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Summary record of the 1688th meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
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47. The CHAIRMAN thanked the Observer for the European Committee on Legal Co-operation for describing that body's activities. Europe made a substantial contribution to the work of the Commission, whose task it was to effect the synthesis of the world's legal systems, for, historically, Europe was the point at which those systems met. The Commission would, therefore, unquestionably draw inspiration from the work of the Committee.

The meeting rose at 1 p.m.

1688th MEETING

Friday, 10 July 1981, at 10.20 a.m.

Chairman: Mr. Doudou THIAM

Present: Mr. Aldrich, Mr. Barboza, Mr. Bedjaoui, Mr. Boutros Ghali, Mr. Calle y Calle, Mr. Dadzie, Mr. Francis, Mr. Njenga, Mr. Pinto, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Šahović, Mr. Sucharitkul, Mr. Tabibi, Mr. Ushakov, Mr. Francis Vallat, Mr. Verosta, Mr. Yankov.

Resignation of a member of the Commission

1. The CHAIRMAN said that, in a letter addressed to him, dated 19 June 1981, Mr. Tsuruoka had submitted his resignation from the Commission. At a private meeting on 7 July 1981, the Commission had taken note with regret of that resignation. In a letter dated 10 July, the Chairman had informed Mr. Tsuruoka and the Secretary-General of the United Nations of the Commission's decision.

2. At its private meeting on 7 July 1981, the Commission had elected Mr. Díaz González Chairman of the Drafting Committee, to replace Mr. Tsuruoka.

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

[Item 2 of the agenda]

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

ARTICLE 20 (Newly independent State),

ARTICLE 21 (Uniting of States),

ARTICLE 22 (Separation of part or parts of the territory of a State), *and*

ARTICLE 23 (Dissolution of a State)

* Resumed from the 1675th meeting.

3. The CHAIRMAN invited the Commission to consider articles 20 to 23, which read:

Article 20. Newly independent State

1. When the successor State is a newly independent State, no State debt of the predecessor State shall pass to the newly independent State, unless an agreement between the newly independent State and the predecessor State provides otherwise in view of the link between the State debt of the predecessor State connected with its activity in the territory to which the succession of States relates and the property, rights and interests which pass to the newly independent State.

2. The agreement referred to in paragraph 1 should not infringe the principle of the permanent sovereignty of every people over its wealth and natural resources, nor should its implementation endanger the fundamental economic equilibria of the newly independent State.

Article 21. Uniting of States

1. When two or more States unite and so form a successor State, the State debt of the predecessor States shall pass to the successor State.

2. Without prejudice to the provision of paragraph 1, the successor State may, in accordance with its internal law, attribute the whole or any part of the State debt of the predecessor States to its component parts.

Article 22. Separation of part or parts of the territory of a State

1. When part or parts of the territory of a State separate from that State and form a State, and unless the predecessor State and the successor State otherwise agree, an equitable proportion of the State debt of the predecessor State shall pass to the successor State, taking into account all relevant circumstances.

2. Paragraph 1 applies when part of the territory of a State separates from that State and unites with another State.

Article 23. Dissolution of a State

When a predecessor State dissolves and ceases to exist and the parts of its territory form two or more States, and unless the successor States otherwise agree, an equitable proportion of the State debt of the predecessor State shall pass to each successor State, taking into account all relevant circumstances.

4. Mr. BEDJAOUI (Special Rapporteur) reminded members that article 20 dealt with succession of States in the event of decolonization. It had been the subject of conflicting written and oral comments. Some considered that the article was inadequate, and that it should stipulate more categorically for the non-transferability of any debt whatsoever to the newly independent State. Others, on the other hand, felt that it did not give sufficient weight to the need to assign to the newly independent State certain debts entered into for the benefit of the former territory.

5. That divided view of the same article would seem to confirm that its terms achieved a certain balance and did indeed constitute a compromise formula. He therefore trusted that the Commission would not modify its content.

