Document:-

A/CN.4/SR.967

Summary record of the 967th meeting

Topic:

Succession of States with respect to treaties

Extract from the Yearbook of the International Law Commission:-

1968, vol. I

law, provided they were adapted to the needs of contemporary law. Such adaptation was not contrary to the basic rules of the law of nations, of which decolonization was today one of the main principles.

60. With regard to article 4 of the draft, it should be noted that the frontiers of States created by decolonization were often former administrative boundaries fixed by the old colonial Power, which might sometimes have altered them only a few years before decolonization. The question of the moment to be taken as a basis for determining the final boundary was more political than legal. He would certainly make every reservation on the existence of any right of the colonial Power in regard to the territory of the former colony, particularly as to the fixing of boundaries. The system of the Treaty of Versailles had recognized the existence of disputed zones whose inhabitants had been able to exercise an option by plebiscite. That might only have been a palliative, but it was an improvement on the previous system, which was set out and accepted in article 4 of the draft.

61. The principle stated in article 4 should not constitute an absolute rule to be applied without taking account of various political and legal factors and without considering the legitimate aspirations and wishes of those concerned in accordance with the United Nations Charter.

The meeting rose at 12.55 p.m.

967th MEETING

Wednesday, 3 July 1968, at 10 a.m.

Chairman: Mr. José María RUDA

Present: Mr. Albónico, Mr. Amado, Mr. Bartoš, Mr. Bedjaoui, Mr. Castrén, Mr. El-Erian, Mr. Eustathiades, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Reuter, Mr. Rosenne, Mr. Tabibi, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

Succession of States and Governments: Succession in respect of Treaties

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

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

(continued)

1. The CHAIRMAN invited the Commission to continue consideration of the Special Rapporteur's report on succession of States and Governments in respect of treaties (A/CN.4/202).

2. Mr. TSURUOKA said that the purpose of the Commission's work was to provide the international community with a legal instrument that would ensure adequate protection for the lawful interests not only of the parties concerned, but also of third States and of the international community as a whole. That meant that the instrument would be valuable only if it was practical and easy to handle.

3. As to the scope of the study, it seemed that so far consideration had been confined to the question what the rights and obligations of a new State would be with respect to existing treaties. It might be worthwhile to extend the study to cover the process of State succession, and to specify, in particular, what political entity was qualified to succeed to a State and when and how succession took place.

4. Mr. Castañeda's comment that a State had a right, but not an obligation, to succeed to existing treaties deserved careful examination. It might be asked whether that was really a legal rule yet, whether it applied to all bilateral and multilateral treaties of whatever kind, and whether certain cases ought not to be reserved. For such a categorical statement would mean that the other parties had no say in the matter and were bound to agree to the accession of new States to treaties, even if their accession was accompanied by reservations and conditions. That, it seemed to him, was going too far.

5. As to what form the Commission's work should take, it was too early to reach a final decision. Mr. Kearney had pointed out that a convention would have serious disadvantages, because the new State would not be a party to it and would not be bound by its provisions, whereas the predecessor State would be bound, so that the positions of the two States or political entities concerned would be out of balance. There was already a whole network of bilateral and multilateral treaties in force, and Mr. Kearney's point applied just as much to those treaties as to a future convention on succession to treaties. The question therefore arose whether the subject of succession to treaties had a special character which justified special treatment.

6. Mr. ROSENNE said that the Special Rapporteur's report provided a valuable basis for a preliminary discussion.

7. The topic of succession in respect of treaties had some elements in common with the other aspects of succession, which the Commission had recently discussed, but it also had some special features. It was not inherently a problem of decolonization, as was the topic of succession in matters other than treaties, though the urgency of the problem, as distinct from the problem itself, derived exclusively from the process of decolonization, and the political and institutional framework in which decolonization was taking place provided the only sure ground on which the Commission could situate its work.

