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Summary record of the 1179th meeting

Topic:

Succession of States with respect to treaties

Extract from the Yearbook of the International Law Commission:-

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leges and immunities and containing somewhat different provisions with both of the original States which made up the subsequent union, on which of those treaties could the latter rely in pressing its claims against the third State?

82. In spite of those possible difficulties, however, he felt that the Commission should adopt alternative A and embody in it the necessary safeguards to solve any problems which might arise with regard to its application.

The meeting rose at 1.5 p.m.

1179th MEETING

Wednesday, 14 June 1972, at 10.30 a.m.

Chairman: Mr. Richard D. KEARNEY

Present: Mr. Ago, Mr. Alcívar, Mr. Bartoš, Mr. Bilge, Mr. Castañeda, Mr. Hambro, Mr. Nagendra Singh, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Reuter, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock.

Succession of States in respect of treaties

(A/CN.4/202; A/CN.4/214 and Add.1 and 2; A/CN.4/224 and Add.1; A/CN.4/249; A/CN.4/256 and Add.1 and 2)

[Item 1 (*a*) of the agenda]

(continued)

ARTICLE 19 (Formation of unions of States) *(continued)*

1. The CHAIRMAN invited the Commission to continue consideration of article 19 of the Special Rapporteur's draft (A/CN.4/256/Add.1).

2. Mr. ALCÍVAR said that he found it difficult to make a definitive choice between alternatives A and B. The principle of continuity *ipso jure* embodied in alternative A had been defended by Mr. Yasseen on the basis of the *pacta sunt servanda* rule.[1] He did not share that view because, among other reasons, that rule was limited by other higher rules. Mr. Ustor had referred to fundamental change of circumstances,[2] but the *rebus sic stantibus* rule, which was now considered an express rule of international law instead of an implied clause as it had been in the past, was scarcely a ground for terminating a treaty. At any rate, it was a secondary rule to those which invalidated a treaty *ab initio*, like those relating to defect of consent.

3. He shared many of the doubts which the Special Rapporteur himself had expressed concerning the theory of continuity. On the other hand, he also doubted whether it was possible to accept the "clean slate" doctrine embodied in alternative B, although that alternative did possess certain attractive features, such as its insistence on the need for the express or implied consent of the union of States.

4. In paragraph 42 of his commentary (A/CN.4/256/Add.1), the Special Rapporteur had rightly stated that the problem was to find a satisfactory formula for reconciling the principle of continuity with the new constitutional situation resulting from the formation of the union. Since that problem, as Mr. Ago and Mr. Reuter had pointed out, raised a whole series of problems which needed careful study, it should be referred to the Drafting Committee.

5. Mr. USHAKOV said that he preferred alternative A. The two alternatives proposed by the Special Rapporteur were based on diametrically opposed concepts. According to alternative B, which reflected the "clean slate" principle, all the treaties lapsed and could be revived only by novation. In his view, that solution was not in the best interests of the union of States, since it was often to its advantage that third States should have obligations towards it. The same was true for third States with regard to the obligations contracted towards them by the States which had merged.

6. He therefore preferred alternative A, though he recognized that it might give rise to difficulties in view of the infinite variety of possible cases. To overcome those difficulties, the principle stated in alternative A should be accompanied by saving clauses designed to protect the lawful interests of the union and third States.

7. Mr. HAMBRO said that the more he had heard during the debate in favour of alternative A, the more convinced he had become that it was not advisable to adopt that alternative as article 19.

8. It should be remembered that the States which had had an independent status before the union were no longer the same afterwards; the various components had changed their complexion completely, not only from a political but also from a social, economic and legal point of view, so that it would often be impossible to apply the rule stated in paragraph 2, particularly with respect to extradition treaties and others dealing with legal problems.

