Document:-

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**Summary record of the 1394th meeting**

Topic:

**Succession of States in respect of matters other than treaties**

Extract from the Yearbook of the International Law Commission:-

**1976 vol. I**

## 1394th MEETING

*Monday, 21 June 1976, at 3 p.m.*

*Chairman:* Mr. Paul REUTER

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

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### 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 14 (Succession to State property situated in newly independent States)
*and*
ARTICLE 15 (Succession to State property situated outside the territory of the newly independent State) [1] (*continued*)

1. The CHAIRMAN invited the Special Rapporteur to reply to the four questions put to him by Mr. Ushakov at the end of the previous meeting.[2]

2. Mr. BEDJAOUI (Special Rapporteur) said that Mr. Ushakov had asked him, first, whether the articles under consideration covered newly independent States in general or whether certain Non-Self-Governing Territories such as protectorates and Trust Territories should be given separate treatment. In theory, there were differences between colonies and protectorates. The sovereignty of the protected State continued to exist, but the protecting authority acted on behalf of the protected State. In Morocco, for instance, under the French protectorate, the Resident-General of France at Rabat had acted as a kind of Foreign Minister for His Sharifian Majesty. In practice, there was little difference between a protectorate and a colony. Moreover, there had been many forms of protectorate, and some of them, such as Madagascar and Indo-China, had gradually become colonies. Both in protectorates and in colonies there had been State property belonging to the administering Power which it had used in administering those territories. In view of those facts, he had considered it unnecessary to treat the case of protectorates separately. If the Commission considered it advisable, however, he would try to draft provisions on that particular case.

3. With regard to Mr. Ushakov's second question, the reason why he had not dealt separately with the case of newly independent States formed from two or more territories, as the Commission had done in the draft articles on succession of States in respect of treaties,[3] was that he had not found any substantial information on State property situated in or outside the territory of such States. That explanation might be given in the commentary to articles 14 and 15. He saw no reason to deal separately with the case of newly independent States formed from two or more territories.

4. Replying to Mr. Ushakov's third question, he said that legal writings were generally silent on the question of property belonging to Non-Self-Governing Territories. It was quite certain, however, that Non-Self-Governing Territories had always had property of their own. Even under the old colonial law, colonies had enjoyed some degree of personality in public law. They had been subject to colonial law, which differed from metropolitan law; agreements applicable solely to the colonies had been concluded and the question had often arisen whether a particular treaty was applicable to a certain colony. The special régime applied to colonies had been based on the principles of legislative and conventional specialization. There had thus been institutions, a budget and property belonging to the colony—property which had been acquired with the colony's own money. The legal status of such State property had not always been clear, however. In legal systems which distinguished between the public and the private domain, there had, moreover, been a multitude of legal régimes. In French Indo-China, for instance, there had been no less than eight co-existing domains: a "colonial" public domain and private domain of the French State in Indo-China; a "general" domain comprising the public and private domains of the former Federation of Indo-Chinese States; local domains belonging as of right to the five protectorates or colonies composing the Federation, with distinctions between the public and the private domain; and public and private domains coming under the provincial, local and communal authorities in each protectorate or colony of the Federation. There were also the difficulties of legal definition which had been raised by the property of the Special Committee of Katanga. Those difficulties had been increased by the existence of a treaty, concluded on 28 November 1907, between the "Independent State of the Congo" and the Belgian State, by which the Congo had ceded all its property to Belgium. In fact, King Leopold II had ceded his Congolese possession to Belgium and, by a curious duplication of functions, had acted as both parties to the treaty. A distinction had, however, been made in that case between the metropolitan patrimony and the colonial patrimony. With regard to the *habous* or *waqf* property which had existed in Algeria prior to 1830, he referred members to his third report.[4] That had been inalienable religious property and in no sense State property.

5. It was clear that property belonging to a Non-Self-Governing Territory was not affected by a succession of States. Only the metropolitan patrimony in the colony

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[1] For texts, see 1393rd meeting, para. 34.

[2] See 1393rd meeting, para. 49.

