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**First Report on Succession of States and Governments in respect of treaties by
Sir Humphrey Waldock, Special Rapporteur**

Topic:
Succession of States with respect to treaties

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I. Introduction

A. HISTORICAL BACKGROUND

1. At its first session, in 1949, the International Law Commission placed the topic of "Succession of States and Governments" among the fourteen topics listed in paragraph 16 of its report for that year as being suitable for codification.¹ The Commission did not, however, give the topic priority and, owing to its preoccupation with the codification of other branches of the law, did not revert to "Succession of States and Governments" until its fourteenth session held in 1962. Meanwhile, the General Assembly, in its resolution 1686 (XVI), of 18 December 1961, had recommended the Commission to include on its priority list the topic of "Succession of

States and Governments", and at its fourteenth session the Commission decided to include the topic in the programme for its future work.

2. During the fourteenth session, the Commission appointed a Sub-Committee on the Succession of States and Governments which examined the question of the preparatory work that would be required for the study of the topic.² In the light of suggestions of this Sub-Committee, the Commission decided that certain studies should be made by the Secretariat and by members of the Sub-Committee; that a meeting of the Sub-Committee should be held in January 1963 to discuss the scope of and approach to the subject; and that the Chairman of the the Sub-Committee should report the

¹ *Yearbook of the International Law Commission, 1949*, p. 281.

² *Yearbook of the International Law Commission, 1962*, vol. II, document A/5209, pp. 191 and 192.

outcome of the discussion to the Commission at its fifteenth session.

3. In the December following the fourteenth session, the Secretariat circulated to the Sub-Committee on Succession of States and Governments and to the Commission three documents³ which the Secretariat had prepared relative to the topic:

- (i) The Succession of States in relation to membership in the United Nations (A/CN.4/149 and Add.1);
- (ii) Succession of States in relation to general multilateral treaties of which the Secretary-General is the Depository (A/CN.4/150);
- (iii) Digest of the decisions of international tribunals relating to State succession (A/CN.4/151).

4. The Sub-Committee met at Geneva between 17 and 25 January 1963 and again at the beginning of the Commission's fifteenth session, submitting its report to the Commission on 7 June 1963 (A/CN.4/160 and Corr.1). This report, which is printed as annex II to the Report of the Commission to the General Assembly for 1963,⁴ contains the Sub-Committee's conclusions regarding the scope of the subject of succession of States and Governments and its recommendations regarding the Commission's approach to the subject. It also contains in appendix I the summary records of the meetings of the Sub-Committee held in January 1963 and of its meeting of 6 June 1963. In addition, appendix II reproduces the memoranda and working papers presented to the Sub-Committee by Mr. T. O. Elias, Mr. A. H. Tabibi, Mr. S. Rosenne, Mr. E. Castrén, Mr. M. Bartoš and by Mr. M. Lachs (Chairman of the Sub-Committee).

5. The report of the Sub-Committee was discussed at the fifteenth session of the Commission in its 702nd meeting, when the Commission gave its general approval to the Sub-Committee's recommendations. It endorsed the Sub-Committee's view that the succession in the matter of treaties should be considered in connexion with the succession of States, rather than in the context of the law of treaties, but that co-ordination between the Special Rapporteurs on the law of treaties and on succession of States was essential. It also endorsed the Sub-Committee's opinion that the objective should be "a survey and evaluation of the present state of the law and practice on State succession and the preparation of draft articles on the topic having regard also to new developments in international law in this field". It further expressed its agreement with the broad outline and the order of priority of the headings of the topic recommended by the Sub-Committee, which were as follows:

- (i) Succession in respect of treaties;
- (ii) Succession in respect of rights and duties resulting from other sources than treaties;
- (iii) Succession in respect of membership of international organizations.⁵

³ *Ibid.*, document A/CN.4/149/Add.1, pp. 101-151.

⁴ *Yearbook of the International Law Commission, 1963*, vol. II, document A/5509, pp. 260-300.

