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Summary record of the 1392nd meeting

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

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predecessor State which determined the legal status of the property, with all the consequences resulting therefrom.

51. Article 12 covered two cases: that in which the predecessor State exercised sovereignty over the territory; and that in which the predecessor State administered the territory, without having sovereign rights over it. When actual sovereignty over a territory was transferred from a predecessor State to a successor State, it was easier for the two parties to come to an agreement on the fate of State property. In the second case, if a reasonable link existed between the property and the territory concerned, it was essential from the legal standpoint, that the property should be transferred to the successor State along with the territory previously administered by the predecessor State. With regard to the criterion of a "direct and necessary link", he proposed that in the Spanish text the word *vínculo*, which meant a legal link, should be replaced by the word *vinculación*, which rendered the idea of connexion or relationship and was more in keeping with the notion of equity. He also proposed that that word should be qualified by an adjective such as *razonable* (reasonable), since equity was a principle which must always be construed within reason.

The meeting rose at 1.5 p.m.

1392nd MEETING

Thursday, 17 June 1976, at 10 a.m.

Chairman: Mr. Abdullah EL-ERIAN

Members present: Mr. Ago, Mr. Bedjaoui, Mr. Calle y Calle, Mr. Hambro, Mr. Kearney, Mr. Martínez Moreno, Mr. Njenga, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Reuter, Mr. Šahović, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Francis Vallat, Mr. Yasseen.

Succession of States in respect of matters other than treaties (*continued*) (A/CN.4/292)

[Item 3 of the agenda]

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR (*continued*)

ARTICLE 12 (Succession in respect of part of territory as regards State property situated in the territory concerned) [1]

and

ARTICLE 13 (Succession in respect of part of territory as regards State property situated outside the territory concerned) [2] (*continued*)

1. Mr. AGO, after congratulating the Special Rapporteur on his excellent report, said that he wondered whether articles 12 and 13 related to all types of succession, as the Special Rapporteur claimed, or whether they covered only the classical case of the passing of part of a territory from one State to another, as some members of the Commission seemed to wish. He noted that, in any case, the title of the sub-section under consideration, namely, "Succession in respect of part of territory" was too vague and that it would have to be amplified, particularly if articles 12 and 13 were to apply to all types of succession.

2. To determine whether different rules should be formulated for the different types of succession, reference should be made to specific cases. Special rules should be formulated only if cases of succession other than the classical cases warranted them. He referred first to a treaty by which a country ceded a province to a neighbouring State. That was a classical case covered by the draft articles. Some members of the Commission considered that cases of decolonization should be dealt with separately. It was certain that the case of a territory which separated from the State under whose colonial domination it had been placed and became independent, was entirely different from the case in which part of a territory passed from one State to another. The attainment of independence, however, was not the only conceivable case. It could happen that Belize, a territory now administered by the United Kingdom, but coveted by Mexico and Guatemala, might finally be attached to those two States. It was not necessary to establish special rules in a case of that kind, which really differed little from that of the cession of a province by one State to another. It did not involve the creation of a new State, as did the accession to independence of a territory under colonial domination. Surinam, for its part, had moved towards independent status in that way. The Netherlands possessed a number of islands, including Curaçao, in the West Indies; that island had not yet opted for attachment to the metropolitan country or to Surinam. If, now that Surinam had acceded to independence, Curaçao decided to become attached to that new State, the situation would be different from that of the attachment of Belize to the pre-existing States of Mexico and Guatemala. In his opinion, however, that particular situation would not justify the formulation of special rules. In the Caribbean, the Netherlands also possessed the island of Aruba, whose future was not yet decided: it might become a small independent State, unite with Curaçao, be attached to Venezuela or be annexed by Colombia. That variety of possibilities showed that it was difficult to establish a régime for the classical cases of succession and a régime for all cases of decolonization.

