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Summary record of the 1516th meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
1978, vol. I

several States, and if those successor States "otherwise agreed" with the predecessor State.

67. If then, under article 25, all the successor States could agree on a certain distribution of debts, could not some of them subsequently agree on a further distribution of debts among themselves? In his opinion, there was no reason why they should not, and article 25 should therefore be supplemented by a new paragraph on the following lines:

> "The provisions of paragraph 1 are without prejudice to the redistribution by the successor States concerned of their respective shares of the State debt of the predecessor State."

68. The two questions he had raised should be reflected in the commentary to article 25 and discussed on second reading.

69. Mr. TABIBI had no difficulty in accepting the article as proposed by the Drafting Committee, since it was a great improvement on the text originally submitted by the Special Rapporteur. He was particularly gratified by the reference to "all relevant factors" (or "all relevant circumstances"). It was most important, however, that the Commission should accompany article 25, and also articles 23 and 24, by a carefully written commentary showing how those provisions might be applied in practice. The discussion on article 23 had shown that many points required elaboration, while the difficulties that might be caused by the references in articles 24 and 25 to "an equitable proportion" of the State debt could be judged from the financial problems that had followed the partition of India and, later, the partition of Pakistan, some of which were still unresolved.

70. Mr. REUTER pointed out that he had accepted articles 23 and 24, and could accept article 25, only on condition that their provisions were interpreted in the light of article 20. Agreements between predecessor and successor States could not be invoked against creditors unless the conditions laid down in article 20 were met.

71. In article 25, the words "and unless the successor States otherwise agree" should be replaced by the words "and unless some successor States otherwise agree", since such an agreement could relate only to the ultimate burden of the debt, not to the obligation itself. With regard to the obligation, an equitable proportion of the debt of the predecessor State must pass to each successor State. There might, of course, be disagreement between successor States; although each successor State acknowledged that it was responsible for a certain share of the debt, it would unilaterally determine that share itself, and it could hardly be expected that the sum of all the shares thus determined would be equal to the whole. In general, States did not have a very generous conception of equity and were quick to invoke all manner of relevant circumstances, whereas creditors were usually satisfied with what they could obtain on the basis of the successor States' sense of equity. If the Commission did not lay down the rule of equitable distribution, creditors might receive nothing at all. As to the settlements that the successor States might arrange among themselves, they could be made by virtue of article 20, if the creditors accepted them, or by virtue of the principle of equitable distribution, if the creditors acknowledged that the successor States had made an equitable distribution. It should therefore be made clear, if not in the text of article 25, at least in the commentary, that article 20 remained applicable.

The meeting rose at 1.10 p.m.

1516th MEETING

Wednesday, 12 July 1978, at 10.10 a.m.

Chairman: Mr. José SETTE CÂMARA

Members present: Mr. Ago, Mr. Bedjaoui, Mr. Calle y Calle, Mr. Castañeda, Mr. Dadzie, Mr. Díaz González, Mr. El-Erian, Mr. Francis, Mr. Njenga, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Šahović, Mr. Schwebel, Mr. Sucharitkul, Mr. Tabibi, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta, Mr. Yankov.

Succession of States in respect of matters other than treaties (*concluded*) (A/CN.4/301 and Add.1,[1] A/CN.4/313, A/CN.4/L.272)

[Item 3 of the agenda]

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

ARTICLES 23, 24 AND 25 (*concluded*)

ARTICLE 25 (Dissolution of a State)[2] (*concluded*)

1. Sir Francis VALLAT expressed agreement with the comments made on the article at the previous meeting by Mr. Tabibi and Mr. Reuter.

2. Mr. FRANCIS believed that the texts of articles 24[3] and 25 now before the Commission represented the maximum degree of consensus that could be achieved in the Drafting Committee, and he was therefore prepared to accept them as they stood. Like Mr. Sucharitkul, however, he would have preferred to see references in both articles not merely to equitable considerations, but also, as in article 21,[4] to the "property, rights and interests" which passed to the successor State. He would also have preferred article 25 to contain a reference to the "contributory capacity" or, failing that, the "debt-servicing capacity" of each successor State.

3. The CHAIRMAN said that, if there were no objections, he would take it that the Commission de-

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[1] *Yearbook... 1977*, vol. II (Part One), p. 45.

[2] For text, see 1515th meeting, para. 64.

