

Document:-
A/CN.4/SR.1066

Summary record of the 1066th meeting

Topic:
Programme of work

Extract from the Yearbook of the International Law Commission:-
1970, vol. I

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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 1949¹¹ 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.

¹¹ 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.

7. In conclusion, he had a word to say on the question raised by the Legal Counsel the previous day: that of the choice of topics for future consideration. The officers of the Commission had come to the conclusion that it would be best to ask the Secretariat to prepare a background paper for the use of the Commission, taking account of any general comments members might wish to make. The Legal Counsel had assured the Commission that the Secretariat could prepare such a paper, in the light of the recommendations of the General Assembly and in consultation with as many members of the Commission as possible, in time for consideration at the Commission's next session.

8. Mr. CASTAÑEDA said that, in view of the importance attached by the General Assembly to the topic for which Mr. Bedjaoui was Special Rapporteur, the Commission's failure to consider his report at all at its next session might be interpreted as showing a lack of interest in his work.

9. Mr. BARTOŠ agreed with Mr. Castañeda.

10. The CHAIRMAN said that the programme recommended by the officers of the Commission was only a tentative one; by the beginning of the next session, it might prove feasible to make certain readjustments and to discuss Mr. Bedjaoui's report as well.

11. Mr. YASSEEN asked the Chairman to impress on the General Assembly that the extra four weeks the Commission was requesting for its next session were not a favour, but a sacrifice which the members of the Commission, though pressed by other duties, had agreed to make because of the importance of the Commission's work, of which they were deeply conscious.

12. Mr. RUDA pointed out that, in its report on the work of its twenty-first session, the Commission had "confirmed its intention of bringing up to date in 1970 or 1971 its long-term programme of work, taking into account the General Assembly recommendations and the international community's current needs, and discarding those topics on the 1949 list which were no longer suitable for treatment". It had also "asked the Secretary-General to submit a preparatory working paper with a view to facilitating this task".¹

13. The Secretariat had submitted that working paper in document A/CN.4/230, and the representative of the Secretary-General had promised to prepare a supplementary working paper for the Commission's next session. He was somewhat concerned to note, therefore, that the programme of work suggested by the officers of the Commission did not allow even one day for consideration of the Commission's long-term programme of future work. At least four or five days during the next session should be devoted to that programme, in order to meet the needs of the new Commission which would take office in 1972.

14. The CHAIRMAN said that the question raised by Mr. Ruda was indeed of considerable importance and

that the two Secretariat working papers would be considered at the next session, together with a list of the priority topics recommended by the General Assembly.

15. Mr. RUDA said the Chairman had indicated that the four additional weeks of the next session would be devoted to Mr. El-Erian's report; but he thought at least one week would be required for consideration of the Commission's programme of future work.

16. The CHAIRMAN said that the Commission would take a final decision on the matter at the beginning of the next session, immediately after the election of officers.

17. Mr. STAVROPOULOS (Legal Counsel) suggested that in future, when the Commission adopted a new topic for codification and appointed a Special Rapporteur to deal with it, it should at the same time request the Secretariat to prepare the necessary background papers in consultation with the Special Rapporteur. In preparing that documentation, the Secretariat would confine itself to describing the state of international law at the time and would refrain from expressing any opinions of its own.

18. He also suggested that the Commission, as its own contribution to the twenty-fifth anniversary of the United Nations, should include in its report its firm decision to complete the work on Mr. El-Erian's report at its next session.

19. Mr. AGO said he was all in favour of the Secretariat's preparing papers to help the Special Rapporteurs in their work. Documents showing the state of a topic in regard to theory and jurisprudence were always very useful as working material, even if it was sometimes impossible for them to be complete. In the case of subjects dealt with extensively in the literature, a good bibliography could be very useful, particularly if it included works published in countries and languages not easily accessible to the Special Rapporteurs.

20. The Commission's contribution to the celebration of the twenty-fifth anniversary of the United Nations would mainly take the form of the four weeks' extra work proposed for completing the preparation of the draft articles on representatives of States to international organizations and for substantive consideration of the other important topics on the agenda, namely, State responsibility and State succession.

21. Sir Humphrey WALDOCK said he warmly supported the Legal Counsel's suggestion that the Commission should ask the Secretariat to prepare the necessary background material when it adopted a new topic. He fully agreed that the material should be entirely objective and should not contain any expressions of opinion, since they could only embarrass the Special Rapporteur if he chose to take some contrary view. As Mr. Ago had suggested, the material should include a bibliography and a resumé of practice, in particular, the practice of the United Nations.

