Document:-
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# Summary record of the 1318th meeting

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

Extract from the Yearbook of the International Law Commission:-
**1975, vol. I**

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.

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## 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.

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### 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.

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR

7. He then introduced article 9, which read:

*Article 9*

*General principle of the passing of all State property*

State property necessary for the exercise of sovereignty over the territory to which the succession of States relates shall pass from the predecessor State to the successor State.

8. In drafting that provision he had had to ignore a distinction found in some systems of law, which divided State property into a public domain and a private domain. Draft article 9 referred to the passing of State property such as watercourses, administrative buildings of the State, State enterprises, barracks, highways, bridges, dams and railway installations. It was obvious that such property must pass to the successor State; that was a principle which had been consistently confirmed by writers and by the numerous devolution agreements concluded. Many of those agreements had gone further than the rule proposed in article 9. The Malaysia Act of 1963 provided that property of the States of Borneo and Singapore which had been occupied or used by the United Kingdom in those countries, would devolve to the Federation. Some agreements contained a general clause renouncing all rights and titles whatsoever in or concerning the territory. Libya had received the movable and immovable property situated in the country which had been owned by the Italian State. In Burma, all the property of the colonial Government had passed to the newly independent State, including the immovable military installations of the United Kingdom. The same had happened in Cyprus, and in Indonesia under the Batavia agreements of 1949. A Soviet-Czechoslovak treaty, signed on 29 June 1945, concerning the cession of the Sub-Carpathian Ukraine to the Soviet Union, contained a protocol providing for the transfer, without payment, of the ownership of State property in that region. The Soviet-Finnish treaty of 12 March 1940 provided for reciprocal cessions; the property in question had included bridges, dams, aerodromes, barracks, warehouses, railway junctions, industrial undertakings, telegraph installations and electric power stations. The special devolution and co-operation agreements concluded between France and French-speaking republics in Africa in the sixties, corroborated *a contrario* the principle laid down in article 9. In those cases, the agreements had provided that the devolution should operate on the basis of the determination of the respective needs of the partners, but they had later been amended to conform with the principle of general transfer stated in article 9.

9. International jurisprudence also confirmed that principle. In its judgement in the *Péter Pázmány University case*, in 1933, the Permanent Court of International Justice had stated that it was a "principle of the generally accepted law of State succession". [3] Examples of internal law cases were given in his third report. [4]

10. The rule in article 9 should not be regarded as a *lex generalis* making it possible to dispense with the *leges speciales* that followed. Conversely, the general principle stated in article 9 should not be regarded as unnecessary because it was followed by special provisions. In fact, the scope of article 9 was precise. It did not apply to all State property—which would make the subsequent articles unnecessary—but only to State property "necessary for the exercise of sovereignty over the territory to which the succession of States relates". The reason why he had referred to property necessary for the exercise of sovereignty was that he did not wish to introduce the distinction made in some systems of law between the public domain and the private domain. The difficulty was how to define State property which, being linked with the *imperium* of the State, clearly could not remain in the ownership of the predecessor State after the change of sovereignty, in other words after its *imperium* had disappeared. The distinction between the public domain and the private domain could not be introduced into article 9, because it was not made in all national systems of law and varied from one system to another, and also because the draft should not refer to a notion of internal law. It would be better to rely on the notion of sovereignty as understood in international law. As international law had no criteria for distinguishing the public domain from the private domain, a provision based on that distinction might be differently applied by different States. In addition, it would be necessary to decide what law should be applied in determining the public domain and the private domain: would it be the law of the predecessor State or that of the successor State?

