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Summary record of the 1319th meeting

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

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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.

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.

Succession of States in respect of matters other than treaties
(A/CN.4/282) [1]
[Item 2 of the agenda]
(continued)

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR

ARTICLE 9 (General principle of the passing of all State property) [2] *(continued)*

1. Mr. SETTE CÂMARA said that article 9 dealt with a very complex subject on which State practice was scanty, judicial precedent virtually non-existent and the legal literature meagre.

2. He fully agreed with the Special Rapporteur about the need for an article on the passing of State property; such an article was necessary to fill a gap in the draft, after the adoption of articles 1 to 8 (A/CN.4/282, chapter III). He welcomed the Special Rapporteur's cautious approach in avoiding the traditional distinction between the public domain and the private domain of the State. In consequence of the evolution from the old liberal *laissez-faire* State to the modern welfare State or socialist State, that distinction had become obsolete.

3. Instead of an obsolete criterion, the Special Rapporteur proposed a new one in the words "necessary for the exercise of sovereignty". That formula, unfortunately, did not fully solve the problem; besides, it still contained some elements of the old distinction. There was a vestige of the concept of the public domain in the idea of State property necessary for the exercise of sovereignty. The Special Rapporteur himself had offered that formula with an open mind; he had stated in paragraph (5) of his commentary that he had "not reached a final position" and had referred to "the vagueness of the expression 'State property necessary for the exercise of sovereignty'" (*ibid.*, chapter III, A). The Commission might therefore respond by endeavouring to agree on rather different wording.

4. Mr. HAMBRO had proposed a text which was an improvement in so far as it avoided the use of the problematical term "sovereignty". [3] But that proposal had the drawback of leaving open the question that was meant by "State property used for the performance of State tasks". It would certainly not be an easy matter to distinguish State property used for that purpose from other State property. The proposed criterion in fact echoed the traditional distinction between the public and the private domain of the State.

5. The language proposed by Mr. Kearney [4] would be more appropriate, but had the disadvantage of confining the scope of article 9 to property in the territory to which the succession of States related, so that State property elsewhere would have to be the subject of separate provisions. In his opinion, the best solution would be a general formula, more or less on the lines suggested by Mr. Elias, [5] combined with the saving clauses proposed by Mr. Kearney. A formulation of that kind would fill the gap in the draft without raising any new difficulties.

6. Mr. USHAKOV said that in his new report the Special Rapporteur had made a commendable effort to take account of the different types of succession, whereas in his previous reports he had confined himself to establishing general rules without considering the different forms succession might take. The Commission should follow the method it had already adopted in its work on the representation of States in their relations with international organizations and on succession of States in respect of treaties. Contrary to the Special Rapporteur's approach, it should first establish special rules for the different types of succession and then derive from them general rules valid for all types of succession. Experience with the previous drafts had shown that approach to be preferable to that method advocated by the Special Rapporteur.

7. When the Commission had tried, at the beginning of its work, to delimit the topic under study, it had decided to confine itself to public property and public debts. [6] But the idea of public property having proved too broad, it had decided to limit the subject still further and to deal only with State property. [7] Now the Special Rapporteur had once again widened the subject by referring, in article 9 to State property necessary for the exercise of sovereignty, in article 10 to the management of public services and the exploitation of natural resources, and in article 11 to State debt-claims. Natural resources, however, were not property in so far as they were not as yet owned by anyone, and the régime of their exploitation depended on the political, economic and social system of the State: in the socialist States, natural resources were necessarily public property, whereas in the capitalist States they could be private property. He therefore believed that for the time being it would be better to deal only with State property.

8. In article 5, State property was defined "according to the internal law of the predecessor State". That definition was logical, since State property did not exist as international property and so could not be defined according to international law. A distinction should, however, be made between immovable property which could not be attached to the territory of the predecessor State, and movable property which could be repatriated.

9. Whereas article 5 defined State property "according to the internal law of the predecessor State", article 9 referred to property "necessary for the exercise of sovereignty", without specifying what sovereignty was meant. Was it the sovereignty of the predecessor State or that of the successor State? The property capable of passing from the predecessor to the successor State was thus defined by reference to the sovereignty of any State whatsoever. But the notion of property necessary for the exercise of sovereignty differed considerably in different States, and was not the same in capitalist countries as in socialist countries. The only property neces-

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

[2] For text see previous meeting, para. 7.

[3] *Ibid.*, para. 16.

[4] *Ibid.*, para. 21.

[5] *Ibid.*, para. 36.

[6] *Yearbook . . . 1969*, vol. II, p. 228, para. 62.

