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Summary record of the 1010th meeting

Topic:
Cooperation with other bodies

Extract from the Yearbook of the International Law Commission:-
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been said during the debate. The subject of acquired rights was a highly political one and it was important that the Special Rapporteur, in particular, should know the political reactions of the delegations to the General Assembly.

50. Mr. AGO said he would not like the Commission to give the impression that it was asking for instructions from the General Assembly because of differences of opinion among its members. The Commission was sovereign in its study of the topic. It was normal that it should report on the progress of its work. On the other hand, if it wished to bring its task to a successful conclusion, it must retain full freedom of action.

51. Mr. BEDJAOUI (Special Rapporteur) said he had no wish to induce the General Assembly to tie the Commission's hands regarding the problem of acquired rights. He only wanted the Commission to gain the maximum benefit from a debate that would bring out the existing trends. Moreover, he would not like the Commission to devote only two or three paragraphs to a topic which had required two weeks' discussion. The Commission's last report constituted a precedent: problems had been presented in it in such a way as to make for an interesting debate in the General Assembly.

52. Mr. YASSEEN said that there was no fundamental disagreement between members of the Commission on that point. It was simply a question of emphasis. For his part, he thought it necessary to give an adequate account of the main trends which had appeared, without, of course, going so far as a verbatim record.

53. The CHAIRMAN said he was sure that the General Rapporteur and the Special Rapporteur would be able to take account of the comments made by the members of the Commission.

54. He invited the Commission to take a decision on the following paragraph for inclusion in its report to the General Assembly:

"The Commission thanked the Special Rapporteur for his second report on succession of States in respect of matters other than treaties and confirmed its decision to give that topic priority at its twenty-second regular session, in 1970. It requested the Special Rapporteur to prepare, for that session, a report containing draft articles on succession of States in respect of economic and financial matters, taking into account the comments made by members of the Commission on his second report at the twenty-first session."

55. Mr. USTOR said that in his opinion the text suggested by the Chairman should include some reference to public property and public debts, since the Special Rapporteur considered that his report should centre on those aspects of the topic.

56. Mr. RUDA said he feared that if the Commission gave priority to the Special Rapporteur's study it would be going back on the decision it had taken at the last session to give priority at its twenty-second session, in 1970, to the topic of State responsibility, as well as to that of succession in respect of matters other than

treaties.⁷ Since it appeared rather difficult to divide priority between those two subjects, he suggested that the Commission should defer its decision until later in the session.

57. Mr. TABIBI thought it would be better not to tie the Special Rapporteur down by making a specific reference to public property and public debts. He should be left free under his present instructions to draw his own conclusions from the discussion in the General Assembly.

58. He did not agree with Mr. Ago that the Commission was a sovereign body; on the contrary, it was a subsidiary organ of the General Assembly and as such was required to report to the General Assembly.

59. Mr. AGO referring to the question raised by Mr. Ruda, said it would be sufficient to omit any mention of priority. As to Mr. Tabibi's remarks, all he had meant to say was that the Commission was master of its subject and should retain full freedom of action in studying it.

60. The CHAIRMAN, speaking as a member of the Commission, said he was not in favour of further restricting the subject entrusted to the Special Rapporteur, since the succession of States in economic and financial matters was only part of a wider topic. As far as priority was concerned, the text proposed for the report was in conformity with the decisions taken by the Commission at its previous session. He thought that the Commission could take a provisional decision on that text, the wording of which could be reviewed during the discussion of the report.

61. Mr. TSURUOKA supported that proposal.

62. The CHAIRMAN said that, if there was no objection, he would take it that the Commission provisionally approved the text he had read out.

It was so agreed.

63. The CHAIRMAN warmly congratulated the Special Rapporteur and sincerely thanked him for the excellent work he had submitted to the Commission.

The meeting rose at 1.20 p.m.

⁷ See *Yearbook of the International Law Commission, 1968*, vol. II, Report of the Commission to the General Assembly, para. 104.

1010th MEETING

Friday, 27 June 1969, at 10.55 a.m.

Chairman: Mr. Nikolai USHAKOV

Present: Mr. Ago, Mr. Albónico, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Eustathiades, Mr. Ignacio-Pinto, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Rosenne, Mr. Ruda, Mr. Tabibi, Mr. Tammes, Mr. Tsuruoka, Mr. Ustor, Mr. Yasseen.

