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Summary record of the 962nd meeting

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

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to distinguish between property held by the State on its own behalf and property it held in its public capacity.

75. In paragraph 106 of his report, the Special Rapporteur had rightly pointed out that "the principle of non-succession to the municipal law of the predecessor State is incontestable". There was always rupture in that respect, even in the case of a transfer of territory. Hence the Special Rapporteur's draft could leave aside everything connected with succession to the legal régime of the predecessor State.

76. With regard to succession and territorial problems, he thought those problems must inevitably be dealt with, not only with reference to succession resulting from decolonization, but also with reference to all cases of the birth of a new State and even to transfers of territory. The Commission might, however, reach the conclusion that territorial problems went beyond the topic of State succession and called for a wider study. That was a point that needed careful thought.

77. The CHAIRMAN, replying to a question by Mr. TSURUOKA, said that at the previous meeting he had noted six points on which the Special Rapporteur had asked for concrete answers from the Commission. He had suggested to the Special Rapporteur that he prepare a written questionnaire.

78. Mr. BEDJAOUI (Special Rapporteur) said that although he was most anxious to obtain replies from the Commission to the points he had raised at the previous meeting, he thought it desirable that the Commission should have a general discussion on a topic it was considering for the first time. Many members of the Commission had, in fact, already replied to his questions and raised others. He therefore hoped that the discussion would continue.

79. Mr. BARTOŠ suggested that the Commission continue the present discussion and ask the Special Rapporteur to prepare a list of preliminary questions including not only those he had raised at the previous meeting, but also those raised by members of the Commission. That method, which had been followed in the past, would save time and prevent questions of principle from arising in the later stages of the work.

80. The CHAIRMAN said he fully supported Mr. Bartoš' suggestion. If there were no objections, the Special Rapporteur would be requested to prepare a written list of points on which he wished to have the Commission's views.

It was so agreed.

The meeting rose at 12.50 p.m.

962nd MEETING

Wednesday, 26 June 1968, at 10 a.m.

Chairman: Mr. José María RUDA

Present: Mr. Ago, Mr. Albónico, Mr. Bartoš, Mr. Bedjaoui, Mr. Castañeda, Mr. Castrén, Mr. El-Erian, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Rosenne, Mr. Tabibi, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

Succession of States and Governments: Succession in respect of Rights and Duties resulting from Sources other than Treaties

(A/CN.4/204)

[Item 1 (*b*) of the agenda]

(continued)

1. The CHAIRMAN invited the Commission to continue consideration of item 1 (*b*) of the agenda and drew attention to the questionnaire submitted by the Special Rapporteur, which had just been circulated. The questionnaire read:

1. *Title of the subject* (and, in consequence, *scope of the subject*)

   Should the original wording be retained ("Succession in respect of rights and duties resulting from sources other than treaties")?

   or should a new title be adopted ("Succession of States in matters other than treaties")?

2. *General definition of State succession*

   As regards terminology: should the term "succession" continue to be used?

   As regards form: if the Commission agrees to consider the question of a general definition, which of the Special Rapporteurs should be instructed to study it?

   As regards substance: a general definition touches upon the question of cases of succession, the origin of succession, and types of successor régimes (question 5 below).

3. *Method of work*

   Does the Commission wish to confine itself to a strict codification?

   or does it consider that the subject of State succession is particularly well suited to the technique of progressive development of international law?

   or does it intend to combine the two techniques?

4. *Form of the work*

   Should it take the form of a preliminary draft convention on State succession?

   or of a set of rules of unspecified ultimate destination?

   or simply of a dissertation or commentary?

5. *Origins and types of State succession*

   Does the Commission consider that these questions should be examined?

   If so, by which of the following three methods:

   a joint study by the two Special Rapporteurs?

   a separate study by each Special Rapporteur in his own field?

   a special study by one of the two Special Rapporteurs?