[7] *Yearbook . . . 1971*, vol. II, Part One, p. 340, para. 71.

sary for the exercise of sovereignty by all States, whatever their political, economic or social régime, was armaments, since the State, whatever its nature, must exercise power of enforcement. The other property necessary for exercising the sovereignty of the State was not the same in socialist countries as in capitalist countries. In the socialist countries the abolition of private property was necessary for exercising the sovereignty of the State, whereas the capitalist States could dispense with public property other than armaments and make do with private property. Hence State property should always be defined according to the internal law of the predecessor State. He therefore believed that it would be better not to try to distinguish between public property and private property, and for the time being to deal only with State property as defined in article 5.

10. Mr. YASSEEN said there could be no doubt about the principle on which article 9 was based, for if there was a succession of States it must certainly apply to State property. The question was how to formulate the rule of succession to State property. Should the Commission state a general rule and confine itself to affirming that State property passed from the predecessor State to the successor State, or should it enumerate State property item by item, reserving the possibility of drafting a residuary rule to cover possible omissions? The Special Rapporteur might have been content to provide only that State property passed from the predecessor State to the successor State, but he had preferred to begin with the property that was unquestionably State property, namely, State property "necessary for the exercise of sovereignty". Mr. Hambro had proposed another criterion, that of property used to perform the tasks of the predecessor State. He himself thought the latter particular superfluous, since the definition of State property in article 5 made it unnecessary to specify in article 9 that the reference was to the predecessor State.

11. It would have been easy, as Mr. Ago had noted, to make a distinction, as in the internal law of some States, between "property in the public domain" and "property in the private domain". But those were terms of internal law which were not known to some legal systems and the use of which might cause difficulties. The Special Rapporteur had therefore tried to find a criterion based on the vocabulary of international law and proposed the formula "State property necessary for the exercise of sovereignty". In his (Mr. Yasseen's) view the Commission should not hesitate to use the term "sovereignty", since it was in current use in international law. Opinions might be divided on the definition of sovereignty, for doctrine on the subject varied; sovereignty might be regarded as the absolute power or as the "paramount competence" (*competence majeure*). But the fact remained that the notion of sovereignty existed and that at some time or other every State had occasion to exercise its sovereignty.

12. Admittedly, the criterion proposed by the Special Rapporteur might cause difficulties in practice, since a term which could have several different meanings in internal law could not be used in international law. It was inadmissable that sovereignty, as a term of international law, should be differently understood according to whether it was the sovereignty of the predecessor State or that of the successor State. Hence the use of the term "sovereignty" might cause difficulties in that respect if article 5 did not very clearly specify that State property was property which, according to the internal law of the predecessor State, was owned by that State. Thus the problem raised by the word "sovereignty" in article 9 was solved by the definition of "State property" given in article 5.

13. He thought that the expression "State property" could be considered as a criterion, especially if it was specified that what was meant was State property according to the internal law of the predecessor State. The formula proposed by Mr. Elias seemed satisfactory in that respect; but it was perhaps too general, and did not allow for the case in which the new State was formed in only part of the territory of the former State. He thought that Mr. Elias's proposal was useful, however, and that it could serve as a basis of discussion for the Drafting Committee.

14. Sir Francis VALLAT said that the subject-matter of article 9 was extremely difficult and much more complicated than the crystal clarity of the Special Rapporteur's text and presentation would suggest. The Special Rapporteur had performed a great service by simplifying and clarifying the problem, but further reflection would be necessary before it could be disposed of.

15. It was agreed by all that some provision was necessary in the draft to cover the passing of State property in the territory of the successor State, as a support to article 8 and the earlier articles already adopted. Unfortunately, the more one examined particular cases, and the complicated and baffling problems involved, the more difficult it became to devise a rule for general application. An examination of the abundant material on succession of States assembled by the Secretariat [8] clearly showed that no uniform State practice existed in the matter. Consequently, in dealing with article 9 the Commission was concerned more with the progressive development of international law than with its codification; hence the need for additional caution.

16. State practice in the matter of succession also showed that in most cases the passing of State property was settled by some form of agreement. Sometimes the settlement took the form of a declaration or of legislation, but there was nearly always some agreement between the predecessor State and the successor State. That very important point supported the idea put forward by Mr. Kearney that article 9 ought to be a residuary rule. He himself would go even further and suggest that suitable language should be introduced to indicate that it was preferable for the predecessor State and the successor State to act by way of agreement.

