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Seventh report on succession of States in respect of matters other than treaties by Mr. Mohammed Bedjaoui, Special Rapporteur - draft articles on succession to public property, with commentaries

Topic:
Succession of States in respect of matters other than treaties

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SUCCESSION OF STATES IN RESPECT OF MATTERS OTHER THAN TREATIES

[Agenda item 5]

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Seventh report on succession of States in respect of matters other than treaties, by Mr. Mohammed Bedjaoui, Special Rapporteur

Draft articles on succession to public property, with commentaries

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CONTENTS

ABBREVIATIONS

IMF	International Monetary Fund
PCIJ	Permanent Court of International Justice
PCIJ, Series A	PCIJ, *Collection of Judgments*
UNESCO	United Nations Educational, Scientific and Cultural Organization

* * *

EXPLANATORY NOTE: ITALICS IN QUOTATIONS

An asterisk inserted in a quotation indicates that, in the passage immediately preceding the asterisk, the italics have been supplied by the Special Rapporteur.

Chapter I

Draft articles on succession of States in respect of matters other than treaties

NOTE: The articles whose numbers are followed by one asterisk—articles 1 to 8—were provisionally adopted by the International Law Commission at its twenty-fifth session.[1]

The articles followed by two asterisks—articles X, Y and Z, which concern the property of third States and are inserted after article 11 at the end of section I, which deals with general provisions—are new articles designed to supplement the Special Rapporteur's sixth report.[2]

Those articles whose numbers are not followed by an asterisk—articles 9 to 11 and 12 to 31—reproduce the corresponding articles of the sixth report with slight or substantial changes.

Articles 32 to 40, concerning public property other than State property, which were included in the sixth report, have been omitted from the present report, which deals exclusively with State property.

[1] See *Yearbook ... 1973*, vol. II, pp. 202 *et seq.*, document A/9010/Rev.1, para. 92.

[2] *Ibid.*, p. 3, document A/CN.4/267.

INTRODUCTION

*Article 1. * Scope of the present articles*

The present articles apply to the effects of succession of States in respect of matters other than treaties.

*Article 2. * Cases of succession of States covered by the present articles*

The present articles apply only to the effects of a succession of States occurring in conformity with international law and, in particular, the principles of international law embodied in the Charter of the United Nations.

*Article 3. * Use of terms*

For the purposes of the present articles:

(*a*) "succession of States" means the replacement of one State by another in the responsibility for the international relations of territory;

(*b*) "predecessor State" means the State which has been replaced by another State on the occurrence of a succession of States;

(*c*) "successor State" means the State which has replaced another State on the occurrence of a succession of States;

(*d*) "date of the succession of States" means the date upon which the successor State replaced the predecessor State in the responsibility for the international relations of the territory to which the succession of States relates.

PART I

SUCCESSION TO STATE PROPERTY

SECTION 1. GENERAL PROVISIONS

*Article 4. * Scope of the articles in the present Part*

The articles in the present Part apply to the effects of succession of States in respect of State property.

*Article 5. * State property*

For the purposes of the articles in the present Part, "State property" means property, rights and interests which, on the date of the succession of States, were according to the internal law of the predecessor State, owned by that State.

*Article 6. * Rights of the successor State to State property passing to it*

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

*Article 7. * Date of the passing of State property*

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

*Article 8. * Passing of State property without compensation*

Without prejudice to the rights of third parties, the passing of State property from the predecessor State to the successor State in accordance with the provisions of the present articles shall take place without compensation unless otherwise agreed or decided.

Article 9. General principle of the passing of all State property

State property necessary for the exercise of sovereignty over the territory to which the succession of States relates shall pass from the predecessor State to the successor State.

Article 10. Rights in respect of the authority to grant concessions

1. For the purposes of the present article, the term "concession" means the act whereby the State confers, in the territory within its national jurisdiction, on a private enterprise, a person in private law or another State, the management of a public service of the exploitation of a natural resource.

2. Irrespective of the type of succession of States, the successor State shall replace the predecessor State in its rights of ownership of all public property covered by a concession in the territory affected by the change of sovereignty.

3. The existence of devolution agreements regulating the treatment to be accorded to concessions shall not affect the right of eminent domain of the State over public property and natural resources in its territory.

Article 11. State debt-claims

1. The successor State shall become the beneficiary of the (State) debt-claims of all kinds receivable by the predecessor State by virtue of the exercise its sovereignty or its activity in the territory to which the succession of States relates.

PROPERTY OF THIRD STATES

*Article X. ** Definition of a third State*

For the purposes of the articles in the present Part, "third State" means a State which, while neither predecessor nor successor, owned property on the date of the succession of States in the territory to which that succession of States relates.

*Article Y. ** Determination of the property of a third State*

For the purposes of the articles in the present Part, "property of a third State" means property, rights and interests which, on the date of the succession of States, were, according to the internal law of the predecessor State, owned by the third State in the territory to which the succession of States relates.

*Article Z. ** Treatment of the property of a third State*

The rights of a third State pertaining to its property situated in the territory to which the succession of States relates shall not be affected by the succession, except where this is contrary to the public policy (*ordre public*) of the successor State.

SECTION 2. PROVISIONS RELATING TO EACH TYPE OF SUCCESSION OF STATES

SUB-SECTION 1. TRANSFER OF PART OF A TERRFTORY

Article 12. Currency

1. Currency, gold and foreign exchange reserves, and, in general, monetary tokens of all kinds placed in circulation or stored by the predecessor State in the transferred territory and allocated to that territory shall pass to the successor State.

2. The assets of the central institution of issue in the predecessor State, including those allocated for the backing of issues for the transferred territory, shall be apportioned in proportion to the volume of currency circulating or held in the territory in question.

Article 13. Treasury and State funds

1. Liquid or invested funds of the predecessor State, situated in the transferred territory and allocated to that territory, shall pass to the successor State.

2. The successor State shall receive the assets of the Treasury and shall assume responsibility for costs relating thereto and for budgetary and Treasury deficits. It shall also assume the liabilities on such terms and in accordance with such rules as apply to succession the public debt.

Article 14. State archives and libraries

1. State archives and libraries of every kind relating directly to or belonging to the transferred territory shall, irrespective of where they are situated, pass to the successor State.

2. Indivisible State archives shall be copied and apportioned.

Article 15. State property situated outside the transferred territory

The ownership of property belonging to the predecessor State which is situated in a third State shall pass to the successor State in the proportion indicated by the contribution of the transferred territory to the creation of such property.

SUB-SECTION 2. NEWLY INDEPENDENT STATES

Article 16. Currency

1. The successor State shall have at its disposal the currency, gold and foreign exchange reserves and all monetary tokens placed in circulation or stored by the predecessor State in the territory which has become independent and allocated to that territory.

2. It shall have at its disposal the assets of the central institution of issue in proportion to the volume of currency circulating or held in the territory which has become independent.

Article 17. Treasury and State funds

1. Liquid or invested funds which have been allocated by the predecessor State to the territory to which the succession of States relates shall pass to the newly independent State.

2. The assets and holdings of the Treasury which have been allocated by the predecessor State to the territory to which the succession of States relates shall pass to the newly independent State.

Article 18. State archives and libraries

1. State archives and documents of every kind which, irrespective of where they are situated,

(*a*) relate directly to the administration of the territory which has become independent; or

(*b*) belonged to it before its colonization or relate to the pre-colonial period,

and State libraries situated in that territory, shall pass from the predessor State to the newly independent State.

2. The newly independent State shall not refuse to hand over copies of the items referred to in subparagraph (*a*) above to the predecessor State or to any third State concerned, upon the request and at the expense of the latter State, save where considerations of security or sovereignty require otherwise.

3. The predecessor State shall not refuse to hand over copies of its political archives relating to the territory which has become independent to the newly independent State, upon the request and at the expense of the latter State, save where considerations of security or sovereignty require otherwise.

Article 19. State property situated outside the territory of the newly independent State

Property of the predecessor State which is situated in a third State shall be apportioned between the predecessor State and the newly independent State proportionately to the contribution of the territory which has become independent to the creation of such property.

SUB-SECTION 3. UNITING OF STATES AND DISSOLUTION OF UNIONS

Article 20. Currency

1. The union shall receive the assets of the institution of issue and the gold and foreign exchange reserves of each of its constituent States, except where the degree of their integration in the union or treaty provisions allow each State to retain all or part of such State property.

2. In the event of dissolution of the union, the assets of the joint institution of issue and the gold and foreign exchange reserves of the union shall be apportioned in proportion to the volume of currency circulating or held in the territory of each of the successor States.

Article 21. State funds and Treasury

1. The union shall receive as its patrimony the State funds and Treasuries of each of its constituent States, except where the degree of their integration in the union or treaty provisions allow each State to retain all or part of such property.

2. In the event of dissolution of the union, the funds and Treasury of the union shall be apportioned equitably between its constituent States.

Article 22. State archives and libraries

1. Except where otherwise specified in treaty provisions aimed at the establishment of a collection of common central archives, archives and documents of every kind belonging to a State which unites with one or more other States, and its libraries, shall remain its property.

2. In the event of dissolution, the central archives of the union and its libraries shall be placed in the charge of the successor State to which they relate most closely or apportioned between the successor States in accordance with any other criteria of equity.

Article 23. State property situated outside the territory of the union

1. State property situated outside the territory of the union and belonging to the constituent States shall, unless otherwise stipulated by treaty, become the property of the union.

2. Property of the union situated outside its territory shall, in the event of dissolution of the union, be apportioned equitably between the successor States.

SUB-SECTION 4. DISAPPEARANCE OF A STATE THROUGH PARTITION OR ABSORPTION

[*Sub-section deleted*]

SUB-SECTION 5. SUCCESSION OR SEPARATION OF ONE OR MORE PARTS OF ONE OF MORE STATES.

Article 28. Currency

1. The successor State shall have at its disposal the currency, gold and foreign exchange reserves and all monetary tokens placed in circulation or stored by the predecessor State in the detached territory and allocated to that territory.

2. It shall have at its disposal the assets of the institution of issue in proportion to the volume of currency circulating or held in the detached territory.

Article 29. State funds and Treasury

1. Liquid or invested funds which have been allocated by the predecessor State to the detached territory shall pass to the successor State.

2. The assets and holdings of the Treasury which have been allocated by the predecessor State to the detached territory shall pass to the successor State.

Article 30. State archives

1. State archives and documents of every kind relating directly to a territory which has become detached in order to form a separate State shall, irrespective of where they are situated, pass to the latter State.

2. The successor State shall not refuse to hand over copies of such items to the predecessor State or to any third State concerned, upon the request and at the expense of the latter State, save where considerations of security or sovereignty require otherwise.

Article 31. Property situated outside the detached territory

Property of the predecessor State which is situated in a third State shall become the property of the successor State in proportion to the contribution of the detached territory to the creation of such property.

Chapter II

Introduction to the seventh report

1. In accordance with the priority given to the study of succession of States in economic and financial matters, the Special Rapporteur submitted at the twenty-fifth session of the International Law Commission a sixth report,[3] containing 40 draft articles, with commentaries, on succession of States to public property. The draft was divided into two series of articles. The first series concerned "Preliminary provisions relating to succession of States in respect of matters other than treaties", bearing on the topic entrusted to the Special Rapporteur as a whole. It contained articles 1, 2 and 3, which concerned the scope of the whole draft, the cases of succession covered and the meaning of certain terms used.

2. The second series of articles, (articles 4-40) was concerned exclusively, as its title indicated, with "succession to public property". It was divided into seven parts. Part I contained preliminary provisions in articles 4 and 5, dealing with the sphere of application of the articles concerning succession to public property, and the definition and determination of such property. Part II contained, in articles 6 to 8, general provisions relating to the transfer of public property as it exists, the date of its transfer, and the general treatment of public property according to ownership. Part III set forth the provisions common to all types of succession of States, contained in articles 9 to 11 concerning the general principle of the transfer of all State property, rights in respect of the authority to grant concessions, and succession to public debt-claims. Articles 12 to 31 comprised part four, which concerned the provisions relating to each type of succession of States. These provisions dealt, for each type of succession of States, with problems concerning currency and the privilege of issue, Treasury and public funds, archives and public libraries, and property situated outside the territory affected by the change of sovereignty, following on the whole the typology adopted by the Commission in its draft articles on succession of States in respect of treaties. Parts V (articles 32-35), VI (articles 36-39) and VII (article 40), comprised special provisions relating to public establishments, territorial authorities and property of foundations.

3. On the basis of this sixth report, the International Law Commission at its twenty-fifth session continued its consideration of succession of States in respect of matters other than treaties, to which it devoted its 1219th to 1229th, 1230th to 1232nd and 1239th-1240th meetings.

