Document:-
A/CN.4/SR.1226

Summary record of the 1226th meeting

Topic:
<multiple topics>

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

1226th MEETING

Wednesday, 13 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. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Francis Vallat, Mr. Yasseen.

State responsibility

(A/CN.4/L.194)

[Item 2 of the agenda]

(continued)

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE *(continued)*

ARTICLE 4[1]

1. The CHAIRMAN invited the Commission to continue consideration of the draft articles proposed by the Drafting Committee (A/CN.4/L.194). He asked the Chairman of the Drafting Committee to introduce article 4.

2. Mr. YASSEEN (Chairman of the Drafting Committee) said that, as originally drafted, article 4 had read: "The municipal law of a State cannot be invoked to prevent an act of that State from being characterized as wrongful in international law".

3. During the Commission's discussion, that text had been criticized mainly from two points of view. Some members had maintained that municipal law could be relevant, in certain circumstances, for determining whether some particular conduct of a State did or did not constitute an internationally wrongful act. They had therefore considered that the formulation of article 4 was too absolute. Other members had observed that article 4 did not emphasize the basic rule, namely, that in the last resort it was international law which characterized an act as internationally wrongful. As it then stood, the article had appeared to deal only with the particular case in which a State accused of committing an internationally wrongful act invoked its internal law to prove an exception. They therefore considered that a more general formula should be found.

4. The Drafting Committee had taken those two points of view into account in the text it was now proposing to the Commission. It had also amended the title of article 4 to bring it into line with the new text.

5. The new version of article 4 read:

Article 4
Characterization of an act of a State as internationally wrongful

An act of a State may only be characterized as internationally wrongful by international law. Such characterization cannot be affected by the characterization of the same act as lawful by internal law.

6. The CHAIRMAN said that if there were no comments he would take it that the Commission decided provisionally to approve article 4 as proposed by the Drafting Committee.

It was so agreed.

TITLE OF CHAPTER II AND ARTICLE 5[2]

7. Mr. YASSEEN (Chairman of the Drafting Committee), introducing the title of chapter II, said that in the interest of uniform terminology, the Drafting Committee had replaced the words "according to international law" in the title of chapter II, by the words "under international law". Thus the new title proposed for chapter II read: "The 'act of the State' under international law".

8. The discussion on article 5 had related mainly to the question whether, from the Commission's point of view, it was possible to distinguish, in an organ of a State, between the organ proper and the natural person who must necessarily act on behalf of the organ. Some members had maintained that only an organ could act on behalf of the State. They had acknowledged that in most cases there was physical intervention by a natural person, but in their opinion he was acting solely in the capacity of an organ, so that natural persons must be disregarded whenever a certain conduct was attributed to a State.

9. In order to avoid any abstract discussion on that point and not to come out in favour of a particular theory, the Drafting Committee proposed the following title and text for article 5:

Article 5
Attribution to the State of acts of its organs

For the purposes of the present articles, conduct of any State organ having that status under the internal law of that State, will be considered as an act of the State concerned under international law, provided that organ was acting in that capacity in the case in question.

10. Mr. USTOR said he fully approved of the text of article 5, but noted that the tenses of the verbs were not the same in the French and English versions.

11. Mr. YASSEEN (Chairman of the Drafting Committee) said that the Committee had been very careful with the concordance of the different versions, but that in some cases, for purely linguistic reasons, it had been obliged to abandon strict parallelism.

12. Sir Francis VALLAT proposed that the words "will be considered" be replaced by the words "shall be considered", as the word "shall" was less permissive than the word "will".

13. Mr. REUTER said he thought the idea of anteriority should be expressed in the last phrase of article 5. He therefore suggested that the words "*il agisse en cette qualité*" be replaced by the words "*il ait agi en cette qualité*": the past tense was used in the English version.

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[1] For previous discussion see 1209th meeting, para. 1.

[2] For previous discussion see 1211th meeting, para. 1.

14. Comparing the title and text of article 5, he questioned whether it was appropriate for the French version to speak sometimes of the "*faits*" and sometimes of the "*comportement*" of an organ.

15. Mr. AGO (Special Rapporteur) said he concurred with Mr. Reuter's remarks. The term "*fait*" should be reserved for the expression "*fait de l'Etat*" and it would therefore be preferable to replace the words "*des faits*" by "*du comportement*" in the title of the article. It would also be preferable to use the past tense in the final phrase.

