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Summary record of the 968th meeting

Topic:
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There was no need at the present stage to decide whether the work should be oriented towards the law of treaties or the law of succession. Aside from that doctrinal issue, the essential point was that the work should constitute an autonomous group of articles.

58. With regard to the title, he agreed that a flexible approach should be adopted. A final decision could not be taken till a later stage. The recommendations of the Sub-Committee provided general guidance in that matter, both for the Special Rapporteur and for the Commission itself.

59. As for the extent to which succession of Governments should be dealt with in the draft, that should be left to the discretion of the Special Rapporteur. It would be difficult to take a decision on the matter before members had the main body of the draft articles before them.

60. A number of preliminary questions had arisen during the general discussion on items 1 (*a*) and 1 (*b*). The two parts of the topic of State succession were closely related and he would regard the two general discussions as forming a single whole, since many of the questions overlapped.

61. One important point was the diversity shown by State practice with regard to both situations and solutions. The Commission should therefore be on its guard against adopting a dogmatic approach or accepting absolute theories to deal with a variety of situations. The Special Rapporteur had adequately summed up the position when he had said: "In any case, the diversity in the actual practice is itself a legal phenomenon which can hardly be disregarded or subordinated to a particular theory of succession in order to achieve what may be thought a juridically more satisfying formulation of the rules governing succession in respect of treaties" (A/CN.4/202, para. 10).

62. Another basic element which had been stressed during the discussion was that certain situations which might appear to be cases of succession were in fact of a composite character. They involved both a succession to a treaty and the continuance of a legal situation. There was some analogy between those cases and that of objective régimes. In the light of those facts, he favoured a casuistic approach to the topic.

63. On the question of the practice and the special problems of the new States, he had made his position clear during the general debate on item 1 (*b*).[11] The phenomenon of succession was not new, but it did involve special problems for the new States. Their views must therefore be taken into consideration as representing the most recent practice in the matter and as evidence of the contemporary *opinio juris*. The recent practice showed that the principles now governing State succession were different from those prevailing before the Charter. The Special Rapporteur had noted that "the modern precedents reflect the practice of States conducting their relations under the régime of the principles of the Charter of the United Nations" (A/CN.4/202, para. 15). The rules of State succession must conform with the higher law of the Charter.

64. Lastly, although he did not wish to discuss the draft articles in detail, he wished to mention his doubts about article 4 (Boundaries resulting from treaties). His misgivings concerned, not the substance of the article, but its placing. Article 4 took the form of a preliminary article expressing a reservation, and it was difficult to accept that reservation before the substantive rules of the other articles were known. He therefore suggested that consideration of article 4 be deferred until the end of the discussion of the draft articles on succession in respect of treaties.

65. Mr. AMADO said he welcomed the high quality of the discussion and noted with great satisfaction that the Commission, far from losing itself in theory, was thinking mainly of the effectiveness of its work. That was the right approach to a matter in which States had important interests at stake.

The meeting rose at 1 p.m.

968th MEETING

Thursday, 4 July 1968, at 10 a.m.

Chairman: Mr. José María RUDA

Present: Mr. Albónico, Mr. Amado, Mr. Bartoš, Mr. Bedjaoui, Mr. Castrén, Mr. El-Erian, Mr. Eustathiades, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Reuter, 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 Treaties

(A/CN.4/200 and Add.1-2; A/CN.4/202)

[Item 1 *(a)* of the agenda]
(continued)

1. The CHAIRMAN, speaking as a member of the Commission, said the debates had shown that there was general agreement to consider the question of succession of Governments at a later stage.

2. With regard to the process of decolonization, he agreed that special attention should be given to the position of the new States, but without excluding the views of other States. Past practice should not be ignored, but special significance should be attached to recent events which reflected the contemporary *opinio juris*.

