

Document:-  
**A/CN.4/SR.1065**

**Summary record of the 1065th meeting**

Topic:  
**<multiple topics>**

Extract from the Yearbook of the International Law Commission:-  
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104. Mr. ALCÍVAR, thanking the Inter-American Juridical Committee's observer for his valuable report, said the work of that regional body was of great importance to the maintenance of international peace and security in its region. The American system of pacific settlement of disputes needed to be brought into line with the world-wide system. Many of the now well-established principles of international law had had their origin in Latin America but, in the particular matter of modes of pacific settlement, the American system now lagged behind the world system.

105. With regard to the question of foreign investments, on which there had been a division of opinion in the Committee, he expressed the hope that it would be possible to harmonize the essential idea of the right of peoples to dispose of their national resources and their need to obtain the foreign investments they needed.

106. Lastly, it was important that the Committee should co-ordinate its work with that which the International Law Commission was carrying out on a world basis.

107. Mr. RAMANGASOAVINA thanked the observer for the Inter-American Juridical Committee for his very interesting report. At the 1046th meeting, when the Commission had paid a tribute to the memory of Mr. Amado, members had stressed the valuable contributions by Brazil and by Latin America as a whole to civilization in general and to law in particular. Mr. Caicedo Castilla's report on the Committee's work was further evidence of that. Latin American jurists had made a notable contribution, if not to the unification of law, at any rate to the unification of legal concepts in a world which was divided, if only by distance. The Inter-American Juridical Committee was blazing a trail for the other continents to follow.

108. Mr. THIAM said that he had been interested to note the similarity of the problems encountered by the Latin American countries and the African countries. The African countries were convinced of the need to co-operate with the Latin American countries in the field of international law for four main reasons. First, the newly independent countries, and more particularly those of Africa, needed the general principles of law as a guide to ensure that in their actions they did not diverge from the principles of universal civilization. Secondly, they had to ensure that the solutions they found to their own problems did not conflict with the general principles of law, and that unfortunately was not always the case. Thirdly, relationships between the African States, like those between the Latin American States, had to be so organized as to encourage a closer integration at all levels. And fourthly, relationships with the industrialized countries had to be established in the spirit defined by the Group of 77 at the New Delhi Conference. The similarity of the questions of immediate concern to both groups of countries showed how fruitful co-operation between Africa and Latin America could be.

109. Mr. EUSTATHIADES, speaking also on behalf of Mr. Castrén, said he wished to associate himself with the congratulations and thanks expressed to the observer for the Inter-American Juridical Committee, whose very

interesting report provided further evidence of the valuable work on codification carried out by the Committee in addition to its other meritorious activities extending over so many years.

110. The CHAIRMAN said the Commission and all its members were grateful to the observer for the Inter-American Juridical Committee for his very interesting report, which had enabled the Commission to follow the recent work of that Committee.

111. As the author of a comparative study of the Organization of American States and the Organization of African Unity he had noted with particular interest the revision of the structure of the OAS. He had also been much impressed by the extent of the work of codification undertaken by the Committee, and its prospective review of sixty-four inter-American conventions.

112. The work of the Inter-American Committee, particularly on such subjects as international companies and investment disputes, was of more than purely continental importance. Latin America could take pride in its many eminent jurists, whose ability he had had an opportunity to appreciate at the Vienna Conference on the Law of Treaties, where the Latin American delegations had played a very prominent part. The Commission would always welcome the cross-fertilization of ideas resulting from the co-operation between the two bodies.

The meeting rose at 1.10 p.m.

### 1065th MEETING

Monday, 8 June 1970, at 3.10 p.m.