3. As to the variant proposed by the Special Rapporteur for the opening phrase of articles 12 and 13, which was nothing more than the text adopted by the Commission for the beginning of article 14 of the draft on succession of States in respect of treaties,[3] that wording could give the impression that the phrase "for the international relations of which that State is responsible" related to the word "State" and not to the word "territory".

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[1] For text, see 1389th meeting, para. 37.

[2] For text, see 1390th meeting, para. 1.

[3] See *Yearbook... 1974*, vol. II (Part One), p. 203, document A/9610/Rev.1, chap. II, sect. D.

4. Several members of the Commission had stressed that the rules stated in the draft articles were only of a residuary nature and should apply only in the absence of agreement between the States concerned. The position was not quite so simple. In a classical case of succession, an agreement between the two States concerned would be sufficient; but if Belize was attached to Guatemala and Mexico, a tripartite agreement would be necessary, and it was not impossible to imagine even more complicated situations. For instance, if Aruba and Curaçao decided to constitute a new State, there could be no genuine international agreement between Aruba and Curaçao before the formation of that new State, since neither of them would be a subject of international law.

5. With regard to immovable property, the Special Rapporteur was proposing the rule that, unless otherwise agreed or decided, all immovable property passed automatically to the successor State. Apart from its location, however, a piece of immovable property might not have any direct and necessary link with the country in whose territory it was situated. He wondered whether bases which might be established in Curaçao for Netherlands submarines would not have a more direct and necessary link with the metropolitan country than with that territory. Moreover, there could be other installations which were even more closely linked with the metropolitan country. He therefore proposed that it should be indicated in the commentary that the rule on the passing of State property was not necessarily as absolute as it seemed.

6. With regard to movable property, the Special Rapporteur had provided that it passed to the successor State if it had a direct and necessary link with the territory to which the succession of States related. That criterion was rather arbitrary. It might be asked who would judge the link between the property and the territory. Did the gold and foreign exchange cover for the currency have a direct link with the territory? In his view, such cover might perhaps be linked with the country, but it was not really localized. Ships could have a direct link with the territory if they were engaged in regular traffic with it, but there was no such link when they served only for the metropolitan country's trade. It really seemed that the criteria proposed by the Special Rapporteur all involved an idea of equity, as expressed in article 13, subparagraph (*c*). Personally, he was in favour of the principle of equity, but he was not sure how it could be developed in the absence of an international authority. Of course, equity could be reflected in an international agreement; but it was precisely in the absence of agreement that it was necessary to prevent the abuses which could be committed, both by the successor State and by the State in whose territory the State property was situated. In the countries with a Roman law tradition, the concept of equity had been developed by the ordinary courts. In the common law countries, there were special courts, the courts of equity, which developed that concept. Although the idea of having such courts at the international level might seem audacious, it should not be ruled out if such vague criteria were to be applied.

7. Mr. USTOR said he would only speak on the question of archives, which was dealt with at length by the Special Rapporteur in his report. Archives, being movables, were covered by the provisions of article 12, subparagraph (*b*) and of article 13. The question had been raised whether those articles should cover decolonization as well as the classical cases of transfer of a territory from one country to another. For his part, he considered those provisions as referring to the classical cases of succession in respect of part of a territory.

8. Because documents could be easily distinguished as having a relationship with the territory transferred, the Special Rapporteur had reached the conclusion that archives in the ownership of the predecessor State had to pass to the successor State wherever such a relationship existed. Furthermore, the Special Rapporteur had found that there was no need to include in the draft a provision explaining the notion of archives because, regardless of how that term might be defined, all kinds of documents having a link with the territory would have the same fate. The Special Rapporteur had acknowledged, however, that a different opinion was held by certain writers on that point. For example, P. Fauchille drew a distinction between documents that were necessary for the administration of the territory to which the succession of States related and documents that were of a purely historical character. He himself believed that that was a valid and sound distinction. Obviously, such documents as the land register and registers of births, deaths and marriages would follow the territory to which they related. Whether they were situated in the territory in question or elsewhere, they belonged to that territory, because they were needed for its current administration. The position was quite different in regard to centuries-old documents which were of purely historical interest.