11. In his previous reports he had first suggested the expression "property appertaining to sovereignty", [5] but it had later seemed too loose and he had proposed that it should be replaced by "property necessary for the exercise of sovereignty", a formula which brought out the patrimonial aspect of the problem. For the performance of activities which a State considered to be strategic, it must possess certain movable and immovable property, which it defined according to its political philosophy and used for general duties such as defence, security of the territory, and the promotion of health or education. Although the new formula was narrower than the previous one, it still did not make it possible to determine what property was necessary for the exercise of sovereignty or what authority could decide that question. International law did not provide a solution: it was necessary to refer to internal law, which the formula used did not prevent. The proposed expression suggested a related notion taken from international jurisprudence: that of property necessary for the viability of a local territorial authority. That notion had been established by the Franco-Italian Conciliation Commission set up under the Peace Treaty with Italy of 10 February 1947, in a case cited in his sixth report. [6] Strictly speaking, that case could only be taken into consideration *mutatis mutandis*, since it related not to State property, but to municipal property, and had been concerned with the apportionment of property between communes territorially divided by a new frontier, not between States. Nevertheless, it was interesting to

[3] *P.C.I.J.* Series A/B, No. 61, p. 237.

[4] See *Yearbook ... 1970*, vol. II, pp. 136 *et seq.*

[5] *Ibid.*, p. 143, article 2.

[6] See *Yearbook ... 1973*, vol. II, p. 24, para. (12).

note that the Conciliation Commission had rejected the argument of the Italian Government and referred expressly to State property; it had ruled that the successor State received the State property without payment. The position generally adopted by that Commission thus supported the rule stated in article 9.

12. The CHAIRMAN congratulated the Special Rapporteur on his seventh report and his lucid introduction of article 9. He hoped that the illustrative cases cited in connexion with the article would be mentioned in the commentary.

13. Mr. HAMBRO said that the Special Rapporteur had once again brought his legal acumen and encyclopaedic knowledge to bear on a most difficult subject. He thanked him for having taken account in his work of the views expressed by other members of the Commission and for having tried to simplify questions which had been found too complex during earlier discussions.

14. While he agreed with the object of draft article 9, he was unhappy about the terminology employed. The Special Rapporteur had spoken of the difficulties connected with the use of the words "necessary" and "sovereignty". He (Mr. Hambro) was particularly worried by the use of the term "sovereignty", the definition of which depended on the political, sociological or ideological context. For example, the word had been variously interpreted in United Nations debates and in the often bitter struggle of colonial countries for independence, and it was now being employed in entirely different ways by the proponents and opponents of United Kingdom membership in the European Economic Community. As stated in a recent leading article on that subject in *The Times*, "When respectable publicists of honest purpose flatly contradict each other, some claiming of a course of action that it will lead to more, and some that it will lead to less, enjoyment of the same general political good, one may be sure that under the same name they are talking of different things. So it is with 'sovereignty'." Differing definitions of "sovereignty" could be found in such basic reference works as the *Dictionnaire de la terminologie du droit international* [7] and Oppenheim. [8] Not only were there numerous definitions of "sovereignty", but not one of the *dicta* of the International Court of Justice or the Permanent International Court of Justice on the subject contained anything which would help the Commission in determining what property was necessary for the exercise of sovereignty. In his own view, sovereignty could be exercised without the possession of any property whatsoever; the Icelandic Althing, for example, had met and exercised legislative and judicial power in the open air. The Special Rapporteur had stated in his sixth report that the expression of the domestic sovereignty of the State might differ, but that it had "the characteristic of covering everything that the State, in accordance with its own guiding philosophy, regards as a 'strategic' activity which cannot be entrusted to a private person". [9]

15. It was clear, however—most obviously from the difference between capitalist and socialist societies—that certain things might be considered necessary for the exercise of sovereignty in one type of State and not in another—a point the Special Rapporteur had recognized in the commentary to article 9 (A/CN.4/282, chapter IV, A).

16. His own difficulties in regard to draft article 9 would be resolved and, he thought, the Special Rapporteur's object would largely be achieved, if the article were redrafted to read: "State property used for the performance of State tasks according to the internal law of the predecessor State shall pass from that State to the successor State".