9. It was also necessary to consider the interests of third parties, which might have entered into a treaty only after long debate between the two parties involved. A third State might very well hesitate to consider itself bound by a treaty with another State which had subsequently become part of a Union. That was especially true when the third State in question had the rule that ratification needed the consent of parliament, since such consent might in fact be invalidated by reason of an *ipso jure* continuance of treaties after succession. The Commission should be very careful before laying down that treaties concluded with third States should be applied *ipso jure* to the other party, without affording the latter any opportunity for negotiations concerning the future of the treaty.

10. Finally, though precedents did exist, the practice was far from coherent and could be interpreted in different ways, which was undoubtedly the reason why the Commission had been asked to introduce some order into the situation. He hoped, however, that the Commission

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[1] See 1178th meeting, para. 29.

[2] *Ibid.*, para. 79.

would exercise extreme care before adopting the principle of *ipso jure* continuity.

11. Mr. CASTAÑEDA said that he would like to associate himself with the views expressed by Mr. Hambro. Normally, a union of States created a new political reality which might radically alter the position of the parties to an existing treaty. It was better to give new States, and particularly third States, an opportunity to reflect before deciding whether they wished to continue with the treaty or not.

12. It was an exaggeration to say that alternative A basically embodied the theory of continuity and that alternative B embodied that of the "clean slate". In reality, there was not much difference between them. On the whole, however, he agreed with Mr. Hambro and Mr. Ago that preference should be given to alternative B.

13. Mr. REUTER said that the Commission had reached a turning-point in its work on succession of States in respect of treaties. The principle of the legal personality of the State, which had been invoked by several speakers, was not the only one that could be taken into consideration. Incidentally, a party could not invoke change of circumstances as a ground for release from a treaty when it was the party itself that was responsible for the change.

14. Whatever solution might be proposed, there would always be opposing interests that ought to be protected. If the Commission adopted the "clean slate" solution in the name of the principle of legal personality, it would be obliged to adopt the same solution for localized treaties, since they were subject to the same principle.

15. He had no objection to the question being referred to the Drafting Committee, as Mr. Alcívar had suggested, but he must make it clear that he could not accept a compromise solution for article 19 until he knew exactly what the Commission's position was going to be on future articles of the draft. If the Commission decided that the "clean slate" rule applied in all cases, he would either have to abstain or to vote against the draft as a whole, because it would mean that important interests would then be sacrificed.

16. Mr. QUENTIN-BAXTER said that, after listening to what Mr. Hambro had to say in favour of alternative B, he felt it would be possible to formulate almost the same considerations from the opposite point of view. In any union of States there might be a vast change in policy, but there also might be vast constitutional changes in the case of a single State. In the latter case, the doctrine was clear that such changes in themselves should not lead to any lapse of treaty obligations. In other words, the Commission should not try to make too sharp and artificial a distinction between a far-reaching constitutional change in a single State and in the case of a union of States.

17. He himself favoured alternative A, but would not wish to exaggerate the importance of the precedents of Tanzania and the UAR; in those cases, it appeared evident that there had been a strong tacit feeling that the components of those States had not entirely lost their identity. He fully understood the Special Rapporteur's difficulties, but he would not like to leave the matter to turn solely on the form of the constituent instrument of the union, as provided in paragraph 1 (*a*).

18. He sympathized with Mr. Castañeda's view that it would be somewhat exaggerated to make a choice between the principle of continuity contained in alternative A and the "clean slate" principle in alternative B.[3] In his opinion, however, there would always be a certain margin of appreciation. He preferred to start with the presumption of continuity; the situation was analogous to one of far-reaching constitutional changes in a single State, where it might be necessary to revise certain treaty obligations but where it would be possible to accomplish that purpose by way of negotiation.

19. He agreed with Mr. Reuter that the Commission now found itself at a turning-point[4] where it was impossible to arrive at a consensus merely by counting heads. He would suggest, therefore, that the Commission should reserve the possibility of taking another look at article 19.

20. The CHAIRMAN, speaking as a member of the Commission, said that he agreed with the view expressed by Mr. Ustor at the previous meeting[5] that there was no established international law in the matter which could provide any specific rule. Practice was, indeed, an inadequate guide and it would be necessary to make rules for the future on the basis of principles.

