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Summary record of the 631st meeting

Topic:
Programme of work

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annual reports. The resolution, however, called for something more than that sort of routine report. It appeared to him that the Assembly wished to obtain a clear idea of the scope of the work the Commission considered to have been entrusted to it for the purpose of codification or progressive development, keeping in view the object of bringing the international community under the rule of law, and regardless of whether the work had been or could be completed. Indeed the world community had been trying to do that ever since the end of the First World War, which marked the pioneering enterprise of substituting the human device of some sort of constitutional governance for the blind play of physical force in the conduct of international relations. The world had been driven to that serious task by the lash of fear as well as by the incitement of hope. That new and compelling task, if and when fulfilled, would represent the positive side of historical development, revealing the indeterminate possibilities of good in history.

66. As regards the subjects other than the law of treaties mentioned in sub-paragraph 3 (a) of resolution 1686 (XVI), immediate steps to study them would have to be taken.

The meeting rose at 1 p.m.

631st MEETING

Friday, 27 April 1962, at 10 a.m.

Chairman : Mr. Radhabinod PAL

Future work in the field of the codification and progressive development of international law (General Assembly resolution 1686 (XVI)) (item 2 of the agenda) (A/CN.4/145) (continued)

1. The CHAIRMAN invited the Commission to continue its discussion of item 2 of the agenda.

2. Mr. VERDROSS suggested that the Commission's method of work might be improved if it adopted a system similar to that used with some success by the Institute of International Law. In the intervals between sessions, preliminary work might be done not only by a special rapporteur, but also by a committee. The special rapporteur might prepare a first draft, and submit it to the committee and then, in the light of its comments, prepare a final draft for the plenary Commission. That would probably save considerable time. If the Commission decided to place the topics of state responsibility and succession of states and governments on the agenda of its fifteenth session, it should at the current session appoint the special rapporteurs and the committees he had suggested. At the current session the Commission should continue its usual practice ; it should certainly not divide into two sub-commissions, for that would merely mean that the same debate would take place twice, as had happened at the ninth session.

3. Mr. AGO said that the Commission had discussed the subjects before it at several previous sessions. Mr. Verdross's suggestion was, however, relatively new, and he would wholeheartedly support it, provided, of course, that the proposed committee met in the intervals between the plenary Commission's sessions. He was, however, strongly opposed to any idea of dividing the Commission into two sub-commissions. It had been argued that the Commission's membership had been increased and that consequently subdivision would be easier ; his answer to that argument was that, for the purposes of the increase in membership to be achieved, all members must participate in the debates. If the Commission were subdivided and if the work of a sub-commission were to be regarded as final, the whole spirit in which the Commission had been constituted would be violated. On the other hand, if the sub-commission's work was to be regarded as preparatory, the debate would merely be repeated in the plenary meetings. In the light of experience he would urge members who favoured subdivision not to press their proposal, since such a system had been found completely unworkable.

4. He had noted with great pleasure that the General Assembly seemed to have realized that the Commission's essential task was to codify a few very broad topics and not to disperse its efforts on lesser ones. That approach was particularly appropriate in view of the great increase in the membership of the international community, and of the problems of international law arising out of that increase.

5. The topic of the law of treaties would, of course, receive priority. If the Commission succeeded in completing a draft on that topic, it would have achieved a notable success. However, state responsibility, on which a great deal had been said at earlier sessions, was an equally important topic and equally urgently in need of codification. When the Commission had defined the subject, however, it had been led astray by historic considerations. While it was true that the theory of the responsibility of the state had evolved from a body of case-law mainly concerned with the status of aliens, nevertheless the confusion of two distinct questions which had characterized the earlier reports on the topic should be avoided.

