Document:-

A/CN.4/SR.1232

Summary record of the 1232nd meeting

Topic:

Programme of work

Extract from the Yearbook of the International Law Commission:-

1973, vol. I

General of the United Nations, containing the comments of the Prime Minister and Minister for Foreign Affairs of Tonga on the draft articles on succession of States in respect of treaties (ILC (XXV)/Misc.2).

The meeting rose at 1 p.m.

1232nd MEETING

Friday, 22 June 1973, at 10.5 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. Ramangasoavina, Mr. Tammes, Mr. Ushakov, Mr. Ustor, Sir Francis Vallat.

Succession of States in respect of matters other than treaties

(A/CN.4/267 ; A/CN.4/L.197)

[Item 3 of the agenda]

(resumed from the previous meeting)

ARTICLE 9 *(continued)*

1. Mr. TAMMES said that in the new text of article 9 (A/CN.4/L.197), all reference to the different categories of public property had disappeared; it was now only State property—all State property—in the territory affected which would pass to the successor State without compensation. It had been agreed that at a later stage the Commission might consider other categories of public property, as enumerated in article 8, but that for the time being it would deal only with State property. That was undoubtedly a helpful solution; but he wondered whether the new article 9, just because of its simplification, did not go rather too far.

2. In studying the history of the present article he had again gone through the Special Rapporteur's earlier reports, which gave a well-organized account of the multifarious situations which history presented to the legal mind, but he had not found much evidence, either in judicial decisions or in the writings of qualified publicists, of an absolute rule that all State property in the territory in question passed to the successor State without compensation. In his fourth report the Special Rapporteur had indeed recognized that "while the transfer without compensation of property appertaining to the public domain is not in dispute, some legal authorities maintain that public property constituting the private domain can be transferred only against payment".[1] That point of view also seemed to be confirmed by the Special Rapporteur in the commentary to article 9 in his sixth report (A/CN.4/267).

3. In that connexion an interesting example was the decision of 31 January 1953 taken by the United Nations Tribunal in Libya in the case of *Italy v. United Kingdom and Libya*.[2] That decision, which involved the interpretation of General Assembly resolution 388 (V), had quoted the following excerpts from Fauchille's *Traité de droit international public:*

> "When a dismembered State cedes a portion of its territory, property which constitutes *public* property, namely property which by its nature is used for a public service, existing on the annexed territory, passes with its inherent characteristics and legal status to the annexing State; being devoted to the public services of the ceded province, it should belong to the sovereign power which is henceforward responsible for it...
>
> "As regards *private* State property, i.e., property which the State possesses in the same manner as a private person, in order to derive income from it, it must be noted that failing any special provisions it does not become part of the property of the annexing State. In spite of the loss the dismembered State has suffered, it remains the same person as before and does not, any more than a private person, cease to be the owner of the things it possesses in the annexed territory and there is no principle preventing it from having the ownership of immovable property in that territory."

4. That decision, dealing with one category of public property, namely, alienable public property or *patrimonium disponibile*, which, as he understood it, came close to private property of the State, seemed to leave room for different kinds of treatment, and that had been the subject of the litigation.

5. In his opinion, whatever the terms used and the definitions made in internal law, such as public domain, private domain and *patrimonium disponibile*, there was at the present time no agreement in judicial decisions or other authorities on the existence of a rule so catagorical as that laid down in the new article 9. The Commission was in effect working out a rule for the progressive development of international law, and that should be clearly stated.

6. He himself was partly in favour of such a rule, in particular where it referred to the free substitution of the successor State for the predecessor State, which he understood to be an automatic substitution not requiring any agreement. There would be an undeniable burden on the successor State if private property, independently of that State's sovereign will, passed within its jurisdiction with the characteristics of foreign property.

7. As to the absence of compensation, he was not quite sure that the new rule would be the just rule in all cases of succession. It might be so in typical cases of decolonization, but perhaps it might not be so in the more numerous cases of secession which might occur in the future, and which were precisely the cases in which there was often no prior agreement.

