Document:-

A/CN.4/SR.1325

Summary record of the 1325th meeting

Topic:

Succession of States in respect of matters other than treaties

Extract from the Yearbook of the International Law Commission:-

1975, vol. I

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.

articles 9 and 10 (A/CN.4/282), for the attention of the Drafting Committee.

3. Article 9 (General principle of the passing of all State property) referred to State property "necessary for the exercise of sovereignty" over the territory to which the succession of States related; all such property passed from the predecessor State to the successor State. In article 5, however, the term "State property" was defined as meaning property owned by the predecessor State according to its internal law. He had some difficulty in appreciating the distinction between rights to property that were rights of ownership and rights to property that were rights of sovereignty. The definition in article 5, which spoke of property "owned" and specifically referred to the "internal law of the predecessor State" appeared to cover only rights of ownership and not rights of sovereignty. In his view, rights of sovereignty should also be mentioned. Article 10 (Rights in respect of the authority to grant concessions) was particularly significant in that respect, because authority to grant concessions was a sovereign right rather than a right of ownership. Paragraph 3 of that article [2] reserved the "right of eminent domain" of the State over public property and natural resources in its territory.

4. Consideration should be given to the inclusion in the draft—in article 10 or elsewhere—of a general provision on the passing of sovereign rights, especially rights over natural resources, from the predecessor State to the successor State. In that connexion, it was not possible to ignore the Declaration on the Establishment of a New International Economic Order, adopted in 1974 by the General Assembly of the United Nations, [3] operative paragraph 4 (*e*) of which proclaimed "Full permanent sovereignty of every State over its natural resources and all economic activities", as one of the fundamental principles of the new international economic order. The same paragraph provided that "In order to safeguard these resources, each State is entitled to exercise effective control over them and their exploitation with means suitable to its own situation, including the right to nationalization or transfer of ownership to its nationals, this right being an expression of the full permanent sovereignty of the State". The provision concluded with the statement that "No State may be subjected to economic, political or any other type of coercion to prevent the free and full exercise of this inalienable right". That concluding passage was especially significant, in that it spoke of an "inalienable right". Indeed, throughout the Declaration the term "right" was consistently used to describe what States, or at least most of them, regarded as a right.

5. He suggested that the use of the term "concession" should be avoided in article 10 and elsewhere; it might perhaps be replaced by the formula "rights of exploration, exploitation, management or use".

ARTICLE 12

6. The CHAIRMAN invited the Special Rapporteur to introduce article 12, which read:

Article 12

Currency

1. Currency, gold and foreign exchange reserves, and, in general, monetary tokens of all kinds placed in circulation or stored by the predecessor State in the transferred territory and allocated to that territory shall pass to the successor State.

2. The assets of the central institution of issue in the predecessor State, including those allocated for the backing of issues for the transferred territory, shall be apportioned in proportion to the volume of currency circulating or held in the territory in question.

7. Mr. BEDJAOUI (Special Rapporteur) said that with article 12 the Commission was taking up the typology of succession. The first type of State succession considered was the case of transfer of part of the territory of one State to another State. In that case, two States, generally neighbours, carried out a correction of their common frontier that might involve the transfer of a greater or smaller part of the territory of the predecessor State to the successor State. It was also possible that the two States might not be neighbours—for instance, in the case of cession of an island. It might be a small commune or a whole province that was transferred, but neither State disappeared and there was no change in the status of the predecessor or the successor State as a subject of international law. In the case considered, there were two pre-existing States, two separate legal orders and two sovereignties at the moment of the succession of States. There were also two currencies, generally different, and each State exercised separately the privilege of issue in the territory under its jurisdiction. In that situation what happened, first, to the currency in the part of the territory transferred, and secondly, to the currency in the part of the territory remaining under the authority of the predecessor State? That was the two-fold question which was answered by paragraphs 1 and 2 of article 12.

8. In the transferred territory it was possible to distinguish, at the moment of the succession of States, the currency in circulation; the reserves of gold and foreign exchange stored or held in the territory and allocated to that territory; and reserves of gold and foreign exchange which happened to be in the territory, but belonged to the predecessor State.

9. A further point to be considered was what happened to the privilege of issue of the predecessor State in the transferred territory. As he had said in paragraph (5) of the commentary to article 12 in his sixth report, [4] it was obvious that the privilege of issue could belong only to the new sovereign in the transferred territory. He had refrained from stating that obvious rule, because what was involved was a regalian right, an attribute of sovereignty vested by its very nature in the State which exercised authority over the territory. As he had pointed out in his previous reports, that privilege of the successor State was sometimes subject to conventional limitations which might cast doubt on its recognition. But the successor State enjoyed the privilege of issue, even if it delegated the exercise of that privilege to another State by treaty. The rule that the privilege of issue belonged to the successor State was a primary rule which derived from the constituent aspects of the State, since competence in

[2] Deleted by the Special Rapporteur in his revised text; see 1320th meeting, para. 35.