6. The two distinct questions were, first, the international responsibility of the state in general, and, secondly, the state's treatment of aliens. The second was of considerable practical importance in modern times, when the ever-increasing development of international intercourse was reason for a greater interest in the definition of the rights and duties of the State with respect to the alien residing on its territory. But the treatment of aliens should not be dealt with merely from the point of view of possible breaches of rules of international law. It was necessary first to establish what were the basic rules and what were the obligations of states with regard to aliens. By contrast, the state's international responsibility as such arose in circumstances in which a subject of international law infringed a rule of international law — any rule whatever, and not just the rules concerning the treatment of aliens. That was the essential subject.

7. In the course of a study of international responsibility the Commission would have to establish what was meant by an unlawful act under international law — what German jurists called *Unrecht*; in what circumstances a breach of international law might be imputed to a state; cases where the unlawful act was committed by an individual; at what moment an act in breach of international law finally produced international responsibility after the rules relating to the exhaustion of local remedies had been complied with; the responsibility of a state for the unlawful act of another state, also known as indirect responsibility; the circumstances which exonerated the state from responsibility; and so on. There was then the question of the consequences of responsibility, such as reparation or satisfaction, or other. That question ought to be tackled without encroaching on the separate topic of the procedures for the enforcement of responsibility.

8. He suggested, therefore, that the Commission should consider the basic nature of state responsibility separately from any other argument or subject with which it might be historically connected. Other special rapporteurs would have to be appointed for those subjects. Obviously, the treatment of aliens and enforcement measures were separate questions, which would have to be treated by special rapporteurs other than the one who would deal with the theory and nature of state responsibility as such.

9. The succession of states and governments was a very important topic, especially at the moment. He entirely agreed that the Commission should consider it and should appoint a special rapporteur.

10. The Commission should guard against one obvious danger. Some members had expressed the hope that the term of office of members would be extended and the length of sessions prolonged. He would not go into the merits of those excellent suggestions, but would merely point out that it was obvious that the codification of such very broad subjects could not be completed in five years with annual sessions of ten weeks. The Commission should, therefore, think very carefully about its work programme, for it would be deceiving the General Assembly if it gave the impression that it really believed it would be able to do all the work mentioned in the programme in the next four years. It was for the Assembly to decide whether some subjects were so important that it would be justified in allowing the Commission more time to meet in order to give them proper consideration, but if the Assembly decided that a particular topic should be codified, it should realize all the consequences of its decision.

11. Mr. TUNKIN said that the current discussion was called for by sub-paragraph 3 (b) of General Assembly resolution 1686 (XVI). That resolution had itself given the starting point in the third paragraph of the preamble, where it was stated that the codification and progressive development of international law should make international law a more effective means of furthering the purposes and principles set out in Articles 1 and 2 of the Charter of the United Nations. In other words, the object of the codification and progressive development of international law was to contribute to the maintenance

of peace and peaceful co-existence. If the Commission proceeded on that premise, then clearly it should give priority to topics the study of which tended most to achieve that fundamental purpose.

12. The programme of work should describe the Commission's intentions and its approach. Priority should be given to the three topics mentioned in sub-paragraph 3 (a) — the law of treaties, state responsibility, and the succession of states and governments. The Chairman had rightly pointed out that the law of treaties was a vast subject and might take at least five years. That was true, but the programme should also include items that might require more than five years. Certainly if it included all the three topics mentioned in the resolution, the work would take much more than five years.

13. It might be advisable to appoint a working group to draw up the list of topics for the Commission. There should be little difficulty in that; the main question was that of priority. At the current session the Commission should take action on the three topics mentioned in the resolution. The session would be mainly devoted to the law of treaties; the Commission would be able to decide, when it had seen Sir Humphrey Waldock's report, whether to try to cover the whole subject at once or to deal with it in sections.

