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Summary record of the 1323rd meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
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and in the case of socialist countries, activity by a legal person in civil law in the territory which had belonged to the predecessor State and to which the succession of States related. For example, if a State had invested capital abroad in a civil-law company, could that capital be regarded as State property? Certainly not, for in that case, the State had not acted as a State, but as a legal person under its own civil law. The capital invested by a State in a civil-law company could not, therefore, be transferred to the successor State as State property, since it was not State property. Thus, if the successor State decided to nationalize a private enterprise, the capital invested in that enterprise by the predecessor State as a legal person in civil law could be nationalized without any compensation. It followed that the question of State debt-claims referred to in article 11 did not really belong to the topic of succession of States.

27. For the time being, he thought the Commission should keep to the question of State property in the strict sense; it should wait until it had disposed of that question before trying to settle the matter of State debt-claims. He agreed with Mr. Hambro that the French term "*créances d'Etat*" was much broader than the English expression "State debt-claims".

28. Mr. TSURUOKA said he shared most of the doubts expressed about article 11. As in the case of article 10, he urged the Commission to defer its decision on the question whether article 11 should be retained as one of the general provisions and, if so, in what form. He wondered whether what was to be said in article 11 had not already been said in the previous articles, in particular in article 9, as amended by the Drafting Committee [12] in the light of the proposal by Mr. Elias and the comments by Mr. Kearney and Sir Francis Vallat.

29. Most members of the Commission had taken the view that article 9 should refer only to the passing of State property in general, without touching on the question of the substitution of sovereignties. The Special Rapporteur himself had said that article 11 was only an application of the general rule in article 9. As it stood, therefore, article 11 was not justified, since it related not only to *lex gestionis*, but also to *lex imperialis*. In the second case, what was involved was not the effects of the succession of States, but the succession of States as such—in other words, the substitution of one sovereignty for another. But article 11 was meant to deal with State property, not with sovereignty itself. Consequently, everything pertaining to *lex imperialis* should be excluded from the article, and only what pertained to *lex gestionis* should be retained.

30. He recognized, if not the necessity, at least the practical advantage of formulating a general rule on State debt-claims; but he thought that such a general rule could not be worked out until the many problems it raised had been examined and settled one by one. The Commission should therefore defer its decision on article 11.

31. Sir Francis VALLAT said that most questions arising in connexion with State succession in general, and with succession to State property in particular, would be settled by agreement or by the exercise of sovereign powers, and the Commission was really trying to make provision for the exceptional cases. It was drafting residual rules, and the fact that draft article 11 would apply only to exceptional cases was no reason for omitting it. He agreed with its underlying principle, which should be expressed somewhere in the draft articles. Whether it should be left in article 11, subsumed under article 9, or placed elsewhere, was a drafting question. The Commission should not be afraid to deal with particular concrete problems, but should resist the tendency to present governments with abstract rules that would be difficult to understand and apply.

32. Draft article 11 was clearly related to article 5 and to article 9. It also had links with articles yet to be considered, especially articles 13, 17, 21 and 29 (A/CN.4/282). For example, it would be difficult to invest funds, as contemplated in article 13, without creating a debt-claim in some form. When draft article 13 came to be considered, its terms would have to be brought into line with those of draft article 11 or vice versa; at the moment, the two articles applied to quite different situations, inasmuch as one referred to sovereignty and activities in the transferred territory, and the other to funds situated in, or allocated to, the transferred territory. Paragraph 2 of article 13 also introduced the question of costs and liabilities. References to assets, rights and debt-claims might create the impression that only the positive side of succession to State property was considered important and that such property could be taken over free of all obligations attaching to it. Such an emphasis could have unfortunate implications regarding the negative side of succession.

33. He shared Mr. Ushakov's doubts about the equivalence of the terms "*créances d'Etat*" and "State debt-claims". The latter was not an English legal term: English lawyers would speak of "liquidated" or "unliquidated" claims. He was not sure whether the term "debt-claims" would include unpaid claims for damages, for example. If article 11 was retained, it should not give the impression that certain kinds of claim would pass to the successor State while others, equally justified in principle, would not. That point should be considered by the Drafting Committee.

The meeting rose at 1 p.m.

1323rd MEETING

Thursday, 5 June 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.

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[12] See 1329th meeting, para. 2.