4. Following its usual practice, it decided to divide the draft articles into an *introduction* containing the provisions applying to the draft as a whole and a *number of parts*, each devoted to one category of specific matters.

5. On the proposal of the Special Rapporteur, the Commission, which had provisionally adopted three articles for inclusion in the *introduction*, decided to order the problems better by devoting *part I* exclusively to "succession of States in respect of *State property*", while retaining the possibility of considering at a later date property of territorial authorities other than States and of public enterprises or public bodies, and also property of the territory affected by the State succession. The Commission adopted five articles for part I, *section 1* of which contains provisions which are common to all State property, whatever its nature and whatever the type of succession envisaged, while the following sections concern the various types of succession or particular types of property.

Chapter III

Text of the introduction and of the articles relating to succession to State property adopted provisionally by the Commission[4]

Draft articles on succession of States in respect of matters other than treaties

INTRODUCTION

Article 1. Scope of the present articles

The present articles apply to the effects of succession of States in respect of matters other than treaties.

[3] *Yearbook ... 1973*, vol. II, p. 3, document A/CN.4/267.

[4] *Ibid.*, pp. 202 *et seq.*, document A/9010/Rev.1, para. 92.

Article 2. Cases of succession of States covered by the present articles

The present articles apply only to the effects of a succession of States ocurring in conformity with international law and, in particular, the principles of international law embodied in the Charter of the United Nations.

Article 3. Use of terms

For the purposes of the present articles:

(*a*) "succession of States" means the replacement of one State by another in the responsibility for the international relations of territory;

(*b*) "predecessor State" means the State which has been replaced by another State on the occurrence of a succession of States;

(*c*) "successor State" means the State which has replaced another State on the occurrence of a succession of States;

(*d*) "date of the succession of States" means the date upon which the successor State replaced the predecessor State in the responsibility for the international relations of the territory to which the succession of States relates.

PART I

SUCCESSION TO STATE PROPERTY

SECTION 1. GENERAL PROVISIONS

Article 4. Scope of the articles in the present Part

The articles in the present Part apply to the effects of succession of States in respect of State property.

Article 5. State property

For the purposes of the articles in the present Part, "State property" means property, rights and interests which, on the date of the succession of States, were, according to the internal law of the predecessor State, owned by that State.

Article 6. Rights of the successor State to State property passing to it

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

Article 7. Date of the passing of State property

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

Article 8. Passing of State property without compensation

Without prejudice to the rights of third parties, the passing of State property from the predecessor State to the successor State in accordance with the provisions of the present articles shall take place without compensation unless otherwise agreed or decided.

* * *

6. At the twenty-eighth session of the General Assembly, the Sixth Committee considered these eight articles, upon which various representatives made certain observations.[5] In accordance with the Commission's practice, the Special Rapporteur does not intend to reopen the discussion concerning these observations on the eight articles, which were adopted on an entirely provisional basis. The Commission will have an opportunity to consider these observations at a later stage, probably together with other observation on the same articles.

Chapter IV

Commentaries on the other provisions of the draft relating to State property

7. The purpose of this report is to revise the sixth report [6] in the spirit of the discussion in the Commission, in other words as a sequel to the eight articles above considered as provisionally adopted.

SECTION 1. GENERAL PROVISIONS *(continued)*

A. GENERAL PRINCIPLE OF THE PASSING OF ALL STATE PROPERTY

8. Upon reflection, the Special Rapporteur is proposing an article 9 which is similar, apart from its form, to the provision bearing the same number in his sixth report,[7] but makes no reference to "devolution, automatically and without compensation", which is mentioned in article 8 as adopted by the Commission.

Article 9. General principle of the passing of all State property

State property necessary for the exercise of sovereignty over the territory to which the succession of States relates shall pass from the predecessor State to the successor State.

COMMENTARY [8]

(1) The Commission provisionally adopted article 8, given above, concerning "Passing of State property without compensation". The article was adopted *in place of* draft articles 8 and 9 in the Special Rapporteur's sixth report. But the article 8 adopted by the Commission does

[5] See *Official Records of the General Assembly, Twenty-eighth Session, Annexes*, agenda item 89, document A/9334, paras. 59-76.

[6] *Yearbook ... 1973*, vol. II, p. 3, document A/CN.4/267.

[7] *Ibid.*, pp. 22-24, document A/CN.4/267, article 9 and commentary.

[8] *Ibid.*

not provide the key for the automatic identification of the State property which does in fact pass to the successor State. Mention is made only of the passing of State property "in accordance with the provisions of the present articles".

(2) In fact, the draft articles which follow article 9 in the sixth report indicate the conditions in which *certain previously identified categories of property*, such as debt-claims, currency, institutions of issue, the Treasury, public funds, archives and libraries, pass to the successor State. There are, however, many other kinds of State property, such as military buildings or civilian immovable property belonging to the State, and article 8, in the form adopted by the Commission, gives no indication as to whether such property passes to the successor State. In other words, article 8 as provisionally adopted does not specify which property passes to the successor State: it merely considers the problem solved and indicates that the passing of such State property, which is presumed to have taken place, must be carried out *without compensation*. The reference to the principle that the property passes without payment indicates *how* this passing occurs, or on what conditions. It is now even more necessary to specify *if* passing occurs.

(3) The Special Rapporteur does not feel that the present wording of article 8 answers this question. He submitted to the Drafting Committee of the Commission a draft article 8 to replace draft articles 8 and 9 of his sixth report, taking this question into account. By adopting article 8, the Commission chose first to settle the problem of the right to compensation. However, the other question still remains. Before considering the *lex specialis* concerning the passing of property such as currency, institutions of issue, debt-claims and public funds, it is necessary to consider a *lex generalis* containing a general norm concerning the passing of State property.

Such was the purpose of article 9 of the sixth report, which the Special Rapporteur is therefore now submitting to the Commission in the version given above. That version leaves out all reference, now superfluous, to the fact that the passing of State property is effected without payment, already incorporated into article 8.

(4) The question may naturally be raised whether this draft article 9 embodies *a rule of international law and of succession of States*. A highway, a river, a barracks, an aqueduct, a State enterprise and an administrative building housing a State service, all of which belonged to the predecessor State, clearly cannot but pass to the successor State. It is hard to see how the former could retain them (without the consent of the latter) in a territory where one sovereign authority has replaced another. Is this not rather an "inherent" or "natural" right of the State in the sense of Article 51 of the Charter of the United Nations, context apart? If so, such a right, by its self-evidence—one might even say by its prior existence, would not even need to have a place in the international law of succession of States, which, as may fittingly be recalled here, has been defined as the "replacement of one State by another in the responsibility for the international relations of the territory" (article 3, sub-paragraph (*a*)).

(5) In submitting draft article 9, the Special Rapporteur has not adopted a final position. He has sought primarily to remedy the deficiencies of the preceding article 8. If the Commission decides to dispense with the proposed article 9, on the grounds that its legal content is as self-evident as its formulation is difficult owing to the vagueness of the expression "property necessary for the exercise of sovereignty", it will still have to provide a suitable commentary on the problem at the appropriate time.

B. RIGHTS IN RESPECT OF THE AUTHORITY TO GRANT CONCESSIONS

Article 10. Rights in respect of the authority to grant concessions

1. For the purposes of the present article, the term "concession" means the act whereby the State confers, in the territory within its national jurisdiction, on a private enterprise, a person in private law or another State, the management of a public service of the exploitation of a natural resource.

2. Irrespective of the type of succession of States, the successor State shall replace the predecessor State in its rights of ownership of all public property covered by a concession in the territory affected by the change of sovereignty.

3. The existence of devolution agreements regulating the treatment to be accorded to concessions shall not affect the right of eminent domain of the State over public property and natural resources in its territory.

COMMENTARY

The Special Rapporteur has retained draft article 10 of his sixth report. He is concerned here only with the *rights* of the conceding authority in the context of these articles, which are concerned with *public property*, that is, more particularly State property, rights and interests. He has left pending for the time being the problem of the *obligations* of the conceding authority, merely stating that the rights in respect of the authority to grant concessions automatically belong to the successor State as essential attributes of its sovereignty.[9]

C. SUCCESSION TO STATE DEBT-CLAIMS

Article 11. State debt-claims

The successor State shall become the beneficiary of the (State) debt-claims of all kinds receivable by the predecessor State by virtue of the exercise of its sovereignty or its activity in the territory to which the succession of States relates.

COMMENTARY

(1) The Special Rapporteur has retained in part the provisions contained in draft article 11 of his sixth report.

[9] See *Yearbook ... 1973*, vol. II, p. 27, document A/CN.4/267, part four, paras. 15-17 of the commentary to article 10.

However, in conformity with the Commission's decision, for the present he is concerned exclusively with *State debt-claims*. He has therefore temporarily set aside the question to which paragraph 1 of the 1973 draft article 11 referred, concerning public debt-claims proper to the territory to which the succession of States relates. The new article 11 is therefore similar, apart from its form, to paragraph 2 of draft article 11.

(2) The Special Rapporteur does not see any objection to deleting the expression "State", which appears in parentheses in the above text of article 11. Debt-claims cannot be anything but State debt-claims from the moment that they are receivable by the predecessor State.

D. PROPERTY OF A THIRD STATE

9. The Special Rapporteur wishes to supplement the foregoing general provisions, which constitute section of part one, concerning State property, with rules relating to the property of third States.

10. Theoretically, there are two ways in which a third State may be affected by a succession of States in respect of State property: first, it may own property in the territory to which the succession of States relates; in such cases it will be necessary to determine the treatment to be accorded to such property of the third State. Secondly, the problem also arises of determining what treatment should be accorded to property situated *in* the third State, which belongs to the predecessor State or to the territory to which the succession of States relates.

11. The second aspect of the question cannot be examined in the context of section 1 (General provisions) of part I, concerning State property. The subject can be taken up in the next section, under each type of succession of States. Moreover, the question of *property proper* to the territory to which the succession of States relates (and situated in a third State) will have to be deferred, since the Commission decided to devote part I to State property, to the exclusion of property belonging either to territorial authorities other than State authorities, to public establishments or public bodies, or to the territory affected by the succession of States.

12. This examination of the question of the property of third States will focus on: (*a*) the definition of a third State, (*b*) the determination of the property of the third State and (*c*) the treatment to be accorded to such property following State succession.

(1) *Definition of a third State* [10]

Article X. Definition of a third State [11]

For the purposes of the articles in the present Part, "third State" means a State which, while neither predecessor nor successor, owned property on the date of the succession of States in the territory to which that succession of States relates.

COMMENTARY

(1) The *Dictionnaire de la terminologie du droit international* defines the term "third party" as an entity which, in respect of a legal instrument, arbitral or judicial proceedings and the decision resulting therefrom, or a particular case, is not a party to such instrument or proceedings or is a stranger to such case.[12]

It is not an easy task to formulate an "objective" technical definition of a third State. What makes a State a third State varies, and is "relative" to a situation or a legal instrument. *Everything hinges on the thing in relationship to which an entity is or becomes a third party.* The *successor* State itself may be considered a *third* State in relation to the legal instruments whose author is the State to which it succeeds.[13]

(2) The Convention on the Law of Treaties adopted at Vienna on 23 May 1969 defined a third State as "a State not a party to the treaty".[14]

(3) This is roughly the same definition as that used by Mr. Endre Ustor in another context in his draft articles on the most-favoured-nation clause: in this case, the term " 'Third State' means a State not a party to the treaty in question" (i.e., the treaty containing the clause).[15] The third State therefore is not the beneficiary State, which, however, is in some respects a *third party* in relation to the collateral treaty granting certain advantages to another State, but which became a contracting State in the treaty containing the clause. The Special Rapporteur indicated that in most cases the third State, as he defined it, was the State which was a *party* to the collateral treaty concluded between it and the granting State.

(4) In another context, Mr. Paul Reuter, in his second report on treaties concluded between States and international organizations or between two or more international organizations, showed, in connexion with the topic with which he was dealing, the extreme difficulty of the question of the effects of agreements with respect to third parties.[16]

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[10] See Ph. Braud: "Recherches sur l'Etat tiers en droit international public", *Revue générale de droit international public* (Paris), 3rd series, vol. XXXIX, No. 1 (January-March 1968), pp. 17-96.

[11] For the time being, article X and the two articles which follow (Y and Z) have not been numbered in sequence following the preceding articles in order to ensure that their insertion at this point does not interfere with the continuous numbering of the articles or make it difficult to compare the draft articles in the present report and those in the sixth report.

[12] *Dictionnaire de la terminologie du droit international* (Paris, Sirey, 1960), p. 603.

[13] Ph. Braud, *loc. cit.*, p. 42, who states that a distinction must, however, be drawn between a situation in which the successor State undergoes changes and a situation in which the successor State benefits from the changes. In point of fact, in some cases the successor State is even more of a "stranger" or a "third party" in respect of an earlier agreement or earlier instruments since it did not exist when those instruments were concluded.

