Document:-

A/CN.4/SR.1324

Summary record of the 1324th meeting

Topic:

Succession of States in respect of matters other than treaties

Extract from the Yearbook of the International Law Commission:-

1975, vol. I

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.

situated in the territory of the third State. He had therefore amended the definition of a third State given in article X so that it would cover both those cases. Various situations could arise. It sometimes happened that a third State did not own any property in the territory to which the succession of States related or that the property it owned was situated in the part of the territory retained by the predecessor State after the succession. Those two situations were not affected by the change of sovereignty. On the other hand, it was important to consider what happened to property of a third State which was situated in the territory to which the succession related and to property which had belonged to the predecessor State and was situated in the territory of a third State.

3. In paragraph (5) of the commentary to article X (A/CN.4/282, chapter IV.D) he had mentioned that the Commission had adopted different definitions of a third State according to the subject-matter dealt with. A third State could, indeed, be defined only in relation to a particular situation or legal act; that was why a specific definition was proposed in the draft. Where State property was concerned, the third State was a former partner of the predecessor State, either because it had owned property in the territory affected by the change of sovereignty, or because property which had belonged to the predecessor State was situated in its territory. It was not necessary to consider the whole of the real relations, including those concerning property of the third State situated in the territory or part of the territory of the predecessor State which was not affected by the succession of States. The succession had no effect on the legal status of such property. The third State was characterized by the fact that it was extraneous to the succession. It was neither the ceding not the succeeding State; nor was it the subject, or a beneficiary, of the territorial change. Consequently, the new definition of a third State which he had proposed was cast in negative form. It could later become a sub-paragraph of article 3, on the use of terms.

4. Sir Francis VALLAT said that he would speak on all three articles of the section entitled "Property of a third State", not only on article X, containing the definition. He had considerable doubts as to whether those articles, and more particularly the substantive article Z, were really essential in the draft. If one State replaced another in the responsibility for the international relations of a territory, that replacement could not possibly have any legal effect on the property of a third State. The succession produced effects only between the successor State and the predecessor State. It was accordingly a wrong approach to think of succession as capable of affecting the rights of any State other than the successor State and the predecessor State, and the adoption of that approach might have the serious implication that property rights of third parties of any kind could be affected by the succession. If the Commission found it necessary to make specific provision for third States in its draft, it would also have to consider the position regarding the property of other third parties such as companies, individuals and institutions.

5. The basic principle in the matter was that, after the succession of States, the legal situation in the territory to which the succession related continued unchanged so long as the new sovereign took no action to alter it. Indeed, there might be room in the draft for a clear statement of that important legal principle.

6. Mr. USHAKOV said that in normal circumstances general rules should not be drafted before special rules, but that in that particular instance it was advisable to introduce a definition of a third State into the draft at once. Nevertheless, the draft articles on the property of third States seemed to be inadequate, since they did not cover the case of property situated in the territory of the predecessor State or of the successor State; and it was not impossible that such property might be affected by a succession of States. Consequently, draft article Z should be more general and should not be confined to property situated in the territory to which the succession of States related.

7. Furthermore, the words "except where this is contrary to the public policy (*ordre public*) of the successor State", at the end of article Z, were not justified. For the principle that the third State's property in the territory of the predecessor or the successor State was not affected by the succession of States should not suffer any limitation, and in any case the application of that principle could not be contrary to the public policy of the successor State. Nor were the words "The rights of a third State pertaining to its property", at the beginning of article Z, satisfactory. It should be made clear that the reference was to the State property of the third State.

8. With regard to article Y, he reminded the Commission that at its twenty-fifth session he had raised objections to the wording of article 5. [4] Under the terms of that article, "State property" meant the property, rights and interests of the predecessor State. If the expression "State property of the third State" were now used in article Y, the words "State property" would mean, in accordance with article 5, State property of the predecessor State, which would be absurd. That difficulty was due to the fact that the definition of State property in article 5 applied to State property of the predecessor State, not to State property in general. Moreover, as it stood, that definition was not satisfactory even in regard to State property of the predecessor State. In the case of decolonization, it was not the internal law of the predecessor State that applied in determining the State property situated in the newly independent territory, but the law applicable to that territory. The Commission should therefore draft a new definition of State property of the predecessor State when it came to examine the provisions relating to newly independent States.

9. While he approved of the substance of article Z, he would prefer it to be drafted in more general terms. He proposed the following text: "A succession of States shall not as such affect the rights of a third State pertaining to its State property situated in the territory of the predecessor State or of the successor State".