14. He agreed with those members who had suggested that the study of the topic of state responsibility would have to be begun virtually anew. As Mr. Ago had said, the two different subjects of state responsibility as such and the treatment of aliens should be treated separately. The most important question was how the Commission should proceed; and he agreed with Mr. Lachs on the method of approach and with Sir Humphrey Waldock on the problems to be taken up. He disagreed, however, with Mr. Briggs's evaluation of the nature of state responsibility in the old international law. In the past, international law had been tainted by colonialism. Whereas it was true that in a number of cases disputes concerning the responsibility of the state had been settled by peaceful means, in hundreds of other cases armed intervention had been resorted to allegedly for the purpose of protecting aliens. The Commission would have to take the topic of state responsibility as a whole and examine it in the light of recent developments in international life and international law. The aspects of state responsibility cited by Mr. Ago did exist, but those were traditional aspects. Should not the Commission go further and study the problems arising out of the new developments, taking into consideration especially the fact that there had appeared new fields of state responsibility such as responsibility for acts which endangered the peace or constituted a breach of the peace, and responsibility for acts impeding the struggle of colonial peoples for independence?

15. The Commission had in the past often made the mistake of failing to give a topic sufficient preliminary study. Diplomatic and consular relations had not needed a great deal of preparatory work; but state responsibility was a very complex topic and not nearly so well defined. Lack of preliminary study had led to the situation which

now obtained even after many years' work and the submission of several reports. A special committee might, therefore, be set up to make a preliminary survey of the topic. He was glad to see that Mr. Verdross took the same view. His own suggestion was, however, slightly different. The committee should be established at the current session and asked to submit a preliminary report on the approach to be adopted and the specific points to be considered by the Commission at its next session. It would be premature to appoint one or more special rapporteurs, since the committee would have to clarify the issue and its report would show whether a committee or one or more rapporteurs would eventually be more effective.

16. Mr. Elias and Mr. Pessou had rightly stressed the importance of the topic of succession of states and governments to newly independent states, but it was also important for international relations as a whole. He would, therefore, support Mr. Verdross's suggestion that the Secretariat should be asked to collect the relevant material. The questionnaire to governments suggested by the Secretary would also be useful. Nevertheless, by reason of the complexity of the subject, it would be advisable in that case, too, to appoint a committee. The Secretariat might in due course compile the material, but it would not be essential for deciding the method of approach to the topic. The committee could be relatively small and should be appointed at the current session.

17. He agreed with Mr. Bartoš and Sir Humphrey Waldock that, for practical reasons, the Commission should have some other, less important topics on its agenda, as the special rapporteur on the main subject might be absent. The topic of special missions would be very suitable, since the General Assembly was awaiting new proposals and the subject had been examined at the Vienna Conference in 1961 and had since been referred back to the Commission by General Assembly resolution 1687 (XVI). A special rapporteur should be appointed at the current session.

18. It was useful to review the Commission's methods of work from time to time, but he wholeheartedly agreed with the Chairman, Mr. Ago and Mr. Verdross that it would be inadvisable and harmful to divide the Commission into two sub-commissions; that would waste time and might impair the quality of the work.

19. Mr. LIU said that the Commission's immediate objective should be to complete its work on the law of treaties and, so far as possible, to explore the field of state responsibility, tasks which the Commission had set itself even before the Assembly had adopted resolution 1686 (XVI). The Secretariat had pointed out that the General Assembly had shown far greater interest than ever before in the Commission's programme of work; that was only natural in view of the great increase in the membership of the United Nations. Some of the newer member states might not be aware of the programme established in 1949; some might have new needs; but all considered that the rapid codification of international law was necessary. The Commission would, therefore, have to submit a new list of topics suitable for codification. That task had been made easier by the

working paper prepared by the Secretariat (A/CN.4/145). In particular, the relations between states and intergovernmental organizations, the juridical regime of historic waters including historic bays, and the right of asylum should be included in the list. The Commission should not at that stage discuss substance or spend too much time in deciding priorities, for any list would necessarily be subject to revision in the light of changing circumstances.

20. The Chairman had made some excellent suggestions with regard to the Commission's method of work. It might be advisable to appoint small groups for exploratory work, but the main work should be done in the Commission itself.