⁵ The Commission at the same time expressed its general

Finally, the Commission appointed Mr. M. Lachs as Special Rapporteur on the topic of the succession of States and Governments and gave certain instructions to the Secretariat with regard to the obtaining of information on the practice of Governments "relating to the process of succession and affecting States which have attained independence since the Second World War". During the session, the Secretariat circulated a document⁶ which it had prepared, containing a "Digest of decisions of national courts relating to succession of States and Governments".

6. In resolution 1902 (XVIII) of 18 November 1963, the General Assembly recommended that the Commission should "continue its work on the succession of States and Governments, taking into account the views expressed at the eighteenth session of the General Assembly, the report of the Sub-Committee on the Succession of States and Governments and the comments which may be submitted by Governments, with appropriate reference to the views of States which have achieved independence since the Second World War".

7. At its sixteenth, seventeenth and eighteenth sessions, held respectively in 1964, 1965 and 1966, the heavy calls made upon the Commission's time by its work on the law of treaties and on special missions prevented it from giving further consideration to "Succession of States and Governments" during the remainder of the Commission's five-year term. In the course of its discussion of the law of treaties in 1964 the Commission noted certain points with respect to which the succession of States or Governments might have relevance (e.g. the territorial scope of treaties and the effects of treaties on third States); but it decided to leave these aside to be considered in connexion with its separate study of the topic of succession of States and Governments.⁷ In December 1966, Mr. M. Lachs, the Special Rapporteur for the "Succession of States and Governments", was elected to the International Court of Justice and ceased to be a member of the Commission.

8. The Commission, in its new composition, reviewed its programme of work at its nineteenth session and, in accordance with a suggestion of the former Special Rapporteur, decided to divide the topic of succession of States and Governments in order to advance its study more rapidly. Taking account of the Sub-Committee's division of the topic into three headings mentioned in paragraph 5 above, the Commission decided to appoint special rapporteurs for the subjects of (a) Succession in respect of treaties and (b) Succession in respect of rights and duties resulting from sources other than treaties. The third subject in the Sub-Committee's division—succession in respect of membership of international organizations—it decided to

agreement with the detailed division of the topic sketched out in paragraph 15 of the Sub-Committee's report.

⁶ *Yearbook of the International Law Commission, 1963*, vol. II, document A/CN.4/157, pp. 95-150.

⁷ *Yearbook of the International Law Commission, 1964*, vol. II, document A/5809, p. 176.

leave aside for the time being. As regards succession in respect of treaties, the Commission noted that it had already decided in 1963 to give this subject priority, and that the convocation of a Conference on the Law of Treaties in 1968 and 1969 by the General Assembly had made its codification more urgent. Accordingly, the Commission decided to advance the work on succession in respect of treaties as rapidly as possible at its twentieth session in 1968; and at the same time it appointed as its Special Rapporteur Sir Humphrey Waldock, the Commission's former Special Rapporteur on the law of treaties.

B. SCOPE AND FORM OF THE PRESENT DRAFT ARTICLES

9. The Commission has thus specifically limited the scope of the present report to the succession of States and Governments *in respect of treaties*. Furthermore, although in 1963 the Sub-Committee expressed the opinion that "succession in respect of treaties should be dealt with in the context of succession of States, rather than in that of the law of treaties",⁸ and the Commission accepted this opinion, the present Special Rapporteur believes that the solution of the problems of so-called "succession" in respect of treaties is today to be sought within the framework of the law of treaties rather than of any general law of "succession". This view is founded more especially on the modern practice of States, of international organizations and of the depositaries of treaties, though also on doubts as to how far any specific legal institution of "succession" has been recognized in international law.

10. Modern practice shows considerable diversity in regard both to the situations raising questions of succession and to the solutions adopted. The diversity in regard to the solutions makes it difficult to explain this practice in terms of any fundamental principle of "succession" producing compellingly specific logical solutions to each situation. Nor is the matter made any easier by the fact that a number of different theories of succession are to be found in the writings of jurists.⁹ If any one specific theory were to be adopted by the Commission, it would almost certainly be found to be a strait-jacket into which the actual practice of States, organizations and depositaries could not be forced without inadmissible distortions either of the practice or the theory. Admittedly, that same diversity in the situations and in the solutions adopted may also make it difficult to deduce general rules from the modern practice. If, however, the question of "succession" is approached from the point of view of the law of treaties, it is believed that some general rules, however few or broad, are discernible in the practice. 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.

