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Summary record of the 1186th meeting

Topic:

<multiple topics>

Extract from the Yearbook of the International Law Commission:-

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Prevent and Punish Acts of Terrorism,[6] which, in essence, contained the requirements set forth in sub-paragraphs (*a*) and (*b*). The Working Group had also taken account of the 1971 Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation,[7] and particularly of article 10, paragraph 1, of that Convention; but the text of the draft article under discussion was more akin to the provisions of article 8 of the OAS Convention.

53. Sub-paragraph (*a*) related solely to the prevention by States of the preparation in their territories of the crimes specified in article 2, when such crimes were to be carried out in the territory of another State. The suggestion had been made in the Working Group that States parties should also be required to take all the necessary measures to prevent any of the crimes in question taking place in their own territories. That suggestion had not been followed up, mainly because States were already under such an obligation by virtue of existing general international law and in particular of the 1961 Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations.

54. Mr. SETTE CÂMARA said he nevertheless thought that sub-paragraph (*a*), as at present worded, gave the impression that States were not required to take preventive measures where the crimes in question were to be committed in their own territory. In his view, the text should be amended to clarify that point.

55. Mr. USTOR said that he too had misgivings about the wording of sub-paragraph (*a*). The present wording seemed to restrict the obligation to co-operate to States other than the one in whose territory the crime was to be carried out. What was clearly intended was that whenever a State received information that certain persons in its territory were planning to carry out such crimes in the territory of another State, it was obliged to co-operate with that State and to pass on the information. The obligation to co-operate should, however, be reciprocal, and the second State should also be obliged to co-operate with the first. In his view, the sub-paragraph could stand without the phrase "when they are to be carried out in the territory of another State" and perhaps even also without the words "in their respective territories".

56. Sub-paragraph (*b*) ended with the words "those crimes": it was not clear whether the reference was to the crimes specified in article 2 in general, or only to those crimes when they were to be carried out in the territory of another State. That point, too, should be clarified.

57. Lastly, he questioned whether the phrase "in accordance with their internal law", in the first sentence of the article, was really necessary. That phrase had been used in other conventions and, in his experience, its interpretation could give rise to difficulties. It went without saying that States should act in accordance with their internal law and the inclusion of the phrase seemed to imply some limitation of the obligation to co-operate.

58. Mr. TSURUOKA (Chairman of the Working Group) referring to Mr. Ustor's suggestion on sub-paragraph (*a*), said it had been the Group's intention to cover both cases, in other words, to lay down an obligation for States to co-operate in their own territory and in that of the other State. The Working Group would perhaps be able to improve the wording of the provision.

59. The CHAIRMAN, speaking as a member of the Commission, said there had been no intention to limit the obligation of the State in which the preparations were taking place to mere notification of the other State. The first State was also obliged, if any of the preparations in question constituted unlawful acts under its own internal law, to prosecute the persons involved at that stage in order to break up the preparations.

60. Mr. TABIBI said he thought the introductory statement in article 3 was broad enough to cover all the points contained in sub-paragraphs (*a*) and (*b*). The two sub-paragraphs seemed, in effect, to weaken the rule stated at the beginning of the article. It appeared from sub-paragraph (*a*) that preventive measures need be taken only when the crime was to take place in the territory of another State, and sub-paragraph (*b*) seemed to limit the measures to administrative measures only. It would be much better merely to say that States should co-operate in the prevention of the crimes set forth in article 2, in accordance with their internal law.

61. Mr. RAMANGASOAVINA said it would have been preferable to use the verb "*empêcher*" rather than "*prévenir*" in the French text of sub-paragraph (*a*). But since even with that change certain points would remain obscure, he suggested that the sub-paragraph be entirely redrafted on the following lines: "taking measures to prevent the use of their territory for the preparation of the crimes set forth in article 2".

62. The CHAIRMAN said that, if there were no further comments, he would take it that the Commission agreed to refer article 3 back to the Working Group for review in the light of the discussion.