Co-operation with other Bodies

(A/CN.4/215; A/CN.4/212)

[Item 5 of the agenda]

*(resumed from the 1004th meeting)***REPORT ON THE 1968 MEETING OF THE
INTER-AMERICAN JURIDICAL COMMITTEE**

1. The CHAIRMAN invited Mr. Ruda to introduce his report (A/CN.4/215) on the 1968 meeting of the Inter-American Juridical Committee, which he had attended as observer for the Commission.

2. Mr. RUDA said that the 1968 meeting of the Inter-American Juridical Committee had been the first to be attended by an observer for the Commission and he had consequently received an especially warm welcome.

3. During the week he had spent at Rio de Janeiro, the Committee had been engaged in revising its statutes in accordance with the proposals for structural reform of the inter-American system adopted in the Buenos Aires Protocol of 1967. When that reform came into effect, the Committee would become one of the main organs of the Organization of American States (OAS); it would also become the sole legal organ, since the Inter-American Council of Jurists would be abolished. The preliminary draft of the statutes of the Inter-American Juridical Committee was annexed to his report; it was of interest because the Committee was engaged, at the regional level, in tasks similar to those of the Commission.

4. Article 1 of the draft stated that the Committee was "the juridical organ of the Organization of American States". Article 2 set forth its functions which, in addition to the progressive development and codification of international law, included that of serving the OAS "as an advisory body on juridical matters of an international nature".

5. Article 3 provided that the "permanent seat of the Inter-American Juridical Committee shall be the city of Rio de Janeiro".

6. Article 4, which dealt with the competence of the Committee, empowered it to render to "the Governments of member States legal advice on matters of public and private international law on which they consult it", and to establish "co-operative relations with universities, institutes and other teaching centres, as well as with national and international committees and entities devoted to study, teaching or dissemination of information on juridical matters of international interest".

7. Article 6 stipulated that the Committee "shall have the broadest possible technical autonomy"; it also made provision for the privileges and immunities of its members, whose number would be increased from seven to eleven under the provisions of article 7.

8. Article 9 provided that members of the Committee would be elected for a period of four years and would be eligible for re-election.

9. It was interesting to note the provisions of article 18: "Jurists elected as members of the Inter-

American Juridical Committee shall bear in mind that for the fulfilment of the purposes of the Committee it is essential that, during the meeting, they reside in Rio de Janeiro and devote their full time to the work of the Committee", and of article 19: "Failure of a member of the Committee to attend its regular meetings for two consecutive years shall result in automatic vacation of his office".

10. Article 26 laid down that members' expenses for their stay in Rio de Janeiro and their travel expenses "shall be borne by the respective States of which those jurists are nationals", while article 27 made provision for the payment of an attendance fee to members by the OAS. It was worth noting that the Brazilian Government, as host, provided the Committee with excellent premises and each of its members with an office and secretarial facilities in the same building.

11. With regard to the Committee's methods of work, article 33 specified that the results of its work, such as drafts or reports, "shall be transmitted to the General Secretariat so that it may make them known to governments and, when appropriate, transmit them to the General Assembly" of the OAS. The Committee would thus not have an opportunity of reviewing its drafts in the light of government comments, as the Commission did.

12. The items of substance considered by the Committee at its 1968 meeting had included "Harmonization of the legislation of the Latin American countries on companies, including the problem of international companies". The Committee had thus dealt with problems of the nationality of companies and the laws applicable to them, recognition of the juristic personality of foreign companies and the position of "multi-national public companies", a term used for government-owned companies belonging jointly to several States, such as the merchant fleet jointly owned by Colombia, Ecuador and Venezuela, known as the "Flota Gran Colombiana". On that point, the Committee had decided to request the OAS Council to convene a specialized conference to revise the Bustamante Code, or adopt a new code of private international law, to deal with the problem of companies. The Committee had prepared a draft on the mutual recognition of companies and other corporate bodies, which specified that the status of a company under commercial law was governed by the law of its place of domicile, "domicile" being defined as the legal centre of a company's administration. The draft also provided that a company duly constituted in one contracting State should be recognized as having the same juristic personality in the other contracting States. Under the item "A Uniform Law for Latin America on Commercial Documents", the Committee had decided to begin work on bills of exchange and cheques.

13. The Observer for the Inter-American Juridical Committee had already given the Commission an account of the work of that Committee on the substantive items before it.