[1] See *Yearbook of the International Law Commission, 1971*, vol. II (Part One), p. 177, document A/CN.4/247 and Add.1, part II, para. (2) of the commentary to article 6.

[2] *Ibid., 1970*, vol. II, p. 173, document A/CN.4/232, para 16.

8. He therefore wondered whether, from the point of view of compensation, a distinction should not be reintroduced on the lines of that proposed by the Special Rapporteur in his original article 9 (A/CN.4/267), by including a reference to "property necessary for the exercise of sovereignty". To put it more precisely, the real point was that what belonged to the *imperium* of the State was part of the sovereign State itself and the problem of payment of indemnity did not arise although, as he interpreted Fauchille, that problem might arise in connexion with the "private domain" of the State. In any case, the problem was one which called for further reflection.

9. Mr. HAMBRO said that, as the representative of a pragmatic legal tradition, he was glad that the Special Rapporteur had been able to combine articles 8 and 9 in a new simplified article 9. He himself had had serious difficulties in accepting the expression "property necessary for the exercise of sovereignty".

10. Mr. Tammes had been right in stating that on many of the questions dealt with in the present draft articles there was no general agreement either in practice or among the learned authors. The duty of the Commission, however, was, precisely, to reach agreement where no agreement had existed before and to try to produce a text which could apply to all kinds of succession and all kinds of property.

11. At the beginning of his work the Special Rapporteur had perhaps been carried away by historical and political considerations, but it was gratifying to note that he had now reverted to a purely legal approach. The predecessor State and the successor State were, of course, always free to make their own rules, but the Commission's concern now was with the drafting of residual rules which would apply in the absence of contractual rules.

12. As Mr. Tammes had observed, it was obvious that article 9 called for further reflection, but he was prepared to accept it as a preliminary draft on condition that the Commission reconsidered it at a later stage in relation to the draft articles as a whole.

13. Mr. USHAKOV said he reiterated the opinion he had held ever since the Commission had begun studying succession of States in any form whatsoever: namely, that it was impossible to formulate rules which were uniformly applicable to all cases of succession; cases differed too widely, both in cause and in effect. Each specific situation—a transfer of territory, the accession of a State to independence, fusion or a union of States, and so forth—called for different rules. Thus the draft article 9 before the Commission at present could apply only—and then only in part—to the case of the formation of a unified State, in which all the property of the predecessor States became the whole of the property of the new State formed by the union of those predecessor States. In that case, however, there was not one, but several predecessor States and it was therefore necessary to speak of substitution for the "predecessor States". Hence draft article 9, as it stood, was not even applicable to the case of a union of States. Nor was it applicable to the case of States emerging from decolonization, since not all the property of the former metropolitan Power became the property of the newly independent State, notwithstanding article 5, which made no exception for that case.

14. In addition, as provided for in article 25 of the draft articles on succession of States in respect of treaties,[3] a newly independent State might be formed from two or more territories which had not been under the jurisdiction of the same predecessor State. Article 9 did not provide for that situation either. Moreover, the principle expressed in the words "save as may have been agreed otherwise", although correct, was not applicable to newly independent States, since only the predecessor State had existed as a sovereign State and the validity of devolution agreements was not confirmed by international law.

15. Thus it was clear that a single rule could not be applied to all cases of succession and that draft article 9 was too general to be acceptable. The Commission should not draw up the general articles until it had drafted the substantive ones.

16. The provision "freely and without compensation" was fair in principle, especially for newly independent States, but it was entirely appropriate to provide that the States concerned could decide otherwise by agreement.