[3] *Ibid.*, para. 55.

[4] See 1514th meeting, foot-note 2.

cided to approve article 25 as proposed by the Drafting Committee and amended by Mr. Díaz González,[5] on the understanding that the Commission's discussion on the article would be summarized in the commentary.

It was so agreed.

State responsibility (*continued*)* (A/CN.4/307 and Add.1 and 2 and Add.1/Corr.1)

[Item 2 of the agenda]

Draft articles submitted by the Special Rapporteur (*continued*)**

Article 25 (Complicity of a State in the internationally wrongful act of another State)

4. The CHAIRMAN invited the Special Rapporteur to introduce chapter IV of his draft articles, entitled "Implication of a State in the internationally wrongful act of another State" and in particular article 25, which was set out in the seventh report on State responsibility (A/CN.4/307 and Add.1 and 2 and Add.2/Corr.1) and which read:

Article 25. Complicity of a State in the internationally wrongful act of another State

The fact that a State renders assistance to another State by its conduct in order to enable or help that State to commit an international offence against a third State, constitutes an internationally wrongful act of the State, which thus becomes an accessory to the commission of the offence and incurs international responsibility thereby, even if the conduct in question would not otherwise be internationally wrongful.

5. Mr. AGO (Special Rapporteur) reminded the Commission that chapters II and III of the draft articles on State responsibility dealt, respectively, with the subjective and objective elements on an internationally wrongful act. There remained to be considered, in chapter IV, the problems raised by the implication of a State in the internationally wrongful act of another State. The Sixth Committee of the General Assembly had on several occasions stressed the need to study those problems and the International Law Commission had undertaken to do so.

6. Cases of implication of a State in the internationally wrongful act of another State could be divided into two categories. First, the internationally wrongful act of a State, which was attributable to it and engaged its international responsibility, might have been committed with the participation of another State, in the form of aid or assistance in its commission. Secondly, there might be a relationship between two States whose existence led to one of those States being made to answer for an internationally wrongful act of the other. In other words, the State that had committed the wrongful act and the State that answered for it were dissociated. That was the case of responsibility for the act of another, or vicarious responsibility. The two sections of chapter IV examined those two cases successively.

7. The first case did not cover any and every kind of implication of a State in the internationally wrongful act of another State, but only its participation in that act in the form of aid or assistance in the commission of the act by the other State. Cases of that kind were common, and they were often of great political importance. For a proper understanding of the situation under consideration, a number of other situations should be eliminated. In connexion with the attribution of certain acts to a State, the Commission had considered, in draft article 9,[6] the case in which an organ of a State was placed at the disposal of another State. If an organ of a State had not really been placed at the disposal of another State, but was acting in the exercise of the prerogatives of the governmental authority of the State to which it belonged, any breach of an international obligation by that organ constituted an internationally wrongful act of the State to which it belonged. On the other hand, if an organ of a State had been placed at the disposal of another State in such a way that it was acting under the control and in the exercise of the prerogatives of the governmental authority of that other State, any internationally wrongful act it might commit constituted an act of the State at whose disposal it was placed. In such a case, there was clearly no participation of one State in the internationally wrongful act of another. If State A placed one of its organs at the disposal of State B, any act of that organ was an act of State B, without any participation by State A. The situation might appear to become more complicated if State B committed an internationally wrongful act through an action of one of its own organs, in which an organ placed at its disposal by State A participated; but in reality there would then be collaboration of two organs, both acting in the exercise of the prerogatives of the governmental authority of State B, and there would still be no participation by State A.

8. Another situation that should be eliminated was that of conduct in the territory of one State by an organ of another State acting as such, which was detrimental to a foreign State or to its nationals. For as article 12 showed, such conduct was not an act of the "territorial" State and did not constitute an internationally wrongful act by that State. Nevertheless, as article 12 also made clear, such conduct could bring about the breach of an international obligation by the "territorial" State, if, for example, that State had not taken the preventive or punitive measures required. But failure to take such measures was a separate wrongful act and in no way constituted participation by the "territorial" State in the internationally wrongful act of the State to which the organ be-

[5] See 1515th meeting, para. 65.

* Resumed from the 1513th meeting.