10. Mr. HAMBRO said he fully agreed with the views expressed by Sir Francis Vallat. The draft articles under consideration applied only to the relations between the

[4] *Ibid.*, p. 108, paras. 43 *et seq.*

predecessor State and the successor State in the context of the succession of States. The question of the property of third States was wholly outside the subject. Consequently, despite the laudable efforts made by the Special Rapporteur, draft articles X, Y and Z were not necessary or even useful in the context of the draft. Moreover, as those provisions referred only to the property of third States, what would happen to the property of national or international companies, or the property of private persons who were nationals of a third State? There was no obvious reason for drawing a distinction between the property of a third State and the property of other third parties. As it enjoyed all the attributes of sovereignty, the successor State was free to take whatever measures it saw fit to take in its territory with regard to the property of third States and the property of foreign private persons. In particular, it could acquire such property or nationalize it. The questions of price and compensation which might then arise had no connexion with the phenomenon of succession. He therefore considered that the three articles X, Y and Z should be omitted from the draft.

11. Mr. ELIAS said it would be helpful to the Commission if the Special Rapporteur were invited to introduce articles Y and Z at that stage. Articles X, Y and Z constituted a set of new articles intended to supplement the Special Rapporteur's sixth report. Many members, including himself, would wish to comment on all three articles and it would facilitate the discussion if the Special Rapporteur had an opportunity of explaining in greater detail his reasons for proposing the whole set.

12. With regard to article X, he noted the Special Rapporteur's own hesitations, expressed in paragraph (9) of the commentary, where he proposed that the definition contained in the article should be used only provisionally and should not be included in a separate paragraph for insertion in draft article 3, on the use of terms.

13. The main clause of the substantive article Z adequately expressed the essential idea of continuity. As to the concluding exception "except where this is contrary to the public policy (*ordre public*) of the successor State", he noted that the Special Rapporteur himself had serious doubts, for the reasons indicated in paragraphs (7) and (8) of the commentary. Paragraph (8) showed that he had no intention of suggesting that the successor State should be given a free hand in regard to the property of a third State.

14. Unless article Z was heavily revised, in particular by removing the controversial exception concerning public policy, it should have no place in the draft articles.

ARTICLES Y AND Z

15. The CHAIRMAN invited the Special Rapporteur to introduce articles Y and Z, which read:

Article Y

Determination of the property of a third State

For the purposes of the articles in the present Part, "property of a third State" means 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 the third State in the territory to which the succession of States relates.

Article Z

Treatment of the property of a third State

The rights of a third State pertaining to its property situated in the territory to which the succession of States relates shall not be affected by the succession, except where this is contrary to the public policy (*ordre public*) of the successor State.

16. Mr. BEDJAOUI (Special Rapporteur) said that the determination of the property of a third State, which was the subject of article Y, could be effected only in the light of the definition of State property formulated by the Commission in article 5. During the long discussions on that definition he had emphasized the difficulty of determining State property solely by reference to the internal law of the predecessor State. In his third report, he had cited numerous examples of the practice of successor States which had applied their own internal law to determine what property had passed to them. [5] In addition, he had emphasized that, even within the legal order of the predecessor State, a distinction must be made in the case of dependent territories. In that case, two legal orders co-existed, in so far as a colonial State applied in a dependent territory specific legislation different from the more liberal laws in force in the "metropolitan" country. Nevertheless, the Commission had taken the view that reference should be made to the law of the predecessor State, and it was that choice which was the origin of the anomaly pointed out by Mr. Ushakov. In fact, article 5 related to the State property of the predecessor State which could pass to the successor State, but that did not mean that the property of a third State referred to in article Y was not State property. If article Y simply provided that "property of a third State" meant 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 the third State, the difficulty would not be removed, since the property of the third State, wherever it might be situated, including property in its own territory, could not all be defined by reference to the internal law of the predecessor State. Hence it was essential to refer expressly to the property of the third State which was situated in the territory the succession of States related to, and which might be affected by that succession. Thus the property in the territory in question included State property which had been owned by the predecessor State under its internal law, as provided in article 5, and the State property which had been owned by a third State under the same law, as provided in article Y.

17. Referring to Mr. Ushakov's comments, he urged the need to avoid going into details of the legal concepts peculiar to each system of law. The Commission should not inquire whether property was in the public domain or the private domain, or whether a State acted as a sovereign State or as a legal person in private law; it should start from the principle that it was State property according to the internal law of the predecessor State that was concerned, and then consider what happened to it.