3. As to the scope of the draft articles, he agreed with Mr. Ustor's interpretation of the decision taken in 1963 by the Sub-Committee and by the Commission itself at its fifteenth session;[1] the position then taken was simply that succession of States in respect of treaties would be examined after the general question of the law of treaties.

[11] See 963rd meeting, paras. 45-48 and 965th meeting, paras. 6-11.

[1] See *Yearbook of the International Law Commission, 1963*, vol. II, p. 224, para. 58 and p. 261, para. 10.

4. The Commission was now faced with the totally different problem of deciding whether the solutions to the problems of State succession in respect of treaties should be sought in the general principles of the law of treaties or in those of the law of succession. On that point, he agreed with the Special Rapporteur that the only possible course was to seek the solutions in the law of treaties.

5. One reason was that he had some doubts as to whether any succession to treaties really took place. The position was rather that a State had a right to succeed to a treaty which had formerly been applied to its territory; but it could either accept or reject the treaty. It was not altogether clear whether the concept of succession as such played any part in that process.

6. Another reason was that succession in respect of treaties presupposed by its very nature a consensual relationship; the essential question was therefore to determine whether the new State consented to be bound and thus established the consensual relationship.

7. On the question of the definition of succession, he agreed with the Special Rapporteur's approach, but thought that both in Spanish and in English, it would be advisable to speak of "capacity to conclude treaties", as the French version did, rather than of "competence to conclude treaties". A better term might also be found to replace the word "possession", which was normally used for rights applicable to a certain territory — an idea foreign to that expressed in article 1, paragraph 2 (*a*).

8. He reserved his position on article 4. It was an important provision which deserved to be considered in detail; his impression was, however, that it might ultimately have to be dropped altogether.

9. Sir Humphrey WALDOCK (Special Rapporteur), replying to the debate, said that some of the doubts expressed had been due to misunderstandings that had arisen because of the incomplete nature of his report. That report, unlike the one submitted by the Special Rapporteur on item 1 (*b*), had never been intended as a preliminary report. If such had been his purpose, he would have presented it in a different form and would have covered, at least in a preliminary fashion, a great many more matters.

10. His introductory section had been designed as a brief, comparatively formal introduction to what was to have been a comprehensive series of articles covering, or largely covering, the whole subject. He had not considered it useful to deal in that introduction with such matters as the types of succession and the categories of treaties, which would necessarily be the subject of full-scale studies in the commentaries on the articles. Many other points which had also been raised during the discussion would be dealt with in those commentaries or in special introductions to particular sections of the draft. Hence he did not think it would be fruitful to pursue the discussion on those points at the present session.

11. The incompleteness of his first report had perhaps been the cause of misunderstanding on the point whether the draft should be oriented towards the law of treaties or the law of succession. There could be no question of detaching the present topic from succession, or from such principles of succession as the Commission might find to exist. That would have been obvious if he had been able to carry his report further. As the title itself indicated, the questions of succession and of treaties went together for the purposes of consideration of the topic. When he had stated, in paragraph 9 of his report, that the solution to the problems of succession in respect of treaties should be sought in the law of treaties rather than in any general law of succession, he had not intended to suggest that the Commission should turn its back on succession and think only of treaties. The problems to be solved were generated by cases of succession of one State to another in the sovereignty of the territory. Those cases involved questions as to precisely what effect certain types of events, e.g. decolonization, dismemberment, fusion, or transfer of territory, might have on the sovereignty of a territory. Those questions formed part of the topic of succession in the general sense, and the answers there given to them might have an impact on the problem of succession in respect of treaties.

12. The essence of the problem was succession to treaty rights and obligations, and he doubted whether a solution would be found in any general law of succession. Nor could the questions raised be answered merely by applying the principles of the law of treaties. Those principles would provide guidance, but they would not necessarily provide answers; the very reason for studying the topic of succession in respect of treaties was that it involved problems which fell outside the general law of treaties.