It was so agreed.[8]

The meeting rose at 6 p.m.

[6] *International Legal Materials*, vol. X, number 2, March 1971, p. 257.

[7] *Ibid.*, number 6, November 1971, p. 1151.

[8] For resumption of the discussion, see 1191st meeting, para. 59.

1186th MEETING

Friday, 23 June 1972, at 10.15 a.m.

Chairman: Mr. Richard D. KEARNEY

Present: Mr. Ago, Mr. Alcívar, Mr. Bartoš, Mr. Bedjaoui, Mr. Bilge, Mr. Elias, Mr. Hambro, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Reuter, Mr. Ruda, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

Question of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law

(A/CN.4/253 and Add.1 to 5; A/CN.4/L.182 and L.186)

[Item 5 of the agenda]

(continued)

DRAFT ARTICLES ON THE PREVENTION AND PUNISHMENT OF CRIMES AGAINST DIPLOMATIC AGENTS AND OTHER INTERNATIONALLY PROTECTED PERSONS

ARTICLE 4

1. The CHAIRMAN invited the Commission to consider the text of article 4 of the draft submitted by the Working Group (A/CN.4/L.186), which read:

Article 4

The State Party in which one or more of the crimes set forth in article 2 have been committed shall, if it has reason to believe an alleged offender has fled from its territory, communicate to all other States Party all the pertinent facts regarding the crime committed and all available information regarding the identity of the alleged offender.

2. There was no parallel principle to article 4 in either the Montreal, The Hague or the OAS Conventions, but the Working Group had thought it would be desirable to specify that a State party, if it had reason to believe an alleged offender had fled from its territory, should communicate to all other States parties all the pertinent facts regarding the crime committed and all available information regarding the identity of the alleged offender. The Working Group had not specified any particular means of communication, since the appropriate means would necessarily vary from case to case. The article was of a purely technical character and he did not think it raised any special problems. He therefore suggested that the Commission should approve it.

It was so agreed.

ARTICLE 5

3. The CHAIRMAN invited the Commission to consider the text of article 5 submitted by the Working Group, which read:

Article 5

1. A State Party in whose territory the alleged offender is found shall take the appropriate measures under its internal law so as to ensure his presence for prosecution or extradition. Such measures shall be immediately notified to all other States Party.

2. Any person regarding whom the measures referred to in paragraph 1 of this article are being taken shall be entitled to communicate immediately with the nearest appropriate representative of the State of which he is a national and to be visited by a representative of that State.

4. Article 5 was based primarily on article 6, paragraphs 1 and 3, of the Montreal Convention,[1] subject to certain minor modifications. In particular, the Working Group had deleted the second sentence in article 6, paragraph 1, of the Montreal Convention, which read: "The custody and other measures shall be as provided in the law of that State but may only be continued for such time as is necessary to enable any criminal or extradition proceedings to be instituted", because it considered that that provision was unnecessarily confusing. The requirement in article 5 that "Such measures shall be immediately notified to all other States Party" seemed reasonable in cases where the State in question had already begun to gather evidence and to consider whether it wished to apply for extradition.

5. Paragraph 2 of article 5 was based on article 6, paragraph 3 of the Montreal Convention, which read: "Any person in custody pursuant to paragraph 1 of this Article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national". That provision was a standard clause in almost all consular agreements.

6. Mr. TAMMES suggested that a sentence should be added to paragraph 2 of article 5, stating that persons having no effective nationality should be entitled to communicate with the appropriate officer of the United Nations High Commissioner for Refugees.

7. Mr. USHAKOV pointed out that article 6, paragraph 1, of the Montreal Convention referred to "the offender or the alleged offender", whereas the Working Group's article 5 referred only to "the alleged offender".

8. The CHAIRMAN said that the Working Group had decided to use the term "alleged offender", since the person in question could not properly be considered an offender until he had been tried and convicted.

