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**Summary record of the 1069th meeting**

Topic:  
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**1069th MEETING**

Friday, 12 June 1970, at 10.15 a.m.

Chairman: Mr. Taslim O. ELIAS

later: Mr. Richard D. KEARNEY

*Present:* Mr. Ago, Mr. Albónico, Mr. Alcívar, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Eustathiades, Mr. Ramangasoavina, Mr. Reuter, Mr. Rosenne, Mr. Ruda, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Thiam, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

### Relations between States and international organizations

(A/CN.4/221 and Add.1; A/CN.4/227 and Add.1 and 2)

[Item 2 of the agenda]

(resumed from the 1065th meeting)

### DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE (continued)

#### ARTICLE 57 bis (Chargé d'affaires *ad interim*)<sup>1</sup>

1. The CHAIRMAN invited the Commission to consider the text for article 57 bis adopted by the Drafting Committee on third reading.

2. Mr. KEARNEY (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for article 57 bis:

#### Article 57 bis

##### Chargé d'affaires *ad interim*

If the post of permanent observer is vacant, or if the permanent observer is unable to perform his functions, a chargé d'affaires *ad interim* may act as head of the permanent observer mission. The name of the chargé d'affaires *ad interim* shall be notified to the Organization either by the permanent observer or, in case he is unable to do so, by the Minister for Foreign Affairs or by another competent minister if that is allowed by the practice followed in the Organization.

3. Two changes had been made to the text discussed by the Commission at its 1065th meeting. The first had been to make the rule in the first sentence permissive, by replacing the words "shall act" by "may act", in response to the comments of several members of the Commission. The provision embodied in the second sentence, however, remained mandatory. If the sending State appointed a chargé d'affaires *ad interim*, it was under an obligation to notify his name.

4. The second change had been to replace the concluding words of the second sentence, "by the sending State", by the words "by the Minister for Foreign Affairs or by another competent minister if that is allowed by the practice followed in the Organization". The provision had thus been brought into line with the corresponding

provision relating to permanent missions and the method of notification had been clarified.

5. Mr. YASSEEN said that he was grateful to the Drafting Committee for having taken into account the comment he had made.<sup>2</sup> As to the drafting, he wondered whether it would not be better, despite the precedents, to say "by another competent authority" instead of "by another competent minister".

6. Mr. USHAKOV said that although he had agreed to the present wording in the Drafting Committee, he preferred the former drafting of the first sentence. In any case, it should be understood that the new wording was without prejudice to the provisions of article 19 of the Vienna Convention on Diplomatic Relations.<sup>3</sup>

7. Mr. KEARNEY (Chairman of the Drafting Committee), replying to Mr. Yasseen's suggestion, said that the words "competent minister" were used in the corresponding article 12 in Part II. The same wording had been used in the interests of consistency.

8. The CHAIRMAN said that, if there were no objection, he would assume that the Commission agreed to adopt article 57 bis, subject to consideration on second reading of the comments made during the present discussion.

*It was so agreed.*

### PART IV. Delegations of States to organs and to conferences

9. The CHAIRMAN invited the Commission to consider the Drafting Committee's text for articles 00, 61-B and 62.

#### ARTICLE 00 (Use of terms)<sup>4</sup>

10. Mr. KEARNEY (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for article 00:

#### Article 00

##### Use of terms

For the purposes of the present part:

(a) An "organ" means a principal or subsidiary organ of an international organization and any commission, committee or sub-group thereof, in which States are members;

(b) A "conference" means a conference of States convened by or under the auspices of an international organization, other than a meeting of an organ;

(c) A "delegation to an organ" means the delegation designated by a State member of the organ to represent it therein;

(d) A "delegation to a conference" means the delegation sent by a participating State to represent it at the conference;

(e) A "representative" means any person designated by a State to represent it in an organ or at a conference;

<sup>2</sup> See 1062nd meeting, para. 86.

<sup>3</sup> United Nations, *Treaty Series*, vol. 500, p. 106.

<sup>4</sup> For previous discussion, see 1052nd meeting, paras. 29-47; 1053rd meeting, paras. 5-46; and 1054th meeting, paras. 3-47.

<sup>1</sup> For previous discussion, see 1065th meeting, paras. 12-45.

