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Summary record of the 961st meeting

Topic:

Succession of States in respect of matters other than treaties

Extract from the Yearbook of the International Law Commission:-

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of the report: "dismemberment", which the Special Rapporteur used in referring to the past, "decolonization", which he used to cover the present, and "merger", which looked to the future. It would be difficult to fit all cases into those three categories, but if the Special Rapporteur found them useful for classification purposes they were acceptable.

The meeting rose at 6 p.m.

961st MEETING

Tuesday, 25 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 the Special Rapporteur's report on item 1 (*b*) of the agenda (A/CN.4/204).

2. Mr. CASTRÉN said that the Special Rapporteur's excellent study and the new documentation supplied by the Secretariat had provided the Commission with the necessary material for considering the questions before it. But if it was to submit a final draft on the topic of State succession to the General Assembly before the end of the term of office of its present members, it would have to confine its work to the main questions and formulate general rules, without going into detail. It would also have to exclude purely political questions and concentrate on legal problems.

3. With regard to the scope of the topic, the Special Rapporteur had rightly rejected the criterion of the sources of State succession and adopted that of its subject-matter. The Commission's intention had obviously been that the study should deal with succession with respect to matters other than treaties and not succession resulting from sources other than treaties. In refraining from a detailed examination of the problems raised, the Special Rapporteur had interpreted his terms of reference correctly. The question of judicial procedures for the settlement of disputes arising out of State succession could be considered later.

4. With regard to methods of work, and particularly the choice between codification and progressive development, the Commission and the General Assembly had tended to opt in favour of codification. But the practice of State succession had never been very consistent, and events since the Second World War had confused the situation even further. The Commission should therefore make some attempt at progressive development, as proposed by the Special Rapporteur in paragraph 30 of his report.

5. He (Mr. Castrén) agreed that the question of State succession was of particular importance for States which had acceded to independence since the Second World War and were still developing. However, as the Special Rapporteur explained in paragraphs 37 and 53 of his report, the problem of State succession also arose for the ceding State and concerned its nationals. Third parties could also be affected by changes in territorial sovereignty. Even if the Commission gave priority to problems connected with recent decolonization, as recommended by the Special Rapporteur, other cases of State succession should not be neglected.

6. The question whether the rules prepared by the Commission should take the form of a draft convention or a code must be left open for the moment. However, in order to facilitate the task of the Special Rapporteur, the Commission could initially instruct him to formulate rules suitable for a draft convention.

7. Section IV of the report was devoted to the types of State succession. The Special Rapporteur's classification of the three types of succession in terms of the past, the present and the future was interesting, but cases of dismemberment were still frequent today and there had also been several cases of merger in the past. It would therefore be necessary to examine all types of State succession and see which of the old rules could be retained, either unchanged or modified.

8. In speaking of continuity and rupture in connexion with decolonization, the Special Rapporteur had rightly said that international law should protect new States. But it should also, to some extent, protect the other States concerned and their nationals. The factors of continuity and rupture and the different types of problem facing new States had been well described; but the Special Rapporteur had sometimes generalized too much, particularly in paragraph 69, where he spoke of rights acquired "during the *période suspecte*", and in paragraph 70, which dealt with instruments which he described as "unequal". The law governing acts of nationalization and expropriation and measures taken by a former dependent country to regain control of its natural resources was a vast and complex field requiring special studies. Not only could the Commission not go into detail on such questions, but there were great difficulties to be faced in formulating even general rules on them.

9. On the question of the relative importance of the problems involved, he agreed that those affecting the general position of the new State and the future of public property and public debts were of particular importance and could be given priority. But all the other subjects mentioned in paragraph 77 of the report were important as well, and each should be examined in due course.

10. Referring to the specific questions dealt with in sections VI-XI of the report, he noted that, in connexion

with public property, the Special Rapporteur recommended the Commission to abandon the traditional distinction between the treatment of property in the State's public domain and property in its private domain; that would result in the automatic transfer, without payment, of all the property of the ceding State situated in the ceded territory or connected with that territory. The practical arguments advanced by the Special Rapporteur had some force, but from the doctrinal point of view, a cession of territory could entail the transfer only of property in the State's public domain. He took the liberty of referring, on that point, to a course of lectures he had given at the Hague Academy of International Law.[1] It was true that in State practice, particularly in recent years, the successor State had generally taken possession of all the property of the ceding State which had come into its hands. But the Commission should reflect before adopting without reservation the rule proposed in paragraph 82 of the report.