9. Mr. RAMANGASOAVINA said he was afraid that the use of both the phrases "to communicate immediately" and "to be visited by a representative of that State" in paragraph 2 might lead to confusion, since communication generally took place during a visit by a representative of the State of which the alleged offender was a national.

10. The CHAIRMAN said he believed that normally either the police notified the consular officer or the individual in question was allowed to do so himself by telephone. To the best of his knowledge, the wording of paragraph 2 was the wording customarily used in consular conventions, but the point would be checked.

11. Mr. YASSEEN said he saw no good reason for the notifications provided for in the last sentence of paragraph 1, which seemed excessive. It would be sufficient to notify only the States concerned.

12. Mr. TSURUOKA (Chairman of the Working Group) said the sentence was based on the idea that there must be the fullest co-operation between all the States parties to the Convention.

13. The CHAIRMAN said that there were some practical reasons for the procedure proposed. It might, for instance, be necessary for the police of all other States parties to be informed that further search for a particular individual was unnecessary.

14. Mr. YASSEEN pointed out that in the case covered by article 5 the alleged offender was no longer a fugitive, but had already been arrested. At that stage there was

[1] See *International Legal Materials*, vol. X, number 6, November 1971, p. 1154.

no need for general measures applicable to all the States of the world.

15. Mr. RAMANGASOAVINA said that he too thought it would be sufficient to notify the States concerned.

16. Mr. REUTER asked what degree of police collaboration the authors of the text expected from States during the stage between preventive measures taken under article 3, that was to say before the commission of an offence, and mutual assistance with criminal proceedings given under article 10 after the commission of an offence, but before identification of the criminal.

17. Mr. USHAKOV replied that the draft did not provide for general police collaboration. Article 3 covered the special case of prevention in one country of the preparation of crimes to be committed in the territory of another country, and provided for the exchange of information between the two countries and the co-ordination of their administrative measures to prevent the commission of such crimes.

18. Mr. AGO said he saw no lacuna in the system provided for. Article 3 dealt with the case in which no crime had yet been committed and placed an obligation on States to collaborate in preventing the commission of crimes. Its text was in accord with the old rule of international law that every State must ensure that its territory was not used for subversive activities against a neighbouring State. Then came the case in which the crime had already been committed, and the two stages covered by articles 5 and 10. In the first stage the offender had to be found, and if he was "found" abroad—not arrested, since measures other than arrest might be taken to keep him in the country, for example, confiscation of his passport—article 5 placed an obligation on the State concerned to take appropriate measures to prevent him from escaping, pending a decision on whether he was to be extradited or prosecuted. Then came the stage of criminal proceedings and of the mutual assistance in connexion with them provided for in article 10, which required States to supply the evidence and other information at their disposal to the State in which the prosecution was conducted. He did not see what further obligation could be imposed on States.

19. Mr. REUTER agreed that there was no lacuna if article 3 was broadly interpreted, as he himself interpreted it. Such an interpretation placed very heavy obligations on States, for article 3 concerned prevention, not of the commission, but of the preparation of crimes. That was going very far and would require constant police vigilance. There would then be no break in continuity, since, under article 5, if an assassination was committed by an unknown person, the police forces of all the States parties to the Convention, and not only of the State in which the crime had been committed, would have to take action to find the offender. The application of the conventions on illicit drug traffic showed that there could be no effective prevention and punishment without very thorough police work. The Commission could say that article 3 was open to various interpretations, but it would be wrong to ignore the issue. The article must be interpreted broadly if it was to produce results.

20. Mr. AGO said he interpreted article 3 in the same way as Mr. Reuter, but he thought the future convention should mainly lay down general principles and that it would provide a framework for any particular agreements that might be concluded on closer police collaboration between individual States.

