for all the negotiating organizations or, as the case may be, all the negotiating States and negotiating organizations.

3. When the consent of a State or of an international organization to be bound by a treaty is established on a date after the treaty has come into force, the treaty enters into force for that State or that organization on that date, unless the treaty otherwise provides.

4. The provisions of a treaty regulating the authentication of its text, the establishment of the consent to be bound by the treaty, the manner or date of its entry into force, reservations, the functions of the depositary and other matters arising necessarily before the entry into force of the treaty apply from the time of the adoption of its text.

Article 25. Provisional application

1. A treaty or a part of a treaty is applied provisionally pending its entry into force if:

(a) the treaty itself so provides; or

(b) the negotiating organizations or, as the case may be, the negotiating States and negotiating organizations have in some other manner so agreed.

2. Unless the treaty otherwise provides or the negotiating organizations or, as the case may be, the negotiating States and negotiating organizations have otherwise agreed, the provisional application of a treaty or a part of a treaty with respect to a State or organization shall be terminated if that State or that organization notifies the other States and the organizations or, as the case may be, the other organizations and the States between which the treaty is being applied provisionally of its intention not to become a party to the treaty.

44. The text of the two articles had been prepared following the pattern, explained earlier, of aligning the regime of international organizations on that of States. Accordingly, article 24 replaced articles 24 and 24 *bis* of the original draft, and article 25 replaced articles 25 and 25 *bis*. Both texts corresponded more closely to articles 24 and 25 of the Vienna Convention, with the necessary drafting adjustments.

Articles 24 and 25 were adopted.

¹² *Idem.*

¹³ *Idem*, paras. 30–31.

¹⁴ *Idem.*

45. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that no changes had been made in the titles of Part III or of Section 1 thereof, which remained identical to the corresponding titles appearing in the Vienna Convention, namely: "Part III. Observance, application and interpretation of treaties", and "Section 1. Observance of treaties".

The titles of Part III and of Part III, Section 1 were adopted.

ARTICLE 26¹⁵ (*Pacta sunt servanda*)

46. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee proposed no change to article 26, which read:

Article 26. Pacta sunt servanda

Every treaty in force is binding upon the parties to it and must be performed by them in good faith.

Article 26 was adopted.

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, A/CN.4/L.328)

[Item 2 of the agenda]

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE¹⁶

TITLE AND STRUCTURE OF THE DRAFT ARTICLES;
TITLES OF PARTS AND SECTIONS

47. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said the Drafting Committee proposed that the title of the draft articles should read (A/CN.4/L.328):

*Draft articles on succession of States
in respect of State property, archives and debts*

The Committee had adopted the Special Rapporteur's proposal that the title of the draft should be made more specific by an express reference to the three matters with which it dealt.

48. For reasons of style, the word "State" appeared only once in the title, but it covered all three matters—property, archives and debts.

The title of the draft articles was adopted.

49. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that, in keeping with the wishes of the Commission, the articles on State archives formed a separate part, entitled "State

archives", which now became Part III of the draft, following the part relating to "State property". The original Part III therefore became Part IV of the draft and was entitled "State debts". Part I of the draft, adopted on first reading with the title "Introduction", had been entitled "General Provisions", and Section 1 of Parts II, III and IV had been entitled "Introduction", while Section 2 had been given the title "Provisions concerning specific categories of succession of States".

The structure of the draft articles and the titles of the Parts and sections were adopted.

ARTICLE 1¹⁷ (Scope of the present articles)

50. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee proposed the following text for article 1 (A/CN.4/L.328):

Article 1. Scope of the present articles

The present articles apply to the effects of a succession of States in respect of State property, archives and debts

51. As a consequence of the change in the title of the draft, the expression "in respect of matters other than treaties", which appeared in the original text of the article, had been replaced by "in respect of State property, archives and debts".

Article 1 was adopted.

ARTICLE 2¹⁸ (Use of terms)

52. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee had made no change to article 2 as adopted on first reading.¹⁹

Article 2 was adopted.

