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A/CN.4/SR.965

Summary record of the 965th meeting

Topic:

<multiple topics>

Extract from the Yearbook of the International Law Commission:-

1968, vol. I

46. He agreed with Mr. Albónico that State succession in regard to economic questions should be given priority in the choice of subjects for study during the coming year. The emancipation of a country could not be regarded as complete until it had attained economic independence. He preferred the title "State succession in economic questions" to "The influence of the succession of States on economic matters", because the main influence in the economies of newly-independent countries was their struggle for economic self-determination.

47. Much research had been done under United Nations auspices on the subject of economic independence, especially since the establishment of the Commission on Permanent Sovereignty over Natural Resources, and the International Law Commission had a clear mandate to study the succession aspects of that subject. The Commission should not leave that study to some other United Nations body, but should take the present opportunity to clarify the situation. The Special Rapporteur could be asked to prepare the study, or at least the first part of it, in time for the Commission's next session. The question of State responsibility also required a special study.

48. Mr. NAGENDRA SINGH noted that there seemed to be general agreement on all the points in the Special Rapporteur's questionnaire except the specific problems of new States. He agreed with Mr. Kearney that the Commission should not give the impression that it wished to establish a *lex specialis* for the problems of new States, as such special pleading would detract from the value of any codification it undertook.

49. The purpose of codification was to introduce uniformity into international law, not to create rival camps on the issue of succession. It might therefore be better not to mention decolonization, which evoked unpleasant associations for some countries, but to refer to the experience of new States. Whatever approach to codification the Commission adopted, it could not ignore the many cases involving new States. But he did not think it would be appropriate to include a chapter on the succession problems of former colonies among the other aspects of succession, as that would also amount to special pleading. The best approach seemed to be to begin with a study of succession problems relating to public property and public debts, taking into account the extensive experience of new States. He could agree to the economic aspects being codified, but there should be a specific topic under the economic heading. It was essential to be precise.

50. He agreed with Mr. Eustathiades that the Commission should first try to codify rules of succession relating to treaties, for which Sir Humphrey Waldock had already prepared some draft articles, and then take up the question of public property and public debts when the Special Rapporteur had completed his study.

51. Mr. AGO, referring to Mr. Castañeda's remarks on the need to seek precedents in determining the traditional rules on State succession, said that a comprehensive study of Italian diplomatic practice relating to international law was being published in Italy; the volume covering the period 1860-1897 was due to appear towards the end of the year. The practice during that period covered very many questions of State succession which had arisen either in international relations proper or in connexion with internal problems; it was not only in regard to Italy that it was of interest: it reflected Italian relations with many other Powers. Since the subject might be of interest to the two Special Rapporteurs on State succession, he would send them the work as soon as it appeared.

52. The CHAIRMAN, speaking as a member of the Commission, said he agreed that, although the term "succession" was not entirely satisfactory, it would not be appropriate to try to find a substitute at that stage, especially before the Special Rapporteur had completed his study of the succession of States. The term was in any case well established in international law. The Commission could, at least in the meantime, adopt the connotation suggested by Sir Humphrey Waldock and regard succession as a change in the possession of competence to conclude treaties with respect to a given territory. He also agreed that it would not be opportune to study the origins and types of succession at that stage, and that the subject could perhaps be more usefully discussed when the Special Rapporteurs had completed their studies.

53. With regard to the special consideration to be given to the succession problems of new States, he believed that the Commission, when undertaking the codification of rules on that subject, should take into account all past experience of succession problems arising out of decolonization, including that of Latin American countries. The Commission should try to help new States to consolidate their political and economic sovereignty, and could best do so by drawing up a code of rules which reflected the experience of all former colonies.

54. He had at first been inclined to agree with Mr. Eustathiades that territorial questions deserved priority, since territory was of fundamental concern to States. But in view of the guidance given by the General Assembly in its resolutions he thought the Commission should give priority to the economic aspects of succession. He agreed with Sir Humphrey Waldock that the somewhat diffuse subject of economic aspects should be limited to the more specific problems of public property and public debts and asked the Special Rapporteur to word the title of his study accordingly.

The meeting rose at 12.50 p.m.

965th MEETING

Monday, 1 July 1968, at 3.10 p.m.

