

Document:-  
**A/CN.4/L.313**

**Draft articles on succession of States in respect of matters other than treaties. Draft articles on succession to State archives. Texts adopted by the Drafting Committee: articles C, D, E and F - reproduced in A/CN.4/SR.1627, para. 27**

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

Extract from the Yearbook of the International Law Commission:-  
**1980, vol. I**

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limited case of the action that a Member of the United Nations could take in the event of an armed attack against it or against another Member until such time as the Organization's machinery for the maintenance of peace and security could be activated. Nor was he clear as to the intent behind Article 2, paragraph 4, of the Charter, which, as had rightly been pointed out, might possibly imply that defensive measures could be taken in the event of the threat of force, as opposed to an actual armed attack.

21. What did seem clear to him was that, irrespective of the intent of the Charter and of those who had drafted it, the concept of self-defence, if codified, would extend beyond armed attacks. Such codification might well have to encompass the ways in which a State could defend itself against threats to its economy or to its legitimate interests outside its territory or, indeed, outside the territory of any State; it might have to take account of whether or not such threats involved the use of armed force, in the sense of full-scale military operations, or of some other form of coercion which fell short of military operations, and whether or not there had been overt aggression. It might also have to determine whether defensive measures taken by a State were legitimate in cases where such measures were not in themselves of a warlike nature, but were aimed at warding off an armed attack at some time in the future, rather than an attack that was imminent or was actually taking place.

22. The term "self-defence" connoted the idea not only of forceful resistance or defence, but also of preventive or security measures which could comprise a variety of legitimate external actions. It could be argued, for example, that the notions of zones of peace, nuclear-weapon-free zones and zones of neutrality, together with the measures taken to implement the corresponding regimes, derived from a modern concept of self-defence. It could also be argued that the concept of self-defence must be expanded in direct proportion to the destructive capacity and concentration of modern weaponry. Thus, Article 51 of the Charter of the United Nations, whatever its initial purpose, was now no more than a narrow part of a far broader concept of self-defence. It was therefore not so much a question of interpreting Article 51 of the Charter as interpreting the scope of an inherent right conferred on every State by customary international law.

23. Article 51 of the Charter might be applied with some justification in the case of a State that was militarily strong and ready for combat, since the Article assumed that a defensive military machine, whether of the State under attack or of an allied State, could be effectively mobilized within a very short time to repel an armed attack that was taking place. Even so, some life and property might well have to be sacrificed in order to comply fully with the restraint imposed by Article 51. Given modern weaponry and the size of some modern States, the absurd result might be that a whole State would have to be sacrificed to

satisfy the terms of Article 51. Application of that Article to the majority of States that were not large, had only limited military capability and were not parties to any military alliance, seemed far less reasonable.

24. He mentioned those considerations since draft article 34 in its present wording could reinforce the view that the only type of self-defence that was legitimate, and therefore precluded wrongfulness, was the type provided for under Article 51 of the Charter, namely, the self-defence to which a State could resort when "an armed attack occurs". In his view, it would be advisable not to prejudice the progressive development of the concept or the value of certain widely-held interpretations of it. Moreover, the application of draft article 34 should not be unduly restricted by linking it to Article 51 of the Charter.

25. Consequently, while he supported the idea underlying draft article 34, he proposed that the last part of it, starting with the words "in order to defend itself", should be deleted and replaced by "in defence of itself or of another State in accordance with international law, including the provisions of the Charter of the United Nations". The expression "to defend itself or another State" also seemed to convey a heavy burden of unexplored meaning and some further thought should be given to developing that expression at a later stage.

**Succession of States in respect of matters other than treaties (*concluded*)\* (A/CN.4/322 and Add.1 and 2,<sup>6</sup> A/CN.4/333, A/CN.4/L.313)**

[Item 1 of the agenda]

**DRAFT ARTICLES PROPOSED BY THE  
DRAFTING COMMITTEE**

**ARTICLES C, D, E AND F**

26. The CHAIRMAN invited the Chairman of the Drafting Committee to introduce the draft articles adopted by the Committee (A/CN.4/L.313).