[14] Article 2, para. 1 (*h*). Sir Gerald Fitzmaurice, in his fifth report on the law of treaties, offered the following definition:

> "For the purposes of the present articles, the term 'third State' in relation to any treaty, denotes any State not actually a party to that treaty, irrespective of whether or not such State is entitled to become a party, by signature, ratification, accession or other means; so long as such faculty, where existing, has not yet been exercised".

(*Yearbook . . . 1960*, vol. II, p. 75, document A/CN.4/130, I, article 1, para. 1).

[15] *Yearbook . . . 1972*, vol. II, p. 162, document A/CN.4/257 and Add.1, article 1 (*f*).

[16] *Yearbook . . . 1973*, vol. II, pp. 89 *et seq.*, document A/CN.4/271, paras. 89-107.

(5) In its draft articles on succession of States in respect of treaties, the International Law Commission sought to define "the third State", which, with the predecessor State and the successor State, forms the *triangular relationship* proper to succession of States in respect of treaties. The Commission defined the third State by the term "other State party", which "means in relation to a successor State any party, other than the predecessor State, to a treaty in force at the date of a succession of States in respect of the territory to which that succession of States relates".[17]

The commentary on this article defining terms explains why the Commission avoided using both the terms "third State" (in the technical sense) and "other Party" (in its general, ordinary sense), which were used in the Vienna Convention on the Law of Treaties, and why it considered it appropriate to use the term "other State party".[18]

(6) It is obvious that, in view of the variety of situations covered by the concept of a third State, none of the foregoing definitions is precisely suited to the present draft articles. A third State cannot be referred to as a "non-party to a treaty" or as "another party to the treaty," since what is involved here is succession to State property, and not succession to a treaty. A definition must be found for the third State which was a "former partner" of the predecessor State in so far as State property is concerned. Moreover, the third State must be considered only in respect of its property situated in the territory to which the succession of States relates, namely in the territory of the successor State. What is relevant here, accordingly, is not all the "real" relations, i.e., those relating to the movable and immovable property of the third State situated in the territory or the part of the territory of the predecessor State which is not affected by the succession of States. The effects of the succession of States cannot cover such property. Therefore, what is involved is solely the property of the third State situated in the territory to which the succession of States relates.

(7) One of the fundamental principles retained in connexion with succession of States in respect of treaties is the consent or absence of consent to be bound by an agreement. The successor State may choose to remain a third party with respect to a treaty concluded by the predecessor State and another State or, on the contrary, it may consider itself bound by the treaty, provided that such faculty is open to it under the treaty. However, in respect of public property or State property the third State is characterized essentially by the fact that it has the nature or status of stranger to the succession of States. It is *paenitus extranei*. However, while remaining a third party with respect to the succession of States, it is affected, so far as its property is concerned, by the juridical effects of the succession.

Against this background, a third State is thus neither the State which cedes nor the State which succeeds. It is neither the State which undergoes a change nor the beneficiary of the change. It is the State which, by virtue of having previously established a patrimonial relationship with the predecessor State, is affected by the succession of States.

(8) Accordingly, the Special Rapporteur suggests the wording used in article X, a definition which has two aspects: on the one hand, the third State is a stranger to the actual phenomenon involving the replacement of one State by another in the responsibility for the international relations of the territory, a fact which distinguishes the third State from the successor State and the predecessor State; on the other hand, the third State is nevertheless affected by the succession of States since it owns property in the territory, a fact which distinguishes it from all other States, which are not affected.

(9) As drafted, this is a very specific definition of succession of States in respect of State property, and the Special Rapporteur therefore proposes that it should be used provisionally only in this context. For this reason, he suggests that it should not be included in a separate paragraph for insertion in draft article 3, relating to the "use of terms" throughout the draft articles on succession of States in respect of matters other than treaties.

(2) *Determination of the property of a third State*

Article Y. Determination of the property of a third State

For the purposes of the articles in the present Part, "property of a third State" means property, rights and interests which, on the date of the succession of States, were, according to the internal law of the predecessor State, owned by the third State in the territory to which the succession of States relates.

COMMENTARY

(1) It would be most prejudicial to have two different definitions of State property, depending on whether it belongs to a third State or to a predecessor or successor State. Article 5 adopted provisionally by the Commission at its twenty-fifth session, and mentioned earlier,[19] provides a general and satisfactory definition of State property. The Special Rapporteur believes that that definition has the merit of also being applicable to cases involving property belonging to a third State.

(2) It may, however, appear odd to refer to the legislation of the predecessor State when determining the property of the third State. But the property in question is not the entire property of the third State—and particularly does not include that which is situated in its own territory and which can be identified only by reference to its own legislation. It is necessary to refer to the legislation of the predecessor State because for the purposes of the present articles we are concerned only with the property of the third State which is situated in the territory to which the succession of States relates. Accordingly, if the Commission deems it essential at this stage in its work to specify, as would be expedient, that the property of the third State may be determined

[17] *Yearbook ... 1972*, vol. II, p. 230, document A/8710/Rev.1, chap. II,C, article 2, para. 1 (*m*).

[18] *Ibid.*, p. 232, para. 9 of the commentary to article 2.

[19] See chap. III above.

by reference to the legislation of the predecessor State only if such property is situated in the territory affected by the succession of States, it will have to supplement the general definition of State property contained in article 5 by adding at the end that what is envisaged is property situated "in the territory to which the succession of States relates". That is the purpose of article Y under consideration, which differs from article 5 only in that it mentions this point at the end.

(3) The Commission could not dispense with this article unless it wished to include the same point in article 5. The Special Rapporteur believes that it cannot do so at the present stage of its work, because it would then exclude State property situated *outside the territory* to which the succession of States relates, in particular, property situated in the predecessor State. For, as concerns the latter type of property, and in certain types of succession of States, the Commission does not yet know whether the property passes to the successor State or whether, on the contrary, it is shared with the predecessor State. It would therefore appear wiser for the time being provisionally to retain article Y.

(4) Normally, a State acquires property in the territory of another State by virtue of an act, agreement, convention or some other document having legal force. The legal nature of such property, as the *property of a foreign State*, is determined by this instrument. Where the legal nature is determined unilaterally by the acquiring State, it may have been accepted tacitly or expressly by the State in whose territory the property in question is situated, or it may have been challenged and then been settled by treaty. In both cases, the legal nature of the property of the acquiring State is recognized by the two States. Accordingly, the status of property of a third State situated in the territory to which the succesion of States relates was recognized by the predecessor State, according to its legislation, at the date of the succession of States.

(3) *Treatment of the property of a third State*

Article Z. Treatment of the property of a third State

The rights of a third State pertaining to its property situated in the territory to which the succession of States relates shall not be affected by the succession, except where this is contrary to the public policy (*ordre public*) of the successor State.

COMMENTARY

(1) To begin with, it should be clearly recalled that "property of a third State" in this case means only the *State property* of the third State, and not the property *of nationals* of the third State.

The Special Rapporteur is referring to a situation in which a third State possesses real property in the territory to which the succession relates, such as a consulate, cultural office or trade mission. The Special Rapporteur has done a great deal of research on the data available to him concerning diplomatic practice. Although this research did not yield any particularly significant precedents, it did confirm him in his conviction—that no disputes have arisen in connexion with the matter. He therefore feels justified in believing in the intangibility of such property belonging to a third State and in affirming the principle of intangibility in the draft article under consideration.[20]

(2) If such a principle is not included, or if it is affected by State succession, international relations themselves would become precarious or difficult. In fact it is necessary, in the normal interplay of these relations, for States to acquire in each other's territory various kinds of real property in order to discharge their task of representation in the broad sense.

(3) Without having to refer to the case of succession of States, the Vienna Convention on Consular Relations protected consular property in the following manner, in the event of abolition or restriction of the right of ownership of the foreign State:

> The consular premises, their furnishings, the property of the consular post and its means of transport shall be immune from any form of requisition for purposes of national defence or public utility. If expropriation is necessary for such purposes, all possible steps shall be taken to avoid impeding the performance of consular functions, and prompt, adequate and effective compensation shall be paid to the sending State.[21]

(4) However, let us consider a type of State property other than that required for the official representation of one State in another. A situation may arise in which *mixed companies of States* exercise a commercial, agricultural or industrial activity in the territory of any one of the participating States. Mixed companies of States are common in the USSR and the peoples' democracies.

(5) Furthermore, a United Nations study listed certain "treaty rights of States in foreign territory pertaining to natural resources".[22] The

[20] Daniel Bardonnet (*La succession d'Etats à Madagascar — Succession au droit conventionnel et aux droits patrimoniaux* (Paris, Librairie générale de droit et de jurisprudence, 1970)) refers to a case which is now solely of historical interest, since it involves the annexation of a territory, a method which has been rendered invalid by contemporary international law. When France changed Madagascar from a protectorate into a colony, a decree of 9 June 1896 eliminated the consular jurisdictions of the United States, Great Britain and Italy. The text contained no provisions concerning the treatment to be accorded to the real property in which the courts sat. The decree was interpreted as applying only to the consular function, the real property having been recognized as belonging to the countries concerned (Bardonnet, *op cit.*, pp. 99 *et seq.*).

[21] Article 31, para. 4 of the 1963 Vienna Convention on Consular Relations. For the text of the Convention, see United Nations, *Treaty Series*, vol. 596, p. 261. Certain representatives went even further, although their views were not adopted by the Conference (see *Official Records of the United Nations Conference on Consular Relations*, vol. I (United Nations publication. Sales No. 63.X.2), pp. 21 *et seq.*, eighth plenary meeting, paras. 10-47). The representative of the Ukrainian Soviet Socialist Republic, for example, belived that international law:

> "did not permit execution of the property of foreign States without their agreement. Absolute immunity from execution [on the property of a foreign State] was a basic principle of national sovereignty . . ." (*ibid.*, pp. 23-24, para. 29).

[22] See *I. The status of permanent sovereignty over natural resources: Study by the Secretariat—II. Report of the Commission on Permanent Sovereignty over Natural Resources* (United Nations publication, Sales No. 62.V.6), chap. II, Sect. B. Not all the examples cited, however, refer to cases involving State property.

Treaty rights thus enjoyed by a State or States in the territory of another State or States are localized in the sense that the rights are granted for certain purposes in particular parts of the territory of the grantor State(s). They include transit rights, mining rights, rights in connexion with the construction of international pipelines and water rights.[23]

(6) What treatment is accorded to such property when it belongs to a foreign State which becomes a third State in the case of State succession? It should be noted, firstly, that there exist situations which are the opposite of those described in the United Nations study and which occur even more frequently: a great many States are subject to legislation and occasionally even to a constitution which *restrict the right of another State to own in the former's territory State property other than that required for its official representation.* Therefore, if such States become successor States—as is always possible given particular circumstances—there is reason to fear that their constitution, basic laws or internal juridical order in general may prevent them from permitting the third State to retain its right of ownership. There would them be a conflict between the public policy (*ordre public*) of such States and the rule of the inviolability of the property of the third State, assuming no exceptions to the rule were permitted.

(7) The problem is far from being theoretical. Numerous examples could be cited of internal legislation which restricts the rights of ownership of third States.[24] Only a few examples will be cited here. It is obvious from the outset that, given the diversity of social and economic systems in the world, uniform acceptance of ownership rights of one State in another can hardly be expected. There are countries in which certain, if not all, sectors of the economy are the exclusive domain of national State enterprises. Some countries have adopted measures excluding foreign enterprises—privately owned and, *a fortiori*, State-owned—from various sectors of the national economy. The United Nations study referred to above mentions legislative and even constitutional measures excluding enterprises controlled by foreign *Governments* in countries whose economies have not, however, been totally nationalized.[25]

(8) It was in order to take account of such situations of conflict between the "internal public policy" (*ordre public*) of the successor State and the definitive maintenance of the right of ownership of the third State that the Special Rapporteur provided for an exception in the article under consideration. However, this exception obviously does not confer on the successor State any discretionary rights in respect of the property of the third State.

SECTION 2. PROVISIONS RELATING TO EACH TYPE OF SUCCESSION OF STATES

13. The Special Rapporteur indicated in his sixth report the theoretical and practical difficulties encountered in attempting to classify the various cases of State succession.[26] He pointed out that from a purely logical standpoint one could envisage a double classification of cases according to whether a new State was created and whether the predecessor State disappeared. One would then have the following four cases:

(*a*) Succession without the creation or disappearance of a State (case of transfer of part of the territory of a State);

(*b*) Succession by creation of a State not entailing the disappearance of the predecessor State (case of newly independent States);

(*c*) Succession by creation of a State and disappearance of the predecessor State or States (cases of uniting of States, dissolution of unions, merger and creation of "composite" States);

(*d*) Succession without the creation of a State but entailing the disappearance of the predecessor (absorption, extinction, complete integration, and partition among several States).

