Document:-
A/CN.4/SR.1221

Summary record of the 1221st meeting

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

Extract from the Yearbook of the International Law Commission:-
1973, vol. I

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supposed that every exercise of freedom by a State was the result of some concession of international law. For example, the privilege of issuing currency, referred to in article 12, paragraph 1, did not derive from a rule of international law, as might be supposed from reading that paragraph. It derived from the internal sovereignty of the State; it was a faculty enjoyed by the State, but not one granted to it by the international law governing succession of States.

43. Another very important question was the distinction between sovereignty and ownership. Sovereignty was a matter of international law, whereas ownership was a matter of internal law. That did not mean that international law could not intervene to establish how ownership could be transferred in certain cases, but the Commission, when examining the draft articles, should constantly ask itself whether it was dealing with a case of sovereignty or a case of ownership; in other words, whether the State should be considered, in each particular case, as a subject of international law or a subject of internal law.

44. General rules should not be laid down without conclusive evidence that there were generally accepted criteria to justify them.

45. Mr. TSURUOKA said that the Commission's task was to draft articles which would offer satisfactory solutions for the predecessor State, the successor State and third States. The articles should be simply and clearly worded so as to constitute a useful legal instrument that was easy to apply.

46. A closer parallelism with the draft articles on succession in respect of treaties was desirable, both in regard to terminology and in order to avoid any gaps or duplication. In addition, the meaning and scope of such expressions as "public property" and "rights and obligations" should be defined.

47. In his draft articles the Special Rapporteur had emphasized the relations between the predecessor State and the successor State, but it frequently happened that the interests of third States were also involved. To ensure that such States did not have to suffer through the refusal of a successor State or a predecessor State to honour obligations it did not consider to be incumbent on it, public property should also include obligations, debts and property in third States.

48. Articles 1 and 2 could be referred to the Drafting Committee. As to article 3, he preferred the definition of "succession of States" given in the draft on succession of States in respect of treaties.

The meeting rose at 1 p.m.

1221st MEETING

Wednesday, 6 June 1973, at 10.10 a.m.

Chairman: Mr. Mustafa Kamil YASSEEN
later: Mr. Jorge CASTAÑEDA

Present: Mr. Ago, Mr. Bartoš, Mr. Bedjaoui, Mr. Bilge, Mr. Calle y Calle, Mr. Hambro, Mr. Kearney, Mr. Martínez Moreno, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Reuter, Mr. Sette Câmara, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Francis Vallat.

Succession of States in respect of matters other than treaties

(A/CN.4/226; A/CN.4/247 and Add.1; A/CN.4/259; A/CN.4/267)

[Item 3 of the agenda]
(continued)

ARTICLE 1 (Scope of the present articles),
ARTICLE 2 (Cases of succession of States covered by the present articles) and
ARTICLE 3 (Use of terms) *(continued)*

1. The CHAIRMAN invited the Commission to continue its general discussion on the Special Rapporteur's sixth report (A/CN.4/267) and consideration of articles 1, 2 and 3.

2. Mr. HAMBRO said that, while he had listened to the debate with interest and admiration, he could not help fearing that the Commission was attempting to do too much. Like Odysseus of old, it seemed to be embarking on a long and perilous voyage through uncharted seas strewn with rocks and shoals. As Mr. Yasseen had remarked at the previous meeting, there was a danger that it might never reach its goal unless it began to consider the individual articles immediately.

3. He was glad to note that the Special Rapporteur, in his sixth report, had abandoned some of the ideological and political considerations which had appeared in his first report[1] and had adopted a more simplified and pragmatic approach. Like Mr. Reuter, he was also glad that the Special Rapporteur had agreed not to concentrate too much on questions of decolonization, since there were other forms of State succession which were of equal importance.

4. Even if some of the problems connected with the topic should prove impossible to solve at present because the law concerning them was not yet settled, he was confident that useful work could still be done and that the final, collective report would stand as a monument to the Special Rapporteur's industry and imagination.

