

Document:-
A/CN.4/L.104

Relations between States and inter-governmental organizations: suggested list of questions as basis of discussion for the definition of the scope and mode of treatment: working paper prepared by Mr. Abdullah El-Erian, Special Rapporteur - contained in A/5809, para. 41

Topic:
Representation of States in their relations with international organizations

Extract from the Yearbook of the International Law Commission:-
1964, vol. II

*Downloaded from the web site of the International Law Commission
(<http://www.un.org/law/ilc/index.htm>)*

(7) Intercourse between a special mission of one State and the permanent diplomatic mission of another State accredited to the receiving State must be accorded the same treatment as the intercourse and activities of special missions in the territory of the third State. Such contacts are frequent, and they are referred to by legal writers as irregular means of diplomatic communication. They make direct intercourse possible between States which do not maintain mutual diplomatic relations, even when the States concerned are in armed conflict.

(8) The right of the third State, at any time and without being obliged to give any reason, to withdraw its hospitality from special missions in its territory and to prohibit them from engaging in any activity is recognized. In such cases, the sending States are obliged to recall their special missions immediately, and the missions themselves are required to cease their activities as soon as they learn that hospitality has been withdrawn. The exercise of this right by the third State does not mean that diplomatic relations with the States in question are broken off or that the head of the mission or its members are declared *persona non grata*. It merely means that the third State's consent to the activities of special missions in its territory has been revoked. The Commission held that article 16, paragraph 1, was sufficient and that the word "consent" means that the consent of the third State continues to be required throughout the period during which the activities of the special missions of the other States are taking place.

CHAPTER IV

Programme of Work and Organization of Future Sessions

36. After discussion at two private meetings held on 19 and 22 June 1964 and consideration by the officers of the Commission and the Special Rapporteurs, the Commission, at its 749th meeting, adopted its programme of work for 1965 and 1966. It decided to complete the study of the law of treaties and of special missions within that period. As to the other subjects on its agenda, the Commission decided to give priority to its work on relations between States and inter-governmental organizations. The questions of succession of States and Governments and State responsibility will be dealt with as soon as the subjects previously mentioned have been completed.

37. These decisions were taken having regard, in particular, to the fact that the term of office of the present members of the Commission expires at the end of 1966 and that it is desirable to complete, before that date, not only the study of the law of treaties, but also the study of special missions. That topic was chosen in preference to relations between States and inter-governmental organizations in the light of General Assembly resolution 1289 (XIII) of 5 December 1958, which provided that the question of relations between States and inter-governmental international organizations should be considered "at the appropriate time, after study of diplomatic intercourse and immunities, consular intercourse and immunities and *ad*

hoc diplomacy has been completed by the United Nations . . .". A draft on special missions had already been prepared, and several articles of that draft were discussed at the present session.

38. The need to complete the study of several topics before the end of 1966 led the Commission to raise the question of the duration of sessions. In order to complete its programme for 1964, the Commission decided to extend its present session by one week. It regretted the fact that, by reason of external circumstances such as the postponement of the dates of the nineteenth session of the General Assembly, it was not possible for the Commission to hold a supplementary winter session in 1965, as it had intended. The Commission believes, however, that it is essential to hold a four-week winter session in 1966, in order to have at its disposal the minimum time necessary for the completion of the heavy programme of work it has to complete before the end of the 1966 session.

39. The Commission intends in 1965, after considering the comments received from Governments, to conclude the second reading of the first part, and as many further articles as possible of the second part, of its draft on the law of treaties, in accordance with suggestions of the Special Rapporteur. At the same session, the Commission will continue its study of special missions and of relations between States and inter-governmental organizations. In 1966, the Commission will complete the remaining articles of its draft on the law of treaties and the draft on special missions. At the same time and within the limits of the time available, the Commission will also continue its study of relations between States and inter-governmental organizations and undertake further preparatory work on succession of States and Governments and State responsibility, which are to be the main subjects of its concern during sessions held after 1966.

40. It was therefore decided to ask the Secretariat to request Governments to submit their comments on the second part of the draft on the law of treaties by January 1965 at the latest, so that the Commission can consider them at its 1965 session; it was also decided to request Governments to submit their comments as soon as possible on the third part of the draft on the law of treaties completed in 1964 by the Commission, so that the whole of the work on the law of treaties could be completed before the end of 1966. The draft on special missions will be sent to Governments for comments when it is completed in 1965, and Governments will then be requested to submit their comments in time for the Commission to complete its work on the topic in 1966.

