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First Report on Succession of States in respect of rights and duties resulting from sources other than treaties, by Mr. Mohammed Bedjaoui, Special Rapporteur

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I. Introduction

1. In the League of Nations Committee of Experts for the Progressive Codification of International Law, set up in 1924, Professor De Visscher vainly requested that the question of the succession of States and Governments, which had often arisen in international relations during the period between the two World Wars, should be included in the list of topics for codification.[1]

2. The United Nations later acknowledged that the problem "would seem to deserve more attention in the scheme of codification than has been the case hitherto".[2] Consequently, following a request by Mr. Alfaro, Mr. Cordova, Mr. François and Mr. Scelle, the question was included among those which the International Law Commission decided to study at the time of its establishment. At the first session, in 1949, the question was included in the provisional list of topics for codification; it was the sixth of the twenty-five topics which made up the Commission's programme of work, and the second of the fourteen topics provisionally chosen by the Commission from that list of twenty-five.[3]

3. Subsequently, owing particularly to the emergence of many new States on the international scene, the United Nations expressed the hope that the International Law Commission would, as a matter of urgency, study the problem of the succession of States and Governments. At the thirteenth session of the Commission, Mr. Bartoš, Mr. Padilla Nervo, Mr. Pal, Mr. Tunkin and Mr. Zourek requested the codification of the topic.[4] Eight Governments expressed themselves in favour of such a study.[5] The Sixth Committee was of the same opinion, and finally, in its resolution 1686 (XVI) of 18 December 1961, the General Assembly recommended that the International Law Commission should "include on its priority list the topic of succession of States and Governments".

4. In fact, the Commission decided unanimously at its fourteenth session to include the topic on its priority list. At its 637th meeting, on 7 May 1962, it set up a Sub-Committee—composed of Mr. Lachs (Chairman), Mr. Bartoš, Mr. Briggs, Mr. Castrén, Mr. El-Erian, Mr. Elias, Mr. Liu, Mr. Rosenne, Mr. Tabibi and Mr. Tunkin[6]—to prepare a preliminary report containing suggestions on the scope of the subject, the method of approach for a study and the means of providing the documentation.

5. At its 668th meeting, on 26 June 1962,[7] the Commission adopted the Sub-Committee's suggestions, namely:

(i) that the Sub-Committee should meet in January 1963 to proceed with its work;

(ii) that each member of the Sub-Committee should prepare a report on the problem and its Chairman a report on the results achieved for submission to the next session of the Commission; and

(iii) that the United Nations Secretariat should be requested to undertake a number of studies.[8]

6. In its resolution 1765 (XVII) of 20 November 1962, the General Assembly, noting that, as regards State responsibility and the succession of States and Governments, the International Law Commission, in order to expedite its work, had established two sub-committees, which were to meet at Geneva in 1963, recommended that the Commission should continue its work on the succession of States and Governments, taking into account the views expressed at the seventeenth session of the General Assembly and the report of the Sub-Committee on the Succession of States and Governments, *with appropriate reference to the views of States which had achieved independence since the Second World War.*

7. At its 702nd meeting, the Commission discussed the report of the Sub-Committee,[9] submitted in 1963, and considered that the priority given to the study of the question of State succession was fully justified, the succession of Governments at that stage being considered only to the extent necessary to supplement the study on State succession. Several members stressed the need to give special attention to the problems of concern to the new States, in view of the modern phenomenon of decolonization.

8. The Commission approved the objectives of the work as proposed by the Sub-Committee. It decided that the question of State succession called for an evaluation of the present state of the law and practice of States and the preparation of draft articles on the topic in the light of new developments in international law.

9. Succession in the matter of treaties was to be con-

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[1] League of Nations, Committee of Experts for the Progressive Codification of International Law, first session, second meeting, pp. 10-13.

[2] *Survey of international law in relation to the work of codification of the International Law Commission*, p. 29.

[3] *Yearbook of the International Law Commission, 1949*, document A/925, paras. 15 and 16.

[4] *Yearbook of the International Law Commission, 1961*, vol. I, pp. 210-223.

[5] Replies submitted in 1961 to the sixteenth session of the General Assembly by Austria (A/4796/Add.6), Belgium (A/4796/Add.4), Ceylon (A/4796/Add.8), Ghana (A/4796/Add.1), Mexico (*ibid.*), the Netherlands (A/4796/Add.7), Venezuela (A/4796/Add.5) and Yugoslavia (A/4796) (see *Official Records of the General Assembly, Sixteenth Session, Annexes*, agenda item 70).

[6] *Yearbook of the International Law Commission, 1962*, vol. I, p. 45.

[7] *Ibid.*, pp. 266 and 267.

[8] These studies were prepared and submitted to the Commission in 1963; they consisted of (*a*) a memorandum on the problem of succession in relation to membership in the United Nations; (*b*) a memorandum on the succession of States in relation to general multilateral treaties of which the Secretary-General is the depositary; and (*c*) a digest of the decisions of international tribunals relating to State succession (see *Yearbook of the International Law Commission, 1962*, vol. II, document A/CN.4/149 and Add.1, pp. 101-151). The Secretariat subsequently prepared a digest of decisions of national courts relating to succession of States and Governments (see *Yearbook of the International Law Commission, 1963*, vol. II, document A/CN.4/157, pp. 95-150).

[9] *Yearbook of the International Law Commission, 1963*, vol. II, document A/5509, Annex II, pp. 260-300.

sidered in connexion with the succession of States rather than in the context of the law of treaties. It was decided to co-ordinate the work of the Special Rapporteurs on the law of treaties, State responsibility and the succession of States, in order to avoid any overlapping in the codification of the three topics.

10. The Commission appointed Mr. Manfred Lachs as Special Rapporteur on the topic of the succession of States and Governments, after having approved the report of the Sub-Committee, which proposed a broad outline, a detailed division of the topic and an order of priority for the headings.[10] It was thus agreed that the subject should be divided into three main headings:

(i) Succession in respect of treaties;

(ii) Succession in respect of rights and duties resulting from sources other than treaties;

(iii) Succession in respect of membership of international organizations.

11. The Sixth Committee approved the International Law Commission's decision to give priority to the succession of States and not to deal with the succession of Governments for the time being, and its decision that succession in relation to treaties should be studied first, as part of the succession of States, in order to complete the work on the codification of the law of treaties.[11] Many members pointed out once again that the topic was particularly important for newly independent States, and said that the problem should thus be studied not merely with regard to the traditional practice of States but also, and principally, in the light of the principles of the Charter and the situation created by the disappearance of the colonial system.

12. In its resolution 1902 (XVIII) of 18 November 1963, the General Assembly, noting that the work of codification of the succession of States and Government was proceeding satisfactorily, as set forth in chapter IV of the report of the Commission, recommended that the Commission should "continue its work on the succession of States and Governments, taking into account the views expressed at the eighteenth session of the General Assembly, the report of the Sub-Committee on the Succession of States and Governments and the comments which may be submitted by Governments, *with appropriate reference to the views of States which have achieved independence since the Second World War*".

13. Since the term of office of all its members was due to expire in 1966, the International Law Commission decided in 1964 to devote its 1965 and 1966 sessions to completing its current studies of the law of treaties and special missions. The question of the succession of States and Governments would be dealt with as soon as the aforementioned studies and the study of relations between States and inter-governmental organizations had been completed.[12]

14. Mr. Manfred Lachs, Special Rapporteur on the Succession of States, having been elected to the International Court of Justice in December 1966, the Commission, which had in the meantime completed its study of the law of treaties and had almost completed its study of special missions, considered at its nineteenth session new arrangements for dealing with the succession of States. It adopted the suggestion made by Mr. Lachs in 1963 that the topic should be divided among more than one Special Rapporteur. It therefore decided, on the basis of its 1963 decision to divide the topic into three main headings, to entrust the study of succession in respect of treaties to Sir Humphrey Waldock, Special Rapporteur on the law of treaties, who was particularly well-qualified to deal with that heading, which continued and supplemented the topic for which he had previously been responsible. Since a United Nations Conference on the Law of Treaties was to be convened at Vienna in 1968 and 1969, the Commission decided that the succession of States in respect of treaties should be given priority, and taken up at its twentieth session, in May 1968.

15. The second heading, "Succession in respect of rights and duties resulting from sources other than treaties" was entrusted to Mr. Mohammed Bedjaoui. The International Law Commission requested him to prepare a "preparatory study" on this "diverse and complex" aspect of the topic, and "to present an introductory report which would enable the Commission to decide what parts of the subject should be dealt with, the priorities to be given to them, and the general manner of treatment".[13]

16. The third heading, succession in respect of membership of international organizations, was left aside for the time being, for it was related both to succession in respect of treaties and to relations between States and inter-governmental organizations.

17. These decisions of the International Law Commission were approved by the Sixth Committee and the General Assembly, which, at its twenty-second session, in resolution 2272 (XXII) of 1 December 1967, recommended that the work should be continued, taking into account the views and considerations referred to in General Assembly resolution 1765 (XVII) and 1902 (XVIII) . . .".

II. Scope of the subject

18. This report deals with a limited aspect of the topic. It does not deal with the question of the succession of Governments, the latter having been excluded from the current work programme of the International Law Commission, which decided in 1963 that priority should be given to the succession of States and that the succession of Governments should for the time being be considered only to the extent necessary to supplement the study on State succession. Nor does it deal with succession in respect of treaties, which has

[10] *Ibid.*, document A/5509, pp. 224 and 225, paras. 56-61.

[11] See *Official Records of the General Assembly, Eighteenth Session, Annexes*, agenda item 69, document A/5601, para. 28.

[12] *Yearbook of International Law Commission, 1964*, vol. II, document A/5809, p. 226.

[13] *Yearbook of the International Law Commission, 1967*, vol. II, document A/6709/Rev.1 and Rev.1/Corr.1, p. 368, para. 40.

been entrusted to another Special Rapporteur, or with succession in respect of membership of international organizations, which has been left aside for the time being. The report deals only with succession in respect of rights and duties "*resulting from sources other than treaties*".

19. This definition of the subject, however, does not eliminate all ambiguity. By referring to the criterion of sources, a distinction may be drawn between conventional succession and non-conventional succession, i.e., between succession resulting from treaties and succession "resulting from sources other than treaties". By adopting the criterion of the *subject-matter of the law of succession,* on the other hand, a distinction may be drawn between succession in respect of treaties and succession in respect of matters other than treaties (public or private property, debts, legislation, nationality, territorial rights, etc.). However, the headings adopted are (i) succession in respect of treaties and (ii) succession in respect of rights and duties resulting from sources other than treaties; thus, treaties are regarded as a subject matter of the law of succession in the first heading and as an instrument of that law in the second. A combination of two different criteria has thus been used, so that the whole lacks homogeneity. If the wording "succession . . . resulting from sources other than treaties" were interpreted literally, the study would have to be envisaged as dealing only with problems of succession not regulated by treaty. That would mean excluding problems relating to private property, debts, public property, acquired rights, etc., which have been regulated by treaty, and would preclude not only the examination of treaties regulating these matters, but also a survey of the practice and judicial precedents of States. In the final analysis, the subject would seem to be impracticable on the basis of the present wording.

20. The Special Rapporteur considers that the criterion of sources is not helpful in the present case. It is probably not very feasible to divide the subject by making a distinction between succession regulated by treaties and succession regulated by sources other than treaties. That would oblige the first Special Rapporteur to study not succession *in respect* of treaties but succession *resulting from* treaties, while the second Rapporteur would be forced to exclude customary sources or judicial precedents if they referred to treaties. It is, of course, important to answer the basic question of what has generally been done and what should normally be done when succession is not regulated by treaty. However, the Special Rapporteur does not think that the Commission really intended him to examine succession resulting *stricto sensu* from sources other than treaties. Although the question of non-conventional succession is of considerable theoretical interest, its practical interest is somewhat limited, for situations are being regulated increasingly by agreements even when succession is the outcome of a rupture following tension.

21. The criterion of *subject-matter* seems to be the most useful, and in any case seems to be indicated by the spirit prevailing during the work of the Sub-Committee in 1963 and the work of the Commission itself. The Special Rapporteur will accordingly apply the criterion of succession according to subject-matter and not that of succession according to source, despite the excessively precise definition of the subject. In order to remove his uncertainty, however, it would be desirable for the Commission, at its twentieth session, to take a decision on the problem in order to redefine the subject, indicating whether it in fact intends to examine "succession in respect of matters other than treaties" and not "succession not regulated by treaties".

22. This report is also limited by the nature of the task entrusted to the Special Rapporteur by the International Law Commission, which instructed him to undertake a "preparatory study" and to present an introductory report on the question at its twentieth session, in 1968. According to the Special Rapporteur's terms of reference, this introductory report should enable the Commission "to decide what parts of the subject should be dealt with, the priorities to be given to them, and the general manner of treatment".

