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Summary record of the 1317th meeting

Topic:
State responsibility

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emergence of a new State in part of the territory of the pre-existing State. It was appropriate to refer to the emergence of a new State in the second case, but not in the first. Where the whole of the territory was affected, there was no change either in territory or in population; there was only a change of government. The provisions of paragraph 1, which were adequate for the case of separation of part of the territory of a State, were unsuitable for the case in which the whole territory was taken over by a successful insurrectional movement.

46. The continuity of the State was even clearer in the case envisaged in paragraph 2. In that paragraph, the use of the term "structures" was acceptable, and preferable to the enumeration in the 1961 Harvard draft: "an organ, agency, official or employee" (A/CN.4/264, para. 212, foot-note 495). It would be even more unsatisfactory to refer to an "organization".

47. He supported the text of article 13 proposed by the Special Rapporteur. Its contents were in line with earlier codification drafts, but the formulation was clearer and consistent with the provisions of the preceding articles.

The meeting rose at 6 p.m.

1317th MEETING

Tuesday, 27 May 1975, at 10.10 a.m.

Chairman: Mr. Abdul Hakim TABIBI

Members present: Mr. Ago, Mr. Bilge, Mr. Calle y Calle, Mr. Elias, Mr. Hambro, Mr. Kearney, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Reuter, Mr. Šahović, Mr. Sette Câmara, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Francis Vallat, Mr. Yasseen.

State responsibility

(A/CN.4/264 and Add.1;[1] A/9610/Rev.1[2])

[Item 1 of the agenda]

(*continued*)

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR

ARTICLE 13 (Retroactive attribution to a State of the acts of organs of a successful insurrectional movement)[3] (*continued*)

1. Mr. QUENTIN-BAXTER said he approved of article 13, which was supported by a learned commentary prepared by the Special Rapporteur. That commentary, like the entire report (A/CN.4/264 and Add.1), was in itself a remarkable contribution to international law. The report would be of great value not only to scholars and university students everywhere, but also to legal advisers to States. Studies of that kind had the further advantage that, being published in the *Yearbooks* of the Commission, they could be obtained in several languages, both easily and cheaply.

2. In formulating the text of article 13, the Special Rapporteur had wisely avoided theoretical controversies and had based its provisions on what was virtually a uniform State practice. It might at first sight appear arbitrary that the nature of a claim should depend on the success of an insurrectional movement. On reflection, however, it would be seen that the risk involved was inherent in life and common to all systems of law. If the person or entity against whom a claim had been lodged disappeared and could not be reached through the channels of the law, the victim had no redress. If, on the other hand, that person or entity existed and was not protected by any lack of status, it was right and proper that a claim should be possible. It was instinctively on that basis that State practice had evolved the two essential rules in the matter. The first was the rule of the immediate responsibility of the State for the actions of its organs. The second was the residual rule of the responsibility of the State for matters arising within its jurisdiction.

3. In line with those thoughts, he shared the views of those who had criticized the reference to retroactivity. It was not just a matter of avoiding an unsatisfactory and somewhat alarming term. The very concept of retroactivity was out of place in that context. It was not the purpose of article 13 to attribute responsibility retrospectively to an entity which had not previously had such responsibility. The provisions of the article merely recognized the sensible principle that one had to wait for the domestic situation to become clear before attaching an international obligation. That approach was based on the fundamental principle of non-interference in the domestic affairs of a State. The provisions of article 13 thus achieved a delicate balance between matters of domestic concern and matters which involved international responsibility.

4. For his part, he found article 13 easier to accept than the principle in paragraph 2 of article 12,[4] which dealt with a situation of disequilibrium where one of the actors on the international stage was not a State. The situation contemplated in article 13 had its origin in the attempts made by the international community to draw a line between matters of international interest and matters which should be settled at the domestic level. It should be remembered that the United Nations had views about the state of the world which sometimes involved a characterization of international status. Those views coexisted with the older rules of an international society which had not been institutionalized at the international level. As a result, there existed certain very sensitive areas presenting considerable difficulties. It was for that reason that the topics of recognition and personality of the State had not been accepted as priority topics for codification. For the same reason, the Commission, when dealing with a particular topic, had always taken care not to trespass inadvertently on matters which were not strictly within the scope of that topic. Paragraph 2 of article 12 gave rise to problems of that order. It was difficult to

[1] *Yearbook ... 1972*, vol. II, pp. 71-160.