17. Mr. KEARNEY said that, like Mr. Hambro, he approved of the object of the draft of article 9. He was doubtful, however, whether the Special Rapporteur's definition of the property that passed to the successor State would in fact enable the passage to occur smoothly.

18. As Mr. Hambro had shown, the stipulation that the property in question should be that which was "necessary for the exercise of sovereignty" would cause dissension, because the test to be applied was so vague and general. The Special Rapporteur had recognized the difficulty in paragraph (10) of the commentary to article 9 in his sixth report. [10] If, as he (Mr. Kearney) believed, the view there expressed was correct, the test proposed in article 9 was bound to lead to extreme differences of opinion as to whether it was the law of the predecessor State or that of the successor State that should apply. In paragraph (11) of the same commentary the Special Rapporteur seemed to be talking not of State succession, but of what might be an aspect of the primary rules of State responsibility. If, on the other hand, he was proposing that there should be retroactive determination by the successor State of what constituted State property, that again would complicate rather than simplify passage. For a combination of those reasons and in the light of Mr. Hambro's comments, he considered that the test proposed by the Special Rapporteur should be abandoned and replaced by a more simple and workable rule based on the property owned by the predecessor State at the time of the succession, and not on the property it might have possessed if its economic or social system had been different.

19. While Mr. Hambro's proposal went quite far in the right direction, it still reflected something of the distinction between the private and the public property of the State which, he thought, was at the root of the Special Rapporteur's difficulties in dealing with the subject. That distinction should be eliminated, for the nature of the State property which passed was immaterial; if the property was in the possession of the predecessor State at the time of the succession, it should be transferred. If the Commission accepted that suggestion it would have to bear in mind, in drafting a new article, that there were three categories of State property: property situated in the territory affected by the succession and covered by the definition in article 5; State property which was situated in the predecessor State, but had some connexion with

[7] Union académique internationale, *op. cit.* (1960), pp. 573 *et seq.*

[8] *International Law* (8th ed.), vol. I, p. 286.

[9] See *Yearbook . . . 1973*, vol. II, p. 22, para. (4).

[10] *Ibid.*, p. 24.

the successor State; and property of the predecessor State which was situated in a third State.

20. The object of article 9 was to lay down a general residual rule, and it would be impossible to do so in a way which adequately covered all those different situations. The Special Rapporteur seemed to have covered the question of State property outside the transferred territory in one of his "special articles", but he (Mr. Kearney) considered that article 9 should concern only property located in the territory to which the succession related, and that the remaining problems should form the subject of separate rules.

21. The effect of retaining a general rule like that proposed in article 9 would be that, in the absence of an agreed solution, the predecessor and the successor States would each keep all the property remaining in its territory. Article 9 might therefore consist of a main clause reading: "State property in the territory to which the succession relates shall pass from the predecessor State to the successor State"; and of two saving clauses, reading, respectively: "except as otherwise provided in these articles" and "unless otherwise agreed or decided". The second of those saving clauses was particularly important, for most future cases of succession would result from the union or dissolution of existing States—situations which would be far too complex to be covered by universal rules of law or settled otherwise than by agreement between the parties.

22. Mr. USTOR said that article 9 dealt with a difficult matter, on which he found most of the Special Rapporteur's views acceptable.

23. The Special Rapporteur had done well to follow the system adopted by the Commission for the topic of succession of States in respect of treaties. That system was to begin by stating certain general principles applicable to all types of succession of States and then to set out the separate rules for each type of succession. On the topic of succession of States in respect of matters other than treaties, the Commission had adopted a number of general principles in 1973.[11] The purpose of article 9 was to state an additional principle applicable to all types of succession.

24. The title of the article did not fully correspond to the contents, since it referred to the passing of "all" State property. The meaning of the term "State property" was defined in article 5, and an examination of various types of succession, showed that not all State property as thus defined passed to the successor State in every case. In the case of a union of States, it would be true to say that all the property of the uniting States would pass to the State formed by the union; but the position would not be the same in other types of succession.