23. Since he was called upon to undertake a preparatory study that would delimit the problem and define its various aspects with a view to the subsequent establishment of an order of priority, the Special Rapporteur felt that it would be inconsistent with his terms of reference if at the present stage he were to study the topic itself, summarize the literature and make a systematic analysis of the question. In his view, his terms of reference precluded an examination of the substance of the problems involved. Clearly, however, the delimitation of the subject, the approach to be taken to it and the choice of matters to be studied will undoubtedly lead the Commission to undertake a discussion from which questions of substance cannot be excluded. In preparation for that discussion, the Special Rapporteur therefore considered it useful occasionally to devote some attention to substance in the report.

24. The Commission has already considered the earlier work on the subject undertaken by some of its members or former members in 1962 and 1963, and has approved the first approaches to the problem, which have served as a point of departure for this report.

25. One question discussed in the Sub-Committee was not included in the list of matters to be dealt with, namely, adjudicative procedures for the settlement of disputes arising from the succession of States. By approving the Sub-Committee's report, the International Law Commission seems to have indicated that it did not wish to concern itself with that question. However, the Acting Chairman of the Sub-Committee, with the approval of its members, appears to have left the Special Rapporteurs free to discuss it if they deem it necessary. It is true that the question is important and should not be ignored. It is even more true, however, that it impinges on a specific branch of international law, namely the peaceful settlement of international disputes by judicial means. The problem of State succession is complex enough to justify an attempt to limit the topic as much as possible rather than to broaden it, at least in the initial phases of the Commission's work. The Special Rapporteur, while con-

sidering that the question should be mentioned again in order to stress its importance, therefore deems it advisable to propose that the Commission should postpone consideration of the question and examine it in a more appropriate context, namely, in connexion with the wider field to which it relates.

26. The problems of the *origin* of succession are not specifically entrusted to either Special Rapporteur. More precisely, examination of these problems as such as a separate heading would appear to be strictly excluded from each Special Rapporteur's terms of reference. However, the rules regulating succession vary considerably according to the origin of the succession, which seems to introduce so many elements of diversification into the forms of succession law that State succession changes not only in *degree* but also in *nature* according to its origin. Origin thus provides a means of drawing fundamental distinctions and not merely a means of making secondary classifications. Possible variations in the rules defined may, of course, be studied in connexion with the succession of States to treaties, as in connexion with succession to debts and to property. In fact, however, these differences are so great that they are no longer variations but "novations", indicating the *evolution* in State succession which has occurred as a result of the phenomenon of decolonization. The origin of succession may all the more justifiably be taken as the required point of departure for the classification of forms of succession because the General Assembly resolutions seem in some respects to refer to it by contrasting traditional succession with succession resulting from decolonization, to the study of which the Assembly wishes special attention to be paid.

III. Methods of work

27. A question which in some respects impinges on the methods of work and concerns all the matters to be dealt with by the various Special Rapporteurs relates to the choice which must be made between the technique of codification and the technique of progressive development of international law. In its resolutions 1765 (XVII) of 20 November, 1962 and 1902 (XVIII) of 18 November, 1963, the General Assembly, on the Commission's recommendation, seems to have opted for codification. The aim would thus be mainly, if not exclusively, to analyse the practice of States and bring out the rules on which it is certainly based, in order to codify them and set them down in draft articles. There would be no question of creating new rules, or of taking the uncontested practice of States as a basis for projecting into the future the elements of solutions which it contains and amplifying them with a view to the progressive development of international law.

28. Although the variety of rules and the complexity of situations, the multiplicity of solutions and the diversity of forms of succession may seem to call for codification strictly in accordance with uncontested practice, the Special Rapporteur does not know whether the Commission will be able to maintain this attitude of rigorous respect for practice. Indeed, it might equally well be contended that because practice is inconsistent it should to some extent be "by-passed". Its contradictory aspects would probably make it very difficult, if not impossible, to reduce it to common denominators which would constitute its basic rules. It will no doubt be advisable to extrapolate a little from practice, i.e., to furtther the progressive development of international law, in order to achieve appropriate systematization of the subject.

29. General objections have already been made to this method. For example, one representative has stated that "Progressive development should be based on the foundation of known and accepted rules of international law, which are themselves ripe for codification. The International Law Commission should not be called upon to create new law under the guise of progressive development where the subject is so novel that it is a matter for agreement between States rather than for progressive development based on codification of existing rules".[14] However, it is precisely because the General Assembly and the International Law Commission are not international legislative bodies imposing legal norms, but organs which may propose new rules for acceptance by States, that international law, which can only be progressively developed by incorporating those new rules, will be a body of law based on the agreement of States in relation to a set of norms known and accepted by them to a greater extent than traditional law, in whose formulation most existing States took no part.

30. It may be wondered—especially in the case of State succession resulting from decolonization—whether the codification of traditional rules which already seem obsolete and would limit the value of the work should not be accompanied by some attempt to further the progressive development of international law. International ethics necessitate such a course, and also the difficulty of deducing from a practice which is inconsistent enough basic rules to justify codification. The matter itself and the practice to which it has given rise, with all uncertainties, would seem to call for both codification *and* progressive development of international law, as Professor Bartoš has observed.[15] It is essential to harmonize practice by basing it on legal constructions embodying to the maximum extent possible the present trends of international law, the principles of the Charter, the right to self-determination, sovereign equality, ownership of natural resources, etc.

31. Many representatives at the United Nations and some members of the International Law Commission have in fact stated that they consider it desirable, indeed essential, to study the problem of State succession—and especially the problem of succession in respect of matters other than treaties—in a new spirit.[16] At the United

[14] See *Official Records of the General Assembly, Sixteenth Session, Annexes*, agenda item 70, document A/4796, p. 8.

[15] See summary record of the sixth meeting of the Sub-Committee on Succession of States and Governments, reproduced in the *Yearbook of the International Law Commission, 1963*, vol. II, document A/5509, Annex II, p. 273.

[16] For example, the representative of the Byelorussian Soviet Socialist Republic stated that "...the twentieth century had been characterized by the elimination of colonialism and the

Nations, the majority considered that the experience of the new States should be taken into account during the examination of the question. The need to safeguard the sovereignty of those States, particularly in connexion with their natural resources, should be borne in mind.[17] It was felt that the topic should be codified not with reference to the traditional rules of international law but in the light of recent sociological progress in the international community.[18] In fact, the General Assembly requested in its resolution 1765 (XVII) of 20 November 1962 that the question should be approached "with appropriate reference to the views of States which have achieved independence since the Second World War". In a resolution adopted the following year (resolution 1902 (XVIII) of 18 November 1963), the General Assembly amended the text slightly but retained its spirit, since it mentioned "appropriate reference to the views of States which have achieved independence since the Second World War". The latest General Assembly resolution on the subject (resolution 2272 (XXII) of 1 December, 1967) recommends that the International Law Commission should continue its work on succession of States "taking into account the views and considerations referred to in General Assembly resolutions 1765 (XVII) and 1902 (XVIII)". The various positions may be summed up thus, in the words of the Sixth Committee: "The majority emphasized the special importance which the topic now had for the new States which attained independence since the Second World War as a result, of the abolition of colonialism, and held that the Commission should pay particular attention to the practice followed and the experience acquired by these new States. Other representatives pointed out that the topic concerns all States, including States not concerned with the elimination of the colonial system".[19] In its report to the General Assembly at its twenty-second session on agenda item 85, the Sixth Committee again noted that the topic of State succession was "of considerable importance to developing States".[20]

32. These recommendations are binding on the International Law Commission and throw light on the search for a method of work. Among the various cases of State succession, particular attention should be paid to those resulting from decolonization. If, within the framework of this method of work, forms of succession are classified according to type, this will also provide an opportunity to establish an order of priority. Priority should be given to succession resulting from the elimination of colonialism, rather than to succession of the traditional type. For this reason, the Special Rapporteur considers that the problem of the *origin* of succession has an important bearing on the study of the problem.[21]

33. The study of the succession of States in fields other than treaties calls for a thorough examination of international practice and judicial precedents. For methodological reasons, however, it is essential to determine exactly what is meant by "*international practice*" in this context. In the case of decolonization, for example, the question is whether State succession should be codified on the basis and at the time of the agreements concluded between the former metropolitan country and the former colony, or on the basis of the inevitable development which sooner or later takes place in the relations between the two countries. There is always a general tendency, which varies in speed and scope from case to case, for those relations to deteriorate or to be readjusted on the basis of greater equality and greater respect for the sovereignty of the new State.

34. Efforts should not be limited to codifying solutions provided by texts which have fallen into disuse, much less those derived from texts which have remained a dead letter, for that would not be a faithful reflection of actual international practice. The texts governing succession to property, debts, legislation, etc., may never have been applied, may have lapsed after a certain time, or have been speedily denounced by one of the parties or revised by agreement. The continuity theoretically set forth in the texts may have been replaced in practice by rupture. For example, some agreements never come into force. The Joint Declaration of 28 April 1954 and the draft Treaty of Independence and Treaty of Association of 4 June 1954 between Viet-Nam and France were not even signed. The Franco-Guinean agreements of 5 January 1959 were never applied. The Joint Franco-Moroccan Declaration of La Celle-Saint-Cloud of 6 November 1955, organizing the famous "independence within interdependence", was supposed to constitute an indivisible whole, but was in fact divided into two phases (first independence, which was attained, then interdependence, which was never established) and thus lost its meaning. In the confusion and serious disturbances which followed the attainment of independence by the Democratic Republic of the Congo, nothing remained of the work of the first and second Brussels Round Tables of 1959 and 1960, at which independence had been organized. Other agreements soon fell into disuse. The 1949 Round-Table Conference Agreement between the Netherlands and Indonesia[22]

appearance of a large number of new States whose development depended upon the solution adopted in the question of the succession of States. International practice was not the only criterion to be taken into consideration" (*Official Records of the General Assembly, Eighteenth Session, Sixth Committee*, 791st meeting, para. 11).

[17] *Official Records of the General Assembly, Seventeenth Session, Annexes*, agenda item 76, document A/5287, para. 49.

[18] See the comments of Austria in *Official Records of the General Assembly, Sixteenth Session, Annexes*, agenda item 70, document A/4796/Add.6, and the comments of Yugoslavia: "... The role of international law should in fact be to ensure that the powerful new trends in world affairs evolve in the sense indicated by the Charter of the United Nations" (*ibid.*, document A/4796).

[19] *Official Records of the General Assembly, Seventeenth Session, Annexes*, agenda item 76, document A/5287, para. 48. The last sentence explains why the General Assembly decided that "appropriate reference" should be made to the practice of new States.

[20] *Official Records of the General Assembly, Twenty-second Session, Annexes*, agenda item 85, document A/6898, para. 83.

[21] See above, para. 26.

[22] United Nations, *Treaty Series*, vol. 69, p. 200.

lapsed long before it was officially denounced by the Indonesian Government. The co-operation conventions between France and the Federation of Mali concluded in April 1960 met the same fate following the dissolution of the Federation. The dissolution of Indonesia's union with the Netherlands on 13 February 1956 and the abrogation of its indebtedness to that country on 6 August 1956, the withdrawal of Viet-Nam, Morocco, Tunisia and, in some respects, Algeria from the franc area, and the termination of the Franco-Viet-Namese Economic Convention of 30 October 1955 provide examples of the denunciation of agreements. The return of military bases before the date fixed upon, the revision of the public debt, the re-examination of agreements relating to State territory, the arranging of supplementary transfers of property, etc., represent fairly common cases of bilateral revision of agreements regulating State succession.

35. Since decolonization is a phenomenon that tends to rapid development and the relations between the former metropolitan country and the new State may very soon become different from what they should have been if the agreements had been respected for a long time, the *International Law Commission should not concern itself with abortive or precarious solutions.*

36. Although the Commission has in the past adopted the wisely pragmatic practice of not deciding in favour of a draft convention or a code until the work was completed, it nevertheless seems that if in this case it could take a decision at the outset, it would in some ways facilitate and orient research into this very complex matter. Furthermore, it could perhaps be argued that the problem has already been solved by the Commission, which, after having prepared a draft convention on the law of treaties, is about to complete it, probably by using the same formula, i.e., by preparing draft articles on the supplementary question of the succession of States in respect of treaties. The fact that the convention formula was used for the law of treaties doubtless does not compel the Commission to use it for the succession of States, but it would nevertheless seem to point the way quite naturally to that solution.