Organization of work

(resumed from the 1313th meeting)

1. Mr. KEARNEY said that the small advisory group of the Enlarged Bureau had discussed ways of speeding up consideration of the draft articles on State succession and had concluded that those in section 2, "Provisions relating to each type of succession of States" (A/CN.4/282), could be more expeditiously dealt with if they were reproduced in a comparative table, using a separate column for each type of succession. The corresponding articles, for example, articles 12, 16, 20 and 28, would be on the same line, so that their differences and resemblances would be easy to see. In that way, the Commission might even be able to consider four articles at a time.

2. Sir Francis VALLAT supported that procedure and suggested that the work might be speeded up further, at that stage, by leaving aside the general articles on third States, consideration of which might take some time.

3. Mr. BEDJAOUI said he was grateful to the advisory group for its proposal, as he was in favour of any arrangement which could help the Commission to save time. He pointed out, however, that the three articles X, Y and Z, relating to the property of third States, had been suggested to him by comments made by members of the Commission in 1973. By those articles he had tried to dissipate certain anxieties which had then been expressed. The three articles should not take up much time, as they raised no major problems. Moreover, he feared that when the Commission took up the different types of State succession and the different classes of State property, it might need to consider what happened to the property of third States. In his opinion it would therefore be preferable to deal with that question quickly, before passing on to the different types of succession. Consideration of the three articles on the property of third States would make the Commission's work easier later on.

4. Mr. KEARNEY said that, since the proposed comparative table could not be prepared before Monday, the Commission would still have time to discuss draft articles X, Y and Z, perhaps taking them up together.

5. The CHAIRMAN said he took it that the Commission wished the Secretariat to prepare the proposed comparative table of the draft articles in section 2.

It was so agreed.

Succession of States in respect of matters other than treaties

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

[Item 2 of the agenda]

(resumed from the previous meeting)

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR

ARTICLE 11 (State debt-claims) [2] *(continued)*

6. Mr. SETTE CÂMARA said he had no difficulty in accepting the rule in article 11, though it was so obvious that he doubted whether the article was necessary. The question it dealt with was already settled by articles 5 and 9 (A/CN.4/282). The subject of debts in State succession was extensive and complicated, and it might be misleading to devote only one article to it, dealing solely with the position of creditor States. The nature of the succession played an important part in the matter of debt: for example, the position would depend on whether the predecessor State disappeared or retained its personality, and even on the viability of the predecessor State. There were also many kinds of debt. As the principle was already laid down in articles 5 and 9, it seemed unwise to deal with a particular aspect of the matter.

7. He suggested that draft article 11, like draft article 10, should be placed in square brackets and left aside until examination of the other articles had shown whether a special article on debts was needed.

8. Mr. RAMANGASOAVINA said he thought article 11 was very important, because the successor State must be able to rely on debt-claims which had arisen before the date of the succession, but were needed to ensure the continuity of the State despite the change of sovereignty over the territory. To question the need for the article would amount to presenting the choice between the principle of continuity and the "clean slate" principle in regard to that particular aspect of State property. But as several members of the Commission had emphasized, the sovereignty of the State entailed continuity of its services and institutions. It was, indeed, obvious that in order to survive, the successor State must have the means necessary for the performance of its tasks and the functioning of its services, its institutions and its defence. Hence it must be able to count, immediately, not only on the patrimonial property left by the predecessor State, but also on the resources—taxation, revenue, duties and other receipts—which it was entitled to expect from its nationals and from its property in its territory, and sometimes even outside its territory.

9. Since the succession of States meant replacement of sovereignty and of responsibility, the successor State was entitled, from the date of the succession, to collect debts which were owing—just as it was entitled to levy taxes and to mint money. It had a perfectly legitimate right of succession to debts owing to the predecessor State. The debts in question were fiscal or other debts, the amount of which had been determined before the succession of States, but which had not been collected before the succession. The right to collect those debts guaranteed the continuity of the life of the State, since a break in continuity in the collection of debts might be fatal to the successor State.

10. It might, of course, be found surprising that article 11 referred to claims without mentioning debts—in other words, that it referred to rights without mentioning the obligations which were their necessary counterpart—for a patrimonial succession necessarily included both assets and liabilities. But a reading of the later articles showed that the Special Rapporteur had not lost sight of the successor State's obligations. They were dealt with in article 13, on treasury and State funds, that was to say, public debts. Hence, article 11 was necessary.

