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Summary record of the 1228th meeting

Topic:

<multiple topics>

Extract from the Yearbook of the International Law Commission:-

1973, vol. I

Commission, which had found its way into the Vienna Convention, had been largely inspired by Latin American practice.

77. He thought that co-operation between the Inter-American Juridical Committee and the International Law Commission could be made even more fruitful. The Committee could give it its opinion on the work accomplished by the Commission. Any comments the Committee might make on that subject would be very useful, since they would combine the attitudes of the different countries of Latin America. He was glad to see that the Inter-American Juridical Committee was studying questions that were very close to the topics being examined by the International Law Commission, in particular, the very important topic of State responsibility. He appreciated that co-operation and hoped it would increase.

78. Lastly, he wished to say how happy he had been to work with Mr. Vargas Carreño, the present observer for the Inter-American Juridical Committee, both in the Sixth Committee of the General Assembly and in various other international bodies, and how much be appreciated his devotion to the cause of the codification and progressive development of international law.

79. Mr. KEARNEY said he was delighted to meet an old friend in the person of the observer for the Inter-American Juridical Committee, whose hospitality he had enjoyed at the Committee's last session in the charming city of Rio de Janeiro. He, too, was well aware that Mr. Vargas Carreño could be called the father of the "patrimonial sea", though he suspected that certain evil tongues might insinuate that it was an illegitimate child. He strongly supported the idea that the Chairman of the Commission should attend the next session of the Committee as an observer.

The meeting rose at 1 p.m.

1228th MEETING

Friday, 15 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. Ushakov, Mr. Ustor, Sir Francis Vallat, Mr. Yasseen.

Co-operation with other bodies

[Item 8 of the agenda]

(continued)

INTER-AMERICAN JURIDICAL COMMITTEE *(continued)*

1. The CHAIRMAN invited members who had not already done so to comment on the statement by the observer for the Inter-American Juridical Committee.

2. Mr. MARTÍNEZ MORENO said that as a Latin American member of the Commission, he was pleased to greet the distinguished Chilean jurist, Mr. Vargas Carreño, as observer for the Inter-American Juridical Committee.

3. There could be no doubt that close co-operation between the Commission, which worked at the world level of international law, and the Committee, which worked at the regional level, would be highly beneficial to both bodies. As to doctrine, the dispute about whether there was such a thing as American international law was obsolete. The great majority of writers, even Americans, were inclined to believe that there was only one universal international law; but that was no obstacle to the recognition of American institutions of international law, both practical and theoretical.

4. As examples, he could cite the development of the Latin American rules of *uti possedetis* for the demarcation of international frontiers; the principle of freedom of navigation of rivers, even before the Congress of Vienna; the principle of political asylum; and the doctrine of recognition of *de facto* governments. It should also be remembered that Latin America had come out in favour of the self-determination of peoples and the legal equality of States at a time when other continents still put their trust in political balance.

5. He was pleased to note that the observer for the Committee, while recognizing that there were certain legal practices peculiar to Latin America, had agreed that there was general agreement among the jurists of that continent that international law was unique and universal.

6. At its last session, the Committee had made an outstanding effort to reach agreement on such a highly complex matter as the regime of the territorial sea. The result had been a generous compromise in which the members, while supporting the idea of an "economic zone" extending 200 miles beyond the coastal State, had also accepted the right of free or innocent passage through international straits. Those efforts of the Committee, it was encouraging to note, offered some assurance that the next conference on the law of the sea, to be held at Santiago de Chile in 1974, would have some flexible material before it, designed to harmonize the rights and interests of the world community with the higher rights of coastal States to the conservation and use of the natural resources of the sea adjacent to their shores.

7. The Committee's draft convention on extradition also contained new elements, such as the requirement that an extraditable offence must be punishable by at least one year's imprisonment, and provision for lists of extraditable offences to be supplied by both parties. It was interesting to note that the majority of Latin American States, despite their traditional support of the right of asylum, were now agreed that the nationality of the person whose extradition was requested could not be invoked as a reason for denying extradition, unless the law of the requested State expressly provided otherwise.

8. Lastly, he congratulated the observer for the Committee on his excellent statement and expressed the hope

that co-operation between the Committee and the Commission would continue to their mutual benefit.

9. Mr. REUTER, speaking on behalf of those members who were nationals of States members of the Council of Europe, congratulated the observer for the Latin-American Juridical Committee on his enlightening statement on the present state of codification of international law in Latin America. His statement showed that regional work on the codification of international law was directed towards both concrete formulation and exploration.

