

Document:-  
**A/CN.4/SR.1146**

**Summary record of the 1146th meeting**

Topic:  
**<multiple topics>**

Extract from the Yearbook of the International Law Commission:-  
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**Commentary to article 57 (Freedom of communication)**

*The commentary to article 57 was approved.*

**Commentary to articles 58 (Personal inviolability) and 59 (Inviolability of private accommodation and property)**

*The commentary to articles 58 and 59 was approved.*

**Commentary to article 60 (Immunity from jurisdiction)**

*The commentary to article 60 was approved.*

**Commentary to article 61 (Waiver of immunity)**

*The commentary to article 61 was approved.*

**COMMENTARIES TO ARTICLES 62 to 70 (A/CN.4/L.178/Add.8)****Commentary to article 62 (Exemption from social security legislation)**

*The commentary to article 62 was approved.*

**Commentary to article 63 (Exemption from dues and taxes)**

30. Mr. EUSTATHIADES said that he wondered whether it was necessary to retain the last sentence in paragraph (2).

31. Mr. EL-ERIAN (Special Rapporteur) said that his first reaction was that it might be useful.

*The commentary to article 63 was approved.*

**Commentary to article 64 (Exemption from personal services)**

*The commentary to article 64 was approved.*

**Commentary to article 65 (Exemption from customs duties and inspection)**

*The commentary to article 65 was approved.*

**Commentary to article 66 (Privileges and immunities of other persons)**

*The commentary to article 66 was approved.*

**Commentary to article 67 (Nationals of the host State and persons permanently resident in the host State)**

*The commentary to article 67 was approved.*

**Commentary to article 68 (Duration of privileges and immunities)**

*The commentary to article 68 was approved.*

**Commentary to article 69 (End of the functions of the head of delegation or any other delegate or member of the diplomatic staff)**

*The commentary to article 69 was approved.*

**Commentary to article 70 (Protection of premises, property and archives)**

*The commentary to article 70 was approved.*

**ARTICLE 113 (Professional activity)**

32. Mr. ROSENNE said he hoped that the commentary would include some mention of the fact that the Working Group had decided to drop article 113, on professional activity, and to limit that provision to article 38 *bis*.<sup>5</sup>

33. Mr. EL-ERIAN (Special Rapporteur) suggested that a reference to the deletion of article 113 might be made in a footnote to article 38 *bis*.<sup>6</sup>

The meeting rose at 5.10 p.m.

<sup>5</sup> See 1127th meeting, paras. 18 and 19.

<sup>6</sup> See 1135th meeting, paras. 49 to 63 and footnote 9.

**1146th MEETING**

*Wednesday, 28 July 1971, at 10.20 a.m.*

*Chairman: Mr. Senjin TSURUOKA*

*Present: Mr. Ago, Mr. Alcívar, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. El-Erian, Mr. Elias, Mr. Eustathiades, Mr. Kearney, Mr. Rosenne, Mr. Sette Câmara, Mr. Tabibi, Mr. Thiam, Mr. Ushakov, Sir Humphrey Waldock, Mr. Yasseen.*

**Relations between States and international organizations**

(A/CN.4/221 and Add.1; A/CN.4/238 and Add.1 and 2; A/CN.4/239 and Add.1 to 3; A/CN.4/240 and Add.1 to 7; A/CN.4/241 and Add.1 to 6; A/CN.4/L.162/Rev.1; A/CN.4/L.174/Add.6)

[Item 1 of the agenda]

*(resumed from the 1142nd meeting)*

**FIFTH REPORT OF THE WORKING GROUP**

*(resumed from the 1142nd meeting)*

1. The CHAIRMAN said that Mr. Ushakov had some further comments to make on the fifth report of the Working Group (A/CN.4/L.174/Add.6).

