

Document:-  
**A/CN.4/SR.960**

**Summary record of the 960th meeting**

Topic:  
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importance and one in which it was appropriate that the Commission should take the lead. The codification of international law did not consist merely in writing rules; it was also essential to ensure the general acceptance of those rules.

83. As matters now stood, the Secretariat itself had only a passive role. When a codification convention was adopted, the Secretariat supplied two copies to each State and waited for ratifications. When a new State joined the United Nations, it was the practice of the Secretariat to furnish it with a list of all the conventions it could sign, which included the codification conventions.

84. The Secretariat also issued regularly a volume entitled "Multilateral Treaties in respect of which the Secretary-General performs Depositary Functions", (ST/LEG/SER.D/1), a publication that deserved to be better known. Delegations occasionally asked questions to which they could have found the answers themselves merely by referring to that publication.

85. He fully agreed with Mr. Ago's remarks on the reasons for failure to ratify conventions. It was extremely rare for a State to be opposed to a convention: it was much more common for a State to be indifferent. Problems also arose in some countries as a result of the relations between the Government and parliament; in other countries delay in ratification was due to the inadequacy, or total lack, of a treaty section in the foreign ministry.

86. If so requested by the Commission, the Office of Legal Affairs would be glad to furnish it with a comparative study of the status of the codification conventions in respect of which the Secretary-General performed depositary functions.

87. He felt certain that if the Commission were to include a passage in its report on the matter raised by Mr. Ago, the Sixth Committee would take it up. Of course, it was only after thorough consideration of the problem that concrete suggestions could be made for its solution.

88. The CHAIRMAN said he noted that there appeared to be general agreement in the Commission, first, to mention in the report that a preliminary discussion had taken place on the matter raised by Mr. Ago, and secondly, to place on the Commission's agenda a new item relating to the ratification of codification conventions. The exact wording of the item could be decided later in consultation with Mr. Ago.

*It was so agreed.*

The meeting rose at 1.20 p.m.

## 960th MEETING

*Monday, 24 June 1968, at 3.10 p.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.

## Relations between States and inter-governmental organizations

(A/CN.4/195 and Add.1; A/CN.4/203 and Add.1-2; A/CN.4/L.118 and Add.1-2)

[Item 2 of the agenda]

*(resumed from the previous meeting)*

ARTICLE 14 (Size of the permanent mission)<sup>1</sup> *(resumed from the previous meeting)*

1. The CHAIRMAN invited the Commission to continue consideration of article 14 of the Special Rapporteur's draft (A/CN.4/203/Add.2).

2. Mr. EL-ERIAN (Special Rapporteur) said that one of the main points on which the discussion had centred had been the character of the rule laid down in article 14. Several members had questioned the advisability of providing what was only a rule of conduct and would prefer the article to state a categorical legal obligation.

3. While not questioning that, in general, the provisions of conventions prepared by the Commission should take the form of legal obligations, he believed that there could be exceptions to that rule. For example, the draft articles on the law of treaties had included a number of expository articles which had given rise to criticism, but the Commission had finally decided that the articles should not be strictly confined to legal obligations. Perhaps Sir Humphrey Waldock had provided the real test when he had said that the Commission might have recourse to a rule of conduct or a recommendation as "a last resort".

4. There were, indeed, other examples of rules of conduct in draft conventions which were not strictly legal obligations. Article 37, paragraph 4, of the Vienna Convention on Diplomatic Relations<sup>2</sup> provided that private servants of members of the mission might "enjoy privileges and immunities only to the extent admitted by the receiving State", but went on to say that the receiving State "must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission." The word "must" had caused difficulties in the Drafting Committee; some members had wished to use the word "should", while others had preferred the word "shall". The text finally adopted was a compromise which might be described as *lex imperfecta*.