ARTICLE 3²⁰ (Cases of succession of States covered by the present articles)

53. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee had made no change to article 3 as adopted on first reading.²¹

Article 3 was adopted.

ARTICLE 3 *bis* (Temporal application of the present articles)

54. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee pro-

* Resumed from the 1690th meeting.

¹⁵ *Idem*, 1673rd meeting, paras. 1-3.

¹⁶ For initial consideration of the draft articles at the current session, see 1658th to 1662nd, 1671st, 1672nd, 1675th and 1688th to 1690th meetings.

¹⁷ For initial consideration of the text at the current session, see 1658th meeting, paras. 5 *et seq.*, and 1659th meeting, paras. 1-24.

¹⁸ *Idem*, 1659th meeting, paras. 25-46.

¹⁹ For text, see 1659th meeting, para. 25.

²⁰ For initial consideration of the text at the current session, see 1659th meeting, paras. 47 *et seq.*, and 1660th meeting, paras. 1-15.

²¹ For text, see 1659th meeting, para. 47.

posed an article 3 *bis*, (A/CN.4/L.328), the text of which read:

Article 3 bis. Temporal application of the present articles

1. Without prejudice to the application of any of the rules set forth in the present articles to which the effects of a succession of States would be subject under international law independently of these articles, the articles apply only in respect of a succession of States which has occurred after the entry into force of the articles except as may be otherwise agreed.

2. A successor State may, at the time of expressing its consent to be bound by the present articles or at any time thereafter, make a declaration that it will apply the provisions of the articles in respect of its own succession of States which has occurred before the entry into force of the articles in relation to any other contracting State or State Party to the articles which makes a declaration accepting the declaration of the successor State. Upon entry into force of the articles as between the States making the declarations or upon the making of the declaration of acceptance, whichever occurs later, the provisions of the articles shall apply to the effects of the succession of States as from the date of that succession of States.

3. A successor State may at the time of signing or of expressing its consent to be bound by the present articles make a declaration that it will apply the provisions of the articles provisionally in respect of its own succession of States which has occurred before the entry into force of the articles in relation to any other signatory or contracting State which makes a declaration accepting the declaration of the successor State; upon the making of the declaration of acceptance, those provisions shall apply provisionally to the effects of the succession of States as between those two States as from the date of that succession of States.

4. Any declaration made in accordance with paragraph 2 or 3 shall be contained in a written notification communicated to the depositary, who shall inform the Parties and the States entitled to become Parties to the present articles of the communication to him of that notification and of its terms.

55. Article 3 *bis* was a new provision and reproduced, with the necessary adjustments, the text of article 7 of the 1978 Vienna Convention,²² which had been the subject of lengthy and delicate negotiations at the Conference responsible for drafting the Convention. The Drafting Committee had decided that the inclusion of such an article in the Commission's draft was necessary for reasons akin to those that had warranted the inclusion of article 7 in the 1978 Convention—reasons relating more particularly to the opportunity for a successor State of applying the draft articles to its own succession of States which occurred before their entry into force of the Convention.

Article 3 bis was adopted.

ARTICLE 3 *ter* (Succession in respect of other matters)

56. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee proposed an article 3 *ter* (A/CN.4/L.328), which read:

Article 3 ter. Succession in respect of other matters

Nothing in the present article shall be considered as prejudging in any respect any question relating to the effects of a succession of States in respect of matters other than those provided for in the present articles.

57. Article 3 *ter* was new. The Drafting Committee had decided it was necessary to have such an article in view of the decision not to deal in the draft with the effects of succession of States in respect of all matters other than treaties and to confine the Commission's work to the three matters listed in the title of the draft. The wording of the proposed article followed that of article 14 of the 1978 Vienna Convention.

Article 3 ter was adopted.

ARTICLE 4²³ (Scope of the articles in the present Part)

58. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee had made no change to article 4 as adopted on first reading.²⁴

Article 4 was adopted.

ARTICLE 5²⁵ (State property)

59. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee had made no change to article 5 as adopted on first reading.²⁶

Article 5 was adopted.