6. Article 20 first laid down, in paragraph 1, the principle that debts did not pass to the newly

independent State, which should satisfy those who considered that such States had suffered enough from colonization and should not have to assume debts entered into by the colonizing State. On the other hand, it preserved the possibility of debts passing under an agreement between the predecessor State and the successor State, subject to the proviso that only those debts which had benefited the territory acquired by the newly independent State would pass to that State. Paragraph 2 then stipulated that the agreement must not infringe the principle of the permanent sovereignty of every people over its wealth and natural resources, and that its implementation must not endanger the fundamental economic equilibria of the successor State.

7. While he considered the wording adopted in first reading entirely satisfactory, he did feel that the phrase suggested by a representative to the Sixth Committee and quoted in paragraph 207 of his own thirteenth report (A/CN.4/345 and Add.1–3) could be added at the end of paragraph 2 to make it clear that the agreement must not jeopardize the normal development of the newly independent State by excessive indebtedness. He was prepared to accept that addition, but would not personally insist on it.

8. He had not been convinced by the arguments adduced in written or oral comments by those who considered that article 20 as adopted in first reading went too far. The persons concerned seemed, in particular, to confuse State debts which passed to the successor State and local or localized debts. Article 20 in no way precluded the assignment of the latter category of debts to the successor State. It should, however, be noted that debts initially contracted by the predecessor State bore no relation to the local debt, which latter could have been directly entered into by an enterprise or a local authority in the territory and for which the territory would of course continue to be responsible, as it would for State debts from which the territory had benefited.

9. Article 21, given the content of paragraph 2, raised the same problems as article 12.[1] The question was whether the matter dealt with in the article still came within the context of State succession since, presumably, succession had already occurred and the apportionment of the debt by the successor State among its component parts was therefore a matter for the internal law of that State.

10. Paragraph 2 of article 21 had been designed to protect the creditors of the State and to identify their debtor for them. However, some people considered that that objective had not been attained, inasmuch as paragraph 2 apparently authorized the successor State to opt for a change of debtor, and so could create enormous confusion among creditors. Although he had proposed in paragraph 213 of his report that the paragraph should be deleted, he was still hesitant about the matter. Paragraph 1 laid down the principle of the passing of State debts from the predecessor States to the successor State, and paragraph 2 provided for a second legal transaction whereby the debts could be apportioned in accordance with the internal law of the successor State. Since he realized that that could be regarded both as a complication and as a protection for creditors, he would leave it to the Commission to decide whether to retain or to delete paragraph 2.

11. In regard to articles 22 and 23, which related respectively to the case of separation and to that of dissolution, he recommended that the Commission should be guided by the same consideration as always, namely that the passing of the debt or its apportionment should be effected in equitable proportions between the predecessor State and the successor State, in the case of article 22, and between the successor States, in the case of article 23. Obviously, such a solution was possible only if due account was taken of all the relevant circumstances in determining what was equitable.

12. The general structure of articles 21 to 23 had not been the subject of any criticism in the written or oral comments that had been formulated. It had merely been noted that the wording adopted by the Commission might give rise to an interpretation of the provisions that was contrary to the Commission's intent: by providing expressly for the possibility of an agreement between the predecessor State and the successor State (art. 22) or between the successor States (art. 23), in derogation of the general principle of devolution laid down in both articles, the impression might be given that such an agreement could infringe the rule concerning the equitable apportionment of debts. That was naturally not what the Commission intended, although, in the case of a separation, it was conceivable that the predecessor State might agree to continue to assume responsibility for all State debts, in return for a consideration from the successor State. Such a transaction, of course, presupposed an agreement between the States which, seen in isolation, might appear to be inequitable, but which in fact achieved genuine equity if the modalities of succession as a whole were borne in mind.

13. There had been some speculation that it might be clearer to delete all reference to the possibility of an agreement, since an agreement was in any event essential in the matter of State succession, and express reference to a possible agreement was therefore not altogether necessary. His own view was that articles 22 and 23 were perfectly clear. He could agree to the deletion of the reference to the possibility of an agreement, and would leave it to the Drafting Committee to decide whether any change was needed.

14. Mr. NJENGA, referring to draft article 20, said that paragraph 2 would clearly be improved by the addition of the provision to the effect that the implementation of the agreement referred to in paragraph 1 should not endanger, by excessive indebt-

[1] For text, see 1661st meeting, para. 95.

edness, the normal development of the newly independent State.