** Resumed from the 1482nd meeting.

[6] For the text of the articles adopted so far by the Commission, see *Yearbook... 1977*, vol. II (Part Two), pp. 9 *et seq.*, doc. A/32/10, chap. II, sect. B, 1.

longed. Thus such failure to take action was not a form of complicity.

9. The case in which an internationally wrongful act was committed by an organ common to two or more States must also be eliminated. If, for example, the sole commander of allied armed forces committed an internationally wrongful act, his action would in reality be split up into several internationally wrongful acts, attributable concurrently to each of the States having that organ in common. But in that case there was no participation by one State in the internationally wrongful act of another.

10. The last case to be eliminated was that in which States acted in concert and, in so doing, committed two parallel offences. When two States committed an act of aggression together, there was no participation of one in the internationally wrongful act of the other, but two simultaneously committed wrongful acts.

11. It followed that there was participation by a State in the internationally wrongful act of another State only if one State, and one State alone, committed an internationally wrongful act and the other merely took part, in some way or other, in its commission. That concept of participation in the commission of an internationally wrongful act covered a certain number of situations. Facile analogies with internal law, especially criminal law, must be avoided, for the situation was quite different at the level of inter-State relations.

12. It might at first be supposed that there existed, in international law, a notion similar to that of "incitement" to commit an offence, since it was not unusual for a State to advise or incite another State to commit an internationally wrongful act. He, personally, remained convinced that mere incitement or instigation to commit an internationally wrongful act did not as such constitute a breach of an international obligation and did not give rise to international responsibiity on that ground. The history of international relations might abound with examples of protests following such acts of incitement, but no State had ever charged any other with international responsibility merely for having incited a third State to commit an internationally wrongful act. The inter-State relations in the context of which the question of incitement to commit a wrongful act arose were relations between sovereign States, which were free to determine their own actions. A State could certainly be advised or incited by another State, but when it decided to act, it did so freely and as a sovereign State.

13. It would also be wrong to think that the nature of "incitement" to commit an internationally wrongful act was different if the object of the incitement was not a sovereign State but a "puppet" State. That point was illustrated by the decision of the American Board of Commissioners set up to distribute the sum allocated by France, under the Convention of 4 July 1831 between the United States of America and France, as reparation for the confiscation measures taken by certain States under the influence of Napoleonic France. For instance, Denmark, which had been a sovereign State, had seized American ships bringing goods to that country. The Commission had decided that those measures, although they had been taken to please the French Emperor, were exclusively an act of Denmark, and that France was not internationally responsible. Holland, on the other hand, had been placed under the rule of a brother of Napoleon, Louis Bonaparte, and had been so dependent on France that the latter had gradually annexed it. The Commission had decided that before its annexation Holland had been placed in a position of total dependence and that its decisions had not been taken freely, so that responsibility for them rested with France. Consequently, the American claimants against Holland had been allowed to share in the sum allocated by France.[7]

14. The history of the Second World War provided further examples of "puppet" States which had been at the origin of international disputes caused by their violation of an international obligation. In such cases, however, the decisive factor was not the instigation or incitement of the "puppet" State to commit an internationally wrongful act. What counted was the relationship established between the "puppet" State and the State that had created it. The "puppet" State did not act as a sovereign State, since it was in a position of dependence on the other State. Consequently, that other State would not bear separate international responsibility for its incitement of the "puppet" State, but full responsibility for the wrongful act committed by the latter. Such cases of responsibility for the act of another, or vicarious responsibility, were discussed in chapter IV, section 2.

15. It might be asked what the situation was when a State did not confine itself to inciting another to act in breach of an international obligation, but used coercion to that end. Coercion, when applied to a State to make it commit an internationally wrongful act, was a very much more serious matter than mere incitement and necessarily produced legal effects. If State A used coercion to make State B commit an internationally wrongful act against State C, it was very likely, at least in the current state of international law, that the use of coercion would constitute an internationally wrongful act of State A against State B; as such, it might engage A's international responsibility towards B, and even, in an extreme case, towards all the other members of the international community. Of course, if coercion involved the use of armed force, it was wrongful both under general international law and under the special legal system of the United Nations. The wrongfulness might be more open to question if coercion took the form of mere economic pressure, but the important point was not whether, by using coercion, State A had committed an internationally wrongful act against State B. What had to be determined was whether, by exercis-

[7] See A/CN.4/307 and Add. 1 and 2 and Add. 2/Corr. 1, paras. 62 and 64.