11. With regard to terminology, several members of the Commission had made reservations regarding the

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

[2] For text see previous meeting, para. 1.

expression "State debt-claims" used in the English text of the article. In French law the word *créance* and the word *dette* certainly had very precise meanings: a *créance* was the right to demand payment in money or in kind from another person, whereas a *dette*, which was its counterpart, was the obligation to pay in money or in kind. Thus it seemed that the expression "State debt-claims" did not correspond exactly to the French expression *créances d'Etat*. In that respect, as in the case of movable and immovable property, the common law systems were not quite the same as the code systems, and the terminology was not entirely equivalent. He believed, however, that in the French text the word *créances* was perfectly correct and had a very precise meaning. On the other hand, he had reservations about the term *redevables*, which in his opinion could only be applied to persons, and which he proposed should be replaced by the word *dues*. In addition, he would prefer article 11 to refer to debt-claims receivable by the predecessor State "by virtue of the exercise of its sovereignty *and* its activity in the territory", because "sovereignty" and "activity" were two necessary terms which were not mutually exclusive, but complementary, sovereignty being the basis of the right to collect debts and activity being the purpose of that right, since it meant the functioning and the very life of the State.

12. He considered that article 11 was necessary and perfectly appropriate in the draft articles, since it was an essential article which could be applied to all the types of succession contemplated. With a few changes in terminology its wording seemed perfectly acceptable.

13. Mr. USTOR said that the opening phrase of paragraph 1 of the original version of draft article 11, [3] "Irrespective of the type of succession", indicated that the article had been intended as a general rule. In his sixth report, however, the Special Rapporteur had stated in his commentary to article 11 that that article and the following articles to some extent represented *lex specialis*, as opposed to the *lex generalis* laid down in article 9. [4] But a special rule was justified only if it provided a solution different from that provided by the general rule, and that did not seem to be true of the present wording of article 11. It was obviously difficult, if not impossible, to formulate articles of general validity for all types of succession.

14. In citing instances of the treatment of State property, the Special Rapporteur had often referred to peace treaties; the Commission should, however, be very cautious about accepting peace treaties as precedents or as proof of custom, because they rarely reflected customary international law and very often contained rules conflicting with general international law.

15. Mr. CALLE Y CALLE said he thought that the intended meaning of the proposed rule on the complex and delicate problem of debt-claims in cases of succession was conveyed more accurately in the Spanish version than in the other two languages. *Los créditos ... de que era titular el Estado* accurately described what should pass to the successor State as part of the property, rights and interests previously owned by the predecessor State. Such claims would include claims to unpaid taxes, but also, for example, income from real property and the proceeds of sales. Draft article 11 rightly covered all kinds of claims that had previously been vested in the predecessor State by virtue of its sovereignty or its activity in the territory concerned.

16. It would be desirable to apply some test other than that of sovereignty, for the article was intended to apply to all types of succession, including cases involving newly-independent States. It was undesirable to give the impression that there had been sovereignty prior to succession in all cases. The term "activity", however, was not entirely satisfactory as an alternative to the sovereignty test and should perhaps be replaced by the word "administration", since debt-claims arose as often from the predecessor State's administration of the territory as from its commercial activities in the territory.

17. Although draft article 11 laid down an accepted general rule, it was also a residual rule, in that debt-claims were in practice often the subject of special agreements or settlements. It would therefore be appropriate to insert some such phrase as "unless otherwise agreed", as Mr. Elias had suggested. [5]

18. Mr. BILGE said that article 11 was useful and that it complemented article 9 in so far as it dealt with one of the classes of State property. He therefore accepted it, subject to certain reservations already made by other members of the Commission.

19. He agreed with Mr. Kearney that it was necessary first to define the legal nature of the acquisition by the successor State of the claims of the predecessor State. In that matter, the Commission should be guided by article 6. It would also be necessary, as Mr. Tammes had said, to determine which claims passed to the successor State. [6] That should not be difficult, since the notion of State debt-claims was well defined. In that respect the Commission should be guided by article 9. In addition, as Mr. Elias had said, article 11 should refer not only to State claims, but also to the obligations attaching to those claims.

20. He wondered whether, as in the case of article 9, succession to claims could not perhaps be geographically limited to the territory to which the succession of States related. He did not think that limitation could be applied to all types of succession, especially not to cases in which the predecessor State disappeared completely.

21. Mr. QUENTIN-BAXTER said that obviously neither article 11 nor any other article on State debt-claims could be regarded as a fetter on the sovereignty of a State, affecting its autonomy as the law-maker in its territory. If the new sovereign acted wrongly, it might engage its international responsibility, but that was a matter outside the field of succession to State property. The same question had arisen in the case of article 10 and, in his opinion, draft article 11 could also be dispensed with. The subject of debts could be dealt

[3] *Yearbook ... 1971*, vol. II, Part One, p. 185, article 9.