Chairman: Mr. José María RUDA

Present: Mr. Albónico, Mr. Amado, Mr. Bartoš, Mr. Bedjaoui, Mr. Castañeda, 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 Rights and Duties resulting from Sources other than Treaties

(A/CN.4/204)

[Item 1 (*b*) of the agenda]

(continued)

1. The CHAIRMAN invited the Special Rapporteur to sum up his conclusions from the debate.

2. Mr. BEDJAOUI (Special Rapporteur) said he would not deal with the substantive issues, as the Commission would have occasion to revert to them. He would confine his remarks to the preliminary questions asked in the questionnaire circulated at the 962nd meeting.

3. On question 1, the members of the Commission had agreed that the title of the subject should be amended to "Succession of States in matters other than treaties".

4. As to question 2, it was considered that no attempt should be made to draft a general definition of State succession at that stage, as it would be premature and dangerous. It might not even be necessary to define "succession"—a term which would continue to be used for lack of a better one, although it was rather too closely associated with private law. The general view was that it might perhaps be useful later to give some explanation of the meaning of the expressions which would be used in the draft.

5. The answer to question 3 was that the Commission clearly wished to combine codification with progressive development of international law.

6. As to the form its work should take (question 4), it seemed that the Commission would prefer a set of rules, or perhaps draft articles, and that the final form could be decided later.

7. With regard to question 5, he emphasized that he had deliberately simplified, or even caricatured, the typology of State succession. There were certainly exceptions to the classification he had proposed and it needed to be elaborated. In any case, the members of the Commission were unanimous in thinking that the origins and types of State succession should not be the subject of a separate section.

8. On question 6, he thought all the members of the Commission agreed that the whole study should be undertaken in the light of the problem of new States, but without neglecting other forms of succession. It was all a matter of proportion and a realistic approach. There was no denying that the phenomenon of decolonization was a major feature of modern times. Since the drafting of the Charter, the international community had recognized that it had special duties to a number of dependent countries and peoples, which were like an international public service and comparable to the duty of a State within its own territory to keep a public service working properly. Little by little, the principles of self-determination and decolonization had been recognized as new principles, and the Declaration on the granting of independence to colonial countries and peoples [1] had played a most important part in that process.

9. The discussion had brought out that the problems of the new States created by decolonization concerned not only the former colonial Power and the new State, but the international community as a whole.

10. As Mr. Bartoš had clearly shown at the previous meeting,[2] the traditional forms of succession involved a rather nominal change of sovereignty, whereas succession resulting from decolonization brought about a radical change in the social structure. In succession through decolonization there was not only a transfer of sovereignty from one State to another, but also reversion to a former sovereignty, and that could not fail to affect the validity of acts performed by the predecessor State, so that the factors making for rupture tended to outweigh those making for continuity. Of course, the way in which independence had been attained would influence the rules to be adopted, just as other differences had a bearing.

11. Decolonization was, however, the characteristic feature of the present period. It had brought into being rules which influenced traditional succession, as Mr. Ago had pointed out at the 962nd meeting. [3] Mr. Bartoš had emphasized that the principle of nationality had also influenced the old rules. He himself thought it necessary to formulate rules which were as general as possible and to review the solutions adopted in practice, in order to find the most significant and characteristic elements of the present time.

12. With regard to question 7, he noted that most of his colleagues were in favour of leaving aside the question of the judicial settlement of disputes for the time being. Some even thought that it went beyond the scope of the subject under consideration and should be excluded from the Commission's work entirely.

13. Question 8, the choice of subjects to be given priority, raised a delicate problem. Of the various criteria which could be applied in making the choice, he had not thought it possible to adopt the frequency of cases, the interests at stake, the importance of the former colonial Power or the instrument—for example, a devolution treaty—by which issues were settled.

14. It would certainly have been quite logical to begin with territorial questions, as suggested by Mr. Eustathiades at the previous meeting.[4] He himself was keenly interested in those questions, but he thought that, critical though they might sometimes be, they did not arise in all cases of State succession, so they were not so general as economic questions.

15. He had thought he could begin with the problems of public property and public debts because they were important, because they also had a traditional aspect and because they had evolved sufficiently to provide material for the prediction of future trends. As that subject had seemed rather limited, he had thought of adding to it the whole associated field of concession rights and adminis-

[1] General Assembly resolution 1514 (XV).

[2] See para. 5.

[3] See para. 68.

