Document:-
A/CN.4/SR.1007

Summary record of the 1007th meeting

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

Extract from the Yearbook of the International Law Commission:-
1969, **vol. I**

asked to undertake that kind of evaluation of State practice.

63. In addition, he doubted whether much more information would be forthcoming—at least not quickly. In a report submitted to the General Assembly in 1960, the Secretary-General had written: "Optimism as to the rapidity of the transmission from governments of the material ... ought to be tempered with some substantial measure of caution... . Past experience has shown... that it is questionable whether all governments will provide the necessary information . . .".[10] He was sure that all members recalled the famous and caustic observation of the French Government in 1950 to the effect that it could not work through "several tons of its archives" in order to answer questions emanating from the Commission.[11]

64. The Special Rapporteur's proposal that the Secretariat should undertake an evaluation of jurisprudence was open to the same objection: it invited the Secretary-General to undertake a task which was essentially the special responsibility of members of the Commission. The digest of decisions furnished by the Secretariat [12] contained adequate data for the Commission's researches, but it should be brought up to date along the lines indicated at the seventh meeting of the Sub-Committee in 1963.[13]

65. The proposed bibliography might be useful, but only on condition that it was compiled by the Library services in conjuction with the Codification Division, and that no attempt was made to evaluate the items listed.

66. He suggested that the Secretariat should also be asked to prepare a short note on the interaction between the present topic and General Assembly resolution 1803 (XVII), on permanent sovereignty over natural resources, the other resolutions mentioned in footnote 76 of the Special Rapporteur's report and subsequent resolutions, with particular reference to discussions in the General Assembly. General Assembly resolution 1803 (XVII) was dealt with as far as State responsibility was concerned in the summary prepared by the Secretariat of the discussions in various United Nations organs and the resulting decisions,[14] while subsequent developments in connexion with the same topic were covered in document A/CN.4/209. A parallel document was now needed for the topic of State succession.

Organization of Work

67. The CHAIRMAN said that an estimate of the cost of implementing the Special Rapporteur's suggestions had just been circulated. In his view, that document should be discussed at a closed meeting. Since the issue was clearly presented, perhaps the meeting could be held even if the Special Rapporteur was absent. The officers of the Commission would decide that point.

The meeting rose at 6 p.m.

1007th MEETING

Tuesday, 24 June 1969, at 10.15 a.m.

Chairman: Mr. Nikolai USHAKOV

Present: Mr. Ago, Mr. Albónico, Mr. Bartoš, Mr. Bedjaoui, Mr. Castañeda, Mr. Castrén, Mr. Eustathiades, Mr. Ingacio-Pinto, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Rosenne, Mr. Ruda, Mr. Tabibi, Mr. Tammes, Mr. Tsuruoka, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

Appointment of a Drafting Committee

1. The CHAIRMAN said that the officers of the Commission wished the Drafting Committee to start work without delay, so that the Commission could begin to examine the draft articles on permanent missions to international organizations. He suggested that the Drafting Committee should consist of the following: Chairman: Mr. Castañeda; members: Mr. Ago, Mr. Bastoš, Mr. Ignacio-Pinto, Mr. Jiménez de Aréchaga, Mr. Reuter, Mr. Tabibi, Mr. Tammes, Mr. Tsuruoka, Mr. Ustor and Sir Humphrey Waldock.

It was so agreed.

Succession of States and Governments: Succession in Respect of Matters other than Treaties

(A/CN.4/216/Rev.1)

[Item 2 (*b*) of the agenda]

(resumed from the previous meeting)

2. Mr. ROSENNE said he wished to join with other speakers in expressing great appreciation of the work accomplished by the Special Rapporteur. His frank, hard-hitting and superficially uncompromising report, or brief, as it had been called, amplifying points contained in his first report [1], squarely pointed up the non-jural context in which the matter would have to be discussed. He (Mr. Rosenne) was rather disappointed, however, that the Special Rapporteur had not phrased his questionnaire in such a way as to bring into clearer focus the legal issues on which he wished to have the views of members of the Commission. As a result, the

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[10] See *Official Records of the General Assembly, Fifteenth Session, Annexes*, agenda item 66, document A/4406, para. 18.