21. Mr. CASTRÉN said that the Commission was clearly agreed that it should concentrate in the main on the codification of the law of treaties. It would have to decide whether the rules to be formulated as a basis for international instruments should be embodied in one or in several draft conventions. Perhaps as the subject was so vast it might be preferable to draft several conventions, for then each would be limited in scope and would consequently stand a better chance of ratification.

22. There seemed to be general support for the view that the Commission should also undertake the study of the more complex topic of state responsibility. Clearly the Commission would have to decide how the topic should be dealt with. After considerable hesitation he had formed the opinion that the right way for the Commission was first to formulate the general principles. The subject of the status of aliens, which some members thought should be dealt with first, raised very special problems, and practice in that regard varied considerably. Perhaps it should be taken up later.

23. The subject of special missions, on which the Commission had already prepared a preliminary draft,¹ was more limited in scope, and a special rapporteur, if selected forthwith, might be able to submit a report before the end of the session, in which event the Commission would be able to decide how to proceed.

24. Similarly, special rapporteurs should be appointed to study the topics of relations between states and intergovernmental organizations, the right of asylum and the juridical regime of historic waters, for all three had been expressly referred to the Commission by the General Assembly.

25. Work on the topic of the succession of states should be undertaken as soon as possible, for otherwise it might lose some of its immediate interest. The material could be collected by the special rapporteur himself with the Secretariat's help. As the subject was a wide one, perhaps a start should be made with state succession in relation to the law of treaties, and its effect on patrimonial rights and public debts.

26. The Commission might also wish to include in its programme of work the recognition of states and govern-

¹ *Yearbook of the International Law Commission 1960*, Vol. II (United Nations publication, Sales No. : 60.V.1, Vol. II), p. 179.

ments and jurisdictional immunities of states. In addition, careful thought should be given to including the pacific settlement of disputes, non-intervention, the rules governing international rivers and the laws of war and neutrality. He was uncertain, however, what order of priorities should be established for those last subjects.

27. Mr. JIMÉNEZ de ARÉCHAGA agreed with Mr. Lachs that, before appointing a special rapporteur, or perhaps, as suggested by Mr. Tunkin, a committee, for the preparatory work on state responsibility, the Commission should first determine the scope of its study. He held the view that the Commission should not leave aside for the time being the problem of responsibility for injuries to aliens, which traditionally was held to belong to the general topic of state responsibility.

28. As the Commission had no material available for even a preliminary discussion on state succession, it should appoint a special rapporteur on the subject at once who would report to the next session; by then the Commission should be able to decide whether more than one special rapporteur or a special working group would be needed. An effective way of obtaining information would be to circulate a questionnaire to governments.

29. The Commission should also initiate work on some other topics, to be considered when it had the time. As it might take too long to review in plenary the subjects listed in the Secretariat's working paper, perhaps a small working group should be asked to select suitable topics.

30. Mr. ROSENNE, on the question of the Commission's method of work, said that at one time he had thought that there was considerable room for improvement and that by introducing a procedure along the lines of that employed by the Institute of International Law, the Commission might be able to produce a greater flow of material for consideration by governments and the Sixth Committee of the General Assembly. However, after studying the paper prepared by Mr. Žourek in 1958² and the discussion on it at the Commission's tenth session,³ he had become convinced that the recommended procedure, which theoretically might be desirable, was in fact impracticable.