37. According to one view, the preparation of a draft multilateral convention would be inappropriate for this topic, mainly because the latter does not concern all States but only former metropolitan States and former colonies. On the other hand, it may be contended: (*a*) that such States already constitute a majority in the international community; (*b*) that State succession may affect the rights and obligations of other States, in addition to those of former colonial Powers and former colonial territories; (*c*) that new States should be given the maximum opportunity to discuss the rules of international law, since they complain that they played no part in their formulation in the past; and (*d*) that State succession does not result exclusively from decolonization, which concerns only a limited number of States, but results also, for example, from merger, which may concern any State, especially in the present era, in which efforts are being made to establish large, politically integrated units.

38. Since the General Assembly resolutions recommend that the problems of State succession should be examined in the light of the interest taken in them by the new States, or more precisely in the light of their importance for the development of those States, this factor must be taken into account in the methods of work, the delimitation of the questions to be studied and the order of priority to be established. The International Law Commission seems to be invited to accord less importance to the traditional problems of succession than to the more modern problems resulting from decolonization. It is, however, essential to begin by making a rough classification of the various types of succession, in order better to appreciate the differences between them.

IV. Types of State succession

39. The classification which we are trying to establish here does not have the virtues of absolute rigour, and is not even completely orthodox. It is designed only to bring out—by magnifying or even caricaturing the facts—the marked differences between traditional succession and modern succession. The necessary nuances will be introduced later.

40. As a temporary definition, for the convenience of simple classification, the succession of States may be classified in three general types: "dismemberment", "decolonization" and "merger". Schematically, it could be said that the first refers to the past, the second covers the present and the third looks to the future.

41. If the term "dismemberment" is held to apply to any phenomenon which alters the geographical dimensions of two or more neighbouring States (by one State's annexing part of the other's territory, or by cession, or as the result of a plebiscite or a boundary rectification), it covers all the hypothetical cases of *traditional State succession.* Generally speaking, it does not involve the establishment of a new State—although the plebiscite, for example, may have that result—but the redistribution of territory within a region. Usually, too, the region itself is one that can be considered relatively "homogeneous" in levels of living and civilization (as in the case of the succession of States in Europe, for instance). Without necessarily being identical, the juridical orders of the countries concerned are substantially the same. The inhabitants of the piece of territory affected by succession were citizens of one country and become *citizens* of the same class of the other country (subject to various option rights). In principle, acquired rights are respected. The application of the principle of unjustified enrichment makes it possible to transfer to the acquiring State the encumbrances on the assets left by the ceding State. This hypothetical case, which continues to occur in practice from time to time, nevertheless represents a case of traditional State succession, for which a number of rules governing the matters other than treaties covered by the present report have been brought out on the basis of doctrine, precedent and State practice. It is one of the hypothetical cases relating to the *past,* when State succession, although regulated in some areas by the prin-

ciple of *tabula rasa,* was governed mainly by the principle of legal continuity and stability.

42. The hypothetical cases relating to the *present,* on the other hand, are regulated by the opposite principle of *rupture and change,* except for some important nuances. These cases of succession result from decolonization and, unlike the previous cases, involve the creation of a State. The new entity is under-developed; its level of living and degree of civilization differ from those of the former metropolitan country, and it seeks to become stronger. The juridical orders of the two countries are not identical and are sometimes not even comparable, although the former metropolitan country may have introduced some similarities, especially in former settler colonies. The legal status of the inhabitants of the new State changes from that of colonized persons to that of citizens. The relationship based on domination is dissolved, and the principle of succession does not apply to those components of the former juridical order which reflect that relationship. Since emancipation *ex hypothesi* involves a change in political, economic and social aims within the territory, it normally constitutes a hiatus, a break in continuity, especially since in many cases independence is achieved after a long period of very tense relations with the colonial Power.

43. In such cases the traditional rules can be applied only partially, if they can be applied at all. The principle of unjustified enrichment, the principle of respect for rights acquired by individuals in good faith, and the principle that public property cannot be transferred without valuable consideration correspond very little or not at all to the situation resulting from decolonization.

44. In general, the new State considers that since these principles regulate situations radically different from its own they are not enforceable against it or applicable to it. Having been subjected to a period of domination during which its own property and that of its nationals were not consistently or completely protected, but were, on the contrary, often confiscated at the time of conquest by the colonial Power and its nationals, the new State tries to translate into legal terms its need to recover fully everything it considers it lost through colonization, and usually refuses to grant any indemnity or assume responsibility for any liabilities.

45. It views the co-operation entered into with the former metropolitan country in various fields mainly as a set of advantages which it accepts, as it were, as a reparation due to it for the exploitation it has suffered, while the former colonial Power regards that co-operation—and this is indeed one purpose of the institution—as a technique for ensuring the legal continuity of situations where rupture is thought to be prejudicial to its material interests or moral influence.

46. The third possible type of State succession involves us in what might be called a kind of "legal futurism". This possibility is merger, which has, of course, occurred often in the past but which seems above all to be the form of the future, of the era of groupings and large political aggregations. The history of mankind has seen the age of nationalism, which is gradually making way for the age of integration. It is probably not so much the dying phenomenon of decolonization as the emerging phenomenon of integration which will characterize the future of our planet and pose problems of State succession.

47. In the case of mergers, these problems cannot be solved simply by applying the principles governing either of the first two hypothetical cases. The legal system applicable to the third case will be drawn from both the others. A merger generally takes place between two political entities at approximately the same level of political and social development (otherwise it would be but another manifestation of colonialism). The inhabitants, who are not linked in any relationship of subordination or domination, become citizens of the new entity after being citizens, in like manner, of one of the two other entities. Like dismemberment (as defined above), merger or integration involves homogeneous and substantially comparable social bodies. The acquired rights of the citizen of the new State are respected. Reparation or recovery of lost assets is not involved. The two merging States have decided to join forces in the future and the liabilities of each are fully assumed by the new political entity they have created. Similarly, integration will draw some of its rules from those applicable to cases resulting from decolonization. Since a merger reflects a desire to pursue a common destiny, all the assets of the two former entities are transferred to the new third entity and clearly no valuable consideration need be involved. These are, in broad outline, the three modes of succession. It can be seen that the origin of State succession has a definite influence on the formulation of rules to govern the matter.

48. If the Commission, in order to comply with the wish expressed by the General Assembly, decides to devote somewhat less attention to past forms of succession ("dismemberment") and more attention to succession as a result of decolonization, which could, moreover, be given priority over what we have called the forms of the future ("integration" or "merger"), a more detailed study should be made of the problems of the newly independent States in order to elaborate on the first rough classification. It will then be possible to make an inventory of the problems of these new States and to establish priorities.

V. The specific problems of new States

49. In the case of the countries created by the abolition of the colonial régime, the mode of State succession —to both assets and liabilities—varies very considerably. There may be continuity and rupture in the same State, depending on the issue and the time. If we seek the reasons for this, we find that various factors, sometimes working against each other, determine how the problems of State succession are solved. Because of these variables, the solutions adopted vary from case to case, from country to country. We shall then see how State succession is organized—what procedures and techniques of accommodation are used—before con-

sidering how international law can protect the new States and classifying the problems facing them.

(a) *Decolonization: continuity and rupture*

50. Is the former metropolitan Power an example to be followed or a model to be rejected? Is the former dependence still considered a challenge or as something to be avenged, or is it seen as an example to be followed and imitated? Will the new State remain for ever a *"trainee State"* in the international community or will it quickly establish its sovereignty? A study of the problems of the succession of States in respect of matters other than treaties shows that often all these questions can be answered in the affirmative, to varying degrees. In the new relationship established between the former metropolitan country and the former dependency, there is a general effort to maintain preferential ties and an opposite and equally strong tendency to loosen them. In fact, it is not a question of rupture or continuity but, in each country, of periods of continuity and series of ruptures, depending on the sphere of interest involved. *Neither tendency—preservation or rejection of the heritage—prevails to the exclusion of the other in the new State.* The two tendencies always coexist. Because the situations vary so greatly and in many cases evolve so rapidly, it is difficult to make comparisons and dangerous to systematize.

51. Individual attitudes vary considerably: *ties may be sought, in some cases, accepted in others, some may be tolerated, yet others rejected.* In some spheres, co-operation hastily accepted as a necessity is soon considered a servitude. Some ties are held incompatible with political sovereignty (in military, diplomatic or police matters) or economic sovereignty (for example, in monetary matters). Everything depends, in the individual country, on various factors which will be analysed below. Indeed, it cannot be said that continuity necessarily means neo-colonialism or rupture, true independence.[23]

52. Generally speaking, *the marks of domination are less quickly erased from economic than from political relations.* In theory, therefore, continuity is more perceptible and real, and succession more clearly marked, in the economic sphere. Political relations are not affected in the same way by decolonization. Succession is more acceptable for the administrative institutions than for the constitutional machinery. The habits, official routine and technical nature of administrative institutions make them less vulnerable to the changes wrought by decolonization. Those institutions, the civil service, the administrative law and sometimes even the staff are not affected by the change. This must be slightly qualified, however, in the case of the judicial administration, which is somewhat more sensitive to decolonization, possibly because the judicial power is the manifestation within the State of its newly acquired national sovereignty[24] and because the judicial institutions are not always appropriate to the needs of the new State, particularly as regards procedure.

53. One remark may be made in passing, to contrast State succession with the comparable institution in private municipal law and provide yet another reason for not using the term "succession". In matters of inheritance, under private law, the *de cujus* no longer has a physical existence or patrimony. He has not simply undergone certain changes; he has completely disappeared. This is not so in the case of succession as a result of decolonization. The ceding Power remains, although its patrimony has been altered. The problem of State succession thus concerns both the successor State and the ceding State. By its withdrawal, voluntary or imposed, the latter exposes itself to the effects of succession in various spheres—the same spheres as those in which the successor State is affected. The former colonial Power's economic situation, its constitutional and political order, its legislation, etc., are all involved.[25] It may have commitments towards its nationals whom it has repatriated from the dependency and who make various claims against it or seek comprehension for property transferred to the successor State or "acquired rights" which the latter does not recognize. This involves certain aspects of international law and, similarly, third parties whose property or interests are affected may invoke the international responsibility of the ceding State, with all the difficulties that that entails.

(b) *Factors making for continuity or rupture*

54. (i) *The legal status of the territory, the method of administration and the form in which the colonial Power manifests its presence* are all factors which influence the manner in which the problems of State succession in respect of matters other than treaties are solved. The solutions vary, depending on whether the territory concerned is a protectorate, a dominion or an integrated overseas department and whether it has been maintained as a dependency for strategic purposes, for settlement or for development. The Latin spirit of assimilation and the Anglo-Saxon fondness for local self-government influence State succession in different ways. The legal status of the former dependency is a factor in determining the arrangements for the transfer in particular.

55. At this point a qualifying remark should be made,

[23] After the Geneva Agreements of July 1954 on Indo-China, the Government of South Viet-Nam made a spectacular break with the former metropolitan Power and established very close relations with another Power.

[24] This has not prevented a higher metropolitan authority from supervising the administration of justice in a new State. Like Malaya, Ceylon and other Commonwealth countries, Ghana in its 1957 Constitution accepted the jurisdiction of the Judicial Committee of the Privy Council of the British Crown as the highest appelate court in a number of cases. In addition, a number of former French dependencies (Maghreb States and States of Indo-China) have reverted to the old system of capitulations, French nationals being tried in courts which are presided over by one or more French judges and in which the French language is used.

[25] A recent example was the Commonwealth Immigrants Act passed by the United Kingdom Parliament on 1 March 1968 restricting entry into the United Kingdom by British subjects of Indian origin resident in Kenya.

which is relevant to the problem under consideration. It was an over-simplification to say, as we did, that decolonization results in the creation of new States. Actually, in some cases the entities involved may not be *States* and in others may not be *new* States. State succession may occur, particularly in respect of matters other than treaties, when the State does not yet enjoy full international capacity. The succession may be open and organized, for example, on the basis of local self-government or membership of a commonwealth or of a political community created by the former metropolitan Power. Alternatively, the successor States are sometimes mandated or Trust Territories or protectorates recovering their full international sovereignty. Before they regained their full independence, they were consistently regarded in theory and in practice as States. These are not, therefore, strictly speaking new States. As another possibility, a State may recover its lost sovereignty at the end of a period of colonization. This involves not so much the creation of a new State as the restoration of an old State (e.g. Ethiopia, at the end of the Italian colonization), with the implications this may have for the succession of States.

56. (ii) *The gradual and peaceful transfer of power* is another factor—one which makes for continuity. In particular, a long intervening period between the phase of domination and the phase of independence predisposes to continuity. During this period, the colonial Power gradually transfers power and shapes—sometimes decisively—the future institutions of the territory as it prepares them for almost total succession.