Chairman: Mr. Taslim O. ELIAS

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

#### Relations between States and international organizations

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

[Item 2 of the agenda]

(resumed from previous meeting)

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE  
(resumed from previous meeting)

ARTICLE 0 (Use of terms) (resumed from the 1061st meeting)<sup>1</sup>

1. The CHAIRMAN said that the Commission had already adopted sub-paragraphs (a) and (b) of article 0

<sup>1</sup> For previous discussion, see 1043rd meeting, paras. 32-46, 1044th meeting, paras. 1-23, and 1061st meeting, paras. 57-68.

on a provisional basis at the 1061st meeting. The Drafting Committee had now completed its work and was submitting the text of sub-paragraphs (a) to (k).

2. Mr. KEARNEY (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following complete text for sub-paragraphs (a) to (k) of article 0:

*Article 0*  
*Use of terms*

For the purposes of the present part:

(a) A "permanent observer mission" is a mission of representative and permanent character sent to an international organization by a State not member of that organization;

(b) The "permanent observer" is the person charged by the sending State with the duty of acting as the head of the permanent observer mission;

(c) The "members of the permanent observer mission" are the permanent observer and the members of the staff of the permanent observer mission;

(d) The "members of the staff of the permanent observer mission" are the members of the diplomatic staff, the administrative and technical staff and the service staff of the permanent observer mission;

(e) The "members of the diplomatic staff" are the members of the staff of the permanent observer mission, including experts and advisers, who have diplomatic status;

(f) The "members of the administrative and technical staff" are the members of the staff of the permanent observer mission employed in the administrative and technical service of the permanent observer mission;

(g) The "members of the service staff" are the members of the staff of the permanent observer mission employed by it as household workers or for similar tasks;

(h) The "private staff" are persons employed exclusively in the private service of the members of the permanent observer mission;

(i) The "host State" is the State in whose territory the Organization has its seat, or an office, at which permanent observer missions are established;

(j) The "premises of the permanent observer mission" are the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used for the purposes of the permanent observer mission, including the residence of the permanent observer;

(k) An "organ of an international organization" means a principal or subsidiary organ, and any commission, committee or sub-group of any of those bodies.

3. The CHAIRMAN invited the Commission to consider article 0 sub-paragraph by sub-paragraph, beginning with sub-paragraph (c).

*Sub-paragraphs (c), (d), (e), (f), (g), (h), (i), (j)*

*Sub-paragraphs (c) to (j) were adopted without comment*

*Sub-paragraph (k)*

4. Mr. ROSENNE said that he was puzzled by the words "and any commission, committee or sub-group of any of those bodies". In view of the great variety of subsidiary bodies at the present time, many of which were not composed of representatives of States, it should perhaps be made clear that the commissions, committees,

and sub-groups in question were composed of representatives of States. The same clarification would have to be made on second reading in the case of the corresponding provision in article 1.<sup>2</sup>

*Sub-paragraph (k) was adopted.*

*Article 0 was adopted.*

ARTICLE 55 (Composition of the permanent observer mission)<sup>3</sup> (resumed from the 1062nd meeting)

5. The CHAIRMAN said that, at the 1062nd meeting, the Commission had adopted paragraph 1 of article 55 but had asked the Drafting Committee to reconsider paragraph 2 in the light of the discussion.

6. Mr. KEARNEY (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for paragraph 2:

2. When members of a permanent diplomatic mission, a consular post or a permanent mission in the host State are included in a permanent observer mission, their privileges and immunities as members of their diplomatic mission, consular or permanent mission shall not be affected.

7. Mr. ROSENNE said that that paragraph really had nothing to do with the composition of the permanent observer mission; it more properly belonged to the section on privileges and immunities. He hoped, therefore, that the Drafting Committee would suggest a more suitable place for it.

8. Mr. KEARNEY (Chairman of the Drafting Committee) said that the Drafting Committee had discussed that point and had concluded that it would be desirable to change the placing of article 55 and to renumber it accordingly.

9. Mr. RAMANGASOAVINA said he thought it would be more correct, at the end of the French version, to say "*n'en sont pas affectés*" instead of "*ne sont pas affectés*".