8. His study of what had occurred during the past twenty years had confirmed his view that the concept of succession was inadmissible if it implied some automatic process brought about by operation of law, which was independent of the consent of the parties. For that reason alone—because of its implication that something happened automatically—he would like the term "succession" to be jettisoned.

9. The Commission's decision to appoint two Special Rapporteurs showed that the subject should be treated in its own right, and the choice of Sir Humphrey Waldock showed that the Commission believed that the starting

point for the subject must be the codified law of treaties, from which it had hitherto been reserved. Some of the preliminary considerations discussed in 1963 had now been overtaken by events, notably by the advanced stage of the comprehensive codification of the law of treaties and the vast quantity of new material prepared by the Secretariat.

10. The subject under discussion was limited to the succession of States and Governments with respect to the same matter as was covered by the codified law of treaties; it did not extend to matters dealt with in treaties themselves. The Commission must keep within those limits for the same reason as it had restricted its own concept of what a treaty was, and in order to avoid arbitrary classifications. It had limited its codification of the law of treaties to the written instrument, and not to the obligation reflected in the treaty. The succession to obligations might be different from succession to treaties, just as the law of treaties itself was different from the law of international obligations. Another element deriving from the law of treaties was the principle of the autonomy of the will of the parties, which applied in the material sense to the assumption of treaty rights and obligations, and in the personal sense to the identity of the co-contracting parties. That element was concentrated in the definition of "party" in the 1966 articles,[1] to which no amendment had been proposed at Vienna.

11. In introducing his report, the Special Rapporteur had introduced an important nuance when he had referred to the right of a new State to become a party to a treaty, or to continue to apply a treaty as a party in its own right, if the treaty had previously been applied in the territory.[2] That approach was correct, but it was important to keep in mind the many ways in which a metropolitan State might have applied treaties in a dependent territory without the juridical basis of the action being very clear. Such lack of system had been a cause of considerable confusion.

12. He agreed with the statement in paragraph 14 of the report that "Succession in respect of a treaty is a question which by its very nature involves consensual relations with other existing States...". That was true both for old and for new States.

13. There was a significant difference between the decolonization practice of the United Nations and the steps taken in 1931 by the League of Nations, the Council of which, in a resolution of 4 September 1931, had adopted a series of general conditions for the termination of mandates, including a clause on the future of treaty obligations that were binding on mandated territories.[3] Except in a few early isolated cases, which had not been wholly successful, the United Nations had not adopted any comparable set of conditions or tried to force succession on new States, even, as in the case of Cameroon, where the territory had previously been under a mandate. That demonstrated the nature of the changes inspired by the Charter and should be brought out in the Commission's report, possibly in paragraph 15, where the reference to the principles of the Charter should be transferred from the end to the beginning.

14. Although new States had adopted different attitudes, ranging from the *tabula rasa* position to complete succession, with variants in between, a common feature was the freedom of each State to choose its own approach. That was not new; the same situation had existed after the First World War, and was usefully illustrated in the Digest of decisions of national courts relating to succession of States and Governments, published by the Secretariat in 1963.[4] He thought the Commission should be extremely careful not to disturb the pragmatism of current practices.

15. Having had close personal experience of the *tabula rasa* position, which had been adopted by Israel, he would not dispute that it was inconvenient, or that it would be easier to have continuity. But the few States which had chosen to adopt the *tabula rasa* position had done so for good reasons and their choice had been recognized as legally permissible by other States.

16. It would not be premature for the Commission to consider the form which the work on succession of States and Governments in respect of treaties should take. The question was treated in a technical way in paragraph 11 of the Special Rapporteur's report, but he shared the doubts of other speakers as to whether all the possibilities were exhausted there. For example, the question of the relationship between any new convention on the matter and the final clauses, particularly the participation clauses, of existing treaties was not dealt with. That aspect was important because modern depositary practice showed that the choice of the new State was not the only factor and that account was also taken of the terms of the participation clause of a given treaty. Another question to consider would be how the articles would operate *ratione temporis*, and whether they would solve the problems they were designed to meet.

