

Document:-
A/CN.4/SR.1558

Summary record of the 1558th meeting

Topic:
Treaties concluded between States and international organizations or between two or more international organizations

Extract from the Yearbook of the International Law Commission:-
1979, vol. I

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that *par in parem imperium non habet* and the principle that one State could not act in the territory of another. While both those principles were based on the idea of the separation of States, they had, especially in modern times, been mitigated by inter-State co-operation. Consent was really a matter of such co-operation; it was in essence always bilateral, not unilateral. Accordingly, it seemed strange and unbalanced to presume in the draft articles the consent of one State to the activities of another within its territory, on the one hand, and, on the other hand, the absence of consent on the part of that other State to the exercise of jurisdiction. Because of that imbalance, he had difficulty in forming an opinion on the draft articles and in commenting on their drafting.

33. It might be better to try to deal with the procedural and substantive aspects of the topic at the same time, and to determine in which cases the "pre-trial consent" of the non-territorial State must be presumed from its activities in, or in connection with, the territorial State, particularly where those activities made use of the territorial State's legal system. That would, admittedly, entail dealing immediately with the substance of the matter, but he feared that to deal first with the procedural aspect might prejudice the subject-matter of what had been called the limits of State immunity.

34. Those comments were perhaps also relevant to some of the detailed subjects discussed in the document under study, particularly the subject of counter-claims, which provided an illustration of the reciprocal relationship involved in the type of cases in question. He wondered whether the limitations set out in draft article 10 were always fully applicable to counter-claims. For example, in a well-known case before the Netherlands Supreme Court, involving a Netherlands bank and the United States of America, the counter-claim entered by the bank had not set off the claim made by the United States.

35. Furthermore, he found the discrepancy to which the Special Rapporteur had referred in the first sentence of paragraph 80 of his report so startling as to make him wonder whether the reciprocal relationship involved in the matters to which the sentence referred was not sometimes overlooked. There was also, he thought, a reciprocal aspect to the activity, namely, the establishment of a representative bureau in a foreign State, which had been the subject of the latest advisory opinion by the International Court of Justice.⁵ In short, all instances in which one State was active in the territory of another involved an element of reciprocity, co-operation or the exchange of benefits, which could not always be split up into its "component parts", in the sense of the unilateral acts of one or other of the States involved. The Commission should give thought to that reciprocal aspect of immunity.

⁵ Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion: *I.C.J. Reports 1980*, p. 73.

36. Mr. USHAKOV said he would confine himself to some general comments on the articles under consideration, as he thought that all the articles in Part II required thorough study, and it was too early to dwell on their drafting.

37. Article 8, like the following articles, was not, in the Special Rapporteur's view, based on presumptions, since the Special Rapporteur believed that he had stated the rule of immunity in article 6 and could then formulate exceptions to that rule, as was clearly shown by the first sentence of his written introduction to article 8 (A/CN.4/340 and Add.1, paragraph 45). However, article 6 did not state the rule of immunity because, according to that provision, a State was immune from the jurisdiction of another State "in accordance with the provisions of the present articles". The rule was stated not in absolute terms, but in relation to the draft articles. Starting with article 7, all the proposed articles were thus based on a general principle that had not been stated. If that principle was stated, it would apply with exceptions, whereas if it was not stated, both the articles under consideration and the following articles could only be based on presumptions. There would be no justification for those articles if the rule of immunity was not properly established at the beginning of Part II of the draft.

38. It should be noted that civil actions that might be brought would not necessarily be connected with the territory of the receiving State or its area of jurisdiction. Lastly, he found the expression "voluntary submission" unsatisfactory. It might be used in legal literature, but seemed rather too strong for a draft article referring to the position of one State in relation to that of another.

39. The CHAIRMAN, noting that the Commission had not been able to complete its examination of the Special Rapporteur's third report on item 7 within the allotted time,⁶ suggested that the discussion should be resumed later in the session.

It was so decided.

The meeting rose at 12.45 p.m.

⁶ See 1650th meeting, paras. 39 and 43.

1658th MEETING

Monday, 25 May 1981, at 3.10 p.m.

Chairman: Mr. Doudou THIAM

Present: Mr. Bedjaoui, Mr. Calle y Calle, Mr. Díaz González, Mr. Francis, Mr. Jagota, Mr. Quentin-Baxter, Mr. Riphagen, Mr. Šahović, Mr. Sucharitkul, Mr. Tabibi, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta, Mr. Yankov.

