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Summary record of the 1234th meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
1973, vol. I

more in need of peace and food than of legal texts—but were ripe for codification. His own choice, as he had stated in his written observations, would be the industrial use of watercourses and the immunities of foreign States and bodies corporate.

32. Mr. BARTOŠ said he endorsed Mr. Reuter's comments. The Commission's task was to contribute to the codification of international law as a whole, but it should not try to codify topics which were not yet ripe for codification unless the General Assembly asked it to do so. For however rational they might be, codified rules remained inoperative where principles had been codified prematurely, before they had been universally accepted or established by practice. For instance, the provisions of the Conventions on Fishing and Conservation of the Living Resources of the High Seas, which had been drawn up for reasons that were perhaps more political than legal, were not being applied, because they had not yet become custom. He therefore approved of Mr. Reuter's choices. The topics selected should not be those whose codification would enable the ideas of particular States to prevail, but those which were of general concern to all nations.

33. The Commission should nevertheless beware of being too traditionalist and conservative. It must find a happy medium between codifications and progressive development of international law.

34. Sir Francis VALLAT said he wished to make a few preliminary remarks and would not comment on the substance. It was extremely hard to choose among the many subjects suggested in the *Survey*. There were certain considerations which should guide the Commission in that difficult task. It was necessary to look beyond the subjects at present being studied by the Commission, in order to see which topics were likely to be suitable for codification and progressive development in the future.

35. Experience had shown that the time needed to prepare a topic was inevitably very long. It had taken, in all, no less than 18 years for the Commission's work on the law of treaties to come to fruition. The best results had been obtained by the Commission when its consideration of a topic had been preceded by very thorough initial research conducted a considerable time before a draft was submitted to it. The Commission should therefore choose a few topics which it could take up for study on completing its current programme of work. The General Assembly expected the Commission, on the basis of the 1971 *Survey*, to provide some indication of the direction of its future work.

36. He agreed with the two previous speakers that the Commission should not be over-ambitious. Its aim should simply be to select three, or possibly four topics of importance, to be given priority after it completed the work in hand. If the Commission could take such a decision, the present discussion would be extremely useful.

The meeting rose at 4.40 p.m.

1234th MEETING

Tuesday, 26 June 1973, at 10.10 a.m.

Chairman: Mr. Jorge CASTAÑEDA
later: Mr. Mustafa Kamil YASSEEN

Present: Mr. Ago, Mr. Bartoš, Mr. Bilge, Mr. Calle y Calle, Mr. Hambro, Mr. Kearney, Mr. Martínez Moreno, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Reuter, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Francis Vallat.

(*a*) Review of the Commission's long-term programme of work: "Survey of International Law" (A/CN.4/245) prepared by the Secretary-General

(*b*) Priority to be given to the topic of the law of the non-navigational uses of international watercourses

(A/CN.4/244/Rev.1; A/CN.4/245; A/CN.4/254; A/CN.4/270)

[Item 5 of the agenda]

(continued)

1. The CHAIRMAN welcomed Mr. Tabibi, who had been unable, for health reasons, to attend the previous meetings. He invited the Commission to continue consideration of item 5 of the agenda.

2. Mr. USTOR said that the Statute of the International Law Commission made a clear distinction between codification and progressive development of international law. Article 18 required the Commission to survey the whole field of international law, but solely with a view to selecting topics for codification, and article 15 restricted codification to fields where there had already been extensive State practice, precedent and doctrine. Work on progressive development was undertaken by the Commission solely at the request of the General Assembly, but the Assembly had only rarely availed itself of its powers under article 16 of the Commission's Statute. Action had been taken by the Commission at the Assembly's request in only eight cases,[1] and in some of them the initiative had really come from the Commission itself.

