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Summary record of the 771st meeting

Topic:
Other topics

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94. Mr. TABIBI pointed out that as the General Assembly had adopted a resolution about the Commission's programme of work something explicit should be stated on the matter.

95. The CHAIRMAN suggested that the last sentence in paragraph 1 be redrafted to read: "As to the other subjects on its agenda, the Commission decided to give priority to its work on relations between States and intergovernmental organizations. The questions of State succession and State responsibility would be dealt with as soon as work on the subjects previously mentioned had been completed."

That wording was approved.

96. Mr. TUNKIN said it was inadvisable to go into so much detail about the length of the Commission's sessions in paragraphs 3 to 6. It would suffice to state in paragraph 6 that: "In view of its heavy programme the Commission decided to hold a winter session, etc."

97. Mr. YASSEEN, Rapporteur, said that he agreed with Mr. Tunkin. Paragraph 6 contained an account of what had transpired, and he had thought it advisable to put it before the Commission, but he personally did not consider it desirable to report discussions concerning such international affairs.

98. The CHAIRMAN said that the Commission had decided not only to hold a four-week winter session in 1966 but had considered a possible winter session in 1967 as well.

99. Mr. BRIGGS asked whether the Commission had in fact decided to restrict its annual session in 1965 to ten weeks, as was stated in paragraph 6.

100. Mr. ROSENNE said it would be enough to state that the Commission had decided, in order to complete its programme of work, to hold a session of ten weeks in 1965 and two sessions in 1966 of 14 weeks in all.

101. Mr. BRIGGS considered that express mention should be made of the decision to hold a winter session in 1966.

102. Mr. ROSENNE agreed.

103. Mr. TABIBI said that the Commission should give the paragraph further thought because of its budgetary implications.

The meeting rose at 6.30 p.m.

771st MEETING

Tuesday, 21 July 1964, at 10 a.m.

Chairman: Mr. Roberto AGO

Draft Report of the Commission on the Work of its Sixteenth Session

(A/CN.4/L.106 and addenda)

(continued)

CHAPTER IV: Programme of work and organization of future sessions (A/CN.4/L.106/Add.2) *(continued)*

1. The CHAIRMAN invited the Commission to continue its consideration of chapter IV of its draft report on the session (A/CN.4/L.106/Add.2).

Paragraphs 1 and 2

Paragraphs 1 and 2 were adopted.

Paragraphs 3, 4, 5 and 6

2. Mr. TUNKIN proposed the deletion of paragraphs 3, 4 and 5 and of the opening words of paragraph 6. That paragraph would then begin with the words: "In view of the heavy programme of work the Commission had to complete . . .".

3. Mr. ROSENNE supported that proposal. However, he thought that chapter IV should indicate that the Commission's decision to prolong its 1964 session by one week was linked with the Commission's inability to hold a winter session in January 1965 because of circumstances beyond its control, specifically the late General Assembly session in the autumn of 1964. In addition, some reference should perhaps be included to the question of honoraria, which the Commission had discussed at the current session.

4. The CHAIRMAN, speaking as a member of the Commission, said that, in his opinion, the question of honoraria should not be mentioned at that point, but elsewhere, if at all. On the other hand, it should be explained that the current session had been extended by one week owing to the circumstances mentioned by the preceding speaker. It should also be stated that the Commission considered that it would need a four-week session in January 1966, without prejudging any later decision.

5. Mr. LIANG, Secretary to the Commission, said that the Commission's decision to extend its 1964 session by one week had not been entirely due to the fact that it would be unable to hold a winter session in January 1965. In fact, it was the Commission's inability to hold a winter session in January 1964 which had led to the Secretariat's offer of an extension by two weeks of the regular 1964 session.