**Expression of sympathy to the Government
and people of Ecuador**

1. The CHAIRMAN said that the Commission joined with the whole of the international community in presenting to the Government and people of Ecuador its sincere condolences in connection with the tragic air crash in which the President of Ecuador and many members of the Ecuadorian Government had lost their lives.

**Succession of States in respect of matters other than
treaties (A/CN.4/338 and Add.1-3, A/CN.4/345)**

[Item 2 of the agenda]

INTRODUCTORY STATEMENT BY THE SPECIAL
RAPPORTEUR

2. The CHAIRMAN invited the Special Rapporteur to introduce his thirteenth report on succession of States in respect of matters other than treaties (A/CN.4/345), which had been prepared with a view to the second reading by the Commission of the draft articles adopted on first reading at its thirty-second session.¹

3. Mr. BEDJAOUI (Special Rapporteur) said that the Commission had been studying the topic of succession of States in respect of matters other than treaties for thirteen years and, in view of its immensity, had decided to restrict the scope of the articles to State property, archives and debts. One of the Governments which had submitted comments on the draft articles had expressed regret that the mass of information so accumulated had given rise only to a limited number of articles. In his own opinion, the draft articles, which he regarded not as the result of his personal studies but as the fruit of the Commission's joint efforts, unquestionably constituted a worthwhile product. In preparing them, the Commission had aimed at legal soundness and endeavoured to produce an aid to States in settling their problems.

4. The fact that few States had submitted written comments on the draft articles was somewhat disappointing, but it might mean that States had found the draft generally acceptable and had felt no need to criticize it. In the report under examination, he had supplemented the few written comments which had been received with comments made in the Sixth Committee in 1979 and 1980, at the thirty-fourth and thirty-fifth sessions of the General Assembly.

DRAFT ARTICLES ADOPTED BY THE COMMISSION:
SECOND READING

ARTICLE I (Scope of the present articles) AND TITLE OF
THE DRAFT

5. Mr. BEDJAOUI (Special Rapporteur) read the text of article I of the draft (Part I: Introduction):

Article I. Scope of the present articles

**The present articles apply to the effects of succession of States
in respect of matters other than treaties.**

6. In connection with that article, he recalled that, in 1979, one representative to the Sixth Committee had said that the scope of the articles should be restricted to the "effects" of succession of States, or the legal consequences of the replacement of one State by another in the responsibility for the international relations of territory. That had always been the view of the Commission. Other representatives had said that it was not immediately clear from the expression "matters other than treaties" to what matters the draft articles referred, and that it might even be thought that the articles applied to all matters other than treaties. That was not the case, however, for the Commission had been obliged to restrict the scope of its work.

7. Four States had submitted written comments on article 1. The German Democratic Republic had approved the article (A/CN.4/338), while expressing the wish that, on second reading, the Commission would seek to define the field of application of the draft more precisely and would amend its title accordingly. It suggested that explicit reference should be made to State property, State archives and State debts. Italy (A/CN.4/338/Add.1) proposed that the title of the draft and article 1 should be amended along the same lines, and considered that the part of the draft on State archives should be distinct from the other two parts and should comprise an autonomous body of rules. Austria (A/CN.4/338/Add.3) would also prefer the title of the draft to be more explicit; it considered that a vague title was not good enough for an international instrument. Czechoslovakia (A/CN.4/338/Add.2) also felt that the title of the draft and the wording of article 1 might be misleading as to the content of the draft. While it shared the desire for harmony with the 1978 Vienna Convention on Succession of States in Respect of Treaties,² it believed that the Commission must choose wording that reflected as closely as possible the subject-matter of the draft. The 1978 Vienna Convention applied to treaties between States, whereas the draft articles applied to three other clear-cut matters that could not be defined in relation to such treaties.