11. Accordingly, the draft contained in the present report consists of a group of articles designed as a sequel to the draft articles on the law of treaties rather than as one section of a single comprehensive codification of the several branches of the law applicable to succession of States and Governments. The precise form which the present draft should take—an addendum or a protocol to the projected Convention on the law of treaties, a text forming part of a series of instruments dealing with "succession", or a wholly independent instrument—is clearly a matter to be decided at a much later stage. At the present stage the tentative plan of the Special Rapporteur is to prepare an autonomous group of articles on succession in respect of treaties capable, with slight adjustments, of being converted into any of the above forms. But for present purposes he thinks that the convenient course may be to formulate the draft on the basis that it is intended to be an autonomous instrument, which assumes the existence of the Commission's articles on the law of treaties or of similar articles resulting from the Vienna Conference. This, therefore, is the course followed in the present report.

12. The title to the present report reproduces the rubric which the Special Rapporteur understands the Commission to have intended when it entrusted the subject of succession in respect of treaties to him at its nineteenth session. In 1963, there was some discussion in the Sub-Committee as to how far succession of Governments really forms part of the topic of succession; and some differences manifested themselves in the Sub-Committee as to whether certain situations should be regarded as cases of succession to States or to Governments. In paragraph 9 of its report, under the heading "Questions of Priority",¹⁰ the Sub-Committee confined itself to recommending that, when appointed, the Special Rapporteur should "initially concentrate on the topic of State succession, and should study succession of Governments in so far as necessary to complement the study of State succession". The Special Rapporteur considers that the Commission will be in a better position to form a judgement on this matter and on the precise title to be given to its draft when it has completed its first examination of the subject. The recommendation of the Sub-Committee, however, provides a useful general guide for the work of the Commission and the Special Rapporteur has taken it as such in preparing the present report.

13. The Sub-Committee, in paragraph 6 of its report,¹¹ stressed the "need to pay special attention to problems of succession arising as a result of the emancipation of many nations and the birth of so many new States after World War II". It further advocated that the "problems concerning new States should be given special attention and the whole topic should be viewed

⁸ *Yearbook of the International Law Commission, 1963*, vol. II, document A/5509, Annex II, p. 261.

⁹ For a succinct account of various theories, see D. P. O'Connell, *State Succession in Municipal Law and International Law* (1967), vol. I, pp. 8-30.

¹⁰ *Yearbook of the International Law Commission, 1963*, vol. II, document A/5509, Annex II, p. 261.

¹¹ *Ibid.*

in the light of contemporary needs and the principles of the United Nations Charter". The General Assembly, as already noted in paragraph 6 above, expressed the same idea, if perhaps in more cautious terms, in its resolution 1902 (XVIII) when it requested the Commission to continue its work "with appropriate reference to the views of States which have achieved independence since the Second World War". Some jurists, indeed, go so far as to suggest that the precedents of earlier years, such as the emergence to independence of the American colonies of Spain and Portugal or the territorial changes at the end of the First World War, are of limited or no relevance for the solution of the contemporary problems of succession which have arisen during the United Nations era.

14. The stress laid by the Sub-Committee and the General Assembly on the problems of the new States needs neither justification nor explanation at the present moment in history. At the same time, it may be doubted 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. After all, on the emergence of a new State, the problems of succession which arise in respect of *treaties* are inevitably problems that involve old States no less than the newly emerged one. Succession in respect of a *treaty* is a question which by its very nature involves consensual relations with other existing States and, in the case of some multilateral treaties, a very large number of other States. Today, moreover, on the emergence of a new State the problems of succession will touch just as many recently emerged States as it will "old" States. The Commission cannot fail to give particular importance to the case of "new" States because it is both the commonest and the most perplexing form in which the issue of succession arises. But there is a 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.