13. He had been confirmed as to the need to exercise caution in regard to the general law of succession by the fact that those members who were most inclined to refer to that general law had been particularly emphatic in stating their view that no succession to rights and obligations in fact took place in the cases under discussion. The illuminating remarks of the Special Rapporteur for item 1 (*b*) of the agenda illustrated that point.[2] Since the obligations involved in the present topic were of a consensual character, the consent of the State concerned was material and the rules of the law of treaties were relevant. However, he would not go so far as Mr. Rosenne, who had suggested that the Commission should simply draft a general commentary showing how the various articles on the law of treaties applied to succession in respect of treaties.

14. He agreed with Mr. Castañeda that there was an extensive body of practice on general multilateral treaties showing that there existed at least one basic minimal rule: a new State to whose territory a treaty had previously applied was entitled either to become a party as of right or to continue the application of the treaty to its territory as a party in its own right, irrespective of the provisions of the final clauses of the treaty on the question of participation. On that point the position differed materially from that under the provisions of the draft on the law of treaties.

15. On the other hand, it had been suggested that, while the new State might have a right of participation, it had no obligation to continue the application of the treaty. He did not wish to express a final view on the matter.

[2] See previous meeting, paras. 22 *et seq.*

The right to become a party could well be called "succession". Even in municipal law the need for an element of consent did not exclude the concept of succession, as Mr. Yasseen had pointed out.

16. The relevance of the question whether "succession" occurred was illustrated by the practice of some depositaries, e.g. the depositary of the Berne Convention, of considering that the successor State inherited the reservations formulated by the predecessor State. The point was whether a State making a declaration of continuance must be regarded as being in exactly the same position as the predecessor State, or whether it was entitled to make reservations of its own. Of course the problem would not arise if a right of accession existed and if the new State made use of that right; but if it chose to make a declaration of continuance, the question would arise whether it must be considered as succeeding to the rights of the predecessor State, or merely to a right to participate in the régime of the treaty.

17. With regard to the definition of the word "succession" in article 1, paragraph 2 (*a*), his main purpose had been not to beg the question of succession to rights and obligations. He had preferred to avoid the word "sovereignty" and had used the more neutral term "competence" to conclude treaties; he had done so partly because, in some cases, for example cases of succession involving protected States or former trust territories, it had been held that sovereignty had never lapsed and that the situation was more one of change of government. He had also been careful to use the word "replacement", which implied a change by which one State took the place of another; he had not used the word "substitution" because the use of that term would have implied that the successor State was necessarily in the same legal position as the predecessor State.

18. On the question of the form of the draft, Mr. Kearney had stressed the advantages of the absence of rigid rules during the recent decolonization period, which had made it possible to avoid serious disputes. He agreed that it was important not to destroy that flexibility; an effort should, however, be made to find some basic minimum rules which would be of assistance to those dealing with future problems, particularly depositaries.

19. Reference had been made to the difficulties that might arise in cases where not all the States concerned were parties to the future convention. Arguments of a similar kind had been put forward very forcefully during the Commission's work on the law of treaties and could be put forward in connexion with almost any work of codification. The object of codification was to arrive at a coherent statement of rules and principles that would prove acceptable to the majority of States at an international conference; generally accepted rules of that type were of great assistance to all concerned, whether they had themselves become bound by the codification convention or not.

20. Although it would be premature to discuss, at the present stage, the final form which the draft should take, there was much value, from the point of view of discipline, in preparing provisions suitable for a draft convention. That method would constrain the Commission to distinguish more clearly between genuine rules of law and other elements which were also to be found in practice, but which did not constitute rules of law.

21. He would not discuss the provisions of article 4 at length, and he could accept Mr. El-Erian's suggestion that consideration of that article might usefully be deferred until towards the end of the draft. He must point out, however, that the rule embodied in article 4 was based on the exception made for boundary treaties in article 59, on fundamental change of circumstances, of the draft on the law of treaties, as approved by the Committee of the Whole of the Vienna Conference at its first session.[3] In fact, proposals had even been made at the Conference to extend that exception to cover all so-called "dispositive" treaties. It should also be noted that article 4, as he proposed it, referred to the continuance in force of the boundary itself rather than of the boundary treaty.