6. *Specific problems of new States* (in connexion with question 5 above)

   Does the Commission wish to stress these problems in accordance with the wish of the General Assembly, and hence to study State succession mainly with reference to the specific problems of new States (succession through decolonization)?

   or does the Commission intend to deny that there is any specific element peculiar to new States, in other words, to endeavour to

work out general rules applicable to all forms and all cases of succession? (Question 5 would then be superfluous).

Or does the Commission wish the most striking specific elements to be mentioned occasionally, in other words that, in connexion with certain matters and whenever necessary, a specific rule for a particular type of State succession should be worked out?

7. *Judicial settlement of disputes*

Should this question be studied in connexion with disputes arising out of State successions?

8. *Order of priority or choice of subjects*

What subject does the Commission wish to study next year? It has been suggested that the questions of public property and public debts might be examined."

2. Mr. BEDJAOUI (Special Rapporteur) said that the questionnaire was not exhaustive, and that many members of the Commission had already stated their views on the questions it contained. Nevertheless, a general discussion would be very useful and would make it possible to save time later.

3. With regard to question 1, he explained that, as the topic was divided between two Special Rapporteurs, he had deduced the scope of the part he had to deal with by eliminating the part entrusted to the first Special Rapporteur (Sir Humphrey Waldock).

4. The first Special Rapporteur was dealing with treaties concluded by the former sovereign and trying to ascertain what problems arose for the new State in connexion with those treaties. Devolution treaties, which governed the succession itself, formed a separate category. From the standpoint of validity, they lay outside the province of succession and came within that of the law of treaties. From the legal standpoint, however, in so far as they regulated the succession or settled certain important questions, they concerned the second Special Rapporteur.

5. He had no preference for one or the other of the titles mentioned in the questionnaire, provided there was clear agreement on the subject-matter to be studied.

6. In connexion with question 2, he wished to reply to Mr. Tammes, who at the previous meeting had advocated the term "jurisdiction" in preference to "sovereignty". He personally preferred the term "sovereignty", which had the advantage of excluding any consideration of situations resulting from military occupation; for military occupation did not in any way affect sovereignty, which was not transmitted to the occupying State. But that was a substantive issue to which the Commission would have to revert later. The most important point at the moment was that the Commission should decide whether a general definition was required, and if so, which Special Rapporteur should be responsible for it.

7. Question 3 had been included mainly for the record. Obviously the Commission could not confine itself exclusively either to codification or to progressive development. Nevertheless, it seemed to him that, in view of the exceptional and quite recent phenomenon of decolonization, the subject might lend itself more than others to progressive development.

8. With regard to question 4, he thought that many members would prefer a self-contained set of rules of unspecified ultimate destination.

9. As to question 5, it was obvious that the deliberately very simplified classification of types used in the report needed some elaboration. As Mr. Castrén had pointed out at the previous meeting,[1] cases of dismemberment, which the report presented as belonging mainly to the past, were still frequent; conversely, cases of merger had occurred in the past and might arise in the present, although the report characterized that type of succession as a thing of the future.

10. The division into two main categories suggested by Mr. Ushakov at the previous meeting [2] corresponded to two of the headings adopted by the 1962 Sub-Committee.[3] The Sub-Committee had also proposed a third heading: "disappearance of a State"; that heading was probably unnecessary, since a State which disappeared could neither claim any rights nor assume any obligations. However, the case of the disappearance of a State deserved further consideration.

11. As to question 6, he reminded the Commission that the General Assembly, in resolutions 1765 (XVII) and 1902 (XVIII), had instructed the Commission to continue its work on the succession of States and Governments "with appropriate reference to the views of States which have achieved independence since the Second World War". Thus, it was clear that the General Assembly had wished the Commission to consider the special problems of decolonization. Before achieving independence, the new States in question had been unable to claim any rights; now that they were independent, they would consider it unjust if they had to conform strictly to the rules of older States. They realized that they had quite exceptional problems, which the Commission should take into account if it did not wish to incur their reproaches.