[11] See *Yearbook of the International Law Commission, 1950*, vol. II, p. 206.

[12] *Op. cit.*, 1962, vol. II, p. 131.

[13] *Op. cit.*, 1962, vol. II, p. 277.

[14] *Op. cit.*, 1964, vol. II, p. 125

[1] *Yearbook of the International Law Commission, 1968*, vol. II, document A/CN.4/204.

present debate had been essentially a repetition of the one the Commission had had the previous year, which was summarized in its report. [2].

3. It would appear that questions 1, 2, 3 and 6 in the Special Rapporteur's questionnaire [3] invited the Commission to take a position precisely on the non-jural elements, although all experience, including that of the present debate, showed that an attempt to reach decisions on those elements or on abstract theses would result in a sharp division of opinion. He himself was not yet convinced that it was really necessary to take a position on them or that it was even possible to do so on an abstract basis. He hoped the Special Rapporteur would find sufficient indication of his general views in his statement at the 962nd meeting.[4]

4. In paragraph 6 of his report (A/CN.4/216/Rev.1), the Special Rapporteur said that his initial conclusions "might form the basis of a set of draft articles which would constitute the first chapter of the work on succession." While agreeing with that statement, he wished to point out that, as the Special Rapporteur said in paragraph 137, "the International Law Commission could not concern itself with abortive or precarious solutions", and that paragraph 148 contained somewhat negative conclusions on certain concepts or principles. In his experience, it would be abortive and precarious for the Commission to attempt to work on such a basis. Moreover, like many other members, he did not disagree with many of the conclusions reached by the Special Rapporteur, and he thought that in many respects the report was knocking at open doors.

5. He had always been doubtful about the validity of extreme theories of "acquired rights" and believed, as he had written in his working paper of 1963,[5] that the real problem for the Commission was to achieve a just balance between the need to maintain a measure of stability and the need for regulated change which was implicit in the process that led to the political and economic independence of new States. In dealing with the law of treaties, both in the Commission and at the Vienna Conference, it had been found that time and time again theoretical or doctrinal approaches had to be abandoned in favour of pragmatic solutions, which alone were able to secure the representative two-thirds majority necessary for the long-term success of a codification effort.

6. As to the impact of the principle of the equality of States on the present topic, he did not disagree with the Special Rapporteur's general thesis, but he was not sure that that thesis necessarily led to all the conclusions reached in the report; in particular, paragraph 25 seemed to state what it called "the heart of the problem" in too broad terms. According to the report, the problem was whether the successor State was "obliged to respect whatever it was that bound the predecessor State". The answer was obviously in the negative. He would have thought that the real problem was to establish the extent to which the successor State was bound to respect obligations which the predecessor State had legally assumed in respect of the territory which became that of the successor State. He wished to stress the territorial as opposed to the temporal aspect, for the reasons given in paragraph 17 of the report.

7. On the same issue, he could not accept the thesis that the principle of the equality of States was impaired simply because one State was the obligor and the other the obligee—a thesis which seemed to be implicit in paragraph 27 of the report—whether the obligation arose out of a valid international treaty or from some other rule of international law. In his opinion, the acceptance of that thesis would quickly lead to legal nihilism and make nonsense of the very idea of international law. Nor could he accept what seemed to be the parallel thesis, advanced in paragraph 107, that it was only since 1917 that the problem of economic distortion between States had become intertwined with the problem of State succession. As Mr. Ago had once said, it was an easy error to believe that what happened in one's own lifetime was entirely different from what had happened in the past.[6] For similar reasons, he did not think that the General Assembly, in the resolutions to which the Special Rapporteur had referred,[7] had intended to infer the existence of categories of States, but that, at the most, it had been pointing to categories of problems.