21. Mr. REUTER said that the conclusion of such agreements was not just a possibility, but a necessity.

22. Mr. USHAKOV observed that illicit drug traffic was a continuing problem requiring constant police collaboration, but that the same did not apply to the protection of diplomats. His interpretation of article 3 was therefore more realistic.

23. The CHAIRMAN suggested that article 5 should be referred back to the Working Group, which should consider whether some more specific provision was necessary with respect to police co-operation and similar matters.

It was so agreed.[2]

ARTICLE 6

24. The CHAIRMAN invited the Commission to consider the text of article 6 submitted by the Working Group, which read:

Article 6

The State Party in whose territory the alleged offender is found shall, if it does not extradite him, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution.

25. The origins of article 6 were to be found in a number of international conventions, in particular article 7 of the Montreal Convention and article 7 of the Hague Convention.[3] Article 7 of the Montreal Convention provided that "The Contracting State in the territory of which the alleged offender is found shall, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution ..." There were no substantial differences between that text and draft article 6. The Working Group had, however, added the words "without undue delay", which were similar to the language used in the OAS Convention.[4] It had also omitted the phrase "whether or not the offence was committed in its territory", because that idea had been incorporated in draft article 2.

26. Mr. TAMMES said that the principle laid down in article 6 was that the State party should either extradite or prosecute the alleged offender. To his mind, however, the question was whether priority should be given to article 6 or to article 7. The last sentence of article 7,

[2] For resumption of the discussion, see 1191st meeting, para. 66.

[3] See *International Legal Materials*, vol. X, 1971, number 6, p. 1154 and number 1, p. 134-135.

[4] *Ibid.*, number 2, p. 255.

paragraph 2, read "Extradition shall be subject to the other conditions provided for by the law of the requested State". What, however, was the meaning of the words "the other conditions" ? Did those conditions refer to the problems of dual nationality or to the principle of *non-refoulement* of political offenders as adopted in the Latin American countries, in Africa and in certain extradition treaties concluded in Europe ?

27. It seemed to him that some doubt had been cast on the generally accepted principle of *non-refoulement* by the use of the words "regardless of motive" in article 2. The Commission should therefore consider whether the words "it shall consider", in article 7, paragraph 2, might not be replaced by the words "it may at its option consider", in order to bring the article into line with the Conventions of The Hague and Montreal. In any case, there was such a close connexion between articles 6 and 7 that he did not believe they could be examined separately.

28. Mr. HAMBRO said he agreed with Mr. Tammes that there was a close connexion between articles 6 and 7 and that it was important not to jeopardize the principle of *non-refoulement* of political offenders. Some members, however, seemed to fear that the present articles were directed against revolutionary and liberation movements, and to hold the view that it was necessary to tolerate acts of terrorism if they were committed with a political motive. In his opinion, that would be an extremely dangerous position for the Commission to adopt. It had to be borne in mind that the Commission was dealing not with trifling contraventions of law, but with extremely grave and dangerous crimes, some of which involved the murder of innocent people or their detention as hostages. As a result of long efforts to improve the rules governing warfare and armed conflict, such acts were illegal even in wartime. There could therefore be still less doubt of their illegality as a means of political warfare. It was accordingly reasonable that the international community should insist on the extradition or prosecution of alleged offenders. If the proposed convention did not do that, he feared that it would be of very little international importance.

29. Mr. AGO said he agreed with Mr. Hambro that no lacuna must be left in the draft if the system was to function as intended; one was apparent, however, if the draft was compared with the Montreal Convention.

30. The Commission should concern itself with two problems: the substantive criminal law and the rules relating to criminal procedure. The obligation of States to enact substantive criminal legislation was laid down in article 3 of the Montreal Convention and also, more or less clearly, in article 2 of the Commission's draft—which would have to be made more precise. Article 5 of the Montreal Convention also placed an obligation on States to take such measures as might be necessary to establish their jurisdiction over the offences covered by the Convention, that was to say an obligation to have adequate rules of criminal procedure, which the Commission's draft did not provide for. It was not enough to say that the State must submit the case to its competent authorities for the purpose of prosecution; the need for competent authorities must first be specified. That was the lacuna which needed to be filled.