5. A similar compromise had been reached by the Eighteen-Nation Committee on Disarmament in 1962, when the eight non-aligned countries had submitted a joint memorandum<sup>3</sup> proposing the establishment of an International Commission of scientists to report on any

<sup>1</sup> See 958th meeting, para. 37.

<sup>2</sup> See United Nations, *Treaty Series*, vol. 500, p. 116.

<sup>3</sup> Document ENDC/28.

nuclear explosion or suspicious event. The memorandum had stated that: "All parties to the treaty should accept the obligation to furnish the Commission with the facts necessary to establish the nature of any suspicious and significant event." If the Commission was unable to reach a conclusion on the nature of a significant event in the territory of one of the parties, "the party and the Commission should consult as to what further measures of clarification . . . would facilitate the assessment". Thus the memorandum laid down a rule of conduct and not an absolute legal obligation.

6. It had been pointed out that article 14 provided no remedy where the size of a permanent mission was excessive. Mr. Ustor had therefore suggested that some of the last part of paragraph 5 of the commentary, concerning consultations, should be incorporated in the article. He (the Special Rapporteur) had misgivings about dealing with such matters in the body of the article and thought it would be better to leave them to the practice of the international organizations. That question would, however, be one for the Drafting Committee to decide.

7. Mr. Tammes had drawn attention to the many differences in wording between the Vienna Convention on Diplomatic Relations, the draft articles on special missions and the present articles on permanent missions, and had expressed the hope that all the matters involved would one day be regulated by a uniform law. But it should be borne in mind that while relations between States and inter-governmental organizations showed some similarities with diplomatic relations, they also showed important differences.

8. Mr. Tabibi had asked why provisions should be included in article 14 to protect the host State, since the draft articles were intended primarily to regulate relations between the sending State and the organization. It was impossible, however, to overlook the fact that there was a third party involved, namely, the State in whose territory the permanent missions performed their functions and enjoyed a certain legal status, and that some protection should be provided for the legal interests of that State, though in such a way as not to interfere with the performance of the functions of the organization.

9. Mr. Tabibi had also argued that the interests of the host State were adequately protected by headquarters agreements. But those agreements were silent on most of the aspects of permanent missions, and article 14 was designed to fill the gap.

10. The Legal Counsel had asked what would be the fate of the United Nations Headquarters Agreement if article 14 were adopted. His reply was that the Legal Counsel had had in mind the privileges and immunities of international organizations, whereas the present draft articles referred primarily to permanent missions. The various headquarters agreements had virtually nothing to say about permanent missions, except in connexion with the question of reciprocity, which he proposed to deal with in his article on non-discrimination (article 41).

11. Questions had also been asked about the meaning of the phrase "reasonable and normal"; he agreed that that criterion was a vague one, but unfortunately such expressions were part and parcel of legal terminology.

He need only mention the expression "due diligence", used in relation to State responsibility for injuries to aliens, and the concept of the "*bon père de famille*", which was used frequently in the French legal system.

12. Mr. Bartoš had said that neither the articles nor the commentary covered the case in which a permanent mission was accredited to more than one organization. That was admittedly a difficult problem, but he thought that more than one mission was involved, although they might all be housed in the same building. The premises of the Yugoslav Mission in Geneva, for example, accommodated both its permanent mission to the United Nations and its representatives to the ILO. He would reflect on that problem, however, and include something about it in the commentary.

13. Mr. Yasseen had taken the view that the interests of the host State did not enter into article 14 and that it must accept all the consequences of having an international organization in its territory. He could agree to that statement provided it was qualified by adding that the host State, by agreeing to be host to an international organization, waived certain privileges which a receiving State possessed under bilateral diplomacy. The important thing was to preserve the freedom of choice of the sending State.

14. The Legal Counsel had raised the question of the position of the Headquarters Agreement. But when the preliminary articles had been discussed, some members had reserved their position with respect to the question of special agreements, and it was with that consideration in mind that he had included a saving clause in article 4.