11. In the case of complete disappearance of a State through dismemberment or fusion, which should also be dealt with in the draft, special rules would apply.

12. The Special Rapporteur, without giving his personal view, asked the Commission to attempt an acceptable definition of public property. In his (Mr. Castrén's) opinion, public property was property owned by the State on public account; it did not include the property of communes or, generally, the property of public undertakings. Nevertheless, each case should be considered separately.

13. The Special Rapporteur thought that his rule of total transfer should also apply to property situated outside the ceded territory. In general, however, succession was confined to property situated within the territory. To justify an extension of the application of the rule, special circumstances had to be invoked, the most important being the fact that the property was in some way connected with the ceded territory.

14. Cases of plurality of successor States raised special problems concerning the distribution of property, so the Commission should consider them as well.

15. It also seemed advisable that the draft should include special rules on the future of archives and libraries. The Special Rapporteur had made some useful suggestions on that matter in paragraphs 93 and 94 of his report.

16. With regard to public debts, dealt with in section VII, the criterion which really justified succession was the intended or actual use of the debt for the benefit of the ceded territory, and equity demanded that the successor State accept liability not only for local debts contracted in its interests by the ceding State, but also for that part of the general debt which had benefited the ceded territory. He agreed with what the Special Rapporteur said about debts to third States and their nationals and so-called "odious" debts, war debts and other similar debts.

17. Referring to section VIII, he recognized that succession to the legal system was not really a right and that the legal system was liable to be replaced at any time, subject, of course, to compliance with international obligations. Although at first sight it was true to say that *de facto* continuity was not essential in the matter of form, the Commission could nevertheless consider that question, as the Special Rapporteur had suggested. Pending court proceedings raised numerous difficulties, as could be seen from paragraph 116 of the report, and it would be advisable for the Commission to examine that point too.

18. It was in connexion with territorial problems, dealt with in section IX, that he had the greatest doubts, because so many political aspects were involved. The 1962 Sub-Committee had proposed that the only questions to be considered under the heading of territorial rights should be those relating to international servitudes.[2] The Special Rapporteur proposed that questions concerning succession with respect to boundaries and so-called incomplete devolution should be dealt with as well. While not denying the importance or topicality of those problems, he questioned whether the Commission was the appropriate organ to draw up rules concerning them.

19. The Special Rapporteur himself seemed doubtful whether the Commission should formulate a rule prohibiting expansionism and calculated to discourage unjustified territorial claims; but he wished the Commission to decide whether there was a rule of international law barring any frontier revision, for example, by application of the principle of self-determination, or in order to achieve natural or more rational boundaries. The Special Rapporteur thought that the Commission should also consider the problems of boundaries inherited from the colonial past and incomplete territorial devolutions, which he thought could be described, in the language of private law, as "partial failure to make delivery".

20. Even subsection (*b*) of section IX, concerning servitudes, rights of way and enclaves, concealed political problems, in particular the problem of military bases. Servitudes had always been one of the most controversial questions in public international law.

21. Section X dealt with the status of the inhabitants of territories affected by succession. The very important problems involved, especially questions of nationality, were quite suitable for treatment by the Commission. In addition to denaturalization and the right of option, the protection of individuals and their property, as well as other questions, deserved its attention.

22. In section XI, the Special Rapporteur proposed the rejection of the principle of acquired rights. It was true that private rights were only protected if the new sovereign agreed, but if the possessors of those rights were nationals of a third State, the successor State did not enjoy unlimited freedom of action; it could even be held that, in view of new developments in the sphere of human rights, some protection of property should be extended to everyone.

23. With regard to concessions granted to foreigners, although under certain conditions they could be terminated, even retroactively, with rare exceptions, termination had to be accompanied by payment of monetary compen-

[1] See "Aspects récents de la succession d'Etats" Académie de droit international, *Recueil des cours, 1951*, vol. I, pp. 454 *et seq.*

[2] See *Yearbook of the International Law Commission, 1963*, vol. II, p. 260 *et seq.*

sation. The Commission could therefore examine the circumstances in which the successor State was entitled to terminate or modify the terms of concessions, but it could not accept the view that the successor State was in no way bound by the undertakings of the predecessor State.

24. Sir Humphrey WALDOCK said that the Special Rapporteur's penetrating study was useful in identifying the main problems to be considered, even if the Commission did not ultimately deal with all of them. It also constituted a clear statement of the Special Rapporteur's general approach to his work.

25. The Commission's aim in the present discussion should be to clarify the position with regard to what it would expect from the Special Rapporteur at the next stage of his work.