[2] *Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 10* (see *Yearbook ... 1974*, vol. II, Part One, pp. 157-331).

[3] For text see previous meeting, para. 2.

[4] For text see 1312th meeting, para. 1.

discuss a subject of international law that was not a State, without evoking controversial matters in which there was no well-ordered State practice.

5. He did not believe that article 13 raised difficulties of the same order; it dealt with a situation of restored equilibrium. It would suffice for the Commission to avoid any implications regarding questions outside the present draft. He therefore shared the views of those who had questioned the need for a specific reference to a new State constituted "in all or part" of the territory formerly under the sovereignty of the pre-existing State. As Mr. Tammes had pointed out, the draft articles on succession of States in respect of treaties adopted by the Commission in 1974 showed a realization that the Commission had an equal loyalty to United Nations doctrine and to rules originating in older law. Thus any draft rules adopted by the Commission had to be consistent with the doctrine of decolonization and, at the same time, should not encourage any break in the continuity of obligations in an increasingly interdependent world.

6. In the situation dealt with in article 13, certain events in a State created uncertainty regarding continuity. Those events might sometimes lead to an abrupt change in the governmental structure of the State concerned. It was important not to encourage the idea that in such a situation a State could cast off its identity because of the change that had taken place. His views were strengthened by the important saving clause in the second sentence of paragraph 2 of the article, which safeguarded the parallel attribution to the State of the acts of the former legal government. It would be a totally unintended and undesirable result if article 13 was thought to encourage the view that a State could rely on its provisions to escape responsibility by claiming that there had been a succession.

7. Subject to those points of detail, he supported article 13.

8. Sir Francis VALLAT said that there appeared to be general agreement in the Commission regarding the essence of article 13. The article might well raise serious difficulties, but the Special Rapporteur had skilfully avoided most of them, while retaining its essential purpose.

9. In other contexts, the problem of legitimacy, to which Mr. Ushakov [5] had drawn attention, might well be of vital importance. It was not, however, an element to be introduced into article 13; in that respect, he agreed with Mr. Elias. [6]

10. On a broader view, article 13 stood on the borderline between the principle of continuity and State succession. In the form in which it was drafted, the article nevertheless generally succeeded in keeping within the borders of continuity, because it had been framed so as to deal with the commonest cases. The destruction of an old State by revolution, resulting in the creation of an entirely new State, was an extremely rare occurrence. Indeed, he shared the view that a revolutionary change of government never really destroyed the identity of the old State. At any rate, the question was a controversial one, as Mr. Ushakov himself had pointed out. That being so, it would be generally agreed that, in considering article 13, the Commission should concentrate on the continuity of the State, rather than on the exceptional cases of the destruction of an old State.

11. As other members had said, the Commission had faced the same basic problem in 1974 in connexion with the topic of succession of States in respect of treaties. It had then taken the view that no attempt should be made to differentiate between various kinds of revolutionary movements. It was true that there had been some criticism in the Sixth Committee's debates, but he believed that the Commission should adhere to that view; the excellent reasons given in support of it in the Commission's report for the previous session remained valid (A/9610/Rev.1, chapter II, para. 66). He would recommend the same approach with regard to article 13. That applied particularly to paragraph 1 of the article; the element of continuity was especially important in that provision, which related to the acts of an insurrectional movement and the continued burden of those acts on the State when the insurrectional movement became the government.