22. The General Assembly, in operative paragraph 5 of its resolution 2501 (XXIV), had recommended "... that the International Law Commission should study, in consultation with the principal international organiza-

¹ See *Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 10*, para. 91.

tions, as it may consider appropriate in accordance with its practice, the question of treaties concluded between States and international organizations or between two or more international organizations, as an important question". In view of that recommendation, he suggested that the least the Commission could do at its present session would be to ask the Secretariat to collect the necessary information from various international organizations. It should also consider the choice of a suitable Special Rapporteur for the topic.

23. In the course of his work as Special Rapporteur for the Law of Treaties, he had been impressed by the enormous value of the practice of the United Nations as a depositary. That practice was difficult to ascertain without the collaboration of the Secretariat, because it was contained partly in circular letters from the United Nations to States, and did not all appear in official publications. But since there were other depositaries than the United Nations, and since uniformity was highly desirable, he hoped that the Secretariat would undertake to revise its documentation periodically and bring it up to date.

24. Mr. ROSENNE said he welcomed the general proposal advanced by the Legal Counsel, which was in line with action taken occasionally in the past. The papers produced by the Secretariat had proved extremely useful; indeed, many of them remained useful long after the completion of the Commission's work on a topic and its incorporation in a convention. In preparing such papers, the Secretariat should co-operate closely with the Special Rapporteur concerned, except when the Commission itself requested a paper on a well-defined subject.

25. With regard to the question of treaties between States and international organizations or between two or more international organizations, he saw nothing in General Assembly resolution 2501 (XXIV) which called for any immediate response by the Commission. The question had simply been described by the General Assembly as "an important question", without any suggestion of priority. It did, however, provide a very good illustration of the need for the Secretariat to work in very close association with the Special Rapporteur, who would certainly wish his views on the topic to be taken into account in the presentation of the material by the Secretariat.

26. He agreed with Sir Humphrey Waldock on the urgent need for the Secretariat to bring up to date its "Summary of the Practice of the Secretary-General as Depositary of Multilateral Agreements";² it should issue the revised summary in some form other than a mimeographed document.

27. As to the information made available by the Secretariat to a Special Rapporteur, he thought the Commission itself should ultimately have access to all such information, though it was quite appropriate for it to be supplied to the Special Rapporteur first.

28. The question of the celebration of the twenty-fifth anniversary of the United Nations had been raised.

Operative paragraph 18 of General Assembly resolution 2499 A (XXIV) read: "Urges appropriate organs of the United Nations to complete as early as possible the consideration of important conventions still to be concluded." He accordingly suggested that the Commission might link three matters together: first, the overriding necessity of completing its work on the priority topic of relations between States and international organizations; second, its offer to meet for an extra four weeks at the next session in order to comply with the urgent request of the General Assembly to complete important work in hand; and third, its long-term programme of work, which would appear as the Commission's own contribution to the next twenty-five years of the United Nations, much as the 1949 list of topics had been its contribution to the first twenty-five years of the Organization.

29. Mr. USTOR said he too welcomed the Legal Counsel's suggestion.

30. On the topic of the most-favoured-nation clause, for which he was Special Rapporteur, the Secretariat had already collected abundant material from the international organizations concerned and he had made good use of it in the preparation of his report. He would shortly approach the Secretariat with a request for some further work to be carried out. In the tentative schedule of work for the present session no reference had been made to the topic of the most-favoured-nation clause and he hoped that, if time permitted, the possibility of a short discussion on it would not be excluded. He assumed that the topic would also appear on the agenda for the 1971 session.

31. The CHAIRMAN said that the topic of the most-favoured-nation clause would be on the agenda for the next session; if there were any possibility of taking it up before the end of the present session, the Commission would certainly do so.

32. Mr. CASTAÑEDA said he supported the Legal Counsel's suggestion regarding the celebration of the twenty-fifth anniversary of the United Nations, and also the further suggestions on the subject put forward by various members, in particular Mr. Rosenne. Perhaps the most appropriate contribution to that celebration would have been to review the present state of international law, as suggested by Mr. Ago, and find out what new topics could be studied to fill the existing gaps in the law. It was unfortunate that the Secretariat survey of topics would not be submitted in its final form until the next session.