25. The text of article 9 clearly showed that its provisions did not apply to all State property, as defined in article 5. The article covered only State property that was "necessary for the exercise of sovereignty over the territory" to which the succession related. If the Commission adopted an article of that kind, which applied only to a certain kind of State property, it would be necessary to make provision for other types of State property as well. Failing such provision, it might be inferred, according to the maxim *inclusio unius est exclusio alterius*, that the rule did not apply to those other types of State property.

26. The Special Rapporteur admitted that it was not easy to determine what State property was "necessary for the exercise of sovereignty", and the meaning of that expression was certainly debatable. Moreover, although he did not have the same difficulties as Mr. Hambro with the use of the term "sovereignty", he shared his concern about the appropriateness of that term to express the underlying idea of article 9.

27. He agreed with Mr. Kearney on the need to differentiate between State property in the territory to which the succession of States related and State property outside that territory. Different rules would clearly have to be applied to the two classes of property, especially in the case of a separation of States. At the time of the dissolution of the Austro-Hungarian monarchy, no general principle had been found for determining how to distribute the State property located outside the old frontiers, such as embassy buildings; it was only by agreement between the successor States that it had been possible to make the apportionment. For those reasons, he supported Mr. Kearney's suggestion that the general principle stated in article 9 should be framed in terms restricting its application to State property in the territory of the successor State. He also supported Mr. Kearney's suggested addition of a reservation relating to special agreements on particular kinds of property. Such agreements were, of course, possible, since the rule in article 9 was not one of *jus cogens*.

28. State property raised the question of the distinction between the public and the private domain of the State, which existed in one form or another in practically all States, including socialist States. Under Hungarian law, for example, the estate of a person who had no legal heirs and died intestate reverted to the State. As a result, the State might find itself the owner of a private dwelling, jewellery or a small shop. Normally, such property would be disposed of by the State without delay; but it could happen that, at the time of a succession of States, property of that kind was held by the predecessor State in the territory to which the succession related. Clearly, the property would have to pass to the successor State; no other solution was possible. For that reason, consideration should be given to broadening the scope of article 9 so that it did not appear to be limited to property held *jure imperii*. On the other hand, he thought it would be very useful, and might even be indispensable, to restrict the rule in article 9 to property situated in the territory of the successor State. It would be extremely difficult to accept the application of that general rule to State property situated outside the borders of the successor State.

29. The formula proposed by the Special Rapporteur, which made it essential to determine whether an item of State property was necessary for the exercise of sovereignty, contemplated the case of a newly independent State. The question of property claimed by a newly independent State as necessary for the exercise of its

[11] *Ibid.*, pp. 198-209.

sovereignty could be dealt with in the articles on newly independent States. In other types of succession, like a union of States, the only question which arose was what property belonged to the State. Clearly, only property owned by the State could pass to the successor State, in accordance with the maxim *nemo plus juris ad alium transferre potest quam ipse habet.*

30. Mr. RAMANGASOAVINA congratulated the Special Rapporteur on the remarkable work he had submitted to the Commission in his seventh report, which bore witness to a fresh effort to clarify the subject under study. He fully supported the principle stated in article 9, for he considered that a new State should have all the necessary guarantees to enable it to operate normally and to exercise its sovereignty fully in the territory assigned to it.

31. He had some reservations, however, about the formulation of the principle. In article 5, State property was very clearly defined as meaning "property, rights and interests which, on the date of the succession of States, were according to the internal law of the predecessor State, owned by that State". All property capable of passing from the predecessor State to the successor State and necessary for the exercise of the sovereignty of the new State could be covered by that definition. Hence it was questionable whether article 9 really added anything to the definition in article 5. He did not think so. In his opinion the word "sovereignty" had political, economic and social connotations that differed according to the conception of the State and the way in which the leaders of the new State regarded its future. Thus it was open to very different interpretations. It might also be asked whether the words "necessary for the exercise of sovereignty" did not to some extent limit the State property capable of passing from the predecessor State to the successor State, since they implied the existence of property that was not necessary for the exercise of sovereignty.