57. There are cases where the former metropolitan Power has itself drafted the Constitution of the new State, had it approved and finally promulgated it. This is even more remarkable when the Power concerned is, like the United Kingdom, governed by an unwritten constitution and pragmatic institutions but does not hesitate methodically to frame a written constitution for the territory in anticipation of its independence. The constitutional authorities are established by an Order in Council of the Crown and by an Act of Parliament. The constitutions prepared in this way for Ghana, Nigeria and Malta, for example, protected acquired rights by providing for the payment of adequate compensation for property taken possession of compulsorily. The rights of private property were guaranteed by the Constitution of Kenya.[26]

58. (iii) *Tie within a wider framework,* such as the Commonwealth, are conducive to a more lasting succession in all spheres. Solidarity has been found to be a more potent factor in avoiding legal rupture than equality, which is difficult to achieve between a former metropolitan Power and its ex-colonies. In particular, the existence of this huge political aggregation into which the former dependencies are gradually integrated, links up with the factor we have discussed above of independence by stages, in which the idea of continuity is inculcated in the phase of self-government or local autonomy.

59. (iv) On the other hand, succession is disturbed or imperilled when *decolonization is achieved by violent methods.* When a country is emancipated by a colonial war it is left with a desire to appropriate public and private property, to repudiate debts and to refuse establishment guarantees to nationals of the former metropolitan Power—a desire which is all the more pronounced and, in its view, justified because the destruction left in the wake of the war of liberation has aggravated its structural under-development.

60. (v) *The desire to achieve national unity* and combat regionalism and tribalism is another factor which usually militates against succession, either directly because the new State refuses to recognize the privileges of the former metropolitan Power in a particular province (e.g. the problems between Belgium and the Congo in connexion with Katanga and between the Netherlands and Indonesia over West Irian), or indirectly because the question of unity becomes a source of friction between the former colonial Power and the emancipated State (e.g., the incomplete transfer to the central authority of sovereignty over the numerous Indian principalities).

61. (vi) *Assistance granted by the former metropolitan Power* is one of the most decisive factors in the succession of States. Rendered on a bilateral basis, it is a powerful instrument for exerting influence and even pressure—neither necessarily overt—on the recipient country. The existence of close ties of co-operation prevents disputes, facilitates the conclusion of agreements and inevitably causes the latter to reflect a presumption of quasi-automatic succession. Public loans and debts, fiscal debts and acquired interests and rights of individuals and bodies corporate are generally honoured and personal status is guaranteed by conventions of establishment.

62. (vii) Lastly, *the desire to effect a radical and revolutionary transformation* of the colonial society may have a considerable influence on the problems under consideration. The new State may want to embark on a socialist revolution and to introduce far-reaching structural reforms in the economic, social and political spheres. Obviously, it can only do this by rejecting the legacy left by the former metropolitan Power.

(c) *Procedures for effecting State succession in decolonization cases*

63. Two methods are commonly employed by the colonial Power. One is to *grant independence first and then negotiate* a preferential system to solve the various problems of State succession (e.g. in the case of Trust

[26] For Nigeria, there were no fewer than five constitutional conferences, held in London and Lagos in 1953, 1954, 1957, 1958 and 1960 (Cmd.1063, 1960, constitutional discussions on Nigeria, May 1960; the Nigeria (Constitution) Order in Council, S.I., 1960, No. 1652). See also the Federation of Malaya Independence Order in Council, S.I., 1957, No. 1533, promulgating the Constitution of the Federation of Malaya and the Constitutions of the States of Penang and Malacca. For the Constitution of Malta, see S.I., 1959, vol. II, appendix, sect. 51, and for the Constitution of Kenya, see S.I., 1960, No. 2202, Annex, S.10.

Territories, protectorates or mandated territories: Lebanon, Syria, Jordan, Togo, Sudan, Morocco, Tunisia; African States of the Entente, etc.). The other is to do the opposite—*to negotiate the terms of succession before granting independence.* The classic example of this is Algeria, where the two sides agreed on exceptional guarantees because of the large French population in Algeria and the economic interests at stake.

64. When negotiations precede independence, the colonial Power may, in its efforts to obtain guarantees and safeguards, go so far as to establish itself the constitutional rules to govern the future State.[27] The first procedure does not give the metropolitan Power such a strong hand as the second in the negotiation of the terms of succession. Consequently, unless other factors operate to balance the situation, it may militate against succession, in contrast to the second procedure. Even the latter, however, may quickly produce the same result if, immediately after achieving independence, the new State is led to denounce the privileges retained by the colonial Power as unequal and obtained by force.

65. It will be noted that succession is *almost always regulated by treaties* even in the case of violent decolonization. These instruments have acquired considerable importance in international relations because of their large number and their subject matter. For twelve African countries which were to attain independence, France concluded no less than 300 instruments of succession.

66. When the agreements are concluded prior to independence (second procedure) and *with rebels,* they raise quite complex legal problems. For reasons of legal principle as well as of political expediency, the colonial Power is generally reluctant to concede international status to its partner in the agreement, although later it seeks to claim all the benefits of the agreement. It is in an awkward position. But the position of the new State is no easier, at least in classical law. The latter generally agrees to honour a commitment which circumstances will subsequently prompt it to repudiate. The agreement in question, concluded on the eve of the creation of a new State, is an agreement between an actual State and a potential State. The new State ultimately finds it too restrictive, either because of the similarity with the famous "*unequal treaties*" or simply because, rightly or wrongly, it considers the instrument an obstacle to its growth. It may then invoke, for example, the principle of *rebus sic stantibus,* in order to extricate itself from certain provisions of the "agreement" thus tending to adopt the principle of rupture when the principle of continuity should be applied.

(d) *Questions connected with the birth of new States*

67. Four main questions arise in connexion with transfers of sovereignty and assets. They correspond to the following phases: (i) the pre-independence phase; (ii) the period of negotiations for independence; (iii) the period during which the succession instruments produce their effects; (iv) the phase of normal or forced extinction of these effects.

68. (i) The first question is how far international law can govern situations which are normally covered by Article 2 (7) of the Charter and which arise on the very eve of independence. It is during this period, when the exercise of authority is an "internal affair" of the colonial Power, that the latter may dissipate or encumber the estate of the colonized country, by acts which impoverish it or acts which mortgage its future. The effects of the former acts are exhausted on the eve of independence, while those of the latter continue to be produced after the acquisition of sovereignty. The former may consist of transfers abroad of all kinds of assets or alienation of supplies and equipment. They may be performed illegally or under *ad hoc* legislation authorizing such transfers or alienations or altering the composition of the assets and liabilities of various public sectors in the economy of the dependent country.

69. At the present stage of development of international law, it seems impractical to have a *période suspecte,* similar to the period provided for in French bankruptcy law during which the merchant's powers are limited. At least as regards dispositive acts which produce their effects until the eve of independence, the former colonized countries are not protected by the international law of State succession and probably not by the international law of State responsibility. Acts which continue to produce their effects and the legislation enacted to authorize them are usually matters within the newly acquired or regained jurisdiction of the new State, which has the power, if not to nullify their effects completely, at least to revoke what can be revoked, without recourse to international law. However, this aspect of the problem may involve the question of acquired rights and should therefore be a matter for consideration by the International Law Commission. It would seem necessary to assert that rights acquired in dubious circumstances on the eve of independence (during the *période suspecte*) cannot be protected by international law. It will be noted, however, that respect for acquired rights is by no means a generally accepted principle in the matter of State succession after decolonization. *A fortiori,* rights should not be protected when illegally acquired.

70. (ii) There is also the question how far the period of negotiations for independence is covered by international law. This has a direct bearing in some respects on the problems of succession being considered by the Commission. The emancipated State's protection in this matter lies in the general theory of treaties (although the agreements involved are usually not between two States but between an actual State and a potential State). However, the peculiarity of these agreements lies not so much in their form as in their content. In most cases, they are inevitably unequal, because they are usually concluded at a time when one of the parties is at a disadvantage. One view is that it may and should be possible, if not to declare such instruments null and void, at least to denounce their unequal provisions. The question is one which relates to the general theory of

[27] See above, para. 57.

treaties. It remains unanswered, however, since the International Law Commission decided that, in codifying the law of treaties, it would not deal with agreements concluded between a State and a rebel movement. In order to minimize disputes after independence, the rules governing the essential aspects of negotiations for independence, i.e., all the principles to be applied both by the colonial Power and by the Non-Self-Governing Territory in regard to the transfer of sovereignty and succession to rights and obligations, should be brought out. This is the task of the International Law Commission.

71. (iii) The third question is how far international law can protect new States during the period immediately following their birth, when such effects and burdens as their succession to assets, debts, legislation, etc. may impose on them will perhaps weigh most heavily. In addition to the problem of repudiation of commitments, to which we have already referred and which is covered by the rules of the law of treaties, and to the domestic legislation which the new State may adopt in its sovereignty, there is another aspect which may be of interest to the Commission: do the burdens of succession have to be borne indefinitely by the successor State or can a time-limit be fixed, after which the emancipated country is released from those burdens? Some of them are self-extinguishing (e.g. payment of instalments on international loans, amortization of the public debt). Others continue for an indefinite but possibly lengthy period. Still others are perpetual (e.g., international servitudes, territorial rights granted to third Powers or to the former metropolitan Power). In particular, the problem of military bases which are ceded for very long and in some cases indefinite periods of time and are thus on the same footing as enclaves or *presidios* should be studied in this light.

72. (iv) Lastly, there is the question whether international law can concern itself with the measures which the successor State may take, after succession, in order to win or consolidate its economic independence. This embraces the vast problem of the law governing acts of nationalization and expropriation and, in general, all measures taken by a former dependent country to regain control of its natural resources. These are not matters of municipal law exclusively. The Commission should consider certain aspects which relate, according to some, to State succession and, according to others, to the international responsibility of States.

(e) *Relative importance of the problems*

73. It is a truism that political independence is not true independence and that new States often remain under *de facto* domination for long periods of time because their economies are dependent on that of the former metropolitan country, to which they remain firmly bound by the ties of State succession. Economic structures have generally proved to be more stable than political structures,[28] since the latter are easier to alter, with the result that succession is a more prolonged process in economic spheres. Ultimately, political independence itself often seems an illusion. Should such conclusions be placed on record and such tendencies reinforced, and should the codification of the rules of succession in matters other than treaties be undertaken in this spirit? Or would it not be better to list all factors in the matter of succession which affect economic independence, with a view to consolidating that independence and protecting the new State by means of appropriate rules against a succession which would weaken its economy and jeopardize its development? In other words, should the tendency to continuity in the matter of economic succession be reversed and brought into line with the tendency towards rejection of succession in political matters? Such a course of action is probably outside the Commission's terms of reference; the Commission could, however, work to bring about a readjustment and so help to make new States more truly independent.

74. The Commission may for that reason decide to give priority to these economic problems. If there is to be a positive response to the recommendation made in the General Assembly resolutions on the subject that State succession should be studied with reference to the experience of new States, and if the intention is therefore to devote less attention in this work to succession of the traditional type and more to succession arising out of decolonization, priority ought to be given to those rules whose operation can influence the general economic situation of a new State. The second subject of study should be the juridical framework of the new political entity, which should be examined from the standpoint of its repercussions both on the economic situation and on the political sovereignty of the new country. A third subject would be the status of private persons and private property.

75. The aim being to assist the new States, the first part of the work, that concerning economic problems, would consist essentially of a study of public property and public debts, the future treatment of which should be defined in the light of the General Assembly's expressed desire that these States should recover their sovereignty over their natural resources, property, land and sub-soil. The problem of private property will then arise, by antithesis. Acquired rights in respect of such property are found to exist within the framework of the traditional form of succession and within certain limits. In the context of decolonization, on the other hand, these "rights" are generally not recognized, or at least are not recognized on a permanent basis. The subject is, however, a complex one. The Commission might either set it aside for the moment (because it does not involve the recognition of indisputable rights and because prior consideration should be given to public property) or consider it, by way of antithesis, directly after property and debts; alternatively, it could be taken up third as part of the study on the status of private persons or, more precisely, as part of an expanded section on "the status of private persons and their property", because the two subjects are linked in a number of

[28] See above, para. 52.

ways; as yet another possibility, it could be made the subject of a final separate section on concessionary rights.

76. None of these approaches should be interpreted as implying the intention to attribute only minor importance to the individual, since we know that the individual is the ultimate beneficiary of the protective rules of international law. Nevertheless, among the Commission's subjects of study, with a view to meeting the wishes of the General Assembly, particular attention should be given to economic problems with affect the whole community in the new States and the work on private individuals should come second. The problem is more complicated, however, when private property is associated with public property in mixed-economy systems or in the case of concessions for the development of major natural resources.