9. According to the Special Rapporteur there was no need to draw such a distinction, so he had not included in the draft any special rule on archives and documents; hence they would have the same fate as other movables in the cases contemplated in articles 12 and 13. The Special Rapporteur's reasoning was based almost exclusively on peace treaties. But peace treaties did not provide a sufficient basic for a general rule, because their provisions included measures which were closer to sanctions than to agreed clauses. Moreover, the position in regard to peace treaties was not as simple as the Special Rapporteur had suggested. Some of those treaties did, in fact, make a distinction between documents according to their age. For example, article 11 of the 1947 Peace Treaty between the Allied Powers and Hungary [4] imposed on Hungary the duty to hand over to Yugoslavia and Czechoslovakia the archives relating to certain territories. That provision, however, was limited to the archives which had come into being during a specified period which, for most of the provinces concerned, was 1848 to 1919. Thus, although the treaty of 1947 had been more or less imposed on Hungary, it had not required that country to transfer to the successor States all the archives relating to the provinces ceded to those States, regardless of their age. The province in question had belonged to Hungary for some 800 years before they had become

[4] United Nations, *Treaty Series*, vol. 41, p. 178.

part of Czechoslovakia and Yugoslavia in 1919, but the clause on the transfer of archives related to documents going back only one century.

10. If the situation was considered *in abstracto*, the same conclusion would be reached. Because of the continuing relations between States, every State had in its archives historical documents which related to other States. There was no rule of international law laying down that France, for example, had an obligation to transfer to Hungary all documents in its possession which had some bearing on that country. That being the normal position, it was difficult to see why it should be any different in the case of peace treaties. When part of the territory of the predecessor State was transferred to the successor State, the separation took place at a certain moment, after which the territory would be administered by that State. The successor State was obviously entitled to receive all the documents and archives relating to the territory in question. But since the territory had for a long time been part of the predecessor State, the documents and archives relating to it belonged to the history of the predecessor State. Hence he could not agree that simply because they had a link with the territory in question, the documents and archives must necessarily be transferred to the successor State.

11. The Special Rapporteur had also drawn attention to new developments in the technique of reproduction of documents and had suggested that those developments would facilitate the solution of the problem. He recommended that the predecessor State should transfer all documents which had a link with the territory and retain copies of them for itself. His own preference was for the opposite arrangement. The documents in the predecessor State's archives constituted its historical records; that State should, under certain conditions admit research workers from the successor State to peruse the documents and make such copies as they required. It was necessary, however, to consider the cost of that research and of making the copies. In his view, the successor State should bear all such costs if it wished to obtain the contents of the documents.

12. He therefore believed that whatever improvements might be made in the drafting of articles 12 and 13, those provisions would not suffice to solve all the problems raised by archives. The least that should be done was to specify that the provisions of those articles covering movable property did not apply to archives, which should come under different rules.

13. The Special Rapporteur had said that the transfer of archives concerning the part of territory ceded was justified by the application of the "principle of territorial origin" and the "principle of pertinence".[5] He had also quoted a resolution adopted by the General Conference of UNESCO at its sixteenth session (1970), which recommended Member States to return manuscripts and documents "to the countries of origin".[6] The Special Rapporteur had interpreted the expression "country of origin" to mean the successor State in cases of succession in respect of part of a territory. His own view was that the "country of origin" was clearly the predecessor State, since the documents came from that State.

14. Mr. TSURUOKA said he would support the view of the majority of the members of the Commission on the question whether the case of decolonization should be dealt with separately or not. Although questions of decolonization were of such importance that they warranted separate treatment, the process of decolonization would probably have ended when the instrument now in preparation came into force. Would it not be strange for the Commission to have worked on drafting provisions which were no longer of any use to the international community?

