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A/CN.4/L.299/Rev.1/Add.1

Draft articles on succession of States in respect of matters other than treaties - draft articles relating to succession to State archives: article A and C adopted by the Drafting Committee - reproduced in A/CN.4/SR.1570, para. 3

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

Extract from the Yearbook of the International Law Commission:-
1979, vol. I

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

Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta, Mr. Yankov.

Also present: Mr. Ago.

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

[Item 3 of the agenda]

DRAFT ARTICLES PROPOSED BY THE
DRAFTING COMMITTEE (concluded)

ARTICLES 1-23 (concluded)

SECTION 2 (Provisions relating to each type of succession of States)

The title of section 2 was adopted.

ARTICLE 19 (Transfer of part of the territory of a State)¹

Article 19 was adopted.

ARTICLE 20 (Newly independent State)²

1. Mr. REUTER wished to make a reservation with regard to article 20. His understanding was that the article implied an obligation to conclude an agreement on the basis of the principles embodied therein, but he did not think the article was worded sufficiently clearly to express that idea.

2. The CHAIRMAN said that if there were no objections he would take it that the Commission adopted draft article 20, subject to the reservation entered by Mr. Reuter.

It was so decided.

ARTICLE 21 (Uniting of States),

ARTICLE 22 (Separation of part or parts of the territory of a State), and

ARTICLE 23 (Dissolution of a State)³

Articles 21, 22 and 23 were adopted.

ARTICLES A AND C

3. The CHAIRMAN invited the Chairman of the Drafting Committee to introduce draft articles A and C, on State archives, as adopted by the Committee (A/CN.4/L.299/Rev.1/Add.1), which read:

Article A. State archives

For the purposes of the present articles, "State archives" means the collection of documents of all kinds which, at the date of the succession of States, belonged to the predecessor State according to its internal law and had been preserved by it as State archives.

Article C. Newly independent State

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

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

(b) the part of State archives of the predecessor State, which for normal administration of the territory to which the succession of States relates should be in that territory, shall pass to the newly independent State.

2. The passing or the appropriate reproduction of parts of the State archives of the predecessor State, other than those dealt with in paragraph 1, of interest to the territory to which the succession of States relates, shall be determined by agreement between the predecessor State and the newly independent State in such a manner that each of those States can benefit as widely and equitably as possible from those parts of the State archives.

3. The predecessor State shall provide the newly independent State with the best available evidence of documents from the State archives of the predecessor State which bear upon title to the territory of the newly independent State or its boundaries, or which are necessary to clarify the meaning of documents of State archives which pass to the newly independent State pursuant to other provisions of the articles in the present Part.

4. Paragraphs 1 to 3 apply when a newly independent State is formed from two or more dependent territories.

5. Paragraphs 1 to 3 apply when a dependent territory becomes part of the territory of a State other than the State which was responsible for its international relations.

6. Agreements concluded between the predecessor State and the newly independent State in regard to State archives of the predecessor State shall not infringe the right of the peoples of those States to development, to information about their history and to their cultural heritage.

4. Mr. RIPHAGEN (Chairman of the Drafting Committee) said that the Drafting Committee had been unable to decide whether draft articles A and C should be included in part II of the draft, relating to State property, or whether they should form the subject of a new part IV. It had finally taken the view that the question was one for the Commission itself to decide. It had therefore kept to the arrangement suggested by the Special Rapporteur in his report and had submitted the two draft articles as an addendum (A/CN.4/L.299/Rev.1/Add.1) to the document setting forth articles 1 to 23.

5. Article A defined "State archives" and, like article 5,⁴ which defined "State property", referred to the internal law of the predecessor State. Unlike article 5, however, it contained the words "and had been preserved by it [the predecessor State] as State archives", so as to make it clear that the reference to internal law related only to the belonging of archives and not to their preservation as State archives. The object was to ensure the public documents of recent origin, which under the law of some countries would not be designated as State archives until a certain period had elapsed, should not be excluded from the scope of the draft. The Commission would note that the word "appartenait" had been used in the French version of

¹ For text, see 1568th meeting, para. 3.

² *Idem.*

³ *Idem.*

⁴ *Idem.*