17. There was an additional practical reason for adopting that approach. The question of the passing of State property did not arise in isolation; it arose in the context of a particular situation: for example, where a State was already virtually independent at the time of the succession. In some cases the newly independent State consisted of

[8] *Yearbook . . . 1962*, vol. II, pp. 131-151 and *Yearbook . . . 1970*, vol. II, pp. 170-175.

a federation of a number of previously autonomous or virtually independent territories. A further complication was that the passing of State property was often dealt with in the context of complex financial settlements between the parties. That being so, the basic principle should always be emphasized that, wherever possible, matters of passing of State property ought to be settled by agreement. The residuary rule was still necessary, however, to deal with exceptional cases in which no agreement was reached and with those cases in which the particular circumstances at the time of the succession made it virtually impossible for the parties to enter into an agreement.

18. The agreements made in specific cases differed in points of detail, but they would be found to apply three main tests to State property: first, the test of ownership by the State, which was the pivot of the formulation proposed by Mr. Elias; secondly, the test of the use or purpose of the State property in question; and thirdly, the test of location. In studying those cases, he had gained the clear impression that it would not be possible to devise a single short rule which would cover all cases. For example, the language proposed by Mr. Elias, to the effect that all the property of the predecessor State would pass to the successor State, would clearly be entirely satisfactory in the event of a union of States, which would have the effect of vesting in the newly formed State or union, all the State property of the component States. In the case of separation, however, that formula would be quite unworkable. For example, most of the State property in the United Kingdom was concentrated in one part of the country; in the hypothetical event of the separation of another part of the country, it would be unthinkable that all State property throughout the United Kingdom should become the property of the successor State which had seceded.

19. For those reasons, he associated himself with those members who had suggested that the subject under consideration should be dealt with in the same way as succession of States in respect of treaties, in the draft adopted in 1974.[9] The disposal of the various kinds of property would then be determined by separate provisions for each type of succession; that approach would be better than trying to formulate a single rule applicable to all types of succession. In preparing such a text, the Drafting Committee should take into account the tests of ownership, use or purpose of the property and location; it should also stress the need for agreement between the parties wherever possible.

20. Mr. ŠAHOVIĆ said he noted that in his oral introduction and in the commentary to article 9, the Special Rapporteur had expressed the same doubts as the members of the Commission. He had been uncertain whether all State property passed to the successor State (A/CN.4/282, chapter IV A, para. (2) of the commentary to article 9), whether a *lex specialis* or a *lex generalis* on the matter should be envisaged (*ibid.*, para. (3)), whether it was a question of State succession (*ibid.*, para. (4)) and, lastly, whether article 9 should be dropped (*ibid.*, para (5)).

[9] *Yearbook . . . 1974*, vol. II, Part One, document A/9610/Rev.1, chapter II, section D.

21. Thus the first question that arose about article 9 was whether the passing of State property should be the subject of a general rule. He was not yet certain, and shared the doubts of other members of the Commission. The wording proposed by the Special Rapporteur seemed logical, because succession should be accompanied by the passing of State property; but in his view the passing was only the logical consequence and expression of the notion of succession. Hence it might not be necessary to formulate a general rule on the matter. Moreover, it seemed that when adopting articles 7 and 8, the Commission had not considered it necessary to formulate a general rule on the passing of State property, for that general rule ought logically to have preceded the provisions relating to the date of the passing and to compensation. So he wondered whether it was really necessary to lay down such a general rule in the draft articles.

22. The difference between the title and the text of article 9 showed that the Special Rapporteur had had doubts on that point. All State property was not necessarily situated in the territory of the State. Indeed, in other articles the Special Rapporteur had referred to State property situated outside the territory of the State. But if it was intended to lay down a general rule in article 9, that rule should cover all State property, so the wording proposed by the Special Rapporteur would have to be amplified. That was a further reason for pondering the need for a general rule.

23. In his opinion, the other questions should be settled before the rule in article 9 was inserted in the general provisions. The words "necessary for the exercise of sovereignty" seemed logical if the intention was to distinguish between certain categories of State property, such as property in the public domain and property in the private domain; but that distinction was not necessary. On the other hand, the concept of sovereignty was well known and generally accepted, and it played an important role in political and legal life. Hence it was acceptable. But the nature of the State and differences between legal systems should first be taken into consideration; for the definition of State property in internal law depended on the nature of the State: it was not the same in socialist and capitalist States and differed even within those two classes of States. It was not necessary to go into those details, however, and for the time being it would be better to speak of State property in general. In that regard he was satisfied by the definition given in article 5. The wording proposed by Mr. Elias was very general and emphasized the importance of the passing of State property. Nevertheless, he doubted whether article 9 was really necessary.