21. In his opinion, the Commission should rely on the Vienna Convention, which would tend to support alternative A, not necessarily because of the rule of *pacta sunt servanda*, but also on the basis of other articles in that Convention.

22. Mr. Hambro had said that the changes which might come about as the result of the formation of a union of States might make it impossible for the latter to carry out treaties previously concluded by its component parts. He would call his attention, however, to paragraph 2 of article 61 of the Vienna Convention (Supervening impossibility of performance), which stated that such an alleged impossibility could not be invoked as a ground for terminating the operation of a treaty if the impossibility was a result of a breach of an obligation under the treaty.

23. The main difficulty in alternative B arose in connexion with the need to protect the interests of a third State. The latter was clearly entitled to adequate performance of the treaty; therefore, any difficulties connected with the union of States should be borne by the State which had originally created those difficulties.

24. In the interests of promoting the stability of treaties, he thought that alternative A was to be preferred. Like Mr. Quentin-Baxter, however, he was somewhat dubious about paragraph 1 (*a*), which would terminate a treaty if its object and purpose were incompatible with the constituent instrument of the union. He himself did not see why that should be the prime criterion, since it would leave it to the component States of the union to determine whether they would agree to an instrument

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[3] See para. 12 above.

[4] See para. 13 above.

[5] See 1178th meeting, paras. 77 and 78.

which might defeat the purpose of the treaty. After all, it was not impossible that two States in a union might decide to have provisions in the constituent instrument which would relieve the union of their previous treaty obligations.

25. Such a formulation seemed to go beyond the problem of State succession in respect of treaties and to raise the question of State responsibility. He doubted whether it would be reasonable to include in alternative A a rule which would eliminate State responsibility in those circumstances. If alternative A were accepted, it should include a different type of rule, such as that laid down in sub-paragraph (*a*) of excursus A (A/CN.4/256/Add.1).

26. There might be some validity in the objections to the use of the term "union of States", which was rather broad; he himself would suggest the term "unitary State". After all, it was up to the unitary State to maintain the necessary internal administration to enable it to fulfil its treaty obligations; the exact geographical organization of its constituent units was immaterial. Consequently, he would prefer a simpler definition, possibly along the lines of that originally proposed by Mr. Reuter: "A unitary State is one formed by the uniting of two or more States".[6]

27. Mr. TABIBI said that he would like to state for the record that he had supported alternative A because it was clear, concise and in line with the definition of a union of States. In particular, he felt that paragraph 1 (*b*) covered the point made by Mr. Castañeda and Mr. Hambro.

28. Mr. CASTAÑEDA said that not enough attention had been given to paragraph 1 (*b*) (ii) of alternative B, which stated that treaties would continue in force between the union of States and other States if they "must by reason of their conduct be considered as having agreed to or acquiesced in the treaty's being in force in their relations with each other".

29. He did not see any real difference between the two situations in alternatives A and B. Alternative A said that the treaties would continue in force unless the parties agreed otherwise, while alternative B said that the parties would have to take some decision in the matter, whether express or implied. Both alternatives called for some kind of agreement and he did not think that the difference between them was very great.

30. Mr. NAGENDRA SINGH said he would like to ask the Special Rapporteur to clarify the distinction between alternatives A and B. Was it correct that alternative A was based primarily on the principle of continuity, while alternative B stated that the express or tacit agreement of the parties was necessary?

31. Sir Humphrey WALDOCK (Special Rapporteur), replying to Mr. Nagendra Singh, said he would think that there was a clear and strong difference between alternatives A and B. Alternative A was a rule of *ipso jure* continuity which provided that the treaty would continue in force unless the parties agreed otherwise. The case in alternative B, on the other hand, was fundamentally different, since everything depended on the express or implied consent of the parties.