10. Mr. KEARNEY (Chairman of the Drafting Committee) said that it might be advisable for the Commission to consider in what cases, in the present draft articles, the word "permanent" should be inserted before the words "diplomatic mission". It had been used in article 2 of the Vienna Convention on Diplomatic Relations<sup>4</sup> but not in article 9 of the present draft.<sup>5</sup>

11. The CHAIRMAN suggested that the Commission adopt article 55, paragraph 2, provisionally and reserve its position on the question of the placing of the article, as well as on the point made by Mr. Ramangasoavina, until the second reading.

*It was so agreed.*

<sup>2</sup> See *Yearbook of the International Law Commission, 1968*, vol. II, p. 196.

<sup>3</sup> For previous discussion, see 1050th meeting, paras. 46-55, and 1062nd meeting, paras. 42-65.

<sup>4</sup> United Nations, *Treaty Series*, vol. 500, p. 98.

<sup>5</sup> See *Yearbook of the International Law Commission, 1968*, vol. II, p. 202.

ARTICLE 57 *bis* (Chargé d'affaires *ad interim*)<sup>6</sup> (resumed from the 1062nd meeting)

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

*Article 57 bis*  
*Chargé d'affaires ad interim*

If the post of permanent observer is vacant, or if the permanent observer is unable to perform his functions, a chargé d'affaires *ad interim* shall act as head of the permanent observer mission. The name of the chargé d'affaires *ad interim* shall be notified to the Organization either by the permanent observer or, in case he is unable to do so, by the sending State.

13. The article had been referred back to the Drafting Committee with the request that it consider whether some other term than "chargé d'affaires *ad interim*" should be used in connexion with permanent observer missions. The Committee had examined the practice in the matter and had found that that term was not used by the Protocol Section at Headquarters in New York, although it had been used on a number of occasions at Geneva. Since there did seem to be a modicum of practice in support of the term, the Drafting Committee had decided to retain it.

14. Mr. YASSEEN said that at the 1062nd meeting he had suggested that it would be better to find some neutral wording which did not imply an obligation, as did the text submitted to the Commission; that text did not reflect positive law.

15. Mr. CASTRÉN said that the Drafting Committee, after discussing the question at length, had decided not to alter the wording, which was the same at that of article 18,<sup>7</sup> but simply to ask the Special Rapporteur to state in the commentary that the wording should not be interpreted too strictly, particularly as no sanction was possible. In any case there could not be any obligation, since the mission might consist only of the permanent observer.

16. Mr. EUSTATHIADES said that he sympathized with those who thought it was in the organization's interests to know whom, in the absence of the permanent observer, it should approach in the matter of communications, correspondence, and so on. But he did not think it was possible to lay down an obligation in the text of an article and diminish it in the commentary. The Commission must therefore take a position on the point.

17. Where the mission consisted only of a permanent observer, the procedure proposed by the Drafting Committee could be adopted only when the permanent observer was prevented from acting; but it might be that by keeping the post vacant, the State wished to indicate that for the time being it did not wish to have a permanent observer. The text should therefore be worded in such a way as to make the appointment of a chargé d'affaires *ad interim* facultative and not mandatory.

18. Mr. YASSEEN said he was not convinced by Mr. Castrén's explanations. The fact that an adopted text already existed was not a valid argument, since that text did not reflect the real position and ought therefore to be revised. The establishment of a permanent mission was not an obligation and the sending State should therefore also have the faculty to appoint, or not to appoint, a head of the mission *ad interim*.

19. He could not agree to a solution which consisted in interpreting the article in the commentary in a manner inconsistent with the interpretation that flowed from the terms of the article itself. The wording of article 57 *bis* should therefore be amended in both the French and the English versions.

20. Mr. ROSENNE said that he entirely agreed with Mr. Yasseen that there was no analogy between article 57 *bis* and article 18 from the point of view either of the sending State or of the organization. To avoid wording article 57 *bis* in the categorical form of an obligation, he suggested that the words "shall act" in the first sentence be amended to "may act".