3. However, experience had shown that codification and progressive development were practically inseparable, so that the distinction between those two aspects of the Commission's work had not been maintained in practice. It followed that, in attempting to draw up its future programme, the Commission was not bound by the strict interpretation of articles 15, 16 and 18 of its Statute, but had complete liberty to survey the whole field of international law and to choose not only subjects from fields in which there had already been extensive State practice, precedent and doctrine, but also subjects which had not yet been regulated by international law or in regard to which the law had not yet been sufficiently developed in the practice of States.

[1] See foot-note 6 to paragraph 5 of the "Survey" (A/CN.4/245).

4. It had to be recognized at the same time that the choice was of considerable political importance; that was perhaps why, in both article 16 and article 18 of the Statute, the power of decision had been left with the General Assembly. The Commission only had the power to make recommendations, and in doing so it would certainly wish to take the wishes of States into account; in that connexion he drew attention to paragraph 8 of the *Survey* (A/CN.4/245). It might be said, more simply, that codification and progressive development were not an end in themselves, but a means to an end—the end being the peaceful and just organization of the international community. On that basis, the General Assembly would be inclined to choose subjects closely connected with topical problems of international peace and security and with the economic development of the world, particularly that of the developing countries.

5. Topics of that kind, however, were fraught with political implications and were not ripe for codification and progressive development. In addition, they were linked with highly technical questions. The answer to those objections was that the matters in question were urgent and important; that the world political climate had greatly improved; and that the Commission was a forum in which the most delicate problems could be discussed calmly and objectively. As to technical questions, the Commission's achievements in dealing with the law of the sea, with its difficult technical aspects, were a sufficient reference. The General Assembly might therefore be induced to refer to the Commission the most diverse and difficult topics, which were more in the realm of progressive development than in that of codification.

6. The Commission, however, had to bear in mind its limited possibilities and the short time available to it. Its agenda was full for many years to come. Moreover, although codification and progressive development were inseparable, topics which came more within the scope of codification than of progressive development could be clearly distinguished.

7. Hence it might well be asked whether it was advisable to draw up a long-term programme of work. A long-term programme was no more than a list of topics with which the Commission proposed to deal at some time in the future. What mattered was not so much the programme itself as the priority given to each topic. A list of topics already existed in the excellent Secretariat *Survey*, and the Commission could always choose topics from it in the light of the progress of its current work. It would hardly be advisable to add any more topics to the 40 or so already listed in the *Survey*. His own view was that the Commission should place on its agenda every year the consideration of new items for inclusion in its programme and report whatever it decided to the General Assembly.

8. If the majority of members so desired, however, the Commission could perhaps also indicate some topics —but only a few—which it intended to study in the not too distant future. They could include the topic of international watercourses and that of State responsibility for damage caused by acts which were not wrongful under international law.

9. He would also recommend, although it was not a topic for codification, renewed consideration of ways and means of making the evidence of customary international law more readily available. In accordance with article 24 of its Statute, the Commission had placed that subject on the agenda for its second session and had discussed it on the basis of an excellent working paper.[2] It would be extremely useful if that study could be revised or supplemented to bring it up to date. That work would have the advantage of revealing what national publications existed regarding State practice. If a circular note was addressed to governments asking whether such a publication existed in their country, it might induce States which did not have such publications to start them.

10. The Commission could also remind the General Assembly that it remained open at all times to any proposal referred to it by the Assembly under article 16. It might also refer to the now almost forgotten article 17, which entitled Member States, the principal organs of the United Nations, specialized agencies and even "official bodies established by inter-governmental agreement" to submit proposals and draft multilateral conventions to encourage the progressive development of international law and its codification. For example the International Court of Justice, as a principal organ of the United Nations, could well make interesting suggestions with regard to the Commission's future programme.

11. In conclusion, should the Commission refrain from drawing up a long-term programme of work such as that adopted in 1949, it could still decide to place on its agenda every year an item entitled "Consideration of the inclusion of new items in the Commission's programme of work". That would ensure continuity.