[4] *Yearbook ... 1973*, vol. II, p. 28, para. (2).

[5] See previous meeting, para. 21.

[6] *Ibid.*, para. 13.

with in the context of article 5; but in the realm of State property matters were clearly defined, and any rule must be made to mean what was intended.

22. Draft article 11 could not properly be described as a particular application of the general rule in article 9, which, although not yet in its final form, would probably lay down a norm subject to exceptions. It was important to avoid the implication that draft article 11 was to be construed as a limitation on article 9: it was intended to complement that article by clarifying a difficult area. The two articles were interdependent and should therefore be very carefully drafted. No decision had yet been reached on where the boundary between general rules and special rules lay, or on the relationship between them. The Commission's attitude in the present instance should be the same as that which it expected to adopt in regard to the draft articles yet to be considered. If retained, draft article 11 should add substance to the bare principles laid down in articles 5 and 9.

23. Mr. BEDJAOUI (Special Rapporteur) observed that, on the whole, the members of the Commission considered that draft article 11 was useful and necessary and that it should be referred to the Drafting Committee. Some of the comments made during the discussion nevertheless called for clarification.

24. For example, Mr. Ushakov had tried to show that the article did not concern State property, and to that end had advanced three arguments. [7] First, he had contended that, in so far as it related to tax claims, article 11 dealt only with an exceptional case. But if one examined what happened in reality, three stages could be distinguished: the arising of the right to levy a tax, the tax declaration and the collection of the tax. In the first stage, the State decided to levy a tax for a certain period, such as one year. In the second, the taxpayer filed a tax declaration for the previous year; that second stage could itself last for one year. The third stage was the collection of the tax, which could last another year. Thus the collection of taxes by the successor State on the basis of an act of sovereignty by the predecessor State, was not carried out only during a transitional period, such as the time between the *de jure* separation and the *de facto* separation of a State, but often over a much longer period. It should not be concluded from those facts that the predecessor State was entitled to collect taxes owing after the succession had occurred, but rather that the successor State might be left with declarations in respect of which the tax had not yet been collected. The taxes collected in the first year after the succession of States were often taxes due from private persons or companies on their income for the previous two years. In fact, the tax debts collected during the transitional period between the *de jure* creation and the *de facto* creation of the successor State were relatively few, whereas the tax debts arising under the legal order of the predecessor State and collected by the successor State during the next few years following the succession, represented large amounts. They comprised all the taxation of a State for several years.

25. Secondly, Mr. Ushakov had observed that the debt-claims of the predecessor State could not be due to it by virtue of its activity in the territory in question, because it had withdrawn from that territory at the time of succession. The answer to that argument was that it was the activity of the predecessor State before the succession which was referred to. The predecessor State could never collect all its debt-claims or liquidate all its patrimonial rights before withdrawing from the territory. There were thus three possible solutions: to let the predecessor State collect its debt-claims after the succession, which would infringe the sovereignty of the successor State; to regard the claims as being extinguished, which would not be satisfactory either; or to let the successor State collect the debts as proposed in article 11. In addition, Mr. Ushakov had argued that any private activities carried on by the predecessor State in the territory in question must necessarily have been conducted through a legal person under its civil law, so that State property was not involved. In that connexion, allowance had to be made for all the legal concepts applied in the different systems of law, even if they differed widely from concepts familiar to individual members of the Commission. Article 11 took account of the fact that, in some systems of law, the State could carry on a commercial or industrial activity without acting through a legal person in private law.

26. Thirdly, Mr. Ushakov had remarked that debts owed to the predecessor State by a third State as the result of a loan, for example, could not be receivable by the successor State only. He (the Special Rapporteur) had been aware of that problem but had not wished to settle it in article 11. A claim of that kind did not pass to the successor State under article 11, because the debt was not owed to the predecessor State by virtue of "its activity in the territory". However, if the loan made by the predecessor State to the third State had some connexion with the territory, the successor State might become the beneficiary of the claim to the extent of that connexion. In any case, article 11 applied to State debt-claims only in so far as they were connected with the territory.

