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Draft articles on succession of States in respect of matters other than treaties: articles on newly independent States proposed by Mr. Ushakov - in A/32/10, ft.428

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

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independent State (other than the former metropolitan Power) is a mode of implementing the right of self-determination of peoples and is therefore logically to be included in article 22, dealing with newly independent States. Finally, it will be recalled that article 13, concerning succession to State property, did not include a specific reference to the fate of property acquired by the dependent territory in its own name and in its own right prior to the date of the succession of States. Similarly, the Commission has not felt it necessary to deal with the self-evident case of debts of the predecessor State owed to the dependent territory, which continue to be payable, after the date of the succession of States, to the newly independent State.

(68) Certain members of the Commission were unable to support the text of article 22 and expressed reservations and doubts thereon, and one member expressed reservations on certain paragraphs of the commentary to this article as well.⁴²⁶ One member proposed an alternative text for the article,⁴²⁷ which received a measure of support from some members. The view was expressed that it was preferable, as a

⁴²⁶ One member objected to the inclusion of paragraphs (39) to (50) of the present commentary, particularly on the grounds that they contain, in his view, economic exposition and analysis which are not within the sphere of the Commission's competence and that such exposition and analysis in some aspects are debatable. That member also considered it important, in relation to paragraph (62) of the commentary, to note that a number of States had dissented from the quoted elements of the Charter of Economic Rights and Duties of States and the Declaration on the Establishment of a New International Economic Order.

⁴²⁷ That text (A/CN.4/L.257) reads as follows:

"Article 22. Newly independent States"

"1. No debt contracted by the predecessor State on behalf or for the account of a territory which has become a newly independent State shall pass to the newly independent State unless the debt related to property, rights and interests of which the newly independent State is beneficiary and unless that passage of debt is in equitable proportion to the benefits that the newly independent State has derived or derives from the property, rights and interests in question.

"2. Any agreement concluded between the predecessor and the newly independent State for the implementation of the principles contained in the preceding paragraph shall pay due regard to the newly independent State's permanent sovereignty over its natural wealth and resources in accordance with international law."

matter of principle, to admit the possibility that a State debt of the predecessor State might pass to the successor State in some way other than by an agreement between the two States, even though in State practice such passage was normally effected by agreement. Such a passing other than by agreement would still, it was said, be severely limited, in much the same manner as that spelled out in paragraph 1 of the adopted text, concerning the conditions for the conclusion of an agreement, and would indeed provide an incentive for the conclusion of agreements between predecessor and successor States. Concerning the question of permanent sovereignty over natural resources, preference was expressed for the terminology found in the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. It was further believed that the text of article 22 as adopted could have the effect of discouraging loans to the remaining colonial territories. Another view expressed was that article 22 should have stated a certain number of legal rules: the basic principle of the non-passage of State debts of the predecessor State to the successor State and an exception to that rule based on equity, however limited. The provisions of the present paragraph 2 would then provide the procedures to be applied in the case of difficulties, namely, by agreement. According to that point of view, the article's major defects were that it did not allow for the slightest exception to the basic rule and that it mixed questions of principle with questions relating to the settlement of disputes, according a predominant place to the latter.

(69) To conclude, one member proposed on the other hand that the rule expressed in article 22 should be simplified by making it a straightforward statement of the principle that no State debt of the predecessor State is transferable to the newly independent State, unless both States otherwise agree.⁴²⁸

⁴²⁸ That text (A/CN.4/L.254) reads as follows:

"Article 22. Newly independent States"

"No State debt of the predecessor State shall pass to the newly independent State unless an agreement between the newly independent State and the predecessor State provides otherwise."