22. A provision on the lines of article 4 was necessary in the draft articles, because the Commission might ultimately reach the conclusion that there was no general rule of succession to bilateral treaty obligations. Accordingly, unless article 4 were included, a situation of uncertainty might be created with regard to a great many boundaries. Existing boundaries often resulted from provisions of past treaties, and if such boundary provisions could always be challenged on the occurrence of a decolonization or other case of succession, the effect could only be to increase the risks to world peace.

23. With regard to the next session, he proposed to continue his report with draft articles on changes in sovereignty not resulting in the creation of a new State, and to follow those with the major part of the draft, which would deal with the complex problems that arose in cases where the change of sovereignty gave rise to the emergence of a new State.

24. The CHAIRMAN said that the Commission was not called upon to take any formal decision on item 1 (*a*). He thanked the Special Rapporteur for his contribution and took note of his intention to submit a further series of draft articles at the next session.

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]

(resumed from the 965th meeting)

25. The CHAIRMAN said that, at its 965th meeting,[4] the Commission had reached provisional conclusions on item 1 (*b*) of the agenda pending its decision on item 1 (*a*). Since the debate on item 1 (*a*) had not affected those conclusions in any way he would take it, if there were no objection, that the Commission agreed to consider them final.

It was so agreed.

[3] A/CONF.39/C.1/L.370/Add.6.

[4] See paras. 36-38.

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 960th meeting)

26. The CHAIRMAN invited the Commission to resume consideration of the Special Rapporteur's report on item 2 of the agenda (A/CN.4/203/Add.2).

ARTICLE 15

27. *Article 15*

Notifications

1. The Organization shall be notified of:

(*a*) The appointment of members of the mission, their arrival and their final departure or the termination of their functions with the mission;

(*b*) The arrival and final departure of a person belonging to the family of a member of the mission and, where appropriate, the fact that a person becomes or ceases to be a member of the family of a member of the mission;

(*c*) The arrival and final departure of private servants in the employ of persons referred to in sub-paragraph (*a*) of this paragraph and, where appropriate, the fact that they are leaving the employ of such persons;

(*d*) The engagement and discharge of persons resident in the receiving State as members of the mission or private servants entitled to privileges and immunities.

2. The Organization shall transmit to the host State the notifications referred to in paragraph 1 of this article.

3. The sending State may also transmit to the host State the notifications referred to in paragraph 1 of this article.

4. Where possible, prior notification of arrival and final departure shall also be given.

28. Mr. EL-ERIAN (Special Rapporteur), introducing article 15, said that it was modelled on article 10 of the Vienna Convention on Diplomatic Relations.[5] Both the organization and the host State required to know the names of the persons who could claim privileges and immunities as members of the staff of a permanent mission, and article 15 contained provisions on the notifications to be made to the organization or the host State, or both.

29. Paragraphs 3 and 4 of the commentary gave particulars of the established practice at United Nations Headquarters and at the United Nations Office at Geneva. He had dealt in footnote 104 with the controversy that had arisen as a result of the contention by the State Department of the United States that its approval was required for each individual resident member of a State's permanent mission to the United Nations. The practice of the specialized agencies was explained in paragraph 5 of the commentary.

30. His survey of the existing practice showed that while the United Nations had developed a system of notification of appointments of the members of permanent missions and of their departures and arrivals, the arrangements applied within the specialized agencies were fragmentary and far from systematized. In the circumstances, he had considered it desirable to establish a uniform regulation and article 15 sought to accomplish that end.

31. The rule embodied in article 15 was based on the principle that, since there was a direct relationship between the sending State and the organization, notifications must be communicated to the organization and transmitted to the host State through the organization.