6. The CHAIRMAN, speaking as a member of the Commission, suggested the following wording :

"Being anxious to complete the study of several topics before 1966, the Commission considered the problem of the duration of its sessions. In order to be able to complete its 1964 programme, the Commission decided to prolong its present session by one week. It regretted that owing to circumstances beyond its control, such as the late opening of the 19th session of the General Assembly, it would be unable to hold an additional winter session in 1965, as it had intended. It considers it indispensable, however, to arrange a four-week winter session in 1966, in order to have at its disposal the minimum time necessary in the light of the heavy programme of work to be completed before the end of the 1966 session."

7. Mr. LACHS supported the Chairman's proposal.

8. The question of honoraria should not, he thought, be mentioned in the Commission's report. The matter was one for the General Assembly.

9. Mr. YASSEEN agreed with Mr. Lachs's remarks concerning honoraria.

10. Mr. BRIGGS considered it essential that some reference to the question of honoraria should be included in the report. If the report was silent on that point, there would be no occasion for any delegation to raise the question in the General Assembly. The question of honoraria was linked with that of the duration of the Commission's sessions, which were to last for more than ten weeks annually.

11. Mr. BARTOŠ agreed with the view of Mr. Lachs and Mr. Yasseen that it would be inadvisable to mention the question of honoraria in the Commission's report.

12. Mr. TUNKIN also agreed with Mr. Lachs. The subject of honoraria had been mentioned in previous reports, and it was open to any delegation to raise it in the General Assembly.

13. Sir Humphrey WALDOCK said that any delegation could raise the subject of honoraria by pointing to the Commission's programme of work and to its decision to sit for more than ten weeks annually.

14. The CHAIRMAN, speaking as a member of the Commission, said that if there was no reference to honoraria in the report — and that, he considered, would be the better course — the report should nevertheless set forth the factors which representatives might mention in the General Assembly as reasons for requesting an increase — first, the length of the sessions and, secondly, the special importance of the topic under study, which demanded a great effort on the part of members of the Commission.

15. Mr. YASSEEN agreed that stress should be laid on the very considerable preparatory work to be done by members.

16. Mr. ROSENNE supported the Chairman's suggestion but thought that no comparison should be made

with the work of the Commission in the past. He proposed an amendment to that effect. The Commission had, for example, in the past devoted ten years to the law of the sea.

17. The CHAIRMAN fully agreed with the amendment proposed by Mr. Rosenne and said that a passage would be drafted stressing the importance of quality rather than quantity in the work of the Commission. In his own report to the General Assembly, he would naturally lay stress on those aspects of the work of the Commission.

18. Mr. BARTOŠ said that some reference should be included to the fact that members needed to work in the intervals between the sessions on the topics which would come before the Commission.

19. The CHAIRMAN suggested that, in view of the importance of the matter, a redraft of paragraph 6 should be submitted to the Commission at one of its next meetings.

It was so agreed.

Paragraph 7

20. Mr. TUNKIN said that the last sentence of paragraph 7 was not correct. No decision had been taken by the Commission to consider at its 1966 session the question of succession of States as it applied to treaties.

21. The CHAIRMAN, speaking as a member of the Commission, said that the sentence really meant that the Commission intended to do some preparatory work on State succession or State responsibility in order that the future Commission might have a basis on which to work. It might be as well to make a specific reference to that.

22. Sir Humphrey WALDOCK drew attention to the following passage in paragraph 7 of chapter II of the draft report (A/CN.4/L.106) dealing with the law of treaties :

"In the case of succession of States and Governments, the question is whether this topic should or should not be dealt with in the context of the effect of treaties on third States. The Commission decided that this question should be left aside from the present discussion of the draft articles. The Commission, as already indicated in the decision recorded in paragraph 58 of its report for 1963, intends to study the question on the basis of a report to be submitted by the Special Rapporteur on the topic of succession of States and Governments and will decide later whether or not it is appropriate to include provisions regarding State succession in its final draft on the law of treaties".

23. It was very unlikely that the Commission would ultimately decide to include in the draft on the law of treaties any provision on that point.