31. Mr. USTOR said he agreed with the point made by Mr. Ago. He also agreed with Mr. Hambro on the need to avoid jeopardizing the principle of *non-refoulement*, although he did not think that that principle would cover any crimes or offences which were committed in violation of the purposes and principles of the United Nations Charter.

32. Mr. REUTER said he wished to draw attention to the very important fact that the differences between article 6 and the corresponding provisions in the Montreal and Hague Conventions were not merely points of drafting. For the States which had requested the insertion of those provisions in the two Conventions there was a radical difference. The Commission's text might perhaps be technically superior, but the States which had been able to accept the provisions of the two Conventions owing to the sentence which had been deleted from the Commission's draft would obviously not accept the convention the Commission was preparing, because of the present wording of article 6. For States had interpreted that sentence in article 7 of the Montreal and Hague Conventions, now deleted from the Commission's draft, as a safeguard clause qualifying the obligation to extradite or prosecute, since by virtue of it the competent authorities were entitled to decide that there were no grounds for prosecution. Such a clause did not eliminate the main obligation, but it provided a loophole which had enabled many governments wishing to observe the Montreal and Hague Conventions faithfully to deal with embarrassing situations without having recourse to extradition or prosecution. The issue was therefore crucial since, if the Commission retained the present text, many States would be unable to accept it.

33. Mr. ELIAS said that article 6 was the most important provision in the draft. He did not think the draft should be weakened by making provision for alternatives or loopholes to the rule embodied in that article.

34. Article 6 simply gave States the choice between agreeing to extradite the alleged offender and prosecuting him. He did not believe it would be asking too much of a State to require it to take one or the other of those courses. If any other possibility were left open, States would be encouraged to give asylum to individuals who had kidnapped diplomats or murdered them in cold blood.

35. It was important that the remedy to be provided should be clear and unequivocal. Persons who were sent abroad to serve their governments or the international community should not be made the victims of attacks, whatever the motive might be.

36. He saw no reason for concern with regard to national liberation movements. Those movements should fight their wars of liberation in a more conventional manner than by killing Heads of State, diplomats or officials of international organizations. Such killings would not make any contribution towards achieving the aims of national liberation.

37. Article 6 related to the acts enumerated in article 2 and its purpose was to discourage violent attacks against diplomats or other persons serving the needs of the international community. He urged that the provisions of article 6 should be retained without change.

38. Mr. RAMANGASOAVINA agreed with Mr. Elias. If the Commission wished to help prevent and punish acts of violence against diplomats, the only solution was that proposed in article 6, namely, the obligation either to extradite or to prosecute. That solution ought to be accepted, although it was a considerable departure from ordinary law.

39. As other speakers had pointed out, article 6 was closely connected with article 7. The latter article contained an innovation, in that it stipulated that where extradition was not provided for in existing treaties, a legal basis for it was to be found in the draft articles.

40. As far as the drafting was concerned, he was not sure that the expression "without exception whatsoever" in article 6 was justified. It might be interpreted as applying to procedural exceptions, whereas the idea had been that the State in question must submit to its judicial authorities all cases covered by the draft articles, whatever their nature.

41. With regard to the word "priority" in article 7, paragraph 4, it must mean that the State in question had to deal with any request for extradition as a matter of urgency. The word "priority", used with reference to a request for extradition, in fact implied that other requests had been made. He noted that under the same paragraph a request would have priority if it was received within six months after the communication required under article 5, paragraph 1. Once that period had elapsed, it would seem not to have priority any longer, especially as according to article 9 there was to be no time-limit for prosecution.

42. Mr. USHAKOV pointed out that the expression "without exception whatsoever" was also used in the Hague and Montreal Conventions and that the idea behind it was to avoid any express mention of political crimes.