12. Mr. KEARNEY said he would merely add some brief comments to the observations he had already submitted in writing (A/CN.4/254). The present discussion had largely centred on what the Commission's work should be, with some indication of how that work should be done. In considering those questions it was well to remember that the Commission was the major organized body concerned with the codification of international law.

13. In the last 25 years the situation had changed considerably. Many new problems had emerged, some of them relatively unprecedented. Some of those problems had been entrusted to a variety of specialized bodies, and that situation had to be accepted as a fact. Moreover, in view of the Commission's methods of work, it was clearly impossible for it to take up many of the new subjects.

14. At the same time the Commission should not avoid a subject simply because there was little practice, custom or judicial precedent relating to it. Such an approach would mean abandoning part of the task assigned to the Commission. It would reduce the Commission to the secondary role of dealing only with subjects outside the active areas of international life.

15. The question arose what action the Commission should take on the 1972 *Survey* and what it should report to the General Assembly concerning its long-term programme of work. In his opinion the Commission should

[2] See *Yearbook of the International Law Commission, 1950*, vol. II, p. 24, document A/CN.4/16.

not decide on an exclusive list of topics which would preclude consideration of all others. But because of the extensive preparatory work required to deal with any topic, it would be wise to try to select certain topics as having the highest priority having regard to the needs of the international community. That would make it possible to plan the work ahead.

16. As Sir Humphrey Waldock had been wont to say, the Commission could deal with only one major and one minor topic at each session. That being so, the Commission had work on hand for 8 to 10 years to come. If it were to add three major topics and three less important topics to its present workload, it would in effect be covering the next 20 years. In that connexion, he stressed that a ten-week session was totally inadequate for the task of codifying a major portion of international law. The solution to that problem depended on convincing the General Assembly of the need for a change in the Commission's methods of work. One possibility, which would not involve undue expense, would be for a small committee to meet before each session to prepare matters for discussion by the Commission. The Commission itself would then be able to work more quickly.

17. The CHAIRMAN, speaking as a member of the Commission, said that the excellent Secretariat *Survey* amply showed, in paragraph 19, how the present situation differed from that of 1949.

18. In 1949 the Commission's task had been to codify traditional international law on subjects on which there had already been extensive State practice. The 14 topics then selected, out of the 25 originally proposed, had reflected that situation. The present problems, on the other hand, called for more energetic and systematic action than the creation of law solely by means of treaties and through the growth of customary law. Legal rules had to be framed for new activities, or to regulate activities traditionally regarded as lying within the discretion of States. Consequently, the Commission must take the international community's present needs into account when bringing its long-term programme of work up to date.

19. In the circumstances, it would be a mistake to select topics on the basis of the traditional criteria: extensive State practice, a large number of judicial decisions, legal writings that were more or less uniform, and possibly even relevant treaties.

20. It was worth noting that the Commission had not always been guided by those criteria when selecting topics for codification and progressive development. From 1949 to 1958, for example, it had done useful work concerning the continental shelf, a topic which met none of those criteria. The only relevant State practice had been that of 12 States in the Americas, one half of which had acknowledged the sovereignty of the coastal State over the superjacent waters of the continental shelf, while the other half had regarded those waters as part of the territorial sea or of the high seas as the case might be. Writers had been divided on the subject, and the only treaty had been the one concluded by the United Kingdom with Venezuela in 1942 on the subject of the continental shelf beneath the Gulf of Paria. The Commission had nevertheless undertaken a codification of the topic in response to the clear needs of the international community and to the urgings of the General Assembly. That work had culminated in the 1958 Geneva Convention on the Continental Shelf.[3]

21. The same situation had arisen with regard to the problem of fisheries. The International Technical Conference on the Conservation of the Living Resources of the Sea, held at Rome in 1955, had acknowledged by a vote of 18 to 17, with 8 abstentions, "the special interests of the coastal State in maintaining the productivity of the resources of the high seas near to its coast".[4] That narrow vote had sufficed to initiate the movement which had led to the acknowledgement of that special interest in article 6 of the 1958 Geneva Convention on Fishing and Conservation of the Living Resources of the High Seas.[5]