15. The Legal Counsel had also said that the size of a permanent mission had seldom caused any difficulty, and that all the difficulties which had arisen had related to the choice of persons or their nationality. He could assure the Legal Counsel that the present draft would include articles on the nationality of members of permanent missions, their professional activities, and the freedom of choice of the sending State.

16. Mr. Kearney had suggested that article 14 should omit any reference to the sending State and merely provide that the size of the permanent missions should not exceed what was reasonable and normal. That was a useful suggestion and might be acceptable.

17. To sum up, it appeared that, with the exception of Mr. Tabibi, who might still change his mind, all members were in favour of retaining article 14. There was, however, a division of opinion as to whether the article should state an obligation or a rule of conduct. The majority seemed to favour an obligation, but he himself was not sure that that would be the best solution. As Mr. Castañeda had pointed out, a delicate balance was involved, since once the article had been formulated as imposing an obligation, the question of the concomitant right of the host State would arise. The whole question called for serious consideration by the Drafting Committee.

18. Mr. BARTOŠ said he wished to make it clear that the question he had raised related to a permanent mission representing the sending State in several international organizations whose headquarters were not all in the same country. The question was whether the whole staff of

such a permanent mission was accredited, or presumed to be accredited, to all the international organizations concerned, and whether the Government of each host State was bound to regard them as so accredited.

19. Mr. EL-ERIAN (Special Rapporteur) said he was grateful to Mr. Bartoš for providing additional information concerning the intricate problems he had raised. Draft articles 18 and 19 dealt, respectively, with the seat of the permanent mission and offices away from the seat of the permanent mission. He had, however, proceeded on the assumption that a mission would be accredited to only one organization, whereas Mr. Bartoš had envisaged the possibility of more than one. He would try to cover that point in some appropriate place in the draft.

20. The CHAIRMAN said that, if there was no objection, he would take it that the Commission agreed to refer article 14 to the Drafting Committee.

*It was so agreed.*<sup>4</sup>

### **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)

21. The CHAIRMAN invited Mr. Bedjaoui, Special Rapporteur, to introduce his first report on succession of States in respect of rights and duties resulting from sources other than treaties (A/CN.4/204).

22. Mr. BEDJAOUI (Special Rapporteur) said that the problem of State succession was complicated by the difficulty of reconciling the sovereignty of the successor State with respect for established situations—not, of course, where the successor State benefited from rights, but where it assumed obligations incurred by the predecessor State.

23. The Sub-Committee on the Succession of States and Governments, whose suggestions had been approved by the Commission, had considered that a detailed study of the second heading of its broad outline, namely, succession in respect of rights and duties resulting from other sources than treaties, should include the aspects of property, contracts, concessionary rights, servitudes, and public law, including nationality and non-contractual responsibility<sup>5</sup>.

24. In his view, private property did not constitute a source of rights and duties. If the criterion of source was adopted, the subject could be classified thus: sources involving a meeting of wills, such as treaties and contracts; sources involving a unilateral act by the public power, followed by voluntary acceptance of that act by a private person or a corporation, such as concessionary rights; sources involving a straightforward unilateral act by the public power, particularly internal legislation and questions of nationality; sources involving a prejudicial unilateral act whereby the public power engaged its responsibility on a non-contractual basis; and quasi-

customary sources involving no expression of will, whether unilateral or bilateral, such as servitudes. The emphasis in that classification was on the existence or absence of expression of a sovereign will.

25. Leaving all other sources aside for the moment, and considering, or contrasting, only treaties on the one hand and administrative contracts and concessionary rights on the other, it could be said that succession to treaties concerned the expression of the political sovereignty of the successor State, whereas succession to contracts and concessions concerned the expression of that State's economic sovereignty.

26. Another method of classification would be to distinguish between relations between the predecessor and the successor State, relations between the successor State and third States, relations between the successor State and private persons, and questions affecting only the successor State. That classification could be regarded as indicating the order in which the questions should be examined, for it was certainly in the sphere of relations between the predecessor and the successor State that the problems were most numerous.