ARTICLE 6²⁷ (Effects of the passing of State property)

60. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee proposed the following text for article 6 (A/CN.4/L.328).

Article 6. Effects of the passing of State property

A succession of States entails the extinction of the rights of the predecessor State and the arising of the rights of the successor State to such of the State property as passes to the successor State in accordance with the provisions of the articles in the present Part.

61. The Drafting Committee had decided to amend the original title of the article ("Rights of the successor State to State property passing to it"), since it did not properly reflect the content of the article. Also, the new title was more in keeping with that of article 9.

Article 6 was adopted.

²³ For initial consideration of the text by the Commission at the current session, see 1660th meeting, paras. 17–63.

²⁴ For text, see 1660th meeting, para. 17.

²⁵ For initial consideration of the text by the Commission at the current session, see 1660th meeting, paras. 17–63.

²⁶ For text, see 1660th meeting, para. 17.

²⁷ For initial consideration of the text by the Commission at the current session, see 1660th meeting, paras. 64–69.

²² See 1658th meeting, footnote 2.

ARTICLE 7²⁸ (Date of the passing of State property)

62. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee had made no change to Article 7 as adopted on first reading.²⁹

Article 7 was adopted.

ARTICLE 8³⁰ (Passing of State property without compensation)

63. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee had made no change to article 8 as adopted on first reading.³¹

Article 8 was adopted.

ARTICLE 9³² (Absence of effect of a succession of States on the property of a third State)

64. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee proposed the following text for article 9 (A/CN.4/L.328):

Article 9. Absence of effect of a succession of States on the property of a third State

A succession of States shall not as such affect property, rights and interests which, at the date of the succession of States, are situated in the territory of the predecessor State and which, at that date, are owned by a third State according to the internal law of the predecessor State.

65. The Drafting Committee had amended the title of article 9 in the English version by replacing the expression "third party State property" by "the property of a third State", so as to bring it into line with the French and Spanish versions, which were clearer.

66. Mr. ALDRICH said that, in view of the fact that the Commission had already adopted article 5, which defined State property as property which, at the date of the succession of States, was, according to the internal law of the predecessor State, owned by that State, there seemed to be little point in including article 9 in the draft. The only possible effect of the article was to suggest that the property, rights and interests of individuals might be prejudiced in some way. The article was unfortunate and should be deleted.

67. Mr. USHAKOV, supported by Mr. BEDJAOU (Special Rapporteur), said that article 9 did not have any direct connection as to succession of States as such. It was mainly concerned with protection of property which, under the internal law of the predecessor State, belonged to a third State. It would

²⁸ *Idem*, paras. 70-76.

²⁹ For text, see 1660th meeting, para. 70.

³⁰ For initial consideration of the text by the Commission at the current session, see 1660th meeting, paras. 77-78.

³¹ For text, see 1660th meeting, para. 77.

³² For initial consideration of the text by the Commission at the current session, see 1661st meeting, paras. 1-47.

apply, for instance, to consulate and embassy buildings which required protection in the event of State succession so as to safeguard the interests of third States.

Article 9 was adopted.

ARTICLE 10³³ (Transfer of part of the territory of a State)

68. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee proposed the following text for article 10 (A/CN.4/L.328):

Article 10. Transfer of part of the territory of a State

1. When part of the territory of a State is transferred by that State to another State, the passing of State property of the predecessor State to the successor State is to be settled by agreement between them.

2. In the absence of an agreement:

(a) immovable State property of the predecessor State situated in the territory to which the succession of States relates shall pass to the successor State;

(b) movable State property of the predecessor State connected with the activity of the predecessor State in respect of the territory to which the succession of States relates shall pass to the successor State.

69. For the sake of simplification, the Drafting Committee had replaced the words "between the predecessor and successor States", at the end of paragraph 1 as adopted on first reading, by "between them".

70. Mr. REUTER proposed that the opening words of paragraph 2, reading "In the absence of an agreement", should be replaced by "In the absence of such an agreement", so as to leave no doubt that the agreement referred to related to the property and not to the transfer.

Article 10, as amended, was adopted.

