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Summary record of the 1002nd meeting

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

Extract from the Yearbook of the International Law Commission:-
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of the successor State was not unlimited and that its actions should always be consistent with the rules of conduct that governed any State.

The meeting rose at 1 p.m.

1002nd MEETING

Wednesday, 18 June 1969, at 12.10 p.m.

Chairman: Mr. Nikolai USHAKOV

Present: Mr. Bartoš, Mr. Bedjaoui, Mr. Castañeda, Mr. Castrén, Mr. Eustathiades, Mr. Ignacio-Pinto, Mr. Reuter, Mr. Rosenne, Mr. Ruda, Mr. Tabibi, Mr. Tammes, Mr. Tsuruoka, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

Succession of States and Governments: Succession in Respect of Matters other than Treaties

(A/CN.4/216/Rev.1)

[Item 2 (*b*) of the agenda]
(continued)

1. The CHAIRMAN invited the Commission to continue consideration of the Special Rapporteur's second report on succession of States in respect of matters other than treaties (A/CN.4/216/Rev.1).

2. Mr. USTOR said that, as a preliminary comment, he would say that the Special Rapporteur's report was a balanced piece of work which gave a full picture of the various tendencies in the practice and theory of State succession. The Special Rapporteur could not be blamed if he had shown an inclination towards one school of thought rather than another; the Commission would have to take a stand on the report and ultimately choose the course it intended to follow.

3. One criticism he had to make was that the Special Rapporteur had not relied sufficiently on the experience of the Soviet Union and the other socialist States, for in general he seemed rather reluctant to draw the only valid conclusions offered by theory and practice. For example, the first sentence of paragraph 8 read: "It will probably never be possible to say who is right in this centuries-old debate—the supporters or the adversaries of acquired rights". But in his opinion—and he assumed that it was also the Special Rapporteur's opinion—both history and law had already settled that argument, and not in favour of the supporters of the concept of acquired rights, a concept which, in the greater part of the world —the socialist States, Latin America and most of Africa and Asia—could hardly be called "venerable", as the Special Rapporteur termed it in paragraph 11.

4. His impression on reading the report was that what it dealt with was not so much the topic of State succession as State responsibility, particularly that part of State responsibility which related to the treatment of aliens in regard to their property rights. The Commission proposed to deal first only with economic and financial acquired rights, and those were clearly rights of aliens, not of nationals; nationals obviously did not come under international law, whereas aliens might have their residence or place of business either in the territory of the State or abroad. In practice, that might raise extremely difficult and complex questions regarding the nationality of natural or legal persons and the related problems of diplomatic protection. The problem of nationality was already difficult enough in the case of one State, but it was even more difficult if the successor State changed its nationality laws.

5. One point he would like to make was that the French equivalent of the term "acquired rights" was "*droits acquis*", which was usually translated as "vested rights" or "vested interests". The Concise Oxford Dictionary defined "vested rights" as rights "possession of which is determinately fixed in a person and is subject to no contingency". But the question then arose whether in any State there could be rights, particularly economic or financial rights, which were subject to no contingency.

6. Even in the days when all the States of the world had had more or less the same economic and financial system, such rights had not existed, either in theory or in practice. Rights of the individual had their source in domestic laws which were changeable and, indeed, did change from time to time. They might also have their source in a constitution, but even the most rigid constitutions were subject to peaceful or revolutionary change, as also were the rights derived from them. Thus, the expression "acquired rights" or "vested rights" was, if it meant a kind of unchangeable, untouchable and unalterable right, a contradiction in terms; the notion of a right, at least in connexion with property, was always relative and subject to changes, not only in the legal system of the State in question, but also in its economic system. In the socialist States, for instance, there had been a complete transformation of the economic system; the means of production were now almost exclusively under State ownership, and individual property rights did not extend beyond certain limits.

7. His view should not be interpreted as a general denial of values of a universal character, such as the human rights of all human beings, in every kind of society, to freedom, dignity and equality. He merely meant that in the sphere of property rights the world was not uniform, and that there were States and societies which believed that a limitation of those rights was conducive to the general welfare of the population and to the development of human society. That raised the question of the property rights of aliens in a State where there had been a change in the laws of property or in the laws governing the economic system as a whole, with or without the phenomenon of State succession, which seemed to revive the old, and for him now obsolete, debate between the advocates of "equal treatment" and the "minimum standard".