32. In alternative A there was a legal basis for the *ipso jure* rule. When States decided to form a union, the change in their position resulted from their own voluntary acts and it was arguable that they remained bound by the rule of *pacta sunt servanda* with respect to their pre-union treaties. Indeed, when the state of Texas had joined the United States of America, the British law officers had advised that, since that was a voluntary act on the part of Texas, it could not divest itself of its former treaties and that the United States would in consequence have to accept the previous treaties by which Texas was bound. In other words, where there was a voluntary act by a State, that act could not impose an obligation on other parties to a treaty by unilaterally terminating their rights.

33. There were, however, other points which had to be taken into consideration. Mr. Yasseen had pointed out[7] that the Commission should be careful not to formulate a rule which would inhibit constitutional changes in a State. By reason of economic and political pressures, such changes were clearly very likely to occur in future in the life of the international community. To hold new States automatically bound by prior treaties might impede the creation of unions of States, since today virtually every State accumulated a large complex of treaty relations, including both bilateral and multilateral treaties, and those might be incompatible with the new situation created by the union.

34. A new union of States, for example, might create a new economic system which might be incompatible with many former bilateral treaties. In such a case, could one say that it was impossible to form such a union without first obtaining the agreement of the other States parties to the treaty? His intention in drafting paragraph 1 of alternative A had been to give effect to the principle of continuity without inhibiting the creation of unions of States.

35. With regard to the scope of article 19 and the definition of a union of States, Mr. Ago had been right in saying that international law suffered from a paucity of legal language in that field.[8] The term "union of States" was to be found in all the text-books, although sometimes it was used in a looser sense to include intergovernmental, and especially economic unions. He personally did not like the Chairman's term "unitary State",[9] which was normally understood as meaning a State with a concentrated central government which was not a federation. The question whether a "union of States" should comprise cases of the complete disappearance of the component parts as separate entities was a difficult one. That was illustrated by the case of the United Arab Republic, the constitution of which was unitary in form, but which in practice maintained the separate identity of its component parts.

36. Moreover, he wondered whether the same rules should apply to the dissolution of States, dealt with under

[6] See 1177th meeting, para. 80.

[7] See 1178th meeting, para. 30.

[8] See 1177th meeting, para. 73.

[9] See para. 26 above.

article 20. It was clear that the former practice had accorded significance to the element of separate international personality. But that element was absent in the cases of the UAR and Tanzania, at least on paper, and that had led the International Law Association to disregard it as a basis for formulating the rule. The element of separate international personality had been given emphasis by older writers who had attached significance to the retention of treaty-making powers by the cantons of Switzerland and the States of Germany. Their position had been logical, though it was not now consistent with the more recent practice. The International Law Association seemed rather to give significance to the possession by the constituent parts of power to *implement* the treaties. But that went too far in introducing internal law into international law. In his opinion, it would be for the union of States itself to arrange for the performance of treaties concluded by or binding upon its component parts.

37. Since he had retained in the definition of "union of States" the element of the separate identity after the union of the component States, it might be necessary to prepare a separate article to deal with the case where two or more States merged to form a unitary State.

38. With regard to the text of article 19, he noted that thirteen members favoured alternative A, while five members had expressed themselves more or less strongly in favour of alternative B. Both alternatives had their advantages and disadvantages but undoubtedly alternative B would raise fewer drafting problems.

39. It was possible that, when States reflected on the constitutional and other problems which the adoption of alternative text A would involve, they might be inclined to prefer a more flexible system.

40. State practice in the matter was not altogether easy to interpret. The action taken on the formation of the United Arab Republic and of the United Republic of Tanzania, however, gave an indication of a movement in the direction of continuity. The principle of continuity meant that States could not, by forming a union, simply get rid of their pre-existing treaty obligations. If modifications were desired, it would be for the union to negotiate with the other States parties to the treaties and arrive at suitable agreements with them.

41. The case of the European Economic Community was really quite different, since the EEC was an intergovernmental union and not a union of States. It was the member States of EEC which were each responsible for making arrangements with the other contracting parties to their treaties in order to bring their treaty relations into line with the EEC system.