ARTICLE N (Inviolability of accommodation and property)<sup>1</sup> and ARTICLE L (Freedom of communication)<sup>2</sup>

2. Mr. USHAKOV said he detected two small mistakes, which should be corrected.

3. In article N, paragraph 4, the reservation which appeared in article 59, paragraph 2 (A/CN.4/L.181, p. 33), had been omitted, so that the inviolability of the property of observer delegates was broader than that accorded to delegates to an organ or to a conference. He therefore proposed that the words, "except as provided in paragraph 2 of article O," be inserted before the words "property of the observer delegates".

4. Secondly, in article L, paragraph 1, the word "permanent" should be inserted before "diplomatic missions".

5. Mr. CASTRÉN said he supported Mr. Ushakov's proposal concerning article N. The reference should, however, be not only to paragraph 2, but also to paragraph 1 of article O, which dealt with immunity from criminal jurisdiction, since paragraph 2 of article 59 referred to paragraph 1 of article 60 (A/CN.4/L.181, p. 34), which dealt with both immunity from criminal jurisdiction and immunity from civil and administrative jurisdiction.

6. Mr. ROSENNE said he did not think that the addition of the word "permanent" was necessary in article L, since it did not appear in the corresponding article 57. In any case, if a change was made in article L, the same change should also be made in articles 27 and 57.

7. Mr. USHAKOV said that article 1 (b) of the Convention on Special Missions defined a permanent diplomatic mission as "a diplomatic mission within the meaning of the Vienna Convention on Diplomatic Relations". He therefore thought that the word "permanent" should be added in paragraph 1 of article L, and that a consequential correction should be made in the corresponding article on permanent delegations.

8. The CHAIRMAN said that Mr. Ushakov's proposal concerning the addition of the word "permanent" in article L was a drafting point which should be dealt with during the final touching-up of the draft articles.

*It was so agreed.*

9. The CHAIRMAN suggested that the Commission accept the amendments proposed by Mr. Ushakov and Mr. Castrén to article N, paragraph 4, which would then read: "The papers, correspondence and, except as provided in paragraphs 1 and 2 of article O, property of the observer delegates shall likewise enjoy inviolability".

*It was so agreed.*

### Draft report of the Commission on the work of its twenty-third session

(A/CN.4/L.179 and Add.1, 2 and 4; A/CN.4/L.180)

*(resumed from the previous meeting)*

#### Chapter III

#### PROGRESS OF WORK ON TOPICS CURRENTLY UNDER CONSIDERATION

10. The CHAIRMAN invited the Commission to continue its consideration of its draft report, beginning with chapter III.

11. Mr. ROSENNE said that he had some doubts about chapter III as a whole, since it seemed to represent a break with the practice traditionally followed by the Commission in its reports. The presentation of the various sections might be made more uniform by starting each section with a brief introductory paragraph. The name of the special rapporteur concerned should be mentioned in each section.

12. Either in chapter III or in chapter IV there should be two paragraphs on the lines of paragraphs 72 and 73 of the Commission's report on the work of its eighteenth session.<sup>3</sup> The first would state that the Commission recognized that it was a permanent body and must make arrangements to ensure the continuation of the work on the topics selected for codification and progressive development, while the second would reaffirm the Commission's previous decisions that a Special Rapporteur who was re-elected as a member should continue his work on his topic, if not yet finally disposed of by the Commission, unless and until the Commission as newly constituted decided otherwise.

13. The General Rapporteur should be asked to draft those paragraphs and propose where they should be inserted.

14. Sir Humphrey WALDOCK said that some form of introduction to chapter III was necessary in order to make it clear that, when the reports in question had not been discussed by the Commission, the special rapporteurs were merely making statements on the progress of their work.

15. Mr. SETTE CÂMARA (Rapporteur) said he fully agreed that some sort of introductory paragraph was indispensable.

#### Section D. The Most-Favoured-Nation Clause

(A/CN.4/L.179)

16. Mr. ELIAS said that section D should be recast on the lines suggested by Sir Humphrey Waldock and the paragraphs should be numbered.