17. Perhaps the Commission should draw up a descriptive report explaining how the codified law of treaties applied to the problems mentioned by the Special Rapporteur, such as the effect of participation in a treaty through a declaration of succession and its corollary, which was termination, not in the sense of the draft articles on the law of treaties, but meaning the exercise by the successor State of the right not to take up the option to continue to apply a treaty. Other questions such as reservations, application and interpretation would also have to be dealt with. He thought that the new article 9 *bis* adopted by the Committee of the Whole of the Vienna Conference on the Law of Treaties[5] was broad enough to cover participation through a declaration of succession.

18. He was not in favour of the idea of recommending a draft resolution to the General Assembly, because of the questionable status of resolutions in the hierarchy of rules of law—a point which had been discussed by the Commission at its 685th meeting.[6] There was a risk that

[1] *Yearbook of the International Law Commission, 1966*, vol. II, p. 187, article 2, para. 1 (*g*).

[2] See 965th meeting, paras. 48 *et seq.*

[3] See League of Nations, *Official Journal*, 1931, Minutes of the Council (64th session), p. 2056.

[4] See *Yearbook of the International Law Commission, 1963*, vol. II, pp. 106 *et seq.*

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

[6] See *Yearbook of the International Law Commission, 1963*, vol. I, pp. 73 *et seq.*

the resolution would consist of no more than generalized propositions of little practical value: the formulation of such resolutions was not one of the Commission's functions.

19. With regard to the draft articles, the approach in article 1, paragraph 2 (*a*), should be based on fact, as the Special Rapporteur had stated, but he doubted whether the formal competence to conclude treaties with respect to a given territory was the criterion, since sometimes the Governments of dependent territories had such competence. In fact, the criterion was free, independent and unrestricted competence, in other words, sovereignty. For that reason the concept of evolutionary independence touched upon by one speaker in the discussion [7] should be approached with caution, and in that respect the succession of Governments would need to be closely examined.

20. He doubted whether article 2 was necessary; the reasons for including such a rule in the articles on the law of treaties did not apply in the present instance. The same was true of article 3. Furthermore, for formal reasons, it was difficult to understand why any reference should have been made to the constituent instruments of international organizations, since succession in respect of membership in international organizations was a separate question on the Commission's programme of work and should be discussed at some later stage.

21. He was not convinced that article 4 came within the scope of the law of treaties. Without taking any position on the substance of the problem, he thought that it rather concerned the consequences of particular types of treaties and touched upon *uti possidetis* in various forms. It was not relevant in the present text. He also thought that the text as drafted might only apply as between the parties to the treaty and would therefore not fully meet the Special Rapporteur's objective.

22. Mr. BEDJAOUI observed that in his first report the Special Rapporteur had not shrunk from the difficulties and contemplated dealing with the problem of succession of Governments, despite the Commission's earlier decision to confine itself to succession of States. If he did adopt that course, some co-ordination of the work of the two Special Rapporteurs would be required, though each should be allowed the greatest latitude in working out the most convenient approach to his subject.

23. For succession to treaties, it was proposed to define succession as the replacement of one State by another in the possession of the competence to conclude treaties. That definition was as wide and acceptable as possible, and was intended to cover all situations. The substitution of the notion of transfer of competence for that of transfer of sovereignty would make it possible for the draft to cover the problems raised by protectorates.

24. But the transfer of competence to conclude treaties took place before succession proper. It could be said to precede the opening of the succession. Succession could only take place if there were two previously constituted States: it was simply the transfer of rights and obligations, not the transfer of competence referred to in draft article 1. It was because a State possessed competence to conclude treaties before the succession, that succession raised the problem of reconciling that already existing competence with the need to succeed to earlier treaties.