12. At the previous meeting Mr. Kearney had noted that the Special Rapporteur, while regretting that the Commission's work came a little late to be really helpful to the new States, had urged the Commission to give special attention to their problems. There was no real contradiction in that, because although decolonization problems were becoming a thing of the past, the problems of traditional succession were even more remote; the examination of cases of decolonization would still be the most instructive approach.

13. In reply to another comment by Mr. Kearney, he said he realized that any guaranteed investment agreement must be respected; but if the agreement had been made by the former sovereign, the question was whether it remained valid for the new State, and that concerned the first Special Rapporteur; while if the agreement had been made by the new State, it was a problem of the law of treaties. In both cases, it should be considered whether or not the treaty had been unequal.

14. Question 7 of the questionnaire had already been the subject of comments advocating one answer or the other. In any case, the problem of judicial settlement of disputes

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[1] See para. 7.

[2] See para. 71.

[3] See *Yearbook of the International Law Commission, 1963*, vol. II, p. 261.

arising out of State succession could only be solved at a much later stage in the work.

15. Finally, with regard to question 8, he personally could see no objection to giving priority to the problems of public property and public debts.

16. Mr. ROSENNE said he proposed to speak in the general debate on the Special Rapporteur's valuable report; he would speak later on the questionnaire, although he would have to touch on some of the questions submitted in it.

17. The report took up the problems of State succession from the point where they had been left in 1963 by the Sub-Committee on Succession of States and Governments. It gave an indication of the difficulties involved in balancing the conflicting and legitimate interests of the States concerned, which included not only the States parties to the transaction of succession but also third States, and the interests of individuals.

18. The only equitable way of balancing those interests was to eschew the doctrinal approach and refuse to leave the realm of law for that of economics or politics. He had no intention of suggesting that the Commission should retreat into an ivory tower of scientific objectivity, or close its eyes to realities, but it was not the Commission's responsibility to find solutions to sociological and economic problems. The Commission's responsibility was to elucidate rules of law that were relevant and determining for purposes of codification, and to propose rules of progressive development if the received law was clearly inadequate to deal with contemporary problems.

19. He had already stated his general views on the topic of State succession at the Commission's 634th meeting in 1964 [4] and in the working paper he had submitted in 1963 to the Sub-Committee on Succession of States and Governments [5] and he requested the Special Rapporteur to regard those statements of his views as incorporated by reference into the present discussion. However, since members of the Commission accepted the idea that it was their task to try to persuade each other, he wished to stress that his earlier views were not immutable and he would be glad to keep a completely open mind until the Commission reached the stage of discussing concrete proposals.

20. There had been some discussion on the relevant General Assembly resolutions and their interpretation, particularly resolution 1902 (XVIII) of 1963. That resolution invited the Commission to continue its work on State succession, "taking into account the views expressed at the eighteenth session of the General Assembly" and the report of the Sub-Committee; it also looked to the future, however, when it further invited the Commission to take into account "the comments which may be submitted by Governments, with appropriate reference to the views of States which have achieved independence since the Second World War". Thus it seemed that the Commission required to be informed of any comments submitted by Governments since 1963, and he would like to know whether any attempt had been made, either by the Special Rapporteur or by the Secretariat, to obtain such comments.

21. One reason for asking that question was the danger that there might be divergent interpretations of resolution 1902 (XVIII) by the two Special Rapporteurs for the two parts of the topic of State succession.

22. Another reason was the absence of any reference to State succession in the statement made at the Commission's 952nd meeting by the observer for the Asian-African Legal Consultative Committee. He had been struck by the fact that neither in his account of the past work of that Committee nor in his description of its work in hand and future programme, had the observer made any mention of State succession.

23. In those circumstances, he ventured to ask whether the Commission considered that it had sufficient information to determine which aspects of State succession were of urgent interest to the international community at large, in which the new States now outnumbered those which had been independent at the end of the Second World War. Perhaps the best course would be for the Commission to draft its report on the present session in such a way as to provoke a reaction from the Sixth Committee of the General Assembly which would enable it to answer that question.