12. The various points raised during the discussion regarding the language of the article should be carefully considered. In the second sentence of paragraph 2, in which the adjective "parallel" was used, he had difficulty in appreciating the significance of that term in the context. As to the concluding words of the same sentence, "considered to be legitimate", it might be asked who considered the government to be legitimate. That phrase raised the question of recognition, and he suggested that an effort should be made to dispense with it.

13. As a matter of substance, he suggested that the provisions of the second sentence of paragraph 2 should be broadened. As it stood, the sentence meant that nothing in article 13 excluded the continued application of article 5. It was possible, however, to attribute conduct to the State under other articles of the draft, such as article 7 (Attribution to the State of the conduct of other entities empowered to exercise elements of the governmental authority) and article 8 (Attribution to the State of the conduct of persons acting in fact on behalf of the State) (*ibid.*, chapter III, section B). The provisions of the last sentence of paragraph 2 should therefore be so framed as to cover all cases of attribution to the State, not just those coming under article 5.

14. In conclusion, he stressed the crucial importance of the question of continuity. The conduct of the organs of government was attributed to the State, and the destruction of the government did not imply the destruction of the State; hence the attribution stood, irrespective of the change of government.

15. Mr. ŠAHOVIĆ said he agreed with the Special Rapporteur that the phenomenon of successful insurrectional movements had its place in the draft articles, from three points of view: that of existing States, which were subjects of international law; that of the position of insurrectional movements in positive international law; and that of international law proper and the theory of State responsibility. He himself did not think that the

[5] See previous meeting, para. 20.

[6] *Ibid.*, para. 39.

situation referred to in paragraph 2 of article 12 and that referred to in article 13 should be assessed and compared from the point of view of the legitimacy of the insurrectional movement. In his opinion, those different situations were only different aspects of the position of the insurrectional movement. Hence it would be preferable to deal with them from the point of view of State responsibility. For the different stages in the development of an insurrectional movement were but the reflection of the movement's position in law. The problem of the international personality of the insurrectional movement clearly did not arise in article 13 as it did in article 12, since the successful insurrectional movement had become, in whole or in part, a State which was a subject of international law.

16. He thought the phenomenon of insurrectional movements should perhaps be treated in the draft articles as a single phenomenon. It would then be possible to deal in one and the same article with all questions concerning insurrectional movements, while differentiating, as the Special Rapporteur had done, between the successive stages of development of such movements. If that were done, it would be necessary to find wording which brought out more clearly the difference between the situations referred to in article 12, paragraph 2, and those referred to in article 13.

17. With regard to the justification for article 13, he was not sure that the principles stated in paragraphs 1 and 2, which dealt with two very different situations, could be justified in the same way. Paragraph 1 dealt with a new State constituted by the successful insurrectional movement, whereas paragraph 2 dealt with one and the same State, the structures of which were different because the structures of the insurrectional movement had been wholly or partly integrated with those of the pre-existing State. He thought that the position taken by the Special Rapporteur in that respect was correct and in accordance with practice.

18. He agreed that the word "retroactively" could be dropped from the text, but he was not sure that the idea of retroactivity itself could be dispensed with. The Special Rapporteur had been right to emphasize the idea of continuity; but there was a difference between the idea of continuity and that of retroactivity, the legal and political consequences of which were very serious, particularly in regard to the problem of State succession. In the final text, it would probably be necessary to elucidate the different problems raised by article 13, in particular the problem of State succession and the problem of the legitimacy of the insurrectional movement, raised by Mr. Ushakov. In his opinion, the wording would have to be simplified, taking especial account of the Special Rapporteur's intentions. He shared Mr. Ramangasoavina's concern about the possible effects of certain expressions, but he was sure the Drafting Committee would be able to solve those problems.

19. Mr. BILGE said that article 13 completed the set of provisions on attribution to the State of the conduct of its organs. He had no difficulty in accepting the principle stated in the article, for it was a simple and well-established principle, already crystallized in practice and in various codification drafts, as the Special Rapporteur had shown in his report. All the members of the Commission seemed to be in agreement on the principle, but some of them had expressed objections to its formulation and to its inclusion in the draft.