5. Mr. RAMANGASOAVINA said that the Special Rapporteur had done excellent work, which was all the more admirable because there was virtually no doctrine or jurisprudence on the topic, so that the credit for it belonged entirely to him. His sixth report showed a definite improvement in both quantity and quality over his previous reports. He had taken into account the views expressed in the International Law Commission and the Sixth Committee of the General Assembly and, in order not to impede the progress of the Commission's work, had avoided the controversial issues raised by the defini-

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[1] See *Yearbook of the International Law Commission, 1968*, vol. II, p. 94, document A/CN.4/204.

tions, by deferring them for later consideration. He (Mr. Ramangasoavina) fully approved of that procedure.

6. The Special Rapporteur also had the merit of having tried to group together in the draft all the elements relating to succession in respect of matters other than treaties—a vast undertaking, since there had been no previous attempt to codify the topic. Adopting a pragmatic approach, he had endeavoured to draft articles which could serve as a basis for discussion. The proposed classification was acceptable; it took account of what had been done on succession in respect of treaties, thereby ensuring the continuity and unity of the Commission's work on the law of treaties and succession of States. The work on the present topic pertained more to progressive development than to codification, and it was a matter for regret that the Commission had but little time to consider texts that were of undeniable importance.

7. Articles 1 and 2 could be referred to the Drafting Committee; so could article 3, although the definition it gave of succession of States was different from the one adopted in the draft on succession in respect of treaties.[2] That difference was justified for the reasons given by the Special Rapporteur, which he accepted.

8. Sir Francis VALLAT said he wished to congratulate the Special Rapporteur, not only on his sixth report, but also on his valuable oral introduction to it.

9. He, personally, would be glad to see articles 1 and 2 referred to the Drafting Committee, but at the previous meeting Mr. Ushakov had emphasized the need for clarity as to the meaning of the terms "succession of States" and "public property". It would, therefore, be advisable to begin by considering article 3, sub-paragraph (*a*) and article 5.

10. Much State practice already existed concerning treaties dealing with different kinds of transfer of territory and the emergence of new States. He suggested, therefore, that it would be helpful to the Commission if the Special Rapporteur would present a collection of such material, so that the Commission could examine it on a comparative basis.

11. Mr. MARTÍNEZ MORENO said that the codification of the topic dealt with by the Special Rapporteur in his impressive report was almost without precedent. Cases of succession of States in respect of matters other than treaties covered an immense field, because such succession could occur not only through accession to independence, but also through the union or dissolution of States, so that the Special Rapporteur had found it necessary to abandon some of his previous ideas.

12. The problem of public property in absorbed territories was particularly difficult. As Mr. Reuter had pointed out, the very definition of the term "territory" presented special difficulties at the present stage of the debate, since it might conceivably refer to the territorial sea, to the continental shelf or even to the air space above it. It would therefore be desirable to agree on a general definition of "territory" before tackling the problem of public property.

13. Likewise, it was necessary to determine what exactly was the situation of the population of an absorbed territory, before dealing with the question of currency and the privilege of issue. The monetary aspects of such cases were very complex, for the Bretton Woods agreements and the rules of the International Monetary Fund might preclude the transfer to a successor State of special drawing rights, for example, which might well become the monetary unit of the future.

14. He could largely agree with Mr. Pinto's criticisms of the terminology used by the Special Rapporteur,[3] but thought the latter had made a great effort to use the recognized terms of international law, many of which had been taken from the Commission's own texts.

15. He supported the proposal that articles 1 and 2 should be referred to the Drafting Committee. As to article 3, like Mr. Kearney, he was doubtful about the use of the word "sovereignty" in the definition of "succession of States" in sub-paragraph (*a*); but he was confident that the Drafting Committee would manage to find a satisfactory definition, so that the Commission could proceed with its work.

16. Lastly, while recognizing the desirability of a general discussion on the Special Rapporteur's sixth report, he thought that the Commission should concentrate its attention on the articles themselves.