24. With regard to the definition of the subject of item 1 (*b*), he agreed with the Special Rapporteur's conclusion in paragraph 21 that it should be amended. Personally, he would also be glad if some other term than "succession" could be found, but he had no definite suggestion to offer at that stage.

25. With regard to the origins of succession, it seemed to him that the manner in which the question had been presented had perhaps led to some confusion. He did not think it was the Special Rapporteur's intention that different rules should be formulated for the different origins of succession and he believed that the real problem was to establish whether different conclusions did not follow from the different premises. The recently published materials showed that the manner in which independence had been gained by a State had a direct and immediate effect on the legal consequences embraced within the general concept of succession. The Commission would therefore be unwise to follow past precedents slavishly, but should scrutinize them carefully in order to determine their precise meaning. The two Special Rapporteurs should be left to draw their own conclusions and the Commission would later have to ensure that the two drafts, on agenda items 1 (*a*) and 1 (*b*), were consistent.

26. As to its methods of work, the Commission had, in 1963, endorsed the objectives approved by the Sub-Committee,[5] which were stated in the following terms: "The objectives are a survey and evaluation of the present state of the law and practice on succession, and the preparation of draft articles on the topic having regard also to new developments in international law in this field. The presentation should be precise, and must cover the essential elements which are necessary to resolve present diffi-

[4] See *Yearbook of the International Law Commission, 1962*, vol. I, pp. 33-34.

[5] *Op.cit., 1963*, vol. II., pp. 285 *et seq.*

[6] See *Yearbook of the International Law Commission, 1963*, vol. II, p. 224, para. 59.

culties".[7] Those objectives had subsequently been approved by the General Assembly in resolution 1902 (XVIII); they remained the general guideline for the Commission and should not be changed without good reason.

27. The statement in paragraph 32 of the Special Rapporteur's report that General Assembly recommendations "are binding on the International Law Commission" raised a question of principle. Personally, he would find it difficult to accept that view, which seemed calculated to revive the old controversies concerning the relations between the Commission and the General Assembly that had clouded the Commission's early years. The Commission was in fact bound only by its Statute, and by the collective and individual conscience of its members, to state the law to the best of its ability. The contents of General Assembly resolutions constituted general directives for the Commission, not binding instructions in a formal sense.

28. In dealing with the present topic, the Commission should endeavour to formulate terse draft articles, accompanied by reasoned comments on those aspects which it selected for treatment, and decide later, when it had concrete proposals before it, what recommendations to make regarding the outcome of its work.

29. He was unable to accept the Special Rapporteur's analysis of types of State succession, in section IV of his report. Any attempt to differentiate in the manner proposed between past, present and future forms of State succession would involve the risk of establishing arbitrary classifications. In the previous section, the Special Rapporteur himself had warned the Commission of the danger of "abortive or precarious solutions"; if the Commission were to adopt the classification proposed by the Special Rapporteur, it would incur precisely that danger.

30. He did not propose to deal in detail with the contents of sections V-XI of the report. In the absence of any clearer indications of State practice, many of the considerations they contained were too abstract for the Commission's present purpose. The Commission was faced with the problem of establishing the limitations of the topic and would have to ascertain what matters belonged to the international law of succession, as opposed to other branches of international law; it would also have to distinguish between the international law of succession and succession in municipal law. The 1962 Sub-Committee had explored that question, but the Commission itself would now have to examine it further.

31. The Special Rapporteur had noted in paragraph 65 "that succession is almost always regulated by treaties, even in the case of violent decolonization". In the light of that observation, the Commission should analyse the law of treaties as it now stood, in order to see whether any special treatment was required for legitimate succession problems. When the Commission had discussed its draft articles on the invalidity and termination of treaties, its attention had been repeatedly drawn to the relevance of those articles to the question of State succession.