[4] See para. 44.

trative contracts, in other words acquired rights, and then making a general study of succession to the various economic resources ("*moyens économiques*"), which would include the question of the rights of peoples over their natural resources. The subject was certainly very broad and rather vague. Moreover, the translation of the wording into English seemed to present difficulties. The expression "economic interests" would be even more vague, but at least economic interests could be contrasted with economic rights. The study of succession to economic resources would cover all the interests and rights involved.

16. Regarding the subject of succession to the national heritage proposed by Mr. Castañeda at the previous meeting,[5] he pointed out that it was difficult to define a State's national heritage, since its content changed with the political régime.

17. He therefore adhered to his proposal to study economic questions. By a process of elimination it was quite easy to see that that subject did not include problems of nationality, of succession to a legal régime or territorial problems. Of course, the Commission did not intend to abandon those other subjects, but only to postpone their study in order to give priority to one which, in the general opinion, seemed to be more urgent and of wider interest.

18. The CHAIRMAN noted that the title of the priority subject still raised some problems, particularly because of the difficulty of rendering it into Spanish and English.

19. Mr. YASSEEN thought that a distinct preference had been shown for a study of the economic questions arising out of State succession. It was a good subject to begin with, and the members of the Commission were in no doubt about what had to be studied. The term "economic resources" was clearly not very satisfactory, but that was a drafting matter which could be settled at the next session.

20. Mr. EUSTATHIADES said he assumed, from the statement made by the Special Rapporteur, that the choice of the subject to be given priority had not been irrevocably made. He therefore hoped that the Commission would give further thought to the possibility of choosing the subjects he had suggested at the previous meeting, namely, territorial problems and succession to the legal régime of the predecessor State.

21. He did not think the expression "economic resources" clearly identified the subject-matter to which it referred, especially if other questions than those initially selected by the Special Rapporteur were to be included, and also perhaps the question of acquired rights; so that if the Commission nevertheless decided to deal with "economic resources" he would propose some such wording as "Succession in the economic and financial field" or "Succession in economic and financial matters".

22. Mr. BARTOŠ thought the members of the Commission were basically in agreement. The question of public property and public debts in State succession had to be studied in the more general context of the economic and financial situation. The title given to the specific subject was of secondary importance. The main point was that the Special Rapporteur should be left free to choose and to deal with the matters he considered most appropriate.

23. He proposed that the Commission should approve the Special Rapporteur's conclusions, but emphasized that its decision should be regarded as provisional and only become final after consideration of the report submitted by the Special Rapporteur on the succession of States in respect of treaties.

24. Mr. REUTER said he would have misgivings about placing the question of succession to frontiers on the agenda. For a body of regional law applicable to a whole continent had been evolved on the subject, and that continent had derived great benefit from it. Before taking up such a thorny problem, the International Law Commission should give the regional organizations every opportunity of working out solutions for each continent.

25. The title of the subject to be given priority could be "Succession of States in economic and financial matters". He preferred that wording, which had the broadest meaning and was the most satisfactory from a linguistic point of view.

26. Mr. KEARNEY noted that the Special Rapporteur had come to the conclusion that there was agreement in the Commission to postpone consideration of the question of machinery for the settlement of disputes. The Special Rapporteur's impression had been that the subject would be examined at a later stage in the larger context of the general question of the settlement of disputes. His own feeling was that a substantial body of opinion in the Commission favoured deferring a decision on the question only until the Commission had made some progress on the substance of item 1 (*b*) of its agenda and could see what kind of disputes might arise from the rules proposed; the Commission would thus settle the question of the machinery for settlement in the light of the substantive provisions to which the machinery had reference.

27. Mr. USHAKOV thought that the Commission should not take too firm a decision. It could state that it took note of the Special Rapporteur's proposal, approved it and gave the Special Rapporteur full freedom to consider the scope of his work for the following year.

28. Sir Humphrey WALDOCK said he agreed with Mr. Kearney in thinking that the Commission had decided to leave aside the question of machinery for the settlement of disputes until it could see what problems the draft on Mr. Bedjaoui's subject might throw up that gave rise to a particular need for machinery for settling disputes.

29. As to the title of the priority subject, he had some difficulty with the French expression "*moyens économiques*" because it would probably be translated into English as "economic resources", which was not perhaps quite what was intended. The title "Succession of States in economic and financial matters" would be less misleading and therefore more suitable.

30. Mr. BEDJAOUI (Special Rapporteur) said he noted the remarks of Mr. Kearney and Sir Humphrey Waldock regarding the settlement of disputes.

31. He was quite willing to call his subject either "Succession of States in economic and financial matters"

[5] See para. 31.

or "The economic and financial aspects of State succession".