15. Similarly, it may be doubted whether any purpose would be served by distinguishing at all sharply between the value of earlier and later precedents. The basic elements of the situations giving rise to the questions of succession in the earlier precedents and the considerations motivating the attitudes of the States concerned were much the same as in the modern cases. Consequently, to attach no value to the earlier precedents would seem somewhat arbitrary. But in the nature of things more recent practice must be accorded a certain priority as evidence of the *opinio juris* of today. Moreover, in the case of "succession", the very frequency and extensiveness of the modern practice tends to overwhelm and submerge earlier precedents. In addition, it has to be borne in mind that new factors have come into play that affect the context within which State practice in regard to succession takes place today. Particularly important is the much greater interdependence of States which has affected the policy of successor States in some measure in regard to continuing the treaty relations of the territory to which they have succeeded.

Scarcely less important is the enormous growth of international organizations and the contribution which they have made both the development and the publication of State and depositary practice in matters of succession to multilateral treaties. Important also, if in a more general way, is the fact that the modern precedents reflects the practice of States conducting their relations under the régime of the principles of the Charter of the United Nations.

16. When all due weight is given, however, to the new factors and to the modern practice with respect to "new" States, the basic problem in regard to succession remains what it has always been: to discern with sufficient clearness how far the practice is an expression simply of policy and how far and in what points an expression of legal right or obligation.

II. Text of draft articles with commentary

CHAPTER I: GENERAL PROVISIONS

Article I: Use of terms

1. The meanings specified for particular terms in article 2 of the draft articles on the Law of Treaties¹² are also to be given to those terms for the purposes of the present articles.

2. In addition, for the purposes of the present articles:

(a) "Succession" means the replacements of one State by another or, as the case may be, of one Government by another, in the possession of the competence to conclude treaties with respect to a given territory;

(b) "Successor State" and "successor Government" mean the State or, as the case may be, Government which has replaced another State or Government on the occurrence of a "succession";

(c) "Predecessor State" and "predecessor Government" mean the State or, as the case may be, Government which has been replaced on the occasion of a succession".

Commentary

(1) *Paragraph 1* raises, both as to substance and as to form, the question of the link between the present articles and the draft articles on the Law of Treaties (hereinafter called in these Commentaries the "Law of Treaties"). As to substance, articles 1 and 2 of the Law of Treaties specifically limit the application of that draft to international agreements *in written form concluded between States*. The Commission has therefore to consider whether the present articles concerning succession in respect of treaties should be so limited. There seems to be a disposition on the part of some Governments to question the exclusion of treaties concluded by international organizations from the draft on the Law of Treaties, so that the use of the term "treaty" in the

¹² *Yearbook of the International Law Commission, 1966*, vol. II, document A/6309/Rev.1, part II, pp. 177-187.

Law of Treaties may be revised at Vienna. In general, however, it would seem logical for the use of the term "treaty" in the present articles to be uniform with its use in the Law of Treaties, unless it is thought that no special considerations apply to succession in respect of international agreements of "other subjects of international law" or of "oral agreements". On a preliminary view of the matter, the Special Rapporteur doubts very much that succession in respect of these other forms of international agreements would be found not to involve any special problems.

(2) As to form, paragraph 1 is drafted in the form of a general *renvoi* to the meanings given to particular terms in article 2 of the Law of Treaties. This seems the convenient course at the present stage of the Commission's work. If it should prove at a later stage that comparatively few of the terms mentioned in article 2 of the Law of Treaties require to be used in the present articles, it may be preferable only to reproduce the provisions of article 2 relating to the terms appearing in the present draft.