16. The CHAIRMAN said that in the English version the words "will be considered" would be replaced by the words "shall be considered", and to take account of the amendments proposed by Mr. Reuter and Mr. Ago the title would be amended to read: "Attribution to the State of the conduct of its organs".

17. Mr. KEARNEY said he had no objection to the revised text of article 5, but wished to make the reservation that at some stage in the discussion it would be necessary to define a "State organ". A reference to that problem should be included in the commentary.

18. The CHAIRMAN, speaking as a member of the Commission, said he fully supported Mr. Kearney's remarks.

Article 5, as amended, and subject to the reservation made by Mr. Kearney, was approved.

19. Mr. AGO said that if the Commission so desired he would endeavour to define the expression "State organ" in the commentary. He pointed out, however, that it would not be an easy task, since the views of members of the Commission on that subject differed widely.

ARTICLE 6[3]

20. Mr. YASSEEN (Chairman of the Drafting Committee) said that when the Commission had examined article 6 as originally drafted, some members had observed that it might raise difficulties in the common-law countries. For lawyers of those countries, the draft article seemed only to state a rule of evidence. The word "hierarchy", which appeared in the phrase "a superior or a subordinate position in the hierarchy of the State", had also been criticized. There had not, however, been any great difference of opinion on the substance of the article.

21. The new test proposed for article 6 read:

Article 6
Irrelevance of the position of the organ in the organization of the State

The conduct of an organ of the State is considered as an act of that State under international law, whether that organ belongs to the constituent, legislative, executive, judicial or other power, whether its functions are of an international or an internal character and whether it holds a superior or a subordinate position in the organization of the State.

22. Mr. SETTE CÂMARA said he still felt the misgivings he had previously expressed about the enumeration of the constituent, legislative, executive, judicial or other powers; it was a departure from the traditional tripartite structure of the State.[4] The constituent power was not on the same level as the others; it was a short-lived phenomenon which was soon replaced by the legislative power. It was possible to refer to an organ of the executive or judicial power, but hardly to an organ of the constituent power, whose decisions were taken in plenary.

23. Mr. KEARNEY said that the legislative power could undoubtedly possess organs, since it was empowered to appoint committees for a variety of purposes. It was quite possible, though unlikely, that such a committee might commit an internationally wrongful act by requiring the presence of the ambassador of a foreign country at a committee meeting.

24. Mr. SETTE CÂMARA said that, in his view, an organ of the legislative power, such as a committee, was responsible only for reporting to the legislature in plenary; he doubted that it would be capable of committing an act engaging the responsibility of the State.

25. Mr. MARTÍNEZ MORENO said he could accept article 6 in its present form. He appreciated Mr. Sette Câmara's comment on the traditional tripartite structure of the State, but in Latin America there were instances of organs belonging to other powers, such as the electoral power, which exercised certain specific functions on election days.

26. Mr. YASSEEN, speaking as a member of the Commission, said that the constituent power was not sporadic; although it manifested itself sporadically, it was always latent.

27. Mr. SETTE CÂMARA said that the term "constituent power" meant not so much a "power" as a "constitution".

Article 6 was approved.

28. The CHAIRMAN said that the Commission had now completed its consideration of the draft articles on State responsibility proposed by the Drafting Committee.

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]

(resumed from the previous meeting)

ARTICLE 6

29. The CHAIRMAN invited the Special Rapporteur to introduce article 6 of his draft (A/CN.4/267), which read:

Article 6
Transfer of public property as it exists

1. The predecessor State may transfer a territory only on the conditions upon which that State itself possesses it.

[3] For previous discussion see 1213th meeting, para. 39.

[4] *Ibid.*, para. 58.

2. In accordance with the provisions of the present articles, public property shall be transferred to the successor State as it exists and with its legal status.

30. Mr. BEDJAOUI (Special Rapporteur) said that article 6 was the first of three articles containing the general provisions of his draft. He still felt the doubts he had expressed in his fourth report (A/CN.4/247 and Add.1, commentary to article 2) about the need for such a provision, which corresponded to his former article 2. The Commission would have to decide whether to retain article 6, but paragraph 1 should be regarded as having been deleted.