18. As to article Z, he stressed that it had been in deference to the Commission's wish that he had introduced

[5] *Yearbook . . . 1970*, vol. II, p. 137, section C.

that article into the draft. Hence he was surprised that some members of the Commission now thought that provision superfluous and feared that it might be interpreted *a contrario* as meaning that the successor State could take over foreign private property. In fact, private property was not dealt with in the part of the draft now being examined, which dealt exclusively with State property. Perhaps that point should be mentioned in the commentary.

19. With regard to the reservation in article Z concerning the public policy of the successor State, to which Mr. Ushakov had referred, he explained that he had in mind cases in which successor States enacted laws preventing the presence in their territory of certain property of a foreign State. It might happen that a State could not tolerate the continued presence in its territory of a mixed State company, because a certain third State had a share in it. In that connexion, he referred to paragraph (4) of the commentary to article Z (A/CN.4/282, chapter IV.D). As Mr. Hambro had rightly observed, a case of that kind had no relation to succession of States. The rights of third States in their property were inviolable, but if the successor State interfered with such property, it did so as a sovereign State, not as a successor State. If article Z only provided that the property of a third State was in no circumstances affected by the succession of States, it might give the impression that the successor State could not touch that property in any way, even if it was not in conformity with its public policy. Consequently, if the reservation concerning the public policy of the successor State was deleted, it would be necessary to explain, in the commentary on article Z, that by virtue of its attributes as a sovereign State, the successor State could, after the succession, take certain action in regard to the rights of a third State.

20. Mr. TSURUOKA considered that the definition of a third State given in article X was acceptable, subject to minor drafting amendments. In the French text, the words *l'Etat tiers désigne un Etat* ... might be replaced by the words *l'Etat tiers s'entend d'un Etat* ... already used in other articles. In addition, to avoid giving article X an unduly negative form, a third State might be defined as "a State other than the predecessor State or the successor State".

21. Since article Y was mainly a linking article, it might usefully be merged with article Z. With regard to the latter provision, he endorsed the principle that the property of a third State was not affected by the succession. He was glad the Special Rapporteur was willing to delete the clause "except where this is contrary to the public policy (*ordre public*) of the successor State", which expressed an idea foreign to succession of States properly so called.

22. He proposed that articles Y and Z should be combined in a single provision which would read: "The succession of States as such shall not affect property, rights or interests which, on the date of the succession, were, according to the internal law of the predecessor State, owned by a third State and were situated in the territory to which the succession of States relates". That wording was consistent with article 12 of the draft articles on succession of States in respect of treaties, according to which territorial treaties were not, in principle, affected by a succession of States. [6] The provisions of the draft under study should be aligned as closely as possible with those of the draft on succession of States in respect of treaties.

23. Sir Francis VALLAT said he wished to reply briefly to the Special Rapporteur's remarks. He was very conscious of the framework in which the Commission was at present working. Article 4 (Scope of the articles in the present Part) and article 5 (State property) had been adopted precisely for the purpose of specifying that framework. State property was defined in article 5 in terms of the predecessor State, and the scope of the articles, as laid down in article 4, was conditioned by that definition. Since the scope of the draft articles was thus confined to the effects of a succession of States on State property as defined in article 5, the subject-matter of article Z was completely outside the subject under discussion. If that article were retained in the draft, it would have the implications to which he had drawn attention earlier.

24. Mr. ŠAHOVIĆ, referring to article X, said that the definition of a third State, in its amended form, was general enough to be introduced into article 3 of the draft. Since a third State was mentioned in several parts of the draft, the definition should apply to all the articles.

25. Articles Y and Z could be merged, as proposed by Mr. Tsuruoka, provided that they remained within the limits of State succession. He gathered from the commentary to article Z that the Special Rapporteur had hesitated before introducing the reservation relating to the public policy of the successor State. He had first referred to property which was unquestionably State property of the third State, such as consulates, and had then considered whether the rule in article Z should not be limited, having regard to the public policy of the successor State. He (Mr. Šahović) believed that the problems which might be raised by the public policy of that State did not belong to State succession proper, even though, in the practical affairs of certain countries, they might be involved in matters of pure succession. For the Commission, however, it was important to distinguish between those two classes of questions and to emphasize the general rule; it might then refer to the other aspect of the problem in the commentary. Personally, he would agree to State property of the third State being accorded the same treatment as the property of aliens. In paragraph (4) of his commentary to article Y, the Special Rapporteur had indicated how he thought the property of a third State should be determined under the legislation of the predecessor State. His explanations suggested that the property in question was State property belonging to the private domain, which seemed to be yet another reason why there was no need for the last clause in article Z, referring to the public policy of the successor State. The question could not be settled however, until after the articles relating to the various types of succession had been considered.