77. Pending a decision by the Commission, we present below a few notes (which are necessarily short and preliminary only in the context of this report) on various aspects of the following matters:

(*a*) *State succession and the requirements of economic sovereignty:*
  (i) public property;
  (ii) public debts.

(*b*) *State succession and the requirement of political sovereignty:*
  (i) succession to the juridical order;
  (ii) succession and territorial problems.

(*c*) *Succession and the status of the inhabitants:*
  (i) nationality;
  (ii) conventions of establishment.

(*d*) *The problem of acquired rights.*

VI. Public property

78. The whole problem of the transfer of property from the predecessor State to the successor State is dominated by the distinction between the public and the private domain of the State, and the solution to be adopted will depend on whether this distinction is maintained or discarded. In traditional practice, the public domain is *transferred automatically and without payment* to the successor State, whereas the *private domain may not be transferred except against payment.* Should this distinction be maintained?

(a) *Abolition or retention of the distinction between the public and the private domain of the State*

79. Although widely applied in practice and jurisprudence prior to decolonization, this distinction had no absolute value, since it was not maintained in the treaties concluded at the end of the First World War. The Permanent Court of International Justice in its judgement of 15 December 1933 endorsed the principle of the general transfer of the property by stating that in the case in question the "alleged public or private character [of the property] is of no account" and that "this distinction is neither recognized nor applied by the Treaty of Trianon".[29] This tendency seems to have been confirmed after the Second World War in, for example, the case of Libya, when General Assembly resolution 388 (V) of 15 December, 1950 provided that Libya should receive, without payment, the movable and immovable property located in Libya owned by the Italian State, either in its own name or in the name of the Italian administration.

80. However, recent French practice with regard to the transfer of property shows a marked trend towards complete abolition of the distinction between public domain and private domain. The policy adopted by France in the new African States is especially noteworthy as French law is one of the legal systems in which the distinction is most emphasized. A significant illustration of this trend is article 19 of the Declaration of Principles concerning Economic and Financial Co-operation between France and Algeria of 19 March 1962,[30] which raises the principle of succession to all the property of the French State. The exchange of letters of 22 August 1963 concerning property settlement in Greater Algiers provides for the transfer of the public and private immovable property of the French State to Algeria. The same practice is followed in the agreements concluded between France and the French-speaking States of Black Africa and with the two former Maghreb protectorates.

81. This modern tendency favours the new States, which, for their own part, consider that what is involved is merely the restitution of the wealth of their territory which has been developed by capital not provided by the metropolitan country. Moreover, the retention by the predecessor State of a possibly large private domain would have the effect of perpetuating economic domination of the colonial type in some sectors and enabling the predecessor State to establish itself as an important landowner or industrialist—a development which might conflict with the economic policy of the new State. It will also be borne in mind that as long as the distinction exists, it will be a source of temptation for the predecessor State, which will be free to remove property illegally from the public domain and place in the private domain, in order to exclude it from the automatic transfer.

82. In the present state of law and practice it would seem possible for the Commission to support the principle of *the existence of a rule of automatic and total transfer without payment.* Most of the recent agreements embodying this principle do, of course, contain a reservation with respect to the retention by the predecessor State of certain property which it deems necessary for the performance of its new function of co-operation (schools, hospitals, scientific centres) or for the operation of its diplomatic and consular services in the newly

[29] *P.C.I.J.*, Series A/B, fascicle No. 61; see also articles 56 and 256 of the Treaty of Versailles (*British and Foreign State Papers*, vol. 112, pp. 43 and 125), article 208 of the Treaty of Saint-Germain (*ibid.*, pp. 412-414), article 191 of the Treaty of Trianon (*ibid.*, vol. 113, p. 564) and article 142 of the Treatry of Neuilly (*ibid.*, vol. 112, p. 781).

[30] See United Nations, *Treaty Series*, vol. 507, p. 65.

independent country. A reservation of this kind, embodied in an agreement, should be regarded not as invalidating the general rule of transfer but as an exception which proves it. The Commission's endorsement of this rule, which is adopted in practice, would also have the effect of restricting certain abuses which occur when the former metropolitan country, while acquiescing in the principle of general transfer without payment, retains an undue amount of property as being necessary to its services. Endorsement of the rule would make the retention of property beyond what is strictly necessary an increasingly rare occurrence. Above all, it would permit the transfer of natural resources exploited under the control of the predecessor State.

83. This rule will also obviate the difficulties which have inevitably arisen in the choice of the law applicable in determining what is public and what is private property. It has usually been the municipal law of the territory in which the property was situated which has determined what lay in the public domain and was thus transferable without payment. There are at least two ways, however, in which a dispute in this matter of characterization of property can arise between the former metropolitan country and the new State.

84. First, when the new State was originally conquered, new property legislation may have been imposed upon it, replacing its own law. Having regained its independence, it invokes the characterization given by its own legal system, under which certain assets may be regarded as falling within the State's public domain, whereas under the colonial law they were placed in the State's private domain.[31]

85. Secondly, the State which has become independent may not have possessed before its conquest a legal system sufficiently developed to permit the characterization of property, and the colonial law may have filled a legal gap in that respect. Is the new State entitled to repudiate the characterization given to a property by colonial law, in order to obtain its transfer without payment? The reply to this question depends in particular on the position adopted with regard to the problem of continuity of the internal juridical order, which will be examined below. If it is decided that there is a rule of international law which imposes the continuity of the internal juridical order until it is amended or replaced by the new sovereign, it would seem difficult to admit the possibility of changing the characterization of the property. If, on the other hand, it is considered—and this would seem to be the more natural approach—that the juridical order is nothing more than the projection of sovereignty, it follows that there is a rupture, not continuity, even when the former legislation is retained, for in this case it is retained by the tacit or express will of the new sovereign, which considers it as its own: the possibility of changing the legal characterization of a property is thus within its power and more readily admissible. In the latter hypothesis, however, all difficulties will still not have been eliminated. It will be necessary to decide which date should be used in determining the characterization of property, and whether a change which has taken place since independence can be used in deciding what is to be done with property which the new State considers should be transferred gratuitously but which the predecessor State considers a part of its private domain. It seems that the successor State can acquire all the property owned by the predecessor State, even if that property is designated as private under the municipal law of the ceding State.[32]

86. The Commission could resolve this and other kinds of difficulty, by adopting the rule of the automatic and total transfer of public property without payment and abandoning the distinction between public and private domain of the State, a step which is all the more necessary because the distinction is not universally accepted. This rule should be applied to the irregular transfers made by the metropolitan country for its own benefit just before the change in sovereignty. By refusing to accept the distinction between public and private domain, the Commission could prevent any suspicious transfers of State property which might occur just before independence. An effort by the Commission to ensure uniformity in this sphere will be greatly appreciated.

(b) *State property in particular or public property in general?*

87. In connexion with the rule of automatic and total transfer without payment, the Commission will have to take a decision on an acceptable definition of public property. Does this term refer to property owned by the State (in a public or private capacity) or to all public property? The problem has arisen in legal cases in connexion with the property of local authorities *("biens communaux")* and property belonging to public establishments.

88. The 1947 Treaty of Peace [33] rectified the boundaries between Italy and France. The latter considered

[31] In the case of colonies there are two separate problems relating to succession, the first arising when the colony is established and the second during decolonization. Succession is regulated differently in each case. During the colonial conquest, succession to property in some countries took place in conditions which did not always respect local legislation. This is true, for example, of the inalienable religious property in Algeria, known as "*waqf*" property, which is held in mortmain under Moslem law, and which according to some passed into the private domain of the French State and according to others was given to the settlers in concession or in freehold.

[32] Hungarian law, for example, made no distinction between public and private property of the State and treated as private all assets owned by the State or by territorial corporations of public law. In dealing with the legal status of property of the Austro-Hungarian monarchy in territory transferred in 1919 to Czechoslovakia, the Permanent Court of International Justice, after having observed that the provision of the Treaty of Trianon relative to the passing of Hungarian State property "applies the principle of the generally accepted law of State succession", nevertheless ruled that Czechoslovakia must return to the Peter Pazmany University of Budapest the landed property owned by the latter. (Peter Pazmany University case, 15 December 1933, *P.C.I.J.*, Series A/B, fascicle No. 61.)

[33] United Nations, *Treaty Series*, vol. 49.

that the semi-Government property transferred to it by Italy should include the property of local corporate bodies and particularly *biens communaux*. The Franco-Italian Conciliation Commission established by the exchange of notes of 27 September 1951 handed down a decision [34] on this case on 1 December 1953, in which it rejected the French arguments. It recalled the resolution adopted by the Institute of International Law at its session held at Vienna in 1952, according to which "the territorial changes leave intact those patrimonial rights which were duly acquired before the change took place". According to the Institute, the rule also applied "to the patrimonial rights of municipalities or other corporate bodies belonging to the State which is affected by the territorial change".[35]

89. The definition of public property also raises the problem of public establishment—some of which, being of an industrial or commercial nature, may be of considerable importance for a country's economic growth. A United Nations tribunal was set up by General Assembly resolution 388 (V) of 15 December 1950, on provisions relating to the transfer to Libya of property owned by the Italian State. On 27 June 1955 this tribunal handed down a series of decisions relating to thirteen institutions which had taken part in the Italian colonization of Libya.[36]

90. Generally speaking, the former metropolitan country may have set up public establishments, autonomous agencies, offices, commissioner's offices, public companies and associations, etc., whose legal status is sometimes complex and which may have carried out very important activities in the former colony, occasionally extending to the metropolitan country itself. The problems relating to succession in connexion with these bodies are usually regulated by treaty and on the basis of municipal and international judicial precedents. The Commission can, however, play a pioneering role by breaking new ground in this sphere and bring out guiding rules to which judges and negotiators could refer.

(c) *Property situated in the territory and property situated outside the territory*

91. The rule of *total* transfer should hypothetically apply both to property situated in the ceded territory and to that situated outside its boundaries. Difficulties are encountered particularly in the case of civil wars and above all in connexion with the succession of Governments or régimes. They also arise, however, with regard to State succession, and the Commission will have to decide whether the mere reaffirmation of the uncontested rule that property situated abroad should be transferred to the successor State will clarify the question sufficiently.

(d) *Plurality of successor States and distribution of property*

92. If there is more than one successor State, the uncontested rule that property should be allocated to the State in whose territory it is situated does not resolve all difficulties. As noted above, property may be situated outside the territory of successor States. Furthermore, some property may have been temporarily removed from the territory where it was normally situated. Other property is jointly owned, e.g., property situated in the capital, whose territory may have been assigned to one of the successor States. Some of this property can be shared, such as monetary resources, securities, etc. Other types of property are harder to share or cannot be shared at all, e.g., works of art, objects whose value is difficult to estimate, and archives.

(e) *Archives*

93. Here again, the uncontested rule that the archives of the territory like all other property pass to the successor State does not solve all the problems, especially when decolonization took place after a period of armed tension which may have led the former occupants of the territory to apply the "scorched earth" policy to the archives. Some archives may have been destroyed and thus lost to all, without any legal prohibition having thus far been introduced to prevent such acts. Other archives concern both the successor State and the predecessor State, or several successor States and the predecessor State. These include so-called *administrative* archives (civil registers, land registers, miscellaneous files, court records, pension and savings-bank books, documents relating to the public debt, etc.). These archives may concern both the former colonial Power and the former colony, particularly because of migrations following decolonization (repatriation of settlers, partition, etc.). Modern electronic reproduction methods should make it possible to solve these problems in practice, given the will to reach an understanding. It is difficult to apply the rule to *political* archives. The former metropolitan country is unwilling to abandon to the successor State archives which are too closely related to its *imperium*, its administration of the country, and whose highly sensitive contents could inopportunely disclose information relating to its administrative methods which it wishes to keep secret. In general, this property is repatriated just before independence. On the other hand, no exception to the rule should be made in the case of *historical* archives, which should belong to the land where they came into existence and may constitute both valuable property and precious sources of information. Unfortunately, this this rule is all too often ignored in practice.

94. It should be easier to decide what should be done with libraries, although spectacular and long-lasting disputes have occurred in this sphere too (the case of the India Office Library in London, claimed by India, and the case of the Prussian Library in Berlin, claimed by the Federal Republic of Germany).

[34] *International Law Reports, 1953*, pp. 63-77.

[35] *Annuaire de l'Institut de droit international, 1952*, vol. 44, *tome* II, pp. 475-477.

[36] *International Law Reports, 1955*, pp. 103-113.