31. The question raised by article 6 was, basically, whether the rights of third parties—both third States and private persons—should be reserved. It might perhaps be advisable to wait until other questions arising out of succession in respect of matters other than treaties had been considered, particularly the question of acquired rights, before taking a decision on article 6.

32. By virtue of the succession, the successor State would have no more rights over the property transferred than the predecessor State. It might therefore be asked what happened to any defects in the title to the property, and what was the extent of the title of the successor State. It might perhaps be laid down as a principle that no person and no predecessor State could convey more rights than he or it possessed. He had tried to find out whether there was any rule of international law which obliged the predecessor State to clear the transferred property of any charges there might be on it; no such rule appeared to exist.

33. It might also be asked whether the successor State could receive more than it had been given, by freeing itself of obligations attached to the property transferred. It seemed, however, that that was perhaps not strictly a problem of succession of States, but a matter within the exclusive competence of the successor State in its capacity as a State.

34. Finally, must the legal status and condition of the property received be compatible with the rules of the internal law of the successor State? In other words, if there was a legal rule in the predecessor State which had no counterpart in the legal system of the successor State, was that rule binding on the successor State? That raised particularly difficult problems, some of which related to required rights.

35. Mr. REUTER said he fully endorsed the views of the Special Rapporteur, but was concerned about the serious problems raised by article 6. In his opinion, one question was more important than all the rest: was there or was there not a transfer?

36. One could imagine an article which was confined to stipulating the conditions under which the rights of the predecessor State were extinguished. If it was accepted that, following such extinction, there was a break and a new legal order was established, it must then be asked whether the rights of third parties survived the extinction.

37. On the other hand, if there was a transfer, as implied by the titles of articles 6, 7 and 9, the Commission must move away from the internal law of the predecessor State and the successor State into the sphere of international law. For the notion of transfer was not compatible with a simple *renvoi* to the internal law of the predecessor State for the past, and to the internal law of the successor State for the future. It must be affirmed that there was some link between those two legal orders, and all the consequences of that affirmation, which was based on considerations of international law, must be accepted.

38. In his view, it was clear that the rights of the predecessor State were extinguished, but that, by virtue of a general principle of legal security, the extinction did not affect the rights of third parties. If one opted for that narrow conception, one could not go so far as to affirm that public property was transferred "as it exists and with its legal status", as did article 6.

39. The notion of transfer would also arise in connexion with other articles of the draft. Personally, he was inclined to think that there was no transfer in the cases dealt with in the draft.

40. Mr. SETTE CÂMARA said he was glad the Special Rapporteur had decided to delete paragraph 1, since it tended to confuse the concepts of property *(proprietas)* and possession *(possessio)*. The principle in article 6, of course, related to the old rule of Roman law *nemo plus juris ad alium transferre potest quam ipse habet.*

41. To the extent that the problem of transfer of territory fell within the sphere of succession of States in respect of treaties, he did not think the Commission would have any difficulties. Under the system adopted in the Commission's draft on succession of States in respect of treaties,[5] the transfer had to be conducted in such a way that the successor State would be bound by its own will alone in regard to treaties of the predecessor State limiting or circumscribing sovereignty over the territory.

42. Paragraph 2 of article 6 was a revised version of the corresponding paragraph 3 of article 2 of the former draft (A/CN.4/247). The reservation "in so far as this is compatible with the municipal law of the successor State" had been deleted, and that, in his view, was an improvement, since at the time of the transfer it was the law of the predecessor State which prevailed, irrespective of any provisions of the law of the successor State.

43. Since the legal order of the predecessor State continued to apply until modified by a legislative act of the successor State, any limitations or restrictions on public property were unaffected by the change. But of course that was a transitory situation, for once the transfer had taken place nothing prevented the successor State from maintaining or modifying the legal status of public property or even the legal concept of what constituted it.

44. With regard to the drafting of paragraph 2, he thought the French text expressed the Special Rapporteur's ideas much better than the English, so his remarks would apply mainly to the latter. The introductory phrase "In accordance with the provisions of the present articles" seemed unnecessary, for, unless there was a stipulation to the contrary, it was obvious that the provision was bound to be in conformity with the general

[5] See *Yearbook of the International Law Commission, 1972*, vol. II, document A/8710/Rev.1, chapter II, section C.

philosophy of the draft. He did not understand the meaning of the words "as it exists". If public property was to be defined and determined by the law of the predecessor State, in accordance with article 5, it was evident that such property could not be envisaged in a different way from that in which it had existed under the legal order of that State. He hoped the Special Rapporteur would explain the exact meaning of that piece of legal existentialism.