ARTICLE 11³⁴ (Newly independent State)

71. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee proposed the following text for article 11 (A/CN.4/L.328):

Article 11. Newly independent State

1. When the successor State is a newly independent State:

(a) immovable State property of the predecessor State situated in the territory to which the succession of States relates shall pass to the successor State;

(b) immovable property having belonged to the territory to which the succession of States relates, situated outside it and having become State property of the predecessor State during the period of dependence, shall pass to the successor State;

³³ *Idem*, paras. 48-58.

³⁴ *Idem*, paras. 59-94.

(c) immovable State property of the predecessor State other than that mentioned in subparagraph (b) and situated outside the territory to which the succession of States relates, to the creation of which the dependent territory has contributed, shall pass to the successor State in proportion to the contribution of the dependent territory;

(d) movable State property of the predecessor State connected with the activity of the predecessor State in respect of the territory to which the succession of States relates shall pass to the successor State;

(e) movable property having belonged to the territory to which the succession of States relates and having become State property of the predecessor State during the period of dependence, shall pass to the successor State;

(f) movable State property of the predecessor State other than the property mentioned in subparagraphs (d) and (e), to the creation of which the dependent territory has contributed, shall pass to the successor State in proportion to the contribution of the dependent territory.

2. When a newly independent State is formed from two or more dependent territories, the passing of the State property of the predecessor State or States to the newly independent State shall be determined in accordance with the provisions of paragraph 1.

3. When a dependent territory becomes part of the territory of a State, other than the State which was responsible for its international relations, the passing of the State property of the predecessor State to the successor State shall be determined in accordance with the provisions of paragraph 1.

4. Agreements concluded between the predecessor State and the newly independent State to determine succession to State property otherwise than by the application of paragraphs 1 to 3 shall not infringe the principle of the permanent sovereignty of every people over its wealth and natural resources.

72. The text of the article, the title of which had not been changed, was broadly the same as that adopted on first reading. To make it more comprehensive, certain additions had been made to paragraph 1. Also, the order of the subparagraphs to paragraph 1 had been rearranged to achieve a more consistent presentation. In the original version of paragraph 1, subparagraphs (a), (b) and (c) had dealt with three cases of the passing of movable State property, and subparagraph (d) with one case of the passing of immovable State property. The Drafting Committee had decided that there was no convincing reason why the two situations provided for under subparagraphs (a) and (c) of the earlier draft should not also be provided for in the case of the passing of immovable property. Accordingly, the text which it was proposing contained two new subparagraphs, (b) and (c). Subparagraph (a) of the new text therefore corresponded to subparagraph (d) of the original text: subparagraphs (b) and (c) were new, but were based on subparagraphs (a) and (c) of the earlier text, and subparagraphs (d), (e) and (f) of the new text corresponded to subparagraphs (b), (a) and (c) of the original text.

73. In addition, the Drafting Committee had decided, for the sake of consistency, to replace the term “newly independent State”, in new subparagraph (e), by “successor State”, which was used throughout the rest of the article.

74. New subparagraphs (b) and (c), which concerned immovable property, made express reference to property that was situated outside the territory to which the succession of States related. That reference, which was not necessary in the case of movable property, was essential in the case of immovable property because of the terms of subparagraph (a).

75. Lastly, to bring the French version of subparagraphs (c) and (f) of paragraph 1 of the new text into line with the English, the expression “*dans la proportion correspondant a sa part contributive*” had been replaced by “*en proportion de la contribution du territoire dépendant*”.

Article 11 was adopted.

ARTICLE 12³⁵ (Uniting of States)

76. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee proposed the following text for article 12 (A/CN.4/L.328):

Article 12. Uniting of States

1. When two or more States unite and so form a successor State, the State property of the predecessor States shall pass to the successor State.

2. Without prejudice to the provision of paragraph 1, the allocation of the State property of the predecessor States as belonging to the successor State or, as the case may be, to its component parts shall be governed by the internal law of the successor State.

Article 12 was adopted.