27. Like the 1962 Sub-Committee, he had not thought it desirable at the present stage to study the question of acquired rights as though it were a separate heading; for the whole question of State succession presented itself in terms of continuity or rupture, in other words, of the maintenance or termination of rights or situations acquired by a State or a private person.

28. But the notion of acquired rights was not always, or not entirely, confirmed by facts. The General Assembly had asked the Commission to study State succession as far as possible in the interests of new States. From that point of view, the study would be of less value if, instead of helping to strengthen the fragile sovereignty of new States, it tended to perpetuate, as acquired rights, former situations which it would be just and politic to bring to an end.

29. It might also be asked whether it was really possible to speak of rights in that connexion. An acquired right capable of surviving the former sovereignty was, in fact, a right which would simply perpetuate that sovereignty. It could be held that acquired rights only existed if the successor State decided, by an expression of its sovereign will, to take over the former contract, in short, if there was novation. In practice, the result was certainly continuity of the situation, but in law there was merely a new legal situation as to the parties, resembling an old legal situation as to its effects.

30. Some writers recognized, or had recognized, that the successor State could terminate rights acquired by States through succession to treaties, but not rights acquired by private persons through contracts or concessions. That view was based on the idea that private acquired rights were not important enough to affect the general interest of the successor State; but it partook too much of liberal theories which stressed political sovereignty at the expense of economic sovereignty. In reality, foreign private interests were often more powerful and more crippling to the sovereignty of the successor State than foreign public interests.

<sup>4</sup> For resumption of discussion, see 984th meeting, paras. 81-112.

<sup>5</sup> See *Yearbook of the International Law Commission, 1963*, vol. II, pp. 261 and 297 *et seq.*

31. With regard to administrative contracts, although it seemed, from a long tradition of judicial practice, that the principle of acquired rights was fairly generally respected, it could not be said that it was based on the notion of the transfer of the contract to the successor State. The obligation to respect administrative contracts might arise from a conventional undertaking, in other words from a treaty. A moral obligation to respect acquired contractual rights had sometimes been invoked, as had the fact that there were rights and duties inherent in sovereignty, which transferred with it.

32. With regard to concessions, reference had been made to their contractual nature, which would make them depend on an agreement of wills. But that very fact might be a reason for a successor State not to respect acquired concession rights, since it could claim that it had not itself agreed. It was really a question of a conflict between private interest and the general interest. In internal law a State did not sacrifice the general interest to private interest; there was no reason why it should do so in matters of State succession.

33. The Commission might perhaps wish first to settle some questions of method. The first was whether it wished the Special Rapporteur to include in his future reports preliminary drafts of articles codifying the subjects selected for study, or whether he should adopt some other method. The second was whether the aim in view was the codification or the progressive development of the international law on the subject or a combination of the two.

34. With regard to the substance, he would like to know the Commission's attitude to those questions which had not been entrusted to any of the Special Rapporteurs appointed. What did the Commission think of the problems relating to a general definition of succession of States and the term "succession of States" itself? Also, should he abandon the idea of studying the origins of State succession, which greatly affected the rules that should govern it? Some subjects, such as judicial settlement of disputes arising out of State succession and problems of State succession arising out of State responsibility, had already been excluded.

35. There was also the question what should be dealt with first. He would prefer to start with an affirmation of the sovereignty of the successor State and then deal progressively with the limitations to its newly acquired sovereignty which that State had to accept. That would emphasize the rule rather than the exception, and give effect to the recommendations of the General Assembly by focusing the maximum attention on the principles of self-determination, the sovereign equality of States and State sovereignty over natural resources.<sup>6</sup>

36. The CHAIRMAN, after congratulating the Special Rapporteur on his excellent report, suggested that it would facilitate the Commission's work if he would circulate a working paper listing the specific points he had mentioned on which he would like the Commission's views.