8. The Commission had unquestionably gone some way towards meeting the desires of those four States by deciding, with respect to the French version of the article, to replace the expression "*dans les matières autres que les traités*" by the phrase "*dans des matières autres que les traités*" in order to indicate that

¹ See *Yearbook . . . 1980*, vol. II (Part Two), pp. 8 *et seq.*

² For the text of the Convention (hereinafter called "1978 Vienna Convention"), see *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. III, *Documents of the Conference* (United Nations publications, Sales No. E.79.V.10), p. 185.

the draft covered only some matters other than treaties. However, the new text failed to indicate what those matters were. Concern for parallelism between the draft and the 1978 Vienna Convention had at first led the Commission to give the draft a title by reference to that of the Convention; however, now that the Commission had limited its own field of action, the same concern constrained it to specify the matters covered by the draft.

9. A problem then arose in connection with State archives. Some considered that they were State property so special in character that they must be distinguished from State property. His own view was that State archives did indeed form a special category of State property, but that they were none the less State property in essence. That was why he had proposed the drafting of articles dealing specially with State archives, and the Commission had followed him on that point. If State property, archives and debts were specifically mentioned in the title of the draft and in article 1, there was a risk that State archives might appear to form a category wholly independent from that of State property. The impression might then arise that State archives were governed by rules of their own and not by the rules applicable to State property. However, that risk was not very great, and the Commission could avoid it by stating in one of the provisions relating to State archives that they formed a category of State property.

10. He therefore suggested that the draft should be entitled "Draft articles on succession of States in respect of State property, archives and debts", and that article 1 should be reformulated accordingly (A/CN.4/345, para. 12). With regard to the French text, it would not be necessary to state that the matters covered were "*biens d'Etat, archives d'Etat et dettes d'Etat*".

11. Czechoslovakia had made a comment concerning both article 1 and article 16 (A/CN.4/338/Add.2). It feared a possible contradiction between article 1, as proposed by the Special Rapporteur, and article 16, particularly subparagraph (b) thereof. Czechoslovakia argued that the succession of States—replacement of one State by another in responsibility for the international relations of territory—necessarily entailed an inter-State relationship and that article 16 (b) was, therefore, superfluous, since there was a contradiction between it and the reference to State property, archives and debts in article 1. The Commission could deal with that point when it came to examine article 16.

12. The CHAIRMAN congratulated the Special Rapporteur on his report, which bore the stamp not only of his erudition but also of his experience in a field of special importance to developing countries.

13. Mr. JAGOTA referring to the changes to the title of the draft and to article 1 suggested by the Special Rapporteur, reminded the Commission that a systematic course had been followed in separating the question of State succession from that of the law of

treaties, in dividing that question into the two topics of succession in respect of treaties and succession in respect of rights and duties resulting from sources other than treaties, and, finally, in adopting the title now in use. In proposing the amendment of that title, the Special Rapporteur had said that its present vagueness might create the impression that the rules in the draft articles were merely residual, covering whatever was not covered by the law of succession in respect of treaties, and so lead to the application of articles other than on the specific subjects of State property, archives and debts. His own belief was that that risk was virtually non-existent, since the presentation of the draft, with its division into three sections each containing a definition of the relevant subject matter, should suffice to dispel any false impression concerning the scope of the draft that might be occasioned by the title. In that context, no attempt to extend the application of the draft articles to subjects other than State property, archives and debts could repose on anything more than an argument of analogy: the text offered no basis for an argument of equation. Furthermore, since States were now fully familiar with the subdivision of State succession to which the present title related, they might find a change in that title confusing, particularly if the amendment was unaccompanied by any alteration in the substance of the articles.

14. For those reasons, and although he personally had no objection to the amendments proposed, he believed that the Commission should adopt a cautious approach and postpone action on the proposals until it had heard the comments of Governments and the Sixth Committee of the General Assembly.

15. Mr. ŠAHOVIĆ endorsed in principle the Special Rapporteur's proposal to amend the title of the draft and the wording of article 1.

16. The calls for the Commission to be more precise in indicating the matters covered by the draft articles were justified. Before taking a decision, the Commission might, as Mr. Jagota had proposed, continue the second reading so as to see what advantages might be derived from maintaining the provisions in question unchanged. It seemed obvious, however, that there was some risk of the present text giving the impression that the rules set forth in the draft applied not merely to State property, archives and debts, but to all matters other than treaties. If the expression "in respect of matters other than treaties" were maintained, it would have to be explained somewhere—perhaps in special provisions at the end of the draft—what possibilities there would be of applying the rules contained in the draft to other matters relating to State succession. That appeared to be the logical consequence of Mr. Jagota's suggestion. As each of the main parts of which the draft was composed began with an article defining its scope, the Commission could also meet Mr. Jagota's point by inserting the requisite explanation in those articles. He would, however, prefer the adoption of the wording proposed by the Special Rapporteur.