26. On the questions of substance raised in the report, although he agreed with many of Mr. Castrén's remarks, he had no wish to state any precise views at that stage and would prefer to wait until the Commission had before it a more concrete report, together with the material the Special Rapporteur adduced in support of his views and proposals.

27. On the question of the relationship between his own report (A/CN.4/202) and that of the Special Rapporteur, it was correct to say that the language used by the Commission in its decision at the previous session [3] had not been appropriate. The Commission's intentions were, however, clear enough: he himself had been entrusted with the study of the problem of succession of States with respect to treaties, although the Commission had used the words "in respect of" treaties, while Mr. Bedjaoui had been entrusted with the study of the problem of succession of States with respect to matters other than treaties.

28. He himself had to deal with the question whether, and to what extent, treaties formerly applicable to a territory continued to apply to a new sovereign which replaced the old sovereign over that territory. He did not have to deal with questions other than those of treaty rights and obligations; such matters as public property, public debts and the status of inhabitants were thus outside his province. However, it could happen that a treaty touched upon one of those matters. If it should become binding on the successor State by some operation of the law, the provisions of the treaty would govern even those substantive matters and the successor State would have to settle them in accordance with its obligations under the treaty. Those remarks were subject to the qualification that, if any principle of *jus cogens* were found to exist in the matter, that principle would prevail.

29. Devolution treaties were a delicate question and any suggestion that a treaty of that kind might be invalid on the grounds that it had been concluded under duress would have to be examined in the light of the rules governing the law of treaties. The Commission should be very cautious in such matters and not try to cover, in its treatment of the present topic, difficult and controversial questions which pertained more to other branches of the law.

30. No doubt a devolution treaty could also provide evidence of customary law. But since in practice there had been almost as many cases of refusal as of acceptance of such treaties, their value as evidence of customary international law was perhaps marginal.

31. On the question of the new States, he had himself taken as his guide the terms of General Assembly resolution 1902 (XVIII) of 1963 which called for "appropriate reference to the views of States which have achieved independence since the Second World War". He had no intention of underestimating the views of the new States, which constituted a reality in contemporary international law, but if the Commission were self-consciously to prepare a draft based specifically on those views, it might run the risk of making the draft more difficult for other States to accept. Every effort should be made to avoid driving a wedge between the "old" and the "new" States. In the past the Commission had pursued with considerable success the laudable aim of endeavouring to harmonize the views of the international community, and had avoided emphasizing differences between the old and the new States. All States lived under the law of the Charter, and that law included not only the principle of self-determination, but also the prohibition of the threat or use of force and, it was essential to remember, the observance of human rights.

32. With regard to the origin of State succession, he understood the problem to relate to the different political origins of State succession, such as dismemberment, decolonization and fusion, all of which could give rise to different legal situations. There should be no question of assigning that problem to one or other of the two parts into which the topic of State succession had been divided; if the problem was relevant to one part of the subject, it would also be relevant to the other. He would suggest, however, that the Commission refrain from undertaking unnecessary or difficult issues such as the political, economic or social origins of State succession. The Commission's experience with the law of treaties should serve as a warning against taking up such issues. He had himself, somewhat optimistically, submitted detailed proposals on capacity to conclude treaties covering, *inter alia*, the treaty-making capacity of dependent territories. But the discussion had run into difficulties in regard to the political elements, and the Commission had rightly decided to confine the provisions on capacity to a very brief draft article.

33. On the question of codification or progressive development, there was really no choice. It had become the custom for the Commission to include a paragraph in its reports making it clear that the drafts included in those reports combined the two elements of codification and progressive development. Naturally, depending on the nature of a topic, one element might be more in evidence than the other. With a subject such as State succession, on which there was much divergent practice, there was ample scope for progressive development; the practice needed to be clarified and the law developed in desirable directions.

[3] See *Official Records of the General Assembly, Twenty-second Session, Supplement No. 9*, pp. 24-25, paras. 38-41.

34. He agreed with Mr. Castrén on the need to divide up such a vast subject and to select a particular part for treatment by the Special Rapporteur: public property and public debts might perhaps provide suitable subject-matter. His own views on the choice of the subject to be undertaken first would, of course, be greatly influenced by the Special Rapporteur's views.

35. Mr. KEARNEY said that the Special Rapporteur's thorough report dealt with a wide variety of subjects. He naturally had some reservations regarding the views expressed in the report, but most of them related to sections VI — XI, which he did not propose to deal with in detail at that stage.