37. Mr. AGO said that he was particularly grateful to the Special Rapporteur for having removed the unfor-

tunate ambiguity occasioned by the use of the word "sources" in the title of the topic. That title could have suggested that the Commission wished to distinguish between State succession governed by a treaty and State succession governed by the general or customary rules on the subject.

38. The Special Rapporteur had succeeded in bringing out the real difference between the two parts of the topic. The part entrusted to Sir Humphrey Waldock was the study of State succession with respect to rights and obligations arising out of treaties, whereas the part entrusted to Mr. Bedjaoui was the determination of the obligations of the successor State and the rights which it could claim in any matters not covered by a treaty. In other words, the difference between the two parts of the topic concerned the subject-matter, not the manner, of the succession.

39. The Special Rapporteur had fully realized the exceptional difficulty of a vast and rather ill-defined subject, and had mentioned various points he considered particularly important. Those points certainly seemed to be of the sort which most frequently arose in practice and caused the greatest difficulties. The Commission should reflect on them and see whether there were any others which deserved consideration. His first impression, however, was that while leaving the Special Rapporteur entirely free to add other points himself or attribute less importance to some of the points he had already noted, the Commission could, on the whole, approve his choice and set to work on the subject.

40. Mr. TABIBI, after congratulating the Special Rapporteur on his brilliant introduction, said that the Commission should give careful attention to his terms of reference as discussed in paragraph 20 of the report. In particular, had the Commission "really intended him to examine succession resulting *stricto sensu* from sources other than treaties" or had it not?

41. The Commission should also consider carefully whether the topic should be codified on the basis of traditional rules or on the basis of international practice. Both rules and practice differed widely between different countries and different schools of law. The immense difficulty of the topic was readily apparent from the list of its various aspects given in paragraph 77 of the report; obviously, it would take years for the Commission to codify such subjects as public property, public debts, nationality, conventions of establishment and the problem of acquired rights, each of which would have to be considered separately.

42. In his report, the Special Rapporteur had very properly given the economic problems of State succession priority over the political problems; that was particularly important in view of the immediate needs of Africa and Asia.

43. He noted with interest that in section IX, on succession and territorial problems, the Special Rapporteur had adopted an approach to territorial treaties similar to that of the International Law Association. He had rightly stated that the cardinal principle to be observed was that of self-determination.

<sup>6</sup> General Assembly resolution 1803 (XVII).

44. The recent Vienna Conference had amended article 59 of the draft on the law of treaties, concerning the doctrine of *rebus sic stantibus*,<sup>7</sup> and he did not think the Commission had been right in adopting the exception clause by which frontier treaties were excluded from the operation of the rule. He hoped the Commission would be careful not to make the same mistake with regard to colonial and other unequal treaties.

45. There was not as yet any satisfactory definition of a "boundary", "frontier" or "demarcation line", although it was interesting to observe that Mr. Eshkol had quite recently stated that boundaries were of two kinds, territorial and political. The question, in any case, was one which should be solved on the basis of the self-determination of peoples.

46. Mr. BARTOŠ said that the Special Rapporteur had put his questions clearly and had fully appreciated that the subject was governed by certain principles which were followed and applied; but those principles were constantly evolving, like all international law.

47. The Special Rapporteur had also drawn a clear distinction between traditional State succession and State succession resulting from decolonization. Modern decolonization differed from what had taken place in Latin America a century and a half ago, because the general principles of international law had been different then from what they were today. The modern transformation had come about under the influence of the United Nations Charter and because relations between States were no longer simply legal relations of sovereignty and political relations, but also social and economic relations, following the trends of today's United Nations.

48. Certain principles were essential to prevent anarchy in relations between States, including States which had recently gained their independence through decolonization. Those principles were to be found partly in treaties and partly also in the practice, from which the Commission sought to deduce general rules; but, in his view, they were essentially general principles of international law.