45. He also had some misgivings about the use of the expression "legal status", as applied to public property. As he understood it, the Special Rapporteur intended to convey the idea that public property was transferred with any limitations or restrictions with which it might be encumbered under the legal order of the predecessor State. If that was so, would it not be better to say so clearly in the text of the article, instead of speaking of the "legal status" of public property, which was a much broader expression involving a wide range of municipal law provisions that removed public property from the régime of private property?

46. Mr. USHAKOV said that the purpose of article 6 was to make it clear that the fate of public property was governed by the draft. Article 6 was thus a very general provision and it was perhaps premature to determine, at that stage, what was governed by the draft and what was not. As in many other cases, the Commission might subsequently have to draft a special provision on that point.

47. Moreover, to state that the fate of public property was governed by the draft articles ruled out at once the possibility of concluding agreements on the subject, although that possibility had been recognized by the Special Rapporteur. It therefore appeared that the drafting of article 6 was too strict.

48. With regard to Mr. Reuter's comments on the question whether there was a transfer, he could quote two examples of State succession where there was no transfer. The first was the case in which property belonging to two States which had merged into a single State was situated in the territory of a third State. The second was the case of a partial transfer of territory from one State to another, both States agreeing that the property of the predecessor State situated in the territory of a third State should remain its property. In neither of those cases was there a genuine transfer, and the Commission should beware of that term, which did not always correspond to reality.

49. The CHAIRMAN, speaking as a member of the Commission, said that the comments made by Mr. Ushakov and Mr. Reuter related mainly to the question whether a transfer took place or not; he wondered whether that question was not raised rather by article 8.

50. What article 8 meant was that when succession took place, or when there was replacement of one State or sovereignty by another, the public and private property of the predecessor State passed into the patrimony of the successor State; other property, which was not State property, passed within the legal order of the successor State, which was not the same as passing into its patrimony. In his view, therefore, the rule stated in article 6 should properly follow that stated in article 8, which was the basic rule, and it might be better to examine the latter article first.

51. Mr. BARTOŠ said it was his understanding that article 6 concerned the devolution of all property falling under the sovereignty over the territory concerned. But the Special Rapporteur had surely not meant that all property, public or private, devolved gratuitously to the new sovereign State. A distinction must be made between two aspects of the matter: on the one hand, property attached to a territory was subject to the new sovereignty as it had been to the old; on the other hand, in so far as ownership and enjoyment were concerned, it was difficult to accept that all such property passed at the discretion of the new sovereign State, without compensation and without regard to either its former use or its existing condition.

52. Although it was true, as Mr. Reuter had pointed out, that property was subject to the legal order of the successor State once the rights of the predecessor State had been extinguished, that did not mean that there was legal devolution of the property. It was not in consequence of a devolution, but because the property was attached to the territory in question that the successor State was able to impose its public order on it. Moreover, that happened after the succession.

53. Lastly, he doubted whether the expression "property of the territory", in sub-paragraph (*c*) of article 8 was adequate. That expression implied that the territory possessed property of its own; it would be better to speak of property "situated in the territory".

54. Sir Francis VALLAT said that, although he shared to a large extent the misgivings expressed by other members about the concept of "transfer", he had no difficulty with the underlying principle of article 6, which was absolutely sound.

55. That principle was akin to the adage "What is sauce for the goose is sauce for the gander". Article 6 stated, in effect, that if the public property in question was subject to certain obligations, restrictions or limitations, it passed to the successor State subject to the obligations, restrictions or limitations attaching to it. For example, a government house in a territory which became independent would naturally become the property of the new State. Supposing, however, that it was surrounded by large grounds where the local people had the right to grow vegetables, that right would not be extinguished because the house and its grounds had passed to the new State. The principle was an elementary one which needed to be expressed in the draft articles. Otherwise there might be a tendency to consider exclusively the positive side of the operation, without taking the negative aspects duly into account.

56. He agreed with Mr. Sette Câmara about the discrepancy between the English and French texts. The French text was much nearer to his idea of the intended meaning of article 6. That, however, was a matter of drafting which could be settled at a later stage.