32. Mr. ROSENNE said that article 15 did not give rise to any problems of principle and had been correctly stated, but it could be shortened if the introductory phrase were amended to read "The organization and the host State shall be notified of"; paragraphs 2 and 3 could then be dropped. That was all the more necessary as there was no knowing what the parties to the convention containing the draft articles would comprise, and whether it would be open to participation by international organizations.

33. Mr. CASTRÉN said that article 15 was well drafted as to both substance and form. The main question it raised was who was required to make the notifications. The commentary showed that United Nations practice differed as between New York and Geneva and that the arrangements in force in the specialized agencies were unsystematic. The establishment of a uniform system for notifications, as proposed by the Special Rapporteur in paragraphs 1 and 2 of the article, would therefore be justified.

34. Paragraph 3 could be deleted, because in a legal text it was better not to say what could be done, particularly where procedural matters were concerned. Even if that provision were deleted, the sending State would be free to transmit the notifications to the host State. The obligation imposed on the organization in paragraph 2 should suffice.

35. On the other hand, the introductory words of paragraph 1 should specify that it was the sending State which notified the organization.

36. Mr. KEARNEY said that the suggestions made by the two previous speakers were acceptable. A gap in article 10 of the Vienna Convention on Diplomatic Relations should be made good by requiring that the rank of members of the mission be notified, because their privileges and immunities depended on it. That was the general practice at United Nations Headquarters.

37. The phrase "where appropriate", in paragraph 1 (*b*) and (*c*), which appeared in the Vienna Convention, was confusing and should be dropped. As to paragraph 4, he presumed that a copy and not the original of the notification was required.

38. Mr. NAGENDRA SINGH said that article 15 was acceptable, but it should make clear that the entire responsibility for making the notification lay with the sending State. For that reason it would be preferable for the opening phrase to refer to the sending State notifying the organization.

39. The Drafting Committee should be asked to consider whether the phrase "where appropriate" in paragraph 1 (*b*) and (*c*) should be retained.

40. Mr. ALBÓNICO said that the rank of members of the mission should be notified to the host State.

41. Paragraph 3 was unnecessary.

[5] See United Nations, *Treaty Series*, vol. 500, p. 102.

42. Mr. USHAKOV said that in the draft articles on special missions,[6] the term "private servants" which was used in the Vienna Convention on Diplomatic Relations, had been replaced by the term "private staff", which also appeared in article 1 of the present draft. The use of the words "private servants" in article 15 was doubtless an oversight.

43. The CHAIRMAN, speaking as a member of the Commission, said he supported the contents of article 15, with the amendment suggested by Mr. Castrén, making notification a duty of the sending State.

44. Since there was a direct relationship between the sending State and the organization, it was appropriate that notification should be made by the sending State to the organization, which in turn should notify the host State. He saw no need for the purely permissive provisions of paragraph 3, but would not oppose their retention.

45. In paragraph 1 (*d*), the expression "private servants" should be replaced by "private staff", the expression used in sub-paragraph (*i*) of article 1 (Use of terms).

46. Mr. EL-ERIAN (Special Rapporteur) said that the term "private servants" had been used through an oversight; he accepted the Chairman's suggestion with thanks.

47. Mr. YASSEEN said he approved of article 15, which faithfully reflected the practice.

48. Paragraph 3 was useful, first of all because it established a faculty for the sending State; many legal rules recognized a mere faculty. But it also signified that the host State was obliged to accept a notification transmitted to it direct by the sending State. Such direct notifications were current practice at Geneva, especially where private staff were concerned.

49. Mr. USTOR said that the word "mission" in paragraph 1 should be qualified by the word "permanent", in order to conform with article 1.

50. A provision similar to that which appeared in the Vienna Convention on Consular Relations [7] should be added, requiring the sending State to notify the organization of any changes affecting the status of members of the permanent mission.