24. Mr. TSURUOKA said he thought the draft articles under consideration should be modelled as closely as possible on the draft articles on succession of States in respect of treaties. The Special Rapporteur should continue his efforts in that direction, so that the structure of the two drafts might be alike and the terminology the same. With regard to the latter point, he noted that article 2 of the draft on succession of States in respect of treaties, adopted at the previous session,[10] defined the

[10] *Ibid.*

expression "newly independent State", whereas article 16 of the draft under consideration referred to "the territory which has become independent", although that expression was not defined. Again, the notion of the transfer of part of a territory was explained in article 14 of the draft on succession of States in respect of treaties, whereas it was merely mentioned in articles 12 and 15 of the draft under consideration. Similarly, articles 30, paragraph 1, and 33, paragraph 1, of the draft already adopted, which dealt, respectively, with the uniting of States to form one State and the separation of a State to form one or more States, were more detailed than article 20 and the subsequent articles of the draft under consideration, which referred to a union of States without defining its meaning.

25. As to article 9, he thought it was only after it had examined the whole draft, or at least the provisions on succession to State property, that the Commission would be able to decide whether to retain that article. He was not opposed to the provisional adoption of article 9; but the words "the exercise of sovereignty over the territory to which the succession of States relates" should be amended on the lines suggested by Mr. Elias, with the addition of the saving clause "unless it is otherwise agreed or decided", and the three criteria proposed by Sir Francis Vallat should be taken into account. Suitable wording would have to be chosen if the principle in article 9 was to be correctly applied. The commentary to the article might give some explanations and indicate that, in case of doubt, property should be presumed to be public rather than private.

26. Mr. REUTER, referring to the questions of principle and method raised by the Special Rapporteur, said that, whenever possible, it was better to state a general rule than a special rule.

27. He was not opposed to retaining article 9, but would not be able to give a final opinion until its consequences became clear. There was no reason why article 9 should not be referred to the Drafting Committee, though the Commission would have to reconsider it after examining all the other articles of the draft. The succession of States to property was clearly much more complicated than succession to treaties. In addition, article 9 could apply to different types of succession, which should be duly taken into consideration.

28. The Special Rapporteur had also raised the question whether the rules of his draft should be set solely within the framework of international law or should refer to internal law. Unlike treaties, property was governed more by internal than by international law. Depending on the articles concerned, it would sometimes be better to formulate rules of pure international law, and sometimes to refer to internal law. A close examination of other rather complicated fields, such as economic rights and human rights, showed that at the international level there was a constant mixture of *renvois* to internal law and formulation of new principles.

29. Like other articles of the draft, article 9 referred to the territory. It spoke of "sovereignty over the territory", which should be distinguished from "sovereignty in the territory". For example, in his draft article 16 the Special Rapporteur applied the principle stated in article 9. Article 16 provided that the successor State should have at its disposal the currency, gold and foreign exchange reserves placed in circulation or stored in the territory which had become independent and allocated to that territory. That currency and those reserves had certainly enabled the predecessor State to exercise its sovereignty in the territory which had become independent, and the new State should naturally be able to claim such property. Although that principle had not often been recognized in practice in the case of a territory which had become independent, it was at least well established so far as unions of States were concerned. Article 9 was therefore in keeping with that solution. But it might happen that the property in question, while permitting the exercise of sovereignty over the territory which had become independent, was not situated in that territory. So it seemed that a seceding State could claim the weapons which had been used to exercise the sovereignty of the former State over the territory that had become independent. Such claims would be particularly astonishing if they related to air or naval forces of the former State. That was why it was important to consider all the possible implications of the principle stated in article 9, especially those which, although logical, might give offence to States.

30. Draft article 11, under which the successor State became the beneficiary of the debt-claims receivable by the predecessor State by virtue of its sovereignty or its activity in the territory, was based on a territorial link less close than that required for physical property, and it could be seen that throughout the draft articles the closeness of the territorial link depended on the particular case concerned. He well understood those differences in treatment but thought they called for an evaluation of the principle under consideration in the different situations that might arise.

31. Mr. CALLE Y CALLE congratulated the Special Rapporteur on his report and on having taken account in his work of the new methods of formation of a State which were likely to predominate in the future and which made the codification of rules governing succession so interesting. Oppenheim and other writers had said that there were no general rules of succession and that each case was *sui generis*; [11] the Commission itself had expressed a preference for examining the *leges speciales* before determining whether there were general principles which the international community as a whole could apply.