8. As to paragraph 29 of the report, with which he generally agreed, he thought that on the whole it should be more nuanced, for it did not deal with the case in which there was a real transfer of territory.

9. With regard to the Special Raporteur's questionnaire, he thought that questions 1, 2, 3 and 6, as he interpreted them, could not really be answered except on the basis of a firm doctrinal position, which was unnecessary for practical purposes. To some extent, that was also true of question 4, which was answered in the Commission's report for 1968 [8] and the report of the Sixth Committee.[9]

10. Question 5 raised major issues which were not fully ventilated in the report, and which had only been discussed in detail by the Special Rapporteur in his statement at the previous meeting. The general policy should be not to reopen issues which had already been disposed of by the General Assembly or other organs and not to deal with other topics of international law under the guise of State succession. The fact that the question had been put meant either that the Commission's earlier decisions had not been clear, or that, in effect, the Special Rapporteur wished to appeal from them. A re-examination of the Commission's previous

[2] *Ibid.*, Report of the Commission to the General Assembly, paras. 76 and 77.

[3] See 1003rd meeting, para. 1.

[4] See *Yearbook of the International Law Commission, 1968*, vol. I, pp. 113-115.

[5] *Op. cit.* 1963, vol. II, p. 285.

[6] Op. cit., 1962, vol. I, p. 35, para. 19.

[7] See 1000th meeting, para. 6.

[8] See *Yearbook of the International Law Commission, 1968*, vol. II, Report of the Commission to the General Assembly, para. 79.

[9] See *Official Records of the General Assembly, Twenty-third Session, Annexes*, agenda item 84, document A/7370, para. 53.

decisions on the treatment of the topic of State succession showed that what it had probably had in mind was not so much "State succession in respect of treaties" and "State succession in respect of matters other than treaties", as "succession in the law of treaties"—picking up where the Commission had left off at article 69 of its 1966 draft [10] and the Vienna Conference had left off at article 73 of the 1969 Convention [11]—and "succession in other branches of international law", succession always being the secondary subject. That being so, it was not a matter of tracing the boundaries of State succession in matters other than treaties, but of how to draw the boundaries of State responsibility and other relevant topics—a matter which would probably have to await progress on those other topics. Among the other branches of the law which had been mentioned in the present discussions, apart from the topic of State responsibility in general, had been the law of diplomatic protection, the treatment of aliens, the inter-temporal law and the law relating to coercion, particularly economic coercion and the Declaration on that subject which had been adopted at the recent Vienna Conference;[12] in addition, the question of recognition and all its implications could not be overlooked.

11. The answer to question 7 was to be found in paragraph 79 and 104 of the Commission's report for 1968. He doubted whether draft articles on acquired rights as such would be of much practical use, and he feared that, in view of the controversy which they were likely to stir up, they might prejudice any future work on the topic. He reminded the Commission that the delays in its work since 1962 had caused considerable dissatisfaction in the General Assembly, so they should not be aggravated.

12. With regard to the Chairman's ruling at the last meeting, if it had in fact been a ruling, he did not in principle see why, after the Special Rapporteur had squarely posed the issues concerning the proposed work by the Secretariat, the matter should have to be discussed at a closed meeting. He would not, however, object to such a course of action. As to the Commission's report to the General Assembly, he thought it would be unwise to take a summary of the present discussion as a basis for that report; he recalled that in 1956 and 1957, when the Commission had received similarly controversial reports on State responsibility, it had merely said that it had examined the report and requested the Special Rapporteur to continue his work.

13. Mr. TSURUOKA said that before making some general and provisional remarks on acquired rights and the method that should be adopted for the study of State succession, he wished to stress that the Commission's terms of reference were clearly stated in its Statute. Its members were not the legislators of the world. According to its Statute, the Commission's object was to promote the progressive development of international law and its codification. It was responsible for preparing international conventions which would be applicable in the largest possible number of countries and its work should be of an essentially pragmatic nature. It should therefore seek compromise as the only means of obtaining the support of the majority of States and try to make the rules it formulated correspond as closely as possible to the requirements of the international community.