ARTICLE 13³⁶ (Separation of part or parts of the territory of a State)

77. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the only change made to the article was in paragraph 3, where, for the sake of accuracy and clarity, the words “as between the predecessor State and the successor State” had been added after the words “equitable compensation”. The proposed text of the article (A/CN.4/L.328) therefore read:

Article 13. Separation of part or parts of the territory of a State

1. When part or parts of the territory of a State separate from that State and form a State, and unless the predecessor State and the successor State otherwise agree:

(a) immovable State property of the predecessor State shall pass to the successor State in the territory of which it is situated;

(b) movable State property of the predecessor State connected with the activity of the predecessor State in respect of the territory to which the succession of States relates shall pass to the successor State;

³⁵ *Idem*, paras. 95–98.

³⁶ For initial consideration of the text by the Commission at the current session, see 1662nd meeting.

(c) movable State property of the predecessor State other than that mentioned in subparagraph (b) shall pass to the successor State in an equitable proportion.

2. Paragraph 1 applies when part of the territory of a State separates from that State and unites with another State.

3. The provisions of paragraphs 1 and 2 are without prejudice to any question of equitable compensation as between the predecessor State and the successor State that may arise as a result of a succession of States.

78. Mr. USHAKOV, noting that the phrase "shall pass to the successor State in the territory of which it is situated" appeared in both article 14, subparagraph 1 (a) and article 13, subparagraph 1 (a), said that its inclusion in the latter provision was unwarranted. Article 14 dealt with the formation of at least two States, whereas article 13 was concerned with the formation of a single State. In article 13, therefore the phrase should be replaced by "situated in the territory to which the succession of States relates shall pass to the successor State", which was the wording used in article 11, subparagraph 1 (a).

79. He further noted that article 34 of the 1978 Vienna Convention was entitled "Succession of States in cases of separation of parts of a State". He therefore wondered whether the words "parts of the territory of a State" in the title of article 13 should not be replaced by "parts of a State".

80. Mr. REUTER said that he agreed with Mr. Ushakov's first comment, but would point out that article 13 could be interpreted as providing for the case in which several parts of the territory of a State separated from one another to form several States.

81. Mr. BEDJAOU (Special Rapporteur) said that, as he understood it, article 13 covered the particular case of the formation of a single State. Hence, Mr. Ushakov's suggestion seemed acceptable.

82. So far as the title was concerned, he would prefer it to remain unchanged, for the term "parts of a State" was obscure.

Article 13, as amended, was adopted.

ARTICLE 14³⁷ (Dissolution of a State)

83. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that article 14 as proposed by the Drafting Committee (A/CN.4/L.328) read:

Article 14. Dissolution of a State

1. When a predecessor State dissolves and ceases to exist and the parts of its territory form two or more States, and unless the successor States concerned otherwise agree:

(a) immovable State property of the predecessor State shall pass to the successor State in the territory of which it is situated;

(b) immovable State property of the predecessor State situated outside its territory shall pass to the successor States in equitable proportions;

³⁷ *Idem.*

(c) movable State property of the predecessor State connected with the activity of the predecessor State in respect of the territories to which the succession of States relates shall pass to the successor State concerned;

(d) movable State property of the predecessor State other than that mentioned in subparagraph (c) shall pass to the successor States in equitable proportions.

2. The provisions of paragraph 1 are without prejudice to any question of equitable compensation among the successor States that may arise as a result of a succession of States.

84. The wording of the article, the title of which had not been modified, was broadly the same. After mature reflection, the Drafting Committee had decided, in regard to paragraph 1 (b), to replace the words "to one of the successor States, the other successor States being equitably compensated" by "to the successor States in equitable proportions". As a consequential change, the expression "in an equitable proportion", in paragraph 1 (d), had been replaced by "in equitable proportions". Lastly, for the same reasons of accuracy and clarity that had warranted the change in article 13, paragraph 3, the Drafting Committee had added the words "among the successor States" in article 14, paragraph 2, after the words "equitable compensation".

Article 14 was adopted.

ARTICLE 15³⁸ (Scope of the articles in the present Part)

85. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee had made no change to article 15.³⁹

Article 15 was adopted.