32. So far as frontiers were concerned, he had refrained from mentioning his personal preferences. The subject chosen had been chosen by the majority of the Commission. In any case, even though it was wiser to begin with the succession of States in economic and financial matters, there was no question of shelving the other problems permanently.

33. Mr. AMADO said he hoped the Special Rapporteur would continue to enlighten the Commission on the subject of State succession, which was of such historic importance to South Americans.

34. Mr. TSURUOKA said he thought that what had to be done was to take a decision on the order of priority; he understood that the Special Rapporteur would be free to add other subjects to his study.

35. The CHAIRMAN, replying to Mr. Tsuruoka, said that the Commission had always left its Special Rapporteurs ample freedom to deal with their topics as they saw fit; in the present instance, the Special Rapporteur would probably have his hands full with the subject of State succession in economic and financial matters.

36. He noted that there was general agreement on the title "Succession of States in economic and financial matters" for the subject to be prepared by the Special Rapporteur for the next session.

37. He also noted that the Commission approved the Special Rapporteur's conclusions on the other seven questions in his questionnaire, on the understanding that, as requested by Mr. Bartoš, the approval was provisional pending any decision that might be taken under item 1 (*a*) of the agenda regarding co-ordination of the work of the two Special Rapporteurs.

38. If there was no objection, he would take it that the Commission agreed to that procedure.

It was so agreed.

Succession of States and Governments: Succession in respect of Treaties

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

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

39. The CHAIRMAN invited the Special Rapporteur on item 1 (*a*) of the agenda to introduce his first report (A/CN.4/202).

40. Sir Humphrey WALDOCK (Special Rapporteur) said he did not suppose the Commission would wish to go over again, in the context of his report, all the ground it had just covered in discussing Mr. Bedjaoui's report. In the introduction to his first report he had not dwelt on the general economic, political and social considerations which formed the framework of the legal problems of State succession. Those considerations constituted the general background of his study, but he had thought it was his primary duty to examine the practice of States, particularly the modern practice, and the many writings on the subject, in an endeavour to discern principles of law.

41. During the debate on agenda item 1 (*b*), he had spoken on the possible overlap of the two parts of the topic of State succession. He had then interpreted his own subject as strictly limited to succession with respect to treaties.[6] He was called upon to deal with the question how far treaties concluded and applicable with respect to a given territory might continue, through one process or another, to be applicable after there had been a change in sovereignty over that territory.

42. His idea had been that he should not concern himself with the subject matter of the treaty, but that occasionally the subject-matter might have some impact on the question of succession with respect to treaties. In that connexion he had been cautious about taking any final position on the difficult problem of dispositive treaties.

43. In general, there would be no large overlap between the two parts of the topic of State succession. If a treaty was applicable to a territory, however, it would be binding on the State concerned and might therefore affect the handling of questions of succession in matters other than treaties.

44. In the circumstances, he thought there was no need for the Commission to concern itself at the outset with co-ordinating the two parts of the topic of State succession. The question of the interaction and co-ordination of items 1 (*a*) and 1 (*b*) of the agenda should be left until a later stage of the work.

45. There was a difference between the two parts of the topic of State succession. In the part assigned to Mr. Bedjaoui, the implications of succession were in the first instance mainly in municipal law; its implications in international law were secondary, being due to the impact of municipal law on foreign interests. The implications of succession with respect to treaties, on the other hand, were always in the first instance international. There might also, of course, be implications in municipal law in so far as a treaty became part of that law, but the fact remained that agenda item 1 (*a*) was a topic operating more directly on the plane of international law and international relations.

46. Succession of States with respect to treaties had the closest links with the law of treaties itself, and could be regarded as dealing with particular aspects of participation in treaties, the conclusion of treaties and the application of treaties. In codifying the subject, it would therefore be necessary to bear in mind the general principles of the law of treaties. In that connexion, he drew attention to article 69 of the draft convention on the law of treaties, in the form in which it had been approved by the Committee of the Whole of the United Nations Conference on the Law of Treaties at its first session at Vienna.[7] It was stipulated in that article that "The provisions of the present Convention shall not prejudge any question that may arise in regard to a treaty from a succession of States".