VII. Public debts

95. International practice with regard to succession to public debts is unusually complex, either because the very nature of the problems to be solved varies with the circumstances of each case or because there are several categories of debts, each raising different questions. This complexity is reflected in the diversity of views expressed in the literature and the divergencies of practice, where treaty obligations are rarely respected. The Round-Table Conference Agreement of 2 November 1949 between the Netherlands and Indonesia was denounced in 1956; it provided for Indonesia's succession to public debts [37] by virtue of the transfer of sovereignty, thus apparently recognizing the existence of a principle which was not subsequently applied in practice. A similar affirmation is included in the Evian Agreements, which state "Algeria shall assume the obligations and enjoy the rights contracted in its name or in that of Algerian public establishments by the competent French authorities".[38] In this case, as in the case of the agreements concluded with the French-speaking States of Black Africa, the exigencies of co-operation, and perhaps other considerations too, have led the predecessor State to depart from the exact terms of the Agreement and to assume various obligations which were originally to have been assumed by the successor State.

96. Questions relating to succession to debts following decolonization are dominated by the fundamental distinction between the *general debt* of the predecessor State and *local debts*. It has always been recognized that the State for whose benefit a piece of territory is detached does not assume responsibility for a corresponding portion of a general debt of the predecessor State. The contrary situation can only result from a treaty provision.[39] On the other hand, debts connected with the territory are generally assumed by the successor State. The devolution of the territory is accompanied by the debts connected with that territory.

97. Most of the theories formulated to justify succession to debts in general seem to justify succession to local debts only. For example, the "benefit" theory has been cited, according to which the territory of the successor State, having benefited as the result of financial commitments assumed by the predecessor State, is called upon to bear the burden of the debt. Accepted rules of private law, such as those relating to unjustified enrichment and the maxim *"res transit cum suo onere"*, and considerations of equity have also been cited.

98. In the context of decolonization, only local debts may devolve upon the successor State, provided however that the concept of a local debt is clearly defined. The fact that the debt is connected with the territory in some way does not provide a sufficient basis for considering it as local and therefore transmissible to the successor State. The debt may be connected with the territory in various ways:

(i) it may have been contracted by the metropolitan country on behalf of the dependent territory;

(ii) it may have been contracted by the dependent territory as a financially autonomous entity; or

(iii) it may have been secured by a specific pledge situated in the dependent territory (pledged fiscal resources, mortgages or mines or other natural resources).

99. Some writers seem to consider that the existence of one of these connexions suffices to make the debt a local debt, which is the responsibility of the successor State. This view is based on the old maxim *"res transit cum suo onere"*.[40] It seems, however, that the aforementioned connexions do not constitute a sufficient basis for considering these debts as local and transmissible to the successor State. A debt contracted on behalf of a colony or secured by a local mortgage may in practice not be intended to cover expenditures benefiting the dependent territory.

100. The International Law Commission will have to decide whether the real criterion to be taken into consideration is not rather the *intended or actual use of the debt for the benefit of the territory,* the existence of absence of a purely formal connexion not being a determining factor. If the Commission adopted this point of view, it would follow that the new State would succeed not only to local debts contracted previously for its benefit, but also to that part of the general debt used for the same purpose, i.e., for the benefit of the former dependent territory. On the other hand, this would eliminate from the field of succession not only "local" debts contracted by the predecessor State exclusively for its own benefit, but also general debts which could in no way be attributed to the successor State.

101. This solution would seem to satisfy the need for equity, since the devolution of the debt would depend upon the latter having been used for the benefit of the territory, i.e. for its economic, social and cultural development. However, the new State, referring to the need for equity and recalling the former relations based on domination and exploitation, may call for the establishment of a general balance-sheet of the whole situation.[41] In particular, it may cite the general benefits

[37] Draft Financial and Economic Agreement, art. 25 (United Nations, *Treaty Series,* vol. 69, pp. 252-258).

[38] Franco-Algerian Declaration of Principles concerning Economic and Financial Co-operation, art. 18 (United Nations, *Treaty Series,* vol. 507, p. 65).

[39] For the Ottoman public debt, see the Treaty of Versailles (*British and Foreign State Papers,* vol. 112, pp. 1-210) and the Treaty of Lausanne (*League of Nations, Treaty Series,* vol. XXVIII, p. 12) and in connexion with the latter the arbitral award by Eugene Borel of 18 April 1925 (*Reports of International Arbitral Awards,* vol. 1, pp. 529-614).

[40] Charles E. Rousseau, *"La succession d'Etats", Cours de doctorat,* 1964-1965, Paris, p. 275. See also Paul Guggenheim, *Traité de droit international public,* vol. I, Geneva, 1953, p. 472, where the author seems to consider debts secured by a mortgage as synonymous with debts contracted for the benefit of the territory.

[41] The problem of the public debt of former colonies was touched upon at the second session of the United Nations Conference on Trade and Development at New Delhi. Mr. Louis Nègre, Minister of Finance of Mali, stated at the

which the metropolitan country derived from its presence in the colony and the specific benefits which it may have been able to obtain by investing the product of the debt contracted. For these and other reasons, the successor State does not always assume succession to the part of the general debt used in the dependent territory. Thus the same solution is adopted in both traditional and modern succession.

102. Correctly amended, the criterion of the purpose for which the debt was incurred could cover all hypothetical cases that are usually examined, including the debts of local corporate bodies and of local public establishments, which are by nature intended for the development of the territory. The debts must thus be not only intended for use in the dependent territory but also clearly individualized, i.e., specifically contracted for that use, which would exclude general debts of which a more or less identifiable part may in fact have been intended for use in the territory.

103. It is suggested that the Commission should not neglect the implications of the *nationality of the creditor* with regard to the regulation of the debt which devolves on the successor State. It would seem that a distinction could be drawn between debts owed to the predecessor State and its nationals and debts owed to others. The former involve bilateral relations, often regulated by conventions implemented in a co-operative atmosphere which reduces the burden of the obligations assumed by the successor State. Debts owed to third States or their nationals, on the other hand, raise complicated problems involving tripartite relations. Furthermore, the creditor to whom these debts are owed may recognize the predecessor State alone as debtor, thus raising the problem of the contractual responsibility of States, which is included in the Commission's programme of work. The agreement on the devolution of debts concluded between the successor and predecessor States is not enforceable against the creditor third State. No assignment of the obligation involving a change of debtor may be made without the creditor's consent.

104. The exclusion from succession of debts which have served the interests of the predecessor State or its nationals ("odious" debts) has never posed any problems. This is true of war debts, debts relating to the colonization of the territory by the metropolitan country and debts contracted in an endeavour to suppress the insurrection which led to independence.

58th plenary meeting: "Many of our countries could legitimately have contested the legal validity of debts contracted under the authority of foreign Powers... Going beyond respect for the letter of the law and the formation of 'good law', we simply want to appeal to the developed creditor countries for a little more equity, if not justice, by proposing, as a test of their goodwill in this connexion, that they should decree during the current session the outright annulment of all debts contracted during the colonial period for interests which were not fundamentally ours and which our States are unjustly expected to service...". (See *Proceedings of the United Nations Conference on Trade and Development, Second Session*, vol. I; *Report and Annexes*, p. 140).

VIII. Succession to the legal régime of the predecessor State [42]

105. The free formulation of municipal law is the unmistakable mark of a country's internal sovereignty. Thus, just as the demands of economic sovereignty impose non-succession, those of political sovereignty, which are here brought into play, call for a break with the former juridical order. But in this sphere, even more than in others, there is a wide divergence between principle and practice. This is due first of all to the fact that it is difficult to "short-circuit" the time-factor: changing a whole body of legislation takes a relatively long time. However, the time obstacle is often combined with others resulting from economic and social structures and habits of mind that oppose change by inertia and even active resistance. Last and most important, in the words of Professor Charles De Visscher, "the continuity of law, as a guarantee of security, is a basic necessity for the juridical order".[43]

106. It may be said that the principle of non-succession to the municipal law of the predecessor State is incontestable, but that in practice the principle of continuity remains in force for a period whose duration varies according to the country, the era and the sectors of juridical life involved. This comment seems applicable both to traditional State succession and to that arising from decolonization.

(a) *Traditional succession*

107. In the case of traditional succession, the municipal law of the acquiring State is applied to the annexed territory. In fact, it is this feature which normally characterizes annexation. The incorporated territory no longer possesses any legal individuality distinguishing it from the country to which it is attached. In particular, the constitutional system of the acquiring State is extended and applied to the ceded territory.

108. However, this rule of non-succession through the substitution of the juridical order of the annexing State for that of the incorporated territory is not easy to apply. First of all, the desire for continuity, prompt-

[42] The problem of treaties which have been "received" into municipal law and the legislation adopted pursuant to those treaties is not covered in the brief comments under this heading, since succession in respect of treaties is being dealt with separately. Nor, of course, will this section deal with the problem of succession to the *international* juridical order, which is constantly being called into question by the new States. International law is, in fact, behind the times: formulated during the Renaissance and systematized during the nineteenth century by the practice of the great Powers, it is not adapted to the new States, which took no part in its formulation. Even the normative institutions and international institutions established since the end of the Second World War were not adapted to the appearance of the new States. This has led to attempts to revise parts of the United Nations Charter and to adjust economic international law. The old Powers should pay attention to this phenomenon; bearing it in mind will make it possible to strengthen international law while preparing for certain necessary changes in that law.

[43] Charles De Visscher: *Théories et réalités en droit international*, 3rd edition, Paris, 1960, p. 242.

ed in particular by the size of the population concerned, which must be spared too abrupt a change in juridical relations, may lead the successor State to maintain the juridical order of the ceded territory on a temporary and sometimes even on a lasting basis. Sometimes the territory's special characteristics are too pronounced to permit the extension of the municipal law of the successor State. Furthermore, the latter may sometimes maintain the legislation of the ceding State because it considers it superior to its own, better formulated or in any case more appropriate.

109. In other cases, quite opposite reasons prevent the "exportation" of the municipal law of the successor State and lead to semi-continuity. This applies in cases of colonial conquest. Even in "settler colonies", which have the closest legal relations with the metropolitan country, the territory of the indigenous inhabitants does not "receive" the municipal law of the metropolitan country, which is deemed more developed or simply inappropriate for the establishment of a relationship based on domination. However, the former legislation of the colonized territory is not necessarily retained. From the point of view of the metropolitan sovereign, it has the same defect as the latter's own municipal law, namely, it does not lend itself to or facilitate the establishment of a relationship based on domination. Local pre-colonial legislation, metropolitan municipal law and new legislation enacted by the new sovereign, either at the metropolitan centre of administration or locally, co-exist in a mixture, or more precisely in a superimposition or mosaic, in proportions which vary with the metropolitan country, the colony, the period and the subject concerned and which endow colonial law in each Non-Self-Governing Territory with its own particular characteristics and nuances.

110. However, the rule of non-succession and the exceptional case of continuity both express the sovereignty of the successor State. Non-succession, which results either from an extension of the legislation of the acquiring State to the incorporated territory or from the formulation by the former of a body of autonomous rules applicable to the latter, is an obvious expression of that sovereignty. But that sovereignty is also expressed even when the acquiring State decides to maintain the municipal law of the annexed territory. This legislation, which is in fact that of the incorporated territory, is transformed into the law of the successor State in that territory by a sovereign act of "acceptance".

(b) *Succession in recent times*

111. In cases arising as a result of decolonization, non-succession to the existing juridical order is the established principle. But there, too, continuity often prevails for as long a period as is necessary to alter the entire body of legislation by stages or to cast off certain servitudes imposed by the metropolitan country.

112. The new State applies the municipal law enacted by the colonial Power, partly through a genuine process of succession (effected, for example, by treaty, under the independence agreements which may, as a guarantee, confirm the maintenance of certain regulations in a particular sector) and partly *proprio motu,* by virtue of a sovereign act incorporating the colonial legislation into its own municipal law. Sometimes, however, the process is not one of succession by treaty or of incorporation by sovereign act, but one of "renewal" on a temporary basis, which clearly expresses the idea of a foreign body of legislation not incorporated into and merged with the country's own body of laws.[44]

(c) *Consequences*

113. However, extensive and general continuity in the matter of legislation may be in practice, it does not affect the undisputed principle of non-succession to the former juridical order. If, having regard to the widespread practice of succession in this sphere, the International Law Commission were to sanction it by deciding that a rule of continuity truly exists, that action would deprive the successor State of the right to amend or revoke inherited legislation. *However common and lasting succession to the legal system may be, it is not a right and remains precarious, i.e., liable to be replaced at any time.* What in fact is involved is a gradual and fairly rapid discarding of the former legislation until it has entirely disappeared. It is a continuous erosion of a body of laws, proving that the rule of non-succession is applied in stages and that the exceptional case of continuity, important though it is, shrinks gradually but so inevitably that, despite the fact that practice provides some evidence to the contrary, the rule cannot be treated as the exception or the exception as the rule.