14. Mr. CASTAÑEDA, after congratulating Mr. Ruda on his report, said that the Inter-American Juridical

Committee was considerably older than the International Law Commission and had prepared a number of drafts which had already been incorporated in Latin-American legislation. As was evident from Mr. Ruda's report, the Committee was adapting itself to the new needs of the Latin-American continent, and in particular to the task of Latin American economic integration. Both the differences and the similarities between the outlook and the general structure of the Committee and the International Law Commission provided reasons why the Commission should maintain close relations with the Committee and endeavour to increase their mutual co-operation in the future.

15. Mr. EUSTATHIADES said he was glad it had been possible for the Commission to be represented in the Inter-American Juridical Committee by the very eminent Chairman of its last session; it was well to give such practical form to co-operation between bodies pursuing similar objectives.

16. Before the establishment of the International Law Commission, those who taught international law had had the advantage of finding, in the drafts of the Inter-American Juridical Committee, texts which possessed the unusual feature of being the product of regional co-operation. Today, it was an advantage to maintain the closest possible contacts and follow the results of codification in bodies established for regional co-operation, since they faithfully reflected juridical concepts accepted by a number of States.

17. In the Council of Europe, the European Committee on Legal Co-operation fulfilled a function similar to that which the new draft statutes assigned to the Inter-American Juridical Committee.

18. Mr. NAGENDRA SINGH said that obviously the role of the International Law Commission in relation to other regional juridical associations should be a positive one, since in the absence of mutual co-operation there would be a tendency for each body to remain isolated. In initiating such co-operation between the Commission and the Inter-American Juridical Committee, therefore, Mr. Ruda had performed a most valuable service. He hoped that co-operation would continue.

19. Mr. ALBÓNICO said that Mr. Ruda was to be congratulated on his very interesting report on the Inter-American Juridical Committee, which had for many years been engaged in highly important work, and was now particularly concerned with economic problems of the Latin-American area which had legal consequences.

20. Mr. BARTOŠ said he wished to commend Mr. Ruda for having found time, despite his many duties, to represent the International Law Commission at the 1968 meeting of the Inter-American Juridical Committee. The account he had given to the Commission, together with the statement made by the Observer for the Inter-American Juridical Committee,¹ had

shown what a prominent part Mr. Ruda had played in that Committee's meeting.

21. It was unfortunate that it had not been possible for the Commission to be represented at the European Committee on Legal Co-operation the previous year. Many members of that Committee were anxious to maintain contact with the International Law Commission and to be kept informed of its work. The collaboration established both with the Inter-American Juridical Committee and with the Asian-African Legal Consultative Committee provided ample evidence of the value of such contacts for the Commission as well as for those bodies.

22. The CHAIRMAN, thanking Mr. Ruda for the excellent work he had done as the Commission's Observer at the 1968 meeting of the Inter-American Juridical Committee, said that Mr. Ruda was one of the youngest and at the same time one of the most eminent Latin-American internationalists. He himself had already had occasion to refer to the Commission's increasingly close and fruitful links with the Inter-American Juridical Committee and to express the hope that they would be maintained.

REPORT ON THE TENTH SESSION OF THE ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE

23. The CHAIRMAN invited Mr. Tabibi to introduce his report (A/CN.4/212) on the tenth session of the Asian-African Legal Consultative Committee.

24. Mr. TABIBI said that, in accordance with the decision taken by the Commission at its twentieth session, he had had the honour to attend, as an observer, the tenth session of the Asian-African Legal Consultative Committee, which had been held at Karachi in January 1969.

25. Much of the Committee's work had been devoted to preparations for the second session of the Vienna Conference on the Law of Treaties. The question of the draft convention on the law of treaties had been on the Committee's agenda since its seventh session, which had been held at Baghdad in 1967. The Committee had concentrated on the most important articles of the draft and had prepared two volumes containing an analysis of the work of the first session of the Vienna Conference, in particular that on the most controversial issues, such as provisions for the settlement of disputes. That sound preparatory work had enabled the Asian and African delegations at the second session of the Vienna Conference to introduce their well-known compromise proposal which, almost at the last minute, had saved the Conference from failure.²

26. Although the question of the law of treaties had absorbed most of its attention, the Committee had also dealt with two other topics: the rights of refugees and the law of international rivers. The question of the rights of refugees had been brought up at the request of the Government of Pakistan, and the Government

¹ See 999th meeting, paras. 64 *et seq.*

² See *Official Records of the United Nations Conference on the Law of Treaties, Second Session, 1969, 34th plenary meeting.*

of Jordan had also put forward certain special problems concerning Palestinian refugees. Among other aspects of the question the Committee had dealt with such matters as extension of the definition of refugees contained in its "Bangkok principles", the repatriation or return of refugees, compensation for refugees and compensation tribunals, the standard of treatment of refugees, approved documents and visas, and territorial asylum.

