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Part I

Report of the International Law Commission on the work of the second part of its seventeenth session

Monaco, 3-28 January 1966

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A. Introduction

1. The International Law Commission, established in pursuance of General Assembly resolution 174 (II) of 21 November 1947 and in accordance with its Statute annexed thereto, as subsequently amended, held the second part of its seventeenth session at the Palais des Congrès, Principality of Monaco, from 3 to 28 January 1966.

2. At its sixteenth session, in 1964, and at the first part of its seventeenth session, in 1965, the Commission declared that it was essential to hold a four-week series of meetings at the beginning of 1966, in order to finish in the course of that year its draft articles on the law of treaties and on special missions before the end of the term of office of its present members.¹ The General Assembly, by resolution 2045 (XX) of 8 December 1965, approved the Commission's proposal to meet from 3 to 28 January 1966.

3. The Government of the Principality of Monaco invited the Commission to hold its meetings of January 1966 in Monaco, and undertook to defray the additional costs involved, in accordance with General Assembly resolution 1202 (XII) of 13 December 1957. The Commission decided, in pursuance of article 12 of its Statute and after consultation with the Secretary-General, to accept the invitation. The second part of the

seventeenth session of the Commission was therefore held in Monaco.

B. Membership and attendance

4. The Commission consists of the following members:

Mr. Roberto AGO (Italy)
Mr. Gilberto AMADO (Brazil)
Mr. Milan BARTOŠ (Yugoslavia)
Mr. Mohammed BEDJAOU (Algeria)
Mr. Herbert W. BRIGGS (United States of America)
Mr. Marcel CADIEUX (Canada)
Mr. Erik CASTRÉN (Finland)
Mr. Abdullah EL-ERIAN (United Arab Republic)
Mr. Taslim O. ELIAS (Nigeria)
Mr. Eduardo JIMÉNEZ DE ARÉCHAGA (Uruguay)
Mr. Manfred LACHS (Poland)
Mr. LIU Chieh (China)
Mr. Antonio DE LUNA (Spain)
Mr. Radhabinod PAL (India)
Mr. Angel M. PAREDES (Ecuador)
Mr. Obed PESSOU (Senegal)
Mr. Paul REUTER (France)
Mr. Shabtai ROSENNE (Israel)
Mr. José María RUDA (Argentina)
Mr. Abdul Hakim TABIBI (Afghanistan)
Mr. Senjin TSURUOKA (Japan)
Mr. Grigory I. TUNKIN (Union of Soviet Socialist Republics)

¹ *Official Records of the General Assembly, Nineteenth Session, Supplement No. 9 (A/5809), chapter IV, paras. 36-38; ibid., Twentieth Session, Supplement No. 9 (A/6009), chapter IV, paras. 52-56, and chapter V, para. 65.*

Mr. Alfred VERDROSS (Austria)

Sir Humphrey WALDOCK (United Kingdom of Great Britain and Northern Ireland)

Mr. Mustafa Kamil YASSEEN (Iraq)

5. Except for Mr. Abdullah El-Erian, Mr. Liu Chieh, Mr. Radhabinod Pal, Mr. Angel M. Paredes and Mr. Abdul Hakim Tabibi, who were unable to be present, all the members attended.

C. Officers

6. The officers elected during the first part of the session, at the 775th meeting held on 3 May 1965, remained in office during the second part. They were the following:

Chairman: Mr. Milan Bartoš

First Vice-Chairman: Mr. Eduardo Jiménez de Aréchaga

Second Vice-Chairman: Mr. Paul Reuter

Rapporteur: Mr. Taslim O. Elias

7. The Drafting Committee appointed at the first part of the session likewise remained in office. It was composed of the following:

Chairman: Mr. Eduardo Jiménez de Aréchaga

Members: Mr. Roberto Ago; Mr. Herbert W. Briggs; Mr. Taslim O. Elias; Mr. Manfred Lachs; Mr. Paul Reuter; Mr. Shabtai Rosenne; Mr. José María Ruda; Mr. Grigory I. Tunkin; Sir Humphrey Waldock; and Mr. Mustafa Kamil Yasseen. In addition the Commission requested Mr. Marcel Cadieux and Mr. Antonio de Luna to serve temporarily as members of the Committee.