21. Mr. AGO said he too thought that the appointment of a chargé d'affaires *ad interim* should be a faculty and not an obligation.

22. Furthermore, the permanent observer could not be mentioned as an alternative to the sending State, as was done in the second sentence, since the permanent observer always acted on behalf of the sending State.

23. He suggested that the entire article be recast as a single sentence to read: "If the post of permanent observer is vacant, or if the permanent observer is unable to perform his functions, the sending State may notify the Organization of the name of a chargé d'affaires *ad interim* who will act as head of the permanent observer mission".

24. Sir Humphrey WALDOCK said that he shared the views of Mr. Yasseen and Mr. Rosenne. He could also accept Mr. Ago's suggestion that the text should, if possible, be shortened.

25. Mr. USTOR said that if the article was modified as had been suggested, he was afraid that the Commission might have difficulties with article 18. The two articles should be considered together.

26. Mr. BARTOŠ said that he supported Mr. Ago's suggestion: it reflected what he himself had already said about the faculty which the sending State must always enjoy to appoint its representatives directly and to recall them without recourse to any intermediary.

27. Mr. AGO said that, in order to take account of Mr. Ustor's comments, it might perhaps be stated in the commentary to his new text of the article that the Commission was aware that it would probably need to revise the text of the corresponding article on permanent missions of member States.

28. Mr. KEARNEY (Chairman of the Drafting Committee) said that he supported Mr. Rosenne's suggestion to replace the words "shall act" by "may act" in the first sentence. A full stop should be placed after the word "Organization" in the second sentence.

<sup>6</sup> For previous discussion, see 1062nd meeting, paras. 74-87.

<sup>7</sup> See *Yearbook of the International Law Commission, 1968*, vol. II, p. 211.

29. Mr. USHAKOV said that he saw no reason to alter the wording of article 57 *bis* seeing that several conventions, including the Vienna Conventions on Diplomatic and Consular Relations and the Convention on Special Missions, contained a similar provision and it had so far raised no difficulties.

30. Mr. RAMANGASOAVINA said that he was in favour of retaining the text proposed by the Drafting Committee, because if the idea of an obligation were eliminated from the first sentence, it would still subsist in the second. But the article could not be interpreted as imposing an obligation, since if the establishment of a permanent observer mission was a faculty under the basic article, which was article 51, the appointment of a chargé d'affaires *ad interim* could not be made an obligation.

31. Mr. THIAM said that he too thought it would be difficult to impose on the sending State the obligation to appoint a chargé d'affaires *ad interim*. It would be a mistake simply to try to assimilate permanent missions of member States to permanent observer missions and to subject non-member States to the same obligations as member States. It would therefore suffice if words such as "may act" or "may be appointed to act" were used.

32. Mr. ROSENNE said that Mr. Ushakov was correct in pointing out that an obligation did exist in article 19 of the Vienna Convention on Diplomatic Relations,<sup>8</sup> but the case of permanent observer missions was entirely different and some explanation should be given in the commentary.

33. Concerning article 18, he maintained an open mind: it might be reconsidered but it would be going too far to say that it would probably need to be revised. The appointment of a chargé d'affaires *ad interim* was a faculty and not an obligation, but when that faculty was exercised and the appointment was made, there was an obligation to notify the organization.

34. Mr. CASTRÉN said that he still thought there was a very close analogy between article 57 *bis* and article 18, and that if the Commission amended the former, it should also amend the latter. Like Mr. Rosenne, he did not think that article 51 could be invoked as establishing an obligation in article 57 *bis*, since the two articles dealt with different situations.

35. With regard to Mr. Ago's suggestion, it was valid as far as the substance was concerned, but he was still reluctant to amend the wording of the article because it was what had always been used in conventions so far, and in some conventions there was a reference not only to the sending State but to the organs or authorities which could act on its behalf.