[6] *Yearbook* ... *1974*, vol. II, Part One, document A/9610/Rev.1, chapter II, section D, articles 11 and 12.

26. He noted, lastly, that in his observations on the property of a third State (A/CN.4/282, chapter IV.D), the Special Rapporteur had indicated that there were two ways in which a third State might be affected by a succession of States in respect of State property. He had added that the second aspect of the question could not be examined in the context of the general provisions governing the part of the draft concerning State property. It was precisely because he (Mr. Šahović) was generally in favour of examining each phenomenon as a whole that he now proposed that one provision of article 3 should be devoted to the definition of a third State.

27. Mr. KEARNEY said that, although draft articles X, Y and Z and the Special Rapporteur's commentaries on them showed how the problem of the property of third States was related to the general subject of State property in cases of succession, the articles themselves led into an area of great complexity, beyond the scope of the subject with which the Commission was dealing. In defending the reference to public policy in draft article Z, the Special Rapporteur had spoken of the realities of the situations which the articles were intended to provide for, but the reality to which they related was, in effect, not so much the public property aspect of succession as the relationship between the legal régime of the predecessor State and that of the successor State. One example would be a transfer of territory in which a legal régime permitting the ownership of property by foreign State trading organizations was replaced, on succession, by a different legal régime which did not allow foreign States to own property in the territory for commercial purposes. An attempt to work out rules providing for the problems which could arise from the substitution of one legal régime for another would take the Commission outside the field with which it was concerned—succession to State property. It might be unwise, therefore, to introduce the issue of the property of third States into the series of draft articles under consideration.

28. The Special Rapporteur had said that the provisions were not, as yet, concerned with the kind of property involved or with the question whether it was owned by State trading agencies, but dealt only with the effect of succession on State property. But if the problem of the property of third States was provided for, it would be relevant to know whether that property came under *jus imperii* or *jus gestionis*, for different rules might apply. The rules governing sovereign immunity, for example, differentiated between two types of State ownership. If the rules the Commission was drafting were to apply to the property of third States, such differences would have to be taken into account. That problem would also arise in the case of the other types of property mentioned by Sir Francis Vallat. When once distinctions were made as to the use and ownership of property, they would have to be applied to all property, covered by the provisions, which would then be dealing with the effect of the replacement of one legal régime by another, rather than with the effect of the succession of States.

29. Mr. QUENTIN-BAXTER said that his views on draft articles X, Y and Z followed from what he had said about draft article 11. [7] Any approach to the problem of the property of third States should avoid enlarging the range of variables. The draft should in no way imply that a new sovereign State might be in a different position from that of any other sovereign State. For example, he would find it difficult to agree to the exception at the end of draft article Z. The rule in that article was itself so plainly in conformity with general law that it did not need to be stated, or could be stated in more general terms.

30. As the Special Rapporteur had said, the preparation of the draft articles and commentaries had involved a wide inquiry and a useful review of the definitions and working hypotheses already adopted. The subject had certain parallels in the field of succession in respect of treaties, although care should be taken not to draw false analogies. The provisions relating to the different kinds of succession in the draft on succession in respect of treaties would help the Commission to distinguish the effects of different kinds of succession in matters other than treaties. In drafting the rules on succession in respect of treaties, the Commission had rightly tried to ensure that there would be the minimum disturbance of legal relations between members of the international community, and had therefore been more concerned with the position of third States than in the present series of articles. It was now primarily concerned with the relationship between the predecessor State and the successor State within the framework of the working hypotheses it had adopted, and matters outside that relationship should perhaps be considered as beyond the scope of its present concern. However, it need not take a final decision in the matter at the present stage; it should continue to prepare definitions and adopt working hypotheses for the work in hand.

31. Mr. USHAKOV said that he had no difficulty with the principle stated in article Z, not only where the property of a third State was concerned, but also in regard to any property belonging to a third party—whether it was a State or a private individual. In his opinion, it could even be said that a succession of States as such did not affect foreign property, whether private or public.

32. Mr. SETTE CÂMARA observed that the views of members on the subject under consideration had not changed since the Commission had last discussed it in 1973. In his opinion, the definition in article X was necessary and useful. The draft articles would be incomplete without provisions concerning the position of third States and the preservation of the *status quo* of the State property of third States. The amended version of the definition proposed by the Special Rapporteur was clear and simple. It was almost self-evident, but together with the other two draft articles, if they were combined as proposed by Mr. Tsuruoka, would provide a very good solution. The Drafting Committee should study that proposal and take Mr. Ushakov's suggestion into account.