15. If the Commission confined itself to general provisions, they would, of course, cover all cases, but in an abstract way; on the other hand, if it went into details, the provisions would be easier to apply. Both solutions had advantages and disadvantages. Personally, he would prefer the Commission to formulate general provisions, even if it had to overcome application difficulties by drafting a detailed commentary and providing for application procedure and for the establishment of a body to apply the general provisions. He endorsed the principles on which articles 12 and 13 were based and, in particular, the notions of the direct and necessary link, the viability of the territory and equity.

16. After emphasizing the considerable amount of work which had gone into the Special Rapporteur's eighth report, he asked for two points to be clarified. Could it really be said that, under draft article 5,[7] the distinction between immovable and movable property must be made according to the internal law of the predecessor State? Was the notion of a direct and necessary link a legal, economic, social or political notion or did it belong to all those spheres?

17. Mr. USHAKOV said he wished to explain his conception of the transfer of part of a territory from one State to another. In successions of States in respect of treaties, it made no difference whether a small part of a territory was ceded or a territory changed sovereignty in accordance with the principle of self-determination. An example of the first situation was the cession by France of a small part of its territory to Switzerland, for the enlargement of the Geneva-Cointrin airport. The second would occur if the Canton of Geneva, after consulting its population, decided to unite with France. For the purposes of the articles under consideration, those two situations were not assimilable. In the first, there was an agreement between two States, whereas in the second, the people of the Canton of Geneva would also take part; it would not be a mere transfer, but a case of application of the principle of self-determination. It might also be necessary to take the property of the Canton into account. Unlike the Special Rapporteur, he therefore considered that a distinction should be made between those two types

[5] A/CN.4/292, chap. III, para. 50 of the commentary to article 12.

[6] *Ibid.*, para. 65 of the commentary.

[7] For the articles already adopted by the Commission, see *Yearbook... 1975*, vol. II, pp. 110 *et seq.*, document A/10010/Rev.1, chap. III, sect. B.

of situation. He stressed that succession of States in respect of matters other than treaties was much more complex than succession of States in respect of treaties; the draft articles on the former topic could reflect those on the latter only to a limited extent.

18. The CHAIRMAN, speaking as a member of the Commission, said that in the light of his own experience, he fully supported the Special Rapporteur's method of work and the principles underlying articles 12 and 13.

19. He approved of the commendable efforts made by the Special Rapporteur to bring the presentation of the draft articles into line with that of the draft on succession of States in respect of treaties, and to conform to the Commission's decision to consider three types of succession: the transfer of part of territory, the case of newly independent States and the uniting, dissolution and separation of States. That approach served to harmonize the draft dealing with the two parts of the topic of State succession.

20. The rules in articles 12 and 13 were based on State practice, on which the Special Rapporteur gave extensive information in his eighth report. In the present instance, State practice should be construed in a broad sense so as to cover treaty law, decisions and resolutions. The rules stated in article 12 regarding succession to State property situated in the territory concerned were in harmony with the principle laid down in article 9, that State property situated in the territory to which the succession of States related passed to the successor State. The question of the title of the sub-section containing articles 12 and 13, which had been raised by Mr. Ago,[8] could be left to the Drafting Committee.

21. He disagreed with Mr. Ustor's interpretation of the expression "country of origin",[9] used in the UNESCO resolution quoted in the Special Rapporteur's report, which recommended the return to that country of certain original manuscripts forming part of its heritage. That resolution referred to a rather different case from the one under consideration, but it had some bearing on the question of archives and documents in so far as that class of property came under articles 12 and 13. There was no reference to a "country of origin", either in the present set of draft articles or in the draft on succession of States in respect of treaties; those drafts spoke only of the "predecessor State" and the "successor State" and defined the meaning of those terms. As to the expression "country of origin", referring to archives and documents it could only mean the country to whose history and culture they belonged; the test to be applied was certainly not a purely material one.

22. He supported the proposal that articles 12 and 13 should be referred to the Drafting Committee for consideration in the light of the discussion.