14. The Special Rapporteur also included in the list the special case of separation of part of a State (secession), which the International Law Commission decided to treat separately in connexion with its draft articles on succession of States in respect of treaties.

15. However, the Special Rapporteur was of the view that category (*d*), entailing the disappearance of the predecessor State by absorption, was invalid in the context of contemporary international law, which prohibited the annexation, partition or absorption of a State by one or more other States, notwithstanding the fact that in practice, particularly in armed conflicts, cases of this kind do arise,[27] and the fact that in theory it is possible to envisage a State disappearing following a popular referendum in favour of attaching the State completely or partially to one or more neighbouring States.

16. The Special Rapporteur accordingly proposes that in future category (*d*) should be omitted from the draft articles under consideration; *this means that articles 24, 25, 26 and 27* contained in the sixth report *are unnecessary.* The final categories proposed by the Rapporteur are therefore as follows:

(*a*) Transfer of part of a territory;

(*b*) Newly independent States;

(*c*) Uniting of States and the dissolution of unions;

(*d*) Secession or separation of one or more parts of one or more territories.

[23] *Ibid.*, chap. II, para. 63.

[24] *Ibid.*, chaps. I and IV.

[25] *Ibid.*, chap. I, sect. E, 3.

[26] See *Yearbook ... 1973*, vol. II, pp. 29 *et seq.*, document A/CN 4/267, paras. 20 *et seq.*

[27] See *Yearbook ... 1968*, vol. II, p. 94, document A/CN.4/204; *Yearbook ... 1969*, vol. II, p. 69, document A/CN.4/216/Rev.1; *Yearbook ... 1970*, vol. II, p. 131, document A/CN.4/226. See also *Yearbook ... 1971*, vol. II (Part One), pp. 162 *et seq.*, document A/CN.4/247 and Add.1, commentary to article 1, and *Yearbook ... 1973*, vol. II, pp. 14, 33, 54 and 56, document A/CN.4/267, part three, commentary to article 2; *ibid.*, part four, paras. 45 *et seq.*; *ibid.*, para. 2 of the commentary to article 24 and paras. 6 and 7 of the commentary to article 27.

SUB-SECTION 1. TRANSFER OF PART OF A TERRITORY

Article 12. Currency

1. Currency, gold and foreign exchange reserves, and, in general, monetary tokens of all kinds placed in circulation or stored by the predecessor State in the transferred territory and allocated to that territory shall pass to the successor State.

2. The assets of the central institution of issue in the predecessor State, including those allocated for the backing of issues for the transferred territory, shall be apportioned in proportion to the volume of currency circulating or held in the territory in question.

COMMENTARY

(a) *Deletion of paragraph 1 of former article 12 and of the identical paragraphs in the corresponding articles (paragraph 1 of articles 16, 20 and 28):*[28]

(1) The concept of "property, *rights* and interests" was referred to in the definition of State property. This leads one, when considering matters relating to currency, to examine the question of the privilege of issue, a recognized regalian *right* of the State. In his earlier reports, the Special Rapporteur took care to include in the article or articles relating to currency a provision to the effect that "the privilege of issue shall belong to the successor State". The privilege of issue is in fact an attribute of every State. As the Special Rapporteur emphasized in these various reports,[29] the text he had proposed, as drafted, did not mean that the privilege of issue was the subject of a succession or a transfer. The predecessor State loses its privilege of issue in the territory to which the succession of States relates and the successor State exercises its own privilege of issue, which it derives from its own sovereignty. Just as the successor does not derive its sovereignty from the predecessor, as the Special Rapporteur has always asserted,[30] so also it does not receive from the predecessor an attribute of sovereignty such as the privilege of issue. The proposed paragraph simply stated that this privilege "belongs" to the successor State in the territory henceforth within its jurisdiction, just as it belongs to every State in its own territory. The privilege of issue is not inherited.

(2) The Special Rapporteur was particularly anxious to state an obvious fact in this provision, because he feared that *treaty* restrictions established in the past on the exercise of the privilege of issue of the successor State might give rise to some doubt concerning the recognition of this privilege as a natural attribute of that State in the territory to which the succession of States relates.[31]

(3) Monetary authority is a fundamental component of State sovereignty, the privilege of issue being only one aspect of that authority. The replacement of one currency system by another is not always the result of territorial changes; it can occur within a State, without State succession. The Special Rapporteur earlier recommended making a distinction, as in the case of any right, between the possession and the exercise of the privilege of issue, in order to ensure that historical examples of limitations of that right by treaty were correctly interpreted.[32] When one State replaces another in the international responsibility for a territory, the successor State is the real holder of the privilege of issue, even if it delegates the exercise of the privilege by treaty. Any limitation unilaterally imposed on the successor State would be unlawful. The Permanent Court of International Justice, in its 1927 judgement on the *case of the S.S. "Lotus"*, affirmed that "Restrictions upon the independence of States cannot . . . be presumed" [33] and likewise affirmed in its judgements Nos. 14 and 15 of 12 July 1929 that "It is . . . a generally accepted principle that *a State is entitled to regulate its own currency*".*[34]

(4) The Special Rapporteur, however, is really not sure whether the rule embodied in the 1973 version of paragraph 1 of article 12, on the privilege of issue, is, in fact, norm of public international law. It is more in the nature of a "primary" rule based on the constitutive and originating aspect of every State. In this sense it is a rule of internal public law.[35] For that reason the Special Rapporteur intends to omit it from the new version of article 12 proposed above, and from subsequent articles dealing

[28] Article 24, paragraph 1, has already been deleted in view of the elimination of articles 24, 25, 26 and 27 concerning the category—which has now been rejected—relating to the disappearance of a State by partition or absorption.

[29] See in particular *Yearbook . . . 1973*, vol. II, p. 35, document A/CN.4/267, part four, paras. 5 *et seq* of the commentary to article 12.

[30] See *Yearbook . . . 1969*, vol. II, p. 77, document A/CN.4/216/Rev.1, para. 29.

[31] With reference to these treaty restrictions, see *Yearbook . . . 1973*, vol. II, p. 35, paras. 7-9 of the commentary to article 12 and *ibid.*, pp. 45-46, paras. 2-9 of the commentary to article 16.

[32] *Ibid.*, pp. 35 *et seq.*, paras. 7 *et seq.* of the commentary to article 12.

[33] *P.C.I.J.*, Series A, No. 10, Judgement No. 9, p. 18.

[34] *P.C.I.J.*, Series A, Nos. 20/21, Judgement No. 14, p. 44. The fact that, in the opinion of some writers (D. Carreau, *Souveraineté et coopération monétaire internationale* (Paris, Cujas, 1970), p. 10), in monetary matters interdependence and co-operation are more characteristic of our era than political sovereignty does not significantly alter the factual basis of the problem under consideration. First, at the political level this international co-operation scarcely conceals the restrictive *dirigisme*—itself at present under attack—of the small number of Powers forming the club which governs the international monetary order. Secondly, at the legal level, the imposition of limitations on political sovereignty in monetary matters is acceptable only on the basis of treaties, which do not necessarily preclude monetary changes deemed to be necessary within the domestic legal order. The Bretton Woods Agreements on IMF provide that "A member may change the par value of its currency without the concurrence of the Fund if the change does not affect the international transactions of members of the Fund" (United Nations, *Treaty Series*, vol. 2, p. 50, article IV, section 5 (*e*)). "The Fund shall concur in a proposed change . . . if it is satisfied that the change is necessary to correct a fundamental disequilibrium" (*ibid.*, section 5 (*f*)). In short, if the *monetary policy* of the State is susceptible, to some degree, to voluntary limitation by treaty, the privilege of issue, as a regalian *right*, is not thereby affected in the present circumstances of international co-operation.

[35] The association of the privilege of issue with the holder of the sovereign Power goes back to antiquity; Darius—the first person, apparently, to do so—made use of it five centuries before the Christian era (A. Nussbaum, *Money in the Law, National and International* (Brooklyn, Foundation Press, 1950), p. 32; and D. Carreau, *op. cit.*, 1970, p. 24). "The monopoly of the Government (or constitutionally competent organ)", writes Carreau (*op. cit.*, p. 26), "over the domestic monetary system is affirmed unanimously by the precedents and by the laws and constitutions"; he cites numerous illustrations.

with the currency problem in other types of State succession (articles 16, 20 and 28). However, in order to avoid any misunderstanding of the intent of this deletion, the Special Rapporteur urges the International Law Commission to draw attention in its commentary on this article (and on articles 16, 20 and 28) to the self-evident principle that the privilege of issue belongs to the successor State in the territory to which the succession of States relates.

(b) *Other observations on the wording of article 12*

(5) In article 12 the International Law Commission deals with the complex problems of currency. *A definition of currency* for the purpose of international law should take account of the following three fundamental elements: (*a*) currency is an attribute of sovereignty, (*b*) it circulates in a given territory and (*c*) it represents purchasing power.[36] Dominique Carreau observes that this legal definition

necessarily relies on the concept of statehood or, more generally, that of *de jure* or *de facto* sovereign authority. It follows from this proposition that media of exchange in circulation are, legally speaking, not currency unless their issue has been established or authorized by the State, and, *a contrario*, that currency cannot lose its status otherwise than through formal demonetization.[37]

(6) For the purposes of our subject, this means that the predecessor State loses and the successor State exercises its own monetary authority in the territory to which the succession of States relates. That should mean that at the same time the State patrimony associated with the expression of its monetary sovereignty in that territory (gold and foreign exchange reserves, and real property and assets of the institution of issue situated in that territory) must pass from the predecessor State to the successor State.

(7) *The normal relationship between currency and territory* is expressed in the idea that currency can circulate only in the territory of the issuing authority. The concept of the State's "territoriality of currency" or "monetary space" implies, first, the complete surrender by the predecessor State of monetary powers in the territory considered and, secondly, its replacement by the successor State in the same prerogatives in that territory. But both the withdrawal and the assumption of powers must be organized on the basis of a factual situation, namely the impossibility of leaving a territory without any currency in circulation on the day on which the State succession occurs. The currency inevitably left in circulation in the territory by the predecessor State and retained temporarily by the successor State justifies the latter in claiming the gold and foreign exchange security or backing for that currency. Similarly, the real property and assets of any branches of the central institution of issue in the territory to which the State succession relates pass to the successor State under this principle of the State's "currency territoriality" or "monetary space". It is because the circulation of currency implies security or backing—the public debt, in the final analysis—*that currency in circulation cannot be dissociated from its base or normal support, which is formed by all the gold or foreign exchange reserves and all assets of the institution of issue. This absolute inseparability is, after all, merely the expression of the global and "mechanistic" character of the monetary phenomenon itself.*

(8) As the Special Rapporteur has pointed out [38] the circulation of paper money in a territory has the double function of public property and public debt. One writer has recently argued that.

The currency aspects of State succession must be conceived as the complete succession of one monetary system to another and not merely as an appendage to succession to public debts.[39]

In the world monetary system as it exists today, *currency has value only through the existence of its gold backing, and it would be futile to try, in the succession of States, to dissociate a currency from its backing.* For that reason it is essential that the successor State, exercising its jurisdiction in a territory in which there is inevitably paper money in circulation, should receive in gold and foreign exchange the equivalent of the backing for such issue. The Special Rapporteur would point out, however, that this does not always happen in practice.

(9) Incidentally, the wording of article 12 in the sixth report may have given rise to an interpretation which the Special Rapporteur had not contemplated. Paragraph 2 of that article stated that "Currency, gold and foreign exchange reserves, and, in general, monetary tokens of all kinds circulating or stored in the territory shall pass to the successor State". This wording has led one writer to conclude that

there is no good reason why monetary tokens of all kinds should automatically pass to the successor State. In particular, it may happen that individuals or banks possess, either directly or through approved intermediaries, gold or foreign currency, and State succession cannot in itself lead to the expropriation of such private assets.[40]

There is, in reality, only one case to be considered, that of *public* property, and only *State* property, at that. The Special Rapporteur made no reference in this context to private property. In any event it was clearly impossible to make reference to private property, since in the paragraph in question the property "circulating or stored" was "*monetary*" tokens of all kinds, gold and foreign exchange reserves, and *currency*. But in modern systems currency cannot be private property. However, in order to obviate any possible misinterpretation, the Special Rapporteur has revised the text of the paragraph in question (which has become paragraph 1 of the present article 12), and it now makes reference to the currency, gold and foreign exchange reserves, and monetary tokens "placed in circulation or stored *by the predecessor State* in the transferred territory".