(3) Paragraph 2 (a) specifies the sense in which the term "succession" is used in the draft articles and is of cardinal importance for the whole structure of the present draft. In many systems of municipal law, "succession" is a legal term and a legal institution which connotes the devolution from one person to another of rights or obligations automatically *by operation of law* on the happening of an event, as, for example, upon a death. The "successor" may or may not, in any system of law, have an option to disclaim the "succession". But in principle the event and the relationship of the "successor" to the person affected by the event cause the successor as a matter of law to "succeed" to certain rights or obligations of that person. The term "succession" therefore tends in municipal law to carry the meaning of a legal institution which, given the relevant event, brings about by itself the transfer of legal rights and obligations. In international law analogies drawn from municipal law concepts of succession are to be found in the writings of jurists and sometimes also in State practice. A natural enough tendency also manifests itself both among writers and in State practice to use the word "succession" as a convenient term to describe any assumption by a State of rights or obligations previously applicable with respect to territory which has passed under its sovereignty without any nice consideration of whether this is truly succession by operation of law or merely a voluntary arrangement of the States concerned. The ambiguity surrounding the expression "State succession" in international law can be seen in the definition given to the term "*Succession d'Etats*" in the "*Dictionnaire de la terminologie du droit international*"¹³ which is as follows:

"Expression fréquemment employée en doctrine pour désigner:

(a) la situation qui se présente lorsqu'un Etat se substitue à titre permanent à un autre Etat dans un territoire et à l'égard de la population de ce territoire par suite d'une incorporation totale ou d'une annexion partielle, d'un partage ou de la création

d'un Etat nouveau, que l'Etat dont relevait antérieurement ce territoire subsiste ou disparaisse.

(b) la substitution d'un Etat dans les droits et obligations de l'autre résultant de cette situation. "On entend . . . par succession des Etats aussi bien la modification territoriale elle-même, soit le fait qu'à l'intérieur d'un territoire donné un Etat se substitue à un autre, que la succession de l'un de ces Etats aux droits et obligations de l'autre (c'est-à-dire de l'Etat dont le territoire a passé à l'Etat successeur)." Kelsen, *Académie de Droit International*, t. 42, p. 314.

(4) Municipal law analogies, however suggestive and valuable in some connexions, have always to be viewed with some caution in international law; for an assimilation of the position of States to that of individuals as legal persons may in other connexions be misleading even when it is suggestive. In international law and more especially in the field of treaties, the great question is to determine whether and how far the law recognizes any cases of "succession" in the strict, municipal law sense of the transfer of rights or obligations by operation of law. The answer to be given to this question will only become clear for the purposes of the present articles when the Commission has undertaken a full examination of the subject of succession in respect of treaties. Meanwhile, for working purposes and without in any way prejudging the outcome of that examination, the Special Rapporteur considers it desirable to use the term "succession" exclusively as referring to the fact of the replacement of one State by another in the possession of the competence to conclude treaties with respect to a given territory. At the same time, he thinks that, purely for drafting reasons, it will probably be found convenient, whatever the Commission's conclusions on the questions of substance, to use the term "succession" exclusively as referring to the fact of a change in the possession of the treaty-making competence and to leave any possible succession to rights or obligations to be stated separately and expressly.

(5) The meanings attributed in paragraphs 2 (b) and 2 (c) to the terms "Successor State", "Successor Government", "Predecessor State" and "Predecessor Government", are merely consequential upon the meaning given to "succession" in paragraph 2 (a).

(6) As the work progresses, it may be found desirable in the present article to add the meanings of some further terms in order to give precision to the sense in which they are used in the draft. But the Commission has usually found it convenient to leave the general question of the use of terms until a later stage of its work.

Article 2: International agreements not within the scope of the present articles

The fact that the present articles do not relate:

(a) To international agreements concluded between States and other subjects of international law or between such other subjects of international law; or

(b) To international agreements not in written form shall not affect the application to them of any of the rules set forth in the present articles to which they would be subject independently of these articles.

¹³ Paris 1960, p. 587.

Commentary

(1) The inclusion of this article will become necessary if the Commission decides to use the term "treaty" in the present articles with the same meaning as in article 2 of the Law of Treaties. As in the case of the similar article in the Law of Treaties (art. 3), the purpose of the article would simply be to make a general reservation safeguarding the position in regard to the relevance of the general rules of "succession" for other forms of written or oral international agreements not covered by the present articles.