17. The CHAIRMAN suggested that the Commission approve section D, subject to the comments made by Mr. Elias.

*Section D was approved on that understanding.*

<sup>1</sup> See 1142nd meeting, paras. 69 to 72.

<sup>2</sup> *Ibid.*, para. 68.

<sup>3</sup> See *Yearbook of the International Law Commission, 1966*, vol. II, p. 277.

*Section E. The question of treaties concluded between States and international organizations or between two or more international organizations (A/CN.4/L.179/Add.1)*

18. Mr. ROSENNE proposed that paragraphs 5 to 14 of the Sub-Committee's report be inserted in paragraph 4 of section E in order to bring to the attention of the General Assembly the Commission's preliminary thinking about the substantive questions connected with that topic.

19. Sir Humphrey WALDOCK said that in his opinion the section, which was the result of a corporate effort, should either form a separate chapter or be presented as two separate sections.

20. Mr. ROSENNE said that it was the Commission's traditional practice to make each substantive topic the subject of a separate chapter, to which the report of the sub-committee concerned was annexed.

21. The CHAIRMAN suggested that the Commission adopt the proposals made by Mr. Rosenne and Sir Humphrey Waldock.

*It was so agreed.*

*Section E was approved on that understanding.*

*Section C. State responsibility (A/CN.4/L.179/Add.2)*

*Section C was approved.*

*Section A. Succession in respect of treaties (A/CN.4/L.179/Add.4)*

*Section A was approved, subject to a minor correction to the English text.*

#### *Chapter IV*

*Section A. Progressive development and codification of the rules of international law relating to international watercourses (A/CN.4/L.180)*

22. Mr. ROSENNE proposed that the words "It is the view of the Commission" in the last sentence of paragraph 3 be replaced by the words "It is the understanding of the Commission".

*It was so agreed.*

*Section A, as amended, was approved.*

#### **Proposed institution of an annual Gilberto Amado memorial lecture**

23. Mr. ELIAS said that members would recall that at the beginning of the present session he had informed them of the recommendation of the Sixth Committee that an annual lecture should be instituted in memory of

the late Mr. Gilberto Amado.<sup>4</sup> As the suggestion had been welcomed by the Commission, he had asked Mr. Sette Câmara to ascertain the views of the Brazilian Government and, in particular, to ask whether it was prepared to provide some financial assistance towards the endowment of those lectures.

24. The Brazilian Government had given a very favourable reply and had offered to provide the sum of \$3,000 for 1972. That sum would be used for four purposes. First, it would be used to defray the cost of an annual dinner at which the memorial lecture would be delivered; the dinner would be attended by the members of the Commission, by the twenty-four students attending the United Nations seminar in international law, and by some twenty-five guests from Geneva. Secondly, it would be used, if necessary, to pay the travelling expenses of the lecturer, which would not amount to a large sum, since it was hoped that he would be a past or present member of the Commission who would already be in Europe. Thirdly, a small honorarium would be given to the lecturer. Lastly, a sum would be allocated to cover the cost of translating and publishing the lecture, with a view to giving it the widest possible publicity.

25. The lecture would of course be given during the annual seminar on international law at Geneva, so that the students would be able to attend it. A small advisory committee should be set up to choose the lecturers and supervise publication. He would suggest that that committee be selected on the basis of geographical distribution and that it might consist of the following members: Mr. Ago, Mr. Kearney, Mr. Tabibi, Mr. Ushakov, Sir Humphrey Waldock, Mr. Yasseen and himself. Mr. Raton could be secretary to the committee.

26. If the Commission accepted that proposal, the Chairman should write to the Brazilian Government through Mr. Sette Câmara, informing it of the Commission's decision and asking that the sum in question be remitted to the United Nations Office at Geneva through Mr. Raton.

27. Mr. SETTE CÂMARA said that his Government had been deeply moved by the initiative taken by Mr. Elias in the Sixth Committee and in the Commission, and would be happy to make a special contribution for the purpose of endowing an annual Gilberto Amado memorial lecture. His Government was prevented by Brazilian budgetary practice from entering into a long-term commitment, but would provide the sum in question for 1972 and would contribute again in future years.