32. Moreover, some cases of secession or the dissolution of a union raised the question how to apportion the property between the different States created by the secession or dissolution, for certain property might be necessary for the sovereignty of some of the States, but not for the sovereignty of others. For example, if a State was divided into two States, one with a coast and the other land-locked, the ships of the predecessor State would have to be awarded to the coastal State, since they were necessary for the exercise of its sovereignty. Similarly, if a waterway was indispensable to the economy of one of the States resulting from a secession or the dissolution of a union, it would have to be allotted to that State rather than to the others. He therefore considered that, if it was not possible to state the principle of the passing of State property in each particular case according to the purpose for which the property was to be used, where the successors were seceding States or States resulting from the dissolution of a union, the principle in article 9 might be incorporated in the definition of State property contained in article 5. It would be necessary to specify the authority responsible for apportioning the property of the predecessor State, because that was not a matter for general provisions, but one involving the modalities of execution of the succession in respect of State property. In that connexion, he thought the text proposed by Mr. Hambro, which referred to the internal law of the predecessor State, did not add much to what was said in article 5.

33. He approved of the principle stated in article 9, for a newly independent State, whether it was a new State or a State resulting from a secession or from the dissolution of a union, should have all the elements necessary for the exercise of its sovereignty. But he thought those elements were already contained *in posse* in the definition in article 5. That definition covered all the property necessary to the new State, whether it was public property or private property—between which the Special Rapporteur had rightly not wished to make any distinction, because such a distinction was not made in all systems of law. The definition also covered the rights and interests of the predecessor State, which included debt-claims, property outside the territory of the predecessor State and property granted in the form of concessions. He therefore considered that the principle stated in article 9 should be formulated differently, avoiding the word "sovereignty", which was controversial because of its political overtones.

34. Mr. ELIAS said that articles 6, 7 and 8 were based on the assumption that State property passed from the predecessor State to the successor State. A substantive article was therefore necessary to state that the property in question actually passed from one State to the other. Article 9 was thus essential in the draft, and the question before the Commission was whether the language in which it was couched expressed that important idea.

35. For the reasons given by Mr. Hambro and Mr. Kearney, he objected to the formula "necessary for the exercise of sovereignty". Nor could he endorse the idea that the provisions of the article should be confined to State property in the territory to which the succession related. A State might have large assets in the form of securities deposited abroad, and it was necessary to make provision for the passing of such important property. As defined by article 5, the term "State property" included all "rights and interests" owned by the predecessor State according to its internal law. It was thus necessary to refer to that internal law to determine what could be regarded as State property of the predecessor State.

36. For the purposes of article 9, it was not necessary to go into questions of sovereignty. The only purpose of the article was to deal with the actual passing of State property from one State to another. He therefore suggested that article 9 should be redrafted to read: "State property as defined in article 5, which belonged to the predecessor State, shall pass to the successor State".

37. He agreed that the distinction between the public and the private domain was not relevant in the context of article 9. In his view, the formula proposed by Mr. Hambro, which referred to State property "used for the performance of State tasks", tended to introduce that same distinction by implication. The only difference between that proposal and the Special Rapporteur's article 9 was that it avoided the use of the term "sovereignty".

38. He agreed with Mr. Ustor that the title of the article, inasmuch as it referred to the passing of "all" State

property, conflicted with the text, which limited the scope of the article to State property necessary for the exercise of sovereignty.