(f) The "members of the delegation" are the representatives and the members of the staff of the delegation to an organ or to a conference, as the case may be;

(g) The "members of the staff of the delegation" are the members of the diplomatic staff, the administrative and technical staff and the service staff of the delegation to an organ or to a conference, as the case may be;

(h) The "members of the diplomatic staff" are the members of the delegation including experts and advisers, who have been given diplomatic status by the sending State for the purposes of the delegation;

(i) The "members of the administrative and technical staff" are the members of the staff of the delegation to an organ or to a conference, as the case may be, employed in the administrative and technical service of the delegation;

(j) The "members of the service staff" are the members of the staff of the delegation to an organ or to a conference, as the case may be, employed by it as household workers or for similar tasks;

(k) The "private staff" are persons employed exclusively in the private service of the members of the delegation to an organ or to a conference, as the case may be;

(l) The "host State" is the State in whose territory the meeting of an organ or a conference is held.

11. In the Drafting Committee there had been a good deal of discussion on the definitions included in article 00 which, it should be stressed, were designed for application exclusively to Part IV.

12. The main difficulties had arisen over the definition of an "organ" and a "conference", and the distinction between persons who attended the meetings of an organ and persons who attended a conference. There had also been some difficulty regarding the definition of the term "representative".

13. The definition of an "organ" given in sub-paragraph (a) was identical in substance with that contained in article 1, sub-paragraph (m). The Drafting Committee had deemed it appropriate to introduce the words "in which States are members" in order to exclude, for convenience, bodies in which individual experts served in a personal capacity. It had been thought preferable for the time being to adopt a provision dealing with the major aspects of the question, in other words, concentrating on organs of which States were members. At a later stage, the Commission might wish to deal with other bodies.

14. He suggested that the Commission should consider the individual sub-paragraphs one by one.

#### *Sub-paragraph (a)*

15. Mr. ROSENNE said he disliked the use of the figures "00" to designate the article. The designation "article 0" was usually given to an article intended to be placed before article 1 of a draft. In the present instance, the article unsatisfactorily numbered "00" was really intended as an addition to article 1, on the use of terms.

16. With regard to sub-paragraph (a), the word "thereof" was ambiguous and, moreover, was not in line with the French version, which corresponded to that of article 1, sub-paragraph (m); better wording should be found. One solution would be simply to adopt the

language used in the English version of article 1, sub-paragraph (m).

17. The concluding phrase, "in which States are members", was not altogether clear either. It might be better to say "composed of representatives of States".

18. Mr. USHAKOV said that the Drafting Committee proposed that for the time being the Commission should confine the provision to organs whose members were States. Perhaps an attempt would be made later to draft an article covering organs composed of representatives who did not represent States, such as the Governing Body of the International Labour Office.

19. Mr. KEARNEY (Chairman of the Drafting Committee), replying to Mr. Rosenne, said that article 00 was intended to be placed before the first article in Part IV, the part to which the definitions in article 00 exclusively applied. There was no question of incorporating its provisions in article 1, which applied to the whole draft.

20. The word "thereof" had been used as a convenient means of referring to all the bodies mentioned before. It had been thought that the words "of any of those bodies", used in sub-paragraph (m) of article 1, would raise problems of interpretation.

21. The concluding phrase, "in which States are members", was intended to cover the unusual cases in which an organ consisting of States had certain members who did not represent any State.

22. Sir Humphrey WALDOCK said that he himself would be prepared to accept the use of the word "thereof" as reasonably clear. However, he could equally well accept a formula, closer to the French text, in which the word "thereof" was replaced by "of any such organ".

23. Mr. KEARNEY (Chairman of the Drafting Committee) said that such a change would be acceptable to him.

24. The CHAIRMAN said that, if there were no objection, he would assume that the Commission agreed to adopt sub-paragraph (a), with the change in the English version suggested by Sir Humphrey Waldo.

*It was so agreed.*

#### *Sub-paragraph (b)*

25. Mr. THIAM said that although the definition of a "conference" was technically correct, it did not entirely fit the facts. In some African regional organizations, a conference was not something occasional, but an organ of an institution, as in the case of the Organization of African Unity and the Common Afro-Malagasy Organization; in those organizations, the meetings of Heads of State, which were periodical meetings, were called conferences. The States members of those organizations, when invited to comment on the draft articles, might perhaps object to the fact that, in a sense, they were being asked to amend the terms of the charters of those organizations.