24. The CHAIRMAN, speaking as a member of the Commission, said that it would be unwise to separate

the topics in that way; the Commission should not give any specific bent to the topic of State succession even before studying it thoroughly.

25. Mr. YASSEEN agreed with the Chairman. In the sentence criticized by Mr. Tunkin it would be better to say that the Commission would consider at the same session the possibility of studying the topic of relations between States and inter-governmental organizations and that of succession of States as it applied to the law of treaties.

26. Mr. ROSENNE said that he did not recollect that the Commission had taken any decision on the question. For his part, he would prefer the sentence in question to be omitted.

27. Mr. PAL agreed with Mr. Rosenne. The sentence in question appeared to contain a promise that the Commission would deal at its 1966 session with the question of relations between States and inter-governmental organizations and with the topic of succession of States as it applied to treaties.

28. Mr. TUNKIN said that the Commission should not prejudice in any way how it would deal with the topic of State succession as it applied to treaties. Any reference to that point and to the doubts of the Commission as to the topic under which that particular subject should be discussed could mislead readers of the report into believing that the Commission had not completed its work on the law of treaties.

29. The CHAIRMAN, speaking as a member of the Commission, suggested the following wording: "At the same session it would consider the question of relations between States and inter-governmental organizations. If possible, it would also undertake some preparatory work on one of the two topics — State succession or State responsibility — which are to be the main subjects to be dealt with at its forthcoming session".

30. Mr. TUNKIN pointed out that the text of the last sentence created the impression that the Commission would consider in 1966 the topic of relations between States and inter-governmental organizations.

31. Mr. ROSENNE suggested that the text proposed by the Chairman should be amended so as to state that the Commission would carry out "further" preparatory work on the topics in question, for two Sub-Committees of the Commission and previously (in January 1963) considered the topics of State succession and State responsibility.

32. Mr. PESSOU suggested that the word "simultaneously" should be substituted for "if possible" in the Chairman's amendment.

33. The CHAIRMAN said that the Commission would find it easier to take a decision when it had before it the revised text of the paragraph, the end of which might be amended to read: "At the same session, it would consider the question of relations between States and inter-governmental organizations, the examination of which would be continued at the following session. Simul-

taneously, and within the time available, the Commission would also continue its preparatory work on State succession and State responsibility, which are to be the main subjects to be dealt with during its next term of office."

34. Mr. PESSOU, supported by Mr. ROSENNE, said that the term "Succession of States and Governments" should be used.

35. The CHAIRMAN said that, if there were no objection, he would consider that the Commission adopted (subject to drafting changes) paragraph 7 with the amendments proposed by Mr. Pessou, Mr. Rosenne and himself.

It was so agreed.

Paragraph 8

36. Mr. ROSENNE suggested that the closing passage should be redrafted so as to avoid giving the impression that the articles on special missions were being submitted to Governments for their comments. Those articles were included in the report for the session purely for information.

37. Mr. LIANG, Secretary to the Commission, pointed out that the passage in question did not say that Governments were requested to send their comments on the draft on special missions by January 1965. If, by the end of its 1965 session, the Commission's draft on special missions was completed, the articles on that topic would be submitted to Governments for their comments.

38. Mr. YASSEEN said that in paragraph 8 the Commission was expressing its wish to complete the whole of the work on special missions; Governments would therefore understand that they should send in their comments as soon as possible.

39. Mr. ROSENNE said that the point was largely one of drafting. It was essential to draw a distinction between the articles on the law of treaties which were being submitted to Governments in pursuance of articles 16 and 21 of the Commission's Statute, and the articles on special missions. He suggested that the draft on special missions should form the subject of a separate sentence indicating that the Commission planned to complete its work on special missions in 1965 and contemplated suspending the two-year rule for government comments on the articles of special missions, in the same manner as it had done for the articles on the law of treaties adopted at the present session.

40. The CHAIRMAN said that if there were no objection he would consider that the Commission agreed to adopt paragraph 8 with that adjustment.