49. In special cases, treaty sources could provide temporary solutions, or expedients, but when circumstances changed, or the political climate altered, they lost their force. That had been the fate of the system born of the Treaty of Versailles, for example, nothing of which had remained after the Second World War, because there had then been a return to general principles. More recently, even the interpretation and application of the Evian Agreements had, in practice, gradually changed as Algeria had established its independence and sovereignty more firmly. All emancipated States sought more equality and fairness. Revisionism was a general phenomenon. Where State succession was concerned, the rule *pacta sunt servanda* could not be applied literally.

50. Although he gave precedence to general principles, he did not deny the importance of treaty sources; many rules deriving from treaties were transformed by practice into general rules, which became customary law. Moreover, it was impossible in practice to draw a rigid distinction between treaty and non-treaty sources, which were always necessarily intermingled.

51. In reply to one of the questions put by the Special Rapporteur, he said he thought the Commission should draw up a general definition of succession of States—for it was a separate matter on which the Commission should state its opinion—but only after it had studied the reports of both the Special Rapporteurs and their views on such a definition.

52. The Commission had included nothing in its draft articles on the law of treaties which was incompatible with his views on State succession. On the contrary, in that draft the Commission had recognized the existence of certain principles of general public policy, or *jus cogens*, whose development had to some extent a derogative and retroactive effect on treaties.

53. The principles stated in the United Nations Charter and in various important declarations adopted by the United Nations, such as the Declaration on the granting of independence to colonial countries and peoples<sup>8</sup> and General Assembly resolution 1803 (XVII) concerning sovereignty over natural resources, prevailed over other purely formal rules of international law. The subject could be said to be developing in a manner that was not only progressive, but sometimes also revolutionary in international law. The recent arbitral award concerning the Rann of Kutch had satisfied no one, because, in determining the boundary line, the arbitrators, whose good faith and conscientiousness were not in question, had adopted an unduly formal criterion by referring to documents dating from the colonial period. That example showed that territorial disputes between new States should be settled, not on the basis of formal documents, but by applying the general principles of international law stated by the United Nations.

54. Mr. ALBÓNICO said that, as stated in paragraph 15 of the report, the Commission had requested the Special Rapporteur to present an introductory report which would enable it to decide three important questions: first, what parts of the subject should be dealt with; secondly, the order in which the various parts should be considered; and thirdly, the method of treatment.

55. The Special Rapporteur had raised the question of the scope of the subject. On that point, he shared Mr. Ago's opinion on the use of the word "sources" in the title. That term was unfortunate, because the aim was not to study the cause or origin of the succession, but of the material transmitted, whatever the cause or origin of the succession might be.

56. The Commission's intention in dividing up the topic had been that Sir Humphrey Waldock should deal with all matters relating to treaties which might devolve to a successor State, without prejudice to matters common to both Special Rapporteurs. The remainder of the topic of State succession, which was assigned to Mr. Bedjaoui, thus included all matters that could be transmitted to a successor State other than those relating to international responsibility, which was assigned to Mr. Ago, and those relating to succession of States with respect to membership in international organizations, for which no Special Rapporteur had yet been appointed.

<sup>7</sup> A/CONF.39/C.1/L.370/Add.2.

<sup>8</sup> General Assembly resolution 1514 (XV).

57. The subject assigned to Mr. Bedjaoui thus covered a wide field. It would include the human problem of nationality, economic resources, including public property and public debts, and the transmissibility of internal legal acts of the predecessor State, in other words, administrative and judicial acts.

58. He supported the Chairman's suggestion that the Special Rapporteur should submit a list of the most important questions on which he wished to have the views of the Commission.

59. Mr. RAMANGASOAVINA said that the Special Rapporteur had entirely fulfilled the Commission's expectations in dealing with a vast and difficult subject. He had brought out the essential features of what were sometimes delicate relations between predecessor States and successor States and had thus laid a basis for an eventual formulation by the Commission of a set of rules which would contribute to the progressive development of international law.