27. The use of the words "shall become the beneficiary of" had caused Mr. Kearney to ask whether, under article 11, the successor State was considered as the only real creditor after the succession. [8] Mr. Kearney had wondered whether the successor State would have a claim against the predecessor State if the latter had collected the debt during the "transitional period". On that point, he (the Special Rapporteur) referred to draft article 6, according to which a succession of States entailed the extinction of the rights of the predecessor State; it followed, in particular, that its right to recover debts disappeared. According to article 7, the rights of the predecessor State became extinct on the date of the succession of States, whereupon the successor State became the owner of the claim. As was shown by the Czechoslovak, Polish and French judicial decisions he had cited at the previous meeting, [9] the payment of debts to the predecessor State did not constitute a discharge

[7] *Ibid.*, paras. 24 *et seq.*

[8] *Ibid.*, para. 15.

[9] *Ibid.*, paras. 6-10.

vis-à-vis the successor State. On the strength of article 6 it would be open to the successor State to apply to the predecessor State for reimbursement of the amount improperly collected.

28. In fact, Mr. Kearney's question indirectly raised the problem of the possible offsetting of the debt which a State or individual owed to the predecessor State against any claim such a State or individual might have against the predecessor State. According to the Czechoslovak judgements, [10] a private individual was not entitled to do such offsetting, though the situation was quite different when a third State was both a creditor and a debtor. Under article 11, the successor State could not be held liable for debts which the predecessor State owed to a third State. That question would be dealt with in the provisions of the draft relating to State debts. It was only after it had dealt with State debts that the Commission would be in a position to consider the possibility of offsetting operations. It was necessary to distinguish between a debt-claim of the predecessor State owed to the successor State by a third State in accordance with article 11, and a debt which the predecessor State might have contracted to the third State.

29. The English translation of article 11 seemed to be the source of certain misunderstandings. For example, Mr. Elias had observed that the claims passing to the successor State should be accompanied by any outstanding charges. In his previous reports, however, he had stated that the property which passed to the successor State passed to it as such; that was true of debt-claims in particular. Moreover, in introducing draft article 11 at the previous meeting, he had expressly referred to mortgage debts. [11] Mr. Tammes had questioned whether article 11 was general enough to cover, in addition to income from State property, income from non-State property, such as that from a State's financial participation in industrial enterprises. He (the Special Rapporteur) considered that such income should pass normally to the successor State if it was derived from an activity carried on in the territory to which the succession related. Moreover, neither article 11 nor article 9 excluded such income.

30. In view of a suggestion made by some members of the Commission who wished to make article 11 a residual rule, he suggested that the Drafting Committee might consider the possibility of adding the words "unless otherwise agreed".

31. In his sixth report, the rule in article 11 had been termed *lex specialis*. When he had prepared that report, his draft had been divided into general provisions, provisions common to all types of succession of States and provisions relating to each type of succession. At the commission's request, he had subsequently recast the text by eliminating the provisions common to all four types of succession. That was why the article relating to State debt-claims, which had been among the provisions common to the various types of succession, had then constituted *lex specialis*, whereas it should now be regarded as stating *lex generalis*, since it was among the general provisions. That would explain the point raised by Mr. Ustor.

32. Although the question of claims and the question of debts might be interrelated, he did not think that article 11 should be left aside until the Commission had considered the provisions relating to debts, as Mr. Sette Câmara had suggested. In law, claims were distinct from debts, and they should be studied separately. In particular, localized debts, State debts and government debts, which had nothing to do with the subject dealt with in article 11, would have to be studied separately later. There again, the English version of article 11 might account for the difficulties encountered by some members of the Commission.

33. In reply to a comment by Mr. Ramangasoavina, he explained that in the expression "its sovereignty or its activity" the conjunction "or" was intended to be cumulative, not to denote an alternative. The term "sovereignty" could be replaced by the expression "governmental authority", since it did not apply to cases of decolonization; for according to the Declaration on the Granting of Independence to Colonial Countries and Peoples [12] and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, [13] the colonizing State did not exercise real sovereignty over a non-self-governing territory, but acted as an administering authority.

34. The French term "*redevables*", the Spanish equivalent of which Mr. Calle y Calle considered satisfactory, had been criticized by Mr. Ramangasoavina. The reason why it had been preferred to the word "*dues*" was that its meaning was broad enough to cover not only existing rights, but also future rights.

35. He appreciated that, as Mr. Ustor had said, peace treaties should be interpreted with great caution. His purpose in mentioning them had been to show that they did not always confirm the solution adopted in article 11. Since his very first report, he had warned against the solutions appearing in peace treaties, and against "abortive or precarious solutions" which would inevitably be called in question again soon by the successor State. [14]

36. Mr. KEARNEY said that, having heard the Special Rapporteur's enlightening remarks on the wording used in article 11, he was in a position to make a number of comments.