31. The Commission's general method of work as determined by the provisions of its statute and the procedure followed by the Commission itself, the General Assembly and the Sixth Committee and governments, was to deal with a subject in two distinct stages. The first stage consisted in the preparation of draft articles by a special rapporteur, which, after being considered in first reading by the Commission, were circulated to governments and included for information in the Commission's report to the General Assembly, whose Sixth Committee might or might not examine and comment on the draft at that stage. Two years were allowed, after the Commission's first reading of the draft articles, for the submission of observations by

governments in writing. Those written observations were quite a different matter from oral statements by government representatives in the Sixth Committee. Only after that process had been completed did the second and final stage of the Commission's work take place, namely, the second reading of the draft articles. The Commission as a whole thus retained full responsibility for each of the two principal stages, and he was convinced that no other method would enable the Commission to discharge its task adequately. Within that general framework of working methods, the Commission was free, by virtue of articles 16, 17 and 19 of its statute, to adopt special plans of work appropriate for individual topics, including where necessary the appointment of sub-committees, which should be properly representative of the Commission as a whole.

32. In considering some possible advantages in the method of work adopted by the Institute of International Law, it should be kept in mind that the Institute differed from the Commission in several ways. For instance, the Institute numbered over 100 members compared to the Commission's twenty-five. It was too early yet to judge whether the recent increase in the Commission's own membership called for fundamental changes in the established patterns for the Commission's work.

33. Mr. Tunkin's interesting suggestion that preparatory committees might be set up should certainly be considered. If he had understood it correctly, for the topics for which that procedure would be adopted, the general directives to a special rapporteur would be framed after discussion in plenary of an initial report drawn up by such a committee. In order to avoid delay, it would probably be desirable that the Commission itself should hold some preliminary discussion on a topic before establishing such a preparatory committee. A further gain in formulating the general directives to a special rapporteur in that manner was that it would reduce some of the difficulties which arose when a special rapporteur had to be replaced by another.

34. In order to avoid unnecessary work and confusion, the Commission would have to examine the way in which the topic of the law of treaties impinged upon those of state succession and state responsibility and demarcate where possible the boundaries between them so as to give the special rapporteurs clear guidance.

35. To comply with sub-paragraph 3(b) of General Assembly resolution 1686 (XVI), the Commission should briefly discuss in turn each of the subjects mentioned in the Secretariat's working paper. If that discussion took place in a working group, as suggested by Mr. Tunkin, there was a danger of the same arguments being repeated in plenary meeting when the working group's report came to be examined.

36. Mr. ELIAS said he favoured the suggestion that a small working group be appointed to draw up a list of topics for the future programme of work, for submission to the General Assembly at its seventeenth session.

37. However, as a matter of first priority, the Commission should take up, in the following order, the topics of the law of treaties, state responsibility, succession of

² *Yearbook of the International Law Commission 1958*, Vol. II (United Nations publication, Sales No.: 58.V.1, Vol. II), p. 74.

³ *Ibid.*, Vol. I, p. 174.

states and of governments, special missions, the juridical regime of historic waters, and the right of asylum or political refuge.

38. At least at the preliminary stage the succession of governments should be taken together with the succession of states, since, as international practice demonstrated, it was not always easy to separate the two and they were often linked with the whole problem of recognition, whether *de jure* or *de facto*.

39. The right of asylum or political refuge was a matter of considerable interest to African countries and perhaps also to Asian countries. For example, certain persons from South Africa were seeking asylum in West Africa and elsewhere, and a government in exile from Angola had recently arrived at Leopoldville.

40. With regard to the suggestion that committees should be appointed for some preparatory work before the selection of a special rapporteur, he said that such an innovation could hardly be approved without the authority of the General Assembly, because of possible budgetary implications. The Commission's statute provided only for the appointment of special rapporteurs.

41. Perhaps some effort should be made to co-ordinate the work on the topic of succession of states and governments with that of a committee of the International Law Association formed recently in the United Kingdom specifically to study that question, particularly in connexion with newly independent states.

42. Mr. BARTOS explained that his own suggestion did not conflict in any way with that made by Mr. Tunkin. Under his own suggestion, all the topics before the Commission would be taken into consideration and a list of priorities established. However, he had not excluded the possibility of that being done by a working party as a preliminary. Each working group would have to consider all aspects of the topic referred to it; when the working group reported to the Commission, the latter could amend, if necessary, the proposals submitted to it by the group.