22. Such a result had been possible because the concept of the special interest of the coastal State had been incorporated in articles 4 to 6 of the draft articles relating to the conservation of the living resources of the sea,[6] prepared by the International Law Commission under the able leadership of Mr. J. P. A. François, the Special Rapporteur for the topic of the law of the sea. That piece of progressive development of international law thus had its origin not in any State practice or precedent, of which there was little or none, but simply in the decision taken by the 1955 Rome Conference to adopt a principle that went well beyond mere technical considerations.

23. Similarly, the Treaty adopted by the General Assembly on activities in outer space[7] did not reflect any existing State practice. It was a legal framework for future State practice, deliberately adopted by the General Assembly in response to the needs of the international community.

24. That experience should be borne in mind when selecting topics for the long-term programme of work. Moreover, the topics selected should be those which were likely to attract the interest of the majority of countries.

25. That being said, he wished to consider briefly the five topics not yet examined by the Commission, out of the 14 accepted by the General Assembly in 1949.[8] The first, that of recognition of States and governments, was one which the Commission had never tried to codify owing to lack of interest on the part of the General Assembly. The second, that of the jurisdictional immunities of States and their property, was an appropriate subject for codification and the Commission could well select it, even though it was not perhaps especially important or urgent. Some aspects of the third of those topics, namely, jurisdiction with regard to crimes com-

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[3] United Nations, *Treaty Series*, vol. 499, p. 312.

[4] See *Report of the International Technical Conference on the Conservation of the Living Resources of the Sea* (1955) (United Nations publication, Sales No. 1955.II.B.2), para. 18.

[5] United Nations, *Treaty Series*, vol. 559, p. 286.

[6] See *Yearbook of the International Law Commission, 1955*, vol. II, p. 33.

[7] See General Assembly resolution 2222 (XXI).

[8] See *Yearbook of the International Law Commission, 1949*, p. 281.

mitted outside national territory, had been codified by a number of recent treaties; the remaining aspects did not offer a promising field for the Commission. The position was somewhat similar with regard to the fourth topic, that of the right of asylum, since the adoption of a Declaration on territorial asylum by the General Assembly in 1967.[9] That left the topic of the treatment of aliens, which the General Assembly must have had in mind when inviting the Commission to deal with the topic of State responsibility. On taking up the topic of State responsibility, however, the Commission itself had, of course, decided not to deal with substantive rules such as those governing the treatment of aliens.

26. He himself would suggest that the Commission should include the treatment of aliens in its programme of work; it was an important topic, some aspects of which were being codified piecemeal by a number of international bodies, including UNCTAD.

27. Among the subjects mentioned in the *Survey*, those in chapter III, on the law relating to economic development, were of great importance, but did not lend themselves readily to codification by the International Law Commission.

28. As to topics in chapter II, on the law relating to international peace and security, he did not believe that the Commission was disqualified from dealing with them. It should be remembered that in 1949 the Commission had adopted a draft Declaration on Rights and Duties of States.[10]

29. With regard to the law of the sea, the matters now outstanding were almost entirely within the realm of progressive development. The 1958 Geneva Conventions, which had emerged from the Commission's work, had already codified much of the traditional law of the sea. Hence there did not appear to be an important role for the Commission still to play in that sphere. Results could be achieved only by give and take, in the course of strenuous negotiations at the Conference to be held at Santiago in 1974. That was more a matter for representatives of States than for the Commission.

30. On the other hand, the question of the environment could lend itself to useful action by the Commission. The main difficulty arose from the diversity of sources and forms of pollution. The question of pollution of the sea by oil had been dealt with in a recent Convention,[11] and the Commission might well endeavour to identify five or six legal principles on the protection of the environment.