17. Mr. SETTE CÂMARA said that, in dealing with the Special Rapporteur's very important and voluminous report, the Commission should, in his opinion, proceed in its traditional way and consider the draft, article by article.

18. He agreed with other members that articles 1 and 2 were quite satisfactory, following the Special Rapporteur's efforts to meet the Commission's wishes.

19. With regard to article 1, however, he noted that although the present articles applied to "the effects of succession of States in respect of matters other than treaties", they would actually serve as residual provisions to supplement treaties and to provide guidance in the absence of a treaty or if the treaty were silent on the subject, so that there would always be a treaty framework.

20. With regard to article 3, Mr. Ushakov had pointed out the difference between the definition of "succession of States" in sub-paragraph (*a*) of that article and the definition given in article 2, paragraph 1 (*b*) of the draft on succession of States in respect of treaties. The latter definition read: " 'succession of States' means the replacement of one State by another in the responsibility for the international relations of territory". The commentary to that definition stated, *inter alia:* "Consequently, the term is used as referring exclusively to *the fact of the replacement* of one State by another in the responsibility for the international relations of territory, leaving aside any connotation of inheritance of rights or obligations on the occurrence of that event". In paragraph 25 of his commentary to article 3 (sixth report), the Special

[2] *Ibid., 1972,* vol. II, document A/8710/Rev.1, chapter II, section C, article 2.

[3] See previous meeting, paras. 9-21.

Rapporteur had explained why he had adopted a different definition, but the point was certainly one on which the Commission would have to take a decision.

21. Lastly, he had been impressed by the doubts expressed by Mr. Pinto concerning the terminology used in the draft articles. In particular, the definition of "public property" would give rise to difficulties in the socialist States.

22. Mr. QUENTIN-BAXTER said that, like the other members, he found little difficulty in accepting the first three articles of the Special Rapporteur's impressive report, with the exception of sub-paragraph (*a*) of article 3. He would be content to dismiss that as a mere drafting problem did it not appear, from paragraphs (3) and (4) of the commentary to that article, that the Special Rapporteur attached importance of a substantive kind to the definition.

23. In paragraph (4), the Special Rapporteur had written: "In turning from succession in respect of treaties to succession in respect of matters other than treaties, one passes from the *fact* of the simple replacement of one State by another in the responsibility for the international relations of a territory to the problem of the concrete content of the rights and obligations transferred *as a result of that fact* to the successor State in the various fields relating to public property, public debts, the status of the inhabitants and so forth".

24. While he did not quarrel with that idea, he wondered whether it was necessary for it to be embodied in the definition of "succession of States", since the notion of "effects" was also contained in article 4. That was purely a drafting suggestion, but to his way of thinking there were certain advantages in keeping the primary definitions extremely simple.

25. He also questioned the use of the words "the replacement of one sovereignty by another" instead of the words "the replacement of one State by another", which had been used in article 2, paragraph 1(*b*) of the draft on succession of States in respect of treaties. The word "sovereignty" had many different connotations, some of which were clearly understood, while others were of a more shadowy and controversial nature. He would prefer the words "the replacement of one State by another".

26. He was very much in agreement with those speakers who has asked what the precise function of article 5 was. The Special Rapporteur had asked the same question in paragraph 2 of his fifth report (A/CN.4/259) when he had written: "It might well be argued that since State succession consists of the replacement of one sovereignty over a territory by another, this means that the previous sovereignty automatically loses its material support and that the right of the predecessor State to public property therefore passes *ipso jure* to the successor State". He himself agreed that the one clear primary sense in which the word "sovereignty" was used in international law related to the control of territory and to exclusive jurisdiction within that territory, in which the State was the law-maker.

27. In considering that problem, the Special Rapporteur had taken as a point of reference the case of property situated, not within the territory, but abroad and had concluded that that was a situation in which the change of sovereignty, the replacement of one State by another, did not immediately lead to an automatic transfer of the property rights involved.