26. Mr. KEARNEY (Chairman of the Drafting Committee) pointed out that the definition of a "conference" specifically excluded "a meeting of an organ".

27. Moreover, if the term "international organization" was to be taken in the context of article 2, paragraph 1, it meant only an organization of a universal character, so that for the purposes of the present articles regional organizations were excluded.

28. Article 3 was also relevant: if an organization had a rule according to which one of its organs was termed a "conference", then article 3 applied.

*Sub-paragraph (b) was adopted.*

29. Mr. ROSENNE said he wished to place on record his reservation in respect of both sub-paragraphs (a) and (b), which he did not consider necessary, though he would not oppose their adoption for the time being.

*Sub-paragraph (c)*

30. Mr. ROSENNE said that there was some discrepancy in the language used in sub-paragraphs (c), (d) and (e). Sub-paragraph (c) and (e) spoke of a delegation or a person "designated" by a State; sub-paragraph (d) referred to a delegation "sent" by a State.

31. Mr. USHAKOV said that the Drafting Committee's view was that the expression "delegation to an organ" referred to delegations as such—even if they consisted of only one person, provided there was representation. The term "representative" referred to a person forming part of a delegation in that capacity.

32. The CHAIRMAN said that, if there were no objection, he would assume that the Commission agreed to adopt sub-paragraph (c) subject to consideration, on second reading, of the points raised during the discussion.

*It was so agreed.*

*Sub-paragraph (d)*

33. Mr. ROSENNE said that the expression "participating State" was ambiguous. A State could participate in a conference as an observer. He enquired whether the intention was to refer to a State member of an organ or participating in a conference in any capacity, or only as a voting participant.

34. He suggested that the words "participating State" be replaced simply by the word "State".

35. Mr. KEARNEY (Chairman of the Drafting Committee) said that the term "participating State" had been used with the meaning assigned to it in article 9 of the 1969 Vienna Convention on the Law of Treaties.<sup>5</sup>

36. The CHAIRMAN said that, if there were no objection, he would assume that the Commission agreed to adopt sub-paragraph (d) subject to consideration, on second reading, of the points raised during the discussion.

*It was so agreed.*

<sup>5</sup> *United Nations Conference on the Law of Treaties, Official Records, Documents of the Conference, document A/CONF.39/27 (United Nations publication, Sales No.: E.70.V.5).*

*Sub-paragraph (e)*

*Sub-paragraph (e) was adopted.*

*Sub-paragraph (f)*

*Sub-paragraph (f) was adopted.*

*Sub-paragraph (g)*

*Sub-paragraph (g) was adopted.*

*Sub-paragraph (h)*

37. Mr. ROSENNE said he disliked the concluding words "for the purposes of the delegation". He suggested that they be replaced by the words "for the purposes of the meeting".

38. Mr. KEARNEY (Chairman of the Drafting Committee) said that the words "for the purposes of the delegation" had been used in order to stress that it would not be necessary for the sending State to give such titles as "ambassador" or "minister" to the various members of the delegation; it would be sufficient for the sending State to indicate that the persons concerned had diplomatic status for the purposes of the delegation.

39. Mr. RUDA, supported by Mr. ALBÓNICO and Mr. CASTAÑEDA, proposed that the Spanish version be reviewed by the Spanish-speaking members of the Commission.

40. The CHAIRMAN said that, if there were no objection, he would assume that the Commission agreed to adopt sub-paragraph (h) subject to revision of the Spanish version.

*It was so agreed.*

*Sub-paragraph (i)*

41. Mr. CASTAÑEDA said that although the provision in sub-paragraph (i) reflected well-established terminology, it was none the less tautological. It was unsatisfactory to say that the members of the administrative and technical staff were the members of the staff of a delegation "employed in the administrative and technical service of the delegation". It would be much better to define the members of the administrative and technical staff by exclusion, in other words, by indicating that they were the members of the delegation who were neither members of the diplomatic staff nor members of the service staff.

*Sub-paragraph (i) was adopted.*

*Sub-paragraph (j)*

*Sub-paragraph (j) was adopted.*

*Sub-paragraph (k)*

42. Mr. THIAM said he thought the term "private staff" was unsatisfactory, though perhaps it was an accepted expression.

43. Mr. TESLENKO (Deputy-Secretary to the Commission) said that the term had been used in the Con-

vention on Special Missions, in article 1 (k), in order to avoid the use of the term "servant".