17. The CHAIRMAN, speaking as a member of the Commission, said that the new article 9 represented a praiseworthy effort to simplify matters. Instead of the three categories of property covered by the former article 8 and the category covered by the former article 9, there was now only the single category "State property"

18. However, as Mr. Tammes had pointed out, that effort at simplification had not proved as simple as it had seemed at first. The essential difficulty lay in the plurality of legal systems to which public property was subject. In some countries there was the "public domain", in others "eminent domain", and in still others "original property of the nation". The Special Rapporteur had therefore done well to begin with the simplest category of all, namely, State property, though the underlying problems had not disappeared, but had merely been postponed until the subsequent parts of the draft came up for consideration.

19. Even in the case of State property, however, there might, as Mr. Tammes had suggested, be two categories subject to utterly different legal régimes. There was no difficulty in the case of public property of the State, which could pass to the successor State automatically and without compensation, but in the case of private property of the State it would, in his opinion, be unjust if certain items, such as private property situated abroad, should pass within the legal order of the successor State.

20. In the new text of article 9 the notion of "substitution" was used in two different senses. The word "substitution", at the beginning of the article, referred to a simple fact, the substitution of one State for another, whereas the word "substituting" referred to an entirely different phenomenon, namely, the transfer of property. He thought the article would gain much if the word "substituting" were replaced by the word "transferring".

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

21. It was his impression that the Special Rapporteur, in introducing the new text of article 9 at the previous meeting, had said that when the substitution took place it gave rise to a legal obligation to transfer State perperty;[4] he himself was of the opinion that the transfer took place *ipso jure* and automatically. He hoped that that idea could be embodied in the article.

22. Lastly, he noted that the Special Rapporteur had said in his commentary to article 9 (A/CN.4/267) that "it was difficult to find a satisfactory expression to describe property of a public character, which, being linked to the *imperium* of the predecessor State over the territory, can obviously not remain the property of that State after the change of sovereignty, or, in other words, after the termination of that *imperium*". He thought, therefore, that the Commission should give some consideration to the possibility of retaining the concept of "property necessary for the exercise of sovereignty", which had been used in the former article 9.

23. Mr. RAMANGASOAVINA said he accepted the principle laid down in draft article 9, which met the Commission's desire to simplify basic notions as much as possible and to confine itself for the time being, to State property and the substitution of one State for another. The word "substituting" was preferable to the word "transferring", proposed by Mr. Castañeda; for "substituting" expressed the idea that the successor took the place of the predecessor, with all the legal consequences that entailed, whereas the word "transferring" would allow of changes in the transferable property. It would therefore be better to retain the word "substituting".

24. On the other hand he was in favour of replacing the word "freely" by the word "automatically", in order to avoid giving the impression that the successor State bore no share of the expenses which might arise from the transfer of the property. The expression "shall devolve, automatically and without compensation", used in the former article 9, was excellent. He therefore proposed that it be stated that the substitution of the successor State for the predecessor State "shall have the effect of substituting the former for the latter, automatically and without compensation, in the ownership of all State property...".

25. Mr. KEARNEY said he was inclined to agree with Mr. Ushakov that the new article 9 covered such a wide variety of situations that it would be difficult to foresee all their consequences and to do justice to all the interests involved.

26. Mr. Ushakov had raised a particularly important point with regard to unions of States. Where such unions were of a federal character, which was the standard type, it would seem an unjust rule, for example, to make public buildings in the capitals of the component states federal property, when they might still be needed for the proper functioning of those states. Or course, in most unions those matters were governed by special agreements, but the Commission was drafting residual rules for cases in which no such agreement existed. The problem might be solved by accepting article 9 as a general principle and introducing it with some such phrase as "Subject to the provisions of subsequent articles dealing with particular forms of succession,".

27. Article 9 also raised problems concerning the kind of property that was subject to transfer upon succession. As the representative of a common-law country he saw no problem in distinguishing between the public and private property of the State. If a State operated oil refineries, for example, they were State property which should pass to the successor State; but some kinds of State property, such as military equipment, arms and bases, might give rise to more complex difficulties.