31. Another suitable topic for study by the Commission, was that of the objective liability of States for lawful acts. The topic was in urgent need of codification and was of especial interest to States owing to the problems it presented daily.

32. To sum up, he would suggest that the Commission should recommend to the General Assembly the inclusion of four new topics in its long-term programme of work: first, the treatment of aliens; secondly, principles of law relating to the environment; thirdly, State responsibility for lawful acts; and fourthly, the law of the non-navigational uses of international watercourses.

33. He fully agreed that it was desirable not to overload the Commission's long-term programme of work, since three or four topics would keep it occupied for about 15 years.

34. Mr. TSURUOKA associated himself with the congratulations addressed to the Secretariat on the preparation of the *Survey*. The need to review the Commission's long-term programme of work was undeniable. The international situation had changed greatly since 1949 and new problems had arisen which called for regulation by international law.

35. Changes had also taken place within the United Nations, including the setting up of bodies to consider certain legal questions, and he wondered whether the Commission could leave the codification and progressive development of international law on those questions to other bodies. It might be feared that the Commission would have nothing but secondary matters to deal with if it allowed that trend to gain ground. It should be remembered, however, that the Commission was composed of jurists representing the different legal systems of the world and had always been successful in codifying the fundamental rules of international law. Unlike other bodies of its kind, it was not called upon to legislate in areas where immediate solutions were required; it should confine itself to the basic problems of international law. Consequently, the proliferation of bodies dealing with urgent and, in many cases, important matters was not a threat to the Commission's work.

36. Seven of the 14 topics on the 1949 programme had already been dealt with in final drafts or reports, and two others were under study, namely, State responsibility and succession of States. The Commission would still have to devote much time to those two topics, but it was obvious that the list of subjects for study should now be extended.

37. In drawing up a new list the Commission should be guided by two considerations. In the first place it should take into account the needs of the international community with regard to the codification and progressive development of international law. The Commission was the servant of the international community; it should not engage in purely academic studies, but should concentrate on the practical value of the provisions it proposed. Secondly, the Commission should select topics which were sufficiently ripe for codification or progressive development. It should not legislate at all costs, even if some situations did demand immediate solutions, nor should it succumb to the temptation of examining problems of urgent concern to the world. On the contrary, it should confine its work to those spheres of international law in which at least some rules of customary law could be identified.

38. With regard to the topics to be included in the new list, the Commission might well retain the five topics on the 1949 programme which it had not yet studied, namely, recognition of States and governments; jurisdictional immunities of States and their property;

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[9] General Assembly resolution 2312 (XXII).

[10] See *Yearbook of the International Law Commission, 1949*, p. 287.

[11] See *International Legal Materials*, vol. XI (1972), No. 2, p. 262.

jurisdiction with regard to crimes committed outside national territory; treatment of aliens; and the right of asylum. However, there was no disguising the fact that the question of recognition of States and governments would raise political difficulties, and that jurisdiction with regard to crimes committed outside national territory would present many problems.

39. As to new topics, he would recommend State responsibility for lawful acts, which he considered ready for study by the Commission. His other preferences were for international law relating to international watercourses; the law relating to the peaceful settlement of disputes, in particular conciliation procedure, which had recently gained in importance; and extradition.

40. If the Commission placed the question of unilateral acts on its list, the study of that topic would involve distinguishing between the different spheres to which such acts might belong. The denunciation of treaties, for instance, was closely bound up with the law of treaties.

41. He supported Mr. Kearney's suggestion that a small committee should be set up to meet before each session and prepare the Commission's work.

Mr. Yasseen took the Chair.