28. It seemed to him that the situation was basically the same in both cases. The State in which the property was situated was the lawgiver; at the level of domestic law it had exclusive jurisdiction and control, but always possessed those powers subject to the requirements of international law. To say what those requirements were, to say what limitations were placed on the State's exercise of its power was, of course, the purpose of the present draft articles.

29. He thought that the draft articles had nothing to do with the particular problem of State responsibility towards aliens. In the nature of things it was within the power of a sovereign State to change rights of ownership in domestic law, and the international consequence of such action ought to be considered under the broad heading of State responsibility and, in particular, in the context of the duties owed to foreign States and their citizens.

30. That would seem to be a matter clearly beyond the scope of the present draft article, and the Commission should concentrate on the question whether the replacement of one State by another extinguished, diminished or transformed the duty owed by the new State. A number of speakers had noted that in many cases those rights would be dealt with in treaty instruments and that the Commission was laying down residual rules subject to the right of States to order their affairs in treaties. Those residual rules, however, were of immense importance, because in some situations the possibility of regulation by treaty would not easily arise.

31. With regard to new States, it was a cardinal feature of international law that a decolonizing Power should not, for example, be allowed to settle certain questions which would affect its former territory. International law required that that territory should itself become an independent member of the international community before it attempted to dispose by treaty of its own rights and obligations. Moreover, as had already been pointed out, the age of decolonization was now coming to an end, and the Commission's attention had to be focused more and more on other areas. But even in those areas, the emergence of other new States by disruption or dismemberment of a former territory, would raise the same problems.

32. It seemed to him, therefore, that even if the scope of the present work was defined as modestly as possible, it would still present enormous difficulties. The rules laid down by the Commission would indeed have to be flexible rules, to be applied in the light of the circumstances of each case.

33. Lastly, referring more particularly to article 5, he said that although that article dealt with the question of defining public property, it immediately raised echoes of points he had already attempted to discuss. The article provided that what was public property would in the first instance be determined in accordance with the laws of the predecessor State, although clearly there could be

no attempt to elevate the law of that State to something unchangeable, which departed from the municipal level and settled permanently at the international level. The Special Rapporteur had, indeed, tried to qualify the definition by adding the words "or which are necessary for the exercise of sovereignty by the successor State in the said territory". However, that attempt at qualification raised the whole problem of the word "sovereignty" and how the necessity for exercising sovereignty was to be measured. The latter question would, in fact, seem to call for many of the tests which were properly applied to the question of State responsibility towards third States and their citizens.

34. Mr. USHAKOV said he realized that the almost total lack of jurisprudence and doctrine in a very difficult field made the task of the Special Rapporteur particularly arduous, but he had no doubt that his great ability would enable him to overcome the difficulties which were inherent in the preliminary phase of any study of a given topic.

35. The first three articles submitted to the Commission did not present any problems of substance and could be referred to the Drafting Committee. Sub-paragraph (*a*) of article 3, however, raised a drafting problem. While it was true that there was no difference of substance between the "replacement of one State by another" and "replacement of one sovereignty by another", it was preferable, in his opinion, to speak of the replacement of one State by another, so as not to lend support to the idea that colonial territories had previously been under the sovereignty of the former metropolitan Power. To say that one sovereignty was replaced by another was to acknowledge the sovereignty of the former metropolitan Power over its colonies. But the former colonies had been under the administration of the metropolitan Powers, not under their sovereignty. It was better not to say anything which might sow doubt in people's minds.

36. To gain time, the Commission might also refer article 4, which did not present any problem, to the Drafting Committee and pass on immediately to article 5, which was the key article of the draft. With regard to that article, he observed that a definition should follow from all the other draft articles, so that it could only be approved provisionally in order to facilitate further work by clarifying the meaning of certain terms.

Mr. Castañeda took the Chair.

37. Mr USTOR said he congratulated the Special Rapporteur on his valuable reports and draft articles, which had the merit of following largely the pattern of the Commission's 1972 draft articles on succession of States in respect of treaties.