37. In the first place, since article 11 governed problems which largely affected questions of private law, the wording should be very precise as to the rights and obligations covered by its provisions. In the absence of such precision, those provisions could prove totally ineffective. For example, the transfer envisaged in article 11 might include claims to debts under a formal instrument of the type of a trust indenture. If under such an instrument

[10] *Yearbook ... 1971*, vol. II, Part One, p. 189, para. (20).

[11] See previous meeting, para. 7.

[12] General Assembly resolution 1514 (XV).

[13] General Assembly resolution 2625 (XXV), annex.

[14] *Yearbook ... 1968*, vol. II, p. 100, para. 35.

a bank was required to make payments to a particular State, it would not make payments to any other State because vague language in an international convention could be interpreted to the effect that it should do so. In order to achieve that result—in other words, in order that the successor State should become the beneficiary in the place of the predecessor State in the circumstances envisaged in article 11—the international convention would have to give legal protection to the bank that made the payment. Failing such protection, the bank would simply pay the amount due into court and allow the two States concerned to fight out the issue between themselves. That problem was a very real one and could not be avoided when article 11 came to be redrafted. The text should make it perfectly clear that, from the legal point of view, the successor State became the actual creditor. It should also specify unambiguously that payment made to the successor State discharged the debtor from all liability towards any other claimants.

38. There was a second matter for which specific provision should be made. Article 11 should state that if, under the conditions governing the debt, the debtor had no other choice than to make payment to the predecessor State, then that State was under an obligation to pay the proceeds to the successor State without delay.

39. A third problem was that of mixed claims arising from activities carried on before the succession by the predecessor State in the territory to which the succession related, combined with activities in the remainder of the predecessor State's territory. A complication was that the activities in question could be continuing. It would not be easy to make due allowance for that problem; one possibility would be to hold the matter over until the Commission had considered the question of public debts. If that course was adopted, a full explanation should be given in the commentary to article 11.

40. Lastly, it was important to clarify the references to the "sovereignty" and the "activity" of the predecessor State in the territory to which the succession of States related.

41. He hoped that the Drafting Committee would take all those points into account when redrafting article 11.

42. Mr. USHAKOV, after thanking the Special Rapporteur for his explanations, said that the English expression "debt-claims" was misleading because the article was not concerned with debts.

43. Furthermore, under Soviet law, as under the law of some other countries, the State could act either as a public authority or as a person in civil law. In the first case, it was subject neither to the jurisdiction of the Soviet Union nor to that of any other State; in the second case, it was subject to a national jurisdiction. For example, when the Soviet State concluded a treaty with another State, it acted as a State and was accordingly subject to international law. On the other hand, when it concluded a contract with a foreign company, it could agree to be subject either to the jurisdiction of the Soviet Union or to that of another State. In that case, it was acting as a legal person under private law. Hence, it was not always State property that was involved, but the property of a legal person subject to private-law jurisdiction.

44. Mr. BEDJAOUI (Special Rapporteur) replied that a State could indeed act as a legal person and be treated almost like a private person, particularly in the case of a dispute with a foreign company or even with a domestic company. That showed how complex the problem was. Without going into details of the situations that could arise in different States, the essential point was that, where State debt-claims were concerned, article 11 applied.

45. The CHAIRMAN proposed that draft article 11 should be referred to the Drafting Committee.

It was so agreed. [15]

The meeting rose at 12.50 p.m.

[15] For resumption of the discussion see 1329th meeting, para. 9.

1324th MEETING

Friday, 6 June 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. Martínez Moreno, Mr. Pinto, 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 X

1. The CHAIRMAN invited the Special Rapporteur to introduce draft article X, which read:

Article X [2]

Definition of a third State

For the purposes of the articles in the present Part, "third State" means a State which is neither the predecessor State nor the successor State.

2. Mr. BEDJAOUI (Special Rapporteur) reminded the Commission that it had been because of the concern expressed by certain members at its twenty-fifth session [3] that he had introduced into his draft three articles relating to the property of third States: articles X, Y, and Z (A/CN.4/282). Those provisions, which had been drafted in haste, dealt only with property of third States situated in the territory to which the succession related. Several of the provisions relating to the different types of succession, however, referred to a third State not only because it owned property in the territory to which the succession related, but also because property which had belonged to the predecessor State at the time of the succession was

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

[2] Text as revised by the Special Rapporteur.

[3] *Yearbook ... 1973*, vol. I, 1240th meeting.