ing coercion on State B, State A participated in the internationally wrongful act committed, under coercion, by State B against State C. In his view, that case both fell short of and went beyond such "participation". It fell short because, although State A had exercised coercion on State B, it had done nothing to State C; it had taken no active part in the act committed by State B against State C and had given no aid or assistance for its commission. But at the same time, its involvement in the affair went far beyond "participation", since by its action State A had deprived the State subjected to coercion of its sovereign capacity of decision. If that were so, the situation would once again be that already mentioned of incitement of a puppet State. The decisive factor was then not the incitement, but the situation of dependence in which the incitement took place. And the responsibility that the coercing State might have to assume, as vicarious responsibility, would be responsibility for the act committed by the coerced State, not direct responsibility for its own act.

16. An example of that situation was to be found in the case of Persia, which, at the beginning of the twentieth century, had been divided by an Anglo-Russian treaty into three zones: a neutral zone, a northern zone under Russian influence and a southern zone under British influence. The Persian Government, which had been in desperate financial straits, had asked the Government of the United States of America to send it an expert. The expert appointed, Mr. Shuster, had worked for some time at Teheran, to the entire satisfaction of the Persian Government. The Tsarist Empire, displeased at the situation, had sent an ultimatum to the Persian Government calling upon it to dismiss the expert. On Persia's refusal to do so, a Russian army had invaded its territory. The Persian Government had thus been forced to dismiss the expert, but it had compensated him to the best of its ability. The United States Government, noting that its national had been duly compensated, had abstained from making any claim, but had declared that, in the absence of adequate compensation, it would have called upon the Tsarist Empire to make good the loss inflicted upon the American expert. That case had obviously gone far beyond participation by one State in the internationally wrongful act of another. The Russian Government had not participated in the dismissal of the American expert. Moreover, the Persian Government had admitted that it had acted of its own free will—although it could hardly have acted otherwise. Had it claimed that it had been placed in a situation of dependence on Russia, the United States would have claimed from the Russian Government, not reparation for alleged "participation" in the internationally wrongful act committed by Persia, but full reparation for the internationally wrongful act committed by the Persian State. As would be seen in section 2 of chapter IV, there would then have been vicarious responsibility, that was to say, dissociation of the author of the internationally wrongful act from the entity responsible for it.

17. Participation by a State in the commission of an internationally wrongful act by another State really occurred when the first State actively gave the second aid or assistance in committing the act. It was essentially that situation, the case of "complicity", that the members of the Commission and of the Sixth Committee had had in mind when they had stressed the need to consider the question of participation by a State in the internationally wrongful act of another State. The most frequently cited example of participation in the form of complicity had been that of a State placing its territory at the disposal of another State to help it to commit an offence against a third State. For instance, a State might allow the troops of another State to pass through its territory in order to commit an act of aggression. According to article 3 (*f*) of the 1974 Definition of Aggression,[8] "The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State" qualified as an "act of aggression".

18. Other examples of complicity could be cited, such as supplying a State with weapons to attack another State, providing it with means of transport to facilitate an act of aggression, or placing military organs at its disposal to advise or guide it. Furthermore, complicity might be aimed not at committing an act of aggression, but at committing genocide, supporting a régime of *apartheid* or maintaining colonial domination by force. There might also be complicity of a State in the commission of offences that were not international crimes, such as providing means for the closure of an international waterway, facilitating the abduction of persons on foreign soil or assisting the destruction of property belonging to a third State.

19. Cases of action involving complicity in the internationally wrongful act of another called for a distinction. The action of the accessory State might not in itself be wrongful. For instance, there was no general prohibition of the provision of arms to another State. The provision of arms was not wrongful in itself, but it became tainted with wrongfulness if it was intended to facilitate an act of aggression by another. The accessory State might also commit an act which, taken in isolation, was also internationally wrongful, such as currently supplying arms to South Africa in breach of Security Council resolution 418 (1977). But such an internationally wrongful act in relation to that resolution would be coupled with another wrong if the arms in question were intended for the perpetration of a wrongful act such as aggression or genocide.