23. Mr. AGO said he wished to ask the Special Rapporteur two questions. First, the Special Rapporteur had mentioned, as movable property, only currency and archives. In order to avoid giving the impression that they were the only property to be taken into consideration, would it not be advisable to mention other kinds of property, such as ships? Secondly, since the concept of equity necessarily included an arbitrary element, it would be desirable for States to reach agreement by treaty. That being so, would it not be advisable to introduce an obligation to negotiate in good faith on the basis of the criteria proposed by the Special Rapporteur?

24. Mr. KEARNEY said that, as he had already indicated earlier in the discussion,[10] archives raised special problems which were different from those arising in regard to other types of property. Those problems, however, could now be solved more easily, because of the comparatively inexpensive modern methods of reproduction.

25. The question was to determine which of the two States concerned would retain the original documents and to what extent the other party was entitled to copy them. The latter issue mainly concerned the successor State, since the predecessor State, if it had to part with an original document, could always make a copy first.

26. Under the provisions of article 13, subparagraph (*b*), if the archives were in the capital of the predecessor State, any documents which a had a link with the successor State should be transferred to that State. That rule, however, raised a more complicated issue: some documents might have a more direct and necessary link with the successor State than with the predecessor State. Obviously, the test of the direct and necessary link could not be framed in absolute terms; all rules had to have some degree of relativity.

27. Another problem was that of the decision-making process in the apportionment of archives. Since the predecessor State, unlike the successor State, had actual control over the documents, it was bound to have a greater range of decision in the matter. It would have to have some latitude to eliminate certain documents in the interests of good future relations with the successor State.

28. It was precisely in order to deal with those delicate problems that he believed that certain procedures for the settlement of disputes should be provided for. He was not thinking essentially in terms of judicial or arbitration procedures, but rather of machinery for screening by a third party, to decide what papers were so delicate that they could affect relations between States and therefore should not be transferred. He hoped that the Special Rapporteur would take into account the need for some such machinery, apart from standard procedures for the settlement of disputes.

29. Mr. ŠAHOVIĆ pointed out that, if the Commission decided to delve deeper into the question of archives, it would have to take account of peace treaties as a source of the rules to be enunciated. In recent times, State practice in that matter had been based mainly on peace treaties.

[8] See para. 1 above.

[9] See para. 13 above.

[10] 1390th meeting.

30. Sir Francis VALLAT said that the commentaries to articles 12 and 13 were highly instructive. More particularly, they contained very pertinent observations on the problem of archives.

31. With regard to the form of the draft articles being prepared, it would be advisable, wherever possible, to follow the format and wording of the draft articles on succession of States in respect of treaties. To use a different form of language in a set of articles that dealt essentially with the same kind of situation would be confusing. He had in mind the variants suggested for the opening phrase of articles 12 and 13, which exactly reproduced the wording used in the draft on succession of States in respect of treaties. Needless to say, the Special Rapporteur should not be constrained at all times to propose provisions that corresponded to those of that draft.

32. It was true that a wide range of situations might arise as a result of a change in the status of part of a territory. At one extreme, if Northern Ireland were to become part of Ireland, the situation would be similar in many respects to that of a newly independent State —if the change took place otherwise than by agreement, which was perfectly possible. Indeed, it was because of the possibility of changes in the status of part of a territory that the Commission had adopted the type of language contained in article 14 of the draft articles on succession of States in respect of treaties. However, in what might be loosely termed the transfer of territory, it would be extremely difficult to distinguish between the different types of situation that might arise, and he very much doubted whether it would be possible to cover them all and to identify them with sufficient clarity.

33. In view of the wide variety of situations possible, the Commission was faced with an extremely difficult choice: either to resort to extreme generalization or to become enmeshed in a mass of fragmented detail. Nevertheless, in practice, the element of agreement did exist in most cases of transfer of part of a territory from one State to another. While it might be worth considering the inclusion of a rule specifying an obligation to negotiate, articles 12 and 13 should, in any case, emphasize the idea of agreement. States should be encouraged initially to reach agreement and it should be clearly indicated that, in the absence of any agreement, the draft articles would apply.