27. The Committee had not had sufficient time to deal at length with the question of the law of international rivers, which had been introduced by the Governments of Iraq and Pakistan, but had decided that an inter-sessional Sub-Committee should be set up at New Delhi to consider it. The proper utilization of water was a problem of the highest importance in the arid lands of Asia and Africa, and the world community as a whole would undoubtedly benefit from a study of it.

28. Mr. NAGENDRA SINGH said that, as an Asian member of the Commission, he wished to thank Mr. Tabibi for the service he had rendered the Commission by attending the tenth session of the Asian-African Legal Consultative Committee. Mr. Tabibi had made a number of noteworthy contributions to that session and his valuable advice, particularly on the draft Convention on the law of treaties, had been appreciated by all members. Since the Committee had already done outstanding work for the codification and progressive development of international law, he hoped that the Commission would continue the practice of sending observers to its meetings.

29. Mr. USTOR said he congratulated both Mr. Ruda and Mr. Tabibi on their very informative reports. The guiding principle in the world of today was that of international co-operation, much of which necessarily took place at the regional level. Legal co-operation was being carried out in almost all regions of the world; in some of them it was already institutionalized in permanent bodies, while in others it was of a more informal nature. Like other speakers, he hoped that the Commission would maintain and strengthen its ties with the Inter-American Juridical Committee, with the Asian-African Legal Consultative Committee and, last but not least, with the European Committee on Legal Co-operation.

30. Mr. TSURUOKA said he wished first to congratulate Mr. Ruda on his excellent report and to thank him for having agreed to go to Rio de Janeiro in the service of international law. He also wished to congratulate Mr. Tabibi for his very full and excellent report. Mr. Tabibi had rendered a great service both to international law and to the Asian-African Legal Consultative Committee, a body for which he (Mr. Tsuruoka) had a particular regard. In the minds of its founders, the Committee's purpose was not to see that member States adopted the same position on the issues of the day, but to provide an opportunity for frank exchanges of views on various branches of international law. Happily that tradition had been maintained, particularly at the tenth session. There might have been attempts to persuade as many member

States as possible to adopt a particular point of view, but the working of the Committee had been so democratic that such attempts had been vain. The Committee represented a vast area of the world and its members had brought a high standard of learning to its debates. Those were sufficient grounds for continuing and strengthening relations between the Committee and the Commission.

31. Mr. RAMANGASOAVINA said that both Mr. Ruda and Mr. Tabibi had presented very interesting reports.

32. The Inter-American Juridical Committee was a most useful model, because its function was to co-ordinate the different legal systems of a whole continent. The opinions of such bodies were very valuable to those concerned with the harmonization of law. The Commission always listened with close attention to the statements of observers sent to it by such committees, which did excellent work at the regional level. It was especially important that the Commission should send observers to such bodies because its own work was at the world level.

33. Mr. Tabibi's report showed that the work of the Asian-African Legal Consultative Committee had made a large contribution to the success of the Vienna Conference on the Law of Treaties. He would have liked to see more African countries represented on the Committee, which included representatives of most Asian countries. He had noted that most of the participating countries were English speaking. It would make for greater efficiency and strengthen the representative character of the Committee if more African and more French-speaking countries could take part in its work, despite the practical difficulties to which that might sometimes give rise.

34. Mr. AGO thanked Mr. Ruda and Mr. Tabibi for the full and graphic summaries they had presented of the work of the Inter-American Juridical Committee and the Asian-African Legal Consultative Committee. The contacts made with those bodies enabled the Commission to learn at first-hand what trends were developing in the different regions of the world with regard to the problems on its agenda, and contributed to the efficacy of its work.

35. The members of the Asian-African Legal Consultative Committee, and especially Mr. Tabibi, had played a considerable part in the success of the Vienna Conference. As President of that Conference, he was greatly indebted to them for their efforts to reconcile the different points of view that had been expressed there.