36. With regard to the scope of the subject and the distinction between items 1 (*a*) and 1 (*b*), he agreed with Sir Humphrey Waldock on the need to bear in mind the rules on the law of treaties. For example, the problem of acquired rights in connexion with nationalization measures would have a different character where the new State succeeded to a guaranteed investment agreement; if the guaranteeing State exercised the subrogation clause, the problem would arise whether the claim had become a claim by a State instead of a claim by an individual. The general rules of the law of treaties would govern problems of that type.

37. Devolution treaties would obviously play a considerable part in framing the situation resulting from the emergence of a new State and it was necessary to take those treaties into account. In that regard, there was some overlapping with the topic of State succession with respect to treaties. The effect of devolution treaties, or devolution clauses in treaties, could not be treated separately with respect to treaties and with respect to matters other than treaties. It must be treated on the same basis in both cases, and the effect of such treaty provisions would, in both cases, be governed by the law of treaties. The only exception would be where the Commission found valid grounds to propose some special rule by way of progressive development.

38. It had been suggested that some devolution treaties might be regarded as unequal treaties or as invalid treaties, but that question could only be settled in the light of the provisions eventually adopted by the Vienna Conference on the Law of Treaties, assuming that the Conference adopted the rule that the grounds of invalidity set forth in the future convention on the law of treaties must be deemed to be exhaustive.

39. On the question of adjudication, he agreed with Mr. Nagendra Singh that there were sound reasons for considering what methods of settlement might be adopted for disputes arising out of succession problems. The question was particularly relevant to boundary and other territorial problems. Nothing would be more dangerous than to open the way for a series of boundary problems without making provision for some means of settlement. To a lesser extent, the same was true of such matters as acquired rights and nationality.

40. On the question of the origin of State succession, he agreed with Sir Humphrey Waldock that it affected both parts of the topic equally. Perhaps it would have been useful to hold a theoretical discussion on the question, but since the Commission had not done so, it would be for each of the two Special Rapporteurs to deal with it.

41. With regard to methods of work, it was obvious that there would be elements of progressive development in any report on State succession. The present report made specific reference to progressive development when it stated, in paragraph 28, that it would be "advisable to extrapolate a little from practice ... in order to achieve appropriate systemization of the subject". The Special Rapporteur proceeded to elaborate the point and, in paragraph 30, asked "whether the codification of traditional rules which already seem obsolete and would limit the value of the work should not be accompanied by some attempt to further the progressive development of international law". In later sections of the report there was a tendency to give preference to progressive development over codification, because of the importance to new States of the political and economic aspects of State succession. What was needed was a balanced body of law which took into account all the elements of the subject and made full use of the experience gained in cases of fusion, dissolution and transition to independence of States.

42. A body of law was needed that would be effective for a long time. The process of decolonization was nearing its end, and the Special Rapporteur had himself pointed out that, if a set of rules on State succession had been devised ten years previously, they would have been extremely helpful in dealing with the problems arising out of decolonization. The Commission must now formulate its drafts in preparation for the problems of fusion and dissolution, which were those most likely to arise in the future.

43. As to the approach to the topic of State succession with repsect to matters other than treaties, he saw no necessity to take a decision on the choice between a draft convention and codification in another form. It would, however, be of advantage to undertake the study with the aim of formulating specific, and perhaps terse, rules to govern the various aspects of the topic. It was immaterial whether those rules were couched in treaty language or in some looser wording, but it would not be desirable merely to prepare a general commentary.

44. He supported the suggestion that one or two subjects should be selected for immediate study. The titles of sections VI—XI of the report provided a list of suitable subjects to choose from.

45. Mr. TAMMES said that in the preliminary discussion a number of problems had been raised in addition to those dealt with by the Special Rapporteur in his very full and systematic report.

46. The first was the problem of a definition of State succession, which was all the more necessary since the phenomenon of State succession had not always been recognized as such in State practice and in case law. The Commission would be on solid ground if it took as its starting point the definition proposed by Sir Humphrey Waldock in article 1, paragraph 2(*a*), of his draft on State succession in respect of treaties (A/CN.4/202). He therefore suggested some such wording as: "State succession

means the definitive replacement of one State by another in respect of the jurisdiction over a given territory".

47. That definition would take into account the fact that succession of Governments and succession to membership of international organizations were excluded from the scope of the topic. It would stress the discontinuity in jurisdiction over the territory. It would cover the case in which an international mandate or trusteeship was replaced by a sovereign State — an instance of State succession of which there had been a number of examples since the adoption of the Charter. On the other hand, it would exclude cases of military occupation; in such cases, the occupant State took over certain international rights and obligations of the occupied territory, but there was no permanent transfer of jurisdiction.