17. Mr. TABIBI said that the Special Rapporteur had provided, in what, like the topic of jurisdictional immunities of States and their property, could be considered a new field of international law, articles which satisfied all the conflicting interests involved and which third world States could feel proud to have been drafted by a representative of one of their number.
18. While he agreed with the changes which the Special Rapporteur had proposed to the title of the draft and to article 1, he also agreed with Mr. Jagota and Mr. Šahović that those changes should not be made immediately. Since most cases of State succession occurred in the third world, it was there that practical interest in, and experience of, the matters to which the draft articles related were greatest. That being so, and comments having so far been received only from European States, the Commission should leave time for expressions of opinion by third world nations too.
19. Mr. USHAKOV said that the fact that few States had submitted comments on the draft probably meant that the draft had generally been deemed satisfactory.
20. With regard to article 1, he considered it essential to make the amendment suggested by the Special Rapporteur, since the remainder of the draft dealt exclusively with State property archives and debts. As for the title of the draft, it could equally well be left in its present form or amended as proposed by the Special Rapporteur. The question could be decided at a later stage.
21. Mr. FRANCIS observed that the English and Spanish versions of the title and of article 1 could be interpreted as being more comprehensive in scope than the corresponding French originals. Since the changes proposed by the Special Rapporteur would have the dual advantage of removing that ambiguity and of showing, by means of a concise formula, to what the draft referred, his first reaction was to support them. He agreed, however, that a decision on that matter could be postponed until the discussion of the draft as a whole had been completed.
22. Mr. SUCHARITKUL said that he welcomed the Special Rapporteur's suggestion to amend the title of the draft, and hoped that the Commission would both approve it and take account in that respect of the comments made by some of its members, particularly Mr. Jagota. Like Mr. Šahović and Sir Francis Vallat, he thought that the proposed amendment would make for better understanding of the draft and preclude misunderstanding. He recalled that he had himself drawn attention to the question of obligations which arose outside treaties and therefore related not to contractual, but to criminal or penal situations. It could be held that there was State succession in such cases. Consequently, the idea of expressly listing the three matters dealt with in the draft—State property, archives and debts—all three of which were defined in the text, appeared to be logically necessary in the interests of clarity.
23. He also approved the Special Rapporteur's suggestion relating to article 1. He noted that the Commission was concerned only with the effects of State succession, and not with the replacement of one State by another in the responsibility for the international relations of territory.
24. Mr. YANKOV said that the draft articles would make a very important political and legal contribution to the progressive development of international law. Although, in principle, a second reading should not be used to reopen fundamental or conceptual issues, he subscribed to the adage "better late than never" so far as improvements to the draft were concerned. He also agreed that the Commission should not be in a hurry to amend the draft at that stage and that, if time allowed, it should reflect a little more on the issues involved.
25. Where the scope of international treaties was concerned, it could be assumed that, for purely practical considerations, Governments favoured precision and, if only for that reason, it would be advisable to confine the scope of the draft to the three main topics of State property, State archives and State debts. In that connection, the points raised by Mr. Jagota merited further consideration. It would be difficult to make provision in the draft for other matters, apart from State property, State archives and State debts, to be contemplated, and such a provision could lead to vagueness. He therefore supported the Special Rapporteur's proposal.
26. It might, however, be possible at a later stage to rearrange the draft articles in a more logical order, in harmony with the amended title as proposed by the Special Rapporteur in paragraph 12 of his report, so as to deal first with State property and State archives and then with State debts.
27. He urged that all aspects of the issues involved should be considered before any final decision was taken on such changes.
28. Mr. TSURUOKA thought that, when at the stage of second reading, the Commission should endeavour to construct a coherent and harmonious body of legal rules capable of resolving specific problems in the field under consideration.
29. He approved the proposals made by the Special Rapporteur and saw no cogent reason for opposing the suggested amendment. He hoped that the Commission would eschew theoretical discussion on the subject of the title and that, as it examined each of the draft articles, it would succeed in harmonizing the various currents of opinion which co-existed in its midst.
30. Some members had called for the Commission to postpone its decision on the title. While their attitude was not without merit, he felt that it would be preferable to follow a slightly different course by adopting provisionally the title suggested by the Special Rapporteur and reviewing that decision at a later stage should that appear necessary.