20. He thought that article 13 was necessary in order to define the scope of chapter II and complete the range of situations in which the conduct of its agents could be attributed to the State. The article did not raise the problem of State succession, for the principle of continuity justified the attribution of the conduct of an insurrectional movement to the new State which was the outcome of that movement. The insurrectional movement in question was not intermittent, but had a certain continuity. Thus there was continuity in the authorship of the conduct of the unsurrectional movement which became a State, in so far as the organ of the movement became a genuine organ of the State. The name of the author of the conduct changed, but the author remained the same. Damage caused by an insurrectional movement must therefore be repaired by the State which was the outcome of that movement. In that connexion he observed that the adjective "successful" had no moral significance, but merely meant that the insurrectional movement had become master of all or part of the territory of the pre-existing State. What mattered was that it became a State. Perhaps that point should be explained in the commentary.

21. He was not sure that the question of the legitimacy of a successful insurrectional movement should be raised in connexion with article 13, as Mr. Ushakov wished. In his opinion, that question had no important bearing on the attribution of responsibility to an insurrectional movement which had become a new State, for whether it was legitimate or not, the movement had caused damage for which reparation must be made. In the case of an insurrectional movement fomented by another State, it might be possible to speak of common or joint conduct of the insurrectional movement and that other State, but that did not prevent the attribution of the conduct to the insurrectional movement, whether it was legitimate or not. He did not think that, in the attribution of responsibility, a distinction should be made between an insurrectional movement of the classical revolutionary type and a liberation movement. There might be a difference in the case of State succession, but in the present instance there was no succession of States, since there was continuity in the conversion of the insurrectional movement into a State. Hence there was no reason to treat insurrectional movements differently according to their nature. For instance, an insurrectional movement could not be exonerated because it was a liberation movement.

22. Paragraph 2 dealt with the case in which an insurrectional movement, instead of replacing the pre-existing State, had been integrated with the structures of that State, which it had thus profoundly changed. The paragraph accordingly raised the problem of the attribution of the acts of a successful insurrectional movement to the pre-existing State. In that case, too, the Special Rapporteur had proposed a just solution, which reflected the practice of States.

23. He accepted the principle stated in article 13 and would leave it to the Drafting Committee to improve the wording.

24. Mr. TSURUOKA said he willingly accepted the rules set out in paragraphs 1 and 2 of article 13. The principle stated in paragraph 1 was supported by abundant practice, jurisprudence and doctrine. He also accepted the justification for that principle put forward by the Special Rapporteur, namely, the idea of continuity. The rule stated in paragraph 2 was supported by less abundant practice and jurisprudence than the rule in paragraph 1; it reflected the Special Rapporteur's concern not to leave persons injured by insurrectional movements unprotected.

25. He wished to draw attention to a few points of drafting. First of all, he had reservations about the expression "new State", used in paragraph 1. For instance, could the present State of Cambodia be called a new State? It would be easier to speak of a new State in the case of Bangladesh, which represented only part of the pre-existing State. Next, he wondered whether, in paragraphs 1 and 2, the words "acting in that capacity" should not be added after the words "The conduct of of an organ of an insurrectional movement", as in other articles. For the text as it stood did not specify that the organ of the insurrectional movement was acting as such and not merely as a private person. Lastly, he saw difficulties in the phrase "whose structures have subsequently been integrated, in whole or in part, with those of the pre-existing State", in paragraph 2. If the elements of the insurrectional movement represented only a small minority in the new government, the rule stated in the first sentence of paragraph 2 would be difficult to apply. Conversely, the rule stated in the second sentence of paragraph 2 would be difficult to apply if the elements of the insurrectional movement represented an overwhelming majority in the new organs of the State.