36. Mr. RUDA said he was grateful to Mr. Tabibi for having agreed to represent the Commission at the tenth session of the Asian-African Legal Consultative Committee. He had noted with particular interest the Committee's resolution X (6) on international rivers, a subject of great importance to Latin American countries, which were facing development problems similar to those of the African and Asian countries. International rivers also appeared as a topic on the International Law Commission's programme.

37. Mr. ROSENNE said he would like to associate himself with the expressions of appreciation to the two members who had represented the Commission at important regional meetings. He attached great significance to the regular submission of reports on the activities of regional bodies concerned with international law and hoped that the Commission's documentation on those activities would be kept as complete as possible. That documentation, which was useful for the edification of members of the Commission, also drew attention to important trends in various parts of the world. Thus, it was interesting to note the silence of regional bodies on certain issues; for example, at the previous session, the representative of the Asian-African Legal Consultative Committee had made no reference to State succession.

38. The reports on regional activities provided the Commission with authentic and objective documentation on the matters with which the regional bodies had dealt. In the past, the Commission had found valuable material in such reports on the subject of reservations to multilateral treaties. In the future, its work on State responsibility would benefit from the same exchange of authentic information.

39. He had listened with interest to Mr. Ruda's analysis of the new statutes of the Inter-American Juridical Committee and looked forward to learning what solutions were ultimately adopted.

40. As to the Vienna Conference on the Law of Treaties, he had noted Mr. Tabibi's remarks on the role of the Asian-African Legal Consultative Committee, but he believed that there were a number of aspects of the history of that Conference on which it was still too early to lift the veil. That remark, however, did not detract in any way from the well-deserved tribute paid to the role of the African delegations in the success of the Conference.

41. Mr. NAGENDRA SINGH, referring to the comments of Mr. Ramangasoavina, said it was true that African participation in the meetings of the Asian-African Legal Consultative Committee had been somewhat limited in the past. It had now been decided, however, to hold a series of meetings in Africa and the next meeting of the Committee would take place in Ghana; it was hoped that a greater number of Africans would then be able to participate in the Committee's work.

42. The CHAIRMAN said he wished to thank Mr. Tabibi for being so good as to represent the Commission in the Asian-African Legal Consultative Committee, and to congratulate him on the excellent report which he had just presented. The Commission would soon have the pleasure of hearing the Observer for the Asian-African Legal Consultative Committee give a summary of the work of that Committee which, though not as old-established as the Inter-American Juridical Committee, also carried out important and fruitful work.

The meeting rose at 12.25 p.m.

1011th MEETING

Monday, 30 June 1969, at 3.10 p.m.

Chairman: Mr. Nikolai USHAKOV

Present: Mr. Ago, Mr. Albónico, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Eustathiades, Mr. Ignacio-Pinto, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Ruda, Mr. Tammes, Mr. Tsuruoka, Mr. Ustor, Mr. Yasseen.

State responsibility

(A/CN.4/208; A/CN.4/209; A/CN.4/217)

[Item 3 of the agenda]

1. The CHAIRMAN invited the Commission to begin consideration of item 3 of the agenda and called on the Special Rapporteur to introduce his report (A/CN.4/217).

2. Mr. AGO (Special Rapporteur) said that in presenting, in his first report, a review of previous work on codification of the topic of the international responsibility of States, his intention had been to provide the Commission with a conspectus of what had been done so far, by studying which it could derive the maximum benefit for its future work and at the same time avoid committing the errors which had stood in the way of such codification in the past. The international responsibility of States, perhaps more than any other branch of international law, including the law of treaties, had been the subject of the earliest attempts at codification. To emphasize the difficulty of the task he would remind the Commission how arduous the codification of the law of treaties had been, even though that work had been made easier by the fact that the subject-matter had been well defined and the plan to be followed relatively straightforward, and that it had been possible to refer quite extensively to the general theory of obligations in private law.

3. That did not apply where the international responsibility of States was concerned. In the first place, the greatest caution was called for in making any reference in that context to internal law, where the clearly separate development of the concepts of civil responsibility and criminal responsibility made those concepts difficult to transfer to international law. An even greater difficulty lay in the fact that, unlike the law of treaties, which was a clearly differentiated branch of international law, responsibility was generally treated in conjunction with other subjects, which, moreover, differed from each other. It was true that writers were more or less agreed on a general definition, according to which a State incurred responsibility by violating an international obligation. But it was often found that while speaking of responsibility writers were in fact attempting indirectly to define general substantive rules, the primary