34. In his opinion, the Commission should pay special attention to the question of archives and devote a separate article to it. Archives were not simply property, but instruments which related to the history of a territory or to its administration, and they were of great practical importance to new or transferred territories. One difficulty lay in determining whether a particular document was only of historical value or whether it affected the administration of the territory in question. For instance, a treaty concerning cession of territory concluded in the seventeenth century and held by the State transferring the territory might be regarded as of historical interest, but it was quite likely that it established certain conditions relating to the territory and, even after some hundreds of years, a dispute might arise regarding the application of those conditions. In such a case, the archives were vital to the life of the territory concerned. If the Commission was to formulate rules on that matter, it must be careful not to arrange for a rigid test of the value or interest of archives which would prove unworkable.

35. He shared the view that articles 12 and 13 could now be referred to the Drafting Committee.

36. Mr. BEDJAOUI (Special Rapporteur) noted that the members of the Commission were unanimous in proposing that articles 12 and 13 should be referred to the Drafting Committee. On the question of the choice of method, some members had referred to the methods he had followed in his previous reports. In his third,[11] fourth [12] and fifth [13] reports, he had submitted general articles applicable to all kinds of State property. The articles submitted in his third report had, indeed, been so general that they had not referred to types of succession and could have applied to every type. In his seventh report,[14] he had followed a more analytical method, examining particular kinds of property, such as currency and archives. In his eighth report (A/CN.4/292), he had returned to more general articles and intended to adhere to that new method, which had met with the unanimous approval of members of the Commission, although five of them had expressed regret at his abandoning the consideration of State property *in concreto*.

37. Mr. Ramangasoavina considered that the study of concrete questions such as currency or archives would be useful, particularly for newly independent States,[15] and he shared that view.

38. Mr. Kearney, although of the same opinion as all the other members of the Commission, hoped that, in the case of article 12, it would be possible to deal with at least one kind of State property considered *in concreto* —archives—and that that would be done as often as possible.

39. Sir Francis Vallat had said that, in view of the exceptional importance of archives, a separate article should be devoted to that question,[16] which might possibly be taken from the seventh report.

40. Mr. Calle y Calle, although he approved of the method now being followed, had pointed out [17] that paragraph 27 of the report left it open to the Commission to choose a third approach, which was to "formulate for each type of succession one or two articles of a general character, perhaps adding one or two more relating to specific kinds of State property".

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[11] *Yearbook... 1970*, vol. II, p. 131, document A/CN.4/226.

[12] *Yearbook... 1971*, vol. II (Part One), p. 157, document A/CN.4/247 and Add.1.

[13] *Yearbook... 1972*, vol. II, p. 61, document A/CN.4/259.

[14] *Yearbook... 1974*, vol. II (Part One), p. 91, document A/CN.4/282.

[15] See 1391st meeting, para. 21.

[16] See para. 34 above.

[17] See 1391st meeting, para. 47.

41. Mr. Reuter, who had approved of the earlier reports, had endorsed the new method [18] and had called on the Commission to approve it once and for all.

42. Thus the members of the Commission seemed to be unanimous in approving the new method and he was accordingly determined to adhere to it.

43. The question of types of succession had raised numerous difficulties. There, too, the members of the Commission, with the exception of Mr. Ushakov,[19] had all endorsed the typology adopted at their request. He regretted that Mr. Ushakov had not raised his objections to the typology at the twenty-seventh session, so that he could have taken them into account in his last report. The Commission's work was now far advanced and it would be a pity to call in question again everything that had already been done. The draft articles had already suffered from the delay in preparing them—to the extent that they would come too late to regulate decolonization, which was nearing its end. It would therefore be better not to re-open typological problems; otherwise, the Commission's work might be delayed indefinitely.