[3] General Assembly resolution 3201 (S-VI).

[4] *Yearbook . . . 1973*, vol. II, p. 35.

monetary matters was a fundamental element of the sovereignty of the State. He had therefore considered it unnecessary to state the rule in article 12.

10. The sovereign exercise of the successor State's privilege of issue had sometimes in the past been limited by treaty, as he had pointed out in his sixth report. [5] For instance, under the terms of the Convention between the United States of America and Denmark providing for the cession of the Danish West Indies, the United States had agreed to maintain the privilege of issue conferred by Denmark on a bank. When Genoa had been ceded to the King of Sardinia in 1814, it had been decided, at the Congress of Vienna, that "the gold and silver currency of the ancient state of Genoa" would be accepted by the public treasury concurrently with the currency of Piedmont. And at the time of the cession of Smyrna to Greece, the treaty of peace with Turkey, signed in 1920, had provided that Turkish currency would be maintained for five years in the territory of Smyrna. But those cases involved rules of public internal law, rather than a rule of public international law.

11. What happened to the currency in circulation in the territory at the time of the succession of States? It should be borne in mind that currency had three characteristics: it was an attribute of sovereignty; it circulated in a particular territory; and it represented purchasing power and means of payment. It was obvious that the successor State could not, from one day to the next, wipe out all all the currency in circulation in the territory and replace it by another currency. Moreover, as Max Huber had said, currency represented a debt rather than an asset. [6] But the problem connected with that "public debt" aspect of currency arose mainly for the counterpart of currency—monetary tokens and reserves of gold and foreign exchange backing the currency in circulation.

12. A distinction should be made between reserves of gold and foreign exchange and monetary tokens in general which were allocated to the territory, and those which happened to be in the territory at the moment of the succession of States. Only reserves allocated to the territory passed to the successor State, because there was a direct relation between those reserves and the territory. That requirement of allocation to the territory must not be dropped, because certain provinces of a State might have a special régime, and in the case of a confederation or a federation of States it might happen that the predecessor State had a local issuing institution in part of its territory which was subsequently ceded to a neighbouring State as a rectification of the frontier. If that requirement was not satisfied, the reserves of gold and foreign exchange would not pass, since there was no direct link between them and the territory. The reserves in question were, of course, those belonging to the predecessor State, not gold and foreign exchange belonging to private persons or to a third State. Thus, under paragraph 1 of article 12, the successor State did not succeed to gold and foreign exchange reserves which were in the transferred territory temporarily or by chance.

13. Another question was what happened to the currency in circulation, and the gold and foreign exchange reserves stored, in the part of the territory which remained under the authority of the predecessor State and in which the central issuing institution was situated. Were the assets of the central issuing institution affected by the succession of States? That was the question answered by paragraph 2 of article 12. The part of the territory transferred might be large or small; it might formerly have contributed significantly to the predecessor State's prosperity and thus to the formation of its gold and foreign exchange reserves. It seemed equitable to provide for the apportionment of the gold and foreign exchange reserves between the predecessor and the successor States, in proportion to the volume of currency circulating or held in the territory in question.

14. Mr. USHAKOV said he considered that the decisive factor was the type of succession, and that for one and the same class of property it would be impossible to deal simultaneously with all the types of succession. In his opinion it would accordingly be better to confine the discussion, for the moment, to the passing of the different kinds of State property in the case of a transfer of part of the territory.

15. The CHAIRMAN drew attention to an informal Secretariat paper setting out in four columns the draft articles dealing with each of the four types of succession of States: transfer of part of a territory; newly independent States; uniting of States and dissolution of unions; and secession or separation of one or more parts of one or more States. [7] The purpose of the paper was to facilitate comparison of four articles dealing with the same problem, such as articles 12, 16, 20 and 28 concerning currency, for each of the four types of succession of States.