8. Mr. Constantin A. Baguinian, Director of the Codification Division of the Office of Legal Affairs, represented the Secretary-General and acted as Secretary to the Commission.

D. Agenda and meetings

9. The agenda for the seventeenth session was adopted during the first part of the session, at the 775th meeting on 3 May 1965. In accordance with the Commission's decision taken in 1965,² the second part of the session was mainly devoted to the law of treaties. Consideration was also given to the organization and duration of the eighteenth session in 1966, to co-operation with other bodies, and to other business.

10. In the course of the second part of the seventeenth session the Commission held twenty-two public meetings.³ In addition, the Drafting Committee held eight meetings.

E. Law of treaties

11. During its meetings in Monaco the Commission had before it, in connexion with the law of treaties, a portion of the fourth report (A/CN.4/177/Add.2) of Sir Humphrey Waldock, Special Rapporteur, which had

not previously been examined; the fifth report of the Special Rapporteur (A/CN.4/183 and Add.1-4); part II of the draft articles on the law of treaties, adopted by the Commission at its fifteenth session in 1963;⁴ and the comments of Governments on those draft articles (A/CN.4/175 and Add.1-4).

12. The Commission re-examined in the light of the comments of Governments articles 30-50 of the draft articles. It decided to defer a decision on article 40 until the eighteenth session, and at that session the Drafting Committee will report on articles 49 and 50, on which it was unable to complete its study in Monaco. The Commission, in all, adopted revised texts of nineteen articles. As explained in its last report,⁵ these texts must still be treated as subject to review at the eighteenth session of the Commission, when its work on the draft articles on the law of treaties will be completed. As also explained in that report, the Commission preferred to postpone its consideration of all the commentaries until its eighteenth session when it would have before it the final text of all the articles to be included in the draft. The texts of articles 30-50 as finally adopted by the Commission, together with commentaries thereto, will be published as part of the complete draft on the law of treaties in the report of the Commission on the work of its eighteenth session.

F. Resolution of thanks to the Government of Monaco

13. At its 843rd meeting, on 27 January 1966, the Commission unanimously adopted the following resolution:

"The International Law Commission,

"Having met from 3 to 28 January 1966 in order to continue the work of its seventeenth session,

"Expresses its profound gratitude to the Government of H.S.H. Prince Rainier III and to the Principality of Monaco for having made it possible to hold the second part of the Commission's seventeenth session at Monaco, for their generous hospitality and for their contribution to the completion of its work."

G. Organization and duration of the eighteenth session

14. At its 843rd meeting, on 28 January 1966, the Commission decided that its eighteenth session would be mainly devoted to the law of treaties and to special missions, and that the law of treaties would be taken up at the beginning of the session. The Commission would also discuss at that session the organization of future work on the other topics on its agenda.

15. The Commission, during its meetings in 1965,⁶ desired to reserve the possibility of a two-week extension of its eighteenth session in summer 1966, the question of the extension to be decided in January 1966 in the light of the progress made up to that time. The General Assembly, by resolution 2045 (XX) of 8 December 1965,

⁴ *Official Records of the General Assembly, Eighteenth Session, Supplement No. 9 (A/5509), chapter II.*

⁵ *Official Records of the General Assembly, Twentieth Session, Supplement No. 9 (A/6009), chapter II, paras. 27 and 28.*

⁶ *Ibid.*, chapter IV, para. 54, and chapter V, para. 66.

² *Official Records of the General Assembly, Twentieth Session, Supplement No. 9 (A/6009), chapter IV, para. 55.*

³ 822nd to 843rd meetings.

noted that proposal with approval. At its 835th meeting, on 20 January 1966, the Commission unanimously decided in principle in favour of the two-week extension, subject to the possibility of earlier adjournment if the progress of work permitted. The dates envisaged for the eighteenth session are therefore from 4 May to 22 July 1966. It will be held at the Office of the United Nations at Geneva.