[3] See *Yearbook... 1974*, vol. II (Part One), pp. 174 *et seq.*, document A/9610/Rev.1, chap. II, sect. D.

[4] See *Yearbook... 1970*, vol. II, p. 138, document A/CN.4/226, part II, para 19 of the commentary to article 1.

formed part of the succession. Hence there was no reason to speculate on the fate of property belonging to the non-self-governing territory. It would be an aberration if decolonization caused the territory acceding to independence to lose its property. It would also be an aberration if the colonizing State, by the mere fact of the succession, acquired the ownership of property which could not have belonged to it before. The reason why the question of property belonging to a dependent territory sometimes arose, was that the predecessor State often agreed to the "transfer" of that property only, thus excluding its own State property from the transfer.

6. Referring to the fourth question put by Mr. Ushakov, he said that, in his first report,[5] he had examined at length the question of the nature and validity of agreements concluded between an administering Power and a dependent territory prior to decolonization. Generally speaking, it was in the interest of the colonial Power to regard such instruments as genuine international agreements. At the Congress of Berlin, the agreements between colonizers and African tribal chiefs had been considered, contrary to the international law of the time, as genuine international agreements. There were also agreements concluded after decolonization which raised no difficulty as to the status of the contracting parties as States, but which might never enter into force, be denounced, lapse or be replaced by other treaties. In cases of decolonization, moreover, a succession of States could take place when the dependent territory concerned did not yet enjoy full international capacity. Conversely, a succession of States might involve countries recovering their full international sovereignty. Before regaining their full independence, those countries had been regarded in theory and in practice as States.[6] To sum up, agreements concluded on the eve of independence were agreements between an actual State and a potential State.[7]

7. Mr. HAMBRO said he endorsed the general principles set out in articles 14 and 15. Paragraph 1 of article 14 provided that the newly independent State "shall exercise a right of ownership" of immovable property, whereas paragraph 2 provided that movable property of the predecessor State "shall pass" to the successor State. He wondered whether that difference in wording reflected a difference in substance or whether it was merely a stylistic variation. In the latter case, it would be better to use a single, identical formula.

8. The Special Rapporteur had probably been right to adopt a general approach and not to deal separately with State property such as currency, State funds, treasury or archives. Nevertheless, State archives were often so important that a special provision might be devoted to them. In his view, there was no such thing as "dead" archives. All archives, even historical archives, were part of living history. For instance, the Norwegian and Icelandic archives in Denmark had been considered extremely important. The importance of archives could not be overestimated, and newly independent States deserved special protection in that regard.

9. Perhaps it was because the Special Rapporteur had lived through his country's struggle for independence that he had come to formulate certain general theories. While he did not disagree with him on those theories, he thought the Commission should not take up questions such as the sovereign equality of States. Referring to that concept, as understood in classical international law, the Special Rapporteur had spoken of "hypocrisy". On that point, it should be remembered that, although it had long been hypocritical to proclaim the sovereign equality of States, it was nevertheless because that principle had been tirelessly repeated that it had finally become fact; hypocrisy had given way to habit, and habit to reality. In studying succession of States, the question of sovereignty was not of capital importance. The Commission had better not try to formulate a new theory of sovereignty which might be superficial and by which it might one day be held captive.

10. With regard to paragraph 3 of article 14, he was all in favour safeguarding the sovereignty of States over their wealth and natural resources, but that principle did not come under succession: it was a general principle valid for all States. He doubted whether matters not directly concerning succession of States should be dealt with in the draft articles. Personally, he would not like the Commission to engage in a campaign against colonialism, neo-colonialism or imperialism. Rather than dwelling on past situations, it would be better to provide that in case of doubt the interest of the newly independent States must prevail.

11. Mr. TAMMES said he had found that the Special Rapporteur had given convincing reasons for retaining provisions on the type of succession relating to newly independent States. The problem of newly independent States would continue to arise for some time and there would still be a number of cases to be counted as decolonization, for which the convention that would emerge from the present draft articles could be useful.