16. Mr. KEARNEY suggested that each problem, such as currency, or treasury and State funds, should be considered in relation to the four types of succession—in other words that the articles should be taken up according to the class of property, not according to type of succession. The latter approach, which would mean taking up articles 12 to 15 together, would lead to a diffuse and not very orderly discussion, because it would oblige the Commission to deal with four quite different problems at the same time. On the other hand, the resemblances between the four articles concerning currency far outweighed the differences. In particular, one feature which all four articles on the currency problem should have in common was that they should be framed as residuary rules, applicable only where no other rule had been agreed or decided on by the States concerned. That point was specifically mentioned in paragraph 1 of article 20, which made an exception for the case in which "treaty provisions allow each State to retain all or part of such State property". It was obviously much more convenient to deal with a question of that type by taking the four articles on currency together.

17. Mr. USTOR said that a number of preliminary questions would have to be settled before the Commission could usefully discuss particular problems. The first was

[5] *Ibid.*, paras. (7) and (8).

[6] *Ibid.*, p. 34, para. (4).

[7] See 1323rd meeting, paras. 1 *et seq.*

why the draft articles were arranged under the present headings—an arrangement which differed from that adopted in 1974 for the draft articles on succession of States in respect of treaties. [8]

18. The second question was on what basis the particular classes of State property had been singled out—currency, treasury and State funds, State archives and libraries, and State property outside the territory to which the succession of States related.

19. Mr. BEDJAOUI (Special Rapporteur) said that the Commission had the choice between two formulas: Mr. Kearney's formula, which grouped together the articles dealing with the same class of State property; and Mr. Ushakov's formula, which grouped together the articles dealing with the same type of State succession. His personal preference would be for Mr. Kearney's formula, which would enable the Commission, when considering a particular class of State property, to see how the emphasis varied according to the type of succession. The four articles relating to the same class of State property could perhaps later be rearranged in a single article. He would therefore prefer the "horizontal" formula. Mr. Ushakov's "vertical" formula had the advantage of putting a particular type of State succession before the Commission. But it would be difficult to deal simultaneously with matters so different as currency, treasury and State funds, State archives and libraries, and State property situated outside the territory affected by the succession of States. It would be just as difficult to consider simultaneously the different types of State succession with respect to one particular question. That was why he had dealt with the four classes of property separately for each of the four types of State succession.

20. Since the Commission had adopted, in article 9, a general provision on the passing of all State property, it would be sufficient to supplement it by provisions relating specifically to each type of succession of States as it affected certain classes of State property: currency, treasury, State archives and State property outside the territory affected by the succession. There were, of course, other classes of State property, but it was impossible to take them all into account, and he had thought it reasonable to confine his work to four essential classes. All States did not, for example, possess a navy; but all States had currency and a treasury. In his opinion, article 12 should therefore be examined in the light of the other articles concerning currency.

21. Mr. BILGE said that the type of State succession was very important and might affect the choice of the State property that should pass to the successor State. He therefore agreed with Mr. Ushakov that the different types of succession should be studied separately. The Commission should discuss all the articles relating to the passing of the different classes of State property in the event of one particular type of succession before taking up another type.

22. Mr. KEARNEY said that, since his proposal gave rise to difficulties, he would withdraw it; he had made it only to save the Commission's time.

23. Mr. PINTO said that the two suggested methods of work might perhaps be combined.

24. He asked what was the legal distinction between "transfer of part of a territory" and "secession or separation of one or more parts of one or more States". There might be differences in political climate between the two situations, but from the legal point of view both were cases in which part of a State separated from the whole. In most cases, but by no means all, the predecessor State would be the larger of the parts resulting from the separation.

25. Mr. ŠAHOVIĆ agreed with the Special Rapporteur that it would be difficult to deal with the different types of State succession all together, and that the Commission should try to work out the general rules on the passing of State property with due attention to certain problems raised by different classes of State property. To make the Commission's task easier, however, the Special Rapporteur might perhaps indicate—for example, by comparing article 12 with articles 16, 20 and 28—how the solutions of each of those problems differed according to the type of succession.

26. Mr. TSURUOKA said he thought the articles in the table prepared by the Secretariat on Mr. Kearney's proposal should be examined "vertically", column by column. The table would make it easier to examine the articles, because it would enable the Commission to see, opposite each article, the corresponding articles in the other columns. The title of the first column would lead the Commission to inquire, as Mr. Ustor had done, whether four types of succession of States should be distinguished. The title of article 12 would lead it to consider the choice of classes of State property.

27. Mr. USHAKOV said he thought that the articles relating to the transfer of part of a territory should be examined first, and that the most important point was to define the notion of "transfer of part of a territory". The Commission could take as a guide the draft articles on succession of States in respect of treaties, which it had adopted at its twenty-sixth session. Part II of that draft, entitled "Succession in respect of part of territory", contained an article 14, which had the same title and dealt with two cases: the transfer of part of the territory of one State to another, and the transfer of territory not part of the territory of a State, for the international relations of which that State was responsible. The second case was that the transfer of a dependent territory, which passed from the administration of the metropolitan State to the sovereignty of a pre-existing State. Both cases should be considered in the context of succession of States in respect of State property. It was possible, moreover, that the two cases ought to be considered from different angles in the draft now under study. For that reason, it was important to define what was meant by "transfer of part of territory" and to distinguish clearly between the two cases.