10. As to the former, the different geographical, economic and political regions required particular formulations of international law. Europe had already benefited from the codification work undertaken in the New World. A particular aim of that work was to give practical expression to the general principles laid down in the United Nations Charter. In the sphere of human rights, where rules of differing applicability were needed for different regions, Europe had profited from the work done in Latin America, just as Latin America had sometimes drawn inspiration from the work of the Council of Europe. In the sphere of economic co-operation, which should certainly be established on a world-wide basis, but which had nevertheless taken different forms in different regions, the formulas developed in the New World could serve as models for the African and even the European countries.

11. With regard to exploration, which the observer had illustrated by references to the law of the sea and extradition, the tendency to work out solutions to world problems at the regional level was not a new one, and even in the matter of codification, the American countries had preceded those of Europe. A few troubled spirits might find the trend towards regional codification disturbing and wonder what would become of the world if every region set about formulating universally applicable rules of international law. But the observer for the Inter-American Committee had shown such fears to be vain. For States within the same region were in different situations and had different interests, so that the results of their regional codification work could provide a valid scheme at the world level. With regard to the law of the sea, for example, the observer had shown that the Latin American States experienced the same difficulties as the countries of other continents; for instance, their respective geographical positions in relation to the sea were not so very different from those of the European countries.

12. Mr. CALLE y CALLE said that previous speakers had already mentioned the interest with which the Commission had listened to the statement by the observer for the Inter-American Juridical Committee. Co-operation between the two bodies had hitherto mainly taken the form of exchanges of observers, but he wondered whether the Commission could not engage in even more fruitful co-operation by consulting with the Committee from time to time, as provided for in article 26, paragraph 1, of the Commission's Statute.

13. There were several Latin-American members of the Commission and he was sure they had no doubt that the Committee represented the legal conscience of Latin America. It had been asked whether there was a system of international law peculiar to Latin America. What was certain was that Latin-American regional international law possessed certain special features, such as a greater development than elsewhere of the principle of the right of asylum.

14. Moreover, as the observer had so clearly brought out in his statement, the Latin American States had made a great contribution to the development of the law of the sea, in particular by recognizing the sovereign right of coastal States to control, protect and exploit the natural resources of their territorial sea. The observer had also described the Committee's work on the draft convention on extradition, a subject which had been on the fringe of the Commission's own work for some time and which it might well consider tackling, in the form of a draft international convention, at some time in the future.

15. Mr. SETTE CÂMARA said that the observer had given the Commission a brilliant and succinct description of the work accomplished by the Committee during the past year. The fact that Mr. Kearney, the Commission's Chairman at that time, had been present at the Committee's last session had established an interesting precedent, and he himself, as a member from the host country, Brazil, hoped that the Commission would follow that precedent and send its present Chairman to the Committee's next session as an observer.

16. The legal world today was much concerned with the law of the sea, a subject to which the Committee had devoted much time in an effort to reach a compromise solution. Different views had been expressed on the extent of the territorial sea, but he hoped that the representatives of the Latin-American legal system would be able to attend the 1974 conference on the law of the sea with a certain unity of outlook. That question was related to the right of the coastal State to protect and exploit those natural resources of the sea which were essential for the survival of its population. The Chairman had pointed out that the new concept of the "patrimonial sea" had been developed precisely for that purpose.

17. The Committee's work on the draft convention on extradition was another example of its efforts to reconcile conflicting points of view. Latin American jurists had always attached great importance to the right of asylum, but some of them were now impressed by the need to combat the frequent outbursts of terrorism which were afflicting the continent, and were therefore inclined to treat certain crimes differently from the traditional ones. The ingenious device of providing lists of extraditable offences would enable States to solve that problem on a bilateral basis within a multilateral system.

18. Mr. Martínez Moreno had raised the old question whether there was such a thing as Latin American international law. He himself believed that all the States in the Latin American legal system, while possessing their own special characteristics, were anxious to find a common place within the world system of international law.

19. The Chairman had said that the Committee, with thirty-five years' experience, was perhaps the oldest body in the world engaged in the codification of international law. He himself would say that attempts at

codification on the Latin American continent went back much further than that—as far back as the Congress of Panama of 1826, not to mention later conferences such as the Third International Conference of American States in 1906, which had, in fact, set up a special Commission of Jurists to work on the codification of international law.