(10) Moreover, the Special Rapporteur has deemed it necessary to add the phrase "*and allocated to that terri-*

[36] D. Carreau, *op. cit.*, p. 23.

[37] *Ibid.*, p. 27.

[38] See *Yearbook ... 1971*, vol. II (Part One), pp. 179 *et seq.*, document A/CN.4/247 and Add.1, commentary to article 7; and *Yearbook ... 1973*, vol. II, p. 34, document A/CN.4/267, paras. 2-4 of the commentary to article 12.

[39] G. Burdeau, "Les successions de systèmes monétaires en droit international", Université de droit, d'économie et de sciences sociales, Paris (Paris II) (1974) (thesis), p. 126.

[40] *Ibid.*, pp. 274-275.

tory". The principle of allocation or assignment of monetary tokens to the territory to which the succession of States relates is essential here. If currency, gold and foreign exchange reserves, and monetary tokens of all kinds belonging to the predecessor State are temporarily or fortuitously present in the transferred territory without the predecessor State's having intended to allocate them to that territory, obviously they have *no link or relationship with the territory* and cannot pass to the successor State. The gold owned by the Banque de France which was held in Strasbourg during the Franco-German War of 1870 could not have passed to Germany after Alsace-Lorraine was annexed to that country unless it had been established that that gold had been "allocated" to the transferred territory.

Article 13. State funds and Treasury

1. Liquid or invested funds of the predecessor State situated in the transferred territory and allocated to that territory shall pass to the successor State.

2. The successor State shall receive the assets of the Treasury and shall assume responsibility for costs relating thereto and for budgetary and Treasury deficits. It shall also assume the liabilities on such terms and in accordance with such rules as apply to the public debt.

COMMENTARY

(1) In the previous report article 13 had three paragraphs.[41] In this version paragraph 2, which read

> Irrespective of where they are situated, public funds, liquid or invested, which are proper to the transferred territory shall continue to be allocated and to belong to the transferred territory

has been dropped. At the twenty-fifth session the Special Rapporteur proposed and the Commission agreed that for the moment only *State property* should be considered, so that the problem of property which was *proper to the transferred territory* is outside the scope of the present study. Paragraphs 1 and 3 have consequently become paragraphs 1 and 2 of article 13.

(2) Some drafting changes have been made in paragraph 1, on State funds. For the sake of consistency with the terminology used by the Commission at its twenty-fifth session, the Special Rapporteur has used the wording "funds of the predecessor State ... shall pass to the successor State" in preference to "[the] funds ... shall pass into the patrimony of the successor State", which were used in the sixth report. But the Special Rapporteur's chief concern was to specify, in order to avoid any misinterpretation, that the funds in question, liquid or invested, had genuinely been "allocated" to the territory to which the succession of States relates. The principle of assignment or allocation is decisive in this case. It is obvious, after all, that funds of the predecessor State in transit through the territory or temporarily or fortuitously situated in the territory do not pass to the successor State.

(3) It will be noted that in paragraph 2 of the article, on the Treasury, the words used by the Special Rapporteur in his sixth report "Upon closure of the public accounts relating to Treasury operations in the transferred territory" have been deleted. This phrase deals with a specific situation, a visible event, an operation which will take place in any case. It does not in itself embody a normative act or rule. Accordingly, it is as well to delete it from paragraph 2 of article 13.

Article 14. State archives and libraries

State archives and libraries of every kind relating directly to or belonging to the transferred territory shall, irrespective of where they are situated, pass to the successor State.

Indivisible State archives shall be reproduced and apportioned.

COMMENTARY

(1) The text of article 14 above, on "State archives and libraries", replaces article 14 ("Archives and public libraries") in the 1973 report.[42] Article 14 has been redrafted by the Special Rapporteur in accordance with the approach suggested by the Commission. It is therefore confined to the disposal of *State* libraries and archives, excluding archives and libraries belonging to territorial authorities (municipal, provincial or other) or to public establishments or agencies.

(2) Whether the State archives are situated in the transferred territory, in that of the predecessor State or in that of a third State is immaterial. It is sufficient that these State archives relate directly to the transferred territory, that is to say, that they should have a direct administrative or historical link with that territory. There may, however, be State archives which, although not relating to the transferred territory, belong to it: this would be the case of historical archives and of papers or collections having a cultural value.

(3) If the central State archives are an indivisible entity, the predecessor State and the successor State will agree to reproduce them in the most suitable way and to apportion them between themselves according to such procedures as they may choose. One example not to be emulated is that provided by the Treaty of Turin of 16 March 1816[43] between the Kingdom of Sardinia and the Swiss Confederation establishing the frontiers of Savoy and the State of Geneva, they went so far as to tear books apart or cut pages out of common land registers with scissors in order to give each of the parties

[41] See *Yearbook ... 1973*, vol. II, p. 36 *et seq.*, document A/CN.4/267, part four, article 13 and commentary.

[42] The Special Rapporteur has dealt extensively with the problem of archives, particularly in his third, fifth and sixth reports (*Yearbook ... 1970*, vol. II, pp. 152 et *seq.*, document A/CN.4/226, part two, commentary to article 7; *Yearbook ... 1972*, vol. II, pp. 68 et *seq.*, document A/CN.4/259, paras. 46 et *seq.*; *Yearbook ... 1973*, vol. II, pp. 37 *et seq.*, document A/CN.4/267, commentary to article 14; *ibid.*, pp. 48 *et seq.*, commentary to article 18; *ibid.*, p. 53, commentary to article 22; and *ibid.*, p. 57, commentary to article 30.

[43] Treaty between H.M. the King of Sardinia, the Swiss Confederation and the Canton of Geneva (G. F. de Martens, ed., *Nouveau Recueil de traités* (Göttingen, Dieterich, 1880, vol. IV (1808-1819) (reprint), p. 214).

its due.[44] Nowadays, of course, the solution to problems of this kind is greatly facilitated by the existence of sophisticated modern techniques of document reproduction.

(4) Such is the general scheme of the new article 14 on State archives and libraries. *It embodies the application of two basic principles: a principle of "territorial origin" or "territoriality of archives", according to which all papers and documents*[45] *originating in the territory to which the succession of States relates must pass to the successor State, and the "principle of pertinence", according to which papers*[46] *concerning the territory in question, irrespective of where they are kept, are likewise handed over.*

(5) These principles can easily be illustrated by examples drawn from the practice of States. To that end, the Special Rapporteur will first give a brief summary of the information he has already supplied, making reference to the series of historical precedents in his earlier reports,[47] and will then supplement those reports by some details which further research has shown to be useful.

(6) Further discussion of the importance or the definition of archives and documents is unnecessary. "Archives" must be interpreted as broadly as possible. Diplomatic practice demonstrates that the principle of the transfer to the successor State is unquestioned, the legal foundation for that principle having been the subject of research for evidentiary purposes, first administrative and later historical.

(7) In his earlier reports the Special Rapporteur stressed the following points:

The need for the archives-territory link in the case of archives acquired by the territory or on its behalf and in that of papers of interest to the territory because of the organic link between them and the territory;

The problem of archives situated outside the territory to which the succession of States relates, the successor State having the right to claim such archives wherever they may be, and whether they have been removed or were established outside the territory.

The following questions were also reviewed: (*a*) the question of the "ownership" of archives (successor State or transferred territory), which depends on the circumstances, the essential point being that these items cannot remain in the patrimony of the predecessor State; (*b*) the problem of the special obligations of the successor State: the handing over of copies to the predecessor State and the obligation to preserve documents; (*c*) the question of time-limits for handing over the archives, which varies from 3 to 18 months according to the agreements considered; (*d*) question of the principle of transfer to the successor State free of cost.

(8) The material which follows complements the above information and deals only with the problem of State archives.

(*a*) *The principle of the transfer of archives to the successor State*

(i) *Sources*

(9) This principle, which seems to be unquestioned, originated long ago in territorial transfers carried out in the Middle Ages. France and Poland provide examples of them.[48]

In France in 1194, King Philippe-Auguste founded his Trésor des Chartes, in which he assembled the documents relating to his kingdom. In 1271, Philippe III (the Bold), upon inheriting the estates of his uncle, Alphonse de Poitiers (almost the whole of southern France), had the archives immediately incorporated into the Trésor: title-deeds to the estates, cartularies, registers of letters, surveys and administrative accounts. This was the practice followed over the centuries, as the Crown acquired new lands. The same practice was followed in Poland, from the fourteenth century onwards, as the kingdom generally became unified through the absorption of the ducal provinces: the archives of the dukes were transferred to the king at the same time as the duchy.

The principle of transfer has accordingly been applied for a very long period, although, as will be seen, the reason invoked has varied.

(ii) *Archives as an instrument of evidence*

(10) In old treaties, archives were handed over to the successor State primarily as instruments of evidence and as titles to property. Indeed, the feudal concept was that archives represented a legal title proving a right. For that reason, the victors in wars were careful to carry off the archives relating to their acquisitions, seizing them is necessary by force from the vanquished: their right to properties was assured only by the possession of land registers. One may adduce the example of the Swiss Confederates who in 1415 removed *manu militari* the archives of the former possessions of the Hapsburgs, which were kept in the castle of Baden.[49]

(iii) *Archives as an instrument of administration*

(11) From the sixteenth century onwards, it was realized that while archives constituted an effective legal title, they were also an instrument for administering a country. The idea then prevailed that, when territory was transferred, *the successor should be left as viable a territory as possible* in order to avoid a breakdown in administration and help to ensure that the territory was properly and easily governable. Two cases may arise.

[44] France, Direction des archives de France, *Actes de la Sixième Conférence internationale de la Table ronde des archives, Les archives dans la vie internationale* (Paris, Imprimerie nationale, 1963), p. 20.

[45] Only State archives are involved here, but the principle is equally applicable to documents of territorial authorities or public agencies.

[46] Same comment as in the previous foot-note.

[47] See the references cited in foot-note 42.

[48] France, *Les archives dans la vie internationale* (*op. cit.*), pp. 12 and 13.

[49] As these archives related not only to the territories of the Confederates, but also to an extensive part of south-west Germany, in 1474 the Hapsburgs of Austria were able to recover those which did not refer to Confederate territory.

1. *Case of a single successor State*

(12) All instruments of administration pass from the predecessor to the successor, the said instruments being understood in the broadest sense: taxation documents of all kinds, cadastral and property registers, administrative documents, registers of births, marriage and death registers, land registers, judicial and penitentiary archives, and so forth... Hence the custom of leaving to the territory all the written, graphic and photographic material needed for the continuance of proper administrative functioning.

For instance, when the provinces of Jämtland, Härjedalen, Gottland and Ösel were ceded, the treaty of Brömsbro of 13 August 1645 between Sweden and Denmark made obligatory the transfer to the Queen of Sweden of all instruments, registers and cadastral documents relating to justice (article 29) as well as any information relating to the fiscal situation of the ceded provinces. Similar stipulations were incorporated by both Powers in the subsequent peace treaties of Roskilde (26 February 1658) (article 10) and Copenhagen (27 May 1660) (article 14).[50]

Article 69 of the Münster Treaty of 30 January 1648 between the Netherlands and Spain provided that "all registers, maps, letters, archives and papers, together with all documents relating to lawsuits, concerning any of the United Provinces, associated countries, towns... located in courts, chancelleries, councils and chambers, shall be handed over...".[51]

In the Treaty of Utrecht of 11 April 1713, Louis XIV ceded to the States General (of the Netherlands) Luxembourg, Namur and Charleroi "with all the papers, letters, documents and archives concerning the said Netherlands".[52]

All the treaties concerning a transfer of territory in fact contain a clause relating to the transfer of the archives; thus it is impossible to list them all. The treaties are sometimes even supplemented by a special convention relating solely to that point. Thus, following on the peace treaties which ended the First World War, the convention between Hungary and Romania, signed at Bucharest on 16 April 1924,[53] relates to the exchange of legal documents, land registers and registers of civil status, and specifies the manner in which the transfer is to be effected.

2. *Case of several successor States*

(13) The examples we have quoted, which are old and isolated, cannot be held to constitute a custom, but the Special Rapporteur felt that they were worth mentioning because modern reproduction methods would make the solution adopted very simple nowadays.

The Barrier Treaty of 15 November 1715, concluded between the Holy Roman Empire, England and Holland, provided in article 18 that the archives of the dismembered territory, Gelderland, would not be divided among the three successor States but would remain intact and that an inventory would be drawn up and a copy given to each of the three parties, which would be able to consult the documents freely.[54]

Similarly, the convention concluded between Prussia and Saxony on 18 May 1815[55] mentions "deeds and papers which... are of common interest to the two parties". The solution chosen was that Saxony would keep the originals and be responsible for giving Prussia certified copies.