57. Mr. MARTÍNEZ MORENO said that the question raised by Mr. Reuter was a fundamental one. The Commission would have to decide the preliminary issue

whether, upon a succession, there was a transfer of public property from the predecessor State to the successor State, or an extinction of the rights of the predecessor State and novation in favour of the successor State. The issue was not purely academic; it had important legal effects, and he would be grateful if Mr. Reuter would go into greater detail on it.

58. He welcomed the Special Rapporteur's decision to drop paragraph 1, which could have caused many difficulties. In particular, the reference to possession was unfortunate, because of the essential distinction between *uti possidetis de facto* and *uti possidetis de jure*. This was a matter of great importance with regard to boundaries in Latin America and, more recently, in Africa and Asia, as a result of the emergence of many new States.

59. Paragraph 2, the only remaining paragraph, should be examined with due regard to the provisions of later articles. For example, there appeared to be some contradiction with sub-paragraph (*c*) of article 8. The purpose of article 6 was to state that if the property in question was, say, mortgaged, it would pass to the successor State subject to the mortgage. The terms of sub-paragraph (*c*) of article 8 would, however, make it possible for the mortgage to be disregarded if it were considered contrary to "the juridical order of the successor State".

60. To give some idea of the difficulties involved, he would quote an example which provided a useful illustration, though it was not, strictly speaking, a case of State succession. In the boundary dispute between Honduras and Nicaragua,[6] the International Court of Justice had ordered the return to Honduras of part of the disputed territory, which had previously been in the possession of Nicaragua. It had been agreed that the property rights of private individuals would be respected. Under the constitution of Honduras, however, aliens were forbidden to own property within a certain distance of the international boundary. Nicaraguan nationals affected by the application of that provision of the Honduran juridical order were now involved in litigation which, when the judgement of the Supreme Court of Honduras was known, was likely to lead to further international litigation.

61. A similar problem could well arise in a case of State succession. It was therefore necessary carefully to co-ordinate the provisions of article 6 with those of article 8.

62. The problem became even more serious when the provisions of article 9 were taken into account, according to which property necessary for the exercise of sovereignty devolved "without compensation" to the successor State. A person placed by a State in a situation similar to that of the Nicaraguan property owners would, under the provisions of article 9, be dispossessed of his property without any compensation at all.

63. Mr. KEARNEY said that the concept of transfer raised serious problems, particularly when it was by no means clear what constituted public property. He agreed with Sir Francis Vallat that an article was needed to state the rule that the successor State took over State property with its restrictions and limitations. For that purpose, the expression "with its legal status" was not broad enough.

64. The question was whether article 6 was sufficient to meet all the problems that arose regarding the taking over of public property by the successor State, and, if not, whether the subsequent articles filled all the gaps.

65. An example was provided by the fate of State-run railways in a predecessor State which split up into two successor States. It would not be enough to say that the track and other permanent installations would go with the territory on which they were situated. The formula "as it exists and with its legal status" would be of no assistance when it came to dividing the rolling stock, which was just as much public property as the track.

66. Similar problems would arise in connexion with State-owned shipping lines. One could imagine a case in which all the coast-line of the predecessor State went to one of the two successor States, the other being left land-locked. Difficulties of that kind could, of course, be settled by recourse to the principle of equitable distribution, but the net result would be to trade off one kind of property against another.

67. He was not in a position at the present stage to offer a solution to those problems; he merely wished to draw attention to their complexity.

68. Mr. HAMBRO said that article 6 embodied a simple rule which had been very clearly explained by the Special Rapporteur in a brief but important passage of his fourth report: "The successor State does not acquire more rights than the predecessor State itself had over the property transferred. This is a statement of the obvious, since no one, including a predecessor State, can 'give more than he has' ".[7]

69. The Commission would have to adopt that rule in one form or another. The rule would have to be stated in simple terms and so worded as to apply generally to all the particular cases that could arise. It was not necessary, for the moment, to consider those particular cases in detail; but the Commission should have a general formula in mind for article 6 when it came to discuss the subsequent articles of the draft.

70. Mr. CALLE y CALLE said it would be impossible for a single article to solve all the problems that arose regarding the transfer of public property. Assuming that an agreed concept of public property existed, an article was needed to specify that the public property of the predecessor State passed to the successor State with the same physical features and the same legal status as had obtained prior to the succession.