14. He would examine the question of acquired rights successively in relation to the international responsibility of States, State succession in general and State succession resulting from decolonization.

15. In the first case, respect for acquired rights seemed to him to be a well-established rule of international law, judging from State practice, jurisprudence and doctrine. In particular it had been recognized by the Institute of International Law in 1927, in the resolution it had adopted on the "International responsibility of States for damage caused in their territory to the person or property of aliens",[13] by O'Connell in 1967 [14] and by Nkambo Mugeerwa in 1968.[15] Moreover, as Professor Egawa, a Japanese jurist, had said, respect of the person and property of aliens was the foundation of private international law. On the other hand, no one denied that international law gave every independent State full freedom in the exercise of its sovereignty in its own territory and, consequently, gave it the power to take any legislative or administrative measures it wished with regard to both aliens and nationals. Those two rules appeared to be contradictory and it was in order to remedy that state of affairs that international law laid down that a State must pay compensation for any damage caused to the property of aliens by measures it had taken. It would therefore be incorrect to say that a State could freely dispose of the property of aliens by virtue of its absolute right of government, since that would be recognizing one rule and disregarding the other.

16. As to the question whether the principle of the international responsibility of States for damage caused in their territory to the property of aliens was generally applicable in the case of State succession or whether that principle varied according to the conditions of the succession, both practice and jurisprudence appeared to recognize that acquired rights must be respected in cases of succession. That view was supported by the advisory opinion given in 1923 by the Permanent Court of International Justice in the case of the *German Settlers in Poland*,[16] by the declaration of the Japanese Government protecting the rights of aliens in Korea at the time of its annexation by Japan in 1910,[17] and by the resolution adopted by the Institute of Inter-

[10] See *Yearbook of the International Law Commission, 1966*, vol. II, p. 267.

[11] A/CONF.39/27.

[12] See Final Act of the United Nations Conference on the Law of Treaties (A/CONF.39/26), annex.

[13] See *Annuaire de l'Institut de droit international, 1927*, vol. III, p. 330.

[14] *State succession in municipal law and international law, 1967*, vol. I, p. 263.

[15] See *Manual of public international law*, ed. Max Sørensen, p. 485.

[16] *P.C.I.J., Series B*, No. 6.

[17] *British and Foreign State Papers*, vol. CV, p. 688.

national Law in 1952 on the "Effects of Territorial Changes upon Patrimonial Rights".[18] He was therefore unable to accept the opinion expressed by the Special Rapporteur in paragraph 33 of his report, where he said that if a State encroached on acquired rights in ordinary times, that was to say when succession was not involved, it was "bound only by an obligation under municipal law, which is not susceptible to any international recourse". He himself believed that respect for acquired rights was a rule of international law.

17. Nor did he think it was possible to set aside acquired rights in the case of State succession resulting from decolonization. It was true that the predecessor State and the successor State could derogate from the rule by mutual consent but, in the absence of such agreement, doctrine and practice generally affirmed the validity of the principle of acquired rights, even in that case. It was on that basis that the draft Convention on the International Responsibility of States for Injuries to Aliens,[19] in particular article 10, paragraphs 2 and 4 and the relevant commentaries, had been drafted by Sohn and Baxter in 1961. It could therefore be said that the question was controversial and that the Commission should try to find a compromise.

18. In conclusion, he referred to the working document he had submitted to the Commission in 1963,[20] in particular, paragraph 3 concerning the terms of reference of the Commission and paragraph 24, which pointed out that neither changes in the political system of a State nor the emergence of an independent State could have the legal effect of destroying the juridical value of the international law in force. At a time of increasing co-operation between the developing and the developed countries, the dangers to which the property of aliens would be exposed if the principle of acquired rights was abolished might damp the enthusiasm even of those who were willing to make an effort for international solidarity. It was therefore essential to ensure the equitable protection of those rights.