15. Referring to draft article 21, he agreed that paragraph 2 could be deleted without any detrimental effects, since it dealt with a matter which fell entirely within the sphere of the internal law of the newly independent State. Moreover, it could conceivably jeopardize the rights of the creditor, which should not have to identify the part of a new State to be held responsible for a debt owed to it.

16. Referring to draft articles 22 and 23, he said that the expressions "unless the predecessor State and the successor State otherwise agree" and "unless the successor States otherwise agree" seemed to lack clarity and could be interpreted as meaning that the States concerned might agree on an inequitable apportionment of the State debt of the predecessor State passing to the successor State. Consequently, the two clauses in question could be deleted.

17. Mr. USHAKOV reminded the Commission that he had always been in favour of an abbreviated form of wording for article 20, reading:

> "When the successor State is a newly independent State, no State debt of the predecessor State shall pass to the newly independent State".

He had never insisted on the adoption of that wording, however, since the other members of the Commission, and particularly those from the developed countries, had always been in favour of a reference in the article to the possibility of an agreement between the predecessor State and the successor State. In his view, however, such a reference added nothing, since it went without saying that an agreement could always be concluded if the newly independent State so wished.

18. As for article 21, he had always been opposed to paragraph 2, which was a source of difficulties that boded ill for creditors. Under the terms of draft article 12, which was symmetrical with article 21, the apportionment of State property after State succession was a purely internal matter for the successor State, which was free to apportion that property without third parties being in any way concerned. In the case of State debts, however, the component part to which the successor State attributed a debt might not be a subject of international law if it was, for instance, a province or a town. Consequently, the creditor would no longer be able to turn to his debtor to secure payment, even though it was in fact up to the successor State itself to settle all matters pertaining to the State debt that had passed to it. Paragraph 2 of article 21, therefore, could give rise to considerable difficulty, despite the inclusion of the clause "Without prejudice to the provision of paragraph 1".

19. Lastly, article 23 raised a question of form: it would be preferable if the main clause were drafted to read: ". . . the State debt of the predecessor State shall pass to successor States in equitable proportions . . .".

20. Mr. CALLE Y CALLE, referring to draft article 20, said that the fact that fewer comments had been made on the draft article in the Sixth Committee in 1980 than in 1979 was an indication that the wording proposed in 1980 was fairly acceptable. Referring to paragraph 2, he said that he could accept the current wording, which stated a sound principle, consistent with the goal of establishing a new and equitable international economic order. In his view, the provision contained in paragraph 2 should be retained, particularly since a similar provision, relating to the passing of State property, had been included in draft article 11.[2] Although some few colonies had enjoyed financial autonomy, so that the identification of the origin and nature of State debts had been a simple matter, that situation was not the general rule. On the other hand, there had been many cases where predecessor States had attempted to transfer a heavy debt burden to newly independent States.

21. He favoured the retention of the current wording of draft articles 22 and 23, including the retention, in the interest of clarity, of the explicit references to the possibility of an alternative agreement between the States concerned.

22. Mr. ALDRICH said that he understood paragraph 2 of draft article 20 to be a precatory provision designed to provide assurances for the newly independent State. However, he did not see how the reference to the permanent sovereignty of every people over its wealth and natural resources was relevant to the question of State debts. The reference could be deleted, since it served no useful purpose.

23. He agreed with the observations made by Mr. Ushakov in respect of article 21, paragraph 2, and article 23. However, those matters could be dealt with in the Drafting Committee.

24. Sir Francis VALLAT, referring to the observations made by Mr. Aldrich, noted that the wording of draft article 20 was the result of a compromise which had been very carefully worked out in the Commission. Consequently, although no one might regard the result as very satisfactory, the Commission should be careful not to act too hastily in adding to or subtracting from it.

25. Mr. BEDJAOUI (Special Rapporteur) observed that all members of the Commission considered article 20 as a compromise and agreed that no substantive change should be made to it. Two remarks had, however, been made regarding paragraph 2.