47. On the question of participation in treaties and conclusion of treaties, the same Committee of the Vienna Conference had approved a new article 9 *bis*, which

[6] See 961st meeting, para. 27 *et seq.*

[7] A/CONF.39/C.1/L.370/Add.7.

might be of interest for problems of State succession with respect to treaties. That article read: "The consent of a State to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, approval, acceptance or accession, *or by any other means if so agreed*".

48. It was apparent from the practice of States that in many cases the issue was succession to the right to become a party to a treaty rather than to the rights and obligations of the treaty itself. In any case, whether in virtue of a right or not, what occurred was participation outside the modes of participation contemplated in the final clauses of the treaty itself. State practice showed that treaties, and especially general multilateral treaties, often remained in application after the State which had concluded the treaty for the territory concerned had been replaced by another State. The problem for the Commission was how to express that phenomenon in terms of law. One solution might be to express it in terms of participation; the Commission's draft on the law of treaties had been silent on the question of participation, mainly because of the difficulties which arose in regard to the concept of general multilateral treaties. The Vienna Conference had postponed until its second session consideration of a proposal for a new article 5 *bis* relating to participation in general multilateral treaties;[8] the final decision taken on the matter would, of course, be of interest to the Commission in connexion with the topic of State succession.

49. The provisions of the Vienna draft on reservations to multilateral treaties would also have an impact on State succession. The same was true of the provisions on signature subject to ratification in the case of a treaty signed under those conditions but not ratified at the time of succession. Problems of State succession could also arise in connexion with the provisions on the entry into force and provisional application of treaties.

50. Article 25, as approved by the Committee of the Whole of the Vienna Conference at its first session, was of particular interest. It read: "Unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory". That article would come into play in cases of succession which involved, not the setting up of a new State, but the transfer of a given territory. Its provisions connoted the automatic extension to the territory in question of the application of the treaties of the successor State and the corresponding termination of the treaties of the predecessor State.

51. The provisions of the Vienna draft on the effects of treaties on third States would also be relevant, not least with regard to devolution treaties. The Commission would also have to consider the principles concerning the validity and termination of treaties and their effect on the succession of States with respect to treaties.

52. To sum up, the Commission could not do otherwise than examine the topic of succession of States with respect to treaties within the general framework of the law of treaties. In the introduction to his first report, he had stressed that the principles and rules of the law of treaties seemed to provide a surer guide to the problems of succession with respect to treaties than any general theories of succession.

53. That approach did not mean that the Commission's task would be made any easier or that it would be limited to the general framework of the law of treaties. The Commission would have to interpret the State practice in the matter and find a delicate balance between the various interests involved.

54. As to its contents, his report was to a large extent introductory. It represented an initial study of the topic, which had been rendered difficult by the extensive material existing on multilateral treaties, as evidenced by the wealth of valuable information provided by the Secretariat (A/CN.4/200 and Add.1-2); in that connexion he expressed his appreciation of the material provided concerning the specialized agencies, which gave a general idea of the modern practice with regard to certain types of multilateral treaties.

55. So far as bilateral treaties were concerned, the difficulties arose partly from the lack of material. Some useful data could be found in the International Law Association's handbook *The Effect of Independence on Treaties* (1965), in the Secretariat study *Materials on Succession of States* (ST/LEG/SER.B/14) and in O'Connell's *The Law of State Succession*.[9] The information furnished by States on bilateral treaties was not, however, comparable to the material provided by the Secretariat on multilateral treaties.

56. It had been his general plan to deal next with the part of the subject which related essentially to changes of sovereignty not resulting in the setting up of a new State. That would be followed by the major part of the topic, namely, the problems of succession with respect to treaties connected with the establishment of new States.

57. A number of particular problems had arisen at the outset of his work. The first was that of the meaning of State succession. In article 1 (Use of terms) of his draft articles, he had defined the word "succession", for the purposes of those articles, as meaning "the replacement of one State by another... in the possession of the competence to conclude treaties with respect to a given territory". That provision on the use of terms was, of course, not intended as a definition of the legal concept of succession.

58. It was both convenient and correct to use the word "succession" to describe the process of the displacement of one State by another in the sovereignty over a given territory. He had used the expression "competence to conclude treaties" instead of "sovereignty", in order to avoid the difficulties which arose in certain cases, such as that of protected States, in which it was hard to say whether there had been a displacement of sovereignty; the Permanent Court of International Justice had held that the personality of a protected State had always existed in international law.

59. In any event, he urged the Commission not to take any firm decisions on general issues until it had had an opportunity of examining the substantive provisions of the draft. He had not yet said anything about the form of his report. The draft articles he had prepared did not go

[8] A/CONF.39/C.1/L.370.