33. Mr. RUDA said that the Commission's long-term programme of future work was one of the most important matters before it. The programme should be planned well ahead, and take particular account of the changes which had taken place in international law. The Commission should devote at least one week at its next session to the preparation of a long-term programme in concise terms. The Legal Counsel had put forward some valuable ideas for which all the members were grateful.

34. In 1967, the United Nations Office of Public Information had published a booklet entitled "The Work of

² ST/LEG/7.

the International Law Commission",³ under the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law, established by General Assembly resolution 2099 (XX). But since 1967, the Commission's drafts on the law of treaties and special missions, which were reproduced in that booklet, had been superseded by the 1969 Vienna Convention on the Law of Treaties and the Convention on Special Missions adopted by the General Assembly by resolution 2530 (XXIV). The booklet should therefore be brought up to date and reissued. He would suggest a further improvement for the new edition, namely, that the bibliography on the International Law Commission should be expanded to include other than official publications. There was at least one precedent for such action: the volume in the United Nations Legislative Series entitled "Laws and Practices concerning the Conclusion of Treaties"⁴ listed in its bibliography not only official publications, but also relevant works of writers on international law.

35. Mr. KEARNEY, referring to the celebration of the twenty-fifth anniversary of the United Nations, said it was fitting that the Commission, in addition to completing its work on the topic of relations between States and international organizations, should take up the topic of treaties concluded between States and international organizations or between two or more international organizations, as requested both by the Vienna Conference on the Law of Treaties and by the Sixth Committee. The Commission would thus move on from the consideration of internal aspects of the United Nations to the area of substantive law. Its work on that new topic was bound to have a great effect on the law of international organizations, especially the United Nations.

36. He considered that the Commission should now appoint a Special Rapporteur for the new topic, who would work closely with the Secretariat in the production of any necessary documents.

37. Mr. AGO congratulated the Legal Counsel on having provoked a discussion from which some very promising ideas had emerged. The establishment of a new programme for the next twenty-five years was a task of the greatest importance, but it would be more difficult to carry out than in 1949, because the Commission had then been starting from nothing. It should now show how the situation had changed and in what respects the task of codification differed from what it had been then. It must indicate which parts of international law had been studied and what gaps remained. It should not confine itself to subjects which were regarded as topical; what was necessary was to codify the major themes of international law which had not yet been tackled.

38. Mr. CASTRÉN observed that several interesting proposals had been made along the same lines. It was an excellent idea to draw up a programme covering a long period such as twenty-five years, though much remained to be done under the programme established in 1949, as

a glance at the Commission's programme of work (A/CN.4/230) would show. Five topics still had to be completed, including the two very important ones of State responsibility and State succession. Those topics might take between five and ten years to complete, which was enough work for the next two terms of membership of the Commission.

39. A revision of the old list of topics would nevertheless be useful. The study of some topics might appear more urgent now than in 1949; for instance, unilateral acts, the examination of which had been proposed by Mr. Tammes (A/CN.4/230 para. 137), the law of space, and the utilization of international rivers. Some members of the Sixth Committee had taken the view that it would be premature to codify the last topic (A/CN.4/230, para. 124), but today it seemed more urgent and important than ever. A set of rules, including rules on pollution, had been adopted at Helsinki in 1966 at the Congress of the International Law Association. The Finnish Government had proposed that the subject should be placed on the agenda for the next General Assembly; it need not necessarily be given high priority, but the Finnish Government would certainly be glad if its proposal was favourably received, both by the Sixth Committee and by the International Law Commission.

40. Mr. EUSTATHIADES said that the document which the Secretariat was to draw up to help in preparing the programme for future years should omit several of the topics mentioned in the document prepared for the present session (A/CN.4/230). The problem must be tackled in a fresh spirit and with sufficient imagination to anticipate the needs which would arise during the next twenty-five years.

41. The Commission would certainly need a full week at its next session to draw up such a programme. It might even be advisable to work out some system whereby members could inform the Secretariat, while the document for the next session was being prepared, of their suggestions and arguments for the inclusion of certain topics and the omission of others. That would certainly help to shorten the discussion next year.

42. In any event, the idea of taking up the question of treaties between States and international organizations or between international organizations was very sound, for the Commission's work on the law of treaties and on relations between States and international organizations had already cleared some of the ground.