26. Mr. Njenga had proposed that account should be taken of the wishes expressed in the Sixth Committee of the General Assembly by supplementing the paragraph by a reference to the need not to add to the financial burden of the successor State by subjecting it to the passing of an excessive debt. The form of wording he had proposed in his report (A/CN.4/345

[2] *Idem*, para. 59.

and Add.1–3, para. 207) had therefore been supported by one member of the Commission, and it would be for the Drafting Committee to refine that wording, if need be.

27. It had also been proposed that the reference to the principle of the permanent sovereignty of every people over its wealth and natural resources should be deleted. He was unable to accept that proposal, which would result in a serious distortion of the text adopted in first reading. It could, of course, be argued that the reference in question had no real connection with the debt problem; in fact, there were grounds for fearing that, solely by reason of their respective strengths, the former administering Power might impose on the newly independent State an unconscionable agreement. In that case, the effect of paragraph 2 of article 20 would be to divest such an agreement of any validity. He considered that the scope of application of the concept of autonomy of will must be restricted in the case of State succession. Since the United Nations spoke more readily of the permanent sovereignty of every people over its natural resources than it did of the sovereignty of the State, it followed logically that the people could require the State to account for its management of natural resources. Hence, the Commission was faced with a progressive development of international law. Viewed in that way, the question of sovereignty over natural resources had an obvious connection with succession to State debts, since it would be fairly easy for the administering Power to impose an unfavourable agreement on the newly independent State.

28. He therefore requested that the Commission should retain the text of article 20, paragraph 2, as adopted in first reading. Should the Commission decide otherwise, he would reaffirm his initial position, which had also been expressed by Mr. Ushakov, and ask for the article as a whole to be amended so that it simply laid down the rule of the absolute non-transferability of any debt whatsoever. He would remind the Commission that he had only agreed to omit that principle out of a spirit of compromise and in return for the reference, in paragraph 2, to the principle of the permanent sovereignty of peoples over their natural resources, which was now part of *jus cogens*.

29. With regard to article 21, he noted with satisfaction that two members had pointed out that paragraph 2 did not settle all the problems. That paragraph had initially been designed to protect the interests of creditors, but it was proving to be a double-edged weapon, as Mr. Ushakov and Mr. Aldrich had observed. The Commission might therefore wish to ask the Drafting Committee to re-examine the paragraph and simply to delete it if, in the Committee's opinion, there was no possibility of drafting a provision that would dispel all misgivings.

30. Two comments had also been made regarding articles 22 and 23. Mr. Njenga had asked that closer attention should be paid to the proposal made at the Sixth Committee to delete the reference to the agreement between the predecessor State and the successor States, so as to avoid giving the impresssion that the article authorized a derogation from the equitable agreement principle. In considering that suggestion, the Drafting Committee should bear in mind that an agreement that was inequitable for one of the parties could form part of relations which, globally speaking, were equitable.

31. Mr. Aldrich and Mr. Ushakov had raised some pertinent points concerning the actual wording of the article which would, it seemed, be met by Mr. Ushakov's proposed new text.

32. The CHAIRMAN suggested that articles 20, 21, 22 and 23 should be referred to the Drafting Committee.

It was so decided.[3]

ARTICLE G (Scope of the articles in the present part (State archives)) *and*

ARTICLE A (State archives)

33. The CHAIRMAN invited the Special Rapporteur to introduce the part of the draft articles entitled "State archives and, in particular, articles G and A (A/CN.4/345 and Add.1–3, para. 223), which read:

Article G. Scope of the articles in the present Part

The articles in the present Part apply to the effects of a succession of States in respect of State archives.

Article A. State archives

For the purposes of the present articles, "State archives" means the collection of documents of all kinds which, at the date of the succession of States, belonged to the predecessor State according to its internal law and had been preserved by it as State archives.

34. Mr. BEDJAOUI (Special Rapporteur) said that the first question to be settled concerned the point at which the articles on State archives should appear in the draft. Since State archives formed a category of State property but had features peculiar to themselves that gave a special character to the disputes they engendered, the part relating to them should come immediately after the part relating to State property. The question which then arose was whether the special rules on State archives were the only ones that could be applied or whether, if need be, reference could also be had, in order to settle a dispute involving archives, to the rules governing State property. If that was so, the articles that dealt with State archives should obviously not conflict with those relating to State property. In any event, a link must, sooner or later, be established between the articles on State archives and those on State property.