32. He could not accept the view expressed by the Special Rapporteur in paragraph 70 of his report that, "since the International Law Commission decided that, in codifying the law of treaties, it would not deal with agreements concluded between a State and a rebel movement", it followed that the codified law of treaties did not provide an answer to some of the problems arising from such agreements. Incidentally, it was doubtful whether the statement quoted represented an accurate interpretation of the Commission's 1966 decision which was set out in paragraph (5) of its commentary on article 2 of the draft on the law of treaties.[8] Since succession was almost always regulated by treaties, it followed that the rules which the Commission formulated on State succession were bound to be residuary rules.

33. The discussion had shown a tendency to divide the subject matter of item 1 (*b*) into manageable groups of articles. He approved of that approach, which conformed with the Commission's past practice when dealing with large topics.

34. He also agreed that public property and public debts might constitute suitable subjects for early consideration. As for the legal régime inside the State, that hardly fell within the scope of the international law of State succession; it was more a matter of internal law.

35. On the question of acquired rights, he could not accept the absolute terms of the statement in paragraph 138 of the report that "The traditional international law of State succession follows the principle of respect for acquired rights and imposes an obligation on the successor State to respect concessions granted by the predecessor State". Acquired rights had always been regarded as relative rather than absolute. A sovereign State was the judge of its own interests in economic matters, subject to observance of the treaty obligations binding upon it. Consequently, the Commission need not commit itself to any dogmatic statements on the *lex lata* in that matter.

36. He also disliked the use of the adjective "traditional" to qualify international law. During a discussion on the subject of reservations at the Commission's 672nd meeting, objection had rightly been taken to the use of that term.[9]

37. With regard to adjudicative procedures, he agreed with Mr. Nagendra Singh. There was a contradiction between the statement in paragraph 25 of the report that the Commission "seems to have indicated that it did not wish to concern itself with that question" and the correct statement, in paragraph 150, of the nature of the problems to be considered. The question was whether, for different branches of the topic, organized particular procedures were desirable. On that question, he would refer to his statement in 1963 at the sixth meeting of the Sub-Committee on Succession of States and Governments, when he had given particulars of similar provisions included by the Commission in its various drafts.[10]

38. When dealing with the proposed subjects of public debts and public property, which affected the rights and interests, status and personality of individuals, it would be particularly important for the Commission not to have

[7] *Ibid.* p. 261, para. 8.

[8] See *Yearbook of International Law Commission, 1966,* vol. II, pp. 188-189.

[9] See *Yearbook of International Law Commission, 1962,* vol. I, p. 287, para. 21 *et seq.*

[10] *Op.cit., 1963,* vol. II, pp. 270-271.

a preconceived attitude as to its future conclusions on the question of the settlement of disputes.

39. Mr. ALBÓNICO said that he would reply briefly to the questions put to the Commission by the Special Rapporteur.

40. On the question of the title (question 1), he approved of the suggestion that it be changed to "Succession of States in matters other than treaties", which was clearer and simpler.

41. With regard to the definition of State succession (question 2), the term "succession" would doubtless have to continue to be used until a more acceptable one was found. The whole question of a definition was largely academic and the Commission would no doubt solve the problems involved as and when it considered the concrete proposals on the various aspects of the topic.

42. As to methods of work and the form to be given to the Commission's draft (questions 3 and 4), it was desirable to proceed on the basis that the Commission would prepare a draft convention with suitable commentaries.

43. The question of origins and types of State succession (question 5), would have to be taken into consideration by each of the two Special Rapporteurs when devising solutions for the various concrete problems involved.

44. In examining the specific problems of new States (question 6), the Commission should neither concentrate on them exclusively nor deny their special character altogether, but should take them into consideration when they called for special treatment.

45. The question of the settlement of disputes (question 7) should be deferred until the concluding stages of the Commission's work, because it had political implications.