*Sub-paragraph (k) was adopted.*

*Sub-paragraph (l)*

44. Mr. ALCÍVAR said that the term "*Estado huésped*" used in the Spanish version was not clear. Those words meant literally "guest State", not "host State".

45. Mr. RAMANGASOAVINA said that in the French version the words "*la réunion d'un organe ou une conférence*" were ambiguous, because the word "meeting" appeared to relate to both the nouns that followed it.

46. Mr. ROSENNE said that a similar problem arose with regard to the English version, where the words "or a conference" were ambiguous. He suggested that they be replaced by the words "or the conference".

47. The CHAIRMAN suggested that the terms be transposed, so that the passage would read: "a conference or a meeting of an organ".

*It was so agreed.*

*Sub-paragraph (l), thus amended, was adopted.*

*Article 00 as a whole, as amended, was adopted.*

**ARTICLE 61-B (Derogation from the provisions of the present Part)**

48. Mr. KEARNEY (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text:

*Article 61-B*

*Derogation from the provisions of the present Part*

International agreements between States and international organizations regarding the holding of a conference or the rules which may be adopted by a conference may derogate from the provisions of the present Part.

49. The article was in the nature of a saving clause, which was necessary because articles 3, 4 and 5 did not cover all the matters involved. Article 5 did not refer to future agreements relating to conferences; article 4 did not deal with the rules that might be adopted at a conference.

50. Mr. TAMMES said he was grateful to the Drafting Committee for taking account of his comment<sup>a</sup> by adopting the second part of article 61-B. It was perhaps going too far to speak of the sovereignty of a conference, but it was necessary to safeguard the autonomous power of decision of the conference itself.

51. Mr. CASTAÑEDA said he was opposed to the formulation of the article, which differed from that of article 4, although their purpose was similar. The language of article 4 stressed the subsidiary character of the rules in the draft; the language of article 61-B appeared to present the provisions of Part IV as the

general rule, from which the rules adopted by a conference might "derogate".

52. Mr. USHAKOV suggested that, in the French version, the word "*règlement*" be replaced by the word "*règles*", which was a more accurate rendering of the English word "rules".

53. Mr. ROSENNE said that his own suggestion would have been to drop article 61-B altogether, as containing a self-evident proposition which followed for articles 3, 4 and 5 of Part I.

54. With regard to the drafting, he fully shared the doubts expressed by other speakers. The article appeared to suggest that it might be possible for the rules of a conference to derogate from other agreements. The real position was that the rules of a conference could derogate from the draft articles only in respect of the composition of a delegation, not with regard to such matters as privileges and immunities.

55. Mr. KEARNEY (Chairman of the Drafting Committee) said that article 61-B was necessary for purposes of clarification, because if it were omitted the provisions of general international law would apply. In particular, a question would be presented whether the provisions of article 41 of the Convention on the Law of Treaties would cover subsequent agreements between the host State and the organization.

56. With regard to the other points raised, he explained that the Drafting Committee had attempted to combine in article 61-B the meaning of the provisions embodied in articles 3, 4 and 5.

57. Mr. CASTRÉN said he thought the article was necessary, since articles 3, 4 and 5 dealt with rather different questions, which would be out of place in article 61-B. However, there was nothing to prevent the wording of the article from being brought into line with the formulas already adopted.

58. With regard to the word "*règlement*", Mr. Ushakov was probably right in considering it too vague: the intention had probably been to refer to the rules of procedure.

59. Mr. YASSEEN said he thought the first part of the article was unnecessary, since the idea it contained had already been expressed previously.

60. On the other hand, it might be useful to refer to the rules of a conference, which could not be described as an international agreement without distorting the meaning of the term. The problem then arose of the relationship between international agreements and the rules of procedure of a conference. That was the last point which needed to be made quite clear.

61. The CHAIRMAN suggested that article 61-B be referred back to the Drafting Committee.

62. Mr. ROSENNE said the Drafting Committee should note that it was not altogether correct to use the term "derogate" in that context. The intention was to refer to rules that might be different: it was a question of incompatibility, not of derogation.

<sup>a</sup> See 1053rd meeting, paras. 32-35.