114. A problem that arises in this connexion is that of the *formal procedure* by which inherited legislation can be amended by the successor State. In other words, does the continuity which obtains in practice in the sphere of legislation apply equally in formal and in practical matters? Can the successor State amend a renewed enactment by one which is lower in the hierarchy of legal instruments formerly applied? Can it, for example, amend an Act by means of a simple decree? The domestic sovereignty of the successor State necessarily precludes any possibility of considering it as bound to respect the hierarchy of legal instruments previously in force. *De facto continuity is not essential in the matter of form.* Nevertheless, doubtful situations that may have important consequences will arise if, after introducing amendments without respect for that

[44] In Algeria, for example, Act No. 62-157 of 31 December 1962 "renewed" legislation enacted prior to independence. But the renewal is at all times "subject to inventory". The legislation is, in fact, renewed "except for those provisions which are contrary to national sovereignty". As the Algerian Parliament did not specify which authority would be competent to decide whether a former enactment was contrary to national sovereignty, it is the judge who, as each case arises, screens the legislation concerned; he thus has very broad competence. He has power not only to annul legislation but also to declare that any former legislation which he deems to be contrary to national sovereignty is wholly "non-existent" in Algeria. The power vested in the Algerian judge is particularly extensive as the legislators have not established criteria for determining whether a law is contrary to national sovereignty.

hierarchy, the successor State renews the former legislation, including the act establishing the hierarchy, or fails to enact an instrument establishing its own hierarchy or legal instruments.

115. The continuity of the juridical order may be lasting and even permanent in some cases. According to one theorist, for instance, "the adoption, in some Commonwealth countries, of an advanced form of English law having ordinances, decrees and codes has a number of advantages. The codified forms of English law are often more highly developed than the non-codified form which still prevails in England. Despite their foreign origin, legal institutions and instruments were more advanced than feudal or tribal law and courts and were better suited to the requirements of building a modern State. As a result, countries such as India and Sudan have felt little need to seek a completely new foundation for their law and there are few legal systems of purely national origin in the new States."[45]

(d) *Pending court proceedings*

116. A great many difficulties arise in connexion with court proceedings pending at the time when one State succeeds another. Proceedings commenced under the old law in the courts of the annexed or dependent territory continue under a new legal system and, in any event, before new courts. This inevitably creates quite complex problems, particularly as regards appeal procedures. The difficulties are especially acute in repressive law and in the matter of the execution of criminal sentences. The competence of the courts, the statutory ingredients of the alleged offence, the quantum of the penalty incurred by reason of the said offence, the avenues of appeal available, the conditions and mode of execution of the penalty—all these vary from one system to another and give rise to conflicting solutions which make it difficult to bring out rules applicable in all cases. The Commission will weigh the desirability of furthering the progressive development of law in this sphere in the light of the importance it attaches to this question.

IX. Succession and territorial problems

117. The problems of State succession arise, by definition, from a change of sovereignty over a territory. The main purpose of succession is therefore the transfer of a territory from the predecessor State to the successor State. All the other problems of succession—enforceability of treaties, devolution of property, subrogation in debts, continuity of the juridical order, treatment of concessions—are, so to speak, only secondary effects grafted on to the main effect: *the transfer of the territory and of sovereignty over that territory.*

118. Despite its importance and the central place it occupies, this aspect of State succession does not seem to have been studied with the same care as the other aspects mentioned above. It is apparently regarded as self-evident or as not raising any problems. Yet the problems it raises are real and important and require solutions, and any complete study of State succession must attempt to bring out those solutions.[46] The problems raised by the territorial aspect of State succession are:

(*a*) The question of boundaries, including the delimitation of the territory devolving upon the successor State and the extent to which the boundaries established by its predecessor (with or without the agreement of the other parties concerned) are binding on the successor State;

(*b*) The problem of enclaves, rights of way and other servitudes running with the territory devolving upon the successor State;

(*c*) The question of incomplete devolution.

(a) *Succession with regard to boundaries*

119. In order to fix the object of the succession, i.e., the territorial base for the succession and for the exercise of sovereignty, there bust be well-defined boundaries. In principle the territory devolves upon the successor State on the basis of the pre-existent boundaries. These boundaries will have been established by a treaty, an instrument issuing from an international conference, a statute or regulation of the predecessor State, or a *de facto* situation sanctioned by the passage of time.

120. The study of the first case—boundaries established by treaty—overlaps the study of the effect of State succession on treaties and should be made in consultation with the Special Rapporteur appointed to deal with that topic.

121. Boundaries established by unilateral enactments of the predecessor State are found rather often in the context of decolonization, for vast regions administered by a single metropolitan State have given birth to a number of independent States (for example, French West Africa, French Equatorial Africa). To what extent are these boundaries binding on the successor States? If they are binding, on what terms may the successor States request that they be revised?

122. The Charter of the United Nations and, in more explicit terms, the Charter of the Organization of African Unity proclaim the principle of respect for the territorial integrity of States and thus prohibit the reopening of the question of State boundaries. The attitude of the founders of the Organization of African Unity, is urging all the new States, after they attained their independence, to respect the *status quo* with regard to boundaries, was inspired by realism and political wisdom. Colonial

[45] Ian Brownlie, *"Aspects juridiques du passage à l'indépendance", Revue de droit contemporain,* Brussels, June 1961, No. 1, p. 31.

[46] The Sub-Committee on the Succession of States set up in 1962 by the International Law Commission had listed *"territorial rights"* among the aspects to be considered. In its final report, however, it limited the question to international servitudes, which would not seem to give sufficient consideration to the concerns of the new States and to the requirements of their political sovereignty.

administrative boundaries were made international boundaries in an effort to avoid throwing the political map of Africa into dangerous confusion. The boundaries drawn at the Congress of Berlin in 1885 by the colonial Powers in an agreed partition of spheres of influence in Africa or established administratively by the former metropolitan country to divide its vast colonial territory into regions were imposed in their existing form after independence. There were exceptions, however. The International Law Commission will have to consider whether a rule exists and, if so, how it should be stated.

123. In this connexion, it should be noted that respect for boundaries established by the predecessor State may be viewed in two ways:

As prohibiting expansionism and discouraging unwarranted territorial claims. According to this view, the principle should not be subject to any exception, or to any restrictions which would limit its scope. But other fundamental principles of international law fulfil this function, and the Commission may therefore question the need for a specific rule for succession with regard to boundaries;

As barring any revision of boundary lines, even if warranted by the desire to correct anomalies inherited from the colonial past, by the wish to establish boundaries which are more rational and more consistent with the interests of the peoples concerned, or by respect for rights existing before foreign domination which have been disregarded by the colonial Power. If it adopts this second approach, the Commission will have to decide whether there is a rule of international law barring any revision of boundaries, even if based on respect for other principles of international law (for example, the principle of self-determination). It will have to decide how this rule of the inviolability of boundaries might be combined with others such as the rule of acquisition of sovereignty by prescription or that of "acquired rights".

124. As stated above, in practice not all former colonial boundaries have been preserved. A single colonial entity has given birth to two new States (India and Pakistan), and several former colonial territories have formed a single State (Somalia, Cameroon). The justification for abandonment of pre-existent boundaries in these cases is generally the application of the principle of self-determination.

125. But the question of revision of former colonial boundaries may also arise without reference to any question of self-determination, in the case of territorial adjustments which are needed to achieve natural or more rational boundaries. Nevertheless, in order to avoid the dangerous developments to which these necessary revisions might lead, the independent countries of Africa have often sought to overcome the difficulty by establishing unions of States or confederations (raising new problems of succession), some ephemeral (Mali Federation), others still in the drafting stage (United States of Central Africa). Solutions of this kind are not always at hand, however, and the problems may remain dormant. How then can they be resolved?

126. The boundaries of the African States, like those of the Latin American States, were established on the basis of *uti possidetis juris* at the date of independence, and, as in Latin America, this method of establishing boundaries has not always prevented disputes from arising. In the case concerning the Arbitral Award made by the King of Spain on 23 December 1906 (Honduras *v.* Nicaragua) the International Court of Justice, by its Judgment of 18 December 1960,[47] decided that the principle of *uti possidetis* did not preclude, in that case, territorial compensations and even indemnities in order to establish a better-defined natural boundary line. It is true that the Court's decision on that point was *obiter dictum,* since the remain question before it was the validity of the arbitral award.

127. The United Nations General Assembly, by its resolution 2353 (XXII) on the question of Gibraltar, adopted on 19 December 1967, maintained *inter alia* that "any colonial situation which partially or completely destroys the national unity and territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations".

128. In the light of these principles and of State practice, the Commission will have to consider the problem of boundaries inherited from the colonial past and decide to what extent they are absolutely binding on the new States and what rules should govern the settlement of disputes arising in the matter.

(b) *Servitudes, rights of way, enclaves*

129. Situations giving rise to "servitudes" (the term is criticized by several authors) are created by treaty, by a unilateral act of the predecessor State or by special geographical conditions. Situations of the first type may be considered in connexion with the succession of States in respect of treaties. The suggestion may be advanced here, however, that when a situation is closely connected with the predecessor State's policy, which the successor State does not intend to follow, there are valid grounds for ending it, even if it was created by treaty. This is true, for example, of military bases, rights granted to a State to use ports and airports, etc.

130. Often the enclaves and the right of way through them were brought into being by the predecessor State. This was the case with certain Portuguese enclaves in India, which were the subject of the Judgment of the International Court of Justice of 12 April 1960.[48] The question arises whether such remnants of the colonial régime should not logically disappear with it and whether they can reasonably be imposed on the successor State. In the above-mentioned case, the Court found that Portugal did not have a right of way. However, its judgment was based on the facts of that particular case, which considerably reduces its value as a guiding precedent. The Court considered that the practice followed by the parties made it unnecessary to refer to general rules governing enclaves. The colonial origin of the

[47] *I.C.J. Reports 1960*, pp. 192 *et seq.*

[48] *Ibid.*, pp. 6-46.

enclaves does not seem to have been a factor in the Court's decision.

(c) *Incomplete territorial devolutions*

131. In the history of decolonization, there have been cases where the colonial Power agreed to transfer only a part of the dependent territory to the successor State. The classic example is West Irian (New Guinea), which the Netherlands did not transfer to Indonesia at the same time as the remainder of the 3,000 islands in the former Netherlands dependency.[49]

132. The Commission could consider the question whether such incomplete territorial devolution is compatible with the rules of international law and, in that connexion, study possible correlations between the principle of territorial integrity and the abolition of the colonial régime. In the language of private law, such incomplete devolution could be regarded as *partial failure to make delivery.*

X. Status of the inhabitants

(a) *Succession and nationality*

133. In all cases of succession, traditional or modern, there is in theory no succession or continuity in respect of nationality. The successor State does not let the inhabitants of the territory retain their former nationality. This is a manifestation of its sovereignty. However, this desire to assert its sovereignty may also prompt the successor State, *in its own interest,* to adopt one or other or both of the following solutions, in order to make the principle of non-continuity less rigorous. One solution is a treaty provision giving the successor State the right to deny certain persons its nationality. The other is the transfer of populations which the successor State considers undesirable, in order to preserve the homogeneity of the group of people now in its charge. The International Law Commission will have to determine whether, if no agreement exists, the successor State has unlimited sovereign power to undertake the "denaturalization" of persons or groups of persons, resulting in their expulsion *de facto* (through lack of guarantees) or *de jure* (through mass transfers).

134. On the other hand, other arrangements are sometimes made to mitigate the principle of non-succession, not for the benefit of the successor State but *in the interest of the population,* whose members may be granted a right of option. The allows them a period of adjustment, after which they decide whether to retain the nationality of the successor State or to resume their former nationality. Two conditions, however, are usually attached to the grant of this period of adjustment —conditions which limit the effective choice of the population or lead it to regard this period as a grace period in which to eliminate all ties with the country. Persons wishing to resume their former nationality are obliged to emigrate and to sell all their immovable property (e.g. the case of the Hungarian optants in Transylvania).[50]

135. A new and original extension of this solution, providing a twofold mitigation, may be of interest to the Commission. It was conceived in connexion with the independence of Algeria, because of the large number of French residents in that country. Under the Declarations adopted on 19 March 1962 at the close of the Evian talks, certain categories of French nationals, defined on the basis of birth or length of residence in Algeria, were given a right of option for three years, during which period they could exercise Algerian civil rights without losing their French nationality and at the end of the period, if they did not opt for Algerian nationality, they would be protected by an establishment convention and allowed to live in Algeria, to keep their property and to acquire new property.[51] The period of adjustment and trial was thus replaced by a "period of reflection"—in other words, the option was not immediate and French nationals could weigh the advantages of the situation for three years, during which they enjoyed a kind of dual nationality. In addition, they were not obliged to sell their property and emigrate if, at the end of the prescribed period, they opted for their original nationality.[52]

(b) *Conventions of establishment*

136. However, the fate of the individual is more than just a question of nationality; it involves a number of important problems relating in particular to personal status i.e., the protection of individuals and their property, for which conventions of establishment are sometimes concluded. These conventions usually prescribe equal treatment for nationals on the basis of reciprocity. On occasion, however, they abandon the principle of equality and introduce a special régime which, rightly or wrongly, comes to be viewed as a preferential system and is therefore doomed to disappear relatively quickly.