25. With regard to the general framework of the study of succession to treaties, the subject was obviously at the meeting-point of the law of treaties and the law of State succession in general. The Commission had previously decided to deal with succession to treaties within the framework of State succession. Of course, that decision was not irreversible, but if the Commission was to go back on it, fresh reasons should be given, and so far he could see none. For the moment, therefore, wisdom required that the decision be upheld.

26. It was true, as Mr. Castañeda had said, that new States had a right, but not an obligation, to succeed to treaties. It could be maintained that accession to a treaty concluded before decolonization, or a declaration of continuity, were merely the exercise of the new State's competence to conclude treaties, which would be a further reason for placing succession to treaties within the framework of the law of treaties. But it was necessary to ask what the rules on the subject were to be based on, and the answer to that question must be sought in the law of State succession, not in the law of treaties.

27. Article 4, which related to the thorny question of the permanence of boundaries established by treaties prior to a succession, showed the Special Rapporteur's concern not to take sides on such a delicate point and simply to make a reservation excluding the matter from his field of study. But by reasoning *a contrario*, a legal rule could be deduced from the formulation of the article, which should therefore be changed so as to leave no room for discussion. To delete the article altogether might have disadvantages.

28. With regard to the substance of article 4, he would only say that he agreed with the Special Rapporteur that treaties establishing boundaries admitted of succession, especially as they could be confirmed by devolution treaties or regional law, and could also be invoked by neighbouring States. The Charter of the Organization of African Unity,[8] while not ignoring the fundamental principle of self-determination, stressed the territorial integrity of every State; that implied not only the acceptance of treaties which had preceded decolonization, but also the erection of administrative frontiers into international boundaries. If the organization had not had the good sense to maintain the *status quo*, the African continent, like other continents, would have become a veritable powder-magazine.

29. The Special Rapporteur's comments on the problems of new States were reasonable. It was true that sources of documentation on bilateral treaties were limited, whereas on multilateral treaties there was an excessive amount of material. Another difficulty was the uncertainty of what was included in the succession, for even during the former colonial Power's exercise of sovereignty, it might have been questioned whether a given treaty applied to a particular colonial territory under the rule of the metropolitan Power.

[7] See previous meeting, paras. 44 *et seq.*

[8] See United Nations, *Treaty Series*, vol. 479, p. 70.

30. With regard to the relative value of earlier and later precedents, the uncertainty came from not knowing whether to infer legal or merely moral obligations from them, and whether they represented a certain trend or were merely the expression of a particular policy followed by a group of countries.

31. Although decolonization was nearly finished and State succession in the future would be more associated with techniques of federalism and other forms of State association, it was also certain that several decades would pass before all relationships between the former metropolitan Powers and the independent excolonies could be finally settled. The law was primarily conservative, and its role was to systematize the facts of existing situations.

32. Mr. RAMANGASOAVINA said that the Special Rapporteur had been very wise in stating, in paragraph 9 of his report, that the solution of the problems of succession in respect of treaties was today to be sought within the framework of the law of treaties rather than that of any general law of succession. That did not mean that he (Mr. Ramangasoavina) had lost interest in State succession. On the contrary, he was very interested in it, but at the present stage it was preferable to select the approach which offered the best chance of achieving a concrete result; moreover, the subject formed a logical sequel to the law of treaties.

33. In approving in 1963 the objectives proposed by the Sub-Committee on Succession of States and Governments, namely, "a survey and evaluation of the present state of the law and practice in the matter of State succession and the preparation of draft articles on the topic in the light of new developments in international law",[9] the Commission might perhaps have failed to realize just how difficult the subject was. As the Special Rapporteur had pointed out in paragraph 9 of his report, there might be doubts as to how far any specific legal institution of "succession" had been recognized in international law. Mr. Rosenne had hinted at some of the difficulties of the subject when he had said he could not accept the principle of the automatic transmission of treaties. Any State succession could give rise to a complicated discussion involving subjective elements connected with historical precedents and the political and legal context in which the succession took place.