[3] For consideration of the texts proposed by the Drafting Committee, see 1692nd meeting, paras. 112, 113, 114 and 115.

35. In addition to articles A to F, adopted by the Commission in first reading,[4] he was proposing five general articles, articles G to K (A/CN.4/345 and Add.1–3, paras. 223, 249, 251, 225 and 256), to precede the substantive articles that had already been adopted and, in a sense, pave the way for the rules laid down in those provisions.

36. Draft article G, which defined the scope of the articles on State archives, was based on articles 4[5] and 15[6], which defined the scope of the articles in the part concerning State property and the articles in the part concerning State debts, respectively. All three articles, therefore, fulfilled the same role, but article G required the establishment of a link with the part concerning State property. That could be achieved by adding a complementary provision reading:

> "The application of the articles in the present Part to the effects of a succession of States in respect of State archives shall be without prejudice to, and shall not preclude, the application to such matters, when necessary, of the articles in the Part relating to State property" (A/CN.4/345 and Add.1–3, para. 223).

37. Article A, which defined the expression "State archives", determined the entire structure of the articles that followed. The definition, treated by the Commission as strictly provisional when it had been adopted in first reading, had been the subject of numerous oral and written comments on the part of Governments, some of which lacked clarity and were unlikely to assist the Commission in improving the text of the article.

38. In the Sixth Committee in 1979, some representatives had questioned the meaning of the word "documents". In the view of the Commission, that word, and still more so the expression "documents of all kinds", was to be given a wide meaning. Other representatives had expressed the hope that State archives would be defined by reference to international criteria, so that the definition would not be fettered by the internal law of States. The question had also arisen whether the expression "documents of all kinds" covered works of art, in which connection it had been remarked that, in Africa, certain documents took the form of works of art. On that point, it should be noted that the definition under consideration in no way excluded works of art that were treated as archives under the internal law of a State. Yet other representatives had taken the view that the proposed definition would give rise to confusion, and that a distinction must be made between archives needed for the day-to-day administration of the State and collections of documents of cultural value. Lastly, some representatives had felt that an enumerative definition would be preferable to a vague one. The comments to which the definition had given rise in the Sixth Committee in 1980 had been more or less the same as in 1979. It had been proposed that the definition should be radically amended and amplified to cover all documents belonging to a State, of whatever kind and whatever age.

39. Of the written comments of Governments as summarized in his report (A/CN.4/345 and Add.1–3, 235 *et seq.*), those submitted by the Austrian Government (A/CN.4/338/Add.3) deserved special mention: according to that Government, the rules relating to State archives were necessarily residual, since the agreement between the predecessor State and successor State was absolutely decisive. While he endorsed that viewpoint, he could not go along with the Austrian Government's conclusion that, except for the provision on newly independent States, the articles on State archives should be deleted because they would add little to the draft as a whole.

40. Analysing the text of article A as adopted by the Commission in first reading, he said that the definition of State archives contained two cumulative conditions: first, the fact that the archives belonged to the predecessor State must be determined by reference to the internal law of that State, and, second, the archives must have been preserved by the predecessor State as State archives. Given the absence of an appropriate rule of international law—and the representatives who had been in favour of an international definition of State archives had not suggested any such rule—it seemed impossible to avoid a reference to internal law. Moreover, the expression "State property" had likewise been defined in article 5,[7] by reference to the internal law of the predecessor State, and it was advisable to maintain the similarity between article 5 and article A in that regard.

41. He was, however, hesitant about retaining the second condition. When including that condition, the Commission had attempted to avoid a situation whereby the predecessor State could exclude the bulk of public papers of recent origin ("living" archives) from the application of the draft articles simply because they were not designated under its internal law as State archives. In some countries, living archives were not treated as State archives until a certain time had elapsed. However, the condition might ultimately produce the opposite of what was intended, since it would in fact make it possible to exclude living archives from succession by delaying the moment at which they would be treated as State archives. Hence, it might be better to delete it.