(2) The text of the article reproduces the text of article 3 of the Law of Treaties, only omitting from the final phrase the words "the legal force of such agreements or", which do not seem applicable in the context of the present articles. Clearly, the text would be subject to revision in the light of the discussion of article 3 of the Law of Treaties at the Vienna Conference.

Article 3: Relevant rules of international organizations

The application of the present articles to treaties which are constituent instruments of an international organization or are adopted within an international organization shall be subject to any relevant rules of the organization.

Commentary

(1) As in the case of the application of the general law of treaties, it seems essential to make the application of the present articles to treaties which are constituent instruments of an international organization subject to any relevant rules of the organization. Succession in respect of constituent instruments necessarily encroaches upon the question of admission to membership which in many organizations is subject to particular conditions and is therefore connected with the law of international organizations. Indeed, this was one of the reasons why the Commission at its last session decided to leave aside for the time being the subject of succession in respect of membership of international organizations. As to treaties "adopted within an international organization", it certainly cannot be excluded that organization should develop their own rules for dealing with questions of succession. In the International Labour Organisation, for example, a consistent and important practice has developed regarding the assumption by "successor" members of the organization of the obligations of ILO Conventions previously applicable within the territory concerned. Without taking any position as to whether this particular practice has the status of a customary law or other internal rule of that organization, the Special Rapporteur considers that a general reservation of relevant rules of organizations is necessary to cover such a possibility.

(2) The present article reproduces textually the wording of article 4 of the Commission's draft articles on the Law and Treaties. The Commission will appreciate, however, that this wording may undergo a change at the Vienna Conference on the Law and Treaties, which is to take place before the Commission meets for its next session. Some Governments in their comments on the

Commission's draft have indicated a preference for a more restrictive definition of the treaties covered by this article;¹⁴ some organizations, on the other hand, have advocated a broader definition.¹⁵ The Special Rapporteur will, therefore, report to the Commission at its forthcoming session the outcome of any discussion of this article which may take place at the Vienna Conference.

Article 4: Boundaries resulting from treaties

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.

Commentary

(1) This article makes a general reservation in regard to the effect of the present articles on boundaries established by treaty for reasons similar to those which led the Commission in the Law of Treaties to except from the rule regarding a fundamental change of circumstances (article 59) "a treaty establishing a boundary". In paragraph (11) of its commentary to article 59,¹⁶ after pointing out that the exception appeared to be recognized by most jurists, the Commission observed:

Some members of the Commission suggested that the total exclusion of these treaties from the rule might go too far, and might be inconsistent with the principle of self-determination recognized in the Charter. The Commission, however, concluded that treaties establishing a boundary should be recognized to be an exception to the rule, because otherwise the rule, instead of being an instrument of peaceful change, might become a source of dangerous frictions. It also took the view that "self-determination", as envisaged in the Charter, was an independent principle and that it might lead to confusion if, in the context of the law of treaties, it were presented as an application of the rule contained in the present article. By excepting treaties establishing a boundary from its scope the present article would not exclude the operation of the principle of self-determination in any case where the conditions for its legitimate operation existed. The expression "treaty establishing a boundary" was substituted for "treaty fixing a boundary" by the Commission, in response to comments of Governments, as being a broader expression which would embrace treaties of cession as well as delimitation treaties.

The same general considerations appear to apply, *mutatis mutandis*, to cases of "succession" even although in these cases the question of the continuance or termination of the treaty may present itself somewhat differently.

(2) The weight both of opinion and practice seems clearly to be in favour of the view that boundaries

¹⁴ E.g. Czechoslovakia (see *Official Records of the General Assembly, Twenty-second Session, Annexes*, agenda item 86, document A/6827, p. 3) and the United States of America (*ibid.*, document A/6827/Add.2, p. 25).

¹⁵ The Secretary-General of the United Nations (*ibid.*, document A/6827/Add.1, pp. 13 and 14) and the Food and Agriculture Organization of the United Nations (*ibid.*, pp. 16 and 17).