34. The theories on the subject of succession were very varied. If succession was considered as relating to everything—to both the liabilities and the assets, the obligations and the rights—the new State might be very over-burdened. According to the theory of universal succession, treaties were merely an element in the succession and would inevitably take on a new aspect, which might impair the continuity of the legal order. Again, the sovereignty and independence of the new State might be jeopardized, since it would be bound by an instrument which was not of its own making.

35. To approach succession to treaties from the point of view of State succession would therefore mean running into a great many difficulties. To approach it from the point of view of the law of treaties, on the other hand, would mean that the subject was simplified, limited and to some extent even taken out of the realm of politics; that would be a great advantage, because such a highly topical subject was not free from passion and stimulated argument.

36. Having made the fundamental choice between those two approaches, the Commission should study the subject with reference to the views of the new States, as required by the recommendations of the General Assembly, the needs of the contemporary world and the principles of the United Nations Charter. The need to apply multilateral treaties, and the interdependence of nations, required that the subject be treated, not in relation to a small slice of history, but in its entirety. That would serve the interests of all States, new and old, including third States, and consequently those of the whole international community.

37. The best method of work was undoubtedly to discuss specific texts. The Special Rapporteur had therefore been right to submit a number of articles at the start.

38. He did not deny the justification or value of article 4, but he feared it might be a little precipitate to tackle so soon the delicate problem of boundaries, which might offend certain susceptibilities.

39. In considering the remainder of the draft, the Commission would have to take into account two conflicting tendencies which would continue to prevail throughout the world: the tendency of States to divide, by virtue of the principle of self-determination and the right of peoples to decide their own future, and the tendency to regroup, by fusion or integration. The international community needed a few fundamental rules acceptable to the vast majority of its members and calculated to ensure peace and tranquillity in the matter of succession to treaties.

40. Mr. YASSEEN said he thought the report under consideration formed an ideal basis for a preliminary discussion on a subject beset with uncertainties. The Special Rapporteur had raised several questions which the Commission must answer.

41. In the first place, the Commission would do well to leave aside succession of Governments for the moment, or only refer to it where necessary for its study of State succession.

42. With regard to the form of the draft, the final decision on that point could be left till later, as the Special Rapporteur had himself suggested.

43. As to whether the Commission should rely on earlier or later precedents, his opinion was that the earlier precedents which had retained their force should be taken into consideration, but that those which modern practice had made obsolete should be ignored. The important point was to take as a basis the practice which reflected contemporary realities.

44. Since the subject of the study was succession of States in respect of treaties, the Commission could not hope to study it solely within the framework of the law of treaties or solely within that of the law of succession. Both branches of law must be taken into account. If it were decided to refer only to the law of treaties, all problems would be solved if it were possible to give a

[9] See *Yearbook of the International Law Commission, 1963*, vol. II, p. 224, para. 59.

categorical answer to the question whether the successor State was a third State with respect to the treaty or whether it was a party to the treaty; but that was impossible.

45. The practice was not uniform and had few common elements. That was in the nature of things. The situations differed widely and called for different solutions. It was therefore necessary to identify the factors involved and establish categories. In doing so, it would be possible to rely on two criteria, the first of which was the conditions which had brought about the succession. Some conditions justified rupture and others justified continuation; there was also a whole range of cases falling between those two extremes. It was therefore necessary to formulate carefully differentiated rules adapted to the situations involved.

46. The second criterion was the treaty itself. It was impossible to adopt a uniform attitude to all treaties; the solution could not be the same for a codification treaty as for a treaty establishing a servitude over a territory.

47. The rules to be formulated should also allow for the fact that, the colonial régime having ended, succession to treaties must not have the effect of perpetuating the domination of the old colonial Power over the newly independent State.