42. There was another reason for deleting it. A predecessor State might entrust cultural or historical archives of great value to another State or foreign institution on protracted deposit or for the purposes of a fairly lengthy travelling exhibition. In the event of a succession of States, could the archives be said to have been preserved by the predecessor State when they

[4] See 1658th meeting, footnote 3.

[5] For text, see 1660th meeting, para. 17.

[6] *Idem*, 1671st meeting, para. 1.

[7] *Idem*, 1660th meeting, para. 17.

were no longer within its territory? In archival terminology, the notion of conservation did not involve any idea of situation, at any rate in French, but there was no guarantee that article A would be interpreted in that sense. Lastly, deleting the second condition would ensure parallelism between the definition of State archives and the definition in article 5 of State property.

43. The Commission should guard against any enumeration in article A of the various archives covered by the definition, since such an enumeration could not be complete and the numerous examples given by the Commission in the commentary to the article rendered it unnecessary. At most, the members of the Commission might wish to reflect once again on the suitability of the expression "collection of documents of all kinds", which suggested more a collection, or grouping, of documents than all a State's documents. The expression might exclude from succession individual documents that were not interconnected. Perhaps it would be better to delete the words "the collection of".

44. He saw no need to draw a distinction in article A between administrative archives and cultural or historical archives, since the definition should remain very general in scope.

45. The position regarding works of art depended on the definition given to State archives under each system of internal law. There might be countries where a message had been transmitted by means of works of art, such as illuminations or valuable ancient manuscripts, which were then treated as State archives under the internal law. Where that was not the case, works of art were not excluded from succession, since they then came under the heading of State property.

46. Mr. USHAKOV said he considered that the part of the draft relating to State archives should come after the part relating to State property.

47. With regard to article G, it would perhaps be advisable, in order to provide a link between the parts of the draft relating, respectively, to State archives and State property, to add at the end of the article the words "as component parts of State property". There would then no longer be any reason for fearing that the definition of State archives was too narrow: if certain archives were not treated as State archives under the internal law of a State, the rules relating to State property would govern.

48. Consequently, he considered that the definition in article A was satisfactory and that it would be better not to try to improve it, for fear of making it obscure. As he understood it, the word "*ensemble*", in the French text, patently referred to all documents and did not convey any idea of a collection. The text of article A could, however, be brought more nearly into line with that of article 5. To that end, the words "belonged to the predecessor State according to its internal law" should be replaced by "were, according to the internal law of the predecessor State, owned by that State".

49. Mr. NJENGA, referring to article A, said that, to his mind, the word "collection" implied a set of documents, systematically compiled and numbered and housed in the national archives building. It was clear from the Special Rapporteur's report and oral introduction, that the definition laid down in article A was meant to cover a much broader concept, so as to include, for instance, *objets d'art* or writings on old laws. In his view, some other form of wording should therefore be found.

50. The same criticism applied to the reference to preservation. In his country, as in many others, the "living" archives required for day-to-day administration—such as documents of title to land, maps in contemporary use and marriage and birth certificates—were held in special registries, and not in the State archives. Such documents would not be covered if the phrase "preserved by it as State archives" was retained. The reference to preservation should therefore be deleted, or the word "preserved" should be replaced by some other word such as "considered".

51. Newly independent States sometimes had great difficulty in securing living archives, which tended to disappear either because in the eyes of the previous administration they were sensitive, or because some official decided to keep them, say, for the purposes of research, or again simply because they were destroyed. He therefore suggested that the Drafting Committee should take a closer look at the article to ensure that the Commission's intent was quite clear.

52. Mr. YANKOV agreed that the draft articles on State archives should be placed immediately after those on State property. That would also help to dispel certain difficulties of definition so far as *objets d'art* were concerned.

53. He also agreed that the Drafting Committee should consider modifying article G so as to link archives with State property in some way.

54. He had some difficulty with the word "collection" in article A. As he understood it, a collection was something compact, an integral entity whose elements were interrelated in terms either of time or of some other criterion. In his view, therefore, nothing would be lost if the word "collection" was deleted, particularly since the article included a reference to internal law.