20. That apart, it was obvious that, for participation in an internationally wrongful act to be asserted, there must be not only aid or material assistance but also the intention to collaborate thereby in the commission of an internationally wrongful act by another;

[8] General Assembly resolution 3314 (XXIX), annex.

the accessory State must have acted knowingly. There was no complicity, for example, if a State sent means of transport to another State without being in any way aware that they were to be used for the commission of an internationally wrongful act. The situation could be made clearer by examples. In 1958, Yemen, which had been supplied with arms by certain countries, had attacked the city of Aden, at that time a British protectorate. In reply to a question in the House of Commons, the spokesman for the United Kingdom Government had said he considered that the arms delivereis to Yemen had not been unlawful in themselves and did not justify any protest. Hence the Government had only protested to Yemen and reported the matter to the United Nations. In his comment on that reply, E. Lauterpacht had stressed: (*a*) that, in the absence of any specific prohibition, the supply of arms by one State to another was quite lawful in itself; (*b*) that responsibility for the unlawful use of those arms rested primarily with the State that received them; (*c*) that, those facts notwithstanding, a State that knowingly supplied arms to another State for the purpose of assisting it to act in a manner inconsistent with its international obligations could not escape responsibility for complicity in that unlawful conduct.[9]

21. In 1958, also, the Soviet Union had addressed a note to the Government of the Federal Republic of Germany, which had allowed United States and United Kingdom military aircraft to use its airports for action in Lebanon. The Soviet Union had accused the Federal Republic of Germany of participating in an internationally wrongful act by the United States and the United Kingdom. While not denying that its airports had been used to facilitate the operation of the United States and the United Kingdom, the Government of the Federal Republic of Germany had argued that the operation had not been internationally wrongful in any way, but had merely been a measure to protect the nationals of those countries, who had been endangered by civil strife. As the principal act had not been wrongful, the fact of placing airports at the disposal of the authors of that act could not have been wrongful either. Thus the Government of the Federal Republic of Germany had apparently considered that, if the foreign armed forces had used its territory to commit acts of aggression, there would have been "participation" on its part in the wrongful act of another.[10]

22. Finally, it should be noted that the act of the accessory State was not necessarily of the same nature as the principal act. An argument to the contrary could be drawn from the Definition of Aggression, which treated participation in an act of aggression as an act of aggression itself. However, the wording in question should not be taken too literally. The act of supplying arms to a State which used them to commit genocide need not necessarily be characterized as an act of genocide. In each case, the gravity of the participation must be considered. It was obvious that for a State to place its territory at the disposal of another State for the purpose of committing an act of aggression was more serious than for it to provide another State with means of transport. It could therefore be concluded that: (*a*) to take the form of "complicity" in the commission of an internationally wrongful act by another, conduct by a State consisting in giving aid or assistance to another State which committed or was preparing to commit an international offence must be backed by the intention thereby to facilitate the commission of that offence; (*b*) the conduct by which a State thus participated in the commission of an internationally wrongful act of another State was wrongful precisely by reason of participation in the international offence committed by another, even if that conduct were lawful when considered in isolation; (*c*) the offence consisting in complicity or participation in the offence of another must not be confused with the latter offence, just as the responsibility arising from participation must not be confused with the responsibility arising from the principal offence.

Co-operation with other bodies (*continued*)*

[Item 11 of the agenda]

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

23. The CHAIRMAN invited Mr. Furrer, observer for the European Committee on Legal Co-operation, to address the Commission.

24. Mr. FURRER (Observer for the European Committee on Legal Co-operation) said that, on the occasion of the twenty-fifth anniversary of the entry into force of the Convention for the Protection of Human Rights and Fundamental Freedoms[11] [known as the European Convention on Human Rights], the Committee of Ministers of the Council of Europe had adopted, on 27 April 1978, a declaration on human rights. The Council had stressed that, through its arrangements for supervision on the basis of objective criteria and by independent organs, the Convention provided a collective guarantee for a number of the rights stipulated in the Universal Declaration on Human Rights.[12] The Council had considered that the protection of human rights at both the national and international levels was a continuing task and that those individual rights remained of vital importance through all the mutations and evolution of society. It had also considered that there were close links between the protection and promotion of human rights within States and the strengthening of justice and peace in the world.

[9] See A/CN.4/307 and Add.1 and 2 and Add.2/Corr.1, para. 73.

[10] *Ibid.*

* Resumed from the 1497th meeting.

[11] United Nations, *Treaty Series*, vol. 213, p. 221.

[12] General Assembly resolution 217 A (III).