19. With regard to the Commission's method of work, he thought it would be advisable to study the problem of acquired rights within the framework of State responsibility and to ask the Special Rapporteur to submit to the Commission, at its next session, a third report, dealing with the general rules of State succession in respect of financial rights, public debts and the like, leaving it to him to refer where necessary to the problems of acquired rights arising in cases of succession, in the light of the discussion at the present session. As to the work to be requested of the Secretariat under question 8 of the questionnaire, he shared the views expressed at the previous meeting by Mr. Yasseen and Mr. Rosenne.

20. Mr. AGO said he was grateful to the Special Rapporteur for having drawn attention to the very many problems raised by the subject under study and for having pointed out that they might be closely connected with the rights of aliens and with State responsibility.

21. It must not be thought that a succession of States resulted *ipso facto* in the automatic disappearance of the pre-existing legal system and that legal situations established under that system consequently ceased to exist. At the very moment of the succession a continuity was established, which subsisted so long as the successor State did not intervene to break it and to alter the existing legal situations. The problem of succession lay precisely in the question whether the successor State was restricted, and if so how, in its power to change the existing legal order. In that connexion it was obvious that the State could not be granted the right to change everything, any more than it could be obliged to leave everything unchanged. The answer would differ according to the type of succession, but in every case a series of problems would arise from the outset, in particular, with regard to respect for human rights and certain legal situations. Was the successor State free to adopt even legal rules which disregarded certain essential rights or certain basic legal situations established under the previous régime?

22. The problem which arose with regard to the treatment of aliens was the same in the case of succession as where no succession was involved. There could be exceptions, but it must be recognized in principle that the successor State too was required to guarantee to aliens the treatment which every State must accord them in its territory. It was not a matter of treatment prescribed by treaty rules, which raised other problems; but where rules of general international law were concerned, it was difficult to accept that a State, because it was the successor to another State, was entitled not to comply with some of those rules which related to the treatment of aliens. In any event, he wished to stress that the succession problems raised by the Special Rapporteur were very closely connected with the treatment of aliens, but not directly connected with State responsibility. Responsibility was involved when an obligation deriving from a rule was violated. One must not be misled by the fact that certain obligations, for example, the obligation to pay compensation, could arise just as much on one ground as on another. The obligation to compensate an alien for expropriation was a primary obligation and had nothing to do with responsibility for an unlawful act. The obligation to pay compensation as reparation for an internationally unlawful injury was quite a different matter. Only the latter obligation came within the sphere of responsibility.

23. In codifying and developing the law governing State succession, the Commission should always bear that distinction in mind. Its task was to codify the primary rules from which derived the obligations of States in case of succession, not to study the consequences of a failure to fulfil those obligations. The problem of State succession amounted to deciding whether the fact that a State had succeeded another State introduced an element which authorized it to derogate from the rules generally applicable to the treatment of aliens under national and international law.

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[18] See *Annuaire de l'Institut de droit international, 1952*, vol. II, p. 475.

[19] See *The American Journal of International Law*, vol. 55, p. 548.

[20] See *Yearbook of the International Law Commission, 1963*, vol. II, p. 247.

He also recommended the Commission not to lose sight of the fact that codification was a long-term project in which too much consideration should not be given to transitory situations.

24. Mr. NAGENDRA SINGH expressed his unqualified admiration for the erudition shown by the Special Rapporteur in marshalling facts in support of his views; the convincing legal logic on which his second report was based would undoubtedly win him general support in all the developing countries of the decolonized areas of the world.

25. The Special Rapporteur had entered a field that was both complicated and controversial—an undertaking which had its merits and its difficulties. The question that arose was how to deal with such a vast subject: whether to begin with certain specific matters which lent themselves to easy codification, or immediately to take up the most complicated and controversial issue involved.