63. Moreover, the Commission's report would have to deal with the relationship between article 61-B and articles 3, 4 and 5.

64. Mr. REUTER said he thought the rules of a conference could only be its rules of procedure.

65. Mr. RAMANGASOAVINA said he considered the article necessary. As far as the drafting was concerned, he preferred the formula used in article 4.

66. Mr. EUSTATHIADES said he agreed with Mr. Ramangasoavina, especially as the formula proposed in article 61-B sounded like an encouragement to derogate from the provisions of the draft articles.

67. With regard to the word "rules", it was naturally the rules of procedure of the conference that were meant. However, the words "rules which may be adopted by a conference" could be understood in a wider sense. The wording should therefore be more precise.

68. The CHAIRMAN said that, if there were no objection, he would assume that the Commission agreed to refer article 61-B back to the Drafting Committee for reconsideration in the light of the discussion.

*It was so agreed.<sup>1</sup>*

#### ARTICLE 62 (Composition of the delegation)<sup>2</sup>

69. Mr. KEARNEY (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for article 62:

##### *Article 62*

##### *Composition of the delegation*

A delegation to an organ or to a conference shall consist of one or more representatives of the sending State from among whom the sending State may appoint a head. It may also include diplomatic staff, administrative and technical staff and service staff.

70. The provisions of that article were a repetition of those of article 15 and of other previous articles on the composition of a delegation.

71. Mr. ROSENNE, supported by Mr. RUDA, suggested that the words "shall consist" be replaced by the words "may consist", so as to bring the text closer to that of article 15.

72. Mr. KEARNEY (Chairman of the Drafting Committee) said it was difficult to visualize a delegation without a representative of the sending State.

73. Mr. ROSENNE said that the matter should be left for the sending State to decide; that State might wish to send a delegation consisting only of a secretary.

74. Mr. USHAKOV pointed out that the form "shall" was used in the Convention on Special Missions.

75. Mr. ROSENNE said that the position was different from that of special missions, which operated by agreement between the two States concerned.

76. Mr. RAMANGASOAVINA said he approved of the drafting of the article. The words "shall consist of one or more representatives" did express the idea of a choice.

77. Mr. CASTAÑEDA said that the first sentence of the article was devoid of legal content. The only legal rule in the article was that embodied in the second sentence.

78. He proposed that the article be referred back to the Drafting Committee with the suggestion that the contents of the first sentence, which merely noted the fact that a delegation consisted of one or more representatives, be transferred to article 00 (Use of terms); the second sentence, suitably redrafted, would form article 62.

79. Mr. KEARNEY (Chairman of the Drafting Committee) said that there would be no point in referring the article back to the Drafting Committee without taking a decision on the suggestion made by Mr. Rosenne.

80. The CHAIRMAN said it seemed that the only solution was to take a vote. He accordingly invited members to express their preferences for the two alternative wordings, "shall consist" and "may consist".

*There were 8 votes in favour of the words "shall consist", 5 in favour of the words "may consist", and 4 abstentions.*

81. Mr. ROSENNE said that technically his suggestion had taken the form of an amendment to the proposal by the Drafting Committee. In view of the manner in which the question had been put to the vote, he took it that the Chairman had merely wished to take the sense of the meeting informally.

*Article 62 was adopted.*

#### Organization of future work

[Item 8 of the agenda]

*(resumed from the 1066th meeting)*

#### APPOINTMENT OF A SUB-COMMITTEE ON TREATIES CONCLUDED BETWEEN STATES AND INTERNATIONAL ORGANIZATIONS OR BETWEEN TWO OR MORE INTERNATIONAL ORGANIZATIONS

82. The CHAIRMAN said that the officers of the Commission proposed that a sub-committee of ten members be set up to study the problem of treaties concluded between States and international organizations or between two or more international organizations. The ten members would be Mr. Reuter, who would act as Chairman, Mr. Alcívar, Mr. Sette Câmara, Mr. Castrén, Mr. Ramangasoavina, Mr. Rosenne, Mr. Tabibi, Mr. Thiam, Mr. Tsuruoka and Mr. Ustor. The Sub-Committee would convene its own meetings and go about its business in the usual way, following the precedent established in 1963 in connexion with the topic of State responsibility. It would, he hoped, be able to submit a short report in 1971.

<sup>1</sup> For resumption of the discussion, see 1073rd meeting.

<sup>2</sup> For previous discussion, see 1052nd meeting, paras. 29-47; 1053rd meeting, paras. 5-46; and 1054th meeting, paras. 3-47.

83. Mr. YASSEEN said he fully approved of the proposed method of work and the choice of chairman for the sub-committee. As far as the members were concerned, he proposed that Sir Humphrey Waldock and Mr. El-Erian should also be included; as the Commission's Special Rapporteurs for the law of treaties and relations between States and international organizations respectively, they could make a valuable contribution to the sub-committee's work.

84. Mr. CASTRÉN supported Mr. Yasseen's proposal.

*It was so agreed.*

85. The CHAIRMAN said it was understood that there was no urgency about the Sub-Committee's report; the Commission would consider it when it was ready.

*Mr. Kearney took the Chair.*

### Co-operation with other bodies

[Item 6 of the agenda]

86. The CHAIRMAN said that the Asian-African Legal Consultative Committee had sent the Secretariat a number of copies of the report on its ninth session, held in New Delhi in December 1967. Members who wished to read the report could borrow a copy from the Secretariat.

#### STATEMENT BY THE OBSERVER FOR THE EUROPEAN COMMITTEE ON LEGAL CO-OPERATION

87. The CHAIRMAN welcomed Mr. Golsong, observer for the European Committee on Legal Co-operation, and invited him to address the Commission.

88. Mr. GOLSONG (Observer for the European Committee on Legal Co-operation) thanked the Commission for the opportunity of addressing it and said that he wished to be associated with the tributes paid to the memory of the late Mr. Gilberto Amado, who had been such a distinguished representative of the Latin American legal tradition.

89. To begin with, he wished to stress the ever-increasing interest which the European Committee on Legal Co-operation was taking in the work of the Commission. From time to time, it organized special meetings to consider parts of the Commission's work, which he hoped would stimulate the interest of the States participating in the work of the Committee and help to clear the way for the signature and ratification of treaties based on drafts prepared by the Commission.

90. The Committee was following with particular interest the Commission's discussion on Mr. El-Erian's report on relations between States and international organizations. The approach adopted by the governments of the member States of the Council of Europe to some of the problems dealt with in that report was, however, very different from that adopted by the Commission; the Council of Europe study approached the problem of the privileges and immunities of international organizations from a strictly functional standpoint. That study,

which accompanied Resolution (69) 29 of the Committee of Ministers of the Council of Europe, on the privileges and immunities of international organizations, had already been transmitted both to the United Nations and to the Commission; it contained among its concluding remarks the following statement: "It must be remembered that the granting of privileges and immunities to an international organization does not exhaust the question of the relations between States and international organizations, such privileges and immunities being conditioned by the general duties which apply both to States and to international organizations".

91. With regard to recent work on international law in which the Commission was particularly interested, the Consultative Assembly of the Council of Europe, alarmed by the high degree of water pollution, especially in the Rhine, had recently recommended, as part of its continuing campaign for the protection of nature, the drafting of an international treaty on the pollution of international fresh water. A draft of such a treaty had been annexed to Recommendation 555 of the Consultative Assembly. The draft had included, *inter alia*, the principle of almost unlimited international responsibility of States for pollution caused in their territory; that principle, with its far-reaching responsibility for lawful acts, had been rejected by the Committee of Ministers, which had given a new mandate to the Secretariat to prepare another draft on the same subject. In view of the Commission's interest in the subject of State responsibility and of the proposal made by the Government of Finland on the same matter for the next session of the United Nations General Assembly, he would keep the Commission informed about further developments in that field.

92. As long ago as 1949, the Commission had had on its list of items for consideration<sup>\*</sup> a topic entitled "Jurisdictional immunities of States and their property". It might therefore be interested to know that a European draft Convention on State Immunity had almost been completed. It was based on the system of a so-called negative list, enumerating those cases in which no immunity from jurisdiction was recognized, and contained provisions concerning the obligation of the defendant State to comply with a judgement given against it.