42. With regard to the provisions of paragraph 1 (*a*) of alternative A, he realized the inadequacy of the terms in which the concept of incompatibility was expressed. In that respect, he was inclined to favour the suggestion by the Chairman [10] to replace the reference to incompatibility "with the constituent instrument of the union" by language on the lines of the concluding portion of subparagraph (*a*) of excursus A. The constitution of the union was bound to be in some way incompatible with almost any treaty. For example, new designations might be given in the constitution of the union to State organs, thereby rendering inappropriate—in the formal or literal sense—the references to those organs under their old names in, say, an extradition treaty. The Drafting Committee should therefore try to find other language for paragraph 1 (*a*), bearing in mind the remarks of members and in particular of the Chairman.

43. Several members had drawn attention to the difficulties which might arise from the operation of paragraph 2, which called for the application of a treaty only to a part of the union of States, namely, that part in respect of which the particular treaty had been in force prior to the formation of the union. In practice, difficulties of that kind had been overcome by the union entering into negotiations for the extension of the treaty to the whole of its territory. That certainly had been the case when the United Arab Republic had been formed.

44. The provisions of paragraph 2 were consistent with State practice in the cases of the United Arab Republic, the United Republic of Tanzania and the Republic of Somalia. In the case of the latter, one particular extradition treaty had remained applicable to the territory of the former protectorate of British Somaliland, but was not applied in the former Italian trust territory of Somalia. The situation was certainly anomalous but the system was not unworkable, as experience had shown.

45. He fully agreed with the remark by Mr. Reuter that, with article 19, the Commission had reached something of a crossroads.[11] On the specific point raised by Mr. Reuter, however, he felt that the problem of localized treaties was a general one which would exist whatever choice were made between alternatives A and B.[12] If the Commission agreed that "dispositive, localized or territorial" treaties constituted an exception, then that exception would have to be framed so that it operated all along the line.

46. The importance of the discussion on article 19 resulted rather from the fact that the Commission had had to enter for the first time the area of the personality of the State and consider the effects of that personality on succession. As he had already had occasion to recall, some nineteenth century writers regarded the personality of the State as the key to the whole question of succession.[13] When the Commission came to consider the problem of the dissolution of unions, problems of State personality would once more come to the fore.

47. In reply to Mr. Bilge's first question,[14] he would explain that although he had framed his definition of "union of States" with reference to article 19, on the formation of such unions, it was meant in principle to apply also to article 20 (A/CN.4/256/Add.2), on the dissolution of unions. The wording, however, would have to be carefully scrutinized because he had some mis-

[10] See para. 25 above.

[11] See para. 13 above.

[12] See para. 14 above.

[13] See para. 36 above.

[14] See 1178th meeting, para. 62.

givings as to whether it was altogether suitable for application to article 20.

48. Mr. Bilge's second question had been whether paragraph 1 (*b*) of alternative A was intended to apply to bilateral treaties.[15] It applied in fact to all treaties, although in practice it was more likely to operate for bilateral treaties and restricted multilateral treaties.

49. Mr. Ushakov had asked whether the term "governmental powers" in the definition excluded treaty-making powers;[16] it did not. A limited treaty-making capacity was in some cases retained by the component units of a union; when that occurred, the treaty-making powers would be exercised within the territory of the separate political division formed from the component State.

50. On another point raised by the same member,[17] he considered that the word "joins" was correctly used in paragraph 3. The case had occurred, for example, of three new component States entering the Federation of Malaysia. A case of that kind could be expressed equally well in two ways: either as that of three new States joining an existing union of States, or as that of a second fusion.

51. The question of associated States had been raised by Mr. Quentin-Baxter,[18] but he felt that it would be very confusing to try and deal with it in article 19. If need be, it could be dealt with in a separate provision; he would discuss the matter informally with Mr. Quentin-Baxter.

52. In conclusion, he suggested that article 19 be referred to the Drafting Committee for consideration in the light of the discussion.