36. Mr. AGO said that there was no connexion between articles 57 *bis* and 18 and the so-called corresponding articles of the Vienna Conventions on Diplomatic and Consular Relations. When diplomatic relations were established, it was essential that some person should be instructed to act on behalf of the State; it was in fact

tantamount to an interruption in diplomatic relations if there was neither a head of mission nor a chargé d'affaires. It was therefore natural, in the case in point, that the appointment of a chargé d'affaires *ad interim* should be mandatory.

37. On the other hand, the establishment of permanent missions to an organization was not an obligation and many member States did not make use of the faculty. Consequently, it was not essential that there should be a permanent representative or, consequentially, a chargé d'affaires *ad interim*. It was even less essential in the case of permanent observer missions sent by non-member States, which might wish to leave their permanent observer missions without a titular head for a time if they lost interest in the organization's activities, without necessarily doing away with the mission altogether.

38. There was manifestly no connexion in that respect between diplomatic relations and permanent missions, whatever their nature. It was therefore necessary to stress the optional nature of the appointment of a chargé d'affaires *ad interim* and to state in the commentary that the Commission might consider revising article 18.

39. The wording of the second sentence was not always the same, contrary to what Mr. Castrén had said. For example, it differed in article 19 of the Vienna Convention on Diplomatic Relations. Nor could the permanent observer be assimilated to the competent authorities responsible for appointing or recalling him.

40. Mr. USHAKOV said that the situation was the same with diplomatic missions, permanent missions of member States and permanent observer missions when the head of the mission was absent or his post was vacant and there was no one to replace him. If the wording of article 57 *bis* were altered, there would be a risk of a conflict with the wording of conventions already in force.

41. Mr. EUSTATHIADES said he had been the first to draw attention to the point, at the 1062nd meeting. Neither practice nor logic indicated that the appointment of a chargé d'affaires *ad interim* was an obligation. States which wished to establish permanent observer missions thereby displayed their interest in an organization, but it could easily be envisaged that they might wish to take less interest in it, and they should therefore be given the faculty to do so.

42. As opposed to that idea, which was *de lege lata*, there could be another that clearly was universalist in trend, such as the Secretary-General's idea that the establishment of as many fully active permanent observer missions as possible was desirable in the interests of the universality and prestige of the organization. Consequently, if the Commission wished to encourage permanent observer missions to an organization to sustain their interest, it might very well draft a *de lege ferenda* text and indicate to non-member States that it was hoped that their interest would be maintained once they had manifested it. The Commission should decide whether that was really the attitude it wished to adopt.

43. Mr. RUDA said that article 15 of the Convention on Consular Relations used a different formula from

<sup>8</sup> United Nations, *Treaty Series*, vol. 500, p. 106.

that contained in article 19 of the Convention on Diplomatic Relations. Paragraph 1 of article 15 of the Convention on Consular Relations stated: "If the head of a consular post is unable to carry out his functions or the position of head of consular post is vacant, an acting head of post may act provisionally as head of the consular post".<sup>9</sup> Paragraph 1 of article 19 of the Vienna Convention on Diplomatic Relations, on the other hand, stated: "If the post of head of the mission is vacant, or if the head of the mission is unable to perform his functions, a chargé d'affaires *ad interim* shall act provisionally as head of the mission". However, that article also had an important second paragraph, which stated: "In cases where no member of the diplomatic staff of the mission is present in the receiving State, a member of the administrative and technical staff may, with the consent of the receiving State, be designated by the sending State to be in charge of the current administrative affairs of the mission". Article 18 of the Commission's present draft was taken from paragraph 1 of article 19 of the Convention on Diplomatic Relations, but the problem raised in paragraph 2 seemed to have been overlooked.

44. Sir Humphrey WALDOCK said that, in the case of an observer mission, it was impossible to make the appointment of a chargé d'affaires *ad interim* an obligation for the sending State, which could hardly be said to be bound to maintain a representative at the organization; it could only be a faculty. What might require consideration was the situation of the host State, which in his view was entitled to ask that there should be some member of the permanent observer mission who was identifiable as the person responsible for the conduct of its affairs.