ARTICLE 16⁴⁰ (State debt)

86. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee proposed the following text for article 16 (A/CN.4/L.328):

Article 16. State debt

For the purposes of the articles in the present Part, "State debt" means:

(a) any financial obligation of a State towards another State, an international organization or any other subject of international law;

[(b) any other financial obligation chargeable to a State.]

87. Although the Committee had made no change to the title, the introductory phrase or subparagraph (a), it had, like the Commission, been unable to reach agreement on whether subparagraph (b) should be retained or deleted. It had therefore decided to refer the

³⁸ *Idem.* 1671st meeting, and 1672nd meeting, paras. 1-35.

³⁹ For text, see 1671st meeting, para. 1.

⁴⁰ For initial consideration of the text at the current session, see 1671st meeting and 1672nd meeting, paras. 1-35.

matter to the Commission, and subparagraph (b) had been placed in square brackets for that reason.

88. Mr. REUTER suggested that subparagraph (b) should be retained, but that the words "under international law" should be added at the end of the subparagraph.

89. Mr. ALDRICH said that, in the Commission and in the Drafting Committee, he had always resisted attempts to obscure the meaning of subparagraph (b), a provision that clearly raised the question whether, under international law, a succession of States involved succession to debts owed to private banks and private individuals. He did not understand the meaning of Mr. Reuter's suggestion, which was unacceptable because it simply confused the issue under discussion. In his view, subparagraph (b) should be retained, because it would be unfair for the Sixth Committee and any international conference that might discuss the draft articles for the purposes of adopting a convention not to have before them texts on which the Commission had not been able to agree.

90. Mr. NJENGA said it was his understanding that the commentary to article 16 would indicate, in a fair amount of detail, the reasons for the Commission's decision concerning subparagraph (b).

At the request of Mr. Ushakov, a vote was taken by roll-call on the retention of article 16, subparagraph (b).

Mr. Aldrich, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Mr. Aldrich, Mr. Calle y Calle, Mr. Francis, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Šahović, Mr. Verosta.

Against: Mr. Barboza, Mr. Bedjaoui, Mr. Díaz González, Mr. Njenga, Mr. Tabibi, Mr. Thiam, Mr. Ushakov, Mr. Yankov.

There were 8 votes in favour and 8 votes against.

Article 16, subparagraph (b), was not adopted.

The title, introductory phrase and subparagraph (a) of article 16 were adopted.

91. Mr. REUTER, speaking in explanation of vote, said that he had voted in favour of retention of subparagraph (b) because the question at issue was one of general international law and, from the point of view of general international law, it could not be said that no financial obligation was chargeable to a State by reason of debts owed to private persons.

92. Mr. CALLE Y CALLE said that he had voted in favour of retention of subparagraph (b) because the concept covered by that provision had been approved in the past, and general international law provided for the fulfilment of obligations, including the financial obligations owed by States to creditors other than States or international organizations.

93. Mr. RIPHAGEN said that he had voted in favour of retention of subparagraph (b) for the same reasons as Mr. Reuter.

94. Mr. FRANCIS said that he had voted in favour of retention of subparagraph (b) for the reasons he had explained during the Commission's discussions of article 16. Since the Commission's vote had resulted in a tie, he would have thought that subparagraph (b), without being adopted, would at least have been retained in square brackets.

95. Mr. BARBOZA said that he had voted against retention of subparagraph (b) because he was of the opinion that the kind of debts referred to in that provision came within the scope of the internal law of States and could not be said to be covered by international law.

96. Mr. USHAKOV said that he had voted against retention of subparagraph (b) because the only kind of rule that could be laid down in international law were the kind that concerned relations between subjects of international law. The law applicable to private debts was contract law.

97. Mr. ŠAHOVIĆ said that he had voted in favour of retention of subparagraph (b) for the reasons of principle he had explained during the Commission's discussions of article 16, and because he considered that inclusion of that subparagraph would strengthen the draft and ensure its unanimous adoption.

98. Mr. DÍAZ GONZÁLEZ said that he had voted against retention of subparagraph (b) for the same reasons as Mr. Barboza. He might, however, have voted in favour of its retention if it had been worded differently.