12. At the same time, it should also be considered whether that future convention could not be made even more useful by bringing under the régime of articles 14 and 15 a category of comparable cases. It would be recalled that the Commission had proceeded in that way in its 1974 draft on succession of States in respect of treaties. Article 33, paragraph 3 of that draft equated to a newly independent State, for purposes of application of the draft, the case in which "a part of the territory of a State separates from it and becomes a State in circumstances which are essentially of the same character as those existing in the case of the formation of a newly independent State".[8] That formula covered cases of accession to independence which would probably occur in the more distant future, whereas the cases to which the Special Rapporteur had referred in his oral introduction lay in the immediate future.

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[5] See *Yearbook... 1968*, vol. II, pp. 103 *et seq.*, document A/CN.4/204, paras. 33 *et seq.*

[6] *Ibid.*, p. 102, para. 55.

[7] *Ibid.*, p. 104, para. 66.

[8] *Yearbook... 1974*, vol. II (Part One), p. 260, document A/9610/Rev.1, chap. II, sect. D.

13. Two questions arose in that connexion. The first was whether the reasons that had prompted the Commission to give similar privileged treaty régime to newly independent States and certain other new States would also apply to succession to State property. In the case of succession of States in respect of treaties, the privileged régime related to such matters as the clean slate principle. In the case of State property, the privileged régime would relate mainly to the burden of proof in regard to movable property which passed from the predecessor State to the successor State; article 14, paragraph 2 placed the burden of proof on the predecessor State. The second question to be considered was whether the problem of equating the régimes of the newly independent State and the comparable new State was best dealt with under article 14 or under article 17, the present text of which left the whole problem unsolved.

14. In answering those two questions, it should be borne in mind that the same conditions could prevail in cases of separation as those described in the part of the Special Rapporteur's eighth report dealing with the economic content of the concept of sovereignty.[9] He had studied that part of the report with great sympathy. The 1974 Charter of Economic Rights and Duties of States,[10] on which the Special Rapporteur relied, had already had a certain impact on the Commission's work, particularly in regard to the exceptions to the most-favoured-nation clause. Moreover, the norms of that Charter had been put into practice in recent cases, in which not only had State property been transferred to newly independent States, but additional assistance had been given to them on a large scale.

15. The problem for the Commission was that of translating those new norms into reliable legal terms which could pass the test of application by a court of law. The question arose whether the principle of economic independence was rich enough in itself to generate the desired legal rules. States were so unequal in many respects, economic and other, that it was only through additional principles of mutual compensation that the imbalance could be remedied. The old idea of distributive justice thus emerged in the form of economic interdependence. The difficulty of expressing in legal language thoughts such as those developed in the economic part of the commentary to article 14 was shown by paragraph 3 of that article, the provisions of which could only be interpreted fully with the aid of the commentary.

16. In his sixth report, the Special Rapporteur had quoted the statement by the Secretary-General of the United Nations, in one of his annual reports, that "Sovereignty over natural resources is inherent in the quality of statehood and is part and parcel of territorial sovereignty".[11] In that context, the concept of sovereignty was relevant to the subject of State property; but if article 14, paragraph 3, was read in conjunction with the commentary—particularly paragraph 75—the sovereignty in question appeared to relate to the treaty-making power of the State. It seemed to him that the special succession régime of the newly independent State was already fully protected by the law of treaties and by the law of succession in respect of treaties, particularly by the principle of consent, the exclusion of coercion, the irrelevance of devolution agreements and the clean slate principle.

17. He had no comments to make on article 15 and suggested that both articles should be referred to the Drafting Committee.

18. Mr. ŠAHOVIĆ said he found the rules stated in articles 14 and 15 generally acceptable, and consistent with the main lines of the draft on which the Commission had already reached agreement.