43. With regard to Mr. Ago's suggestion that a clause similar to article 5 of the Montreal Convention should be included in the draft, it should be noted that that Convention related to offences which were of an entirely special nature as to the place where they were committed. To introduce the idea of exterritorial jurisdiction into the Convention it had been necessary to adopt a particularly complex provision. In the draft articles, that idea had been introduced at the end of article 2, by a simple reference to the fact that the offence could have been committed either "within or outside" the territory of the State concerned.

44. Mr. BILGE said he approved of the substance of article 6. He considered, however, that the words "regardless of motive", at the beginning of article 2, made the words "without exception whatsoever", in article 6, unnecessary. Since the system adopted in the draft articles was not the same as that of the Hague and Montreal Conventions, there was no reason to retain these words.

Co-operation with other bodies

[Item 8 of the agenda]

(resumed from the 1175th meeting)

Statement by the Observer for the European Committee on Legal Co-operation

45. The CHAIRMAN welcomed Mr. Golsong, the Observer for the European Committee on Legal Co-operation, and invited him to address the Commission.

46. Mr. GOLSONG (Observer for the European Committee on Legal Co-operation) said that the election of Mr. Kearney as Chairman of the Commission augured well for the success of its work; Mr. Kearney had given frequent proof of his devotion to the aims pursued by the Commission. The European Committee also welcomed the election to the Commission of Mr. Bilge and Mr. Hambro, whose thorough knowledge of international law had been particularly evident in the work of the Council of Europe. Mr. Tsuruoka, the outgoing Chairman of the Commission, had had useful discussions in Strasbourg with the Chairman of the European Committee. He also wished to associate himself with the tribute paid to Mr. Movchan, the former secretary to the Commission, and was looking forward to establishing equally close relations with Mr. Rybakov, his successor.

47. The legal activities of the Council of Europe during the past year had resulted *inter alia* in the signature of the European Convention on State Immunity. In his statement the previous year he had described the content of that Convention, which represented a compromise between the ideas prevailing in the civil law and common law countries. It was supplemented by a protocol setting up a regional system for the judicial settlement of disputes, under which private persons would have access to a European court to be composed of judges of the European Court of Human Rights.

48. Work had been proceeding on the protection of fresh water against pollution, which should lead to the adoption of a model convention containing provisions on the purity of the water in international watercourses. That convention would impose an obligation on the contracting parties to observe a minimum quality standard and encourage them to adopt still stricter standards under individual agreements with each other. The European Committee had abandoned the idea of introducing into the draft convention express provisions on inter-State liability for acts of pollution, since they might be superfluous in view of the general principles of international law on State responsibility.

49. Any process of codifying international law was linked with legislative action at the national level, and measures had been undertaken with a view to harmonizing national laws, both in the field of civil liability for damage resulting from the pollution of fresh water and in the field of criminal law. The Netherlands Government had proposed that, under the auspices of the Council of Europe, provisions should be drawn up on civil liability for damage due to pollution by hydrocarbons from oil prospecting and extraction installations on the sea-bed.

50. Where international criminal law was concerned, he would draw attention to the signature of the European Convention on the Transfer of Criminal Proceedings. That Convention completed the system of penal co-operation set up under the Council of Europe, which was based both on the traditional procedures for extradition and mutual assistance in judicial matters, and on more advanced procedures such as the transfer of criminal proceedings from one country to another and the recognition and enforcement of foreign judgements in criminal cases.

51. He also drew attention to the first implementation of article 50 of the European Convention for the Protection of Human Rights and Fundamental Freedoms by judgements of the European Court of Human Rights. Under that provision, the Court had power to give just satisfaction to the injured party if the violation of the Convention could not be remedied completely under the internal law of the State concerned. Only the previous day, 22 June 1972, the European Court had given a judgement based on that provision awarding compensation of 20,000 DM to a private person who had been detained pending trial for a period exceeding that permitted under the Convention. That judgement might be of interest even beyond the European Convention on Human Rights, because provisions similar to those of its article 50 were to be found in other international treaties such as the General Act of Geneva.[5]

52. Finally, the European Convention on Establishment provided for periodic reports giving information on the subject-matter of the Convention. The first report had now been published and was available.