26. Mr. USHAKOV said he wished to explain his position on the problem of the legitimacy of a successful insurrectional movement. In his opinion, it was a politico-legal problem which could not be disregarded in determining the attribution of responsibility. It was, indeed, impossible to ignore the nature of the insurrectional movement and to treat all successful insurrectional movements in the same way. For instance, if a fascist *coup d'état* was organized by part of the army of a State, with the support of a foreign State, could one speak of a successful insurrectional movement in the same sense as when a national liberation movement had succeeded in overcoming a colonial Power? It was surely impossible not to make a distinction between such movements, since some of them were internationally wrongful, and to treat them in the same way as the others would be to approve them. That was a very difficult problem which the Commission ought to consider.

27. The CHAIRMAN, speaking as a member of the Commission, said he wished to join in the tributes which had been paid to the Special Rapporteur for the skilful manner in which he had drafted article 13 and for his very learned commentary.

28. There was a close organic link between article 13, which completed chapter II of the draft, and article 12 and previous articles. Leaving political considerations aside, the problem dealt with in article 13 was that of the attribution of international responsibility according to the success or failure of an insurrectional movement. Article 13 made it clear that, if the insurrectional movement succeeded, the State was responsible for the conduct of the organs of the movement. If the movement failed, the State was responsible for the conduct of State organs. In the event of conciliation, a new governmental apparatus was created which would be held internationally responsible. If the insurrectional movement resulted in the separation of part of the State, the new State thus created would be internationally responsible.

29. The two paragraphs of article 13 thus covered the idea that governmental changes made no difference to the obligations of the State. Where an insurrectional movement replaced the organs of the State, no succession was involved; the case was one of continuity, not of State succession. He would accept the balanced text of article 13.

30. With regard to the drafting, he favoured the proposed simplification, which would further emphasize the element of continuity and the exclusion of the concept of succession. He also supported Mr. Quentin-Baxter's remarks; the United Nations resolutions on decolonization reflected a rule of *jus cogens*.

31. Mr. AGO (Special Rapporteur), replying to the comments made during the discussion, said that what should be regarded as retroactive was not the attribution of certain acts to the State, but the attribution of statehood to the insurrectional movement. When the structures of that movement became the machinery of a State, the movement was in fact considered to have had, since the beginning of its existence, the quality of statehood for which it had fought.

32. As to the relationship between the provisions of articles 12 and 13 concerning insurrectional movements, those provisions covered quite different cases. Article 12 referred to conduct which was in no way attributable to the State. If the insurrectional movement was not a separate subject of international law, its conduct was that of a group of private individuals; if it had asserted its authority over a certain territory and had had applied to it, for example, certain rules of the international law of war and of peace, its conduct was that of a subject of international law other than a State. In either case, so long as that situation continued, the only conduct attributable to the State was that of its own organs in connexion with the doings of the insurrectional movement, such as failure to take preventive or punitive measures, tolerance or complicity. Article 13, on the other hand, was concerned with attribution to the State of the conduct of an organ of an insurrectional movement which had subsequently become a new government of the State or a new State. The basis for that attribution was the continuity between the insurrectional movement and the State which it had brought into being, or with which it had been integrated. That distinction militated against the drafting of a single article to cover both cases, as suggested by Mr. Šahović.

33. All the members of the Commission seemed to have accepted that the sole basis for attribution to the State of the acts of organs of a successful insurrectional movement was the continuity between that movement and the State to which the acts were attributed. As Mr. Ramangasoavina had said, that solution might, in some cases, leave the victims without redress, but it did not seem possible to remedy that defect.

34. The two paragraphs of article 13 covered different categories of cases. Paragraph 1 dealt with all cases in which the insurrectional movement brought about the formation of a new State, thus causing a break in continuity with the pre-existing State, even though in other respects it might be held that the same State continued to exist. Paragraph 2 covered cases of change of government which did not entail any break in continuity. It did not, as some members of the Commission had thought, cover only the case in which the insurrectional movement had been partly successful, but also the case of total success, provided that the personality of the State remained unchanged.