31. Mr. RIPHAGEN said that he agreed entirely with the Special Rapporteur's proposed change of title of the draft articles.

32. He was somewhat at a loss, however, to understand how the draft articles might be applied by analogy to the many other questions that arose on a succession of States—for example, to questions of nationality, change of legal order, and currency, as well as the questions to which Mr. Sucharitkul had alluded. In that connection, he would also be grateful for Mr. Jagota's guidance as to the extent to which the draft articles could be applied by analogy to matters with which they did not deal. For his own part, he had some difficulty in seeing any analogy, except with qualifications, in which case such qualifications should be expressed.

33. He agreed that there was no need for haste in the matter and considered that, for the time being, the course outlined by the Special Rapporteur was the best one. He wondered, however, whether, in draft article 1, the word "legal" should be added before the word "effects". It was clear from draft article 17,³ which referred to the extinction of obligations, that legal effects were involved. On the other hand, State property was defined in draft article 5 as including "interests", a term which did not have an immediate legal connotation. Moreover, the draft articles frequently referred to effects that were more economic than legal in character, all of which threw doubt on whether or not only legal effects were involved.

34. It had been said that the draft articles were concerned with legal effects alone, and not with State succession itself. While, strictly speaking, that was correct, he wondered whether it was really true, in the legal sense, that the draft articles were not concerned with the origins of the State succession. As he saw it, the main thrust of the draft articles related to the specific case of a succession which arose out of the exercise of the right of self-determination of peoples. That was why the term "newly independent State" had been introduced, and why he found it a little strange that draft article 2 used the term "territory" rather than "peoples", who were very important in that respect. After all, the main reason for having rules of international law at all was that they provided a value judgement on State succession. Such a judgement might be neutral (the case of some minor change in territory), or negative (the case of State succession arising out of a wrongful act), positive (the case of State succession arising out of the right of self-determination). Consequently, while a technical distinction could be drawn between State succession and its effects, there remained an important link between those two concepts, which was perhaps the main reason for having the draft articles at all.

³ For the text of the draft articles adopted by the Commission on first reading, see *Yearbook* . . . 1980, vol. II (Part Two), pp. 8 *et seq.*

35. Mr. VEROSTA reminded the Commission that the present title of the draft articles had never been considered definitive. At a certain stage of its work, the Commission had very wisely decided to restrict the scope of its study to the three major concepts of State property, State debts and State archives, all three of which were defined in the draft.

36. He thought that the title of the draft articles should be brought into line with their concept on second reading, and approved the Special Rapporteur's proposal that the title of the draft articles should be changed and that article 1 should be reformulated accordingly. He had no definite opinion as to the most opportune moment for making that change.

37. Mr. CALLE Y CALLE said that it would be logical to adapt the title of the draft to the substance of the draft articles, and to reformulate article 1 to cover the three main categories of State property, State archives and State debts. It was clear from the wording of draft article 1 that there were other matters affected by State succession which fell outside the scope of the draft.

38. It would perhaps be advisable to show in draft article 1 that the effects of succession in question were effects in law. To that end, it might be better to speak of "juridical" effects rather than "legal" effects, since "legal" referred to the internal order of a country, whereas "juridical" signified the type of relationship between the predecessor and successor States.

39. A second reading was not so much a work of innovation and creation as of adjusting agreed formulations; in that connection, the silence on the part of a number of Governments was to be construed as a tribute to the work done by the Commission and the Special Rapporteur. It was now incumbent upon the Commission to put the final touches to its legal edifice with a view to presenting it in its final form. It was particularly important for the Commission to complete that task at the current session, since the terms of office of its present members were due to expire.

40. The inclusion in the draft articles of a section on State archives was no anomaly. State archives were a part of State property; but they were a special kind of property, in that they presented features which transcended mere economic value and were closely connected with the history and personality of States. It was for that reason that the members of the Sixth Committee of the General Assembly had requested that a special section on State archives should be included in the draft.