20. While members of the Inter-American Juridical Committee, like members of the Commission, were elected in their private capacity as jurists, he was proud to state that his Government extended to them all the facilities, privileges and immunities granted to ambassadors. That was, he thought, an example which should be followed by host countries everywhere.

21. Mr. USTOR, speaking also on behalf of Mr. Ushakov, said he wished to extend the warmest greetings to the observer for the Inter-American Juridical Committee, as well as to express his appreciation of his very lucid account of the Committee's activities during the past year. He was pleased to note that the Commission had, in the past, relied on the work of the Committee in such fields as diplomatic relations; the Committee's work, in fact, was a real gold mine for all students of international law, as he himself could testify from his own work on the most-favoured-nation clause.

22. He had listened with interest to the observer's account of the Committee's work on the law of the sea and considered it highly important that bodies such as the Committee should tackle that problem at the regional level and thus facilitate the task of reaching general agreement at the forthcoming conference at Santiago. The Committee's work on other topics, such as the draft convention on extradition, could also serve as a pattern for broader agreement at the world level.

23. Mr. RAMANGASOAVINA said that the part of the observer's excellent statement which had dealt with the law of the sea was particularly topical in view of the conference on that subject which was to meet in Chile in 1974. It was in the nature of law to evolve, so it was not surprising that the 1958 Geneva Conventions on the Law of the Sea had to be reviewed.

24. Certain requirements made themselves felt in young countries and it was to be feared that, if the 1958 Conventions continued in force, the conservation of the biological and mineral resources which new States found essential for their development might be jeopardized. Moreover, in view of the technological progress made by the advanced countries, the conservation of those resources must not be confined to the territorial sea and the continental shelf. In its resolutions, the Inter-American Juridical Committee had stressed the need for a review of the law of the sea and had indicated the present position of the Latin American countries. The Committee had tried to find a middle course, while preserving the right of freedom of movement. As a national of an African country, he thought he was justified in saying that most African, and even the great majority of Asian countries felt the need for revision of the law of the sea.

25. With regard to extradition, the second question dealt with by the observer for the Inter-American Juridical Committee, he merely wished to stress that the adoption of a common, or at least a harmonized set of rules, would be very useful. Several countries had already concluded bilateral or multilateral conventions on the subject, but the Committee was pursuing more general aims.

26. Mr. BEDJAOUI said he wished to thank Mr. Vargas Carreño for his authoritative remarks on the state of the codification work of the Inter-American Juridical Committee relating to extradition and the law of the sea. African states followed the work of Latin American jurists with great interest. The Committee's activities were a rich and valuable source of inspiration to countries in other continents and the path it had traced might be followed by the African countries, which were making their first attempts to develop an African regional international law.

27. Mr. VARGAS CARREÑO (Observer for the Inter-American Juridical Committee) said he wished to thank all the members of the Commission who had expressed their appreciation of the Committee's work. On behalf of the Committee, he invited the Chairman of the International Law Commission to attend the next session of the Committee as an observer.

28. Commenting briefly on the observations made by various members of the Commission, he said that Mr. Martínez Moreno had made the important point that article 8 of the inter-American draft convention on extradition provided that the nationality of the person whose extradition was requested could not be invoked for the purpose of denying extradition, unless the law of the requested State established the contrary.

29. He agreed with Mr. Reuter that the role of regional international law was to give positive form to and explore the possibilities of international law. A good example was the work done by the Council of Europe on the immunity of a foreign State from jurisdiction, and the work soon to be done on that subject by the Inter-American Juridical Committee. That work might be useful to the Commission if it decided to deal with the topic of the immunity of the State from jurisdiction.

30. In connexion with Mr. Sette Câmara's remarks, it was interesting to note that the Havana Conference of 1928 had been a success, whereas the Hague Conference, held shortly afterwards, had failed on subjects which had been successfully regulated at Havana.[1] Latin American law owed its existence partly to the fact that no other international law had existed at the time of its inception. In the interdependent world of today, however, common norms were needed, the formulation of which could be helped by the positions adopted by regional international law.

31. With regard to the law of the sea, the States of Latin America had developed certain legal concepts, intended mainly to safeguard the rights and interests of developing countries, which might come to have a universal influence.

32. The CHAIRMAN said he wished to thank the observer for the Inter-American Juridical Committee

[1] See Convention regarding the Status of Aliens, League of Nations, *Treaty Series*, vol. CXXXII, p. 303.

for his statement and to express once more the hope that the present fruitful co-operation between the Committee and the International Law Commission would be maintained and strengthened in the future. He would be very pleased to attend the Committee's next session as an observer, if it was possible for him to do so.