46. He agreed that the Commission should consider the subjects of public property and public debts (question 8), but would suggest the addition of a further subject, namely, nationality changes resulting from State succession. In that connexion it was not necessary to draw a distinction between merger, transfer of territory and the birth of new States. Where a merger took place, the State which had been absorbed disappeared and its former nationality ceased to exist. It was the partial transfer of territory that created problems. As far as the American States were concerned, the accepted principle was that embodied in article 4 of the 1933 Montevideo Convention on Nationality:[11] in cases of transfer of territorial sovereignty, no change of nationality took place unless otherwise expressly agreed.

47. Mr. CASTAÑEDA said he did not intend to state any opinion on questions of substance at that stage. He had not made up his mind about many of them, and in any case, detailed reasons for particular conclusions could hardly be given in a general statement; besides, over-hasty conclusions might tie the Commission's hands for the future. He would therefore confine himself to expressing his approval of the Special Rapporteur's basic ideas and would give his views later on the specific points raised in the questionnaire.

48. Mr. TSURUOKA, after congratulating the Special Rapporteur, said that as a purely preliminary issue, his main concern with regard to the substance was that the Commission, in formulating a system of written rules on State succession, should endeavour to ensure that all legitimate interests, whether of successor States, predecessor States or even third States, were protected. That was the only way to promote the well-being and collaboration of peoples and thus to consolidate world peace. The Commission should always keep that aim in view in its work of codification and progressive development of international law.

49. He strongly urged the Commission to put the results of its work into an extremely simple form, to keep it on a very general level and not to go into too much detail. That was the best way of securing a large number of accessions, particularly by the countries most concerned. If the Commission tried to devise a system that was too highly perfected, it might be of no practical value.

50. To come to the questionnaire, he said he was in favour of the new title proposed in question 1.

51. On question 2, he suggested that the two Special Rapporteurs should consult each other to decide how, and by whom, a general definition could be formulated. As long as the term "succession" was retained, such a definition seemed essential.

52. With regard to the method of work, which was the subject of question 3, a combination of codification and progressive development of international law was obviously necessary, in accordance with the Commission's practice.

53. On question 4, his preference was for a draft convention, as that would make the results of the Commission's work most effective.

54. With regard to questions 5 and 6, the Special Rapporteur and the Commission should keep the various legal situations constantly in mind and formulate a specific rule for a given type of succession whenever necessary.

55. As to question 7, the Commission should make a detailed study of the question of judicial settlement of disputes, and work out an adequate system.

56. Question 8 could safely be left to the discretion of the Special Rapporteur. It would be wrong to burden him with an additional task by asking him to deal with a subject for which he was not prepared; if he only had to complete a study he had already begun, he would be able to provide the Commission with a very useful working basis.

57. The CHAIRMAN, speaking as a member of the Commission, said that the Special Rapporteur's excellent report was particularly interesting to Latin American jurists. Latin America had undergone the process of decolonization in the early nineteenth century. In practically all the former Spanish colonies, that process had involved a violent break with the mother country and a long period—sometimes over forty years—had elapsed before the new States re-established normal relations with Spain.

58. Thus experience in Latin America with regard to State succession had been largely based on the problems of the so-called traditional conception of succession. Against that background, it was enlightening to read a

[11] See Hudson, *International Legislation*, vol. VI, p. 593.

report which focussed attention on the very different process of decolonization that had taken place after the end of the Second World War.

59. On a subject which, to Latin America, was thus largely of historical interest, but which was of more immediate concern to the new States of the present international community, he would therefore adopt a cautious attitude; he preferred, like Mr. Castañeda, to reserve the expression of his views until a more advanced stage of the Commission's work.

60. Where the general questions of the definition of State succession, its origins and types were concerned, theoretical considerations could have a considerable influence on the treatment of the whole topic. However, many of the difficulties might prove easier to dispose of when the Special Rapporteur proposed specific rules to deal with concrete issues.