26. Opinions on the question of acquired rights differed so widely that his only concern was to see concrete results emerge from the Special Rapporteur's most illuminating report. In principle, he agreed with all the Special Rapporteur's submissions, but he did not wish the progress of the Commission's work to be impeded by controversies. The question of acquired rights was undoubtedly of vital importance to new States and decolonized areas, and the Special Rapporteur had made a valuable contribution by emphasizing that aspect of the matter. He feared, however, that as the subject was still nebulous and very controversial, it might be difficult to codify it and formulate draft articles. The Commission might well lose sight of its objective in the resulting controversy. For practical reasons, therefore, and with a view to achieving concrete results, he wished to make some suggestions.

27. The Special Rapporteur's second report had been very useful, for it had provoked an interesting exchange of views which had shown the vital importance of the subject. But if the Commission were to ask the Special Rapporteur to draft articles on acquired rights it would be inviting difficulties, because the law on that subject had not yet crystallized. The question of acquired rights was still much debated and any attempt at codification might stir up regrettable controversy. The Special Rapporteur himself had said that "Practice, jurisprudence, doctrine and precedent in general were of no decisive help in studying the problem of acquired rights. Precedents abounded, but they contradicted each other".[21] In those circumstances, he thought that the Special Rapporteur's second report had served its purpose by showing the importance of acquired rights, and the Commission could resume consideration of that important subject at a later stage.

28. He suggested, therefore, that the Commission should invite the Special Rapporteur to deal in his third report with questions mentioned at the previous session, such as public debts, public property and other economic and financial questions connected with State succession which were not controversial and would be easy to codify. That would provide a firm foundation on which rapid progress could be made, even in regard to the question of acquired rights, which would have to be taken up again later.

29. There were good reasons for adopting that method. In the first place, it might be asked whether acquired rights belonged to the topic of State responsibility or to that of State succession—a question on which the members of the Commission were divided and which could lead to endless argument. For his part, he was inclined to share the Special Rapporteur's view that the question of acquired rights belonged to the topic of State succession. He suggested, however, that the Commission should not attempt to settle the matter at that stage, since no agreement was in sight. When the Commission had made some progress on the substance of State responsibility, it would be in a better position to decide which topic the question of acquired rights properly belonged to and it might easily endorse the Special Rapporteur's position.

30. He urged the Commission to proceed step by step and deal first with those aspects of State succession which would make it possible to lay a firm foundation for the subsequent consideration of acquired rights.

31. The nebulous character of the question of acquired rights was shown, for example, by the fact that during the discussion Mr. Yasseen had, quite rightly, asked whether nationals of the predecessor State should not be considered as a third category of persons, distinct both from nationals of the successor State and from aliens.[22]

32. Some States certainly claimed acquired rights that were very questionable and should be set aside; he therefore fully supported the idea of approaching the subject from the point of view of the developing countries, but he thought it would be better not to do so until the Commission had been able to formulate some of the principles governing the whole topic of State succession.

33. In his opinion the Commission should thank the Special Rapporteur for his interesting second report and ask him to prepare a third report containing articles on the law of State succession relating to public debts, public property and other similar subjects connected with State succession in economic and financial matters.

34. The CHAIRMAN, speaking as a member of the Commission, drew attention to the positions of principle he had taken in his statement at the 1005th meeting.[23] He was convinced that contemporary international law could not give direct protection to private persons, since they were not subjects of international law, and that it did not recognize any acquired rights in respect of the property of aliens, whether they were natural persons or legal persons. He was thus entirely in agreement with the Special Rapporteur concerning the present state of international law in regard to so-called acquired rights.

35. As to the Commission's approach, it might be

[21] See 1000th meeting, para. 14.

[22] See 1006th meeting, para. 56.

[23] See paras. 44 to 48.

asked whether the question should be studied on the basis of the subject-matter of succession, such as financial and economic or territorial questions, or whether it would not be preferable to start from the different types of succession of States.