19. With regard to sovereignty, he shared the view of the Special Rapporteur, who had emphasized the economic content of that concept. In the absence of economic content, sovereignty would be an empty word and the sovereign equality of States would be meaningless. Although the questions of sovereignty and the sovereign equality of States went beyond the scope of succession of States, the Special Rapporteur had been right to examine them, for they required clarification. It was necessary, however, to determine how the ideas developed by the Special Rapporteur were to be expressed. The rule stated in article 14, paragraph 3, certainly applied especially to newly independent States, but it was applicable to all States. When viewed in historical perspective, the principle of the permanent sovereignty of the State over its natural resources could be seen to have begun to triumph with socialism and the application of the principle of self-determination in the internal order. He therefore suggested that paragraph 3 of article 14 should be incorporated in another provision of the draft.

20. As to the wording of the articles under consideration, he observed, first, that paragraph 1 of article 14 began with the reservation "Unless otherwise agreed or decided", which appeared in other provisions of the draft. He wondered whether it would not be preferable to draft a general provision emphasizing the residuary character of the rules in the draft and reserving the faculty of States to settle their problems by special agreements.

21. Like Mr. Hambro, he wondered whether the expression "exercise a right of ownership" should be understood as meaning something different from other expressions used in the draft. In addition, he doubted whether it was correct to speak of a "right of ownership" at the international level. In international law, the concept of a "right of ownership" varied widely from one legal system to another. In Yugoslavia, for instance, the concept of the State's right of ownership was not the same as in other socialist countries; it derived from the concept of social ownership which in turn was based on the notion of self-management, according to which the State dit not occupy such an authoritarian position in internal legal relations that everything covered by the concept of social ownership belonged to it. He feared therefore, that when transposed to the international level, the concept of the right of ownership would give rise to

[9] See document A/CN.4/292, chap. III, paras. 54-76 of the commentary to article 14.

[10] General Assembly resolution 3281 (XXIX) of 12 December 1974.

[11] See *Yearbook... 1973*, vol. II, p. 27, document A/CN.4/267, part. IV, para. 13 of the commentary to article 10.

misunderstandings. It would be better merely to say "ownership".

22. As to the conditions stated in article 14, paragraph 2, he thought it should be specified whether they were cumulative or alternative. He noted that all the comments made on the concept of a "direct and necessary link", during the discussion on articles 12 and 13, also applied to articles 14 and 15.

23. He approved of the provisions proposed by the Special Rapporteur in article 15. That article appeared, however, to apply to all property of the predecessor State situated outside the territory of the newly independent State, whereas article 13 applied to property situated outside the territory "to which the succession of States relates". He wondered whether that qualifying phrase should not be added to article 15. Moreover, the conditions set out in article 15, subparagraphs (*b*) and (*c*), needed to be made more precise for purposes of their application. In particular, the Commission might consider formulating a procedure for the settlement of disputes arising out of the application of those conditions.

24. Mr. SETTE CÂMARA said he agreed with the Special Rapporteur on the need to include articles 14 and 15 in the draft. The speed at which decolonization was taking place was a matter for satisfaction, and the end of the colonial era was in sight. Nevertheless, despite all the progress made since the adoption of General Assembly resolution 1514 (XV), there were still some Non-Self-Governing Territories which had yet to achieve independence. Moreover, independence left many problems unsolved. The Special Rapporteur had given the example of the transfer of State property to the Republic of Chad which had only taken place in 1976, over 15 years after independence.[12] The rules embodied in articles 14 and 15 would thus be very useful in settling problems of that kind which arose in the future. Besides, the inclusion of those articles in the draft would show the Commission's awareness of the whole problem of newly independent States. It should be noted that the Commission's draft on succession of States in respect of treaties, adopted in 1974, not only dealt with the matters in question, but treated the problem of the newly independent State as the cornerstone of the draft.

25. Article 14 had the same structure as earlier articles of the draft. It dealt with property belonging to the predecessor State and not with property belonging to the territory itself. It should be remembered that colonial territories sometimes had their own movable and immovable property, which was outside the scope of the succession. He found the Special Rapporteur's treatment of the questions of movable and immovable property acceptable, and approved of the proposed wording.