28. Article 9 did not attempt to deal with the problem of the location of the property; that was the subject of other articles such as article 15; but it might be necessary to consider the effects of articles 9 and 15 together in regard to State property. The main distinction would be between movable and immovable property: for example State-owned railways might raise the question of claims to rolling-stock which the predecessor State had removed from the territory before the succession. Likewise the widespread use of containers and "lighter-aboard-ship" vessels, which might turn up anywhere in the world, could give rise, in a State in which shipping was nationalized, to disputes that would not be covered by the present draft articles.

29. Subject to his concern about the indiscriminate application of article 9 to very difficult situations, whether with regard to the type of succession, the location of the property or the kind of property, he was prepared to accept the new version in principle, although he felt that it could not be discussed in isolation from article 15, which, in its turn, would have to be made more precise.

30. Mr. BARTOŠ said he wished to draw the Commission's attention to three points. First, a succession of States might take place through an intermediate subject of law. The unification of Germany, Italy and, in part, Yugoslavia had come about in that way. For example, Montenegro had united with Serbia before the formation of the Yugoslav State; Serbia had then joined the other States which had finally formed Yugoslavia. The question had then arisen which State was the successor to Montenegro, particularly with regard to the debts contracted with other States by the Government in exile.

31. The second point was whether there was a successor State in the case of States emerging from decolonization. Practice did not always bear out the legal logic of Mr. Ushakov's argument. It was well known that a State which was forced to grant independence often set up, beforehand, a government team with which it signed succession agreements in the first few minutes after the time at which independence took effect. That had happened in India, for example. The question arose whether the representatives with whom the administering authority dealt before independence already represented the successor State, or whether it was the agreements signed between those representatives and the administering authority which created the newly independent State. For instance, France held that it was the Evian Agreements which had created the independent State of Algeria, though Algeria did not agree.

[4] See previous meeting, para. 75.

32. The third point to which he wished to draw attention was that the word "freely" and the words "without compensation" applied to different situations. The element of gratuitousness related mainly to the expenses that might arise from the transfer, and it raised problems too complicated for the Commission to solve. On the other hand the Special Rapporteur had been right to lay down the principle that there should be no compensation, while leaving the States concerned free to depart from that principle by agreement. The principle of no compensation was fairer to newly independent States; moreover, it was simpler to proceed on that basis in order to avoid the endless complications which might arise, and had arisen in the past, from distinguishing between items of property according to whether or not they conferred the right to compensation, having been created to serve the needs of the State or those of the people—police stations or small harbour works, for example—even though the States concerned must be left free to agree on possible exceptions.

33. Mr. AGO said he thought the drafting points raised by article 9 should be referred to the Drafting Committee. Not only should the notion of "substitution" not be used in different senses, but the debatable expression "all State property" should be examined.

34. With regard to the substance of the article he shared the concern expressed by Mr. Ushakob and Mr. Kearney. There was, indeed, a wide variety of situations, which might call for solutions other than that set out in article 9. That, of course, was why the Special Rapporteur had included the words "save as may have been agreed otherwise". Normally, States settled matters by agreement, so the principle embodied in the article under discussion was in the nature of a residuary rule. The only case of State succession which precluded any agreement was certainly that in which a new State was created as a result of a revolution or civil war.

35. He wondered whether, by laying down the rule in article 9, the Commission might not run the risk of hindering the conclusion of agreements between the parties. For if it was in a party's interests that that rule should be applied in a particular case, it would oppose the conclusion of an agreement. Yet in some cases it was objectively desirable that the parties should agree on a solution other than that provided in article 9, and it should not be possible for one party to impose the rule in the article by refusing an agreement.

36. With regard to the words "all State property", the normal position was that at least some of the property of the predecessor State passed automatically and without compensation to the successor State. In some cases, however, it might not be equitable for property to pass in that way. Since, in the Special Rapporteur's opinion, the words consideration applied to both patrimonial and domanial property, it might be asked whether the principle of transfer of State property without compensation, which was fair in the case of public property, was also fait for private property. The answer to that question depended on the fact of each particular case.