42. Mr. AGO, after congratulating the Secretariat on the high quality of the *Survey of International Law*, pointed out that the Commission differed from other United Nations bodies with responsibility for considering questions of international law in that it had been established expressly to deal with the codification and progressive development of international law, had general competence in that matter, and was a permanent organ. Its task was different from those of the special bodies set up to study specifically designated new subjects or matters of immediate interest as the need arose. Consequently, it had no need to seek popularity by drafting conventions in areas to which international law had not yet penetrated. He was glad that other bodies were dealing with legal questions, as that relieved the Commission, whose programme of work was already very heavy.

43. A radical change had taken place in the composition of the international community in the 1960s, as a result of the accession to independence of a very large number of States which, not having participated in the formation of the international law in force, considered, with some justification, that they were entitled to call its content in question. In the sphere of international jurisdiction, for example, what they mistrusted was not the judicial settlement of disputes as such, but the rules—especially unwritten rules—which the courts had to apply.

44. The role of the Commission had radically changed as well. To continue a technical task begun in the 1930s was no longer enough. Codification had become a necessity for imparting certainty to the law, above all unwritten law, and for strengthening its foundation with the co-operation of all members of the international community. That had been done, for example, by the Vienna Conference on the law of Treaties, and the Commission should therefore concentrate on codifying the main branches of international law.

45. So far, the Commission's codification work had resulted in Conventions on the law of the sea, diplomatic law and the law of treaties. So far as the law of the sea was concerned, the effects of the rules drawn up had unfortunately been of short duration. No doubt the Commission might be partly responsible for that, but he nevertheless regretted that the topic had not been assigned to it again, for he was still convinced of the need for continuity in the criteria and methods used in codifying a given topic and in revising the codification to bring it up to date. In the sphere of diplomatic law there were still a few questions outstanding which the Commission could deal with in order to round off the Convention on Diplomatic Relations, the Convention on Consular Relations and the draft articles on the representation of States in their relations with international organizations. As to the law of treaties, the Commission would practically have covered the whole topic when it completed its studies of succession in respect of treaties, the most-favoured-nation clause, and treaties concluded between States and international organizations or between two or more international organizations.

46. That left two major topics whose codification the Commission had undertaken and which would occupy it for many years yet: succession in respect of matters othen than treaties, the study of which had only just begun and would certainly cover a number of matters besides State property; and State responsibility which, with the law of treaties, was the most extensive and important topic that the Commission had taken up, even though it had confined itself to responsibility proper, that was to say responsibility for internationally wrongful acts. Thus it could be seen that the Commission's present programme of work was already a long-term programme.

47. In those circumstances, the Commission should exercise the utmost caution in placing new topics on its agenda. For example, it would be unwise to take up the study, however interesting it might be, of questions such as the law relating to economic development, the law of outer space, international criminal law and so on, which required highly specialized knowledge and for which other bodies might be better qualified. The Commission would do better to concentrate on tasks whose scope was better adapted to its abilities. In addition to the major topics it had under study, two or three of which would occupy it at each session, the Commission would also do well to have, at the most, two or three other subjects in reserve.

48. Of the topics proposed, he would select the law relating to international watercourses, in particular rivers, which was a technical subject of great importance for many States; unilateral acts, which formed a logical sequel to multilateral acts, or treaties; and wrongful acts. If really necessary, the Commission could also adopt the topic mentioned by Mr. Castañeda, of liability for damage resulting from acts which he would not describe as "lawful", but rather as not yet prohibited by the international law in force. Lastly, the Commission would sooner or later certainly have to study the status of aliens, but it should not do so too soon, so as not to re-introduce confusion between international responsibility and the law of aliens, after having done everything possible to dispel it. It went without saying that the General Assem-

bly, if it saw fit, could add to those subjects any other matters it wished the Commission to study.