33. He did not share the concern of some members who thought that if a draft article on third States was included, but no reference was made to the property of foreign legal persons in a territory affected by a succession, that

[7] See previous meeting, paras. 21 and 22.

property would not be protected by international law. The present series of draft articles was concerned only with State property and consequently dealt with the problem of third States in that context. Only States could own State property. He agreed with other speakers that the exception at the end of draft article Z would allow the State too much discretion in matters of public policy, which was an ill-defined concept in law, and would defeat the purpose of the article. He was glad to note that the Special Rapporteur was considering the possibility of deleting that exception and inserting an appropriate passage in the commentary to cover the exceptional situations he had mentioned. Even in the commentary it would be wise to avoid using such terms as "public policy", which could be dangerous or misleading. Such exceptional situations were normally dealt with individually as they arose in practice and, to his knowledge, had caused no difficulties. For example, in Czechoslovakia, under the 1948 Constitution, foreign governments were not allowed to own real property. Several States had already owned property in Czechoslovakia, such as embassies and consulates, when the régime had changed, but their position had been respected and they still owned the property, although foreign States could no longer buy property in Czechoslovakia.

34. Mr. USTOR said he thought it would be useful to include a rule expressing the intention of draft article Z, although it might seem self-evident. He agreed that the reference to public policy was inappropriate and should be deleted. The series of articles under examination was concerned with what happened to State property recognized as such under the internal law of the predecessor State on the date of succession. The successor State's laws came into effect after the moment of succession and could not produce any retroactive or extraterritorial effect. Consequently, no reference or allusion should be made to them in the present context. The Commission had followed the same reasoning when it had adopted the text of article 5.

35. Mr. AGO considered that Mr. Ushakov's proposal for article Z was, on the whole, an excellent formula. He had reservations, however, about the last phrase, "situated in the territory of the predecessor State or of the successor State", which seemed to enlarge the scope of the rule. In his opinion, it would be better to say "situated in the territory to which the succession of States relates".

36. Mr.USHAKOV observed that the rule in question was a very general one which applied not only to property in the territory to which the succession of States related, but also to any property whatever situated in the territory of the predecessor State or of the successor State.

37. Mr. AGO said he was not entirely convinced by that argument, since the succession of States concerned property situated in the territory to which the succession related. The question of State property situated in the rest of the predecessor State's territory was not a matter of State succession, and the Commission should deal only with what came within that topic.

38. Mr. BEDJAOUI (Special Rapporteur) said he noted that all the members of the Commission seemed to agree on the principle that should govern the treatment of the property of the third State.

39. So far as the definition of a third State was concerned, the provision in article X could, as Mr. Šahović had suggested, be put in article 3 (Use of terms) and be amended as suggested by Mr. Tsuruoka, to read: "For the purposes of the articles in the present Part, 'third State' means a State other than the predecessor State or the successor State".

40. Articles Y and Z might be combined in a single article, in accordance with the proposals made by Mr. Tsuruoka and Mr. Ushakov. With regard to Mr. Ushakov's proposal, he shared Mr. Ago's doubts about the advisability of referring to the part of the territory retained by the predecessor State after the succession of States, because the property of the third State situated in that part of the territory did not come within the subject under study. He appreciated Mr. Ushakov's concern that a general rule should be laid down, but thought the Commission should confine itself to property affected by the succession of States. He was sure, however, that Mr. Ushakov's proposal, and that submitted by Mr. Tsuruoka, would provide a useful basis for the work of the Drafting Committee.

41. The CHAIRMAN suggested that draft articles X, Y and Z should be referred to the Drafting Committee.

It was so agreed. [8]

The meeting rose at 12.55 p.m.

[8] For resumption of the discussion see 1329th meeting, para. 19.

1325th MEETING

Monday, 9 June 1975, at 3.10 p.m.

Chairman: Mr. Abdul Hakim TABIBI

Members present: Mr. Ago, Mr. Bedjaoui, Mr. Bilge, Mr. Calle y Calle, Mr. Kearney, Mr. Pinto, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Reuter, Mr. Šahović, Mr. Sette Câmara, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor.

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

1. The CHAIRMAN said that before inviting the Commission to consider article 12, he would give the floor to Mr. Pinto, who wished to speak on the previous articles.

2. Mr. PINTO said that to his regret he had not been able to attend the discussion on the previous articles. He thanked the Chairman for giving him an opportunity to make some comments, which would be mainly on

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