(14) Therefore, according to the principle of respecting collections which arose from the desire to facilitate administrative continuity, whatever the number of successors, the entire collection of archives remains intact. However, that same principle and desire will lead to numerous contestations when applied today, owing to the distinction that has arisen between administrative and historical archives.

(iv) *Historical component of archives*

(15) According to some authors, administrative archives should be handed over in their entirety to the successor State but historical archives, according to the principle of respect for collections, should remain part of the patrimony of the predecessor State, save where they have been established within the territory affected by the succession during the normal operation of its own institutions.

This is contradicted by practice: there are many cases on record of archives, including historical documents, being transferred.

The Vienna Treaty of 30 October 1866 by which Austria ceded Venetia to Italy provided in article 18 for the handing over to Italy of all "title-deeds, administrative and judicial documents... political and historical documents of the former Republic of Venice", while each of the two parties pledged to let the other copy "historical and political documents that might concern the territories remaining in the possession of the other Power and which, in the interests of knowledge, cannot be taken from the archives to which they belong."[56]

It is easy to extend the list of examples of this point. The treaty of peace between Finland and Russia signed at Dorpat on 14 October 1920[57] provides in article 29, paragraph 1, that

> The Contracting Powers undertake at the first opportunity to restore Archives and documents which belong to public authorities and institutions which may be within their respective territories and which refer entirely or mainly to the other Contracting Power or its history.

(*b*) *Archives situated outside the territory (archives which have been removed or established outside the territory)*

(16) There seems to be ample justification for accepting as a rule that adequately reflects the practice of States

[50] France, *Les archives dans la vie internationale* (*op. cit.*), p. 16.

[51] *Ibid.*

[52] *Ibid.*, p. 17.

[53] League of Nations, *Treaty Series*, vol. XLV, p. 330.

[54] France, *Les archives dans la vie internationale* (*op. cit.*), p. 17.

[55] G. F. de Martens, ed., *Nouveau Recueil de traités* (Göttingen, Dieterich, 1818), vol. II (1814-1815), p. 276.

[56] France, *Les archives dans la vie internationale* (*op. cit.*), p. 27.

[57] League of Nations, *Treaty Series*, vol. III, p. 72.

the fact that the successor State receives all the archives, historical and other, relating to the territory affected by the change of sovereignty, even where those archives have been removed or are situated outside the territory.

The treaties of Paris (1814) and Vienna (1815) required the return to the original place of deposit of the State archives which had been concentrated in Paris during the Napoleonic period.[58]

Under the Treaty of Tilsit of 7 July 1807, Prussia, which had returned the part of Polish territory which it had conquered, was obliged to hand over to the new Grand Duchy of Warsaw not only the current local or regional archives relating to the returned territory but also the State documents (Berlin archives) relating to it.[59]

Similarly, Poland recovered the central archives of the former Polish State which had been transferred to Russia at the end of the eighteenth century and those of the former autonomous Kingdom of Poland of 1815 to 1863 and of its continuation up to 1876. In addition, it received the documents of the Secretariat of State of the Kingdom of Poland, which operated at St. Petersburg as a central Russian department, from 1815 to 1863, those of the Czar's Chancellery for Polish Affairs and, finally, the documents from the Office of the Russian Minister of the Interior responsible for land reform in Poland.[60]

(17) The case of the Schleswig archives can be added to the examples cited in previous reports of the Special Rapporteur. Under the Treaty of Vienna of 30 October 1864, Denmark was to cede the three duchies of Schleswig, Holstein and Lauenburg. Article 20 of the treaty in question therefore stipulated that: "title-deeds, administrative documents, documents relating to civil justice concerning the ceded territories situated in the archives of the Kingdom of Denmark" were to be handed over, together with "all parts of the Copenhagen archives which belonged to the ceded duchies and which were taken from their archives".[61]

(18) Even though it has a different application, we could also cite in support of the principle the following resolution of the General Conference of UNESCO:

> *The General Conference,*
>
> *Recognizing* the role of mass media in all aspects of human development, in fostering international understanding and as an instrument for the acceleration of human development,
>
> *Recommends* to Member States:
>
> . . .
>
> (*d*) to co-operate in the return of original manuscripts and documents, or, if this is not possible for special reasons, of copies of them, to the countries of origin; [62]

The logic and form of the language can only be interpreted to mean that the expression "countries of origin" denotes the territory concerned by the archives, that is to say, the successor State in the event that there has been a succession of States.

(c) *Time-limits for the handing over of archives*

(19) These time-limits vary, depending on the agreement. The best example of celerity is undoubtedly to be found in the treaty of 26 June 1816 between the Netherlands and Prussia, article XLI of which states that "the archives, maps and documents . . . shall be handed over to the new authorities at the same time as the territories".[63]

(d) *State libraries*

(20) The Special Rapporteur has already pointed out, in his third report, the difficulty of obtaining information on libraries.[64]

Three peace treaties signed after the First World War nevertheless expressly state that libraries shall be returned together with the archives. They are the Treaty of Riga between Russia and Latvia of 11 August 1930, article 11;[65] the Treaty of Moscow between Russia and Lithuania of 12 July 1920, article 9;[66] and the Treaty of Riga between Poland, Russia and the Ukraine of 18 March 1921, article 11, paragraph 1.[67] The formula used is as follows:

> The Russian Government shall return at its own expense . . . and shall hand over . . . the *libraries*,* archives, museums, objects of vertu, educational supplies, documents and other property of educational establishments, scientific, governmental, religious, communal and professional institutions, in so far as the said objects have been evacuated from the confines of . . . during the world war of 1914-1917 and which actually shall prove to be in the keeping of the governmental or communal establishments of Russia.

Article 15. State property situated outside the transferred territory

The ownership of property belonging to the predecessor State which is situated in a third State shall pass to the successor State in the proportion indicated by the contribution of the transferred territory to the creation of such property.

COMMENTARY

(1) Article 15 above reproduces the text of paragraph 2 of the same article, as contained in the sixth report. Paragraph 1 was dropped pursuant to the Commission's decision to consider for the time being only the treatment to be accorded to *State property*. The paragraph will therefore have to be set aside as it relates to "public property proper to the transferred territory".

(2) For elucidation of article 15 above, the Special Rapporteur refers the Commission to his 1973 Commentary.[68]

[58] France, *Les archives dans la vie internationale* (*op. cit.*), pp. 19 and 20.

[59] *Ibid.*, p. 20.

[60] *Ibid.*, pp. 35-36.

[61] *Ibid.*, pp. 26.

[62] UNESCO, *Records of the General Conference, Sixteenth Session, Resolutions* (Paris, 1970), p. 89, resolution q.134.

[63] G. F. de Martens, ed., *Nouveau Recueil de traités* (Göttingen, Dieterich, 1818), vol. III (1808-1812) (reprinted), p. 41.

[64] *Yearbook . . . 1970*, vol. II, p. 161, document A/CN.4/226, paras. 47 *et seq.* of the commentary to article 7.

[65] League of Nations, *Treaty Series*, vol. II, p. 221.

[66] *Ibid.*, vol. III, p. 129.

[67] *Ibid.*, vol. VI, p. 139.

[68] See *Yearbook . . . 1973*, vol. II, pp. 43-4, document A/CN.4/267, part four, paras. 3, 6, 14 and 15 of the commentary to article 15.

SUB-SECTION 2. NEWLY INDEPENDENT STATES

Article 16. Currency

1. The successor State shall have at its disposal the currency, gold and foreign exchange reserves and all monetary tokens placed in circulation or stored by the predecessor State in the territory which has become independent and allocated to that territory.

2. It shall have at its disposal the assets of the central institution of issue in proportion to the volume of currency circulating or held in the territory which has become independent.

COMMENTARY

(1) In the sixth report, article 16 reads as follows:

1. The privilege of issue shall belong to the new sovereign throughout the newly independent territory.

2. Currency, gold and foreign exchange reserves, and, in general, monetary tokens of all kinds which are proper to the territory concerned shall pass to the successor State.

3. In consideration of the foregoing, the successor State shall assume responsibility for the exchange of the former monetary instruments, with all the legal consequences which this substitution of currency entails.[69]

(2) For the reasons stated above,[70] the Special Rapporteur has eliminated from the articles relating to currency all mention of the privilege of issue, which naturally is an inherent right of any State. Article 16, paragraph 1, in the 1973 report therefore had to be deleted.

(3) Paragraph 2 had to be amended in so far as in this part the Commission is to deal with State property, to the consequent exclusion of property "proper to the territory" mentioned in that paragraph.

This paragraph, which now becomes paragraph 1 of the article, therefore refers to the general, concrete situation observable on the date of the succession of States in a territory which has become independent: at that time there is a currency in circulation—this is an obvious fact. If the currency was issued by an institution of issue of the territory, independence will not change the situation. However, if the currency was issued for the territory by and under the responsibility of a metropolitan institution of issue, it must be backed by gold and reserves if it is to be kept in circulation.

Determination of the total amount of currency to be shared [writes one author]... is based on the idea that the entire assets of the institution of issue under the heading backing for the issue guarantee all currency issued by the institution in the interest of the country as a whole.[71]

(4) For the reasons mentioned above in the commentary on article 12, the Special Rapporteur has made it clear in the new version of paragraph 1, that the monetary tokens in question are those "placed in circulation or stored by the *predecessor State* * in the territory which has become independent and *allocated to that territory* *". The Special Rapporteur was in fact thinking of cases where the monetary gold of the predecessor State might be located in the dependent territory *temporarily* or *fortuitously*, for example, where as a result of an armed conflict the colonial Power had thought to safeguard its gold reserves by placing them in a territory which at the time was still under its domination. All the gold of the Banque de France was thus evacuated to west Africa during the Second World War. Obviously, in such circumstances the gold and foreign exchange reserves stored in the territory had not been "*allocated*" to the territory.

(5) The Commission will decide whether the wording of the paragraph can be simplified by speaking only of currency, gold and foreign exchange "allocated" to the territory, without mentioning their being "placed in circulation" or "stored" in the territory.

(6) Some may have wondered whether the new paragraph 2 does not duplicate paragraph 1 of the article. In the opinion of the Special Rapporteur it does not. Paragraph 1 places the monetary tokens at the disposal of the successor State. Paragraph 2 does the same for the assets of the institution of issue. These are two separate realities. The assets of the institution of issue do not consist only of gold and foreign exchange: they also include real estate and even the debts receivable by the institution of issue.

(7) In addition, it will have been noted that in the new article the Special Rapporteur no longer refers to the "responsibility [assumed by the successor State] for the exchange of the former monetary instruments, with all the legal consequences which this substitution of currency entails".[72] First, the Special Rapporteur has some doubts about the nature of such a rule, which seems to relate to internal public law rather than international law. Secondly, in any event the exchange of the bills places us chronologically beyond the succession of States, that is to say, outside the sphere of succession proper.

Article 17. Treasury and State funds

1. Liquid or invested funds which have been allocated by the predecessor State to the territory to which the succession of States relates shall pass to the newly independent State.

2. The assets and holdings of the Treasury which have been allocated by the predecessor State to the territory to which the succession of States relates shall pass to the newly independent State.

COMMENTARY

(1) The Special Rapporteur proposes a new article 17 which is markedly different from the 1973 article.[73] In the first place, he has taken into account the fact that at present only the question of State property is under consideration, which should exclude from article 17 the question of the public funds and Treasury which are

[69] See the commentaries on this article (*ibid.*, pp. 45-47).

[70] See above, paras. 1-4 of the commentary to article 12.

[71] G. Burdeau, *op. cit.*, p. 276.

[73] Paragraph 3 of the 1973 article.

[73] *Yearbook... 1973*, vol. II, p. 47, document A/CN.4/267, article 17 and commentary.

proper to the territory to which the succession of States relates.

(2) In drafting the new article, the Rapporteur had in mind the case in which funds, holdings or assets of the Treasury of the predecessor State might be provisionally or fortuitously situated in the territory to which the succession of States relates. Such State property cannot, under the new version, pass to the successor State except inasmuch as it was allocated to the territory by the predecessor State. This provision establishes a parallel with the corresponding paragraphs of articles 12 and 16 concerning currency "allocated" to the territory and of article 13 concerning the funds and assets of the Treasury also allocated to the territory.[74] As a result, article 17 contains the useful distinction based on the principle of the allocation or assignment of the property to the territory.

(3) The two paragraphs of article 17 may be combined in a single paragraph relating to "liquid or invested funds and the assets and holdings of the Treasury, allocated by the predecessor State to the territory to which the succession of States relates", which would provide for their passing to the newly independent State.

Article 18. State archives and libraries

1. State archives and documents of every kind which, irrespective of where they are situated,

(*a*) relate directly to the administration of the territory which has become independent; or

(*b*) belonged to it before its colonization or relate to the pre-colonial period,

and State libraries situated in that territory, shall pass from the predecessor State to the newly independent State.