45. The CHAIRMAN suggested that article 57 *bis* be referred back to the Drafting Committee for further consideration.

*It was so agreed.*

#### Organization of work

46. The CHAIRMAN welcomed the Legal Counsel, representative of the Secretary-General. The Commission would take advantage of his presence to examine, starting at the next meeting, agenda items 7 (Survey of topics suitable for codification) and 8 (Organization of future work). To assist the Commission, the Secretariat had prepared a working paper entitled "Review of the Commission's programme of work and of the topics recommended or suggested for inclusion in the programme" (A/CN.4/230).

47. At the same time, the Commission would discuss the question of the possible extension of its next session, or the holding of a special winter session, for the purpose of completing its work on the topic of relations between States and international organizations. Work on that particular topic was the Commission's first priority, since the General Assembly expected it to be completed by 1971.

48. So far as the remainder of the present session was concerned, the Commission would take up item 3 (a) (Succession of States and Governments: succession in respect of treaties) after it had examined items 7 and 8. It would then deal with the articles prepared by the Drafting Committee on relations between States and international organizations. Afterwards, the topic of State responsibility (item 4) would be considered. The Commission had already decided to allocate three days from 29 June to item 3 (b) (Succession of States and Governments; succession in respect of matters other than treaties).

49. Mr. AGO said he was rather uneasy about the optimism discernible in the proposed programme. At the outset, the main topic for the present session had looked to be an easy one. Part of it had seemed to be merely a question of adding an appendix to codification already completed. It was now clear, however, that the rules governing permanent diplomatic missions could not simply be made applicable to permanent missions to international organizations. It had then been found that the case of permanent missions did not exhaust the range of relationships between States and international organizations in the matter of representation, that permanent observer missions of non-member States need not necessarily be assimilated to the permanent missions of member States, and that conditions were not necessarily the same for representatives appointed to bodies on a permanent basis as for delegates appointed for a specific session of a body or for a conference. As a result, the time originally allowed for the consideration of the topic had proved insufficient.

50. The other topics on the agenda were of great importance and required careful consideration. Several weeks should be devoted to them in the course of several sessions. A discussion at four or five meetings would of course be useful, but if that procedure were followed at each session, the discussion would never get beyond preliminaries and would not touch the heart of the matter.

51. Consequently, in order to plan effectively for the rest of the present session, the next session and even the next five-year period of membership, the Commission would first have to complete its study of the draft on relations between States and international organizations. Each of the other topics would then constitute a stage to be completed before passing to the next stage. He would therefore even be prepared to agree to the study of State responsibility being deferred to a later date, although he was anxious to see some progress made on that topic, rather than let the Commission fall behind in its work on Mr. El-Erian's draft.

52. Moreover, if the Commission was going to do some useful work before the end of the term of office of its present members, it would need more time, in the form either of a special session—in the spring, not in the winter, since it would have to wait until it had received the comments of governments on Mr. El-Erian's draft—or of an extension to the regular session. A sufficient number of weeks should, in any case, be allowed for the completion of the draft relations between States and international organizations, before embarking on a

<sup>9</sup> United Nations, *Treaty Series*, vol. 596, p. 274.

thorough study of State succession and State responsibility.

53. Mr. BARTOŠ said that every topic the Commission examined always involved more work than had been anticipated at the outset. Discussion revealed many hitherto unnoticed problems; that was indeed the justification of the Commission's deliberations.

54. The Commission should resume its consideration of relations between States and international organizations after studying the comments of governments, the opinions of writers and the views of the international organizations. The international organizations had been invited to express their opinion by the Legal Counsel and their replies would undoubtedly disclose fresh difficulties.