CHAPTER V

Other Decisions and Conclusions of the Commission

A. RELATIONS BETWEEN STATES AND INTER- GOVERNMENTAL ORGANIZATIONS

41. The Commission continued the discussion of the first report (A/CN.4/161 and Add.1) submitted

in 1963 by the Special Rapporteur, Mr. El-Erian.²⁸⁵ In conjunction therewith the Commission examined a list of questions suggested by the Special Rapporteur in a working paper (A/CN.4/L.104) as a basis of discussion for the definition of the scope and mode of treatment of the topic. The questions related to :

(a) The scope of the subject [interpretation of General Assembly resolution 1289 (XIII)] ;

(b) The approach to the subject (either as an independent subject or as collateral to the treatment of other topics) ;

(c) The mode of treatment (whether priority should be given to " diplomatic law " in its application to relations between States and international organizations) ;

(d) The order of priorities (whether the status of permanent missions accredited to international organizations and delegations to organs of and conferences convened by international organizations should be taken up before the status of international organizations and their agents) ;

(e) The question whether the Commission should concentrate in the first place on international organizations of a universal character or should deal also with regional organizations.

42. At its 755th to 757th meetings, the Commission discussed these questions, and certain other related questions that arose in connexion therewith. The majority of the Commission, while agreeing in principle that the topic had a broad scope, expressed the view that for the purpose of its immediate study the question of diplomatic law in its application to relations between States and inter-governmental organizations should receive priority. Other suggestions made by members of the Commission will be considered in the preparation of a second report by the Special Rapporteur.

B. CO-OPERATION WITH OTHER BODIES

43. At its 768th meeting, held on 17 July, the Commission considered the item concerning co-operation with other bodies.

44. It took note of the report by Mr. Eduardo Jiménez de Aréchaga (A/CN.4/172)²⁸⁶ on the work of the sixth session of the Asian-African Legal Consultative Committee, held at Cairo from 23 February to 6 March 1964, which he had attended as observer for the Commission.

45. The Asian-African Legal Consultative Committee was represented by Mr. Hafez Sabek, who addressed the Commission.

²⁸⁵ *Yearbook of the International Law Commission, 1963*, vol. II, pp. 159-185. The discussion of the report was begun at the fifteenth session of the Commission and a working paper (A/CN.4/L.103) (*ibid.*, p. 186) was submitted by the Special Rapporteur. It was intended to continue the discussion at a session in January 1964, which session, however, was not held.

²⁸⁶ *Vide supra*, pp. 119-124.

46. After considering the standing invitation addressed to it by the Secretary of the Asian-African Legal Consultative Committee to attend the Committee's sessions, the Commission requested its Chairman, Mr. Roberto Ago, to attend the next session of the Committee as an observer or, if he were unable to do so, to appoint another member of the Commission or its Secretary to represent the Commission at that meeting. The next session of the Committee is to be held in Baghdad in February 1965.

47. No communication was received at the present session from the legal bodies of the Organization of American States regarding the next session of the Inter-American Council of Jurists.

48. The Commission considered a letter addressed to the Secretary of the Commission by Mr. F. Dumon, President of the International Union of Judges, requesting that the Union should be authorized to collaborate with the International Law Commission. As the Union's agenda does not for the time being include items similar to those studied by the Commission, the latter requested the Secretary to ask the Union to inform him when it proposed to study matters relating to those considered by the Commission, so that the Union's request to collaborate with the International Law Commission could then be resubmitted to the Commission.

49. At its 768th meeting, the Commission took note of the memorandum prepared by the Secretariat (A/CN.4/171) concerning the distribution of the documents of the Commission. This memorandum was submitted in response to the Commission's request, at its fifteenth session²⁸⁷ in connexion with its consideration of the item on co-operation with other bodies. After an exchange of views, the Commission considered the possibility of establishing at its next session a small committee to study the problems involved.

C. DATE AND PLACE OF THE NEXT SESSION

50. The Commission decided to hold its next session at the European Office of the United Nations from 3 May to 9 July 1965.

D. REPRESENTATION AT THE NINETEENTH SESSION OF THE GENERAL ASSEMBLY

51. The Commission decided that it would be represented at the nineteenth session of the General Assembly, for purposes of consultation, by its Chairman, Mr. Roberto Ago.

E. TRIBUTE TO THE SECRETARY OF THE COMMISSION

52. At its 767th meeting, held on 16 July, the Commission paid tribute to Dr. Yuen-li Liang, Director, Codification Division, Office of Legal Affairs of the United Nations, who has acted with high distinction as Secretary of the Commission since 1949, and who will retire after the present session.

²⁸⁷ *Yearbook of the International Law Commission, 1963*, vol. II, p. 225, para. 70.