2. The newly independent State shall not refuse to hand over copies of the items referred to in subparagraph (*a*) above to the predecessor State or to any third State concerned, upon the request and at the expense of the latter State, save where considerations of security or sovereignty require otherwise.

3. The predecessor State shall not refuse to hand over copies of its political archives relating to the territory which has become independent, to the newly independent State, upon the request and at the expense of the latter State, save where considerations of security or sovereignty require otherwise.

COMMENTARY

(1) The new article above differs from the 1973 article [75] essentially in respect of paragraph 1. In the previous article that paragraph laid upon the predecessor State the obligation to hand over to the successor State all the archives "relating directly or belonging to the territory that has become independent". The new version of paragraph 1 concerns only archives which (*a*) relate directly to the administration of the territory or (*b*) belonged to it before its colonization, or relate to the pre-colonial period. There is a clear difference from the former draft inasmuch as the archives relating to the sovereignty of the colonial Power are excluded from the transfer.

(2) *However, the exclusion of such "political" or "sovereignty archives" must not be total.* The diplomatic, military or political documents by which the *dominium* and *imperium* of the colonial Power over the dependent territory were expressed in the past do not concern the former metropolitan country alone. They clearly "relate" to the dependent territory with which they are concerned. On becoming independent, that territory may feel the need to have the colonial, political or diplomatic archives at its disposal, for example, in the case of a dispute concerning the demarcation of its frontiers, or where it must reach a decision concerning its succession to treaties concluded by the colonial Power for the territory in question. The hesitation shown by newly independent States to notify their succession to certain treaties arises on occasion from uncertainty as to whether the treaties did in fact formerly apply to their territory or concerning the very contents of the instruments, no trace of which is to be found in the archives left in the territory by the colonial Power.[76]

(3) That is why the Special Rapporteur proposes that the fact that the "colonial archives of sovereignty" relating to the territory are not handed over should be moderated by the obligation of the predecessor State to hand over copies of such archives to the successor State in case of need. That is the purpose of the new paragraph 3 of article 18, which is symmetrical with paragraph 2, which lays a similar obligation upon the successor State.

(4) Paragraph 2 itself draws the inference from paragraph 1, since inasmuch as the archives preceding colonization (which belonged to the territory or relate to it) constitute the *historical cultural or documentary sources* of that territory and therefore concern it alone, it cannot be obliged to hand over copies to the predecessor State, much less to any third State.

(5) It may be wondered whether paragraph 1 (*b*) of the article is still within the sphere of *State property*, since it concerns archives, and therefore property, which belonged or relate to a *territory*. However, since it concerns historical documents that antedate colonization, there are many cases involving archives relating to *States which disappeared* as a result of colonial conquest. Such archives are undeniably State historical property (as well as being property which is "proper" to the territory, as is the case at least for those archives which did in fact belong to the territory before colonization).

(6) To justify the new formulation of article 18, the Special Rapporteur wishes to add some details and examples to his previous commentaries, to which the reader is referred for the core of the matter.[77]

[74] See above, para. 10 of the commentary to article 12; para. 2 of the commentary to article 13 and para. 4 of the commentary to article 16.

[75] See *Yearbook ... 1973*, vol. II, pp. 47-49, document A/CN.4/267, article 18 and commentary.

[76] Cf. the work of the International Law Commission on succession of States in respect of treaties, in connexion with newly independent States.

[77] See *Yearbook ... 1970*, vol. II, pp. 151-161, and in particular, p. 159, document A/CN.4/226, part two, commentary to article 7; and *Yearbook ... 1973*, vol. II, pp. 48 *et seq.*, document A/CN.4/267, part four, commentary to article 18.

(7) He recalls that archives relating to newly independent territories may be divided into three categories: first, historical archives proper, which antedate the beginning of colonization, second, archives of the colonial period, relating to the *imperium* and *dominium* and, generally, to the policy of the colonial Power in the territory, and third, purely administrative and technical archives relating to the current administration of the territory.

There is no doubt that the principle of transfer should be respected as concerns the first and third categories. However, it would be unrealistic to expect the *immediate return of all* the archives referred to under the second.

(8) The Special Rapporteur considers it useful to add the following commentaries:

(a) *Background*

(9) The problem raised by the attribution of the archives of overseas territories is wholly contemporary. In the past the colonial Powers gave scant consideration to the question when ceding or abandoning one of their territories. There were two possibilities. Either the archives remained in the territory and shared its destiny. Such was the case of the local archives of the Spanish possessions in America. The new States of Latin America therefore had at their disposal a nucleus for constituting their own collections. Or else, as happened most frequently, the colonial Power repatriated the archives either by force or by agreement. Thus Spain, having ceded Louisiana to France in 1802, immediately repatriated all the archives and agreed to hand over to France only papers "relating to the limits and demarcation of the territory".[78]

Similarly, in 1864 Great Britain authorized the Ionian Islands to unite with Greece and transferred all the archives to London.[79]

France at an early stage practised a particular form of repatriation of archives: a royal edict of 1776 set up the Dépôt des papiers publics des colonies, which was to receive every year, in Versailles, "copies of registers of births, marriages and deaths, notaries' records, papers, court records etc." [80] This department still exists today, but now only receives the registers of births, marriages and deaths.

(10) Many examples could be given; not until the period following the Second World War, with decolonization, was an attempt made to find a uniform solution with regard to the devolution of archives. Decolonization revived the problem of archives and posed it in different terms, as until that time the question had always related to the passing of a territory from one sovereignty to another already constituted sovereignty, whereas it then became a question of a territory obtaining or recovering its own sovereignty.

(b) *Principle of the transfer of archives to the successor State*

(11) Although it seems that there should be no doubt concerning the principle, this question has not yet been satisfactorily settled. This may be explained in part by the diversity of situations: variety of local conditions, of the preceding status and of the degree of administrative organization left by the colonial Power in the territory.

(12) The attribution of archives therefore seems to have been decided case by case, naturally on the basis of the degree of importance of the documents for the newly independent territory and for the former metropolitan country, but especially on the basis of the "balance of power". It is stated in the publication of the French Direction des archives already quoted that

> It appears undeniable that the metropolitan country should hand over to States that achieve independence in the first place *the archives which antedate the colonial régime**, which are without question the property of the territory. It also has the duty to hand over all *documents which make it possible to ensure the continuity of administrative activity and to preserve the interests of the local population.**... As a result, the titles to property of the State and of semi-public institutions, documents concerning public buildings, railways, public highways, cadastral documents, census results, local registers of births, marriages and deaths etc., shall normally be handed over with the territory itself. This supposes the regular handing over of the local administrative archives to the new authorities. It is regrettable that the conditions in which the passing of power from one authority to another occurred did not always make it possible to ensure the regularity of this handing over of archives, which may be considered indispensable.[81]

(13) Continuing to consider the question, the Conference puts forward the opinion, also expressed by the Special Rapporteur in his previous reports, that the principle of transfer may be difficult to apply to archives connected with the *imperium* and *dominium* of the former metropolitan country:

> There have appeared to be legal grounds for distinguishing in the matter of archives between sovereignty collections and administrative collections: the former, concerning essentially the relations between the metropolitan country and its representatives in the territory, whose competence extended to diplomatic, military and high policy matters, fall within the jurisdiction of the metropolitan country, *whose history they directly concern.** [82]

(14) Another author expresses the same opinion:

> Emancipation raises a new problem. The right of new States to possess the archives which are indispensable to the defence of their rights, the fulfilment of their obligations, the continuity of the administration of the population, remains unquestionable. However, there are other categories of archives kept in a territory, of no immediate practical interest to the successor State, which concern primarily the colonial Power. On closer consideration, such archives are of the same kind as those which, under most circumstances in European history, unquestionably remain the property of the ceding States.[83]

[78] France, *Les archives dans la vie internationale, op. cit.*, pp. 41-42. However, when France in turn sold Louisiana to the United States, the Franco-American Treaty of 30 April 1803 provided for the handing over of "archives, papers, and documents relating to the lands *and to sovereignty*". (*ibid.*).

[79] *Ibid.*, p. 42.

[80] C. Laroche: "Les archives françaises d'outre-mer", *Comptes rendus mensuels des séances de l'Académie des sciences d'outre-mer*, (Paris), vol. XXVI, No. III (March 1966), pp. 124-125.

[81] France, *Les archives dans la vie internationale, op. cit.*, pp. 43-44.

[82] *Ibid.* It should, however, be noted that, as the Special Rapporteur has already pointed out (see paras. 2 and 3 above) that the documents also directly concern the history of the newly independent State.

[83] C. Laroche, *loc. cit.*, p. 130 (the author was Chief Conservator of the Overseas section of the French national archives). (This judgement should be tempered, as the Special Rapporteur has indicated in foot-note 82 and paras. 2, 3 and 13 above.)

(15) According to this view, the archives connected with *imperium* would absolutely not belong to the territory. This is no doubt an exaggerated point of view in that the exception made to the principle of transfer for archives connected with *imperium* relates less to the principle of belonging than to considerations of expediency and politics: what is involved, of course, is the importance of good relations between the predecessor State and the successor State, and also at times the viability of the newly independent State.

In the interest of such relations it may perhaps be advisable to avoid argument on the subject of "political" archives or archives "connected with sovereignty", since they refer to the policy followed by the colonial Power *within* its dependent territory. For example, archives concerning general policy with regard to the territory, or a repressive policy against its liberation movements, are not to be confused with administrative archives or archives concerning the day-to-day management of the territory, but form part of the political archives or archives connected with sovereignty. It is probably unrealistic to expect the predecessor State to hand them over. But the section of the political archives or archives connected with sovereignty which is concerned with policy carried on *outside* the territory and on its behalf by the colonial Power (conclusion of treaties applied to the territory, diplomatic documents concerning the relations between the colonial Power and third States in respect of the territory, and in particular diplomatic documents concerning the delimitation of its frontiers), unquestionably concern *also* (and sometimes even *primarily*, in the event of a dispute or conflict with a third State) the newly independent State.

(16) In practice decolonization has unfortunately not taken these aspects of the problem sufficiently into account. For example Algeria, in the frontier disputes it faced upon gaining its independence, was unable to obtain access to the diplomatic documents held by France relating to the problem during the colonial period.[84] Similarly, France transferred to Viet-Nam the archives established by the Imperial Government before the French conquest together with the archives necessary for the administration of the country,[85] but it retained all the archives connected with its own internal and external sovereignty in diplomatic, military and political matters.[86] France seems to have followed a similar policy with regard to its former dependencies in Africa.

The United Kingdom and Belgium have followed an analogous policy: "In all cases the local archives of the territories were handed over, with the exception of papers relating to the sovereignty of the metropolitan country alone".[87]

[84] The case mentioned was all the more regrettable in that Algeria was also unable to recover its archives which *antedated* colonization. See *Yearbook ... 1970*, vol. II, p. 159, document A/CN.4/226, part two, para. 37 of the commentary to article 7; and *Yearbook ... 1973*, vol. II, p. 49, document A/CN.4/267, part four, para. 9 of the commentary to article 18.

[85] Agreement of 15 June 1950 concerning the apportionment of the archives of Indo-China.

[86] C. Laroche, *loc. cit.*, p. 132.

[87] France, *Les archives dans la vie internationale* (*op. cit.*), p. 45.

(c) *Archives situated outside the territory (archives which have been removed)*

(17) The Special Rapporteur refers the reader to his previous reports, and recalls that this question is of particular importance in this type of succession, given the frequency with which archives are repatriated by the former metropolitan country. The "Journées d'études sur les archives et l'histoire africaines" (Seminar on African archives and history) held at Dakar from 1 to 8 October 1965, recognized its importance and therefore made the following recommendation:

> Considering the successive disruptions of the political and administrative structures of African countries, the participants hope that wherever transfers have infringed the principles of the territoriality of archives and the indivisibility of collections, the situation will be remedied by restitution, or by other appropriate measures.[88]

(18) UNESCO, too, has taken action in this field. Reference has already been made to its resolution on the subject.[89] Its intervention would seem to be beneficial, for it takes timely action as the international organization more concerned than any other with the preservation of historical and cultural heritages, and is free from any preoccupation with national pride.

Article 19. State property situated outside the territory of the newly independent State

Property of the predecessor State which is situated in a third State shall be apportioned between the predecessor State and the newly independent State proportionately to the contribution of the territory which has become independent to the creation of such property.

COMMENTARY

(1) The previous article 19 in the 1973 report contained two paragraphs, the first of which dealt with public property proper to the territory which had become independent. Since only the problem of State property is being considered at present, paragraph 1 has been dropped from the new article.