55. The Commission should begin its approach to the topics of State succession and State responsibility by defining the principles on which its work was to be based, in the light of the study of present differences in practice, since on many aspects there were no established rules of international law that were generally recognized. Moreover, many rules regarded as established should be reviewed, especially in the matter of State responsibility. The new system of sanctions instituted by the Charter, for example, gave food for thought. Again, the United Nations Charter and the Declaration on decolonization<sup>10</sup> had changed the legal basis of the rules governing State succession.

56. The Commission had of course discussed those problems and the special rapporteurs had submitted to it the fruits of their knowledge and endeavours, but it had never had time to make effective use of that material. On that point he entirely agreed with Mr. Ago. It would still take some time to formulate the principles which should be followed today, since there was no consensus of opinion either in political or legal quarters, or in practice.

57. An extension of the present session or a special session was therefore necessary. He knew from experience how much time was wasted when consideration of a topic had to be resumed after a change in the membership of the Commission. He was therefore very much hoping that the Legal Counsel would help the Commission out of the critical situation in which it found itself with regard to the use of its time, which was very limited and ought to be increased.

58. Mr. USHAKOV said he agreed with the programme proposed by the Chairman for the work of the present session, and in particular that the Commission should complete its consideration of Mr. El-Erian's draft and should discuss the topics on which reports had been prepared by Mr. Bedjaoui, Sir Humphrey Waldock and Mr. Ago. The question of future work should be considered at a private meeting.

59. Mr. ROSENNE said he reserved his position with regard to the next session and also with regard to the longer-term programme of work.

60. He supported Mr. Ushakov's suggestion that the Commission should discuss its 1971 programme at a private meeting.

61. He found the Chairman's programme for the remainder of the present session somewhat ambitious. Three Special Rapporteurs had submitted reports with draft articles on topics which had already seen some discussion in the Commission. He submitted that it was necessary to choose one of those topics and start discussing the draft articles in the normal way. Experience had shown that the first two or three articles on any topic were particularly important because the decision on those articles set the tone for the project as a whole.

62. The CHAIRMAN might consult the Special Rapporteurs and decide on one report which the Commission could undertake to discuss in order to make some progress on the topic. If the Commission were able to show some progress on one of those topics, that would strengthen its position if it were to make a request to the Sixth Committee for the holding of a winter session.

63. Sir Humphrey WALDOCK said he found himself in agreement in principle with Mr. Ago and also largely with Mr. Rosenne. Experience had shown that the Commission was not likely to make much progress by dealing with topics in a piecemeal fashion. The Commission needed a few days' discussion on a topic before it began to get a real grip of it. He believed that the Commission should, in general, try to give itself the time necessary for a sustained discussion of any major report before it.

64. With regard to the topic of relations between States and international organizations, he asked the Chairman of the Drafting Committee whether some four days would be enough to complete work on that topic.

65. Mr. KEARNEY (Chairman of the Drafting Committee) said that it was still too early to reply to that question. The Drafting Committee was at present discussing the question of the different definitions for representatives to organs and representatives at conferences. It had still to receive from the Special Rapporteur the draft of the section on the privileges and immunities of those representatives. It was not unlikely that, when the Drafting Committee had completed its work on that section, the Commission itself would wish to debate it at length.

66. Mr. NAGENDRA SINGH said he agreed on the need for the Commission to concentrate on one subject, a method of work which was more systematic and more productive of results. However, since there were intervals when the Drafting Committee was engaged on the first priority topic and the Commission was awaiting the results of the Drafting Committee's work, it was desirable to have a second priority topic to fall back on. The present position was that the topic of relations between States and international organizations (item 2) had first priority; when there was a gap in the work on that topic, the Commission should fall back on its second priority topic, namely, succession of States and Governments in respect of treaties (item 3 (a)). Only when the Commission had completed its work on item 2 would

<sup>10</sup> General Assembly resolution 1514 (XV).

item 3 (a) become the first priority item; it would then be appropriate to take up a third topic to fill in gaps in the work of item 3 (a).

67. Mr. STAVROPOULOS (Legal Counsel) thanked the Chairman for his kind words of welcome and said that it was both an honour and a pleasure for him to attend the meetings of the Commission.