71. A statement of that rule in simple terms would be acceptable to him. He suggested deleting the opening words "In accordance with the conditions of the present articles", which were unnecessary, since all the articles had to be read in the context of the whole draft. Moreover, like other provisions of the draft, article 6 contained a residuary rule which applied only unless otherwise agreed by the parties, so that the transfer might well

[6] *I.C.J. Reports 1960*, p. 192.

[7] See *Yearbook of the International Law Commission, 1971*, vol. II (Part One), p. 169, document A/CN.4/247 and Add.1, para. (13) of the Commentary to article 2.

take place in accordance with the terms of an agreement rather than with those of the articles.

72. Mr. BILGE said he approved of the idea expressed in paragraph 2 of article 6, which had become the sole paragraph. It must be expressly stated in the draft that public property was transferred to the successor State as it stood. That was perhaps an obvious truth, but since difficulties had arisen over the point in practice, it was not useless to repeat it.

73. However, the idea of transfer in good faith should also be introduced into the text; the words "by the predecessor State" should therefore be inserted after the words "public property shall be transferred", since that wording would call for a certain conduct showing goodwill on the part of the predecessor State. It should also be indicated in the commentary that the provision was intended to ensure the physical conservation of public property.

74. Mr. REUTER clarifying his position, said he agreed with Sir Francis Vallat and other members of the Commission that the rights of third parties—which could be not only States, but also, for example, international organizations—must be respected. The problems now facing the International Bank for Reconstruction and Development, as a result of certain open successions, showed that that reservation was an entirely practical one. The question of the rights of private persons should also be reserved.

75. He believed, above all, that it was natural for articles 6 to 10 to be considered in conjunction with each other. The comment he had made on the word "transfer" was a comment of substance in the sense that the true problem, which the Commission would have to discuss later, was whether the two terms of the change, namely, the property as it existed in the patrimony of the predecessor State and then its attribution to the patrimony of the successor State, should be determined—as was done very explicitly in article 8—or whether it was enough to determine that the rights of the predecessor State were extinguished and that its property, subject to the rights of third parties, passed under the sovereignty of the successor State. The Commission would have to decide whether it was really possible to say that public property passed into the patrimony of the successor State. That was open to question, for it was not certain that the concept of the patrimony of the State existed in international law, or even in all national systems of law.

76. Mr. QUENTIN-BAXTER said that, like Mr. Bilge, he assumed that the Commission was not concerned at the present stage with the problem of equitable distribution.

77. He had no objection to the idea expressed in paragraph 2 of article 6, the sole remaining paragraph; but he had some doubt whether the provision was necessary. Clearly, the successor State received only what the predecessor State had to give. He shared, however, Mr. Reuter's objections to the concept of "transfer" of property.

78. The question of continuity was of fundamental importance. The territory affected by the succession was acquired by the successor State with its physical features and the law that it carried. It was the lawgiver that changed; the power to make the law was put in other hands.

79. In the draft on succession in respect of treaties, which it had adopted in 1972, the Commission had placed the emphasis on the replacement of one State by another. He thought that, in article 6, the concept of replacement in the ownership of public property should be introduced. The concept of replacement was different from that of transfer, and more suitable for present purposes.

The meeting rose at 12.35 p.m.

1227th MEETING

Thursday, 14 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. Ushakov, Mr. Ustor, Sir Francis Vallat, Mr. Yasseen.

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 6 (Transfer of public property as it exists) *(continued)*

1. The CHAIRMAN invited the Special Rapporteur to reply to the comments of members on article 6.

2. Mr. BEDJAOUI (Special Rapporteur) said the debate had clearly shown that opinions were too definite to allow of any hope of reaching unanimity on the present text of article 6. Before discussing what should be done with the provision, he would reply to the comments that had been made.

3. Mr. Ushakov had criticized the text for being too rigid, in that it excluded the possibility of agreement to a different effect between the parties.[1] He admitted that and would try to find a remedy with the help of the Drafting Committee. Agreement between the parties was obviously important, because the rules the Commission was drawing up were residuary rules.

4. Mr. Ushakov had also considered that the Commission should not, for the moment, dwell on article 6, which dealt with the general régime of property—a subject also regulated by the following articles. Bearing in mind the Draft prepared by Sir Humphrey Waldock, he (Mr. Bedjaoui) wondered whether it had always been

[1] See previous meeting, para. 47.