Organization of work

(resumed from 1201st meeting)

RECOMMENDATION OF THE COMMISSION ON HUMAN RIGHTS

33. The CHAIRMAN said he understood that the Secretary to the Commission wished to inform members of the contents of a memorandum from the Director of the Division of Human Rights.

34. Mr. RYBAKOV (Secretary to the Commission) said he wished to refer to a matter which had been mentioned at the beginning of the session,[2] namely, the decision of the Economic and Social Council at its 1818th meeting, on 2 June 1972, to transmit to the International Law Commission for its comments, at the request of the Commission on Human Rights, the report of the *Ad Hoc* Working Group of Experts concerning the question of *apartheid* from the point of view of international penal law.[3] In a note circulated at the beginning of the session (A/CN.4/L.193), the Secretariat referred to a resolution by which the Commission on Human Rights, at its twenty-ninth session, had recommended, among other things, that the International Law Commission should expedite its comments on the report. By a memorandum dated 31 May 1973, the Director of the Division of Human Rights had now informed the Legal Counsel that the Economic and Social Council had approved that recommendation.

35. The memorandum of the Director of the Division of Human Rights read:

> "I should like to draw your attention to the decision of the Economic and Social Council, adopted at its 1858th meeting on 18 May 1973 on recommendation of the Commission on Human Rights, reminding the International Law Commission to expedite its comments and suggestions on the study of the *Ad Hoc* Working Group of Experts of the Commission on Human Rights concerning the question of *apartheid* from the point of view of international penal law (A/CN.4/1075 and Corr.1).
>
> "You will recall that the Commission on Human Rights had issued a similar reminder in paragraph 12 of its resolution 19 (XXIX), adopted at its 1237th meeting on 3 April 1973. I understand that the Commission's reminder was to have been drawn to the attention of the International Law Commission at the beginning of its current session.
>
> "I would be most grateful to be kept informed of any action taken in implementation of the above-mentioned decision of the Economic and Social Council."

36. Members would be aware that the matter was in hand.

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

37. The CHAIRMAN, speaking as a member of the Commission, said he wished to comment briefly on the remarks made by Mr. Reuter, who had expressed concern that the text of article 6 did not take into account the need to safeguard the acquired rights of third parties, which could be States, international organizations or private persons.[4]

38. Actually, the very terms of article 6 made it, in a sense, a safeguarding clause for such acquired rights. That, he believed, was the real meaning of the concluding words of the article, "as it exists and with its legal status". Those words could only mean that the public property in question was transferred to the successor State with such limitations as attached to it.

39. In discussing article 6, it should be remembered that its provisions could only be construed in conjunction with those of article 8, with which they were closely connected.

40. He wished to draw attention to a number of examples given by the Special Rapporteur in the commentary to article 2 in his fourth report. (Paragraph 3 of that article corresponded to the provision now under discussion.) In the commentary, the Special Rapporteur had mentioned the case of the transfer of Alsace-Lorraine from France to the German Empire in 1871.[5] The latter, as the successor State, had been obliged to respect the obligations undertaken by France, the predecessor State, under the Treaty of Paris of 1815, prohibiting the construction of fortifications within an area of three leagues around Basel. That solution was in accordance with the rule stated in article 6.

41. There were, however, some further aspects of the problem of acquired rights which were connected more with article 8 than with article 6. Article 6 provided that, upon a succession, public property passed from the predecessor State to the successor State subject to existing limitations. Article 8 then went on to lay down, in separate sub-paragraphs, rules for three kinds of property: public or private property of the predecessor State; public property of authorities or bodies other than States; and property of the territory. A separate rule was given in article 9 for property necessary for the exercise of sovereignty over the territory affected by the succession.

See 1201st meeting, paras. 1 and 4-6.

[3] See *Official Records of the Economic and Social Council, Fifty-second Session, Supplement No. 1* (E/5183), p. 23.

[4] See 1226th meeting, para. 74, and 1227th meeting, para. 30.

[5] See *Yearbook of the International Law Commission, 1971*, vol. II (Part One), p. 168, document A/CN.4/247 and Add.1 (part two), article 2, para. 5 of the commentary.

42. In order fully to safeguard acquired rights, it would be appropriate to introduce an additional sub-paragraph into article 8, which would specify that property of private persons situated in the territory passed within the juridical order of the successor State.