25. On the basis of those premises, the States members of the Council of Europe had decided to give priority to the work being done by the Council with a view to expanding the list of individual rights to be protected, including social, economic and cultural rights, and had undertaken to participate actively in safeguarding those rights in order to help strengthen international peace and security.

26. With regard to the application of the supervisory system set up by the European Convention on Human Rights, the European Court of Human Rights had recently delivered two judgments that were likely to prove particularly pertinent to the theory and practice of public international law: the first relating to State responsibility, the second to the interpretation of treaties.

27. In its judgment of 18 January 1978, in the Northern Ireland case, the Court had given its opinion on the responsibility of a State for what it had termed a "practice" attributable to the organs of that State. It should be noted, in regard to that case, that neither the acts complained of, nor their characterization as inhuman and degrading treatment, had been contested before the Court, and that the respondent government had in fact already undertaken to end them.

28. In its judgment, the Court had first defined the practice concerned, holding it to consist of a series of omissions of similar character, sufficiently numerous and sufficiently closely linked to have been more than isolated incidents or exceptions and to have formed a systematic whole. The practice, however, did not constitute an offence separate from the omissions. The Court had taken the view that the State authorities concerned had not been unaware of, or at least had not had the right to overlook, the existence of such practices, that they bore objective responsibility for the conduct of their subordinates, and that they had a duty to impose their will on their subordinates and should not take refuge behind their inability to ensure compliance with it. The Court had concluded by saying that the notion of practice was of particular importance for the operation of the rule of the exhaustion of local remedies. According to the Court, that rule applied not only to appeals by individuals to the Court's supervisory organs, but also to petitions by States in which the applicant State merely denounced one or more offences allegedly committed against individuals whom it, in a way, replaced. In principle, however, the rule did not apply if a State attacked a practice in order to prevent its continuation or recurrence, without asking the Court to rule on each of the cases it put forward as evidence, or as an example, of that practice.

29. In its judgment of 28 June 1978, in the case of König versus the Federal Republic of Germany, the Court had been required to interpret the phrase "determination of ... civil rights and obligations" contained in article 6 of the European Convention on Human Rights, which, in matters of that kind, recognized the right of any person to a decision by a court within a reasonable time. The decisions involved in that case had been decisions which, under the internal law of the respondent State, were the responsibility of the administrative authorities. The Court had nevertheless applied to them the rule laid down in article 6 of the Convention. It had justified that action on the basis, first, of the meaning of the terms of the Convention, as being independent of the meaning attributed to them in internal law; secondly, of an analysis of the material content of the rights which, in the case in question, seemed to be private; thirdly, of the object and purpose of the Convention, which referred, in article 6, to disputes concerning such rights, even if the internal law of the State concerned placed responsibility for the settlement of such matters on administrative tribunals.

30. That latest link in the jurisprudence of the two bodies responsible for monitoring the application of the European Convention on Human Rights showed how the rule of protection of human rights and fundamental freedoms, which the Council of Europe guaranteed internationally, was being strengthened and developed. That rule had stimulated co-operation between member States in the sphere of criminal law, with respect to crime prevention and the treatment of offenders. Several multilateral instruments had already been concluded on such matters as mutual judicial assistance, extradition, international transmission of criminal proceedings, and recognition and execution of foreign sentences; and efforts were now being made, as requested by the ministers of justice of the States members of the Council of Europe at a meeting held on 21-22 June 1978 in Copenhagen, to draw up, on the basis of those instruments, a common code of European co-operation in criminal matters, whch would form the groundwork for what might be termed a "European legal area", to match the European human rights area already established.

31. The existence of international guarantees for human rights had been an indispensable precondition for the conclusion of the European Convention on the Suppression of Terrorism of 26 January 1977.[13] Under that Convention, acts of terrorism such as unlawful acts against the safety of civil aviation, which came within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft (The Hague, 1970) and of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal, 1971), attacks against the life, physical integrity or liberty of internationally protected persons, kidnapping, the taking of hostages and unlawful detention, and the use of bombs, grenades etc., if such use endangered persons, could not be regarded as political offences for the purposes of extradition.