55. He also considered that the phrase "preserved by it as State archives" required amendment. In some countries, a special department was responsible for State archives. In his own country Bulgaria, that department was a relatively autonomous body with a very clearly defined sphere of competence. It did not hold documents that were in current use. To avoid difficulties of interpretation and conflict of laws, therefore, the expression in question could either be omitted or replaced by some other wording. Otherwise, he

could accept the text of the article as proposed by the Special Rapporteur.

56. Mr. ŠAHOVIĆ said he trusted that, when the Drafting Committee came to examine articles G and A, it would not overlook the reasons which had resulted in the form of wording adopted by the Commission in first reading. It was particularly important to avoid defining State archives so broadly that the special nature of such archives was no longer apparent.

57. Mr. VEROSTA said that he had nothing against the idea of specifying, in article G, that State archives were State property; he feared, however, that such a clarification and the reference to other articles might give rise to difficulties of application.

58. With regard to article A, he approved the wording proposed by Mr. Ushakov, but stressed the need to retain the condition set forth in the concluding phrase.

59. Mr. BEDJAOUI (Special Rapporteur), summing up the discussion, noted that the members of the Commission agreed that the articles relating to State archives should come immediately after those on State property.

60. Mr. Ushakov's proposed addition to article G seemed to him to be better and simpler than the wording he had himself proposed. Unlike Mr. Verosta, he considered it essential to establish a link between State archives and State property.

61. With regard to article A, he still thought that the word "*ensemble*" should be omitted, since it conveyed the idea of a collection. Indeed, it had been translated by "collection" in the English version of the article. As for the second condition laid down in article A, it seemed clear from the discussion that it should be deleted. In some countries, the notion of State archives was extremely restrictive, for it applied only to an ancient collection, preserved in an autonomous institution, and in special premises. If the condition was retained, it could give the impression that only archives of that kind would be the subject of a succession of States and that the living archives to be found in other institutions were excluded. Moreover, the concept of preservation could also be interpreted restrictively.

62. The Drafting Committee should not have any difficulty in preserving an appropriate degree of parallelism between article A and article 5.

63. Sir Francis VALLAT agreed that the articles on archives should come after those on State property.

64. In his view, it was very important that the Commission should not find itself in the position where, in respect of the same document, there was a conflict between the application of the articles on State property generally and those on State archives; he feared that some of the suggestions made would have exactly that effect. The purpose of the articles on State archives was to deal with such archives in a special way because of their special character. There was now a risk that that purpose, together with the special character of State archives, would be lost entirely.

65. In his view, it would have been more useful to discuss the question of the definition of State archives after, rather than before, the substance of the other articles had been settled.

66. Mr. BEDJAOUI (Special Rapporteur) said that there was no reason why the Commission should not refer articles G and A to the Drafting Committee, but reserve the right to revert to them after it had considered other articles on State archives.

67. The CHAIRMAN suggested that articles G and A should be referred to the Drafting Committee.

It was so decided.[8]

The meeting rose at 1.10 p.m.

[8] For consideration of the texts proposed by the Drafting Committee, see 1694th meeting, paras. 29–30 and paras. 32–33, respectively.

1689th MEETING

Monday, 13 July 1981, at 3.10 p.m.

Chairman: Mr. Doudou THIAM

Present: Mr. Aldrich, Mr. Barboza, Mr. Bedjaoui, Mr. Calle y Calle, Mr. Dadzie, Mr. Díaz González, Mr. Francis, Mr. Njenga, Mr. Pinto, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Šahović, Mr. Sucharitkul, Mr. Tabibi, 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.1–4, A/CN.4/345 and Add.1–3)

[Item 2 of the agenda]

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

ARTICLE H (Rights of the successor State to State archives passing to it),

ARTICLE I (Date of the passing of State archives),

ARTICLE J (Passing of State archives without compensation), *and*

ARTICLE K (Absence of effect of a succession of States on third party State archives)

1. The CHAIRMAN invited the Special Rapporteur to introduce articles H, I, J and K (A/CN.4/345 and Add.1–3, paras, 249, 251, 255 and 256), which read: