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Summary record of the 1144th meeting

Topic:

<multiple topics>

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66. The section of the Survey devoted to "Questions relating to modes of acquisition of territory" (paras. 42-48) contained a striking analysis of the consolidation of humanity's great achievement in the prohibition of the use of force and of the unlawful effects of the use of force, namely, the acquisition of territory. It mentioned most appropriately the relevant passages of the draft Declaration on the Rights and Duties of States prepared by the Commission in 1949[10] and of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, embodied in General Assembly resolution 2625 (XXV)[11] and other instruments, which proved that those rules had become part of positive international law and were now ripe for codification. He accordingly proposed the inclusion in the list of topics for the Commission's long-term programme of work of a new item entitled "The legal effects of an illegal presence in territory and of the seizure by force of territory".

67. Very pertinent to that position was the Advisory Opinion rendered on 21 June 1971 by the International Court of Justice in the Namibia Case, and he wished to pay tribute to the contributions made during the proceedings before the Court by the Legal Counsel of the United Nations and by two members of the Commission, Mr. Castrén and Mr. Elias. The Advisory Opinion stated *inter alia* that: "By maintaining the present illegal situation, and occupying the Territory without title, South Africa incurs international responsibilities arising from a continuing violation of an international obligation"[12] and that the "member States of the United Nations are... under obligation to recognize the illegality and invalidity of South Africa's continued presence in Namibia. They are also under obligation to refrain from lending any support or any form of assistance to South Africa with reference to its occupation of Namibia...".[13] It then went on to state that "member States are under obligation to abstain from entering into treaty relations with South Africa in all cases in which the Government of South Africa purports to act on behalf of or concerning Namibia"[14] and that "Member States... should also make it clear to the South African authorities that the maintenance of diplomatic or consular relations with South Africa does not imply any recognition of its authority with regard to Namibia".[15] Finally, it had stated: "The restraints which are implicit in the non-recognition of South Africa's presence in Namibia and the explicit provisions of paragraph 5 of (Security Council) resolution 276 (1970) impose upon member States the obligation to abstain from entering into economic and other forms of relationship or dealings with South Africa on behalf of or concerning Namibia which may entrench its authority over the Territory".[16]

68. He hoped that the Secretariat would find some means of including those important passages of the Advisory Opinion in the relevant portion of the Survey before it was printed.

69. With regard to the Commission's future work of codification, he would suggest a number of criteria for the selection of topics. The first was that the Commission should concentrate on those topics already under consideration. The second was it should avoid duplicating work already being done by other bodies. The third was that it should adopt a flexible programme so as to be able to deal with urgent questions as they arose.

70. Finally, he would suggest, as Mr. Tabibi had already done,[17] that for the time being the Commission should confine itself to taking note of the Survey and leave final decisions to its new membership at the next session.

The meeting rose at 6 p.m.

[10] See *Yearbook of the International Law Commission, 1949*, pp. 286-290.

[11] See *Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 28*, p. 121.

[12] See *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 54, para. 118.

[13] *Ibid.*, p. 54, para. 119.

[14] *Ibid.*, p. 55, para. 122.

[15] *Ibid.*, p. 55, para. 123.

[16] *Ibid.*, pp. 55-56, para. 124.

[17] See para. 61 above.

1144th MEETING

Monday, 26 July at 3.15 p.m.

Chairman: Mr. Senjin TSURUOKA

Present: Mr. Alcívar, Mr. Bartoš, Mr. Castrén, Mr. El-Erian, Mr. Elias, Mr. Eustathiades, Mr. Kearney, Mr. Rosenne, Mr. Sette Câmara, Mr. Tabibi, Mr. Thiam, Mr. Ushakov, Sir Humphrey Waldock, Mr. Yasseen.

Review of the Commission's long-term programme of work

(A/CN.4/245)

[Item 7 of the agenda]

(continued)

1. The CHAIRMAN invited the Commission to continue its consideration of item 7 of the agenda and of the Secretariat working paper, "Survey of international law" (A/CN.4/245).

2. Mr. EUSTATHIADES said he congratulated the Legal Adviser and his staff on the admirable working paper which they had submitted to the Commission; it

surveyed not only what had been accomplished so far but what might be achieved in the future codification of international law. Since the document was of great value both for study and research purposes and from an educational point of view, he would request, like other members of the Commission, that it be given as wide a distribution as possible.

3. The evolution of international society, of which many new States had become members during the past twenty-five years, made it necessary to revise the Commission's programme of work. That was partly because the developments which had taken place had intensified relations between States, which it was the very purpose of the codification of international law to facilitate, and partly because the new States could now participate in the codification process. At present, however, bearing in mind the recommendations of the General Assembly and the needs of the international community, the Commission could do no more than have an exchange of views.

4. The needs of the international community were of two kinds: current, urgent needs, and permanent needs whose study could be deferred. The Commission had to consider not only the urgency of a topic but also whether it was ripe for codification. The ideal topics were those which fulfilled both conditions, but where that was not the case, the first consideration should be the needs of the international community, since the Commission had also to concern itself with the progressive development of international law. Any decision by the Commission to give priority to a particular topic should therefore be based primarily on the interests of the international community, as well as on the possibility of undertaking the codification.

5. Among the topics of immediate relevance, there was, first, the question of outer space; secondly, the question of the illicit seizure and diversion of aircraft; and thirdly, the question of acts of aggression against diplomatic agents and other representatives of States.

6. There was no pressing need to study the first question, despite its topicality, since it was already governed by general rules laid down in agreements adopted by the General Assembly, and there was a special committee responsible for particular aspects of it. Also, in some respects, the subject-matter was exceptionally technical.

7. The second question was already widely regulated by the Convention of 16 December 1970 for the Suppression of Unlawful Seizure of Aircraft,[1] and where the matter involved an element of political terrorism, by the abortive Geneva Convention of 16 November 1937 for the Prevention and Punishment of Terrorism.[2] The Institute of International Law was already studying the matter as well. Thus, it was not a suitable subject for the Commission.

8. With regard to the third question, on the other hand, rules needed to be formulated without delay governing the prevention and suppression of acts of aggression against diplomatic agents and other representatives of States; despite its political content, that question ought to be examined by the Commission, as Mr. Kearney had proposed at the beginning of the session.[3]

9. Two topics which ought to be included in the Commission's long-term programme of work were unilateral acts and extradition.

10. With regard to unilateral acts, the Commission could explore the subject in due course without, however, feeling obliged to prepare a draft convention, since the lack of any codification of the topic had not caused any serious practical difficulties so far.

11. The question of extradition was ripe for codification. Parallel solutions and even standard clauses could be found in international conventions, and the question was of immediate relevance because it was related to the subject of international criminal acts. The Commission might therefore envisage its codification. The outcome of that process did not have to be a convention, but might be a text in the nature of a recommendation which States could take as a basis for their extradition treaties.

12. Two further topics which the Commission might place on its long-term programme of work were the jurisdictional immunities of States and recognition of States.

13. The question of the jurisdictional immunities of States was of practical day-to-day importance. The draft convention prepared on the subject by the Council of Europe,[4] which reconciled divergent views and laid down certain principles, clearly suggested that codification could be extended beyond the regional framework. Also, the fact that the principle of reciprocity was accepted even in the law of the socialist States was a good omen for the conclusion of a universal international convention on the subject. Codification should be applied to general principles only, however, and not to specific aspects such as the immunity of Heads of State, foreign armed forces and foreign vessels.

14. The political element involved in the question of recognition of States should not deter the Commission from examining several other aspects of the topic, such as the conditions for and the forms and effects of recognition; those lent themselves to the formulation of international rules, since the political element mainly concerned the granting of recognition. Considerable developments had taken place during the past twenty-five years, particularly with regard to the effects of recognition, and especially of non-recognition, and the question of the relations of non-recognized States with other States was unexplored territory. The importance of the subject justified its inclusion amongst the topics for codification.

15. Furthermore, it would be appropriate to study the question of the relationship between international law and municipal law, with particular reference to the

[1] ICAO document 8920.

[2] League of Nations publication, V. Legal, 1937. V.10.

[3] See 1087th meeting, para. 38.

[4] See para. 37 below.

application of international law by municipal organs. Although the subject was not new, it had not yet been considered except from the standpoint of the penalties incurred under State responsibility. The Commission might thus settle a doctrinal dispute and dispel the confusion which bedevilled the practice on the subject.

16. Finally, he wished to draw attention to the fact that many codification conventions had not yet been ratified. The Commission ought to consider what measures could be taken to remedy that situation.

17. Mr. ELIAS said that he was glad to join in the tributes paid to the Survey, which was a remarkable piece of scholarship, and to the Legal Counsel and to the Director and staff of the Codification Division for their efforts. The Survey was bound to influence the work of law schools and writers of textbooks of international law, and ought therefore to be given as wide publicity and circulation as possible. It was not a document that should be subjected to critical analysis like a special rapporteur's report; it was simply intended to provide a general review of international law, not so much since 1949 as since 1960, so as to enable the Commission to discard from its 1949 list of topics[5] those which were no longer appropriate for codification, and to add new ones. In bringing its long-term programme of work up to date, the Commission should take into account both General Assembly recommendations and the needs of the international community.

18. It was clear that the Commission could not, at that late stage in the session, embark on any lengthy discussion of the Survey, particularly as members were nearing the end of their term of office. In considering its programme of work, however, the Commission should take into account the period of time for which the work was being planned. The Commission had at present under consideration no less than five topics for which it had already appointed Special Rapporteurs: first, succession of States in respect of treaties; secondly, succession of States in respect of matters other than treaties; thirdly, State responsibility; fourthly, the most-favoured-nation clause, and, fifthly, the question of treaties concluded between States and international organizations or between two or more international organizations.

19. Looking back over the past ten years, he felt that the completion of work on three topics, namely, the law of treaties, special missions and relations between States and international organizations, represented a genuine achievement. The Commission should now therefore be content with a comparatively modest list of topics. The General Assembly might at any time request it to examine other topics in addition to the five already under consideration, and there was also the possibility that the Commission itself might suggest some new topic; for instance, Mr. Kearney had suggested the question of the protection and inviolability of diplomatic agents.[6] Personally, he would strongly recommend that the Commission confine its current list of topics to the five for which it had already appointed Special Rapporteurs, together with the question of the rules of international law relating to international watercourses—on which a good deal of work had already been done both by the Sixth Committee and by the Secretariat—and the question suggested by Mr. Kearney, which was of great importance. It would then be for the Commission in its new composition to draw up a list of topics for the long-term programme of work. Perhaps also, at the forthcoming session of the General Assembly, the Sixth Committee might have some recommendations to make on the subject.

20. The emphasis should be placed on accomplishment rather than on length in drawing up a list of topics, since the Commission would be unable to consider very many in anything like the near future. The seven topics which he had mentioned should engage the attention of the Commission for at least ten years, quite apart from any other topics which might be referred to it by the General Assembly or which the Commission itself might decide to take up. A long list of topics had been asked for in 1948 before the Commission had begun to function. The Commission has thus been provided with a wide range of topics from which to make a choice. The position was now quite different because the Commission had been in existence for over twenty years and any new list should be drawn up in the light of experience.

21. Mr. KEARNEY said that the Survey was an excellent working paper which offered a useful basis for determining the future work programme of the Commission. It was his impression that the intention was to plan ahead for a period of some twenty years. Bearing in mind the time-lag between the completion of the Commission's work on a topic and its final codification, that meant that the Commission should have in mind the needs of the international community at the end of the present century with regard to the codification and progressive development of international law. Members should therefore devote some time and thought to the question of the long-term programme of work and as many of them as possible should submit, after the end of the present session, written statements on the subject, as one or two had already promised. He would suggest that written statements be sent in time to reach the Secretariat well before the Commission's twenty-fourth session, so that they might be circulated to members ahead of the session. In that way, the Commission in its new composition would have a clearer view of what was recommended on the basis of past experience. At the next session, the Commission would then be able to concentrate on the selection of topics instead of having to indulge in a discussion of legal theories.

22. Examination of the long-term programme of work would involve more than drawing up a list of topics. The Commission would have to decide on a set of priorities and try to put it into effect. It would also have to consider whether, in order to complete its proposed programme of work, it ought not to adopt some new method of work. Looking back over the past five years, he had the impression that the Commission could

[5] See *Yearbook of the International Law Commission, 1949*, p. 281.

[6] See 1087th meeting, para. 38.

perhaps have accomplished more than it had done and it was for that reason that he felt it should give careful consideration to new methods of work.

23. It was his intention to submit a written statement, so for the moment he would confine his remarks to two points. The first related to a question which was not mentioned in the Survey, namely that of keeping international law up to date. Treaties, when they were applied in practice, often revealed faults, weaknesses and gaps. There appeared to be a need for some international machinery to obtain information on how treaties were working in practice and whether they needed revision. The Commission was well fitted to undertake that task, especially with regard to conventions based on its own work. For example, he could not help feeling that the Commission might be able to review the 1958 Conventions on the law of the sea more effectively than could an eighty-eight nation Committee.

24. His second remark related to the problem of the protection and inviolability of diplomatic agents, to which he had referred at the beginning of the present session in connexion with the adoption of the Commission's agenda.[7] Several members had spoken of the urgency of that problem and he thought that the Commission should bring it to the attention of the General Assembly, either in its report on the work of the session or through its Chairman when he addressed the Assembly as the representative of the Commission. It should be made clear that, if the General Assembly felt the need for prompt action in the matter and if other efforts in that direction did not appear to be fruitful, the Commission was in a position to deal with the question expeditiously. For that purpose, the Commission would have to adopt a new working pattern and deal with the subject through a small working group, perhaps without any special rapporteur. It was essential to dispel the erroneous impression that the Commission needed five years to deal with a topic. The Commission could, if requested, produce a very acceptable draft convention on the subject at its next session and it should inform the General Assembly of that fact.

25. Mr. THIAM said he congratulated the Legal Adviser and his staff on the impressive achievement represented by the working paper before the Commission. It was more than a simple review of international law, it was a comprehensive survey which took account both of theoretical questions and of the needs of the international community, and modern international law could not be formulated without an understanding of those needs. In common with other members of the Commission, he asked that the Survey should be given the widest possible circulation.

26. Since the term of office of its present members was now expiring, the Commission would be unable to review its programme of work in detail until the next session, and it was too early to decide on methods of work. The Commission could, however, give consideration to a long-term programme of work which reflected the state of international law and possible changes and trends. That programme could then be regarded as an over-all forecast; it would not interfere with the Commission's technical function of codification and yet it would take account of development. The Commission should therefore draw up a long-term programme of work at its next session and confine its immediate tasks to subjects which could be codified within five years. He might wish to indicate in due course the subjects he thought should receive priority.

27. Mr. USHAKOV said he congratulated the Legal Counsel on his admirable introduction of the Secretariat's working paper entitled "Survey of international law"; the document was a first-rate working tool.

28. The Commission must now reflect on the topics for its long-term programme of work. It was true that it was for the General Assembly, acting through the Sixth Committee, to draw up the list, but the Commission was also bound to make proposals to the General Assembly to help it to take its decisions. The Commission had not had time to do that at the present session, but members would find in the Secretariat's notable study a basis for reflection which would enable them to give their opinion at the next session with all the facts before them. At that stage, therefore, he would refrain from making specific proposals. The Commission might, however, promise the General Assembly that it would make its proposals at its next session, and thanks to the working paper prepared by the Secretariat, it would be in a position to keep its promise.

29. Sir Humphrey WALDOCK said that the Secretary-General's Survey was obviously not designed to suggest a particular programme of work but rather to give a perspective for the future. Since the term of office of the present members was drawing to a close, it would seem proper that the primary decisions concerning the future programme of work should be taken at the next session or even later.

30. There was already a formidable list of topics on the Commission's agenda, such as State succession in respect of treaties, State responsibility, treaties with international organizations, the most-favoured-nation clause, international watercourses, and the like. He himself had always taken the position that the Commission should for the most part undertake very substantial works of codification, primarily for the reason that there was no other qualified body which was prepared to do so. However, he did feel that it was in the interests of the Commission itself, particularly in its relations with States and the General Assembly, that it should also deal with smaller and more urgent topics as occasion might offer. A case in point was the subject of kidnapping of diplomats, which was closely connected with a topic on which the Commission had already made several reports, namely, that of diplomatic privileges and immunities. He thought, therefore, that that was the type of topic on which it was practicable to appoint a special rapporteur to produce a draft with a view to its adoption in the course of a single session.

[7] *Ibid.*

31. He did not wish to comment in detail on the proposals contained in the Survey, many of which he found attractive, such as the topic of States immunity, which had already been made the subject of codification by the Council of Europe and which had also been considered by the Asian-African Legal Consultative Committee. There were also other topics, such as that of extraterritorial jurisdiction, which frequently gave rise to real difficulties and disputes and which undoubtedly deserved consideration by the Commission. In the end, however, the Commission would have to be practical in making its choice and therefore, as Mr. Kearney had suggested, it should reflect more carefully on the Secretary-General's memorandum between sessions.

32. He was in general agreement with what had been said about the Survey by other members, in particular by Mr. Elias and Mr. Kearney. Everybody must thank the Secretariat for producing that document, which he was sure would be of great value, not only to the Commission, but also to outside bodies such as faculties of international law.

33. The CHAIRMAN said that, if there were no more speakers, he would declare the debate on item 7 of the agenda closed.

Co-operation with other bodies

[Item 9 of the agenda]

(resumed from the 1136th meeting)

Statement by the observer for the European Committee on Legal Co-operation

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

35. Mr. GOLSONG (Observer for the European Committee on Legal Co-operation) said that as the work of the Commission on the one hand and the European Committee and its connected bodies within the Council of Europe on the other hand continued to progress, more and more points where their interests coincided came to light.

36. He had noticed that first when reading the various Commission documents which had been transmitted to him in his capacity as observer. Then the admirable report submitted by Sir Humphrey Waldock, in his capacity as observer for the International Law Commission, to the most recent session of the European Committee on Legal Co-operation had also revealed that community of interests, and his Committee hoped that the Commission would be represented at its meetings as often as possible, so that the number of mutually fruitful personal contacts might increase. And now the coincidence of interest had been disclosed once again in the notable survey of international law submitted to the Commission by the Secretariat (A/CN.4/245). The information it contained on points relating to the Committee's work was very accurate.

37. Among the matters of common interest he would cite first the European draft Convention on State Immunity, which he had mentioned the previous year.[8] The draft convention was based on the system of a negative list, that was to say, a list of cases in which no immunity from jurisdiction was recognized, and it also contained provisions concerning the enforcement of judgments against a foreign State in cases not covered by immunity from jurisdiction. The intention had been to avoid the assimilation of such judgments to foreign judgments in ordinary civil cases and all mention of *exequatur*. For that purpose, stress had been laid on an obligation of the defendant State to "give effect to" a judgment rendered against it by a foreign court. That obligation might possibly give rise to a second court action. The draft detailed the conditions in which a defendant State might challenge the earlier judgment and refuse to comply with it. The institutor of the first proceedings might apply to the courts of the defendant State or, if the latter had acceded to the additional protocol setting up a European procedure, apply to a European court, of which the judges would be the same persons as the judges of the European Court of Human Rights. The convention had entered the final stage of preparation and would probably be opened for signature at the next Conference of European Ministers of Justice, to be held in Switzerland in May 1972. The draft convention did not, of course, make any reference to the rights and duties of States which were not parties to it.

38. With regard to action against pollution of the major international waterways of western Europe, a matter on which he had touched the previous year,[9] the draft treaty now contained a comparatively limited clause on inter-State responsibility which perhaps would not even be retained in its present form when the final vote was taken. There were several technical difficulties, such as the equitable distribution of the costs of action against pollution between the countries upstream and the countries downstream.

39. Consideration of that matter had brought out the fact that there were very wide differences between the laws and practice of member States of the Council of Europe with regard to civil liability for acts of pollution. Apart from Switzerland, where legislation was now being drafted, and two or three other countries, the member States of the Council of Europe had no special laws on the matter. It was for that reason that the question of civil liability had been specifically broached, and the Committee would devote its first meetings next year to that question in the light of a study in comparative law, copies of which could be transmitted to the Commission, if it so wished.

40. The Consultative Assembly and the governments of the member States of the Council of Europe were also very much interested in the work of the Committee on the Peaceful Uses of the Sea-bed and the Ocean

[8] See *Yearbook of the International Law Commission, 1970*, vol. I, p. 147, para. 92.

[9] *Ibid.*, p. 147, para. 91.

Floor, and exchanges of views might take place on that subject early in 1972.

41. With regard to the protection of diplomats against kidnapping, a subject raised by Mr. Kearney, the competent bodies within the Council of Europe were well aware that the problem existed even in Europe, since no one was immune from such acts of terrorism. They had considered that member States should, as a first step, revise and supplement their criminal legislation to cope with that new form of crime.

42. The European bodies had also found that they were faced with the problem of the coexistence of several conventions, not so much regional conventions and a universal convention, as might be the case with regard to human rights, but European conventions dealing with the same subject from different points of view. That applied in particular to the existing conventions relating to criminal law, ranging from conventions relating to extradition and to legal assistance in criminal cases, to conventions for the recognition and enforcement of foreign judgments in criminal cases.

43. The Committee had also undertaken studies on assistance between States in matters of administrative law. It envisaged, first, facilitating the direct communication of information between administrations and, secondly, going on to a form of recognition of certain administrative acts. In the first case, that was already provided for by international courtesy and by practice, but in most countries such practice had no basis in law.

44. Another matter which might perhaps be mentioned was watching the application of the conventions. A meeting of representatives of governments and practising lawyers had been organized to consider the difficulties encountered in the application to international agreements relating to criminal law. A wealth of information had emerged from it, and it had become clear that some difficulties might be settled by harmonizing the position taken by each contracting State unilaterally.

45. The Diplomatic Conference for the preparation of a universal version of the European Convention on the International Classification of Patents had met at Strasbourg in March 1971. It had enabled States which were not members of the Council of Europe to participate on equal terms in the work on classification, for harmonization had become increasingly necessary now that 400,000 patents were issued every year by the patent offices of the world. That Diplomatic Conference had been of some technical interest because of the method adopted for the passage from a regional to a universal convention. It also testified to the fact that the member States of the Council of Europe were politically willing to go beyond the regional framework where the common interests of the members of the international community justified such a step.

46. At the previous session Mr. Ramangasoavina[10] and Mr. Thiam[11] had expressed the wish that contact might be established between the European Committee on Legal Co-operation and countries outside Europe. He could report that a system of fellowships had been instituted for lawyers from the developing countries to enable them to familiarize themselves with the work of the European Committee on Legal Co-operation and with the legal activities of member States. The system would come into force on 1 January 1972 and should be regarded as a contribution to the implementation of General Assembly resolution 2099 (XX) on technical assistance to promote the teaching, study, dissemination and wider appreciation of international law.[12]

47. The Committee was following the Commission's work on relations between States and international organizations of a universal character with the greatest attention. As the Commission already knew, the member States of the Council of Europe had adopted a different approach. He hoped, nevertheless, that the solution worked out by the Commission would attract a significant majority of ratifications. He hoped, too, that the Committee would be able to be of assistance in seeking the necessary compromises, in its capacity as observer at the diplomatic conference convened to adopt the convention.

48. Although it had not yet entered into force, the Vienna Convention on the Law of Treaties had already become a part of daily life and was referred to constantly. For example, in a judgment given by the European Court of Human Rights a week before, Mr. Verdross had referred to article 33, paragraph 4, of the Convention[13] in connexion with a problem of interpretation. It was to be hoped that the Convention would be ratified by a significant majority of States.

49. In expressing the hope that all the present members of the Commission who were candidates would be re-elected, he wished to pay a tribute to Mr. Castrén, who was about to retire and whose authority, independence of mind, legal scrupulosity and modesty were a model for all who were working for a better organization of the international legal order. He also wished to pay a tribute to Mr. Tsuruoka, the Chairman of the Commission, and to observe that although Japan was geographically at the antipodes of Europe and although its legal system was based on different philosophic concepts from those of the member States of the Council of Europe, Japan and the European States shared the same faith in the rule of law.

50. The CHAIRMAN thanked the observer for the European Committee on Legal Co-operation for his very interesting report on the Committee's activities and for the kind words addressed to him personally.

51. Sir Humphrey WALDOCK said that he would like to thank Mr. Golsong for his *exposé*, which he had presented with his usual brilliance and clarity, as well as for

[10] *Ibid.*, p. 148, para. 105.

[11] *Ibid.*, p. 149, para. 111.

[12] See *Official Records of the General Assembly, Twentieth Session, Supplement No. 14*, p. 89.

[13] *United Nations Conference on the Law of Treaties, Official Records, Documents of the Conference* (United Nations publication, Sales No.: E.70.V.5), p. 293.

the reception which had been given to him personally at the meeting of the European Committee on Legal Co-operation which he had attended in his capacity as an observer.

52. He would like now to ask Mr. Golsong if he could describe in a few words the normal technique followed by his Committee in preparing texts for codification. Were those texts prepared by his secretariat, by a special rapporteur appointed for that purpose, or by some other system?

53. Mr. GOLSONG (Observer for the European Committee on Legal Co-operation), said that his Committee followed more or less the same method of work as that adopted in the Commission. In 1963, and again in 1969, a special committee had been convened to examine a set of documents prepared by the secretariat, which it was thought might be of interest to various member governments. Certain suggested topics had then been adopted on the basis of recommendations by faculties of law, and those topics had consequently been studied by the secretariat, with the assistance of expert consultants. The special committee had then considered what programme of work the European Committee should adopt for the next few years, and by a democratic process of voting, had agreed on a list of topics to be given priority treatment; the remaining topics would, of course, be dealt with at a later stage. With regard to the question who was responsible for preparing the material, he would say that there was no uniform practice as yet. The topic of State immunity, for example, had been initiated by a report prepared by the Austrian Ministry of Justice, while the topic of the privileges and immunities of international organizations had been initiated by the United Kingdom Government. The Consultative Assembly had produced a text on water pollution, but since it had proved unacceptable to governments, the secretariat had undertaken to produce a draft of its own.

54. Sir Humphrey WALDOCK asked whether the European Committee ever appointed a special rapporteur to be responsible for a particular topic.

55. Mr. GOLSONG (Observer for the European Committee on Legal Co-operation) replied that the European Committee did not use the special rapporteur system, although the chairman of a special committee often became an expert on a particular subject and submitted a draft. In any case, at the final stage of the work before the Committee of Ministers, it was always for the secretariat to defend and explain the proposals made by the European Committee.

56. Sir Humphrey WALDOCK and Mr. KEARNEY thanked Mr. Golsong for his explanations.

57. Mr. CASTRÉN said he had noted that the Council of Europe succeeded in preparing draft conventions in a relatively short time, whereas the Commission needed several years. One reason was obviously that the Commission met for only a few weeks each year

58. He wished to thank Mr. Golsong very much for his kind words about him; he must state that, although he was sorry to leave the Commission, he would from now on be able to devote more time to following the work of the Council of Europe.

59. Mr. THIAM said that, on his own behalf and on behalf of Mr. Tabibi, he wished to thank the observer for the European Committee on Legal Co-operation for the information he had given about the establishment of a system of fellowships for lawyers from the African and Asian countries. He would not fail to transmit that information to his Government.

60. Although the African and Asian countries had, as a result of achieving independence, adapted legal systems originally based on European legal systems to the realities of their own situation, they remained attached to certain universal values which had been cradled in Europe.

61. Mr. ELIAS said that he had been glad to hear that there would be an opportunity for students from developing countries to go to Strasbourg to learn more about the work of the Council of Europe. That would be a necessary complement to the work of the Commission itself, which was enabling students from those areas to attend its sessions at Geneva and familiarize themselves with its work.

62. He was sure all members were grateful for Mr. Golsong's very interesting report on the work of the European Committee, although he personally had been a little disturbed by his mention of the possibility of a clash between the Commission's draft report on relations between States and international organizations and the approach taken by the European Committee. He hoped, however, that the observer for the European Committee would have an opportunity to express his views at the future plenipotentiary conference which would be held on that subject.

63. Mr. EL-ERIAN said that he wished to associate himself with Mr. Thiam and Mr. Elias in expressing his appreciation of the efforts made to familiarize African youth with the work of the Council of Europe. In particular, he personally wished to thank Mr. Golsong for the material which he had provided concerning the privileges and immunities of permanent missions.

64. He noted with regret that the Commission's draft appeared to have received harsh treatment at the hands of the European Committee, but he hoped it would be possible for the Commission to discuss points of difference with the Committee and soften its present, critical attitude. Like Mr. Elias, he also hoped that the Committee would be able to send an observer to the future plenipotentiary conference on relations between States and international organizations.

The meeting rose at 6.10 p.m