32. The European Committe on Legal Co-operation, an intergovernmental body set up in 1963 to promote the legal activities of the Council of Europe outside the specific spheres of human rights and criminal

[13] Council of Europe, Parliamentary Assembly, *Documents Working Papers, Twenty-eighth ordinary session (third part)*, vol. VIII, p. 9, doc. 3912.

law, had three aims: first, the safeguarding and further development of relations between member States in accordance with international law; secondly, the approximation and harmonization of member States' legislation and legislative policies; thirdly, the adjustment of their laws to the needs of an evolving democratic society.

33. Among the subjects on the Committee's programme more particularly connected with public international law were the question of the privileges and immunities of international organizations, currently being studied from the specific angle of the tax privileges of international officials, and, most important, the European Convention on State Immunity, which had been opened for signature in June 1972 and had entered into force on 11 June 1976, after being ratified by Austria, Belgium and Cyprus. A recent exchange of views arranged by the Committee had shown that the United Kingdom would soon be able to ratify the Convention. In addition, the United States Congress had recently passed a new act on the subject that was entirely compatible with the solutions adopted in the 1972 Convention. Those developments showed the interest which that instrument would not fail to arouse, not only at the European regional level but all over the world, in the development of international law applicable to the important and delicate question of the jurisdictional immunities of foreign States.

34. Also in the sphere of public international law, the Committee had just decided, at the request of members of the Legal Affairs Committee of the Parliamentary Assembly of the Council of Europe, to proceed, at its next session, in November/December 1978, to an exchange of views with parliamentary representatives on the 1957 European Convention for the Peaceful Settlement of Disputes[14] and, more particularly, on ways of improving the machinery for the settlement of disputes arising between States members of the Council of Europe. The Parliamentary Assembly considered that the Convention was not adequate, since it had so far been of use in only two cases: that of the North Sea continental shelf and that of the negotiations on the question of the South Tyrol (Alto Adige).

35. Finally, he drew attention to two recent European conventions, signed in November 1977 and in March 1978, which were aimed at organizing mutual assistance in administrative matters between States members of the Council of Europe. The first concerned the service abroad of documents relating to administrative matters, and the second the obtaining abroad of information and evidence in administrative matters. Those conventions would fill an important gap in co-operation between States, for unlike co-operation in civil, commercial and criminal cases, mutual assistance in administrative matters had so far been based almost exclusively on *ad hoc* arrangements, with all the drawbacks they entailed for legal security. Naturally, those two conventions took into account the diversity not only of the administrative structures of member States, but also of the matters covered by administrative law; they had to allow each contracting State to define unilaterally their field of application to itself, while encouraging it gradually to lift such restrictions.

36. The Committee had also undertaken an extensive programme of harmonization of the internal law of States members of the Council of Europe. The basic interest of that programme lay in the particular viewpoint from which it had been planned and was being carried out. The object was, notwithstanding the co-existence of different national legal systems, to strengthen and protect the legal position and rights of individuals—nationals as well as foreigners—vis-à-vis the public authorities and the various pressures exerted on them by society.

37. Among the items on that programme were the protection of the individual against administrative action, including the modalities of the exercise of the discretionary power of administrative authorities and the responsibility of the State for the acts of its agents; measures to facilitate access to the courts, in other words, legal aid and advice, together with the simplification of judicial procedures and reduction of their cost; protection of privacy having regard to electronic data banks, particularly in regard to the transmission of personal data beyond national frontiers; consumer protection; and reform of family law.

38. The European Committee on Legal Co-operation would hold its next meeting at the headquarters of the Council of Europe, in Strasbourg, from 27 November to 1 December 1978, and would be happy to welcome a representative of the International Law Commission.

39. The CHAIRMAN thanked the observer for the European Committee on Legal Co-operation for his statement, which had clearly brought out the various aspects of the fruitful co-operation established between the Commission and the Council of Europe in the sphere of the codification and progressive development of international law.

The meeting rose at 1 p.m.

[14] United Nations, *Treaty Series*, vol. 320, p. 243.

1517th MEETING

Thursday, 13 July 1978, at 10.10 a.m.

Chairman: Mr. José SETTE CÂMARA

Members present: Mr. Ago, Mr. Calle y Calle, Mr. Castañeda, Mr. Dadzie, Mr. Díaz González, Mr. El-Erian, Mr. Francis, Mr. Njenga, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Šahović, Mr. Schwebel, Mr. Sucharitkul, Mr. Tabibi, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta, Mr. Yankov.