37. While some members of the Commission feared thar it was not possible to lay down a general rule, he himself believed that such a rule might make the normal solution—by agreement—more difficult.

38. Mr. BILGE said he approved of the new wording of article 9, and particularly admired its structure. The provision stated either a residuary rule or a peremptory norm, depending on whether an agreement existed or not.

39. So far the Commission had encountered three main difficulties. The difficulty of the definition of public property had been partly overcome when it had agreed to consider only State property. As to the problem of compensation, the Special Rapporteur had pointed the way by providing in his draft article for the conclusion of an agreement by the States concerned, which might, of course, deal not only with compensation, but also with the property to be transferred. The third difficulty related to the application of the article to the different types of succession. Mr. Ushakov had expressed serious misgivings. He himself was more optimistic, because the rule in article 9 applied only in the absence of an agreement. States were always free to agree on a different solution; and in any case practice showed that the commonest procedure was to conclude an agreement. That enabled States to take due account of the particular requirements of the situation.

40. Unlike Mr. Ago, he did not think the principle stated in article 9 made it less likely that an agreement would be concluded. The principle was that no compensation was payable, but that was no handicap to the predecessor State, since it could always be agreed otherwise. As the Special Rapporteur had demonstrated in his reports, the principle of no compensation, which was based on the principle of viability, was widely adopted. It was justified, in particular, in the case of newly independent States. Nevertheless, States should be left free to reach agreement.

41. With regard to terminology, he thought the word "freely" should be replaced by the word "automatically". Furthermore, the term "ownership" was too limited in meaning and less satisfactory than the expression "Property necessary for the exercise of sovereignty over the territory affected by the succession of States", which had been used in the former version of article 9. Lastly, the words "all State property", which would obviously include property situated outside the territory concerned, were too general. They would be justified only where the predecessor State disappeared completely. It should perhaps be made clear in the commentary that, if the predecessor State continued to exist, all its property was not transferred to the successor State.

42. Mr. MARTÍNEZ MORENO expressed his appreciation for the effort made by the Special Rapporteur to devise a simple solution to a very complex problem.

43. The new article 9 was satisfactory in the case of newly independent States. He had some doubts, however, about its application to cases of succession arising from the dissolution of a union of States. His own country had been one of the members of the Central American Federation which had become independent of Spain in 1821. That union had unfortunately been dissolved in 1838, under almost chaotic conditions. In the circumstances it had not been possible to conclude any agree-

ment between the five new States which had emerged from the dissolution, so each new State had retained the State property situated in its territory. Certain buildings and other property situated in the former capital of the dissolved federation, however, had remained in the ownership of Guatemala. That example showed how difficult it was to apply the formula of the new article 9 in cases of dissolution of States.

44. He shared some of the misgivings which had been expressed about the use of the word "freely". Apart from the question of charges on the property, to which Mr. Bartoš had referred, it was necessary to consider cases in which part of the price was still owing on property bought by the predecessor State, as, for example, when an island had been purchased and payment was spread over several years. The word "freely", used in article 9, could give rise to misunderstanding in that connexion, since the right of the vendor State to payment would not be recognized. His own suggestion would be to introduce into the text the idea of property being transferred "as it exists and with its legal status"—a phrase taken from article 6 in the Special Rapporteur's sixth report (A/CN.4/267). In any case the commentary should contain a reference to that matter.

45. Sir Francis VALLAT said that, bearing in mind that article 9 stated a residual rule, he was prepared to accept it in principle. It set the Commission on the right path and constituted a satisfactory starting point, but there were still a number of problems which required careful consideration.

46. The first was that it would not be easy to apply the rule in article 9 to different kinds of succession. In many cases it might apply quite well, but in the case of transfer of part of a territory—a case of succession which came fully within the Commission's definition of succession of States—its application would prove most difficult. It would be necessary to examine the implications of the principle stated in article 9 for different kinds of succession, before it could be accepted as a general principle.