¹⁶ *Yearbook of the International Law Commission, 1966*, vol. II, document A/6309/Rev.1, part II, p. 259.

established by treaties remain untouched by the mere fact of a succession. The opinion of jurists seems, indeed, to be unanimous on the point even if their reasoning may not always be exactly the same.¹⁷ In State practice the unanimity may not be quite so absolute; but the State practice in favour of the continuance in force of boundaries established by treaty appears to be such as to justify the conclusion that a general rule of international law exists to that effect.¹⁸ The rule here in question, of course, concerns only the issue of the effect of a "succession", as such, upon boundaries established under previous treaties. It does not touch the application of the principle of self-determination in any given case. As the Commission said in the above-quoted passage of its commentary on article 59 of the Law of Treaties, "self-determination as envisaged in the Charter is an independent principle". Therefore, by excepting from succession in respect of treaties boundaries established through treaties, the present article in no way excludes the independent operation of the principle of self-determination in any case where the conditions for its application exist. Nor does it in any way touch the question of what precisely is to be considered the true line of the boundary established under the treaty. It simply prevents any provision of the present articles regarding either the application of the treaties of the successor State or the cessation of the application of the treaties of the predecessor State from affecting established boundaries.

¹⁷ E.g., E. J. S. Castrén, *La succession d'Etats*, *Académie de droit international* (1951), vol. I, p. 437; Alf Ross, *A Textbook of International Law*, p. 127; Lord McNair, *The Law of Treaties* (1961), pp. 656 and 657; P. Guggenheim, *Traité de droit International* (1953), vol. I, p. 465; Academy of Sciences of the USSR, *International Law*, pp. 128 and 129.

¹⁸ See the precedents noted in the International Law Association's Handbook, *The Effect of Independence on Treaties* (1965), chap. 15. See also *United Nations Legislative Series, Materials on Succession of States* (ST/LEG/SER.B/14): reply of the United Kingdom, pp. 185-188, 189 and 190. An exception is Afghanistan, *ibid.*, pp. 1-6. For some earlier precedents see D. P. O'Connell, *Law of State Succession*, (1956), pp. 50 and 51.

(3) The opinions of a number of writers and some of the State practice might suggest a wider formulation of the present article so as to make it cover all so-called "localized" treaty stipulations or alternatively the conversion of the article into a provision laying down a general rule of succession to all "localized" or "dispositive" treaties.¹⁹ The question of succession to "localized" treaties is, however, more controversial than the question of the continuance in force of boundaries.²⁰ Moreover, whereas a boundary established by or in conformity with a treaty may be regarded simply as a legal situation resulting from the execution of the treaty, "localized treaty stipulations" involve executory obligations and, in consequence, may appear to raise a question of succession in respect of treaty obligations as well as one of the continuance of a legal situation. The question of "localized treaty stipulations" also has certain analogies with the problem of "objective régimes" considered by the Commission in connexion with the effect of treaties on third States, and discussed more particularly in paragraph (4) of its commentary to article 34.²¹ Accordingly, the Special Rapporteur suggests that it may be better to reserve the case of boundaries generally by a provision of the kind contained in the present article and to leave the question of "localized stipulations" to be considered later in connexion with the different cases of succession.

¹⁹ E.g., P. Guggenheim, *Traité de droit international public*, p. 465; Lord McNair, *op. cit.*, pp. 655 and 656; *United Nations Legislative Series, Materials on succession of States* (ST/LEG/SER.B/14), p. 183.

²⁰ See E. J. S. Castrén, *op. et vol. cit.*, pp. 436-439. Cf. the distinction made by the United Kingdom between the "boundary" and other "frontier" provisions in the Anglo-Ethiopian Treaties of 1897 and 1954, *United Nations Legislative Series, Materials on succession of States* (ST/LEG/SER.B/14), p. 185. Cf. also Tanzania's rejection of the Belbaa Agreements of 1921 and 1951 concluded between the United Kingdom and Belgium but recognition of the boundaries established by various treaties as binding upon it; E. E. Seaton and S. T. M. Maliti, *Treaties and Succession of States and Governments in Tanzania*, paras. 30-35 and 118-120.

²¹ *Yearbook of the International Law Commission, 1966*, vol. II, document A/6309/Rev.1, part II, p. 231.