35. Mr. Tammes and Mr. Kearney had suggested simplifying paragraph 1 of article 13, [7] but he thought that solution would only shift the problem. Paragraph 1 could, indeed, be made to cover only cases of secession or decolonization, in which the insurrectional movement had manifestly resulted in the creation of a new State, but decolonization would reappear in paragraph 2. That paragraph dealt with cases in which a new government was formed. Normally, that situation did not cause any break in the continuity of the State, but doctrine and practice were rather divided on the matter. Some writers held that such a situation never entailed a break in personality, but others maintained that any victory by an insurrectional movement led to the creation of a new State. Except in cases of rupture of the continuity of the State, however, it was important to reserve the responsibility of the State for acts of the government up to the time when it had been replaced by the insurrectional movement. It would be dangerous to affirm that the State was not responsible for such acts. In cases of total revolution and breaking of the continuity of the State, on the other hand, it would be difficult to make the State responsible for acts committed by the very organization against which the insurgents had fought and which they had destroyed. Perhaps the Commission should try to find subtle wording which would reserve attribution to the State of acts of the pre-existing government solely for cases in which the revolutionary movement had been integrated with the organization of the pre-existing State, but without any resultant break in continuity. It was to that delicate task that the Drafting Committee should devote itself.

36. Most of the purely drafting questions raised during the discussion would be automatically eliminated if the Drafting Committee succeeded in redrafting the two paragraphs of article 13 in the way he suggested. The phrase "organs of the government which was at that time considered to be legitimate", which he had taken from international practice and doctrine, would probably have to be amended in order to avoid possible misunderstandings.

37. Referring to the question of the legitimacy of insurrectional movements raised by Mr. Ushakov, he pointed out that all the cases cited as examples involved the intervention of a foreign State. In such cases, one could not really speak of wrongful conduct on the part of the insurrectional movement. What was wrongful was the intervention of a foreign Power to change the government of a country or cause a province to secede. When a military movement overthrew a government, for example, it was sometimes helped by the intervention of a foreign State, which thus committed a wrongful act. But while there was wrongful conduct by the foreign State, it could hardly be maintained that the existence of the insurrectional movement was itself wrongful and that the movement should be held responsible for it. Nevertheless, he shared the concern expressed by Mr. Ushakov: if an insurrectional movement succeeded thanks to wrongful assistance from abroad and part of the international community was not prepared to recognize that *de facto* situation, would the movement which had taken power be regarded as constituting the government of the State, as it would be if it had taken power without foreign intervention? Any move to attribute responsibility to a government meant recognition of its existence. On the other hand, the Commission should not come to the opposite conclusion and leave exempt from all responsibility a government which had come to power through the wrongful intervention of another State.

38. In the circumstances, he thought it might be advisable to distinguish the problem of attribution to the State of the insurrectional movement, from the problem of the possible wrongfulness of the establishment of the insurrectional movement as the government of the State. It would then be possible to introduce another saving clause, reserving any problems and consequences arising out of the internationally wrongful aspects of the movement's success. That solution would make it possible to attribute responsibility to the foreign State which had provided assistance to an insurrectional movement by wrongfully interfering in the affairs of the State against which that movement had been directed.

39. The Drafting Committee would have to work patiently to find wording that would make the article acceptable not only to the members of the Commission, but also to the governments which would examine its report.

40. The CHAIRMAN suggested that article 13 should be submitted to the Drafting Committee, which would meet the following day. [8]

It was so agreed.

41. Speaking on behalf of the Commission, he congratulated the Special Rapporteur on his masterly commentary and statements. All members of the Commission had benefited from his skill and knowledge and would be proud to have his work included in the Commission's report to the General Assembly.

[7] See previous meeting, paras. 26 and 31.

[8] For resumption of the discussion see 1345th meeting, para. 52.

42. Speaking as a citizen of a developing country, he observed that the foreign ministries of developing countries would not adopt a position on the draft articles until they had received a full translation of the commentary. It would therefore be helpful if the Special Rapporteur would be good enough to condense the great wealth of material he had submitted.

The meeting rose at 12.45 p.m.

1318th MEETING

Thursday, 29 May 1975, at 10.10 a.m.