68. He hoped that the Commission would be able to discuss its future programme of work and make a survey of the topics for codification during his stay at Geneva. A survey of such topics had been made in 1949<sup>11</sup> and had been adequate at the time, but it was now necessary to prepare a list of topics which would take into account the needs of the nineteen-seventies.

69. The working paper prepared by the Secretariat entitled "Review of the Commission's programme of work and of the topics recommended or suggested for inclusion in the programme" (A/CN.4/230) was only a preparatory survey. He was anxious to learn from the Commission what further preparatory work the Secretariat could do.

70. In considering the programme of work, the Commission should look upon the newly elected members as forming a new body, even though many of the present members were likely to be re-elected.

71. The Commission might now hold a preliminary discussion on its future programme of work, so that at its next session, in 1971, it could settle the final list of topics for inclusion in that programme.

The meeting rose at 5.55 p.m.

<sup>11</sup> See *Yearbook of the International Law Commission, 1949*, pp. 279-281.

## 1066th MEETING

Tuesday, 9 June 1970, at 10.55 a.m.

Chairman: Mr. Taslim O. ELIAS

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

### Organization of future work

(A/CN.4/230)

[Item 8 of the agenda]

1. The CHAIRMAN said that the officers of the Commission and all the Special Rapporteurs, except Mr. El-

Erian, had met that morning at 9.30 and, after a very detailed discussion, had come to the conclusion that the programme he had outlined at the previous meeting was the most acceptable. The Commission would take up Sir Humphrey Waldock's second and third reports on succession in respect of treaties (A/CN.4/214 and 224) from 10 June to 16 June. It would then spend about five days, from 17 to 23 June, on the adoption of Mr. El-Erian's draft articles as submitted by the Drafting Committee and go on to consider Mr. Ago's second report on State responsibility (A/CN.4/233) for five days, from 24 to 26 June and on 2 and 3 July. Mr. Bedjaoui's third report on succession of States in respect of matters other than treaties (A/CN.4/226) would be considered for three days as originally decided, from 29 June to 1 July, which would leave one week, from 6 to 10 July, for the adoption of the Commission's report.

2. The discussions of Sir Humphrey Waldock's and Mr. Ago's reports were not intended to lead to the adoption of articles which would be sent to the Drafting Committee; it was intended to discuss the articles in those reports on a broad basis so that the Special Rapporteur could ascertain the views of the members of the Commission on the general line they had adopted.

3. The officers of the Commission, in consultation with the Special Rapporteurs, had also decided that the most practical solution to the problem of extra time would be to extend the Commission's 1971 session by three to four weeks. It was not considered feasible to hold a winter or spring session, as had been suggested; and the recommendation most likely to be accepted by the General Assembly and the Sixth Committee was one which would not involve additional travel expenses.

4. Moreover, if the regular session were extended by three or four weeks, the Commission could be quite sure of completing its work on Mr. El-Erian's draft articles and would also have time to do some substantial work on the reports of Sir Humphrey Waldock and Mr. Ago. The officers hoped it would be possible for Mr. El-Erian to submit a report, taking all the comments of governments into account, by the beginning of the next session, so that the second reading could be based on that report. They also suggested that Mr. Ago's report should be taken first, early in the session, and that about four weeks should be devoted to it; Sir Humphrey Waldock's report would then be studied for a similar period, and after that the Commission could concentrate on Mr. El-Erian's final report until the second reading of his draft was completed.

5. The officers had seriously considered the possibility of starting with Mr. El-Erian's report at the beginning of the next session, but they feared there might be some delay, either on the part of governments in sending in their comments or, because of the need to take account of those comments, in preparing the final report. And the Secretariat would need time to make the necessary translations. Hence it would be better to begin with the reports of Mr. Ago and Sir Humphrey Waldock.

6. That was a rough outline of the programme the officers recommended to the Commission and he hoped that it would prove generally acceptable.