26. He fully approved of the inclusion of paragraph 3 in article 14. Several resolutions of the General Assembly had proclaimed the permanent sovereignty of States over their natural resources. The wording of paragraph 3 had been drawn from Economic and Social Council resolution 1956 (LIX) and from the resolutions adopted by the General Assembly at its sixth special session. There were, perhaps, some verbal inaccuracies in that paragraph: for instance, the "wealth" of a country, to which reference was made, included the property mentioned in the previous paragraphs. Again, it was not easy to see how permanent sovereignty could be exercised over "economic activities". Nevertheless, since the wording in paragraph 3 had been used in a number of decisions and resolutions of the United Nations, the Commission should adhere to it.

27. It could also be contended, to use the Special Rapporteur's own argument, that the attributes of sovereignty mentioned in paragraph 3 already belonged to the territory before independence. Nevertheless, the provisions of that paragraph were still needed, because history showed that the attainment of independence was far from being peaceful and easy. History also offered many examples of devolution agreements of a leonine character. A saving clause such as paragraph 3 of article 14 was therefore necessary.

28. He approved of the wording of article 15 and had no special proposal to make on it. He suggested that both articles should be referred to the Drafting Committee.

29. Mr. QUENTIN-BAXTER said that the Special Rapporteur had demonstrated conclusively that the draft articles must deal with self-determination, which lay at the forefront of United Nations doctrine. Therefore, it was perfectly plain that in dealing with newly independent States or other new States, the rules should not be qualified by the phrase "unless otherwise agreed or decided" or words to that effect. The rules now being drafted related to the moment at which a change of sovereignty occurred and it was hoped and expected that the general principles they enunciated would guide States in drawing up the detailed agreements that followed changes of sovereignty. In particular, those rules could provide guidance when a succession of States occurred with something less than complete agreement or harmony between the predecessor and successor States. Consequently, the articles should be drafted in the light of past and contemporary experience. They should not be so narrow as to fail to discern problems of the immediate future, but they should always respect international life in its present form.

30. The Special Rapporteur had made highly pertinent references to economic sovereignty, a question which had arisen in connexion with each of the items discussed so far. In the present instance, however, while it was possible to grasp the basic idea of the concept of economic sovereignty at once and to concede that it was valid, great care should be exercised, in formulating legal rules, not to move inconsistently between the strict legal notions that were the normal subject of the Commission's work and the deeper political or legal principles that might motivate those rules.

31. Like other speakers, he experienced some difficulty with regard to article 14, paragraph 3, not because of its content, but because of its juxtaposition with the other paragraphs of the article. It referred to sovereignty in the traditional sense—the sense that sovereign States

[12] See 1393rd meeting, para. 9.

were free to deal with matters in their own territory and were masters of their own law. However, he was disturbed by the argument that, whenever the text failed to mention the consequences of State sovereignty, it might be inferred that the Commission was seeking to establish obligations which conflicted with that sovereignty. In addition, the Commission might be led to believe that it was performing a practical service for newly independent States when that was not, in fact, the case.

32. The same sort of difficulty arose in connexion with the opening words of article 14, paragraph 1. He realized that the Special Rapporteur was simply pointing out that, in conformity with the doctrine of self-determination, a Non-Self-Governing Territory was the owner of its resources and was entitled to them *ab initio*. If the property in question was privately owned, it would, upon a change of sovereignty, retain its legal character. But the Commission was concerned with another element, namely, that if the owner of the property, recognized in internal law, happened to be the predecessor State itself, then some process of transmission had to occur at the level of internal law and it had to occur in accordance with rules of international law. Therefore, if, as it was agreed, the Commission was to recognize particularly the situations that followed upon an act of self-determination, and was to give some preference to the rights of newly independent States, the solution lay not in adopting article 14, paragraph 3, or the special language found in article 14, paragraph 1, but in constructing the draft as had been done in the case of succession of States in respect of treaties—in other words, with complete respect for the principle of self-determination, with no attempt to enunciate it, but with every care to ensure that the rules contained in the draft did not flout that principle.