43. Mr. ALBÓNICO said he wished to thank the Legal Counsel for his suggestion and the Secretariat for all the valuable assistance it gave to Special Rapporteurs and to the Commission generally. He supported the various suggestions which had been made with regard to the Commission's programme of future work.

44. The best contribution the Commission could make to the celebration of the twenty-fifth anniversary of the United Nations would be to take measures to work still more effectively in carrying out its duties, and with that aim in view he had two suggestions to make, one of an internal character, the other relating to the Commission's future work.

³ United Nations publication, Sales No.: 67.V.4.

⁴ ST/LEG/SER.B/3 (United Nations publication, Sales No.: 1952.V.4).

45. His first suggestion was that the Commission should, at some stage, consider the adoption of internal rules of procedure. Experience had shown that it was absolutely essential to have, for instance, a rule on the closure of discussions. He was sure that rules of procedure would greatly contribute to the efficiency of the Commission's work.

46. Secondly, with regard to the future programme of work, he suggested the inclusion of a new topic which had attracted much attention from writers and was a matter of concern to governments, namely, the forcible diversion of aircraft. There was an international instrument already in existence on the subject—the 1963 Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft⁵—but it had proved ineffective. The problem of the forcible diversion of aircraft had been a matter of concern in America for some time, and it was now arising in Europe. The Commission should consider that problem, since it was causing serious disturbance both in the domestic life of countries and in international affairs. The situation could only be remedied by the adoption of a universal convention and the Commission should therefore include the topic in its long-term programme of work.

47. Mr. CASTAÑEDA said that the Commission should devote a whole meeting to a thorough discussion of the interesting questions which had been raised during the present debate.

48. Mr. TABIBI said he supported that suggestion. He also supported Mr. Ruda's suggestion that the booklet "The Work of the International Law Commission" should be brought up to date and reissued. It should include not only the Vienna Convention on the Law of Treaties, but also the important resolutions and declarations adopted by the Conference on the Law of Treaties.

49. The idea of showing what parts of international law had been codified by the Commission and what gaps remained should be examined by a small committee of members of the Commission.

50. In connexion with the celebration of the twenty-fifth anniversary of the United Nations, he believed that the Commission should take into account the views of the whole membership of the United Nations and also those of regional bodies, which had taken a special interest in certain topics, such as that of international rivers.

51. The CHAIRMAN said he noted that there had been general acceptance of the suggestion for bringing up to date and reissuing the booklet "The Work of the International Law Commission". There had also been general acceptance of the suggestion put forward by the Legal Counsel and it had been agreed that the Secretariat should prepare a paper on topics for inclusion in the Commission's long-term programme of work.

52. The Commission would continue its discussion on the organization of future work at its 1069th meeting.

53. Mr. STAVROPOULOS (Legal Counsel) said that the question of reissuing the Secretariat "Summary of the Practice of the Secretary-General as Depositary of Multilateral Agreements" and republishing the booklet "The Work of the International Law Commission" had financial implications. Now that it had taken a decision on the matter, the Commission should therefore include an appropriate passage in its report.

54. With regard to the paper to be prepared by the Secretariat on the future programme of work, members would be receiving individual communications from the Secretariat inviting them to state their views.

The meeting rose at 1.15 p.m.

1067th MEETING

Wednesday, 10 June 1970, at 10.15 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.

Succession of States and governments in respect of treaties

(A/CN.4/149 and Add.1; A/CN.4/150, 151, 157, 200 and Add.1 and 2, 210, 214 and Add.1 and 2, 224 and Add.1, 225 and 232; ST/LEG/7; ST/LEG/SER.B/14)

[Item 3 (a) of the agenda]

1. The CHAIRMAN invited the Commission to examine the topic of succession of States and governments in respect of treaties (item 3 (a) of the agenda).

2. He explained that the discussion which would follow the Special Rapporteur's introduction of his second (A/CN.4/214 and Add.1 and 2) and third (A/CN.4/224 and Add.1) reports would not lead to the usual referral of draft articles to the Drafting Committee. Its purpose would simply be to show the Special Rapporteur the reaction of members to the articles in his two reports and to the problems raised by those articles. He expected the Special Rapporteur, in his opening statement, to focus attention on the essential principles and methods of approach on which he would like to have members' views. At the present stage the discussion need not go into points of detail or drafting.

3. Sir Humphrey WALDOCK (Special Rapporteur) said that the Commission had only a short time in which to discuss a large subject.

⁵ See *The American Journal of International Law*, 1964, vol. 58, p. 566.