99. Speaking as the Chairman of the Drafting Committee and referring to the point raised by Mr. Francis, he explained that subparagraph (b) had been placed in square brackets only to indicate that the Drafting Committee had not been able to agree on it and that the Commission should decide on the matter.

100. Mr. VEROSTA said that he had voted in favour of retention of subparagraph (b) for the same reasons as Mr. Reuter.

101. Mr. YANKOV said that he had voted against retention of subparagraph (b) not because the kind of obligation in question should not benefit from the protection of the law, but because it did not come within the scope of the draft as he understood it.

102. Mr. NJENGA said that he too had voted against retention of subparagraph (b) because the provision related to subjects other than subjects of international law. The debts referred to in the subparagraph were, of course, payable, but they simply were not governed by international law.

103. Mr. ALDRICH said that he could not accept the arguments put forward by the members of the Commission who had opposed retention of subparagraph (b) on the grounds that debts owed to private

individuals fell outside the scope of the draft articles. Those arguments were inconsistent because, when reference was made to State property, it was also understood to include debts owed to the State by private persons. He simply could not understand how debts owed to the State by private persons could be said to be subject to State succession, while debts owed to private persons by the State were excluded from State succession.

104. Mr. QUENTIN-BAXTER said that he had voted in favour of retention of subparagraph (b) because he thought that, if the draft articles were to have any chance of success, subparagraph (b) had to be included in article 16. He would have voted in favour of retention of the provision even if he had not agreed with its substance, because he believed it was the Commission's duty to place questions of that kind before the General Assembly and any diplomatic conference that might consider the draft articles. Indeed, he was of the opinion that the Commission had mistaken its role when it had voted on a matter of that kind, something shown by the fact that the vote had resulted in a tie.

ARTICLE 17⁴¹ (Effects of the passing of State debts)

105. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee proposed the following text for article 17 (A/CN.4/L.328):

Article 17. Effects of the passing of State debts

A succession of States entails the extinction of the obligations of the predecessor State and the arising of the obligations of the successor State in respect of such State debts as pass to the successor State in accordance with the provisions of the articles in the present Part.

106. The title of article 17 had been brought into line with that of the corresponding article of Part II, namely, article 6, for the same reasons as had led to the change in the title of that article.

Article 17 was adopted.

ARTICLE 17 bis⁴² (Date of the passing of State debts)

107. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee proposed the following title and text for article 17 bis (A/CN.4/L.328):

Article 17 bis. Date of the passing of State debts

Unless otherwise agreed or decided, the date of the passing of State debts is that of the succession of States.

108. In the light of the Commission's discussions, the Drafting Committee had adopted the proposal made

by the Special Rapporteur in his thirteenth report for the inclusion of a new article 17 bis (A/CN.4/345 and Add.1-3, para. 164), the title and text of which corresponded to those of article 7.

Article 17 bis was adopted.

ARTICLE 18⁴³ (Effects of the passing of State debts with regard to creditors)

109. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee proposed the following text for article 18 (A/CN.4/L.328):

Article 18. Effects of the passing of State debts with regard to creditors

1. A succession of States does not as such affect the rights and obligations of creditors.

2. An agreement between the predecessor State and the successor State or, as the case may be, between successor States, concerning the respective part or parts or the State debts of the predecessor State that pass, cannot be invoked by the predecessor State or by the successor State or States, as the case may be, against a third State, an international organization or any other subject of international law asserting a claim unless:

(a) the consequences of that agreement are in accordance with the provisions of the present Part; or

(b) the agreement has been accepted by that third State, international organization or other subject of international law.

110. The Drafting Committee had made no change to the title of article 18 or to paragraph 1. In order to bring the wording of the end of paragraph 2 and of subparagraph (b) into line with that of article 16, it had added the words "or any other subject of international law" and the words "or other subject of international law". Moreover, in paragraph 2 (a), the word "provisions" had been substituted for the words "the other applicable rules of the articles" in order to avoid problems of interpretation. In the French and Spanish versions of paragraph 2, the words "*le cas échéant*" and the words "*en su caso*" had been replaced by "*selon le cas*" and "*según el caso*", respectively.