53. Mr. AGO said that the Special Rapporteur's statement had brought out clearly the difficulties involved in article 19. He himself had always thought that article 19 referred to a number of very different cases: the case of communities of States, like the European Economic Community, to which the rule in alternative A applied very well; the case of composite States, which raised serious problems when the former States had lost their international legal personality but retained a constitutional legal personality; and the case of total fusion, where the former States disappeared completely, even as separate constitutional and territorial entities.

54. Perhaps the best solution might be to prepare separate rules for each case. He suggested that the article be referred back to the Drafting Committee, with a broad mandate to consider a number of possibilities rather than to make an immediate choice between alternative A and alternative B. The Commission had not yet got to the root of the matter and there was still some spadework to be done, but it was better in the meantime that it should be done by the Drafting Committee than that the discussion should begin all over again in the Commission.

55. Mr. REUTER, referring to the Special Rapporteur's comments on the position he had adopted during the discussion,[19] said he wished to explain that he had not said that the solution of the problem of localized treaties depended on the choice made between alternative A and alternative B; what he had said was that the grounds on which the Commission chose one or the other had consequences for localized treaties.

56. It was quite possible to opt for alternative B and to have a good article on localized treaties. If the Commission categorically laid down the principle of State personality as an absolute rule in successions and accordingly preferred alternative B, that would lead to an unsatisfactory solution of the problem of localized treaties.

57. He realized that the difficulties involved were exceedingly complex, and he was prepared to consider any kind of compromise, but one element of the compromise must be the precise content of the article on localized treaties. A fairly broad definition of localized treaties would defuse the conflict between alternatives A and B. The Drafting Committee should therefore be given a broad mandate, as Mr. Ago had just suggested. Moreover, the Commission should not be asked to consider the Drafting Committee's text for article 19 in isolation; it should have before it all the texts, in order to see what could be saved of the treaties in force when fusion occurred. If the Commission was willing to accept a very broad formula for localized treaties, the problem of article 19 would be greatly simplified; if not, it would remain a very real one.

58. Mr. CASTAÑEDA said that during the discussion on the provisions of paragraph 1 (*b*) (ii) of alternative B, he had pointed out that the case envisaged in those provisions was very close to that contemplated in alternative A.[20] He hoped his comments on that point would be taken into account by the Drafting Committee.

59. Sir Humphrey WALDOCK (Special Rapporteur) said he fully agreed that it would be a mistake to regard the choice between alternatives A and B as a choice between an absolute "clean slate" rule and a rule of *ipso jure* continuity. There remained, however, a fundamental difference between alternative A and alternative B in that the first laid down the rule of *ipso jure* continuity, whereas the second embodied a solution based on consent.

60. Mr. USHAKOV said that the difference was that in alternative B the agreement of all the parties was required, whereas in alternative A, in the absence of express agreement, the treaty continued in force *ipso jure*. An express agreement was, however, always possible.

61. Mr. NAGENDRA SINGH said that he had no objection to article 19 being referred to the Drafting Committee, which was in a much better position to iron out the problems which had been raised during the discussion. He had, however, some misgivings regarding the suggested use of the term "unitary State". That term had a specific meaning in municipal constitutional law

[15] *Ibid.*, para. 63.

[16] *Ibid.*, para. 41.

[17] *Ibid.*, para. 45.

[18] *Ibid.*, paras. 20-28.

[19] See para. 45 above.

[20] See 1178th meeting, para. 75.

and was likely to create confusion, whereas the term "union of States" was to be found in every textbook of international law.

62. The CHAIRMAN, speaking as a member of the Commission, said that when he had referred to a "unitary State" he had meant a unified State.

63. With regard to the question of associated States, he understood that it required extensive treatment, and that could perhaps be given better in the commentary than in the article itself.

64. Speaking as Chairman, he said that, if there were no further comments, he would take it that the Commission agreed to refer article 19 to the Drafting Committee for consideration in the light of the discussion.