43. The CHAIRMAN, summing up, said that the law of treaties was the only topic with which the Commission could deal at the current session. The Commission would do so on the basis of the Special Rapporteur's first report. For the next two years, the Commission would continue its consideration of the law of treaties on the basis of further reports by the Special Rapporteur on other aspects of that topic. As far as the law of treaties was concerned, it appeared to be generally agreed that the Commission's existing methods of work should not be altered.

44. It was also generally agreed that the topic of special missions was suitable for consideration at the next session, if the topic of the law of treaties should not absorb the whole of the Commission's time.

45. So far as the topic of state responsibility was concerned, there appeared to be general support for Mr. Tunkin's proposal that a special working group should be appointed to consider the scope of the topic and report to the Commission at its next session. That proposal had been supplemented by the suggestion, made

by the General Rapporteur and amplified by Mr. Jiménez de Aréchaga, that even before the special working group was set up, the Commission should hold a general discussion on the scope of the topic of state responsibility. His personal view was that such a discussion would involve duplication and would be somewhat *in vacuo*. All the members might not have studied the questions involved sufficiently to enable them to participate fruitfully in the discussion. The Commission would in any event be called upon to discuss the proposals of the special working group. He therefore suggested that Mr. Tunkin's proposal should be adopted and that the officers of the Commission should submit nominations for membership of the working group.

46. The position with regard to the topic of succession of states and of governments was similar. He suggested that the officers of the Commission should submit, in due course, nominations for membership of a special working group to consider the scope of the topic and report to the Commission at its next session.

47. Lastly, in regard to the preparation of a list of topics for the Commission's future programme of work, he suggested that a small committee should be appointed to prepare the list on the basis of the 1949 list and of the suggestions for additional topics. When the committee had prepared a list of topics, it would submit it to the plenary Commission, which would have ample opportunity to amend or supplement the list in question.

48. Mr. LIANG, Secretary to the Commission, said it was his understanding that the special committee to deal with the Commission's future programme would work during the current session. Provided that the committee was prepared to accept the limited language services customarily provided to the Commission's drafting committee, and that it met in the afternoon, when the Commission itself was not in session, the necessary material arrangements could be made.

49. The position with regard to the suggested working groups for the topics of state responsibility and succession of states was different. If special meetings of those groups, say in New York, were contemplated, the additional expenditure involved would have to be considered: travelling expenses and members' daily allowances would involve expenditure not covered by the United Nations budget for 1962. A possible alternative would be to adopt a procedure similar to that followed by the Institute of International Law: members of each group would carry out their work by correspondence and meet a few days before the opening of the 1963 session. Given some notice of a decision to that effect, the Secretariat could make arrangements to include the small additional expenditure involved in the proposals for the 1963 United Nations budget.

50. Having been associated with the Institute of International Law since 1950, he had seen that method work and thought that it might be emulated to some extent by the Commission, although he recognized that there were great differences between the Commission and the Institute. First, the Institute usually met for only about ten days every two years, whereas the Commission met

for ten weeks annually; secondly, the meetings of the Institute were largely devoted to the adoption of decisions after discussion and there was little opportunity for reconciling views in the manner customary in the Commission; thirdly, much of the Institute's work was done in the periods between the sessions, whereas the bulk of the Commission's work was done in the course of its sessions.

51. He assured the Commission that whatever decisions it reached on its methods of work, the Secretariat would lose no time in making all possible material arrangements.

52. Mr. AGO, referring to Mr. Tunkin's proposal, urged that the working group should report to the Commission during the current session so that a special rapporteur could be appointed. Experience had shown that it was necessary to give a special rapporteur ample time to prepare his reports for future sessions.