[9] Cambridge University Press (1956).

far, but they did indicate the relationship between them and the draft articles on the law of treaties, to which they constituted a sequel. In his opinion the Commission worked best when it had a text before it to focus the discussion and clarify issues. For that reason he had prepared draft articles for a possible convention without in any way anticipating the Commission's future action.

60. The CHAIRMAN expressed the Commission's gratitude to the Special Rapporteur for having undertaken his difficult task, when so much of his time had been taken up by his duties as the Commission's representative at the General Assembly in the autumn of 1967 and as expert consultant to the Vienna Conference in the spring of 1968.

61. Mr. TABIBI said that both in theory and in practice the law on State succession in respect of treaties was ambiguous and confused. The type and object of treaties varied widely from country to country, as did the problems of succession themselves, and it was difficult to formulate universally applicable rules. The Commission must concentrate on producing practical rules that took into account the great changes in the world which had followed the First World War and the signing of the United Nations Charter. Neither the Sub-Committee on Succession of States and Governments nor the Commission itself had wished the scope of the subject to go beyond the succession of States and Governments in respect of treaties, because of the different nature of the régimes under which different situations arose. But the Special Rapporteur had adopted an approach which was not in line with the mandate given to him by the Sub-Committee and the Commission, whose view had been based on the nature of the relationship between the parties to treaties, as equal partners, and the successor State, the metropolitan country, a third State or in some cases an international organization.

62. The Commission's mandate should be followed and a thorough study of that branch of the law should be made, in order to formulate rules applicable to present-day needs. The Sub-Committee had emphasized that special attention should be given, in the light of contemporary needs and the principles of the Charter, to problems of succession arising as a result of the emancipation of many nations after the Second World War.[10] But the Special Rapporteur had explained in paragraph 14 of his report that there was "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". He agreed with the Special Rapporteur that the value of earlier precedents should not be ignored, but it would be a mistake to set aside all the facts which had induced the community of nations to accept the principle of self-determination; for after the establishment of the League of Nations and the United Nations new factors had come into play which had affected the validity of earlier precedents and principles of law.

63. He doubted whether the provision in draft article 1, paragraph 2 (*b*), could cover the situation of double succession, which had occurred in India and Pakistan, for example, and in Mali and Senegal.

64. *Succession with respect to treaties* did not take place without an express provision of the treaty or the express consent of the other party. To much reliance on municipal law would undermine the interests of sovereign States, particularly if the treaty was a territorial one.

65. It would be a mistake for the Commission to establish a rule on the basis of the views of a minority of lawyers concerning the highly political question of boundary treaties. If it approved the permanent validity of such treaties, the Commission would be weakening the cardinal principle of the Charter, namely, the right of self-determination, and such action would be contrary to the opinion of the Sub-Committee, as approved by the Commission, which had excluded the question of boundary treaties from the Special Rapporteur's consideration. Recognition of colonial treaties would in most cases be contrary to General Assembly resolutions 1514 (XV), 1654 (XVI) and 2353 (XXII). Boundary problems were highly political and fell within the competence of the United Nations and other political organs. Moreover, they differed widely one from another, and the same rule could not cover all situations as suggested by the Special Rapporteur. In his book, "International Boundaries",[11] Whittemore Boggs had said that such problems should be referred for settlement by international adjudication or arbitration.

66. Frontier problems were complicated by the fact that the different terms, such as boundary, demarcation line and sphere of influence, were understood in different senses by different people. According to Lang in his recent book "Asian Frontier States", British imperial authorities understood a frontier to be a tract of territory separating two sovereign States. Colonial boundaries were shaped to suit the strategic and economic needs of the colonial Powers rather than according to the aspirations of a colonial population, and many Asian and African boundaries failed to follow clear ethnic or cultural divisions. To endorse colonial treaties would create more problems than it solved.

67. He did not agree with the Special Rapporteur's statement in paragraph (2) of his commentary on article 4 that "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".

68. The views of Mr. Castrén and of the International Law Association differed from those of the Special Rapporteur, and the former had stated that "The boundaries for international succession dealing with States—which may be called State succession—are, however, uncertain, there are no general agreements on State succession and even the international customary law on it is defective".[12]

69. In drafting article 4 and the commentary on it, the Special Rapporteur had given no weight to the text of the

[10] See *Yearbook of the International Law Commission, 1963*, vol. II, p. 261, para. 6.