33. To that end, it was essential to give effect to the letter of the doctrine of self-determination. A Non-Self-Governing Territory, no matter how small, was an entity that must exercise the right to self-determination and, even if it decided to merge with another State, such a course fell within the category of State succession to which special respect was shown by the Commission; it could not simply constitute another case of a moving treaty frontier. Similarly, full respect must be shown for the spirit of the doctrine of self-determination. Since the principle involved could not be captured and enunciated in strict rules, the draft should leave room for it to operate. As had been done in the draft articles on succession of States in respect of treaties, it had to be recognized that there were cases in which a succession not involving the creation of a newly independent State might still present essentially the same characteristics as a situation which gave birth to a newly independent State. In the other draft, the Commission had had in mind the case of Bangladesh and had realized that treatment less generous or special than that applied in the normal case of decolonization would hardly be acceptable to the Government and people of that country. Another example was that of territories which decided to enter a free association with an existing State. Subsequently, they might wish to become fully independent —in other words, they might wish, once again, to exercise their right to self-determination. It was the duty of the world community and of individual States not to encourage schism within the territory of any sovereign State. Changes did and would occur, however, and it had to be appreciated that in the future some of them would doubtless involve, in the broadest possible fashion, the right to self-determination.

34. He was prepared to follow and amplify slightly the precedent of the draft articles on succession of States in respect of treaties and to recognize that there might be cases of separation of parts of a State—a matter now covered by article 17—which came under the rules applicable to newly independent States. Similarly, it should be recognized, in connexion with articles 12 and 13, that those same rules could apply, exceptionally, in the transfer of territories that were administered by the predecessor State, but did not form part of its own national territory.

35. Articles 12 to 15, and even article 17, reflected the basic principle that immovable property should pass to the ownership of the territory in which it was situated. Articles 13 and 15, however, did not draw a distinction between property situated in the territory of the predecessor State and property situated in a third State, nor did they even contemplate the possibility that ownership of immovable property situated in the predecessor State or a third State might pass to the territory to which the succession related. On the other hand, the notion of linkage with the successor State appeared to suggest that even the place, or situation, of the property would not provide the final answer. As the Special Rapporteur had pointed out, in general, a Non-Self-Governing Territory had a fairly well-defined relationship with its property and, consequently, it was hardly necessary and possibly even dangerous to qualify in any way the notion that a newly independent State was the owner of the immovable property situated in its territory. However, the Commission was formulating guiding principles. Was it right, therefore, to establish an absolute rule and affirm that the situation factor alone would govern the disposition of immovable property within the territory, but that the rule might be qualified in the case of property situated in the predecessor State? One great merit of the rules embodied in the articles might be to suggest that there were circumstances in which, for reasons of fairness, the rule on the situation of the property had to be tempered.

36. Again, a State's natural resources might be located in one area of vital importance to the country as a whole and substantial investment might have been made in those resources. If the area became independent, the circumstances would have all the features normally associated with the birth of a newly independent State, but the economic loss to the other parts of the country might well have to be considered. In his view, it would be advisable to state explicitly that the doctrine of sovereignty over natural resources was not questioned in any way. A general article could be incorporated in the draft especially for that purpose. Nevertheless, since guidance was being given to States on the way in which property within their territories should be classified, importance should be attached to the notion of equity.

37. With regard to movable property, he had no objection to the notion that the presumptions should operate more firmly in favour of newly independent States or States in similar situations. Nevertheless, it was difficult to avoid a fairly distinct hierarchy of factors—the situation of the property, the linkage between the property and the predecessor or the successor State, and the economic contribution made to the property.

38. Mr. USHAKOV said that, in principle, he fully agreed with the Special Rapporteur about succession to State property situated in newly independent States. He was not sure, however, what was meant by the expression "newly independent State". Article 3 of the draft did not define that expression, though the Commission had defined it in article 2, paragraph 1 (*f*) of the draft on succession of States in respect of treaties. Before dealing with succession to State property situated in newly independent States, it would therefore be necessary to define the concept of a newly independent State.