51. The Drafting Committee should consider whether the opening words of paragraph 4 might read "when possible" instead of "where possible".

52. Mr. TSURUOKA said that he could accept article 15 as a whole.

53. With regard to paragraph 1, he shared the Chairman's view rather than that of Mr. Rosenne.

54. On paragraph 3, his opinion was similar to that of Mr. Yasseen. Paragraph 3 could play a complementary role and serve to relax the strictness of the rule stated in paragraphs 1 and 2. The rule was that the sending State made the necessary notifications to the organization and the latter transmitted them to the host State; but that should not prevent the sending State from transmitting the notifications to the host State direct. Since it was a matter of procedural rules intended to facilitate the work of present and future permanent missions, it was natural to take account of what was established practice not only in New York, but also at Geneva and Berne, for example.

55. Mr. ROSENNE said he wished to make it clear that he agreed with the Chairman about the relationship between the sending State and the organization in paragraph 1. The formula used should be impersonal, however, as in the Vienna Conventions and the draft articles on special missions; no reference should be made to the sending State, as that might lead to difficulties.

56. The different formula used in article 11, paragraph 2 of the draft on special missions might also be considered in connexion with paragraph 4.

57. Mr. EL-ERIAN (Special Rapporteur) said that article 15 had met with general approval; he interpreted the silence of some members as consent.

58. It was in the interests of flexibility that he had not inserted a reference to the sending State in paragraph 1.

59. It had been suggested that paragraph 2 be dropped, particularly as it was not known what the parties to the convention containing the draft articles would comprise. He had assumed, however, that the draft articles would lay down obligations for organizations, even if they were not parties in the formal sense. The matter had been discussed in the Sixth Committee of the last General Assembly, where the Legal Counsel had taken the view that the United Nations was a party to the Convention on the Privileges and Immunities of the United Nations.

60. Admittedly there was an element of compromise in paragraph 3, as Mr. Tsuruoka had pointed out, but it was based on practical considerations and was intended to introduce some uniformity in practice and make for greater speed.

61. The Commission need not follow exactly the wording of the Vienna Conventions; he had also consulted the draft articles on special missions.

62. The CHAIRMAN said that if there was no objection he would take it that the Commission agreed to refer article 15 to the Drafting Committee in the light of the suggestions made during the discussion.

It was so agreed.[8]

ARTICLE 16

63. *Article 16*

Permanent representative ad interim

If the post of permanent representative is vacant, or if the permanent representative is unable to perform his functions, a *chargé d'affaires ad interim* shall act provisionally as acting permanent representative. The name of the acting permanent representative shall be notified to the Organization either by the permanent representative or, in case he is unable to do so, by the sending State.

64. Mr. EL-ERIAN (Special Rapporteur), introducing article 16 (A/CN.4/203/Add.2), said that the content and purpose of the article was explained at length in the commentary, to which he would refer members.

[6] See *Official Records of the General Assembly, Twenty-second Session, Supplement No. 9*, p. 4.

[7] See *United Nations Conference on Consular Relations, Official Records*, vol. II, p. 179, article 24, para. 1 (*a*).

[8] For resumption of discussion, see 985th meeting, paras. 23-46.

65. Mr. EUSTATHIADES asked the Special Rapporteur whether practice required the Commission to use the expression "*chargé d'affaires ad interim*". He thought that some international organizations referred to the "permanent representative *ad interim*", an expression which seemed preferable because it was not borrowed from the language of conventional diplomacy. The expression "acting permanent representative" appeared in the second sentence of the article.

66. Mr. ROSENNE said he doubted whether the word "provisionally" added anything to the text.

67. He was troubled about the absence of any reference to the accreditation of an acting permanent representative, as that could give rise to practical problems.