28. The transfer of part of the territory of one existing State to another existing State was generally effected by an agreement between the two States concerned. Normally, questions of succession, and more particularly questions concerning State property, were settled by

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

agreement. Consequently, the definition of the expression "transfer of part of a territory" should be followed by an article stipulating that the subsequent provisions relating to State property applied only in the absence of an agreement between the parties. Next, immovable State property should be distinguished from movable State property situated in the part of territory passing from one State to another. A third article should provide that, in the absence of an agreement between the States concerned, immovable property situated in the territory in question passed from the predecessor to the successor State. The treatment of movable State property situated in the part of territory transferred was a more delicate matter. Being movable, such property might be situated only temporarily in the transferred territory, and the predecessor State could easily remove it. Consequently, it could not be dealt with in the same way as immovable property. Furthermore, movable property might belong to the transferred part of territory, but be situated in the territory of the predecessor State or in that of a third State. One article of the draft should deal with that situation and provide that, in such circumstances, the property would pass from the predecessor State to the successor State. Yet another provision might deal with movable State property, such as currency or securities, some of which might belong to the transferred part of territory. Such property should pass from the predecessor State to the successor State, possibly after apportionment.

29. The question of State archives and libraries was often insignificant in practice. Referring to the transfer of part of the territory of West Berlin to the German Democratic Republic, he observed that the size of the territory transferred was sometimes so small that the question of the transfer of State archives or libraries did not even arise. Besides, libraries which were State property were regarded as immovable property and passed to the successor State. Libraries owned by private persons should not be dealt with in the draft. As to archives, it was not necessary to make provision for them in the case of transfer of part of a territory.

30. The second case to be taken into consideration—the transfer of territory not part of the territory of a State, for the international relations of which that State was responsible—raised a difficult problem. As that case was related to the case of decolonization, the Commission would perhaps be in a better position to study it after it had examined the draft articles concerning newly independent States. The definition of State property in draft article 5 would then have to be re-examined, since it referred to the internal law of the predecessor State, whereas for the purpose of determining State property situated in a dependent territory, it was not the internal law of the metropolitan State that must be consulted, but the particular legislation applicable to the territory. Consequently, the Commission would either have to redraft article 5 to cover all foreseeable cases, or formulate a specific definition of the State property of the predecessor State when the latter was an administering authority.

31. Mr. CALLE Y CALLE said he approved of the way in which the articles on the various types of succession had been set out. He thought, however, that the final commentary should contain a few paragraphs explaining why the Commission had decided to make provision for four types of succession, whereas it had been content to deal with only three in the draft articles on succession of States in respect of treaties. The Commission should refer, for that purpose, to the Special Rapporteur's previous reports. The sub-division according to type of succession should be explained, for it was unsatisfactory to refer to the type of succession in the titles of the sub-sections, but not in the texts of the articles. Descriptions of the various types of succession had been given in the draft articles on succession of States in respect of treaties.

32. Mr. KEARNEY said he agreed with Mr. Calle y Calle and Mr. Ushakov that it would not be sufficient to mention the various types of succession only in the sub-headings; each sub-section should contain a precise description of what it covered. He differed from Mr. Calle y Calle, however, in considering that the Commission had in fact defined four types of succession of States in respect of treaties, since it had made provision, in article 14 of its draft on that topic, for the moving frontier situation. Those four definitions could reasonably be applied in the present draft and he hoped the Commission would adopt that course. For example, Mr. Ushakov's point, that the transfer of part of a territory involved two distinct situations—the transfer of part of the predecessor State and the transfer of a dependent territory administered by the predecessor State—was covered by the preambular paragraph of article 14 of the set of draft articles on succession in respect of treaties, the other sections of which also contained material of value for defining the areas the Commission was considering.

33. Mr. REUTER said that the Commission should first define the notion of "transfer of part of a territory" and then consider the draft articles relating to that type of succession. As the articles were introduced, the Special Rapporteur could indicate whether the corresponding provisions for each of the other types of succession showed any marked similarities or differences. He could thus introduce his text both vertically and horizontally.