36. The previous year the Commission had approved the principle of making a more specific study of succession of States due to decolonization, without neglecting the other causes of succession.[24] Solutions would certainly differ according to the origin of the succession: whereas a new State born of decolonization could be absolved from all obligations, a different solution would have to be applied to a State created by the fusion of several States or the partitioning of one State.

37. The Special Rapporteur was, of course, entirely free to approach the subject as he understood it. But perhaps he might once again consider the various ways of studying it and the possibility of adopting different methods according to the type of State succession considered. In any event, he (Mr. Ushakov) was convinced that a special chapter should be devoted to decolonization, covering all the questions of succession of States in respect of matters other than treaties.

38. Mr. CASTAÑEDA, referring to Mr. Ago's comment that the position of the successor State in regard to aliens was, in principle, more or less the same as that of any State in the absence of succession, observed that Mr. Ago had nevertheless made the reservation that there could be exceptions.

39. Those exceptions could be looked for in two opposite directions. First, could the successor State have more extensive obligations than those of the predecessor State? The answer was, of course, in the negative. The fact of succession added nothing. The Special Rapporteur had very well explained, in paragraph 33 of his report, that if succession imposed additional obligations on the successor State, it could only be by "some mysterious phenomenon of legal transmutation". It was, indeed, difficult to see what justification could be adduced for such new obligations.

40. The second type of exceptions had not been brought out clearly enough. Might not the obligations assumed by the predecessor State be diminished for the successor State by reason of the succession, since for the latter State they were *res inter alios acta*? It was not possible to give a general reply. The question must be examined for each type of succession. For instance, in a succession due to decolonization, when concessions had been granted very cheaply or under conditions which had been understandable at one time but were now unacceptable, the fact that the successor State had had nothing to do with the granting of those concessions might have the effect of lessening its obligations. Thus, while it was recognized, as a general principle, that the successor State was in the same position as the predecessor State, it could be recognized, as an exception, that its position could be changed by the very fact of the succession.

41. Mr. BEDJAOUI (Special Rapporteur) contested the premise of continuity upon which Mr. Ago's reasoning was based. If there were no element of rupture, that would indeed mean that the successor State assumed the obligations of the predecessor State. There would be no need to consider whether the successor State could modify or abolish acquired rights. The problem was solved by the premise itself.

42. A clearer situation could be arrived at if another premise, which he would be prepared to accept, were adopted. Instead of proceeding from the principle of continuity, by which the successor State absorbed the old legal order into its own legal order, the successor State could be regarded as being only a State like any other, and reference could be made to the international legal order. There would then be continuity, not of the legal order of the predecessor State, but of the international legal order. Once the successor State was born to international legal life, it immediately accepted the rules in force, namely, the international legal order. On that basis, it would be possible to accept the reasoning by which Mr. Ago drew the line of demarcation between the succession of States, which concerned the substance of the law, and responsibility, which covered the problems of sanction for violations.

43. As Mr. Castañeda had just said, the successor State should even be able to claim the right to be bound by lesser obligations than those of the predecessor State, in so far as it had not participated in drawing up the legal rules imposed on it.

The meeting rose at 12.45 p.m.

1008th MEETING

Wednesday, 25 June 1969, at 10.10 a.m.

Chairman: Mr. Nikolai USHAKOV

Present: Mr. Albónico, Mr. Bartoš, Mr. Bedjaoui, Mr. Castañeda, Mr. Castrén, Mr. Eustathiades, Mr. Ignacio-Pinto, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Rosenne, Mr. Ruda, Mr. Tabibi, Mr. Tammes, Mr. Tsuruoka, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

Succession of States and Governments: Succession in Respect of Matters other than Treaties

(A/CN.4/216/Rev.1)

[Item 2 (*b*) of the agenda]

(continued)

1. The CHAIRMAN invited the Commission to continue consideration of the Special Rapporteur's second report (A/CN.4/216/Rev.1).

[24] See *Yearbook of the International Law Commission, 1968*, vol. II, Report of the Commission to the General Assembly, paras. 61 and 79.