49. Mr. USHAKOV said he did not think the Commission should formally decide forthwith what topics it wished to include in its programme of work. No one could say what topics would be suitable for codification or would require it in 10 years' time. Besides, the Commission had chosen its subjects of study itself only at the beginning of its life; later, the initiative had always come from the General Assembly. That applied, for example, to the question of treaties concluded between States and international organizations or between two or more international organizations, and to the law of the non-navigational uses of international watercourses. Moreover, the General Assembly could hardly be asked to decide now, that in 10 or 15 years' time the Commission was to study one or another of the topics it proposed. Again, some of the topics which might be proposed, such as the law relating to the environment or the law of the sea, were either too far-reaching or had already been entrusted to other bodies, but one or more of their aspects might be referred to the Commission by the General Assembly. It was, indeed, for the Assembly to decide not only the subjects to be studied, but the most suitable bodies to study them.

50. It would therefore be better not to draw up a long list of possible topics for study or to decide formally what topics should be codified, but to report to the Assembly that, having examined the excellent *Survey of International Law* prepared by the Secretary-General, the Commission was submitting, for the consideration and information of the Assembly, several topics which its discussions had shown to be important.

Mr. Castañeda resumed the Chair.

51. The CHAIRMAN, speaking as a member of the Commission, pointed out that at its first session the Governing Council of the United Nations Environment Programme had unanimously adopted a report which included the following passage:

> "So far as the topic of the international law regarding the environment was concerned, the suggestion was made that the General Assembly should be invited to consider the codification and progressive development of environmental law and possibly to refer the topic to the International Law Commission."[12]

The meeting rose at 1 p.m.

[12] See *Official Records of the General Assembly, Twenty-eighth Session, Supplement No. 25* (A/9025), para. 60.

1235th MEETING

Wednesday, 27 June 1973, at 10.10 a.m.

Chairman: Mr. Mustafa Kamil YASSEEN
later: Mr. Jorge CASTAÑEDA

Present: Mr. Ago, Mr. Bartoš, Mr. Bilge, Mr. Calle y Calle, Mr. Hambro, Mr. Kearney, Mr. Martínez Moreno, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Reuter, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Francis Vallat.

(*a*) Review of the Commission's long-term programme of work: "Survey of International Law" (A/CN.4/245) prepared by the Secretary-General

(*b*) Priority to be given to the topic of the law of the non-navigational uses of international watercourses

(A/CN.4/244/Rev.1; A/CN.4/245; A/CN.4/254; A/CN.4/270)

[Item 5 of the agenda]
(continued)

1. Sir Francis VALLAT said that Mr. Ustor had been right to remind the Commission that it should always bear in mind the provisions of its Statute. The Statute should be taken as it stood, at least until the General Assembly chose to amend it. In the context of the *Survey*, articles 16, 17, 18 and 24 were particularly relevant. Article 16, which dealt with the progressive development of international law, gave the initiative primarily to the General Assembly, while article 18, which dealt with the codification of international law, gave the initiative primarily to the Commission and placed upon it the duty of surveying the whole field of international law with a view to selecting topics for codification.

2. Article 18, paragraph 2, provided that, when the Commission considered that the codification of a particular topic was necessary or desirable, it should submit its recommendations to the General Assembly. He believed that the time had come for the Commission to submit such recommendations; the only question was whether a particular topic was ripe for codification. The real difficulty was to determine the area on which the Commission should concentrate. Some guidance on that point was given in article 15, which provided definitions of the expressions "progressive development of international law" and "codification of international law". That article read:

> "In the following articles the expression 'progressive development of international law' is used for convenience as meaning the preparation of draft conventions on subjects which have not been regulated by international law or in regard to which the law has not yet been sufficiently developed in the practice of States. Similarly, the expression 'codification of international law' is used for convenience as meaning the more precise formulation and systemization of rules of international law in fields where there already has been extensive State practice, precedent and doctrine."

3. It was perhaps difficult to be precise about the distinction between new and old subjects of law and between general and specific rules of law—in other words, between the foundation and the superstructure of the Commission's work. For example, the law of treaties clearly fell within the Commission's area, while the law of outer space and the ocean floor were in a different category. The Commission's object, as he saw it, should be to complete and fill out the main framework of inter-