34. It was especially important to guard against excessive generalizations. A solution that was valid for one class of State property, such as currency, would not necessarily be valid for other classes. With great ability, the Special Rapporteur had sought a number of links tying the property to the territory. The Commission should wait until he had outlined all the situations contemplated, which might differ very widely. State archives, for example, could raise problems much knottier than, and very different from, those raised by State libraries. For cases in which a State took proceedings against a newly independent State to gain access to its archives and in which the archives were held by the Power previously responsible for the new State's international relations, the Special Rapporteur proposed several rules, including apportionment. That solution would be unfair to the newly independent State. For the former administering authority would be called upon to hand over the archives, not only by the newly independent State, but also by the State with which it was involved in litigation; and if, with a view to equal treatment, the former administering

authority decided to communicate the archives to both States, and they concerned the future of the newly independent State, that State might suffer. In any event, it would not be on an equal footing with the State which had taken proceedings against it, because it would not be able to obtain access to that State's archives. Perhaps a special status, analogous to that of joint property, should be accorded to the archives of which the predecessor State was the depositary, but not the sole owner.

The meeting rose at 5.50 p.m.

1326th MEETING

Tuesday, 10 June 1975, at 10.20 a.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

ARTICLE 12 (Currency) [2] (*continued*)

1. Mr. PINTO said there were a number of points he hoped the Special Rapporteur would clarify. First, he found difficulty in distinguishing, in legal terms, between transfer of part of a territory—articles 12 to 15—and secession or separation of one or more parts of one or more States—articles 28 to 31 (A/CN.4/282). He assumed that in the first case a State, acting voluntarily, ceded part of its territory to another State by treaty. If that was so, it would seem that the difference between the two cases was that transfer involved a fusion of the detached territory with another State, whereas in secession, the detached territory did not join another State, but became a viable separate entity. That view was supported by the inclusion in article 13, paragraph 2, and the absence from article 29, paragraph 2, of a stipulation imposing certain liabilities on the successor State.

2. Articles 12 to 15 referred to specific types of State property, in contrast with articles 8 and 9, which established the general principles of the passing of State property. He assumed that the "monetary tokens of all kinds" mentioned in article 12, paragraph 1, were paper obligations such as bills and the like, and that the "assets of the central institution of issue" mentioned in paragraph 2 were the assets of the central bank. He further assumed that the difference between the "liquid or invested funds" mentioned in article 13, paragraph 1, and "currency", was that the former belonged to the State, whereas "currency" might belong to anyone at all. No doubt the various kinds of property discussed in articles 12 to 15 had been treated separately because the mode of passing was different in each case. The rule stated in article 15, though worthy of consideration, would be very difficult to apply; presumably, preference would be given to the principle of equity in the event of union.

3. If the Commission decided to retain draft articles of the type proposed, provisions would have to be included concerning, for example, immovable property belonging to a municipality rather than to the State, museums and *objets d'art*. The need for a detailed classification of property could be avoided by simply distinguishing between movable and immovable property.

4. He reiterated his view that the draft articles should include a rule relating to sovereignty over natural resources in the event of succession. He would have expected such a rule to be included among the general principles governing the passing of State property. At all events, the matter was far too important to be ignored.

5. Mr. SETTE CÂMARA, speaking on a point of order, said that the Commission appeared to be embarking on a discussion of the whole sub-section concerning the transfer of part of a territory. He had no objection to that, although he preferred the traditional procedure of discussing draft articles one by one. If the discussion was to be on the whole sub-section, however, the Special Rapporteur should be given an opportunity to introduce the remaining articles.

ARTICLES 13, 14 AND 15

6. The CHAIRMAN invited the Special Rapporteur to introduce draft articles 13, 14 and 15, which read:

Article 13

Treasury and State funds

1. Liquid or invested funds of the predecessor State, situated in the transferred territory and allocated to that territory, shall pass to the successor State.

2. The successor State shall receive the assets of the Treasury and shall assume responsibility for costs relating thereto and for budgetary and Treasury deficits. It shall also assume the liabilities on such terms and in accordance with such rules as apply to succession to the public debt.

Article 14

State archives and libraries

1. State archives and libraries of every kind relating directly to or belonging to the transferred territory shall, irrespective of where they are situated, pass to the successor State.

2. Indivisible State archives shall be copied and apportioned.

Article 15

State property situated outside the transferred territory

The ownership of property belonging to the predecessor State which is situated in a third State shall pass to the successor State in the proportion indicated by the contribution of the transferred territory to the creation of such property.

7. Mr. BEDJAOUI (Special Rapporteur) said that the typology he had adopted should not raise difficulties for

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

[2] For text see previous meeting, para. 6.