61. The relevant General Assembly resolutions, and particularly resolution 1902 (XVIII), stressed the importance of decolonization. But dismemberment and merger should not be disregarded, since they also were a source of State succession problems. Cases of merger were likely to occur in the future as a result of such attempts at integration as those at present being undertaken by the States of Central America.

62. Those other types of State succession should therefore be kept well in mind, while paying due regard to the views of the new States, as required by General Assembly resolution 1902 (XVIII). Those views would no doubt be expressed in the Sixth Committee and in other comments by Governments on the Commission's report on its present session.

63. Mr. AGO, replying to the Special Rapporteur's questions, said he agreed that the title of the subject should be changed as proposed, omitting all reference to sources.

64. It would be better not to enter into theoretical considerations, which were not part of the Commission's task, so the question of a preliminary general definition should be left aside for the time being. When a draft had been prepared, the Commission would, as always, have to explain the meanings of the terms used.

65. In such an important field, no distinction should be made between codification and progressive development. Codification served a dual purpose: to clarify the content of existing law and to adapt it to society's new requirements. That part of the work which consisted in true codification of old established rules could not be separated from the adaptation of rules. Both processes might be combined in the same article.

66. With regard to the form of the work, it would be advisable for the Special Rapporteur to prepare a set of draft articles which could subsequently be made into a draft convention.

67. As to the origins and types of State succession, there seemed to be some confusion between practical and theoretical questions. Consultation between the two Special Rapporteurs would certainly be necessary, for it was impossible to separate the two subjects completely. With regard to substance, the delimitation of the subject-matter was clear enough to make it unnecessary to go into details on the origins and types of State succession.

68. In regard to the specific problems of new States there was one misunderstanding to be cleared up. The phenomenon of decolonization, which had formerly appeared in Latin America and more recently in Asia and Africa, had had a great influence on State succession in general international law; but it did not seem to have led to the appearance of two systems of State succession, and the Commission should concentrate on formulating general rules.

69. The problem of the judicial settlement of disputes was very important. It had become clear that the Vienna Conference on the Law of Treaties could not succeed unless an acceptable procedure—not necessarily judicial settlement proper—was found for the settlement of disputes. Where codification was concerned, the problem had two aspects. On the one hand, the precision, and sometimes the changes in emphasis, which resulted from the formulation of rules raised difficulties which might not appear when it was merely a question of citing precedents. On the other hand, once the rules were no longer open to doubt, as customary rules sometimes were, States might find it easier to agree to their being accompanied by a suitable procedure for settling disputes arising out of their practical application. It would therefore be helpful if the Special Rapporteur would submit proposals for the settlement of disputes.

70. With regard to the order of priority, he fully agreed that the precise and concrete subject of public property and public debts should be taken first. It was as important as it was topical. It should take precedence over the question of boundaries, which went beyond the limits of State succession. Moreover, the question of boundaries came closer to the topic assigned to Sir Humphrey Waldock, because boundaries were normally established by treaty, so that, more than any other subject, it would require close co-operation between the two Special Rapporteurs.

71. In that connexion he must point out that *uti possidetis* was not a principle of Latin American law, but a principle of general international law with two meanings. It meant respect for the administrative boundaries established by the old colonial Power in order to avoid fratricidal strife immediately after decolonization, and the new African States had observed it just as had those of Latin America. It also meant respect for existing international boundaries, such as those between the former colonial territory and already independent States.

72. It was *uti possidetis juris*—not just *uti possidetis*—which was a Latin American principle. It had a contingent character, and had been put forward in 1810 to sustain the claim that there was no suzerainless territory in America, so as not to allow other Powers to establish themselves in the place of Spain.

73. The Commission had a duty not to encourage the calling in question of boundaries. The general interest required that the principle of respect for existing frontiers should be maintained, though that did not exclude modification of particular boundary lines by agreement between the parties.

74. Mr. BARTOŠ, replying to the Special Rapporteur's first question, said he was in favour of the second title, because it showed more clearly that the subject concerned all legal relationships in State succession other than those arising from treaties.