41. Sir Francis VALLAT said he felt impelled to express his admiration for the work carried out by the Special Rapporteur. Having provided the Commission with a series of twelve reports of the highest historical value, he had now submitted a set of balanced and clear-cut draft articles in a splendid report.

42. He agreed with the Special Rapporteur that the title to the draft articles and article 1 should be amended. He would, however, state the problem in reverse. The important thing was to ensure that article 1 accurately reflected the scope of the draft articles. Those articles dealt with State property, State archives and State debts; they did not deal with other matters that might be affected by a succession of States. It seemed to him that, in the circumstances, article 1 should reflect only the content of the draft articles, and it followed, as a matter of common sense, that the title should follow along the same lines.

43. Mr. USHAKOV was of the opinion that it would be desirable at the present stage of the Commission's work to prepare a draft safeguard clause. The Special Rapporteur might wish to consider as a possible starting point for the elaboration of such a provision a text reading:

“Nothing in the present articles shall be considered as prejudging in any manner whatsoever any question relating to the effects of State succession in matters other than those dealt with in the present articles”.

The meeting rose at 6 p.m.

1659th MEETING

Tuesday, 26 May 1981, at 10.05 a.m.

Chairman: Mr. Doudou THIAM

Present: Mr. Bedjaoui, Mr. Calle y Calle, Mr. Dadzie, Mr. Diaz González, Mr. Francis, Mr. Jagota, Mr. Quentin-Baxter, Mr. Riphagen, Mr. Šahović, Mr. Sucharitkul, Mr. Tabibi, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta, Mr. Yankov.

Succession of States in respect of matters other than treaties (continued) (A/CN.4/338 and Add.1-3, A/CN.4/345)

[Item 2 of the agenda]

DRAFT ARTICLES ADOPTED BY THE COMMISSION:
SECOND READING (continued)

ARTICLE 1 (Scope of the present articles)¹ AND TITLE OF THE DRAFT (concluded)

1. Mr. DÍAZ GONZÁLEZ said that he agreed entirely with the Special Rapporteur's proposed amendment to the title of the draft articles (1658th meeting, para. 10). He was not sure, however, whether the Commission was not limiting the draft articles unduly by confining them to the three topics of State property, State archives and State debts, or whether, if

on the contrary it did not stop there, the draft articles would not be too broad in scope. Since, however, it had been made quite clear at the first reading that the draft articles would deal only with those three topics, and, in addition, the comments submitted by States had been to the same effect, he thought that the Commission should accept the title as amended.

2. Mr. QUENTIN BAXTER said that he had been much impressed by the wealth of the documentation which the Special Rapporteur had laid before the Commission, and he recognized that the variety of ways in which States arranged their affairs had caused many problems for the Special Rapporteur in his endeavour to reduce the huge volume of State practice to the measurable compass of a set of rules.

3. He shared the general feeling that it should be made clear that the Commission had dealt with three subdivisions of what could be regarded as an integral, yet extensible subject. It went without saying that what the Commission had done within those subdivisions would be helpful to lawyers faced with problems in other areas of the subject of succession, but the responsibility for drawing analogies must be theirs and not the Commission's.

4. In the final analysis, archives were, of course, State property, but the comparison between their value as property and their value as archives could be likened to the face value of a postage stamp that had achieved an enormous price tag in the world of philately. Sometimes archives would have to be measured not in terms of their commercial value, but, like rare stamps, of their intrinsic value, for their value to nations and peoples was so great that it was only right to single them out for special attention and, in so doing, give the draft articles an entirely new dimension.

5. It seemed to him that at second reading the Commission should give some thought to the way in which the reader could be guided as to the relationship between archives as archives and archives as property. The main point, however, was to stress that the rules relating to archives as archives took priority over the residual rules affecting their status as property.

6. Mr. JAGOTA said that he had indicated at the previous meeting his preference for the title and text of article 1 as drafted, mainly because of the categorization that had been attempted. It was, however, no more than a preference, and he was fully prepared to abide by the majority view.

7. With regard to Mr. Riphagen's question (1658th meeting) as to what he had meant by his reference to analogy, he was well aware that the concept of analogy could be abused. In that connection, he would remind members that article 33 of the draft articles on the succession of states in respect of treaties adopted by the Commission, which provided for an analogy between a State that had separated from another State and a newly independent State, had not been adopted in

¹ For text, see 1658th meeting, para. 5.