39. Mr. AGO said he agreed with the Special Rapporteur that it was essential to settle the question of the passing of all State property. He was not sure, however, that it could be settled in a single rule or that the place chosen for the statement of the rule was really the most appropriate. The Special Rapporteur had tried to formulate in article 9 a general rule applicable to any type of State succession, to be followed, in different chapters relating to different types of succession, by supplementary rules on particular problems. It was debatable, however, whether it was possible to establish a single general rule for all types of succession and whether it would not be better to formulate different rules applying to the different types of succession.

40. The situation differed according to the type of succession considered. Where two States succeeded one another in the same territory—a rare, but not impossible case, involving the extinction of one subject of international law and the creation of another—everything which had belonged to the predecessor State, by whatever right, passed to the successor State. In such a case, it was not only the property situated in the territory of the predecessor State that passed to the successor State, but also the property outside its territory, such as embassy and consulate buildings in foreign countries.

41. Similarly, in the case mentioned by Mr. Ustor—that of the dissolution of a unitary State and the creation of a plurality of States—all the property of the predecessor State, without any possible exception, passed to the successor States, including property outside the territory of the predecessor State. In that case, however, a question arose: that of the apportionment of the property among the successor States.

42. The case of secession or decolonization, which the Special Rapporteur had had more particularly in mind, involved the formation of a new State in part of the territory which had been under the jurisdiction of the predecessor State. In that case it was clear, as Mr. Kearney had said, that reference should be made only to property situated in the territory of the new State, for it was hardly conceivable that that State could succeed to property situated in third States. Hence, he wondered whether it would really be possible to devise a single rule covering all those different cases.

43. Article 9 also raised the problem of a possible distinction to be made between types of State property. In that connexion, he was grateful to the Special Rapporteur for making an effort to define and distinguish, which had not been made in articles 5 and 8. Like Mr. Elias, he noted a certain conflict between those two articles and article 9, but, unlike Mr. Elias, he considered that it was articles 5 and 8 that should be corrected, not article 9.

44. The Special Rapporteur had tried to find wording to replace the distinction made, in systems based on Roman law, between domainial property and patrimonial property—a distinction which did not exist in some other systems of law. He had tried to introduce an objective criterion by referring to State property "necessary for the exercise of sovereignty". It should be noted, however, that until the precise moment when the succession of States took place, the only legal order which existed was that of the predecessor State. Manifestly, therefore, any reference to public property or State property meant property so characterized in the legal order of the predecessor State. But the words "necessary for the exercise of sovereignty" might be misconstrued to mean property necessary for the exercise of the sovereignty of the successor State, whereas in fact they meant the property which the predecessor State had used for the exercise of its sovereignty.

45. Like Mr. Hambro, he thought that the word "sovereignty" was open to very different interpretations and that its meaning was difficult to define. The wording proposed by Mr. Hambro was hardly more satisfactory, for it was just as difficult to define the meaning of "State tasks". He wondered whether it would not be better to follow the wording used in the draft articles on State responsibility, and speak of "property used for the exercise of the governmental authority". It was obvious that all such property must pass automatically and without compensation from the predecessor to the successor State. But what happened to property not in that category? Was it normal that property which had nothing to do with the exercise of sovereignty or the governmental authority, or with the performance of State tasks, should pass automatically and without compensation from the predecessor to the successor State? He thought that in cases of that kind it might be necessary to provide for an adequate minimum of compensation. Thus in that respect, too, there was a distinction to be made between cases of total succession and cases of secession or dissolution of a unitary State.

46. To sum up, he was not sure whether a single rule should be laid down in article 9, or whether a series of different rules should be provided for different types of succession. Furthermore, even if the rule in article 9 was limited to the single case of formation of a new State in part of the territory previously under the jurisdiction of the predecessor State, should a single rule be laid down or two rules—one on property necessary for the exercise of the governmental authority and the other on property which did not fall within that category? He hoped that the Special Rapporteur would take those two questions into consideration.

The meeting rose at 1.5 p.m.

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## 1319th MEETING

*Friday, 30 May 1975, at 10.15 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.

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