Chairman: Mr. Abdul Hakim TABIBI

Members present: Mr. Ago, Mr. Bedjaoui, Mr. Bilge, Mr. Calle y Calle, Mr. Elias, Mr. Hambro, Mr. Kearney, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Reuter, Mr. Šahović, Mr. Sette Câmara, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Francis Vallat, Mr. Yasseen.

Succession of States in respect of matters other than treaties

(A/CN.4/282) [1]

[Item 2 of the agenda]

INTRODUCTION BY THE SPECIAL RAPPORTEUR

1. The CHAIRMAN said that at its twenty-fifth session the Commission had begun consideration, on first reading, of the draft articles on succession of States in respect of matters other than treaties submitted by Mr. Bedjaoui, and had adopted articles 1 to 8 with the commentaries thereto. [2] He invited the Special Rapporteur to introduce his seventh report (A/CN.4/282) and article 9 of the draft.

2. Mr. BEDJAOUI (Special Rapporteur) reminded the Commission that it had decided to give priority to succession of States in respect of economic and financial matters; it had begun to examine the provisions relating to succession to State property, leaving open the possibility of considering later, first, the property of territorial authorities, such as provinces, districts, communes or regions and of public enterprises or public bodies, and secondly, the property belonging to the territory. The first three of the eight articles which the Commission had provisionally adopted formed the introduction to the draft; they related to the whole of the topic entrusted to him. Article 1 concerned the scope of the draft; article 2 concerned the cases of succession covered by the draft; and article 3 dealt with the use of terms. Those articles were followed by part I, entitled "Succession to State property", which began with section 1, "General provisions". Article 4, the first of those provisions, defined the scope of the articles relating to succession to State property; article 5 defined the meaning of "State property"; article 6 provided that a succession of States entailed the extinction of the rights of the predecessor State and the arising of the rights of the successor State to the State property; article 7 determined the date of the passing of State property; and article 8 stated the principle of the passing of State property without compensation.

3. To complete the general provisions, four problems remained to be considered. Articles 6 to 8 assumed that the question what property passed to the successor State was settled, and dealt only with the consequences of the passing. First, it was necessary to establish, in an article 9, what property passed. Secondly, the question of rights in respect of the authority to grant concessions had to be considered; for when defining the notion of State property the Commission had referred to the property, rights and interests of the predecessor State, and that enumeration included the rights attaching to the authority to grant concessions. Thirdly, it was necessary to consider, for each of the four types of succession dealt with, the general rule applicable to debt-claims, which he had derived from internal and international judicial decisions and from the practice of States. Fourthly, the Commission still had to examine the question of the property of third States, as dealt with in draft articles X, Y and Z. Those provisions concerned the definition of a third State, the determination of its property and the treatment of that property in the event of a succession of States.

4. In section 2, which contained provisions relating to each type of succession of States, he had taken the fullest possible account of a wish expressed by the Commission at its twenty-fifth session: he had adopted the typology used in the draft articles on succession of States in respect of treaties. Accordingly, the case of the disappearance of a State by absorption or partition had been eliminated, since it was of historical interest only and was, on principle, contrary to contemporary international law.

5. As it would be wearisome to review all the classes of property with respect to each type of succession, he had included only four classes: currency, treasury and State funds, State archives and libraries, and State property situated outside the transferred territory. For each type of succession, a separate article was devoted to each of those classes of property. Inevitably, several provisions were similar, but some of them could perhaps be regrouped later in a single article. His method nevertheless had the advantage that the problems could be dealt with *seriatim*.

6. It would be wrong to assume that each of the first three classes of property he had adopted called for the formulation of a *lex specialis*, whereas the fourth class, that of State property situated abroad, called for a *lex generalis*. In fact, property in the latter class raised specific questions, such as that of recognition, although it might come into one or more of the other classes.

[1] *Yearbook ... 1974*, vol. II, Part One, pp. 91-115.

[2] *Yearbook ... 1973*, vol. II, pp. 203-209.