38. In two matters, however, the Special Rapporteur had departed from that pattern: the definition of succession of States and the typology of cases of succession. His own feeling was that although the Commission was not absolutely bound by its own precedents, any departure from then should only be for compelling reasons.

39. With regard to the definition, he still favoured the 1972 formula, which defined "succession of States" simply in terms of the replacement of one State by another in a certain territory. He would be prepared to revise his views, however, if convincing reasons could be adduced by the Special Rapporteur.

40. Similarly, with regard to typology, the arguments put forward by Mr. Ushakov in favour of maintaining the 1972 pattern were very persuasive.

41. Except, therefore, for his remarks on article 3, sub-paragraph (*a*), he agreed with the suggestions made by Mr. Yasseen regarding the treatment of articles 1, 2 and 3.[4]

42. Speaking generally on the rest of the draft, he wished to suggest that two additional provisions should be introduced into "Part two: General provisions".

43. His first suggestion was for a saving clause to the effect that the provisions of the draft articles did not affect the right of the States concerned to settle matters of State succession by treaty. He believed that virtually all those matters could be settled by means of a treaty between the predecessor State and the successor State, sometimes with the participation of third States. Perhaps the Special Rapporteur would wish to examine how far the various rules were of a purely dispositive character and whether there was any rule that could not be varied by agreement between the parties.

44. His second proposal was for an article to the effect that all the rules set out in the draft articles were without prejudice to the sovereign right of the successor State to regulate rights of property within its own sphere. Clearly, the successor State was a sovereign State like any other and had a full right to regulate such matters.

45. The inclusion in the draft of an article stating that principle could simplify the position with regard to certain other matters, such as the right of the State to issue money, which was obviously not a right inherited from the predecessor State, but a right originating in the sovereignty of the successor State. It would also influence the definition of public property; article 5 referred to the law of the predecessor State, but the successor State undoubtedly had complete freedom to change both the economic and the legal system in its territory. What had previously been private property could thus become public property.

46. The CHAIRMAN, speaking as a member of the Commission, said he wished to associate himself with the tributes paid to the Special Rapporteur for his treatment of the topic and for the draft articles he had submitted. It should be borne in mind during the discussion that the articles in the Special Rapporteur's sixth report dealt only with public property and that other subjects would be considered in subsequent reports.

47. His first general comment would be to remind the Commission that when, in 1968, it had considered the criterion for demarcation between the topics of succession in respect of treaties and succession in respect of matters other than treaties,[5] it had abandoned its earlier approach, which had been based on the source of succession: first, succession effected by means of a treaty and, secondly,

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[4] See previous meeting, paras. 2-7.

[5] See *Yearbook of the International Law Commission, 1968*, vol. II, p. 216, document A/7209/Rev.1, para. 46.

succession by virtue of customary rules of international law.[6]

48. The Commission had found that earlier approach unrealistic, since whether a succession took place by treaty or not was not the essential question. There was, on the other hand, a considerable difference between succession in respect of treaties and succession in respect of other matters, such as public debts and public property.

49. With regard to the definition of State succession given in article 3, sub-paragraph (*a*), he had been impressed by Mr. Ushakov's plea for uniformity with the text of article 2, paragraph 1(*b*) of the 1972 draft.[7] Nevertheless, the Commission was free to adopt a different definition for the purposes of the present draft, and from a logical point of view it was perfectly possible to use the term "succession of States" in the present draft with a different meaning from that ascribed to it in the 1972 draft.

50. Moreover, it should be remembered that the definition in article 3, although different from that appearing in the 1972 draft, did not conflict with it. It was based on the concept of replacement; it did not state that succession of States meant the transfer of rights and obligations relating to the territory. The concept of replacement of sovereignty was not at variance with the concept of replacement of one State by another.

51. He agreed with Mr. Kearney, however, that the expression "practical effects" was not appropriate.[8] The reference should clearly be to legal effects.