Article 18 was adopted.

ARTICLE 19⁴⁴ (Transfer of part of the territory of a State)

111. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) pointed out that the Committee had made a change in article 19, paragraph 1, similar to that made in article 10, which was the corresponding article in Part II; the words "between the predecessor and successor States" had been replaced by "between them". The text of article 19 proposed by the Drafting Committee (A/CN.4/L.328) therefore read:

⁴¹ *Idem*, 1672nd meeting, paras. 36-60.

⁴² *Idem*.

⁴³ *Idem*, paras. 36 *et seq.*, and 1675th meeting, paras. 33-48.

⁴⁴ *Idem*, 1672nd meeting, paras. 36 *et seq.*, and 1675th meeting, paras. 33 *et seq.*

Article 19. Transfer of part of the territory of a State

1. When part of the territory of a State is transferred by that State to another State, the passing of the State debt of the predecessor State to the successor State is to be settled by agreement between them.

2. In the absence of an agreement, the State debt of the predecessor State shall pass to the successor State in an equitable proportion, taking into account, *inter alia*, the property, rights and interests which pass to the successor State in relation to that State debt.

Article 19 was adopted.

ARTICLE 20⁴⁵ (Newly independent State)

112. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee had simply brought the English and Spanish versions of paragraph 2 into line with the French version of that paragraph and of paragraph 4 of article 11, which was the corresponding article in Part II. The proposed text (A/CN.4/L.328) read:

Article 20. Newly independent State

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

2. The agreement referred to in paragraph 1 shall not infringe the principle of the permanent sovereignty of every people over its wealth and natural resources, nor shall its implementation endanger the fundamental economic equilibria of the newly independent State.

Article 20 was adopted.

ARTICLE 21⁴⁶ (Uniting of States)

113. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that, in the light of the Commission's wishes, the Committee had decided to delete paragraph 2, and the article therefore read (A/CN.4/L.328):

Article 21. Uniting of States

1. When two or more States unite and so form a successor State, the State debt of the predecessor States shall pass to the successor State.

Article 21 was adopted.

ARTICLE 22⁴⁷ (Separation of part or parts of the territory of a State)

114. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee had made no change to the article as adopted on first reading.⁴⁸

Article 22 was adopted.

ARTICLE 23⁴⁹ (Dissolution of a State)

115. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that, for the same reasons as in the case of article 14, which was the corresponding article in Part II, the words "an equitable proportion of the State debt of the predecessor State shall pass to each successor State" had been replaced by "the State debt of the predecessor State shall pass to the successor States in equitable proportions". The text of article 23 as proposed by the Drafting Committee (A/CN.4/L.328) therefore read:

Article 23. Dissolution of a State

When a predecessor State dissolves and ceases to exist and the parts of its territory form two or more States, and unless the successor States otherwise agree, the State debt of the predecessor State shall pass to the successor States in equitable proportions, taking into account all relevant circumstances.

Article 23 was adopted.

The meeting rose at 1.10 p.m.

⁴⁸ For text, see 1688th meeting, para. 3.

⁴⁹ For initial consideration of the text by the Commission at the current session, see 1688th meeting, paras. 3–32.

1693rd MEETING

Friday, 17 July 1981, at 10.30 a.m.

Chairman: Mr. Doudou THIAM

Present: Mr. Aldrich, Mr. Barboza, Mr. Bedjaoui, Mr. Calle y Calle, Mr. Dadzie, Mr. Francis, Mr. Njenga, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Šahović, Mr. Tabibi, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta, Mr. Yankov.

Status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier (*continued*)*
(A/CN.4/347 and Add.1 and 2)

[Item 8 of the agenda]

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

ARTICLE I (Scope of the present articles),

* Resumed from the 1691st meeting.

⁴⁵ *Idem*, 1688th meeting, paras. 3–32.

⁴⁶ *Idem*.

⁴⁷ *Idem*.