39. Should Trust Territories be included in that definition? The Special Rapporteur has assimilated the idea of a newly independent State to that of a Non-Self-Governing Territory; for in paragraph 2 of the commentary to article 14, the Special Rapporteur said that the type of succession under consideration involved "a 'Non Self-Governing Territory', which means, in accordance with the United Nations Charter, a territory having a certain international status". But he referred only to Chapter XI of the Charter (Declaration regarding Non-Self-Governing Territories), whereas reference might also be made to Chapter XII, on the International Trusteeship System. It could therefore be asked why the Special Rapporteur had confined himself to the Non-Self-Governing Territories covered by Chapter XI of the Charter and why he had departed from the definition the Commission had given in article 2, paragraph 1 (*f*) of the draft on succession of States in respect of treaties. According to that definition, the expression "newly independent State" meant a successor State the territory of which, immediately before the date of the succession of States, had been a dependent territory. It therefore included all dependent territories, that was to say, not only Non-Self-Governing Territories, but also Trust Territories. It was obvious, however, that that definition could not apply to newly independent States formed from several territories. That was why the Commission had had to include in its draft on succession of States in respect of treaties, a separate article on newly independent States formed from two or more territories (article 29). It should do the same in its present draft.

40. He thought that it was also necessary, in articles 14 and 15, to cover the case of a newly independent State which united with another State. The Special Rapporteur had said that the cases of integration covered by articles 12 and 13 related only to enclaves. But it was quite conceivable that a Territory such as Namibia, which was not an enclave, might unite with a neighbouring State after gaining independence, by the process of self-determination. That possibility should therefore be taken into account.

41. He was not sure what the expression "State property" meant in the context of articles 14 and 15. The definition of State property given in article 5 did not apply to cases of decolonization: that definition referred to the internal law of the predecessor State, whereas in cases of decolonization, it was not necessarily the internal law of the predecessor State which applied, as the Special Rapporteur himself had said. The definition of State property given in article 5 [13] would therefore have to be amplified, so that it could apply to cases of decolonization.

42. He fully agreed on the need to establish rules providing for the passing to the newly independent State of the State property of the administering Power situated in the territory of that State. Like the Special Rapporteur, however, he thought that if the Commission dealt exclusively with succession to State property situated in newly independent States, it would be leaving aside property belonging to a Non-Self-Governing Territory which was about to become a newly independent State. As the Special Rapporteur had pointed out in paragraph 1 of his commentary to article 14

> Such property is not affected by the succession of States, firstly because, by definition, it does not belong to the predecessor State, whose property alone is affected by the succession of States, and secondly because it does not in any case qualify as State property, since the Non-Self-Governing Territory does not acquire statehood until the day on which the succession of States occurs.

It was, however, the property belonging to the Non-Self-Governing Territory which was most important for newly independent States—but that property did not automatically pass to the successor State. Consequently, it was not enough to say in the commentary that the property belonging to the territory must pass to the newly independent State; it was necessary to state rules to that effect in the draft articles.

43. Referring to subparagraph (*a*) of articles 14 and 15, he said he was not sure of the significance of an agreement between two States, one of which did not yet exist. It was possible, *in concreto*, that an agreement might exist between a newly independent State and the former metropolitan country and be recognized as valid by both parties. But such an agreement was of no value in itself if the two parties had not recognized its validity. In its draft articles on succession of States in respect of treaties, the Commission had recognized the existence of agreements of that kind, but it had affirmed that such agreements had no value as far as succession of States in respect of treaties was concerned. Thus, paragraph 1 of article 8, on agreements for the devolution of treaty obligations or rights from a predecessor State to a successor State, provided that

> The obligations or rights of a predecessor State under treaties in force in respect of a territory at the date of a succession of States do not become the obligations or rights of the successor State towards other States parties to those treaties in consequence only of the fact that the predecessor State and the successor State have concluded an agreement providing that such obligations or rights shall devolve upon the successor State.[14]

*The meeting rose at 6 p.m.*

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[13] 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.

[14] *Yearbook... 1974*, vol. II (Part One), p. 182, document A/9610/Rev.1, chap. II, sect. D.