8. As a young man, he had been greatly impressed by the Hungarian Optants case, which had been a *cause*

célèbre for over a decade. After the First World War, when parts of Hungary had been ceded to Czechoslovakia, Romania and Yugoslavia, many Hungarians had found that their property was situated in the successor States. Article 250 of the Treaty of Trianon had guaranteed that Hungarian properties would not be subject to retention or liquidation under other provisions of the treaty. The successor States, however, had introduced extensive measures of agrarian reform, in the course of which properties of Hungarians had been expropriated. The amount of the compensation provided for in the laws of the successor States had not been considered adequate in all cases, especially in Romania, where the currency had been devalued. The case had been brought before the League of Nations and had given rise to an immense legal literature. Hungary had based its complaints both on the provision of the Treaty of Trianon and on the principle of the "minimum standard" in the treatment of aliens.

9. He would refer only to an article published in 1928 by Sir John Fischer Williams,[1] who, for the Romanian side, had argued that the maximum that could be claimed for an alien was equality with nationals, and that that did not mean that a State was obliged to accord such treatment to aliens unless the obligation had been embodied in a treaty. In support of his argument, Sir John had cited the following passage from the judgement in a Mexican case: "The treatment of an alien, in order to constitute an international delinquency, should amount to an outrage, to bad faith, to wilful neglect of duty . . .". "This is not the language", Sir John had then gone on to say, "in which all sober men in civilized communities would at the present time describe any and every measure of expropriation which, though not accompanied by full compensation, was undertaken deliberately by a civilized government and applied impartially to aliens and nationals in pursuit of a policy which that government, rightly or wrongly, acting within the sphere of its own independent authority, conceives to be in the interests of the peace, order and good government of the territory and people committed to its charge".[2] In his (Mr. Ustor's) opinion, that view was still valid today.

10. When the Hungarian Optants Case had been settled in Paris in 1930, arrangements had been made for setting up funds for compensating landowners whose property had been expropriated. The funds had been made up from various sources. The successor States were obliged to pay into the funds the amount of compensation provided for under their own laws, and under that arrangement the amount to be paid by Romania had been very small. The Great Powers which had financial claims on Hungary had renounced those claims and permitted Hungary to contribute the sums in question to the funds. With the advent of the economic crisis of 1931, however, Hungary had been unable to pay either its debts or its own contribution to the funds, which then became unable to fulfil the original expectations. That case went to show that equal treatment of nationals and aliens was the maximum which could be asked of any State which nationalized property or carried out agrarian reforms.

11. After the Second World War, he had personally participated in negotiations conducted by Hungary for compensation for property which had been nationalized. In contemporary legal literature, it was often held that the practice of the socialist States of eastern Europe which had negotiated such compensation agreements militated in favour of the idea that there was an international duty to pay compensation, even in cases of general nationalization as part of a programme of social reforms. In his opinion, however, that practice was not enough to establish international custom within the meaning of article 38, paragraph 1. b. of the Statute of the International Court of Justice. The compensation agreements entered into by the socialist States in the 1950s had been concluded not in accordance with what they considered to be international law, but for reasons of political and economic expediency. Those States had considered it desirable to reach a settlement in the interests of peaceful coexistence and international trade relations.

12. The problem of the treatment of aliens in the event of State succession could easily be solved if the Commission accepted the principle that every State had full freedom to change its economic system, even if that involved a change in its property laws. He agreed with the Special Rapporteur that a successor State could not have any less rights than its predecessor.

13. Mr. ROSENNE said that the debate might be more useful if the Special Rapporteur could obtain more precise information on those points on which he wished to have the Commission's views. He suggested, therefore, that the Special Rapporteur be asked to prepare a questionnaire for that purpose.

14. The CHAIRMAN asked the Special Rapporteur whether he would be able to prepare the questionnaire for circulation at the meeting on Friday, 20 June.

15. Mr. BEDJAOUI (Special Rapporteur) said he would do so.

The meeting rose at 1 p.m.

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[1] *British Year Book of International Law, 1928* — International law and the property of aliens.

[2] Op. cit., p. 29.

1003rd MEETING

Thursday, 19 June 1969, at 10.5 a.m.

Chairman: Mr. Nikolai USHAKOV

Present: Mr. Bartoš, Mr. Bedjaoui, Mr. Castañeda, Mr. Castrén, Mr. Eustathiades, Mr. Ignacio-Pinto, Mr. Reuter, Mr. Rosenne, Mr. Ruda, Mr. Tabibi, Mr. Tammes, Mr. Tsuruoka, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.