48. It was inevitable that the term "succession" should be retained, since the successor State was never obliged to accept the succession. Even in private law, there were systems under which inheritance was subject to the consent of the heir.

49. Mr. USTOR said he would not discuss in detail the draft articles proposed by the Special Rapporteur in his excellent report, but would only touch upon some points which had arisen in the general debate.

50. With regard to the scope of the topic, he noted the Special Rapporteur's view that a solution to the problems involved must be sought within the framework of the law of treaties rather than of any general law of succession. That approach was correct, and could be expected to yield practical results, working on the solid basis of the Vienna draft on the law of treaties.

51. It was true that in 1963 the Sub-Committee had 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".[10] But that simply meant that succession in respect of treaties should not be dealt with as part of the law of treaties. The decision on that point had already been carried out, since the draft on the law of treaties had excluded succession in respect of treaties. There had been no intention on the part of the Sub-Committee to bind the present Special Rapporteur with regard to his method of work. He would start from the premise that the subject was closely related to the general law of treaties and would take into consideration the principles which, under the paramount rule of the United Nations Charter, could now be discerned as rules of State succession.

52. As to the form of the proposed codification, he agreed with the Special Rapporteur's conclusion that the draft should constitute "an autonomous group of articles on succession in respect of treaties" (A/CN.4/202, para. 11). It was true that the practice of States was very varied and that it would not be easy to deduce hard and fast rules from it. But that difficulty was inherent in any codification, and it was too early to assume that the Special Rapporteur and the Commission itself would not be able to succeed as they had done with the general law of treaties, on which the practice of States was also very varied in many ways.

53. It was also true that it would not be possible in all cases to guarantee the effectiveness of a convention, if one were ultimately adopted. States interested in future cases of succession might not all be parties to the convention, and in that case its provisions would not be effective, except where they were merely the codification of existing customary law. New States coming into existence in the future might perhaps contest the validity of rules in the formulation of which they had not participated. But objections of that kind could be raised against any codification, regardless of its form. The best course was to adopt the usual method of approach and wait for articles to be produced by the Special Rapporteur. The success of the Commission's work depended largely on its content. If it responded to the present needs of the international community, offered solutions which were thought to be fair and reasonable and took into consideration the legitimate interests of the new States, its work would have a considerable influence and that was the ultimate proof of success. It was certainly a much more complicated task to deal with the present topic than with a subject like diplomatic relations; but to obtain the desired effect, it seemed necessary to adopt the most solemn form of international legislation, namely, a convention or protocol.

54. As to the problems of new States, there did not seem to be any essential difference between the views of the Special Rapporteur and those of certain members of the Commission, except perhaps on questions of emphasis, which were not of major importance. It was his understanding that the Special Rapporteur would give particular attention to the problems of new States without neglecting the other aspects of the subject. He would also be sure to take into account the views expressed by members during the discussion.

55. The Commission could certainly look forward with confidence to the continuation of the Special Rapporteur's work and to his future reports.

56. Mr. EL-ERIAN said that, as to the scope of the work, he agreed with the Special Rapporteur's statement in paragraph 11 of his report that the aim should be to produce an autonomous group of articles which would assume the existence of a convention on the law of treaties.

57. The question whether the present topic should be dealt with from the standpoint of the law of treaties or from that of succession was now largely academic. In 1963 it had been decided that succession in respect of treaties should not be treated as part of the general topic of the law of treaties. That decision had been acted upon and the topic was now being given separate treatment.

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

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

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

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

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

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

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

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

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

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

The meeting rose at 1 p.m.

968th MEETING

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

Chairman: Mr. José María RUDA

Present: Mr. Albónico, Mr. Amado, Mr. Bartoš, Mr. Bedjaoui, Mr. Castrén, Mr. El-Erian, Mr. Eustathiades, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Reuter, Mr. Rosenne, Mr. Tabibi, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

Succession of States and Governments: Succession in respect of Treaties

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

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

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

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

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

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

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