93. After referring to a general increase in the use of the machinery for the protection of human rights set up under the terms of the European Convention on Human Rights, he paid a special tribute to Professor Eustathiades, one of the draftsmen of the Convention, and to Sir Humphrey Waldock, Vice-President of the European Court of Human Rights, for their contribution to that development. It seemed likely, however, that the functioning of the European Convention and the future implementation of the United Nations Covenants on Human Rights would create certain problems concerning the coexistence of those two different systems. The most important objective was to reach identity of definition of the rights covered by the different instruments, in the

<sup>\*</sup> See *Yearbook of the International Law Commission*, 1949, p. 281.

sense that the European Convention should be aligned with the standards of the world-wide Covenants.

94. In the field of public international law, further progress had been made in a number of sectors. The Committee of Ministers had adopted Resolutions (69) 27 and (69) 28 on the uniform interpretation of European Treaties, and resolutions had also been adopted on the publication of a digest of State practice in the field of public international law. In addition, support had been given to a project of Cambridge University for the production of a unified collection of international treaties.

95. In the field of civil and commercial law, the Committee had established a close working relationship with the United Nations Commission for International Trade Law and a number of instruments had either been completed or were in their final stage. In particular, a Convention relating to stops on bearer securities in international circulation had been opened for signature by member States of the Council of Europe, on the occasion of the Sixth Conference of European Ministers of Justice, on 28 May 1970, at The Hague. In addition, a diplomatic conference was to be convened at Strasbourg in March 1971, to prepare a universal version of the European Convention on the international classification of patents.

96. Progress had also been made during the past year in the field of international criminal law, and at The Hague, on 28 May 1970, two Conventions had been opened for signature by member States of the Council of Europe: the European Convention on the International Validity of Criminal Judgements and the European Convention on the Repatriation of Minors. Further instruments were envisaged, on the settlement of conflicts of jurisdiction in criminal matters and the transfer of criminal proceedings.

97. A number of other matters were under consideration for future inclusion in the legal programme of the Council of Europe, including the problem of hijacking.

98. Another item for future consideration was the judicial settlement of international disputes. Whatever partial solutions might be found at the regional level, it was essential for the maintenance of peace to increase world-wide jurisdiction; he hoped, therefore, that the Commission would in due course consider what steps could be taken to strengthen the role of the International Court of Justice. Whatever progress was made in the codification of international law, the implementation of international instruments could not be efficiently carried out until there was a system in operation for the judicial settlement of disputes relating to the interpretation and application of such instruments.

99. He hoped that the Commission would continue to co-operate closely with his organization, particularly with regard to full exchange of information, and that it would, if possible, send an observer to the November session of the Committee on Legal Co-operation, at which it was planned to complete a draft convention on State immunity.

100. The CHAIRMAN thanked the observer for the European Committee on Legal Co-operation for his very interesting report.

101. Mr. YASSEEN said that co-operation with other bodies throughout the world which were concerned with the codification and progressive development of international law was one of the Commission's most valuable activities, since it kept the Commission in touch with the realities of international life and thus enabled it to perform its difficult and complex tasks more effectively. He had attended a session of the European Committee on Legal Co-operation as the representative of the International Law Commission, and could affirm that that Committee took the greatest interest in statements by the Commission's representatives. He wished to thank Mr. Golsong for the welcome he had received and to congratulate him on his Committee's efforts in the service of the codification and progressive development of international law.

102. Mr. AGO said that the reports and statements of the observer for the European Committee on Legal Co-operation were always of great interest. The Commission had a high regard for the Committee's work, and its valuable co-operation on the topics of relations between States and international organizations and State responsibility gave particular cause for satisfaction.

103. Among the points mentioned by Mr. Golsong, the protection of nature and the protection of the archaeological heritage were especially important.

104. In another sphere, the value of the Committee's work was shown by the fact that Italy, in the first two volumes of its practice in the field of public international law, covering the period 1861-1886, had been able to use the plan drawn up by the Council of Europe for unifying the publication of such digests of State practice. The standardization of the criteria adopted for publication of the digests would make it far easier for students of international law in all countries to consult them. He wished to convey his thanks and congratulations to the European Committee on Legal Co-operation and expressed the hope that the links between it and the Commission would become increasingly close.

105. Mr. RAMANGASOAVINA said he welcomed the close co-operation between the International Law Commission and the European Committee on Legal Co-operation. In the Committee's work, there were several points of interest not only to European States, but also to States in general, and young States in particular, especially the possible differences in the conception and application of law. Differing interpretations of the same notion, for instance, the notion of breach of trust, could be a very serious matter in relations between States, and in that connexion the Committee could play an extremely important role by giving wider publicity to its work on the harmonization of several groups of fundamental legal concepts. The Committee could also help young States by granting fellowships and encouraging work on topics falling within its competence.