H. Co-operation with other bodies

EUROPEAN COMMITTEE ON LEGAL CO-OPERATION

16. At its 827th meeting, on 10 January 1966, the Commission considered a letter of 16 December 1965 from the Secretary-General of the Council of Europe, addressed to the Secretary-General of the United Nations, who had transmitted it to the Commission. The letter stated that the Council of Europe in 1963 had set up a special body, the European Committee on Legal Co-operation, for the purpose of dealing with co-operation of its member States in the legal field. The Committee, which was composed of delegations of eighteen States and of three delegates of the Consultative Assembly of the Council of Europe, had under consideration various items (including immunity of States, consular functions, and reservations to international treaties) which appeared to be connected with the work of the International Law Commission. It was proposed to establish a co-operative relationship of the Commission with the European Committee like those existing with the juridical bodies of the Organization of American States and with the Asian-African Legal Consultative Committee. The Commission decided at its 827th meeting to establish a relationship under article 26 of its Statute with the European Committee on Legal Co-operation.

17. The European Committee was represented at the Commission's meeting by Mr. H. Golsong, Director of Legal Affairs, Council of Europe, who addressed the Commission at its 830th meeting, on 13 January 1966, on the work of the Committee.

INTER-AMERICAN COUNCIL OF JURISTS

18. The Inter-American Juridical Committee, the standing organ of the Inter-American Council of Jurists, was represented by Mr. José Joaquín Caicedo Castilla, who addressed the Commission at its 830th meeting, on 13 January 1966, on the legal work of the Organization of American States. He referred in particular to the meeting of the Inter-American Council of Jurists in San Salvador,⁷ a meeting of the Inter-American Juridical Committee in Rio de Janeiro in July, August and September 1965, and an extraordinary Inter-American Conference in Rio de Janeiro in November 1965. The Juridical Committee had completed work on drafts

⁷ See report (A/CN.4/176) by Mr. Eduardo Jiménez de Aréchaga, in *Yearbook of the International Law Commission, 1965*, vol. II, p. 145.

concerning the breadth of the territorial sea, international responsibility of the State, industrial and agricultural utilization of international rivers and lakes, and differences between intervention and collective action. The Extraordinary Conference had, among other things, examined the opinion of the Juridical Committee on the last-mentioned subject.

I. Seminar on International Law

19. At its 831st meeting, on 14 January 1966, the Commission took note of the final preambular paragraphs and operative paragraph 4 of General Assembly resolution 2045 (XX) of 8 December 1965, by which the General Assembly noted with satisfaction that the Office of the United Nations at Geneva had organized, during the first part of the seventeenth session of the Commission, a seminar on international law, and expressed the wish that during future sessions other seminars would be held, with the participation of a reasonable number of nationals of the developing countries. At that meeting, explanations concerning the seminar to be held during the eighteenth session of the Commission were given on behalf of the United Nations Office at Geneva by Mr. Pierre Raton, the officer in charge of the organization of the seminar. It was explained that practical reasons made it necessary to hold the seminar to begin not later than the second or third week of the session. The second seminar would be of slightly longer duration than the first, in order to give the participants an opportunity to do research in the library of the Palais des Nations. The number of participants would be increased to a maximum of twenty or twenty-one, in order to help secure a better geographical distribution; but a further increase would risk impairing the possibilities for the participants to play an active part and to have personal contacts with members of the Commission. It was hoped that other Governments would follow the examples of the Governments of Israel and Sweden, which had generously agreed to provide one fellowship each to enable a national of a developing country to attend the seminar.

20. In the course of the discussion certain members of the Commission made observations about the seminar. One member suggested that a further attempt should be made to explore the possibilities of obtaining fellowships from Governments and private sources. Another suggested that it might be desirable for other members of the Commission in addition to the lecturer to attend the lectures, so that the debate could be broadened; that the maximum number of participants could be enlarged to thirty; and that one method of ensuring that the best candidates were chosen for fellowships would be to have them chosen by the universities in their countries of origin. The Commission decided to bring these comments to the attention of the Office of the United Nations at Geneva, for its consideration.