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[49] There are two examples of "potential" incomplete devolution, which in the end did not take place. One is the Algerian Sahara; France was not prepared to transfer sovereignty over it and the independence negotiations were broken off in consequence. Similarly, at one stage in the negotiations concerning the independence of the Sudan, when a union with Egypt was envisaged, the United Kingdom tried to retain control of the southern part of the Sudan.

[50] *Annual Digest of Public International Law Cases,* 1927-1928, pp. 88-90.

[51] See United Nations, *Treaty Series,* vol. 507, pp. 35 and 37.

[52] Just before it expired, this three-year period, established by treaty, was unilaterally extended by Algeria in a liberal gesture to resolve various practical problems and to give those wishing to make a choice a final opportunity of doing so. In addition, the Algerian Nationality Code was more liberal than the Evian Agreements had anticipated in some respects. It is original in that it extended Algerian nationality to persons of any nationality, irrespective of their place of birth or residence, who proved that they had taken part in the Algerians' struggle for national liberation and who made a simple declaration expressing their desire to become Algerian. The intent of the Algerian legislator was to acknowledge in this way the services of the foreigners, particularly French nationals, who had helped Algeria to become a sovereign State (Act No. 63-96 of 27 March 1963 establishing the Algerian Nationality Code, art. 8).

For example, all the special judicial arrangements based on the capitulations which were introduced for the benefit of French nationals living in the North African States and the States of Indo-China were short-lived.

137. When they can be concluded, conventions of establishment impose limits on the principle of non-succession and ensure a certain continuity in various situations. Experience has shown, however, that these conventions are, first of all, difficult to conclude and then difficult to enforce. The protection which they afford for private rights is not a lasting one, as will be seen in connexion with the complex problem of "acquired rights".

XI. Acquired rights

138. The traditional international law of State succession follows the principle of respect for acquired rights and imposes an obligation on the successor State to respect concessions granted by the predecessor State. Exceptions were made in the case of "odious" concessions or concession granted *mala fide* on the eve of the territorial transfer. Traditionally, jurisprudence and prevailing doctrine have concurred in making respect for acquired rights (public, private or mixed) the guiding principle.

139. In the present era of decolonization, however, it is fair to ask whether this principle is really valid, in view of the new concept of the sovereignty of States over their natural wealth. One opinion reflecting this concern has emphasized that a concessionary contract must end with the extinction of the personality of the ceding State and could survive the change of sovereignty only at the express wish of the new authority. According to this school of thought, the only right existing after the change of sovereignty was the evicted concessionary enterprise's right to compensation.

140. The current view is that private rights, concessionary or other, cannot be regarded as acquired rights. They are protected only if the new sovereign consents. It has sometimes been possible to protect public or mixed rights by treaty, when the interest of the successor State and that of the predecessor State could be reconciled or even closely linked by a novation of the relationship between the former concessionary enterprise and the successor State. This is a recent tendency.

(a) *Rejection of acquired rights*

141. Treaty clauses can, of course, still be found providing for respect for acquired rights, both public and private. When it became independent, Burma agreed to respect contracts concluded by the United Kingdom. In the Philippines, United States and Philippine nationals were given equal rights for the exploitation and development of natural resources. The Franco-Algerian agreements clearly stated that acquired rights would be respected.[53] Algeria later confirmed all the rights granted by the French Republic under its Saharan Petroleum Code. Under the agreement of 2 November 1949 between the Netherlands and Indonesia, concessions granted before the transfer of sovereignty were made intangible rights. The Anglo-Jordanian treaty provided for the maintenance of concessions.

142. However, facts are more powerful than paper agreements and in most cases events have taken a different course. The solution to Algeria's petroleum problems, which will be described below, departed from the theory of acquired rights *stricto sensu*. Denounced in 1956, the above-mentioned agreement between the Netherlands and Indonesia from the start made the recognition of acquired rights subject to the express reservation that concessions could always be infringed upon in the public interest. Zambia refused to consider itself bound by the Charter granted by Queen Victoria to the British South Africa Company, whose concession was to expire in 1996.

143. The succession of States in the context of decolonization demonstrates that in the recognition of acquired rights in respect of concessions the governing factor is not general obligation to respect acquired rights *but the sovereign will of the new State*.

(i) "Acquired" rights are rights obtained under the former legislation. Yet it has been seen that the continuation in force of the municipal law depends solely on the tacit or express wish of the new sovereign. There are no rules of international law providing for continuity of the former juridical order *ipso jure*. Consequently, concessions granted under the legislation of the predecessor State should not necessarily be binding on the new State.

(ii) The prejudice which the successor State and its nationals may suffer as a result of the maintenance of concessions or acquired rights held by foreigners should also be taken into account.

(iii) Furthermore, it should be noted that new developments regarding the right to nationalize have taken place as a result of the adoption on 14 December 1962 of General Assembly resolution 1803 (XVII) on permanent sovereignty over natural resources and the trends which appeared at the United Nations Conference on Trade and Development. It is interesting to observe that in adopting the aforementioned resolution, operative paragraph 4 of which refers to the protection of acquired rights and the principle of compensation, the General Assembly was careful to state that the paragraph did not apply to cases of State succession resulting from decolonization.

144. The Commission will have to determine whether—as we are inclined to think—a new rule, opposed to the traditional rule can be deduced from practice and the writings of jurists, making it possible to affirm that the successor State is not bound by the commitments entered into by the predecessor State with regard to concessionary enterprises and that it is empowered to

[53] Article 12 of the Declaration of Principles concerning Economic and Financial Co-operation (see United Nations, *Treaty Series*, vol. 507, p. 63).

terminate, modify or maintain a concession by virtue of its sovereign will. If the Commission does not wish to go as far as that, it may have to determine the circumstances in which the successor State is justified in calling into question the concessions granted by the predecessor State. In our view, the economic conditions in which the concession was granted and the requirements of the new economic policy of the successor State should be taken into consideration. We also feel that the pre-colonial municipal law of the territory which has become independent should be taken into account when deciding whether concessions granted by the colonial Power should be maintained or withdrawn.[54] This applies particularly to cases where succession involves the restoration of a pre-existing sovereignty rather than the birth of a new sovereignty. Lastly, the Commission will have to define the scope and range of the reservation included in General Assembly resolution 1803 (XVII) on sovereignty over natural resources and state whether it constitutes a total exemption from the obligation to pay compensation, or merely a relaxation of the former rules in the light of the special problems of newly independent States.

145. The right of young States to carry out nationalizations which cannot be impeded by concessionary contracts is no longer contested. Although the former sovereign was free to grant concessions within the framework of its own political and economic system, it has no grounds for requesting that its successor maintain the *status quo ante*.[55] But many jurists who still subscribe to the concept of acquired rights contend that the successor State cannot retroactively annul the advantages granted to foreigners [56] without paying the latter monetary compensation. They tend to consider that the validity of the nationalization of industries engaged in exploiting natural wealth (petroleum, mineral ores, etc.) depends on the payment of "fair, effective and prompt compensation".

146. However, others will certainly deem the very concept of compensation "unfair" within the colonial context, or will at least consider that it is of no real significance unless it is held to apply to both parties. This approach to the question would make it necessary for all profits earned by concessionary enterprises, the reinvestment of which outside the territory was prejudicial to the latter, to be taken into account in any dispute concerning compensation.[57] It has also been pointed out that a country whose economy has long been dominated by foreign owners cannot seriously contemplate developing its economy and raising the level of living of its inhabitants if it is forced to reimburse the total value of installations left behind by concessionary companies. Hence, the idea of fair compensation would not call for repayment of the value of industrial installations, but would imply that all the elements of a situation characterized by the transfer of profits and the total or partial amortization of the investments made should be taken into account.

147. However, the alternatives of respect for acquired rights or termination of those rights or without compensation are not the only possible solutions. Some States adopt a wholly original attitude with regard to certain situations.

(b) *Novations and transformation of the concessionary régime*

148. In the case of some important natural resources the new State may be unable either to agree to maintain acquired rights, which would prevent it from developing its economy properly, or to abolish such rights immediately, since that would seriously disturb its economy. Combining the legacy of the past and the needs of the present in a balanced way, it reorganizes acquired rights, ensuring greater control and larger profits for itself.

149. For example, in the case of hydrocarbons and raw materials, which are of great importance both to the former metropolitan country and to the former colony, the successor State and the predecessor State have gradually adjusted their relations so as to satisfy the former's desire for novation and the latter's desire to assure itself of a steady source of supply. The interests of the two parties have become complementary rather than antagonistic, for they are dependent on each other.

150. A typical example of these new relations is provided by the Franco-Algerian Conventions, which contain the germ of a new law of State succession. The principle of acquired rights was established in the Declarations adopted on 19 March 1962 at the close of the Evian talks: "Algeria shall confirm all the rights attached to the mining and transport entitlements granted by the French Republic in pursuance of the Saharan Petroleum Code" [58] That was a remarkable result for

[54] For example, in Moslem law, according to the views of the Iman Malek, whose school of thought predominates in North Africa, all mines, even those on freehold land, are the property of the community *(Umma)* and can only be worked by the State or through a concession, which is granted in return for the payment of either a fixed sum or part of the yield. The portion of the yield retained by the concessionary enterprise should in no case exceed a fair recompense for the work and effort involved in operating the mine. The concessionary enterprise's is thus reduced to that of a *mere operator.*

[55] Charles De Visscher has stressed the aleatory nature of concessions granted in such circumstances: "However, from the political point of view, which here is of considerable importance, it is necessary to bear in mind the dangers which inevitably threaten concessions granted to foreign enterprises when they relate to the exploitation of immense national wealth or are granted for a very long period. The awakening of national feeling exposes them to the risk of being regarded as an intolerable mortgage on the life of the community, extorted from a régime which did not represent public opinion." (*Op. cit.*, p. 244).

[56] It should be noted that nationalization may affect nationals too.

[57] A similar consideration led the Algerian Government to call on mining companies to repatriate their assets situated outside Algeria before paying any compensation for the nationalization of nine mining companies, carried out pursuant to Ordinance No. 66-93 of 6 May 1966.

[58] Declaration of Principles on Co-operation for the Exploitation of the Wealth of the Saharan Suboil, title I, para. 1. (See United Nations, *Treaty Series*, vol. 507, p. 67).

the concessionary enterprises, especially those holding prospecting licences or permits to work large deposits of gas and petroleum, as was the agreement relative to arbitration concerning petroleum, concluded a year later, on 23 June 1963. By making organizational arrangements for arbitration, this Agreement also ensured that *acquired rights would be guaranteed by the Court.* The main function of the court is to pronounce judgement on all litigation concerning those rights. It has substantial powers, since it can annul decisions taken by the Algerian Government in the sphere concerned or order that compensation be paid for damages suffered. These rights, henceforth protected under international law, derived from the colonial legislation previously applicable, the Saharan Petroleum Code and the contracts concluded by the concessionary companies and the former public authorities.

151. Furthermore, a new Agreement, signed on 29 July 1965, resolved in a bold and original manner the natural conflict between the concessionary régime and the right of the Algerian people to exploit their natural wealth. This Agreement confirms the acquired rights derived from concessions, but also strengthens the prerogatives of the Algerian Government, introduces a new fiscal régime which is more advantageous to Algeria and ensures the local processing of the products and a certain measure of industrialization. It contains special provisions relating to gaseous hydrocarbons, assigning an important role to the successor State, whose full ownership of the gas is recognized, although the companies have some rights regarding the disposal of the gas.

152. The old formula of concession has been replaced by a *co-operative association,* thus satisfying the needs of the new State, which wishes to promote its economic development and renounces the nationalization procedure, and the requirements of the predecessor State, which is ensured of a regular supply of hydrocarbons. The formulation and implementation of this type of solution was greatly facilitated by the fact that a substantial part of the capital of most of the companies concerned was derived from public sources.

153. The considerations set out in this report and the few accompanying suggestions are of necessity brief in relation to the wide scope and complexity of the subject. The Special Rapporteur felt that he could do no more in a first preliminary report pending the general discussion and instructions from the International Law Commission.