53. It was customary for the observer for the European Committee to review the subjects being studied by the Commission which were of particular interest to the Committee. He had referred the previous year to the reservations expressed by certain States members of the Council of Europe to the draft convention on relations between States and international organizations. In their view, the draft convention extended privileges and immunities to an excessive degree and did not pay enough regard to the functional criterion. Meanwhile the Commission had added two provisions to its draft, one providing for consultations between the sending State, the host State and the organization (article 81) and the other for conciliation machinery (article 82).[6] He thought that the insertion of those two provisions might favourably influence the final attitude of the member States of the Council of Europe towards the draft convention. As to the further procedure for examining it, there was a clear preference among member States of the Council for a diplomatic conference.

54. In that connexion he wished to draw attention to a new development: the practice of convening specialized ministerial conferences. Such conferences were not covered either by the draft convention on relations between States and international organizations, since they were not convened under the auspices of an organization, or by the Convention on Special Missions, as was clear from the commentary to article 2 of that Convention.[7] It was to be expected, however, that such conferences would become more and more frequent, not only within the framework of the Council of Europe, but on a wider basis.

55. The question of the protection of diplomats against acts of violence was of particular concern to the member States of the Council of Europe. Some of them had, at first, questioned the desirability of drawing up a convention on the subject and had considered that it was essential to have the support of the main body of the international community. At all events, they would probably attach some importance to the escape clause now being considered for addition to the text of article 6.

56. On the problem of treaties between international organizations or between an international organization and a State, the European Committee had practically no experience to offer.

57. With reference to General Assembly resolution 2099 (XX) on technical assistance to promote the teaching, study, dissemination and wider appreciation of international law, the Council of Europe had undertaken to put the texts of the conventions drawn up under its auspices on computer tape, so as to provide information more rapidly on the concordance of expressions and legal notions. That was an experiment which might also be of interest to States outside the Council.

58. He had announced in 1971 that, in pursuance of the same resolution, lawyers from developing countries would be able to spend periods working with the European Committee.[8] Through the kind assistance of Chief Justice Elias, a young and very able Nigerian lawyer had made a study visit to the Council of Europe and thus inaugurated the new scheme.

59. He wished likewise to draw attention to the publication of a first collection containing not only the texts of the conventions and agreements concluded under the auspices of the Council of Europe, but also the statements and reservations relating to them.

60. In conclusion, he stressed that the work of the European Committee was not in conflict with that of the Commission. It was only when a universal codification of legal rules proved impossible that the Committee set out to draw up provisions applicable at the regional level to States which had established ties of international co-operation with each other.

61. Noting that the Commission would not be able to be represented at the European Committee's next meeting, which was to be held the following week, he expressed the hope that a representative would be sent to the subsequent meeting to be held in November.

62. The CHAIRMAN thanked the observer for the European Committee on Legal Co-operation for his

[5] League of Nations, *Treaty Series*, vol. XCIII, p. 345.

[6] See document A/8410/Rev.1, chapter II, section D, reproduced in *Yearbook of the International Law Commission, 1971*, vol. II, Part One.

[7] See *Yearbook of the International Law Commission, 1967*, vol. II, p. 349.

[8] Op. cit., *1971*, vol. I, p. 383, para. 46.

most enlightening report on the Committee's activities and for his kind invitation. He hoped to attend one of the Committee's forthcoming meetings.

63. Sir Humphrey WALDOCK expressed his appreciation of the statement just made on the valuable activities of the European Committee on Legal Co-operation, which showed the vigour of the Legal Department headed by Mr. Golsong.