68. Mr. REUTER said he would like to know whether article 16 laid down the rule that there was a *chargé d'affaires ad interim* in all cases, or whether its purpose was simply to extend the obligation of notification to include the name of the person who would perform the functions of *chargé d'affaires ad interim* if the occasion arose. In the latter case, but not otherwise, the wording of article 16 could be simplified by shortening it to read: "If the post of permanent representative is vacant, or if the permanent representative is unable to perform his functions, the name of the member of the permanent mission charged with the duty of performing them shall be notified to the organization".

69. Mr. EL-ERIAN (Special Rapporteur) said that the purpose of the article was to provide for notification. Mr. Reuter's suggestion would certainly improve the text.

70. Mr. BARTOŠ said that a recent practice in the diplomacy of some States, in particular that of the United Kingdom, was to designate a member of the diplomatic staff of the permanent mission to act as *chargé d'affaires ad interim présumé*. In that case, the only notification made to the receiving State was that the head of the permanent mission was absent; his functions were performed *ipso facto* by the *chargé d'affaires ad interim* thus designated. The practice might also have been adopted by the United States of America. It was certainly convenient and provision could be made for it in the case of international organizations, if not in the text, at least in the commentary on article 16.

71. Mr. EL-ERIAN (Special Rapporteur) said that the term "*chargé d'affaires*" need not necessarily be used and the term "acting permanent representative" would be satisfactory.

72. The questionnaire sent by the Codification Division to the specialized agencies had not included any questions on the accreditation of acting permanent representatives. To the best of his knowledge accreditation was only required for permanent representatives. He doubted whether any change in that practice was desirable.

73. The point mentioned by Mr. Bartoš could be covered in the commentary, but need not be regulated in the article itself.

74. One reason why notification was necessary was that it could not be taken for granted that the person second in seniority would be appointed acting permanent representative.

75. Mr. KEARNEY said that, as far as he knew, United States practice was invariably to notify the host State of the appointment of a deputy chief of mission.

76. If article 16 was intended to deal with the problem of notification, perhaps it could be combined with article 15.

77. Mr. EUSTATHIADES said that if the article was to provide for the possibility of stating in advance who the permanent representative *ad interim* would be, the wording would have to be altered, because as it stood, it assumed that the vacancy already existed. As to the substance, he did not think too much importance should be attributed to that practice, which should not be encouraged. The person thus designated as *chargé d'affaires ad interim* would not necessarily be the senior member of the mission, and delicate problems might arise with regard to the respective positions of the members.

78. Mr. ROSENNE said that if the article were reformulated and limited to the question of notification, the question of accreditation could be left aside for the time being.

79. Nevertheless, the post of head of a permanent mission might be vacant for some considerable time, so that it might eventually be necessary to provide for accreditation. The two reports of the Secretary-General on permanent missions for 1966 and 1967 [9] gave an account of the existing situation; they showed that, in December 1966 and in December 1967, at least two delegations at United Nations Headquarters had still been headed by acting permanent representatives. Perhaps more information on the matter could be obtained for consideration at the second reading of the draft articles, to help the Commission to reach a decision.

80. Mr. TABIBI said that undue rigidity must be avoided, because practice differed widely within the United Nations and its specialized agencies. Generally, the person second in seniority in the permanent mission was appointed acting permanent representative, but not always.

81. Mr. USHAKOV said he thought the purpose of the article was to provide not only for notification of the name of the *chargé d'affaires ad interim*, but also for that institution itself. Consequently, in his opinion the rule stated in article 16 would be out of place in article 15.

82. Mr. BARTOŠ said that in diplomatic practice there was not always an accredited permanent representative. For example, a permanent mission could be opened and a *chargé d'affaires ad interim* appointed pending the arrival of a first ambassador. That situation was different from the case in which there was a head of the permanent mission, but he was absent and was replaced by a *chargé d'affaires ad interim*. The Special Rapporteur could reword article 16 to allow for those two different cases.

The meeting rose at 1 p.m.

[9] A/6527 and A/7000.