52. He was prepared to be convinced by the Special Rapporteur of the need to depart from the 1972 precedent in other respects, but he would need some grounds additional to those stated in paragraphs (3) and (4) of the commentary to article 3, which were insufficient.

53. His position was similar with regard to the classification of cases of succession. He would be prepared to accept a different classification from that adopted in 1972 if the Special Rapporteur put forward sufficient grounds for doing so. The fact that a certain classification had been adopted for the purposes of the draft on succession in respect of treaties should not be an obstacle to the adoption of a different classification in the present draft if that was justified.

54. He agreed with Mr. Ushakov on the need to specify clearly in the draft that questions of succession of States in respect of matters other than treaties were essentially questions to be settled by a treaty between the predecessor State and the successor State, sometimes with the participation of third States.[9] That raised the problem of the dispositive character of the rules in the draft; personally, he thought it unlikely that there would prove to be any imperative rules.

55. Lastly, he endorsed Mr. Ushakov's remarks on the important question of titles. Some of the draft articles could be construed only by reference to their titles; in a few cases, it was even necessary to refer to the titles of the chapter and the section in order to understand the meaning of an article. That method of drafting was dangerous.

56. Mr. BILGE said he associated himself with the tributes paid to the Special Rapporteur, who had ventured onto ground that was full of pitfalls, with hardly any precedents to guide him. After a thorough study of the subjects, he had reached certain conclusions which he defended in his draft, sometimes relying on a single decision or a particular opinion. It was not, strictly speaking, his own personal views that the Special Rapporteur was defending, but the results of his meticulous collation.

57. He himself was obliged to reserve his position, as he had not yet been able to make a study of that kind. Nevertheless, he approved of the pragmatic approach adopted by the Special Rapporteur, which seemed to him to be the only feasible method in the circumstances. Instead of developing a general theory, the Special Rapporteur had preferred to present the main cases of succession which could occur and propose solutions for them.

58. The first two articles did not present any difficulty. Article 1 was a classical provision which defined the scope of the draft, while article 2 was taken textually from the draft on succession of States in respect of treaties. He was one of those who had voted in favour of that provision the previous year, because he thought it was better to express the idea it contained, even though it might be self-evident.

59. The word "sovereignty" in article 3, sub-paragraph (*a*) was the key word of that provision. It should not present any insurmountable difficulties, although it had different meanings in internal law and international law and its scope was not always the same as in the Charter or in some United Nations declarations and resolutions. The Special Rapporteur had not used the term "sovereignty" in a broad sense. What he meant was the will of the inhabitants of a given territory to govern themselves and to participate in international relations. As it was used in the definition of the expression "succession of States", the word "sovereignty" served merely to delimit the subject to be codified and to indicate that the succession in question was in accordance with public international law.

60. As to whether it was better to use the definition adopted last year or draft a new one, he found that the present topic did seem to call for a fresh definition. Since it covered succession of States in general, it required a broader definition than succession of States in respect of treaties. Moreover, succession in respect of treaties gave rise to tripartite relationships between the predecessor State, the successor State and the third State, whereas succession of States in respect of matters other than treaties gave rise rather to bilateral relationships. Admittedly, there might be third States involved, but they were usually less directly interested.

61. Consequently, although he was in favour of uniformity in the definitions adopted by the Commission, he thought the expression "succession of States" could

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[6] *Ibid., 1967*, vol. II, p. 368, document A/6709/Rev.1, paras. 38-41.

[7] See previous meeting, para. 34.

[8] *Ibid.*, para. 32.

[9] *Ibid.*, para. 37.

be defined in more general terms for the present topic than for the related topic. In any case, the Commission should, as was its practice, reconsider the definitions proposed by the Special Rapporteur after it had studied the different cases of succession.

62. Mr. CALLE y CALLE said he associated himself with the tributes paid to the Special Rapporteur for his remarkable analysis of a topic on which little guidance was provided by legal writings or precedents.