[11] S. Whittemore Boggs, *International Boundaries*, New York (1940), Columbia University Press.

[12] See *Yearbook of the International Law Commission, 1963*, vol. II, p. 291.

boundary treaty itself, which in many cases called for termination under certain conditions; and in giving precedence to the minority views of some jurists in the name of stability, he undermined the *jus cogens* principle of self-determination. His views, as expressed in that article and in the commentary, conflicted with the doctrine of "revindication", under which a country could reclaim something that it had once held as of right, particularly if backed by the right of self-determination.

70. The principal aim now was the preservation of peace and stability. The Commission's approach should therefore be in line with the views of Mr. Cukwurah, who, in his book "The Settlement of Boundary Disputes in International Law",[13] had stated that "In conformity with the United Nations Charter, and in order to achieve the kind of 'stability and finality' [discussed in Chapter V], international boundary disputes must be settled peacefully". If the machinery for the pacific settlement of disputes set up by the Charter was not made use of, and boundary treaties were protected under such a rule as that contained in article 4, peace would be endangered.

71. Mr. EUSTATHIADES warmly congratulated the Special Rapporteur on his report, and on his supplementary oral statement. Like the Special Rapporteur, and for the same reasons, he thought that the solution to the problems of succession with respect to treaties must at the present time be sought within the framework of the law of treaties rather than that of any general law relating to State succession. It should be added that for succession with respect to treaties there were certain commonly accepted general rules, but that was not so certain with regard to State succession in general. That was a further reason for separate treatment, in addition to the competence of Sir Humphrey Waldock and the expediency of dividing up the work.

72. As to the form of the draft articles, they would in any case constitute an independent instrument, but they could appear in any one of three possible ways: they could be linked, as a protocol, to the future convention on the law of treaties or to a general convention on State succession, or they could constitute an entirely separate instrument. Although the Special Rapporteur had not definitely pronounced in favour of one of these solutions, he had indicated his preference for a protocol to the convention on the law of treaties.

73. As to the question of the succession of Governments, the recommendation of the Sub-Committee [14] should be followed, and the Special Rapporteur should accordingly include some provisions on that subject in his draft, or at least note certain distinctions between succession of States and succession of Governments.

74. The problem of new States was perhaps less acute in succession with respect to treaties than in succession in general. He therefore approved of paragraphs 13 and 14 of the introduction, but he agreed with Mr. Tabibi that due attention should be given to the new problems and factors arising from the appearance of new States.

75. Some priority must obviously be given to doctrine and recent practice. He did not think the differences were so great that certain common rules could not be derived.

76. In connexion with the entirely correct statement in paragraph 16 of his report, the Special Rapporteur might perhaps wish to insert in the draft a clause to the effect that the provisions of the convention were without prejudice to special arrangements. That would perhaps make it possible to ignore the political considerations which might have led to such special arrangements.

77. With reference to the remarks of the Special Rapporteur, he asked whether the latter was proposing to deal with the difference between bilateral and multilateral treaties at a later stage. As to the idea that succession with respect to treaties was an international matter, whereas the subject assigned to Mr. Bedjaoui belonged rather to the internal sphere, he hoped that the Special Rapporteur would amplify what he had merely outlined in his oral statement, namely, that it was not a question of substance, but only of form.

78. Lastly, the definition of State succession contained in article 1 of the draft dealt with succession in regard to future treaties; the right of the new State or Government to participate in an existing treaty should perhaps also be considered. It might be possible to find a single formula to cover both eventualities. That was a question to be examined at a later stage.

The meeting rose at 6 p.m.

966th MEETING

Tuesday, 2 July 1968, at 10 a.m.

Chairman: Mr. José María RUDA

Present: Mr. Albónico, Mr. Amado, Mr. Bartoš, Mr. Bedjaoui, Mr. Castañeda, 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 invited the Commission to continue consideration of the Special Rapporteur's report (A/CN.4/202) on item 1 (*a*) of the agenda.

2. Mr. CASTRÉN said that a general discussion based on the excellent first report submitted by the Special Rapporteur would help the Commission to decide how it should tackle the subject and on which problems it should concentrate its attention.

[13] A. O. Cukwurah, *The Settlement of Boundary Disputes in International Law* (1967), Manchester University Press.

[14] See *Yearbook of the International Law Commission, 1963*, vol. II, p. 261, para. 9.