It was so agreed.

CHAPTER V: *Other decisions and conclusions of the Commission (A/CN.4/L.106/Add.4)*

Paragraphs 1 to 4

Paragraphs 1 to 4 were adopted without comment.

Paragraph 5

Paragraph 5 was adopted subject to a drafting change.

Paragraph 6

41. The CHAIRMAN, speaking as a member of the Commission, suggested that in the second sentence of paragraph 6 some such words as "at the present time" should be inserted before the word "include".

It was so agreed.

Paragraph 6 as so amended was adopted.

Paragraph 7

42. Mr. ROSENNE pointed out that the Commission had discussed not only the distribution of documents, which was mentioned in paragraph 7, but also the exchange of documentation with other bodies with which the Commission maintained relations, following a preliminary examination of that aspect in 1963.¹

43. Mr. BARTOŠ suggested that a passage should be added to paragraph 7 to cover the point mentioned by Mr. Rosenne.

44. Mr. LIANG, Secretary to the Commission, pointed out that the Secretariat memorandum (A/CN.4/171) cited in that paragraph referred not only to the distribution of Commission's documents but also to the exchange of documentation with other bodies. He therefore suggested that the proposed reference should be added at the end of the first sentence of paragraph 7.

45. The CHAIRMAN said that, if there was no objection, he would consider that the Commission agreed to adopt article 7 with the changes suggested by Mr. Bartoš and by the Secretary.

It was so agreed.

Paragraph 8

46. The CHAIRMAN suggested that, in paragraph 8 which dealt with the tribute paid to the Secretary of the Commission, it should be indicated that the tribute had been paid in connexion with Mr. Liang's retirement. He further suggested that the statement that he had exercised the duties of Secretary since 1949 should be qualified so as to recognize the distinguished manner in which those duties had been fulfilled.

47. Mr. LACHS said that paragraph 8 seemed somewhat oddly placed between paragraph 7 on the distribution of documents and paragraph 9 on the date and place of the next session. He suggested that it should be moved further up in the chapter.

48. Sir Humphrey WALDOCK pointed out that paragraph 7, dealing with the distribution and exchange of documents, followed logically upon paragraph 6 dealing with co-operation with other bodies. He proposed that paragraph 8 should be moved to the end, where it would bring the chapter to an appropriate conclusion.

49. The CHAIRMAN said that, if there were no objection, he would consider that the Commission

agreed to adopt paragraph 8 with the changes proposed by Sir Humphrey Waldock and himself.

It was so agreed.

Paragraphs 9 and 10

Paragraphs 9 and 10 were adopted without comment.

Chapter V, as amended, was adopted.

CHAPTER II: Law of treaties (A/CN.4/L.106)

50. The CHAIRMAN invited the Commission to consider the introduction (A/CN.4/L.106) to chapter II of the draft report.

A. INTRODUCTION: Summary of the Commission's proceedings

Paragraph 1

Paragraph 1 was adopted without comment.

Paragraph 2

51. Mr. RUDA pointed out that the Commission had decided to replace the term "revision" by "amendment". It was not therefore altogether correct to say that the draft articles dealt with "the topics mentioned" in the Special Rapporteur's report.

52. The CHAIRMAN said that since, in the first sentence, the title of the report was not given within quotation marks, the simplest course would be to replace the term "revision" by "modification" in that sentence.

Paragraph 2 was adopted with that amendment.

Paragraph 3

53. Mr. TUNKIN said that there seemed to be some inconsistency between the two parts of the last sentence in paragraph 3.

54. Sir Humphrey WALDOCK, Special Rapporteur, said that the sentence was one which had appeared in the report on the previous session.² All it meant was that, although the fourth and fifth reports by Sir Gerald Fitzmaurice had not been formally examined, they had presumably been studied by members of the Commission and, through the work of the Special Rapporteur, had been taken into account.