75. With regard to the second question, it was difficult to give a general and correct definition of State succession. From the point of view of terminology, certain problems went beyond the limits of succession proper. From the point of view of form, the Commission should wait until the Special Rapporteurs had reached a certain stage in their work before deciding which of them should be asked to draft a definition. What was certain was that the Commission could not have two different definitions. Substantive studies would necessarily and certainly be relevant to the settlement of the problem of a definition.

76. To the third question, his reply was that the Commission had long since rejected the idea that its task was pure codification. By virtue of its Statute and of Article 13 of the United Nations Charter, it was obliged to take account of the progressive development of international law. Besides, it had always combined the two methods. There was reason to believe that the progressive development of international law would be particularly important for the topic under study, because of the new features which decolonization had introduced into State succession. But special cases had been the subject of special rules, even before decolonization. The best course was to rely on the wisdom and capabilities of the Special Rapporteur to achieve a proper balance between pure codification and progressive development.

77. The Commission could finally decide what form its work should take when it had before it a complete set of draft articles drawn up by the Special Rapporteur. That was the time to decide its destination. The tendency hitherto, however, had always been for the Commission to formulate treaty rules.

78. The Commission should examine the question of the origins and types of State succession, not in order to study the various cases of State succession under different headings, but in order to deduce from past situations rules relating to the birth of States. The three types of succession mentioned in the report were not the only ones. His own country, Yugoslavia, during its fight for freedom and unification, had seen the revolutionary resurgence of the old State of Serbia, followed by a mixture of different legal types of State succession: the birth of a new State, the merging of a number of States for the purpose of unification and the incorporation of territories under the rule of other States. With regard to the method to be followed by the Special Rapporteurs, he thought they should first work alone and then consult each other so as to avoid contradictions. Contractual and extra-contractual sources were often combined, but the classification of types of State succession was nevertheless useful.

79. The sixth question related to the specific problems of new States. There were not only specific problems resulting from decolonization in general, but also problems peculiar to the last two decades. In the latter period, the decolonization of British colonies had differed from that of French colonies. There had also been differences between territories which had had a quasi national administration and territories which had been under the exclusive and direct administration of the colonial Power. Consequently, a large number of specific problems had to be taken into account.

80. Although he was in favour of some general system of peaceful settlement of disputes and believed that the subject-matter of State succession called for such a system, he did not think the Commission could pronounce on the question at once. It was for the Special Rapporteur to study the various possible procedures. The Commission would subsequently decide which system to recommend.

81. With regard to the order of priority of concrete questions, public property and public debts seemed to him to be secondary questions. What should be settled first was the question of general economic and financial relations between the predecessor State and the successor State. Everything else followed from that. The question of national wealth was surely of prime importance; it came before property and debts.

82. Where property was concerned, the attitude adopted to the compensation of expropriated settlers who had obtained their land by evicting its former inhabitants depended on what general view was taken of decolonization. The question was whether the nationals of the newly independent territories were to be kept in a state of poverty, or whether independence meant both political emancipation and economic liberation.

83. With regard to public debts, it was generally recognized that they were the liability of the State to which the territory was attached, provided they had been contracted in the general interest of the territory and not for the political or even strategic purposes of the former ruling Power, which might require, for example, the construction of roads or the laying of railways. The treatment of debts depended on how the liberation of the territory was understood. He was therefore opposed to studying the problems of public property and public debts before dealing with the general questions on which depended the interests involved.

84. After it had answered the Special Rapporteur's questions, the Commission should have a short discussion on any other subjects which might be raised by members for treatment in the draft.

Appointment of a Drafting Committee

85. The CHAIRMAN suggested that the Commission appoint a drafting committee, under the chairmanship of Mr. Castrén, consisting of Mr. Ago, Mr. Albónico, Mr. Bartoš, Mr. Castañeda, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Reuter, Mr. Ushakov and Mr. Ustor.

It was so agreed.

The meeting rose at 1 p.m.