63. With regard to the definition of "succession of States", he favoured the reference to the replacement of sovereignty. Such questions as succession ot public property were governed by rules which had their foundation in the sovereignty of the successor State.

64. The Special Rapporteur had intimated that the list of terms in article 3 was not yet complete and that additional terms would be added later. He himself would suggest including a definition of the date of succession, which was important in such matters as the effects of succession on public debts. He would also suggest including a definition of the term "newly independent States".

65. As to the classification of cases of succession, he found the Special Rapporteur's proposals acceptable.

66. Lastly, he endorsed the Special Rapporteur's pragmatic approach; the draft stated practical rules. The best way to deal with them was to examine the draft article by article.

The meeting rose at 1 p.m.

1222nd MEETING

Thursday, 7 June 1973, at 10.10 a.m.

Chairman: Mr. Jorge CASTAÑEDA

Present: Mr. Ago, Mr. Bartoš, Mr. Bedjaoui, Mr. Bilge, Mr. Calle y Calle, Mr. Hambro, Mr. Kearney, Mr. Martínez Moreno, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Reuter, Mr. Sette Câmara, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Francis Vallat, Mr. Yasseen.

Succession of States in respect of matters other than treaties

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[Item 3 of the agenda]

(continued)

ARTICLE 1 (Scope of the present articles),

ARTICLE 2 (Cases of succession of States covered by the present articles) and

ARTICLE 3 (Use of terms) *(continued)*

1. The CHAIRMAN invited the Commission to continue its general discussion on the Special Rapporteur's sixth report (A/CN.4/267) and consideration of articles 1, 2 and 3.

2. Mr. BARTOŠ said that the topic under consideration, although new from the theoretical point of view, was not new in the practice of international law. The Commission had divided succession of States into two topics, according to whether it arose in regard to treaties or to matters other than treaties. For the first topic, succession of States in respect of treaties, which had been entrusted to Sir Humphrey Waldock, it was possible to formulate traditional rules of international law based on the presumption of free expression of the will of the parties concerned. It should be noted incidentally, however, that the parties were not always able to express their will freely; a case in point was the creation of the State of Yugoslavia. In the matter of succession of States, some agreements reflected not so much the will of one or other of the parties as the sole will of a State with imperialist designs, which was imposed on another State.

3. The question of succession of States in respect of matters other than treaties involved the whole of international law. There were two basic theories. One stressed the acquired rights of the former sovereign, while the other, which was revolutionary in outlook, emphasized liberation, so that the birth of a new independent State meant the transfer of sovereignty with all its attributes. According to the first theory, on the other hand, rights which had been more or less lawfully acquired remained attached to the predecessor State, so that the successor State was only partly liberated. But the United Nations had proclaimed the inalienable right of liberated nations to sovereignty over their natural resources and wealth; and that principle applied not only to natural wealth, but also to artificial wealth such as roads, railways, canals, etc. The two theories had opposite consequences with regard to compensation of the predecessor State.

4. It was therefore important to choose from the two theories the one which corresponded to the policy generally followed by the international community. The present trend seemed to be to grant newly independent States a natural right to their soil and their property and it was that trend which the Special Rapporteur had followed, while being careful to present it with moderation, so as not to arouse hostility.

5. The first three of his proposed articles stated basic provisions and ideas of international law which were recognized by most nations. It was essential to define the notion of public property. The public property of a State was not simply certain specific property; it included the whole of the public domain. That point should be introduced into the preliminary provisions.

6. As to the transfer rule, that raised the question of the date of transfer. Was it the date of acquisition of the territory by the new sovereign, or could it be considered that occupation or colonization entailed a provisional limitation or suspension of sovereignty? Even if it were considered that the change of sovereignty took place *de jure* at a given moment, it was nevertheless possible to apply the rule of retroactivity, which he would like to see included in the draft. In that way, States would not lose their right to sovereignty over their soil, and that sovereignty would reappear. Those ideas should be expressed in the draft articles or at least in the commentary.