55. Mr. BARTOŠ observed that some comments had been made on Sir Gerald's two reports during the discussions.

56. Mr. LACHS said that there was no need to pass judgment, as it were, on the work done at the previous session; he thought the last sentence in paragraph 3 should be omitted.

57. Sir Humphrey WALDOCK, Special Rapporteur, said that he could see no objection to the inclusion of what was simply a statement of fact.

¹ *Official Records of the General Assembly, Eighteenth Session, Supplement No. 9, para. 70.*

² *Ibid.*, para. 10.

58. Mr. de LUNA agreed with Mr. Lachs that the last sentence should be deleted.

59. The CHAIRMAN, speaking as a member of the Commission, said that in his opinion the reference was not necessary.

60. Mr. ROSENNE said that the sentence might be redrafted to read "Neither of those reports had been examined at the time; at the present session they have been taken into account."

61. Mr. TUNKIN suggested that the sentence should read: "The Commission at this session has naturally taken these reports into consideration".

62. The CHAIRMAN suggested that the sentence be retained with the insertion of the words "at the time" after the word "examined" and the substitution of the words "at the present session the Commission has taken them into account" for the words "the Commission has naturally given them full consideration".

It was so agreed.

Paragraph 3 was adopted as amended.

Paragraph 4

63. Mr. TUNKIN proposed the deletion of the word "self-contained" in the second sentence, for the word was inaccurate.

It was so agreed.

Paragraph 4 was adopted as amended.

Paragraph 5

64. Mr. RUDA said that no mention should be made in the last sentence of paragraph 5 of the month in which the eighteenth session would commence in 1966.

It was so agreed.

Paragraph 5 was adopted as amended.

Paragraph 6

65. Mr. de LUNA said that he doubted whether the question of conflicts between treaties referred to in the second sentence really had anything to do with the rules concerning treaties and third parties; it was, however, closely linked with the rules concerning the modification and the interpretation of treaties.

66. The CHAIRMAN suggested the following wording: "... which it found to be closely connected especially with the rules concerning the interpretation and modification of treaties"

The Chairman's suggestion was adopted.

Paragraph 6 was adopted as so amended.

Paragraph 7

67. Mr. BRIGGS proposed the deletion of the word "all" in the fourth sentence, as the question of State responsibility was, in fact, referred to in one of the articles on the law of treaties.

It was so agreed.

68. Sir Humphrey WALDOCK, Special Rapporteur, said that the latter part of paragraph 7 might need adjustment in the light of the discussion earlier in the meeting about the topic of State succession.

69. Mr. TUNKIN said that the whole paragraph needed to be entirely recast or omitted altogether.

70. Sir Humphrey WALDOCK, Special Rapporteur, agreed that the paragraph might be too explicit but it would be difficult to omit it altogether as he had received express instructions from the Commission to mention in the introduction the question of the points at which the topics of State responsibility and State succession impinged upon the law of treaties.

71. The CHAIRMAN said that in the first sentence the expression "overlap to a certain extent" was not satisfactory.

72. Sir Humphrey WALDOCK, Special Rapporteur, suggested that the words "have some connexion with" might be substituted for the expression in question.

73. The CHAIRMAN proposed that at the end of the paragraph the words "and will decide later ... law of treaties" should be omitted.

Paragraph 7 was adopted with the changes suggested by Mr. Briggs, the Special Rapporteur and the Chairman.

Paragraphs 8, 9, 10, 11, 12 and 13

Paragraphs 8, 9, 10, 11, 12 and 13 were adopted subject to drafting changes.

The meeting rose at 12.20 p.m.

772nd MEETING

Wednesday, 22 July 1964, at 10 a.m.

Chairman: Mr. Roberto AGO

Draft Report of the Commission on the Work of its Sixteenth Session (A/CN.4/L.106 and addenda)

(continued)

CHAPTER II: Law of treaties

1. The CHAIRMAN invited the Commission to continue its consideration of chapter II (Law of treaties) of its draft report.