

Document:-
A/CN.4/L.299/Rev.1

Draft articles on succession of States in respect of matters other than treaties - texts adopted by the Drafting Committee: articles 1-23 and titles of the corresponding parts and sections of the draft - reproduced in A/CN.4/SR.1568, para.3

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

Extract from the Yearbook of the International Law Commission:-
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*Downloaded from the web site of the International Law Commission
(<http://www.un.org/law/ilc/index.htm>)*

word “fait” could mean an action or an omission, a “simple” act or a “continuous”, “composite” or “complex” act, and that in English the word “act” had always been used in the draft as the equivalent of the word “fait” in French. On the other hand, the word “specified”, in the English text of paragraph 1, might be taken to imply that the act referred to was a single act. He wondered whether it would not be better to replace it by the word “given”.

48. Mr. NJENGA said that, since the article referred to a specified act subject to consent, it was only rational for the consent to precede the act. He would have difficulty in accepting the notion of simultaneous or subsequent consent—which was not what the Commission had in mind. However, he was prepared to agree that the title should be left unchanged on the understanding that it referred to prior consent.

49. The CHAIRMAN said that if there were no objections he would take it that the Commission adopted the text of article 29 proposed by the Drafting Committee, as well as the title of chapter V: “Circumstances precluding wrongfulness”.

It was so decided.

ARTICLE 30⁷ (Countermeasures in respect of an internationally wrongful act)⁸

50. Mr. USHAKOV said that the article was very clear and could be adopted by the Commission without difficulty.

51. Mr. REUTER welcomed the fact that the Drafting Committee had introduced the word “countermeasures” in the title.

52. The CHAIRMAN said that if there were no objections he would take it that the Commission adopted the text of article 30 proposed by the Drafting Committee.

It was so decided.

The meeting rose at 12.30 p.m.

⁷ For the text initially submitted by Mr. Ago, see 1544th meeting, paras. 8 *et seq.*, and 1545th meeting, paras. 3 *et seq.*

⁸ For text, see para. 1 above.

1568th MEETING

Friday, 13 July 1979, at 10.15 a.m.

Chairman: Mr. Milan ŠAHOVIĆ

Members present: Mr. Barboza, Mr. Dadzie, Mr. Díaz González, Mr. Njenga, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Tabibi, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta, Mr. Yankov.

Succession of States in respect of matters other than treaties (*continued*)* (A/CN.4/322 and Corr.1 and Add.1 and 2, A/CN.4/L.299/Rev.1)

[Item 3 of the agenda]

DRAFT ARTICLES PROPOSED BY THE
DRAFTING COMMITTEE

ARTICLES 1–23

1. The CHAIRMAN invited the Chairman of the Drafting Committee to present the results of the Committee's work on the first 25 articles of the draft,¹ which the Commission had provisionally adopted at its twenty-fifth session and from its twenty-seventh to thirtieth sessions, and which it had referred to the Drafting Committee at the current session (1560th meeting, para. 30) for review as a whole on completion of the first reading.

2. The results of the Drafting Committee's work were presented in document A/CN.4/L.299/Rev.1, which contained the titles of part I, of part II and sections 1 and 2 thereof, of part III and sections 1 and 2 thereof, and the titles and texts of articles 1 to 23.

3. The texts proposed by the Drafting Committee read:

PART I

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 [3].² Use of terms

1. 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;

(e) “newly independent State” means a successor State the territory of which immediately before the date of the succession of States was a dependent territory for the international relations of which the predecessor State was responsible;

(f) “third State” means any State other than the predecessor State or the successor State.

* Resumed from the 1565th meeting.

¹ See 1560th meeting, foot-note 1.

² The number in square brackets refers to the number of the corresponding article in the original draft (for reference, see 1560th meeting, foot-note 1).

2. The provisions of paragraph 1 regarding the use of terms in the present articles are without prejudice to the use of those terms or to the meanings which may be given to them in the internal law of any State.

Article 3[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, with the principles of international law embodied in the Charter of the United Nations.

PART II

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 a 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, at 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 articles in the present part.

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

Subject to the provisions of the articles in the present part and unless otherwise agreed or decided, the passing of State property from the predecessor State to the successor State shall take place without compensation.

Articles 9[X]. Absence of effect of a succession of States on third party State property

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

SECTION 2 PROVISIONS RELATING TO EACH TYPE OF SUCCESSION OF STATES

Articles 10[12]. Transfer of part of the territory of a State

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

2. In the absence of an agreement:

(a) immovable State property of the predecessor State situated in

the territory to which the succession of States relates shall pass to the successor State;

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

Article 11[13]. Newly independent State

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

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

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

(c) movable State property of the predecessor State other than the property mentioned in subparagraphs (a) and (b), to the creation of which the dependent territory has contributed, shall pass to the successor State in proportion to the contribution of the dependent territory;

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

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

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

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

Article 12[14]. Uniting of States

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

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

Article 13[15]. Separation of part or parts of the territory of a State

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

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

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

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

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

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

Article 14[16]. Dissolution of a State

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

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

(b) immovable State property of the predecessor State situated outside its territory shall pass to one of the successor States, the other successor States being equitably compensated;

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

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

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

PART III

STATE DEBTS

SECTION I GENERAL PROVISIONS

Article 15[17]. Scope of the articles in the present part

The articles in the present part apply to the effects of a succession of States in respect of State debts.

Article 16[18]. State debt

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

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

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

Article 17[19]. Obligations of the successor State in respect of State debts passing to it

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

Article 18[20]. Effects of the passing of State debts with regard to creditors

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

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

(a) the consequences of that agreement are in accordance with the other applicable rules of the articles in the present part; or

(b) the agreement has been accepted by that third State or international organization.

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

Article 19[21]. Transfer of part of the territory of a State

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

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

Article 20[22]. Newly independent State

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

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

Article 21[23]. Uniting of States

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

2. Without prejudice to the provision of paragraph 1, the successor State may, in accordance with its internal law, attribute the whole or any part of the State debt of the predecessor States to its component parts.

Article 22[24]. Separation of part or parts of the territory of a State

1. When part or parts of the territory of a State separate from that State and form a State, and unless the predecessor State and the successor State otherwise agree, an equitable proportion of the State debt of the predecessor State shall pass to the successor State, taking into account all relevant circumstances.

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

Article 23[25]. Dissolution of a State

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

4. Mr. RIPHAGEN (Chairman of the Drafting Committee) said that, in reviewing the 25 articles provisionally adopted by the Commission, the Drafting Committee had addressed itself in particular to those articles or parts of articles on which the Commission had not yet taken a position, and which had been left in square brackets. The Committee had also tried to ensure conformity of the draft articles with those of the 1978 Vienna Convention on Succession of States