47. The second problem related to the location of the property, a matter of considerable importance. That matter was not dealt with either in the definition of State property in article 5 or in the present wording of article 9. The provisions of article 9 were near the mark for property situated in the territory which was the subject of State succession, but it would be difficult to apply them to property situated elsewhere; in its present form, article 9 certainly could not apply to property situated in the territory of the predecessor State.

48. Other problems arose from the nature of State property. Nowadays States assumed responsibilities in a wide variety of matters. Moreover, certain types of property moved very readily. As a result the predecessor State might suffer great hardship if all property that happened to be in the territory of the successor State at the time of the succession was transferred freely and without compensation to the successor State.

49. For property to pass "freely and without compensation" was normal in the case of public property used for government purposes. In other cases, however, some compensation was often given to the predecessor State.

50. Mr. USHAKOV suggested that, in order to cover all possible situations, article 9 should be redrafted to read:

> "The successor State shall, on the date of transfer, acquire full rights to the State property transferred to it on the occasion of a succession of States."

That wording could, of course, be amended according to whatever notion of transfer the Commission finally adopted. There should also be further provisions to indicate when and how the property was transferred.

51. Mr. AGO observed that, worded in that way, article 9 no longer served the purpose of stating a principle of transfer. The emphasis was on the date of transfer. The notion of transfer would be defined in other provisions.

52. Mr. USHAKOV said that there was no transfer, but the automatic substitution of the successor State for the predecessor State. Of course, that substitution occurred on a specific date.

53. Mr. BEDJAOUI (Special Rapporteur) said he had thought that the new version of article 9 would facilitate the Commission's task by simplifying certain problems. But some members, such as Mr. Tammes, had wondered whether the new article did not go rather too far with regard to the transfer of State property. Yet practice showed that it was not only the whole property of the State that was transferred freely, without compensation and automatically, but very often also other public property, under the same conditions. He thought that, in reality, perhaps article 9 did not go far enough and would have to be supplemented later. In that connexion he referred to the Treaty of Peace with Italy,[5] concluded in 1947, which Mr. Ago had cited in his fourth report on State responsibility (A/CN.4/264 and Add.1). Under resolutions adopted by the United Nations,[6] it had been decided to transfer to Libya and Eritrea not only State property, but also para-State property. Similarly, the Franco-Italian Conciliation Commission established to settle the dispute concerning the property of local authorities which had arisen between France and Italy at the time of concluding the Peace Treaty, had ruled that the successor State should receive, without payment, not only State property, but also para-State property, including municipal property.[7] Hence article 9 was not unduly broad, for it did not cover all the property which was very often transferred to the successor State without compensation.

54. As Mr. Kearney had pointed out, article 9 raised three problems: the type of succession, the location of the property, and the nature of State property. Property situated outside the territory did present a problem, and article 9 should be read in the light of all the articles dealing with the various types of State succession, in particular articles 15, paragraph 2; 19, paragraph 2; 23; 27; and 31, paragraph 2. Article 34, on property of the State in public establishments, and article 38, on

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[5] United Nations, *Treaty Series*, vol. 49, p. 126.

[6] General Assembly resolutions 388 (V) and 530 (VI).

[7] United Nations, *Reports of International Arbitral Awards*, vol. XIII (United Nations publications, Sales No. 64.V.3), p. 501.

property of the State in territorial authorities, might also be borne in mind. In that connexion, Mr. Kearney had suggested that it should be specified that the transfer of all State property would be "subject to the provisions of subsequent articles dealing with particular forms of succession." The Drafting Committee might well consider a formula on those lines, which would not unduly mortgage the future. Some members of the Commission, including Mr. Castañeda and Mr. Tammes, had expressed a preference for the formula he had used previously, namely, "property necessary for the exercise of sovereignty". But in any case, whatever the formula selected, it was mainly a matter of the property necessary for the viability of the State.