43. That being so, article 6 could be referred to the Drafting Committee with the same broad instructions as for article 5.

44. He would suggest to the Special Rapporteur that he should consider rearranging articles 6 to 9 so that the basic rules contained in article 8, with the additional paragraph he had suggested, and article 9 would be placed first; the provisions on the date of transfer, in article 7, and the conditions of transfer, in article 6, which logically followed, would come next, in that order.

45. Mr. BEDJAOUI (Special Rapporteur) summing up the further discussion which had taken place on article 6, said that the general feeling had been very well expressed by the Chairman.

46. As to the advisability of considering article 6 at the present stage, he was grateful to Mr. Ushakov for agreeing to its consideration even though he regarded it as premature. It should be noted that, as pointed out by Mr. Yasseen, the Commission had not yet even begun consideration of the draft articles on first reading. Besides, as Mr. Ushakov had very aptly observed, a general rule of the kind contained in article 6 might well prove to be applicable not only to succession to public property, but to other aspects of State succession, such as succession to public debts, and it would be unreasonable to defer its formulation until not only the subject of public property, but also that of public debts had been fully examined.

47. A question of theory had been raised by Mr. Ago and Mr. Reuter: upon the replacement of one State by another, was there an interruption or continuity of the juridical order? That was one of the most delicate questions in legal science. He had not expressed his own views on that question in article 6 any more than he had in article 10, as members would see. It was, of course, true that there was no instantaneous replacement of the old juridical order by a new juridical order; it generally took some time. Mr. Reuter believed that the successor State recognized the juridical order of the predecessor State and that that order could therefore be considered applicable.[6] He thus acknowledged that there was an expression of the will of the successor State. For example, after it became independent, Algeria had enacted a law providing for the provisional continuance, within limits compatible with its sovereignty, of the former laws to which it had been subject. The successor State could be regarded as tacitly and provisionally accepting the juridical order of the predecessor State.

48. When studying the topic of succession of States in respect of treaties, the Commission had, in certain cases been obliged to accept a presumption of continuance of treaties. Generally speaking it could be said, by way of simplification, that sovereignty was expressed essentially through treaties and legislation.

49. In the event of tacit continuance, and even more so in the case of express continuance of the juridical order of the predecessor State, that order did not survive as such. It was no longer the same. It was another juridical order than that of the predecessor State. It was received by the successor State as a result of an act expressing the will of that State. Thus from the outset the manifestation of will, tacit or express, changed the juridical order qualitatively. The continuity between the two juridical orders was thus only apparent. The juridical order of the predecessor State was not extended and it was a new juridical order that the successor State endorsed.

50. Another question which had been raised was whether, parallel to the extinction of the rights of the predecessor State, rights proper to the successor State came into existence. He had not allowed his own views to prevail in article 6 any more than in article 10, where it was said, in paragraph 2, that the successor State replaced the predecessor State in its rights to grant concessions. In his view, it was not the rights of the predecessor State which were exercised by the successor State, but the successor State's own rights.

51. The idea of an interruption in the right of ownership was not acceptable to Mr. Ago.[7] But in the last resort, what was the right of ownership of the State and, more particularly, the right of ownership of the successor State? Could it be assimilated to the right of private ownership? He himself did not think so. If it was a stereotyped right, having the same content for the successor State as for the predecessor State, there would be no problem. If, on the contrary, the change of owner showed that the right of ownership was different, it would be necessary to enquire into its character. The right of ownership of the State over a property had a content which was not the same for all States, but was determined by the juridical order, which reflected the political philosophy inspiring the activities of the State concerned. Above all, the right of the predecessor State was limited by the acquired rights of third parties, and it was against that limitation that the successor State, by exercising its own rights, set a new and different right.

52. That theory was confirmed by the new practice, but also by the old, in particular as it appeared from the formation of all the colonial empires without exception; those empires had applied the most absolute *tabula rasa* principle, on the assumption that they were exercising, not the rights of their predecessors, but their own. No one would now think of claiming that the colonial States had been unable to refer to a right of the predecessor State because they had found only savage tribes in the territory; the work of eminent scholars—in particular, that of the research team led by Professor Charles Alexandrovicz—had amply demonstrated that there had been States before colonization. But apart from colonization, certain cases of restoration of States, such as that of Poland after 1918, showed that the successor had considered that its rights derived only from its own sovereignty and that it was not taking over the rights of the predecessor State. He did not claim to have exhausted

[6] See previous meeting, para. 32.