27. The texts proposed by the Drafting Committee read:

**Article C. 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 archives 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) 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 at the disposal of the State to which the

\* Resumed from the 1606th meeting.

<sup>6</sup> Reproduced in *Yearbook* . . . 1979, vol. II (Part One).

territory in question is transferred, shall pass to the successor State;

(b) the part of State archives of the predecessor State, other than the part referred to in subparagraph (a), that relates exclusively or principally to the territory to which the succession of States relates, shall pass to the successor State.

3. The predecessor State shall provide the successor 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 transferred territory or its boundaries, or which are necessary to clarify the meaning of documents of State archives which pass to the successor State pursuant to other provisions of the present article.

4. (a) The predecessor State shall, at the request and at the expense of the successor State, make available appropriate reproductions of documents of its State archives connected with the interests of the transferred territory.

(b) The successor State shall, at the request and at the expense of the predecessor State, make available appropriate reproductions of documents of State archives which have passed to the successor State in accordance with paragraph 1 or 2.

#### *Article D. Uniting of States*

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

2. Without prejudice to the provision of paragraph 1, the allocation of the State archives 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 E. 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) 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 successor State;

(b) the part of State archives of the predecessor State, other than the part referred to in subparagraph (a), that relates directly to the territory to which the succession of States relates, shall pass to the successor 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 successor 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 successor 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 successor State or its boundaries, or which are necessary to clarify the meaning of documents of State archives which pass to the successor State pursuant to other provisions of the present article.

4. Agreements concluded between the predecessor State and the successor State in regard to State archives of the predecessor State shall not infringe the right of the people to those States to development, to information about their history and to their cultural heritage.

5. The predecessor and successor States shall, at the request and at the expense of one of them, make available appropriate

reproductions of documents of their State archives connected with the interests of their respective territories.

6. The provisions of paragraphs 1 to 5 apply when part of the territory of a State separates from that State and unites with another State.

#### *Article F. 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) the part of the State archives of the predecessor State, which should be in the territory of a successor State for normal administration of its territory, shall pass to that successor State;

(b) the part of the State archives of the predecessor State, other than the part referred to in subparagraph (a), that relates directly to the territory of a successor State, shall pass to that successor State.

2. The passing of the parts of the State archives of the predecessor State other than those dealt with in paragraph 1, of interest to the respective territories of the successor States, shall be determined by agreement between them 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. Each successor State shall provide the other successor State or States with the best available evidence of documents from its part of the State archives of the predecessor State which bear upon title to the territories or boundaries of that other successor State or States, or which are necessary to clarify the meaning of documents of State archives which pass to that State or States pursuant to other provisions of the present article.

4. Agreements concluded between the successor States concerned 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.

5. Each successor State shall make available to any other successor State, at the request and at the expense of that State, appropriate reproductions of documents of its part of the State archives of the predecessor State connected with the interests of the territory of that other successor State.

6. The provisions of paragraphs 1 to 5 shall not prejudice any question that might arise by reason of the preservation of the unity of the State archives of the successor States in their reciprocal interest.

28. Mr. VEROSTA (Chairman of the Drafting Committee) said that the four draft articles before the Commission, as adopted by the Drafting Committee, were part of the series of six articles dealing with the question of succession of States in the matter of State archives.

29. At its thirty-first session, the Commission had adopted the first two articles in that series: draft article A, on the definition of State archives, and article B, on succession to State archives in the case of a newly independent State.<sup>7</sup> The last four draft articles were article C, originally presented by the Special Rapporteur as article B', with the title "Transfer of a part of the territory of one State to another State",<sup>8</sup>

<sup>7</sup> For texts, see *Yearbook ... 1979*, vol. II (Part Two), pp. 79 and 81-82, document A/34/10, chap. II, sect. B.

<sup>8</sup> For text, see 1602nd meeting, para. 1.