48. The use of the term "jurisdiction" instead of "sovereignty" would have the additional advantage of being applicable to such international situations as those relating to the rights of coastal States under the international law of the sea. Those rights were limited to jurisdiction, especially with respect to the continental shelf, where the adjacent coastal State had rights to the exploration and exploitation of mineral resources. A definition of the type he had suggested would indicate the relevance of jurisdiction over sea areas, fishing zones and the continental shelf to problems of State succession.

49. Where the joint use of natural resources was concerned, the Special Rapporteur had drawn attention, in paragraph 152, to the new approach of "co-operative association".

50. In that connexion, however, there also arose the problem of delimitation of sea areas by means of equidistant lines, which to some extent represented international boundaries. As such, those boundaries would be subject to all the qualifications attached to boundary agreements.

51. At the previous meeting, the question had been raised of the relationship between boundaries and the treaties from which they resulted. An answer was provided by article 4 of Sir Humphrey Waldock's draft on succession of States in respect of treaties, which read: "Nothing in the present articles shall be understood as affecting the continuance in force of a boundary established by or in conformity with a treaty prior to the occurrence of a succession".

52. With regard to the question of natural resources, he was impressed by the constructive solutions put forward by the Special Rapporteur in paragraph 148 of his report, which began: "In the case of some important natural resources the new State may be unable either to agree to maintain acquired rights, which would prevent it from developing its economy properly, or to abolish such rights immediately, since that would seriously disturb its economy". That passage was particularly inspiring, even for old States which, through the vicissitudes of fortune, became involved in such situations.

53. With regard to the question of acquired rights, it should be noted that the preamble to General Assembly resolution 1803 (XVII), on permanent sovereignty over natural resources, which was a law-making resolution, specifically safeguarded, in the event of State succession, rights acquired under a government concession, by stipulating that "nothing in paragraph 4 below in any way prejudices the position of any Member State on any aspect of the question of the rights and obligations of successor States and Governments in respect of property acquired before the accession to complete sovereignty of countries formerly under colonial rule". The preamble went on to note that "the subject of succession of States and Governments is being examined as a matter of priority by the International Law Commission". Due regard should therefore be had for acquired rights, pending the codification and, where appropriate, the progressive development of the topic.

54. Through the persistent efforts of the depositaries, continuity had been the rule with regard to such international treaties as the humanitarian conventions and the International Labour Conventions. As a result, the application of those conventions had been disturbed as little as possible by the transfers of sovereignty consequent upon the emergence of new States.

55. At the same time, the discontinuity which resulted from State succession with respect to sovereignty, nationality, legislation and public property called for an effort to develop the rules of international law in accordance with the principles of fairness, equity and equal opportunity in a changing world. Material on which to base such rules could be found in the valuable "Digest of the decisions of international tribunals relating to State succession" prepared by the Secretariat, in particular, in the advisory opinion of the Permanent Court of International Justice in the case concerning *Settlers of German Origin in Territory Ceded by Germany to Poland* (1923),[4] and the *Finnish Shipowners* (arbitration) case (1934).[5]

56. Guidelines for the protection of acquired rights were provided not only by the first Protocol to the European Convention on Human Rights,[6] which made legislation on private property and nationality subject to the limits derived from the general principles of international law, but also by General Assembly resolution 1803 (XVII), section 1, paragraph 8, of which laid down that "Foreign investment agreements freely entered into by or between sovereign States shall be observed in good faith". A number of recent agreements of that type contained provisions for the settlement of investment disputes by arbitration or adjudication.

57. Mr. USTOR said the Special Rapporteur was to be congratulated on his report, which contained a wealth of thought-provoking material. In his introduction, the Special Rapporteur had asked a number of fundamental questions and he (Mr. Ustor) would endeavour to answer them.

58. First, he thought that the Special Rapporteur's next report should be drafted in the form of articles for a draft convention, although the Commission itself would probably take a decision on that point at a later stage.

59. Secondly, the answer to the question whether the report should aim at codification or the progressive devel-

[4] See *Yearbook of the International Law Commission, 1962*, vol. II, p. 138.

[5] *Ibid.*, p. 149.