53. The proposal which had been made by Mr. Verdross was quite different. Whereas under Mr. Tunkin's proposal a working group was to be appointed immediately, and before the appointment of a rapporteur, to define the scope of the topic of state responsibility, under the proposal of Mr. Verdross a sub-committee would be set up to consider the Special Rapporteur's report before it was examined by the Commission itself. That proposal concerned a much later stage of the work on state responsibility, and there would be ample opportunity for the Commission to consider all its implications and to solve any material difficulties which might arise. The proposal of Mr. Tunkin, however, should be considered immediately.

54. He did not consider the method of work by correspondence, followed by the Commissions of the Institute of International Law as very satisfactory; it had been adopted largely for financial reasons.

55. Mr. TUNKIN said that a purely scientific body like the Institute of International Law was very different from the Commission, which was an official organ of the United Nations. The Commission had a much greater responsibility than the Institute; it was expected to prepare drafts acceptable to governments.

56. The suggestion for a working group to draw up a list of topics did not raise any major problems. Such a group could meet during the Commission's session for one week or two and submit to the Commission a list of topics. The appointment of such a group was not without precedent.

57. The appointment of a special working group to study the scope of the topic of state responsibility would represent an innovation in the Commission's methods of work. The working group in question would have a very complicated and very serious task: it would have to undertake the essential preliminary study of the whole topic, which had not as yet been attempted by the Commission. It was evident that the working group could not accomplish that task during the current session.

58. The position was very much the same in regard to the proposed working group on the topic of the succession of states.

59. With regard to the financial implications in the case of both working groups, it should not be too difficult to organize their work without involving the United Nations in any great additional expense. If the groups were appointed forthwith, their members would have two months in which to consult each other and organize their work; in the interval between the current and the next session, the members could keep in touch by correspondence; lastly, there should be no difficulty in arranging for meetings of the working groups a few days before the opening of the fifteenth session. In fact, the groups could meet early in the fifteenth session and submit their reports during the session.

60. He urged the Commission to approach those two important subjects with due deliberation; undue haste would prejudice the value of future work on those topics.

61. Mr. JIMÉNEZ de ARÉCHAGA urged the Commission to consider the suggestion made by the General Rapporteur that a general discussion on the topic of state responsibility should precede the setting up of the proposed special working group. Such a general discussion would give the working group the benefit of the knowledge of the views prevailing in the Commission on the scope of that topic; such a foreknowledge could not but assist the working group in its task of preparing suitable recommendations for submission to the Commission at the following session.

62. Mr. TABIBI said that, in considering its methods of work, the Commission should endeavour to reconcile two needs: first, the need to satisfy the General Assembly that the work of the Commission was proceeding with due speed; second, that of maintaining a high standard in the preparation of the drafts.

63. He shared the general view that the law of treaties did not require examination by a special working group and should be considered by the Commission on the basis of the reports to be submitted by the Special Rapporteur.

64. For the topics of state responsibility and succession of states, he agreed with the suggestion for the establishment of special working groups, after a thorough examination of those subjects by the Commission. It would be another week before the Commission could take up the topic of the law of treaties, so there was time for such a thorough examination which would assist the working groups when these were appointed.

65. He shared the view that the working group on state responsibility should submit its report at the present session, so that the Commission could appoint a special rapporteur before the end of the session.

66. Mr. BRIGGS pointed out that the formulation of a list of topics for codification had been important in 1949 because of the duty imposed upon the Commission by article 18(1) of its statute to "survey the whole field of international law with a view to selecting topics for codification".

67. The position in 1962 was quite different. The Commission's programme contained no fewer than seven topics which it had been officially requested to study by

the General Assembly. It had therefore enough work for many years to come, and any addition to that list of seven topics would have only a nominal significance.

68. With regard to Mr. Tunkin's proposal that a special working group be appointed to study the problem of state responsibility, he had at first been somewhat concerned at the vagueness of the terms of reference of the proposed group. After hearing the explanations given by Mr. Tunkin, he had the impression that the group in question would be performing the duties normally performed by a special rapporteur. He was opposed to that view of its duties and considered that the working group should do no more than demarcate the various chapters of the topic. He also strongly supported Mr. Ago in urging that the group should report to the Commission before the end of the session.