55. He acknowledged that in the past there had been many cases of compensation and indemnification, particularly for property in the private domain of the State. But he did not think it could therefore be said, as Mr. Ago did, that it was unfair to transfer the private property of the predecessor State to the successor State without compensation. In his opinion the notion of equity should not be introduced in that context, because it was not applicable in all cases. In cases of decolonization, for example, equity lay in the opposite direction, since the successor State was merely taking back what had previously belonged to it, of which it had been despoiled.

56. Mr. Bartoš and, before him Mr. Ushakov, had said that they could not regard an agreement concluded between a metropolitan Power and a colony as a treaty under international law; they had cited the case of India, which had signed an agreement with the United Kingdom a few minutes after the declaration of its independence. The Commission would recall that he had dealt with that question in his first report.[8] The case of Algeria was even more complicated, because since 1958 there had been a provisional Government in exile, which the French Government had not regarded as an entity empowered to conclude an agreement with it. Thus the Evian Agreements had begun as parallel declarations, and had subsequently become an agreement.

57. Although it was true, as Mr. Ago had pointed out, that article 9 gave the successor State a great advantage, since in the absence of an agreement the rule laid down in the article was directly applicable, in his own opinion it was nevertheless a general rule which was justified and which could not be departed from too far, even by agreement.

58. The wording proposed by Mr. Ushakov, to the effect that the successor State would, on the date of transfer, acquire full rights to the State property transferred to it on the occasion of a succession of States, did not reflect what he had tried to bring out in article 9, since it did not indicate what property was transferred, which he had tried to do in his draft.

59. The CHAIRMAN said that there appeared to be a general agreement on the essential elements of the rule stated in article 9. He therefore suggested that the article should be referred to the Drafting Committee to find a formula acceptable to all members of the Commission.

60. Mr. KEARNEY suggested that the Drafting Committee should also be authorized to examine article 15 (Property situated outside the transferred territory), since it would be very difficult to work out the text of article 9 without taking article 15 into account.

61. Mr. BEDJAOUI (Special Rapporteur) supported Mr. Kearney's suggestion, but pointed out that article 15 concerned only the particular case of a partial transfer of territory. It would be necessary to consider in general the case of property situated outside the territory and to find a generally valid formula.

62. Mr. BARTOŠ expressed reservations about the similarity between articles 9 and 15. The question dealt with in article 15 had raised many difficulties in international practice; it was very important for third States to know whether property situated outside the transferred territory was on the same footing as that situated within the territory. He was not opposed to referring article 9 to the Drafting Committee, but he fully reserved his position on that article until the Committee submitted a new text.

63. The CHAIRMAN suggested that, subject to those comments, the Commission should decide to refer article 9 to the Drafting Committee, on the understanding that the Committee would also examine not only article 15, but all the various articles dealing with property situated outside the territory subject to succession.

It was so agreed.[9]

Organization of work

64. The CHAIRMAN said that at its next meeting the Commission would take up item 5 (*a*) of the agenda: Review of the Commission's long-term programme of work: "Survey of International Law" prepared by the Secretary-General. He recommended that members who wished to suggest topics for the Commission's programme should do so as soon as possible.

Gilberto Amado memorial lecture

65. The CHAIRMAN announced that the Gilberto Amado memorial lecture would be given on Wednesday, 11 July 1973, at 4.30 p.m., by Mr. C. Eustathiades, a former member of the Commission.

The meeting rose at 1 p.m.

[8] See *Yearbook of the International Law Commission, 1968*, vol. II, p. 103, document A/CN.4/204, para. 63 *et seq.*

[9] For resumption of the discussion see 1240th meeting, para. 1.

1233rd MEETING

Monday, 25 June 1973, at 3.10 p.m.

Chairman: Mr. Jorge CASTAÑEDA

Present: Mr. Ago, Mr. Bartoš, 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.