[6] See United Nations, *Treaty Series*, vol. 213, p. 262.

opment of international law was not difficult. The report revealed a deep understanding of the progress which had been made throughout the world in the last few decades, and it was clear that any codification undertaken by the Special Rapporteur would be of the contemporary rules of international law. Codification and progressive development were, in fact, often inseparable.

60. In paragraph 40 of his report, the Special Rapporteur had classified State succession in three general types: "dismemberment", "decolonization" and "merger". Those types corresponded closely to the classification of "disappearance", "birth" and "territorial changes" adopted by the Sub-Committee.[7]

61. He agreed that problems connected with the birth of new States should be of special concern to the Special Rapporteur and to the Commission as a whole. The Special Rapporteur had pointed out that, on the birth of a new State, the question of succession was almost always regulated by a treaty, but he should nevertheless try to establish general rules that would be applicable to the birth of a new State in the absence of a treaty.

62. What were those general rules? Obviously, the new State became a member of the family of nations and acquired the same rights as the other members, including the rights of sovereignty, independence, equality and the exercise of full law-making powers in its own territory. There were no minors in the family of nations; a new State might be said to come into being like Pallas Athene, fully armed. At the same time, it acquired certain duties *ipso facto*, and that was a subject which should also be dealt with by the Special Rapporteur.

63. Moreover, since the situation of new States was generally affected by devolutionary treaties, he should also deal, at least in part, with such problems of the general law of treaties as *jus cogens*, unequal treaties and so on.

64. The Special Rapporteur had also asked whether his report should deal with the settlement of disputes. He (Mr. Ustor) was inclined to follow the wise advice of Sir Humphrey Waldock and restrict the field of the report as much as possible. The questions of the settlement of disputes and of State responsibility should be dealt with separately.

65. Lastly, in considering the problem of devolution treaties, the Special Rapporteur might not be able to avoid the problem of succession of Governments, which might arise in connexion with the birth of a new State when the new Government brought with it a complete transformation of the social order, since that might have repercussions on the international position of the State itself.

66. Mr. USHAKOV said that the Special Rapporteur's wise and fruitful report brought out clearly the main problems the Commission would have to examine in order to formulate general principles concerning State succession.

67. On the preliminary question whether the Commission's task was mainly one of codification or of progressive development, he shared the general view that both elements were mingled in the topic of State succession, as in the other topics dealt with by the Commission.

68. With regard to the scope of the topic, he agreed with the Special Rapporteur that the Commission should adopt the criterion of the subject-matter of the succession. Sir Humphrey Waldock, the Special Rapporteur on succession of States with respect to treaties, had already accepted that view. The Commission could certainly agree to the new wording proposed by Mr. Bedjaoui for the topic for which he was responsible, namely, "Succession of States in respect of matters other than treaties" (A/CN.4/204, para. 21).

69. The method of work proposed by the Special Rapporteur was the correct one. The Commission should instruct him to prepare draft articles for a future convention, which set out the general rules recognized by States as a whole, and to incorporate elements of progressive development of international law.

70. With regard to the classification of successions, the Special Rapporteur envisaged three types: dismemberment—which it might be better to call "secession" or "division"—decolonization, and merger.

71. That classification should be expanded a little. To begin with, there were two main types of succession: succession through cession or transfer of part of the territory to an existing State and succession through the birth of a new State. Many questions needed to be approached differently according to which of those types of succession was involved. For example, in the case of a cession or transfer of territory, the question of nationality was settled in accordance with the principle of option: the inhabitants of the territory could opt for either the nationality of the predecessor State or that of the successor State; but when a new State was born, the former nationality ceased.

72. Succession resulting from the birth of a new State could be sub-divided into several categories, according to how the new entity was formed—division of a State into two or more States, decolonization or fusion—and again, in each case the questions that arose took a slightly different form. In cases of division, it was the size of the new States that determined the answer to many questions, whereas in cases of fusion, the main factor was the rights and obligations of the predecessor States. In cases of decolonization also, a special approach was needed. Those differences also applied to problems of State succession with respect to treaties.

73. He fully agreed with the Special Rapporteur on the question of priorities. The resolutions of the General Assembly and certain earlier decisions of the Commission called for priority for the problems of decolonization. The Commission should consider whether a special chapter of the future draft ought to be devoted to State succession resulting from decolonization or whether all State succession problems could be dealt with in a general context.

74. He approved of the position taken by the Special Rapporteur in paragraphs 79-86 of his report in favour of abolishing the distinction between the public and the private domain in State property. There was no reason

[7] See *Yearbook of the International Law Commission, 1963*, vol ,II. p. 261, para. 15.

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