60. The subject would have been more interesting ten years earlier. The Commission's work came a little late, but it would still be of value; it could serve as a guide for relations between former colonial countries and the former colonizing countries on such awkward questions as acquired rights, succession to debts, concessions, boundaries, nationality, responsibility and devolution of contracts.

61. It was to be hoped that States would not divide into two camps when examining any draft the Commission might prepare. By its scientific and objective work the Commission would attempt to reconcile the divergent interests of the predecessor State and the successor State; its work would also benefit third States, whose political, economic and commercial relations with former colonial territories had everything to gain from partnership with a successor State in full possession of its sovereignty. Moreover, it was in the interests of the predecessor States themselves that the position should be sufficiently clarified to enable them to conclude reliable contracts with successor States.

62. The Commission should seek a balance between conflicting demands: on the one hand, a minimum of security and respect for acquired or accepted rights, and on the other, the need to guarantee the sovereignty of new States and to prevent its being burdened with encumbrances which might hamper their development and the utilization of their natural resources.

63. Mr. NAGENDRA SINGH said he would like to reply to a number of questions which had been raised by the Special Rapporteur in his lucid report on a complex and controversial subject.

64. The first, which related to the scope of the topic, showed the need to correct the title in so far as it referred to rights and duties "resulting from sources other than treaties". Clearly, the division should be between succession in respect of treaties, which was item 1 (a) of the agenda, and succession in respect of matters other than treaties.

65. It was unfortunate that the Commission should have confined the Special Rapporteur's task to the formulation of a preparatory study. He should not have been prevented from examining the substance of the topic and submitting

a first report on it; that would have facilitated the Commission's work.

66. He could not support the Special Rapporteur's suggestion in paragraph 25 of his report that the Commission should postpone consideration of "adjudicative procedures for the settlement of disputes arising from the succession of States". The Commission should deal with "adjudicative procedures" connected with the important subject of State succession; if it were to leave that important aspect of the problem aside, it might not be dealt with for generations. The Commission was unlikely to undertake the codification of the whole subject of methods of peaceful settlement of international disputes for a very long time.

67. The Special Rapporteur had pointed out that the problems of the origin of succession had not been specifically entrusted either to him or to Sir Humphrey Waldock. Those problems should be regarded as part of the topic of succession in matters other than treaties, which was the residuary topic.

68. On the question of methods of work, he was in general agreement with the Special Rapporteur's conclusions, particularly his conclusion that the topic called for both codification and progressive development of international law. The Commission should endeavour to find a golden mean, avoiding both slavish codification and unrestrained development.

69. With regard to the experience of new States as a factor in the codification of the law of State succession, he noted that Sir Humphrey Waldock, in paragraph 14 of his report (A/CN.4/202), expressed doubt as to "whether any purpose would be served by making a sharp distinction between the problems of the 'old' and of the 'new' States in the present connexion", and stressed the "risk that the perspective of the effort at codification might become distorted if succession in respect of treaties were to be approached too much from the viewpoint of the 'new' State alone". He himself would agree that, so far as State succession in respect of treaties was concerned, those remarks held good; but, in considering succession in respect of all matters other than treaties, it was essential to bear in mind the provisions of the General Assembly resolutions cited by the Special Rapporteur in paragraph 31 of his report (A/CN.4/204), all of which stressed the importance of the topic for new States. Much of the recent practice and case law on State succession had developed around the problems of new States; due emphasis, but no more than due emphasis, should therefore be given to the views of new States in the matter.

70. He had no objection to the Special Rapporteur's approach, which would focus attention on decolonization in cases that lent themselves to such special treatment.

71. On the question of international practice, he agreed on the need to take the final position into account. Although it was necessary to avoid sweeping generalizations, case law should be based on the position that had been finally and formally established, rather than on a transitory picture presented by the earlier stages in the development of a case.

72. Lastly, he had no objection to the threefold classification of types of State succession set out in paragraph 40



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