(2) Article 19 is therefore reduced to paragraph 2 of the former text. The end of the paragraph, in the 1973 text, read: "proportionately to the latter's [the newly independent State's] contribution to the creation of such property". It was, of course, the *territory* which later became independent which contributed to the creation of the property in question.

(3) With regard to the substance, the Special Rapporteur refers the reader to his commentaries to the 1973 version of article 19.[90]

SUB-SECTION 3. UNITING OF STATES AND DISSOLUTION OF UNIONS

Article 20. Currency

1. The union shall receive the assets of the institution of issue and the gold and foreign exchange reserves of

[88] C. Laroche, *loc. cit.*, p. 139.

[89] See above, para. 18 of the commentary to article 18.

[90] See *Yearbook ... 1973*, vol. II, p. 52, document A/CN.4/267, paras. 14-16 of the commentary to article 19.

each of its constituent States, except where the degree of their integration in the union or treaty provisions allow each State to retain all or part of such State property.

2. In the event of dissolution of the union, the assets of the joint institution of issue and the gold and foreign exchange reserves of the union shall be apportioned in proportion to the volume of currency circulating or held in the territory of each of the successor States.

COMMENTARY

(1) Article 20 leaves aside the question of the privilege of issue for the reasons stated a number of times in this report.[91]

(2) Paragraph 1 of the article fills a loophole left by the 1973 article. This paragraph envisages the normal situation in which union is accompanied by monetary unification, which involves amalgamation of the institutions of issue and the pooling of gold and foreign exchange reserves. The text is quite straightforward and calls for no special observations.

(3) Paragraph 2 relates to the reverse phenomenon of dissolution of a union and reproduces the corresponding paragraph of the former article, but contains in addition a reference to gold and foreign exchange reserves and clarifies the *pro parte* sharing formula used in the sixth report. The apportionment of the assets of the joint institution of issue and of gold and foreign exchange reserves must, to be fully equitable, be made in proportion to the volume of currency circulating or held in each territory of the union which becomes a successor State.

(4) This form of apportionment was used at the dissolution of the Federation of Rhodesia and Nyasaland.[92] With one variation, the same method was used at the dissolution of the East African Currency Board, following the establishment of the institutions of issue of Kenya, Tanzania and Uganda.[93] Once again, the principle of a *pro rata* distribution of assets according to the volume of currency in circulation proper to each territory seems to be authoritative in this respect.

It is considered that, in this case, it fulfils the requirements of equity better than the previous formula set out in the sixth report. The term "*pro parte*" in effect eschews all economic, financial or even geographical considerations, relying only on the principle of legal equality. This equality would be destroyed, however, if one territory within a union contributing more than another territory to the economic life of that union found, upon the apportionment of assets, that it had been deprived of a portion of the results of its capacity.

Distribution in proportion to the number of States involved is carried out mainly in respect of assets other than reserves, such as the immovable property of the institution of issue.[94]

Article 21. Treasury and State funds

1. The union shall receive as its patrimony the State funds and Treasuries of each of its constituent States, except where the degree of their integration in the union or treaty provisions allow each State to retain all or part of such property.

2. In the event of dissolution of the union, the funds and Treasury of the union shall be apportioned equitably between its constituent States.

COMMENTARY

Article 21 above corresponds to the 1973 article 21, to the commentary to which the Special Rapporteur refers the reader.[95]

Article 22. State archives and libraries

1. Except where otherwise specified in treaty provisions aimed at the establishment of a collection of common central archives, archives and documents of every kind belonging to a State which unites with one or more other States, and its libraries, shall remain its property.

2. In the event of dissolution, the central archives of the union and its libraries shall be placed in the charge of the successor State to which they relate most closely or apportioned between the successor States in accordance with any other criteria of equity.

COMMENTARY

(1) Article 22 above is almost identical with article 22 of the sixth report. Accordingly, the Special Rapporteur refers the reader to his commentary on that article.[96]

(2) It will be recalled that the principle applied in cases of uniting of States left the predecessor State in possession of its archives, except where otherwise specified in treaty provisions, on the grounds that historical archives are of interest and the administrative archives are of use to that State alone. In this connexion, an old but significant example which can be added to those given is that of the *unification of Spain* during the fifteenth and sixteenth centuries. That union was effected in such a way that the individual kingdoms received varying degrees of autonomy, embodied in appropriate organs such as councils and viceroyalties. Consequently, there was no centralization of archives. The present organization of Spanish archives is still profoundly influenced by that system.[97]

[91] See above, paras. 1 *et seq.* of the commentary to article 12 and paras. 2 and 3 of the commentary to article 16.

[92] D. P. O'Connell, *State Succession in Municipal and International Law*, vol. I, *Internal Relations* (Cambridge, University Press, 1967), p. 196.

[93] *Ibid.*, p. 197.

[94] See Convention on the transfer of the department of issue to Mali of 21 July 1962 in M. Leduc: *Les institutions monétaires africaines* (Paris, Pédone, 1965), p. 264. See also G. Burdeau (*op. cit.*), pp. 278-288, who also provides a number of examples relating to apportionment, together with the derogations from provisions which have occurred in practice.

[95] See *Yearbook ... 1973*, vol. II, pp. 52-53, document A/CN.4/267, part four, commentary to article 21.

[96] *Ibid.*, pp. 53-54.

[97] France, *Les archives dans la vie internationale* (*op. cit.*), p. 13.

(2) In the event of dissolution of the union, each successor State receives the archives relating to its territory. If they are divisible, the central archives of the union are apportioned among the successors or, if they are not divisible, are placed in the charge of the successor State to which they relate most closely. The Special Rapporteur, who has cited the case of the Icelandic archives, reclaimed following the dissolution of the Union between Denmark and Iceland,[98] also refers the reader to Professor Verzijl's recent study of this problem.[99]

Article 23. State property situated outside the territory of the union

1. State property situated outside the territory of the union and belonging to the constituent States shall, unless otherwise stipulated by treaty, become the property of the union.

2. Property of the union situated outside its territory shall, in the event of dissolution of the union, be apportioned equitably between the successor States.

COMMENTARY

As article 23 reproduces without modification the corresponding article in the sixth report, the Special Rapporteur refers the reader to his commentary to that article.[100]

SUB-SECTION 4. DISAPPEARANCE OF A STATE THROUGH PARTITION OR ABSORPTION

[Articles 24-27]
[Sub-section deleted]

As the Special Rapporteur has deleted the disappearance of States from his list of types of State succession, articles 24, 25, 26 and 27 no longer serve any purpose.

SUB-SECTION 5. SECESSION OR SEPARATION OF ONE OR MORE PARTS OF ONE OR MORE STATES

Article 28. Currency

1. The successor State shall have at its disposal the currency, gold and foreign exchange reserves and all monetary tokens placed in circulation or stored by the predecessor State in the detached territory and allocated to that territory.

2. It shall have at its disposal the assets of the institution of issue in proportion to the volume of currency circulating or held in the detached territory.

COMMENTARY

(1) For the reasons already explained in respect of other types of succession of States (articles 12, 16 and 20), the question of privilege of issue is no longer mentioned in this article.

(2) This article is very similar to article 16 relating to currency in territories which have become independent. It is also similar to article 12 concerning currency in cases of transfer of territory. This similarity will facilitate the task of the Commission in bringing together, when the time comes, under a single rule the various provisions dealing with the currency questions involved in each type of succession.

108. Accordingly, for the sake of convenience, the Special Rapporteur refers the reader to commentary articles 12 and 16 in his sixth report [101] and in the present report, at least as concerns the considerations of a general nature which apply equally to the article currently being examined and to the two others mentioned.

Article 29. State funds and Treasury

1. Liquid or invested funds which have been allocated by the predecessor State to the detached territory shall pass to the successor State.

2. The assets and holdings of the Treasury which have been allocated by the predecessor State to the detached territory shall pass to the successor State.

COMMENTARY

(1) The 1973 article 29 read as follows:

1. Irrespective of their geographical location, public funds and Treasury which are proper to the detached territory shall not be affected by the change of sovereignty.

2. The State fortune—its public funds and Treasury assets—shall be apportioned between the predecessor State and the successor State, due regard being had to the criteria of viability of each of the States.

(2) Paragraph 1 refers to property *proper* to the detached territory and should therefore be deleted, since we are concerned here only with State property. Paragraph 2 relates essentially to a peaceful separation of territory, taking place with the consent of the predecessor State and allowing an equitable apportionment of State funds and the Treasury. Such a situation is rare, as witness recent events in Bangladesh.

(3) For this reason, after lengthy consideration, the Special Rapporteur thinks it better to propose a new article 29 based directly on article 17 relating to the situation of newly independent States, which most closely resembles the situation of secession or separation. Accordingly, the Special Rapporteur proposes a more modest solution which simply states that the funds and Treasury situated in the seceding territory should revert to that territory, which cannot realistically expect to obtain anything more, such as, for example, its share of the central funds and Treasury. In the case of the present

[98] See *Yearbook . . . 1970*, vol. II, p. 156, document A/CN.4/226, part two, para. 22 of the commentary to article 7; *Yearbook . . . 1973*, vol. II, p. 53, document A/CN.4/267, part four, para. 5 of the commentary to article 22.

[99] See J. H. W. Verzijl, *International Law in historical perspective* (Leyden, Sijthoff, 1974), vol. VII, p. 153.

[100] See *Yearbook . . . 1973*, vol. II, p. 54, document A/CN.4/267, commentary to article 23.

[101] *Ibid.*, pp. 34-36 and 45-47.

article 29, as in that of article 17, the International Law Commission will decide whether it is possible to go further in seeking an equitable and viable solution for each of the two separating parties.

(4) As in the case of article 17, the Commission may combine the two paragraphs of the present article 29 in a single paragraph providing that "Liquid or invested funds and Treasury assets and holdings which have been allocated by the predecessor State to the detached territory shall pass to the successor State."

Article 30. State archives

1. State archives and documents of every kind relating directly to a territory which has become detached in order to form a separate State shall, irrespective of where they are situated, pass to the latter State.

2. The successor State shall not refuse to hand over copies of such items to the predecessor State or to any third State concerned, upon the request and at the expense of the latter State, save where considerations of security or sovereignty require otherwise.

COMMENTARY

(1) The above article resembles article 30 in the sixth report.[102] However, the case of archives "belonging to the territory" has been omitted from paragraph 1, since such archives are not the property of the State but are proper to the territory and there is no doubt as to what should be done with them. For the same reasons, the Special Rapporteur has made no reference to "libraries belonging to the territory" (which has entailed amending both the title and paragraph 1 of the article).

(2) Paragraph 2 of the article, apart from some changes of style, corresponds to paragraph 2 of article 30 in the sixth report.

Article 31. Property situated outside the detached territory

Property of the predecessor State which is situated in a third State shall become the property of the successor State in proportion to the contribution of the detached territory to the creation of such property.

COMMENTARY

Paragraph 1 of the 1973 article 31, which concerned property belonging to the detached territory, has been deleted. As far as the remainder of the article is concerned, the Special Rapporteur refers the reader to his commentaries on the previous article 31.[103]

Conclusion

17. With article 31, the Special Rapporteur concludes his study of *succession of States in respect of State property*. The other categories of public property (property proper to the territory to which the succession of States relates, property of public establishments, property of territorial authorities, property of foundations), which were dealt with in articles 32 to 40 of the Special Rapporteur's sixth report, will be considered later by the International Law Commission, if time permits. Consequently, the Special Rapporteur presents for consideration by the Commission only draft articles 1 to 31, relating to succession of States in respect of State property. As the Commission provisionally adopted articles 1 to 8 at its twenty-fifth session, it now remains for it to consider articles 9 to 31 together with articles X, Y and Z inserted after article 11 at the end of the general provisions and relating to questions of the property of third States.

18. As it proceeds with its consideration of these articles, the Commission may wish to reduce their number by combining various articles and by devoting only one to each subject (currency, State funds and Treasury, State archives, property situated outside the territory).

19. Having completed this first part on the subject of State property, the Special Rapporteur is of the opinion that, before considering the other categories of public property, the Commission should give careful consideration to the question of *public debts*. To ensure a parallel approach, the Special Rapporteur intends to devote his next report to *State debts*. In this way, consideration of the first part *(succession of States in respect of State property)*, which is the subject of the present report, can be followed immediately by consideration of a second part dealing with *succession of States in respect of State debts*. In view of the extent and complexity of the question of succession of States in respect of matters other than treaties, and since the International Law Commission's very heavy programme has delayed consideration of this question, *the Special Rapporteur therefore suggests that the Commission confine itself to consideration of State property and immediately afterwards to consideration of State debts*. If time permits, the Commission can consider the other categories of public property and public debts later.

[102] *Ibid.*, pp. 57-58, article 30 and commentary.

[103] *Ibid.*, pp. 58-59, article 31 and commentary.