69. Sir Humphrey WALDOCK said that much would depend on the size of the proposed working group. He thought that even a small group would have to have a rapporteur of its own.

70. The discussion in the Commission should preferably take place after the small working group had submitted its suggestions.

71. Mr. TUNKIN said he could not accept the suggestion, implicit in some of the remarks made during the discussion, that the early appointment of a special rapporteur would mean that the Commission's work would move ahead faster. In fact, a special rapporteur had been appointed for state responsibility, and had submitted several reports over a long period, and yet the difficulties inherent in that topic had not been removed. The necessary ingredient for speedy progress was good preliminary work.

72. There could be no doubt that the current session would be taken up with the law of treaties and that at the next session the Commission would not be able to deal with any other topics than the law of treaties and special missions. Clearly, therefore, the Commission would not take up the topic of state responsibility either at its current or at its next session. There was therefore ample time to undertake a satisfactory preliminary study of that topic which would prove of great value to the future work of the Commission.

The meeting rose at 1 p.m.

632nd MEETING

Monday, 30 April 1962, at 3 p.m.

Chairman: Mr. Radhabinod PAL

Future work in the field of the codification and progressive development of international law (General Assembly resolution 1686 (XVI)) (item 2 of the agenda) (A/CN.4/145) (continued)

1. The CHAIRMAN invited the Commission to continue its discussion of item 2 of the agenda.

2. Mr. GROS said that the special rapporteur for the topic of state responsibility should be appointed at the current session. The Commission should have no difficulty in selecting a special rapporteur from among its members, several of whom had written well-known works on the subject.

3. The early appointment of a special rapporteur should not prevent careful examination of Mr. Tunkin's proposal, which contained valuable ideas for the improvement of the methods of work of the Commission. For example, between sessions the special rapporteur might with advantage draw on the knowledge and experience of fellow members of the Commission; it would be remembered what a remarkable contribution Mr. Bartos had made to the study of consular law and how much assistance he had given to the special rapporteur and to the Commission in the consideration of that topic. Indeed, it might be profitable if those members who were particularly interested in the topic of state responsibility met at Geneva two or three days before the opening of the fifteenth session to discuss with the special rapporteur the results of his work.

4. On the other hand, he was not in favour of the idea that the topic should be referred to a drafting committee. A useful draft could only be prepared by a single rapporteur who would specialize in a difficult problem for a number of years. The appointment of a committee was a procedural device which could not solve difficulties of substance. The real cleavage of opinion in the Commission was over the place of the question of the treatment of aliens in the subject of state responsibility. For some members, it was the foundation of the law of state responsibility; for others, it was simply one of the many hypotheses in international law where a breach of international law gave rise to state responsibility.

5. While there was some truth in both contentions, what concerned him particularly in that cleavage of opinion was the fact that it had already been responsible for the failure of the 1930 Conference to codify state responsibility. That conference had failed, not because of any difference of opinion on the principles underlying state responsibility, but because of its inability to agree on the rules governing the status of aliens; and yet even today it was the violation of those rules which most frequently gave rise to state responsibility.

6. He fully understood the misgivings with which certain members contemplated a discussion based exclusively on the treatment of aliens. Yet, it was hardly possible to avoid that question altogether and discuss the machinery of responsibility in the abstract; if the Commission formulated a draft on state responsibility which was silent on the treatment of aliens and the consequences of breaches of the rules governing the treatment of aliens, the draft would be nothing but an empty shell.

7. There were two aspects of the topic of state responsibility. One was the determination of the circumstances which gave rise to the international responsibility of the state; the other was that of the machinery for making international claims. Although it was not impossible to study the second aspect before the first, it would be more