64. Mr. BILGE thanked the observer for the European Committee for his kind words and congratulated him on his excellent statement.

65. Mr. ELIAS expressed his appreciation of the award to a young Nigerian jurist of the first fellowship given to a national of a developing country to study the work of the Council of Europe. There was a real need for developing countries to understand the Council's work and he hoped that the experiment would continue.

66. Mr. TAMMES, speaking also on behalf of Mr. Reuter, thanked the observer for the European Committee on Legal Co-operation for his interesting report. The work undertaken by the Committee on the legal aspects of ecological problems should inspire the Commission in dealing with that topic at some future time.

67. Mr. SETTE CÂMARA, speaking also on behalf of the other Latin American members of the Commission, expressed appreciation of the lucid and succinct statement made by the observer for the European Committee on Legal Co-operation. It was gratifying to find that the Committee was engaged in a study of the complex legal issues underlying the problem of pollution, which the Commission itself would certainly have to study before long.

68. The presence at the Commission's meetings of the observers for the Inter-American Juridical Committee and the European Committee on Legal Co-operation provided welcome evidence of the progressive universalization of international law.

69. Mr. USTOR expressed his admiration of the legal work of the Council of Europe and of the energy displayed by Mr. Golsong and the legal department which he directed.

70. Mr. USHAKOV associated himself with the tributes paid to the observer for the European Committee.

71. Mr. BARTOŠ congratulated Mr. Golsong on his outstanding statement and expressed his admiration for the work of the European Committee, which had duly sent its legal publications to members of the Commission.

72. He hoped that the European Committee would make it possible for European States not belonging to the Council of Europe to accede to the conventions it drew up.

73. Mr. RAMANGASOAVINA, speaking also on behalf of Mr. Yasseen, associated himself with the tributes paid to the observer for the European Committee on Legal Co-operation for his clear and interesting statement.

74. The CHAIRMAN thanked the observer for the European Committee on Legal Co-operation and the observer for the Inter-American Juridical Committee, who would be leaving Geneva shortly, for their attendance at the session.

The meeting rose at 1.10 p.m.

1187th MEETING

Monday, 26 June 1972, at 3.10 p.m.

Chairman: Mr. Richard D. KEARNEY

Present: Mr. Ago, Mr. Alcívar, Mr. Bartoš, Mr. Bilge, Mr. Elias, Mr. Hambro, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Reuter, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

Succession of States in respect of treaties

(A/CN.4/202; A/CN.4/214 and Add.1 and 2; A/CN.4/224 and Add.1; A/CN.4/249; A/CN.4/256 and Add.1 to 3; A/CN.4/L.183 and Add.1 to 3; A/CN.4/L.184 and L.185)

[Item 1 (*a*) of the agenda]

(resumed from the 1181st meeting)

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE *(continued)*

ARTICLE 1 *(quinquies)*

1. Mr. USTOR (Chairman of the Drafting Committee) said that the Committee proposed the following title and text for article 1 (*quinquies*):

Article 1 (quinquies)
Limitation of the present articles to lawful situations

The present articles apply only to the effects of a succession of States occurring in conformity with international law and, in particular, the principles of international law embodied in the Charter of the United Nations.

2. Article 1 *(quinquies)* belonged in Part I (General provisions). It dealt with the limitation of the draft articles to lawful situations, a matter which had been raised by several members, in particular during the Commission's consideration of the two texts for draft article 2 submitted by the Drafting Committee on first and second readings. The text now proposed by the Committee was short and self-explanatory. It was the result of a delicate compromise achieved after lengthy discussions and he hoped the Commission would approve it—on a provisional basis, of course, like all the other articles under consideration at that stage.

3. Mr. TABIBI said he supported article 1 *(quinquies)*.

4. Mr. USHAKOV said he had some doubts about the title, particularly in its French version. The wording seemed much too vague.

5. Mr. SETTE CÂMARA agreed that the title was not satisfactory. It seemed strange for the Commission to