44. Mr. Ushakov seemed to be reproaching him for having abided, against his will, by the Commission's choice of types of succession, although he (Mr. Ushakov) had been the first to insist that the Special Rapporteur should follow as closely as possible the typology adopted by the Commission in the draft articles on succession of States in respect of treaties, and the first to deplore the fact that he had deviated from it. He (Mr. Bedjaoui) had always expressed doubts about the advisability of using the typology adopted for succession of States in respect of treaties, which he did not consider perfect, and he had only complied with the Commission's wish under duress. Consequently, he should not be held responsible for a choice which had been imposed on him by the Commission itself.

45. The typology chosen by the Commission certainly raised many problems, regarding which he was almost inclined to believe that Mr. Ushakov was right. It did not take account of cases of decolonization by integration, that was to say, cases in which a newly independent State merged with a neighbouring State other than the administering Power. Those cases usually related to very small territories which were not capable of becoming separate States, such as the French trading posts and the Portuguese settlements in India, and the territory of Ifni in the South of Morocco. Other instances might be Gibraltar or Djibouti. Mr. Ushakov was right in saying that that type of succession of States could not be assimilated to succession in respect of part of territory, which was one of the types adopted by the Commission in its draft articles on succession of States in respect of treaties. For his part, he had always expressed doubts about the typology chosen, for he thought it impossible to reduce all cases of State succession, of which there was a very wide range, to only three or four types. For example, the case of the disappearance of the Austro-Hungarian Empire could be described as the extinction of a State, the dismemberment of a State, the dissolution of a union or a separation of States. It was also possible to speak of the emergence of new States or even of the resurrection of vanished States, or the partition of territory between old and new States. As which type of succession of States should the disappearance of the Austro-Hungarian monarchy then be identified? That example, and many others, proved that there were types of succession which were impossible to classify.

46. Thus, the cases of decolonization by integration covered by articles 12 and 13 did not correspond to any of the types of succession adopted by the Commission. The Commission had therefore tried to incorporate those cases into the type of succession in respect of part of territory. Mr. Ushakov had rightly said that two different types of succession were involved; he fully agreed with him on that point, but must point out that it was not he (Mr. Bedjaoui) who had wished to place those two types on the same footing. As Mr. Ushakov had observed, it was not the title of articles 12 and 13 that was at fault, but the assimilation of two different types of succession. Mr. Ushakov would like to separate those two types, and he was willing to meet him on that point, but he had not said whether the treatment should be different in each case. In fact, Mr. Ushakov was proposing four articles instead of two—two articles on succession in respect of part of territory and two on succession in respect of decolonization by integration. But he was also proposing the deletion of articles 14 and 15, which related to newly independent States, on the ground that decolonization was nearly completed. Thus he was proposing, on the one hand, to increase the number of articles relating to decolonization and, on the other, to delete articles 14 and 15—which might seem contradictory.

47. Moreover, if, as Mr. Ushakov asserted, the cases covered by articles 12 and 13 amounted simply to frontier rectifications, the type of succession of States referred to in those articles was nothing more than a kind of commercial transaction concerning a parcel of land. If that was so, the Commission should not waste its time in codifying the rules applicable to such minor cases, in which there was always an agreement between the States parties. In that case, it could even be said that there was no longer any typology of succession to adopt. For if the Commission was to eliminate succession in respect of part of territory, because it involved only an insignificant area of territory, and succession in respect of newly independent States because decolonization was coming to an end, there would be nothing left of the typology envisaged.

48. Mr. Ushakov had said that the integration of a territory into a neighbouring State was related to separation of States. But those two situations were not quite the same, for in cases of separation a State was created, whereas in integration that did not occur. It could thus be seen that it was extremely difficult to establish a typology of succession, because the situations varied so widely.

The meeting rose at 1 p.m.

[18] *Ibid.*, para. 31.

[19] See 1390th meeting, para. 18.