[7] *Ibid.*, para. 17.

the subject with those few comments; he had only expressed his deep conviction on the problem of broken continuity, which was at the very root of legal science and could not be easily solved.

53. In reply to Mr. Reuter's objections to article 8,[8] he wished to repeat that it was not a substantive article, but a declaratory article which took note of a certain situation. The terminology was no doubt defective, but the idea was clear. The purpose was to draw a distinction between State property properly so called and the property of authorities or of the territory. It was quite clear, as Mr. Reuter had pointed out, that everything situated within the limits of the territory, and not only public property, came under the exclusive jurisdiction of the successor State. But what he himself had meant to convey in article 8 was that the public and private property of the State not only passed within the new juridical order of the successor State, but passed into its "patrimony", whereas the property of authorities or public bodies and the property of the territory remained the property of those authorities or bodies, or the property of the territory, but were henceforth governed by a different juridical order, namely, that of the successor State. Thus, when France had recovered its sovereignty over Alsace-Lorraine in 1918, the State property of the former German Empire had passed both within the juridical order and into the patrimony of the French State, whereas the property of the port of Strasbourg, for example, had remained the property of that port, but passed within the French juridical order. He had wished to make that clear in an article in order to distinguish, among public property, between what was State property and what was not.

54. With reference to the remarks made by Mr. Castañeda, he recognized that the general arrangement of the draft articles could be more rational, and he would try to recast it at a later stage. On the other hand, he feared that if an additional sub-paragraph (*d*), on private property, were introduced into article 8, it would also be necessary to add a sub-paragraph (*e*) on the fate of the inhabitants and so on. In order to avoid complications, he therefore thought it better not to go beyond the present three sub-paragraphs, though if the Commission wished it he would draft a fourth.

55. The CHAIRMAN said that, if there were no objections, he would take it that the Commission agreed to refer article 6 to the Drafting Committee, requesting it to examine all the questions raised during the discussion and to try to frame a generally acceptable text.

It was so agreed.[9]

ARTICLE 7

56. *Article 7*

Date of transfer of public property

Save where sovereignty has been restored and is deemed to be retroactive to the date of its termination or where the date of transfer is, by treaty or otherwise, made dependent upon the fulfilment of a suspensive condition or simply upon the lapse of a fixed period of time, the date of transfer of public property shall be the date on which the change of sovereignty

(*a*) occurs *de jure* through the ratification of devolution agreements,
or

(*b*) is effectively carried out in cases where no agreement exists or reference is made in an agreement to the said effective date.

57. The CHAIRMAN invited the Special Rapporteur to introduce draft article 7 in his sixth report (A/CN.4/267).

58. Mr. BEDJAOUI (Special Rapporteur) said that article 7 dealt with the date of transfer of public property. The commentary to it would be found in his fourth report below the former article 3 [10] which, with a few drafting amendments, had become the present article 7.

59. The date of transfer of public property did not always coincide with that of the transfer of the territory. It was sometimes later. Very often it was fixed by treaty between the parties, as he had tried to show in article 7. The transfer could take place upon the entry into force of a treaty or on the expiry of a fixed period. It could also be effected in stages or be made subject to a suspensive condition, even in the absence of a treaty; for example, the former metropolitan Powers had sometimes decided to make the date of independence subject to consultation of the people by referendum. Lastly, the parties could stipulate in a treaty that the date of transfer would be fixed by agreement. It had often happened that the parties had been obliged to refer to the date of the effective transfer, which had raised rather complicated problems examined in international jurisprudence.

60. He had thought it advisable to take the case of restoration of sovereignty into account, since there had been in practice, in particular after the first and second World Wars, examples of restored sovereignty operating retroactively to the date of its termination. That had been the case of Poland in 1918, and Ethiopia and Albania in 1947. He was not sure that sovereignty could be restored retroactively in all its practical effects after one or more decades, but the case had arisen.

61. He had also referred to the problem of "critical dates" and the "suspect period" immediately preceding the transfer of property, during which the predecessor State might be tempted to reduce the value or change the composition of the property to be ceded. That had raised very complicated problems in the past, which had come before the Permanent Court of International Justice and which the Commission might examine.

The meeting rose at 1 p.m.

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[8] *Ibid.*, para. 33.

[9] For resumption of the discussion see 1239th meeting, para. 3.

[10] See *Yearbook of the International Law Commission, 1971*, vol. II (Part One), p. 170, document A/CN.4/247 and Add.1, part two.