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UNITED NATIONS CONFERENCE ON SUCCESSION OF STATES IN RESPECT OF
STATE PROPERTY, ARCHIVES AND DEBTS

Report of the Secretary-General

Addendum

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COMMENTS RECEIVED FROM GOVERNMENTS

URUGUAY

[ORIGINAL: SPANISH]

[28 October 1982]

1. The following observations and comments relate to articles 1 to 23 and the commentaries on them contained in official General Assembly documents A/CN.4/L.330/Add.1-6.
2. In our comments we shall follow the order of the articles in those documents.

Article 2. Use of terms

- "1. For the purposes of the present articles:
 - (a) 'succession of States' means the replacement of one State by another in the responsibility for the international relations of territory;"
3. We feel that the following comments are required on this provision.
4. The term "responsibility" used in the provision seems to limit the scope of the draft Convention on succession of States to obligations - or, rather, to the consequences of failure to comply with them - and not to rights. The Convention, however, relates to succession in respect not only of debts but also of State property.
5. The word "responsibility", moreover, is to be read in conjunction with "territory", which might give rise to the incorrect conclusion that the bearer of that responsibility would be the territory when obviously, only a subject of law can have that capacity. We accordingly consider it more satisfactory to refer to "rights and obligations associated with territory".
6. The expression "international relations" is normally used, in a broad sense, as embracing relations among subjects of international law. Nevertheless, it could be interpreted, restrictively, as including only relations among States. That interpretation would run counter to the real intended scope of the Convention, as outlined in the commentary on the article (3 quater).
7. In view of the foregoing comments, we suggest the following alternative text for article 2 (a):

"(a) 'succession of States' means the replacement of one State by another in the rights and obligations associated with territory in relation to any subject of international law".

Article [5]. State property

"For the purposes of the articles in the present Part, 'State property' means property, rights and interests which, at the date of the succession of States, were, according to the internal law of the predecessor State, owned by that State".

8. It seems to us a technical error to have the definition of the word "property" include that word.

9. The word "interests", coming after the word "rights", may give the impression of a wider scope than the strictly legal scope intended, and we accordingly suggest that it be deleted.

10. Article [5] might be worded as follows:

"For the purposes of the articles in the present Part, 'State property' means everything which has a measure of value and can be the subject of ownership and which, at the date of the succession of States, was, according to the internal law of the predecessor State, owned by that State".

Article [8]. Passing of State property without compensation

"Subject to the provisions of the articles in the present Part and unless otherwise agreed or decided, the passing of State property to the successor State shall take place without compensation".

11. We realize that this provision is inspired by the laudable desire to obviate disputes as to whether or not compensation is to be paid when there has been no express agreement to that effect. At the same time, it tends to favour the weaker party inasmuch as the character of a successor State in the contemporary world is normally that of a "newly independent States", to use the wording of the Convention (art. 2(e)).

12. Nevertheless, the provision does require comment. In fact, this provision may be either superfluous, because its content is obvious, or, on the other hand, excessive, because it goes beyond the will of the parties.

13. The provision would be unnecessary if it were confined to making explicit the implicit intent of the States founded - as is pointed out in the commentaries on the provision - on practice, as embodied in a large number of treaties under which "no obligation is imposed on the successor State to pay compensation for the cession by the predecessor State of public property, including State property" (Add.2, p. 10).

14. On the other hand, the provision might be excessive if the presumption, with regard to the will of the parties, which it derives from their silence were not correct. The difficulties that arise in this sphere of legal hermeneutics with regard to interpreting the silence of the parties to contracts and other agreements involving their will are well known.

15. Take, for example, a treaty regulating a problem of succession of States and itemizing all the State property that is the subject of transfer for the purpose of setting for each item the compensation to be paid by the successor State. Let us imagine that by mistake some item of property is omitted from this evaluation, a situation that would not be unexpected, given the large quantity of property that is normally the subject of these transfers of ownership. Under the provision which is the subject of these comments, the successor State would owe no compensation to the predecessor State for the said item of property, and that obviously is not consistent with the will of the parties.
16. In short, the effect of the provision under discussion is to sanction the principle of no compensation in the matter of succession to State property.
17. We know of no legal system that sanctions either no compensation or mandatory compensation as a general principle in the sphere of the obligations of private municipal law. We do not understand why a different arrangement should be sanctioned in the sphere of the obligations of public international law.
18. For the foregoing reasons we suggest that the article be deleted.

Article [10]. Transfer of part of the territory of a State

"1. When part of the territory of a State is transferred by that State to another State, the passing of State property from the predecessor State to the successor State is to be settled by agreement between them.

"2. In the absence of such an agreement:

(a)...

(b) Movable State property of the predecessor State connected with the activity of the predecessor State in respect of the territory to which the succession of States relates shall pass to the successor State."

19. In the commentary on the above provision the Commission analyses the status of currency (Add.3, p. 12). In this connection it points out

"the currency inevitably left in circulation in the territory by the predecessor State and retained temporarily by the successor State justifies the latter in claiming the gold and foreign exchange which constitute the security or backing for that currency."

20. The statement contained in the paragraph cited appears to us highly questionable. The solution to be applied in the provision under discussion must depend on the rules in force with regard to the convertibility of national currencies, and that lies within the domestic competence of States. As is well known, States have in many cases opted for non-convertibility of their currency.

21. Although the statement contained in the cited paragraph of the commentary does not flow from the text of article [10], we consider our comments pertinent because of the effect they may have as part of the travaux préparatoires of the Convention and, consequently, on the interpretation of the provision (article 32 of the Vienna Convention on the Law of Treaties).