32. The object of article 9 should be to establish clearly the principle that the successor State should receive all the property, of whatever type or class, used by the predecessor State in the exercise of the public authority inherent in sovereignty. According to the provisions already approved by the Commission (A/CN.4/282, chapter III), such property should pass automatically, without compensation, to the successor State, except as otherwise agreed or decided by the parties concerned, and without prejudice to the rights of third parties. From the general rather than the legal point of view, he believed

[11] See Oppenheim, *International Law* (8th ed.), vol. I, p. 158, section 81.

that such a rule was necessary. It seemed, however, that the order of articles 8 and 9 should be reversed: the provision that State property passed to the successor State should come first, and be followed by a provision specifying how the passing was to take place.

33. The *raison d'être* of article 9 was the phrase "State property necessary for the exercise of sovereignty over the territory to which the succession of States relates". The word "territory" was important, first because there was no succession if no territory passed from one sovereignty to another, and secondly because it served to localize the property subject to succession. It was essential to determine whether the word "sovereignty" meant the exercise of sovereignty within the territory concerned or the sovereignty of the territory itself. Colonies had formerly been considered as an integral part of the metropolitan country, but the modern view, confirmed by United Nations declarations, was that the colonial Power merely administered a territory and that sovereignty was vested in the territory itself and, by extension, in its inhabitants.

34. It was important that the word "sovereignty" should be retained in the article, for sovereignty constituted the reason why a State existed and why it had property, some property being virtually essential for the manifestation of sovereignty. As the Special Rapporteur had clearly explained, property so closely linked to the exercise of sovereign power could not be left in the hands of the predecessor State; if it were, there would be no succession, since there would be no transfer of sovereignty. The Commission itself had defined "succession" as "the replacement of one State by another in the responsibility for the international relations of territory". [12]

35. With regard to the amended text proposed by Mr. Hambro, Mr. Ago had suggested that the expression "performance of State tasks" might be replaced by a more precise phrase such as "the exercise of governmental authority". [13] In addition, Mr. Ustor had pointed out that a State might acquire property which was neither necessary nor used for the performance of State tasks, but which it would be reasonable to transfer. [14] Noting that the title of draft article 9 spoke of the passing of "all" State property, but that the word "all" did not appear in the body of the article, he reiterated his view that all State property connected with the exercise of governmental authority in the territory to which the succession related, and belonging to the predecessor State, should pass to the successor State. That being so, he found the amendment proposed by Mr. Elias both succinct and essentially correct, particularly in view of its reference to the definition of State property given in article 5.

36. Mr. HAMBRO said that apparently he had been unclear in his statement at the previous meeting, [15] for he had been misunderstood. He had neither said that sovereignty did not exist, nor tried to abolish the concept. What he had said—and his view had been confirmed by subsequent speakers—was that the concept of sovereignty was so disputed and so vague that it could not possibly be used as a frame of reference for legal rules. He still held that view.

37. Furthermore, the criticism that the phrase "used for the performance of State tasks" was as vague as the words it was designed to replace was unjustified, for in making his proposal he had added that the property in question must be "necessary" for the performance of State tasks, an idea that should be understood in the light of the internal law of the State concerned. There could be no once-and-for-all definition of the State property concerned, since the situation varied according to the nature of the State.

The meeting rose at 12.55 p.m.

[12] See document A/9610/Rev.1, chapter II, section D, article 2.

[13] See previous meeting, para. 45.

[14] *Ibid.*, para. 28.

[15] *Ibid.*, paras. 13-16.

1320th MEETING

Monday, 2 June 1975, at 3.10 p.m.

Chairman: Mr. Abdul Hakim TABIBI

Members present: 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.

Succession of States in respect of matters other than treaties

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

[Item 2 of the agenda]

(*continued*)

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR

ARTICLE 9 (General principle of the passing of all State property) [2] (*continued*)

1. The CHAIRMAN invited the Commission to continue consideration of draft article 9.

2. Mr. QUENTIN-BAXTER said he was struck by the importance assumed by the situation of sovereignty over a piece of territory. Where there were no special circumstances and where no special rules applied, the new sovereign in the territory to which the succession of States related would succeed to the State property situated in that territory. That would be so in all cases, ranging from one extreme to the other. The first extreme was that of an orderly devolution, where a newly independent State emerged from a slow and disciplined process of development of autonomous institutions; in cases of that kind, the vast preponderance of State property, expecially corporeal property, in the territory to which the succession related, would pass to the new sovereign. At the other extreme, there were the cases of emergence of a new

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

[2] For text see 1318th meeting, para. 7.