28. Mr. TABIBI said that he wished to express his personal gratitude to Mr. Elias for the proposal he had made in the Sixth Committee and in the Commission, which he fully supported. The Brazilian Government's contribution would be used primarily for the benefit of the youth of Asia, Africa and Latin America. Since Gilberto Amado had always strongly advocated the provision of technical assistance for the teaching of inter-

<sup>4</sup> See 1187th meeting, para. 9.

national law, the endowment of an annual lecture would be an appropriate tribute to his memory.

29. Arrangements might perhaps be made to bring out some small publication which would sum up the ideals and thoughts of Gilberto Amado himself.

30. Mr. ROSENNE said he supported that suggestion. He hoped that the publication would include, in addition to some account of Mr. Amado's work in the Sixth Committee and in the Commission, a reference to the fact that he had been a member of the Committee of Seventeen which had drawn up the Statute of the Commission.

31. Mr. ALCÍVAR said that he welcomed the offer by the Brazilian Government to honour the memory of a man who had belonged not only to Brazil but to Latin America as a whole.

32. The CHAIRMAN said it appeared to be generally agreed that the Commission should accept Mr. Elias's proposal and that he (the Chairman) should address a letter of thanks to the Brazilian Government through Mr. Sette Câmara.

The meeting rose at 11.15 a.m.

## 1147th MEETING

Thursday, 29 July 1971, at 10.15 a.m.

Chairman: Mr. Senjin TSURUOKA

*Present:* Mr. Ago, Mr. Alcívar, Mr. Bartoš, Mr. Bedjaoui, Mr. Castrén, Mr. El-Erian, Mr. Elias, Mr. Eustathiades, Mr. Kearney, Mr. Rosenne, Mr. Sette Câmara, Mr. Tabibi, Mr. Thiam, Mr. Ushakov, Sir Humphrey Waldock, Mr. Yasseen.

### Draft report of the Commission on the work of its twenty-third session

(A/CN.4/L.178/Add.9 to 13; A/CN.4/L.179/Add.3; A/CN.4/L.180/Add.1 and 2; A/CN.4/L.181)

(continued)

#### Chapter III

*Section B. Succession of States in respect of matters other than treaties* (A/CN.4/L.179/Add.3)

1. The CHAIRMAN invited the Commission to continue its consideration of its draft report.

2. Sir Humphrey WALDOCK said that the word "transferable", used in the English version of chapter III,

especially in the part under consideration, should be replaced by the term "transmissible", which was more appropriate in connexion with succession.

*It was so agreed.*

*Section B, as amended, was approved.*

*Chapter III, as amended, was approved.*

#### Chapter II

##### RELATIONS BETWEEN STATES AND INTERNATIONAL ORGANIZATIONS

COMMENTARIES TO ARTICLES 71 to 78 (A/CN.4/L.178/Add.9)

*Commentary to article 71* (Nationality of the members of the mission or the delegation)

*The commentary to article 71 was approved.*

*Commentary to article 72* (Laws concerning acquisition of nationality)

*The commentary to article 72 was approved.*

*Commentary to article 73* (Privileges and immunities in case of multiple functions)

*The commentary to article 73 was approved.*

*Commentary to article 74* (Respect for the laws and regulations of the host State)

*The commentary to article 74 was approved.*

(Article 75: deleted)

*Commentary to article 76* (Entry into the territory of the host State)

*The commentary to article 76 was approved.*

*Commentary to article 77* (Facilities for departure)

*The commentary to article 77 was approved.*

*Commentary to article 78* (Transit through the territory of a third State)

3. Mr. ROSENNE said that the words "with the necessary adjustments and drafting improvements" in paragraph (5) could be read as a criticism of the work of a diplomatic conference. He suggested that they be replaced by the words "with some adjustments and drafting changes".

*It was so agreed.*

*The commentary to article 78, as amended, was approved.*