106. In order to overcome the lack of confidence on the part of young States in international tribunals, to which Mr. André Gros, a Judge of the International Court of Justice, had referred at the previous meeting, the Committee might perhaps also co-operate more

closely with the Inter-American Juridical Committee and the Asian-African Legal Consultative Committee.

107. Mr. ROSENNE, thanking the observer for the European Committee on Legal Co-operation for his excellent written and oral reports, said they offered the Commission ample food for thought in connexion with both its present and its future programme of work.

108. He especially appreciated the work done by the Committee in co-ordinating the presentation of digests of State practice, which were extremely valuable and had been found useful even outside Europe. He also appreciated the support given by the Committee to the Consolidated Treaty Series now being prepared at Cambridge University, though he wished to draw attention to the fact that Europe was not the only part of the world in which treaty-making had been practised even as far back as 1648.

109. The Commission, which was the only organ with universal responsibility in the field of international law, should always be personally represented at the meetings of inter-governmental bodies with which it maintained relations. He hoped, therefore, that the Chairman of the Commission would be able to attend the next session of the Committee, or send a representative to it.

110. The CHAIRMAN said he too hoped that the Commission could be represented at the Committee's next session.

111. Mr. THIAM said he had listened with the greatest interest to the statement by the representative of the European Committee on Legal Co-operation. He was glad to note that regional organizations in different continents were dealing with the same topics.

112. Like Mr. Ramangasoavina, he hoped that the European Committee on Legal Co-operation would study the question of differences in the interpretation of legal norms and that some form of co-operation on that matter would be established between the secretariat of the Council of Europe and the secretariat of the Organization of African Unity. For although the development of concepts inherited from colonialism was logical and normal in some spheres, such as family law, it was difficult to accept when the differences in interpretation related to fundamental legal principles, particularly human rights, which in developing countries were still very often left to the discretion of governments.

113. Mr. USHAKOV said he warmly thanked the observer for the European Committee on Legal Co-operation for his statement; the whole Commission always greatly appreciated the Committee's work. He regretted that, for health reasons, he had been unable to represent the Commission at the Committee's last session, and hoped that a representative of the Commission would be able to attend its next session.

114. Mr. ALBÓNICO thanked the observer for the European Committee on Legal Co-operation for his report and paid a tribute to the outstanding work done by the Committee, particularly in connexion with the privileges and immunities of international organizations.

He noted with pleasure that the close juridical links between Europe and Latin America were being maintained.

The meeting rose at 1.15 p.m.

## 1070th MEETING

Monday, 15 June 1970, at 3.15 p.m.

Chairman: Mr. Richard D. KEARNEY

*Present:* Mr. Ago, Mr. Albónico, Mr. Alcívar, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Eustathiades, Mr. Ramangasoavina, Mr. Reuter, Mr. Rosenne, Mr. Ruda, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Thiam, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

### Succession of States and governments in respect of treaties

(A/CN.4/214 and Add.1 and 2; A/CN.4/224 and Add.1)

[Item 3 (a) of the agenda]

(resumed from the 1068th meeting)

1. The CHAIRMAN invited the Commission to resume consideration of the Special Rapporteur's second and third reports on succession in respect of treaties (A/CN.4/214 and Add.1 and 2, and A/CN.4/224 and Add.1).

2. Mr. AGO said that the Special Rapporteur had submitted admirable reports; generally speaking, he was working on the right lines and should be encouraged to continue in the same way.

3. With regard to the considerations which the Special Rapporteur had set out as an introduction to his second report, he thought that the work of the International Law Association, though useful, left an impression of excessive complexity and a disappointing lack of clarity.

4. As to the relationship between decolonization and succession of States, though he had no wish to minimize the enormous political importance of decolonization, he must stress that decolonization was not a particular aspect of the problem of State succession; it was one of the causes of the birth of new States, but it was from that birth that the problem of succession derived, whether the State was born of decolonization or of some other phenomenon. He would not exclude *a priori* the idea that the creation of new States by decolonization could have special consequences, even in matters of succession, but the general principles were the same, whatever the origin of the new State. It was those principles which the Commission should state, after which it could see