It was so agreed.[21]

ADDITIONAL ARTICLE FOR INCLUSION AT THE END OF PART II (Excursus A)

65. *Excursus A*

States, other than unions of States, which are formed from two or more territories

When a new State has been formed from two or more territories, not themselves States, treaties which are continued in force under the provisions of articles 7 to 17 are considered as applicable in respect to the entire territory of the successor State unless:

(*a*) It appears from the particular treaty or is otherwise established that such application would be incompatible with the object and purpose of the treaty;

(*b*) In the case of a multilateral treaty other than one referred to in article 7 (*c*), the notification of succession is restricted to the territory in respect of which the treaty was in force prior to the succession;

(*c*) In the case of a multilateral treaty of the kind referred to in article 7 (*c*), the successor State and the other States parties otherwise agree;

(*d*) In the case of a bilateral treaty, the successor State and the other States party otherwise agree. (A/CN.4/256/Add.1).

66. The CHAIRMAN invited the Special Rapporteur to introduce the additional article in excursus A of his fifth report (A/CN.4/256/Add.1).

67. Sir Humphrey WALDOCK (Special Rapporteur) said that he had explained in a fairly extensive commentary (A/CN.4/256/Add.1) his reasons for submitting an additional article to deal with States, other than unions of States, formed from two or more territories which prior to the union had not themselves been sovereign States.

68. The fundamental problem which arose was whether a distinction should be drawn between a union of States formed from two or more pre-existing sovereign States and a State, which could be either a unitary State or a federation, which was simply composed of territories. Even where the component territories had a distinct identity in the federal structure, no problem of international existence arose. He therefore believed that the case envisaged in his excursus A constituted merely a separate type of newly independent State and as such should be covered by an additional article to be included in part II of the draft.

69. Mr. SETTE CÂMARA said that he fully agreed with the Special Rapporteur's approach. The whole of the rationale for the rule in article 19, on unions of States, rested on the fact that such unions consisted of former independent sovereign States having each a patrimony of treaties which ought to continue in the interests of the other parties to the treaties and of the international community as a whole. A union of territories such as that envisaged in excursus A, on the other hand, fell within the principles of part II of the draft.

70. Mr. USHAKOV said that the proposed additional article was acceptable but might be unnecessary if the case of a State composed of two or more territories were included in the notion of newly independent State.

71. If the article was retained, it would be advisable to make a slight drafting change in sub-paragraph (*a*) so as to make clear the exact meaning of the words "such application".

72. He reserved his position with regard to the definition of the term "newly independent State".

The meeting rose at 1 p.m.

1180th MEETING

Thursday, 15 June 1972, at 10.15 a.m.

Chairman: Mr. Richard D. KEARNEY

Present: Mr. Ago, Mr. Alcívar, Mr. Bartoš, Mr. Bilge, Mr. Castañeda, Mr. Hambro, Mr. Nagendra Singh, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Reuter, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock.

Succession of States in respect of treaties

(A/CN.4/202; A/CN.4/214 and Add.1 and 2; A/CN.4/224 and Add.1; A/CN.4/249; A/CN.4/256 and Add.1 and 2)

[Item 1 (*a*) of the agenda]

(continued)

EXCURSUS A—ADDITIONAL ARTICLE FOR INCLUSION IN PART II (States, other than unions of States, which are formed from two or more Territories) *(continued)*

1. The CHAIRMAN invited the Commission to continue consideration of excursus A, the additional article for inclusion in Part II, submitted by the Special Rapporteur in his fifth report (A/CN.4/256/Add.1).

2. Mr. TAMMES said that, when he had spoken on article 19 at a previous meeting, he had made some very general and preliminary remarks with regard to excursus A.[1] Its structure was similar to that of alternative A for article 19, in that a presumption was laid down in favour of the application of the treaty to the whole territory, unless it was otherwise agreed by the interested

[21] For resumption of the discussion, see 1196 th meeting, para. 38.

[1] See 1178th meeting, para. 19.