

Document:-
A/CN.4/SR.778

Summary record of the 778th meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
1965, vol. I

*Downloaded from the web site of the International Law Commission
(<http://www.un.org/law/ilc/index.htm>)*

regard definitions as something absolute ; in the case of the word "treaty" he did not accept that view ; the object was to define terms as used in the draft articles. It was manifest that in certain major instruments the term "treaty" was used in different senses ; there was no absolute truth about the meaning of the word "treaty", which depended on the context and on the instrument in which it was used. For instance, Article 102 of the Charter was not at all clear on the question of oral agreements, and the same could be said of Article 38 of the Statute of the International Court of Justice.

75. He had dealt with the question of the words "governed by international law" in his report, and did not feel that any change ought to be made in the light of the comments by governments.

76. Mr. YASSEEN said that as to substance he fully agreed with the Special Rapporteur. As to form, he thought the Commission could perhaps avoid unnecessary repetition by making what might be called the definition of a treaty the basis of the article defining the scope of the draft. Article 1 would then consist of a first paragraph specifying that "the present articles shall apply to any international agreement in written form, whether embodied in a single instrument or in two or more related instruments, and whatever its particular designation, concluded between two or more States and governed by international law", followed by a second paragraph containing the saving clause suggested by the Special Rapporteur to preserve the validity of agreements not in written form and of agreements concluded with other subjects of international law.

77. Mr. CASTRÉN said that he, too, approved of the substance of the Special Rapporteur's proposals. In order to simplify the text he suggested that, instead of drafting an article on the scope of the convention, the Commission should give its draft the title "Draft articles on the law of treaties between States". It would then be possible to give the definitions in article 1.

78. The CHAIRMAN, noting that there were no objections to the Special Rapporteur's conclusions, proposed that the Commission refer paragraph 1 (a) of article 1 and related problems to the Drafting Committee.

*It was so decided.*⁷

The meeting rose at 1.5 p.m.

⁷ For resumption of discussion, see 810th meeting, paras. 10-27.

778th MEETING

Thursday, 6 May 1965, at 10 a.m.

Chairman : Mr. Milan BARTOŠ

Present : Mr. Ago, Mr. Amado, Mr. Briggs, Mr. Castrén, Mr. El-Erian, Mr. Elias, Mr. Lachs, Mr. de Luna, Mr. Paredes, Mr. Pessou, Mr. Reuter, Mr. Rosenne, Mr. Tsuruoka, Mr. Tunkin, Sir Humphrey Waldock, Mr. Yasseen.

Law of Treaties

(A/CN.4/175 and Add.1-3, A/CN.4/177 and Add.1, A/CN.4/L.107)

(continued)

[Item 2 of the Agenda]

ARTICLE 1 (Definitions) (continued)

1. The CHAIRMAN said that, after consultation with the Special Rapporteur, he would suggest that the Commission should postpone consideration of sub-paragraphs (b) and (c) of paragraph 1.

*It was so decided.*¹

2. Mr. PESSOU said he wished to make some general comments on the discussion. While some discussions might enhance the value of the text prepared by the Commission, others were less justified. By reconsidering the text which it had laboriously prepared at the cost of many concessions and compromises, the Commission might undo its own work.

3. Among the communications received from governments, one of the most interesting was that from the Netherlands (A/CN.4/175/Add.1). But some of the comments it contained were hardly justified. For example, the Netherlands Government said it would be preferable not to state that the provisions applied to treaties concluded by international organizations ; but if international organizations had been mentioned, it was only incidentally.

4. Nor was it easy to understand the reserve expressed by the Netherlands Government in its comment on article 3, paragraph 2, where it referred to the special form of the Netherlands State ; for that paragraph, after mentioning the capacity of member States of a federation to conclude treaties, referred to the constitutional law of such States.

5. He was concerned to note that there seemed to be a desire to reconsider the meaning of the expression "other subjects of international law" which the Commission had settled at its fourteenth session. In its commentary on article 3,² the Commission had stated that paragraph 1 laid down the general principle that treaty-making capacity was possessed by States and by other subjects of international law. Further on it had added that the expression "other subjects of international law" covered international organizations, the Holy See, and special cases such as an insurgent community. He categorically refused to deny the reality of an institution such as the Holy See, which was recognized in international law and whose influence was world-wide.

6. The CHAIRMAN said that the questions raised by Mr. Pessou had already been referred to the Drafting Committee, which would take his comments into account when considering article 1, paragraph 1 (a), in conjunction with article 2.

7. He proposed that the Commission should take up paragraph 1 (d) of article 1.

¹ For resumption of discussion, see 820th meeting, paras. 15 and 16.

² *Yearbook of the International Law Commission, 1962, Vol. II, p. 164.*

8. Sir Humphrey WALDOCK said he thought that consideration of paragraph 1 (d), like that of the remaining definitions, should be postponed until the Commission came to the articles dealing with the substance. In his view the Commission should take up paragraph 2.

9. Mr. de LUNA said he supported the Special Rapporteur's view that consideration of sub-paragraphs (d) to (g) of paragraph 1 should be postponed. The comments by governments had shown that it would be better to deal with those sub-paragraphs after the Commission had completed its examination of the whole draft, when the exact extent of the definitions required would be known. That course was the more advisable because the definitions raised many difficult questions.

10. For instance, "signature", a term defined in paragraph 1 (d), was always required for purposes of authentication; but sometimes it served a second purpose, namely, that of conferring a binding character on a treaty. That could occur when recourse was had to the device of executive agreements, used by governments to avoid the delays involved in securing parliamentary approval. A different effect of signature was illustrated by the case of two treaties concluded by Spain, the stipulations of which entered into force at once, but were subject to the reservation that, if ultimately there was no ratification, their application would cease. Another example was a treaty between Spain and Uruguay, which provided for signature and ratification, but in the end had not been ratified; one of the parties had in good faith applied some of the provisions of the treaty, however, so that partial effect had been given to it.

11. The CHAIRMAN suggested that before considering paragraph 1, sub-paragraphs (d) to (g), the Commission should take up paragraph 2.

It was so decided.

12. He drew attention to the new text of paragraph 2 proposed by the Special Rapporteur in his report (A/CN.4/177) which read:

Nothing contained in the present articles shall affect in any way

(a) The characterization or classification in internal law of international agreements or of the procedures for their conclusion;

(b) The requirements of internal law regarding the negotiation, conclusion or entry into force of such agreements.

13. Mr. BRIGGS said he had some difficulty in understanding what the opening phrase of the Special Rapporteur's new proposal for article 1, paragraph 2 meant. What bothered him was its effect. In paragraph (15) of the commentary on article 1 in its report on the work of its fourteenth session, the Commission had stated that "it is quite essential that the definition given to the term 'treaty' in the present articles should do nothing to disturb or affect in any way the existing domestic rules or usages which govern the classification of international agreements under national law".³ That was much more limited than the present article.

14. The United States Government, in its comments, had said that the disclaimer in paragraph 2 was satisfactory as far as it went, but that the classifications in paragraph 1 might be misleading in that they might be understood by some as a part of international law that had the effect of modifying internal law (A/CN.4/175, Section I.21). The United States Government had therefore suggested a new text which had been taken up by the Special Rapporteur and embodied in his new proposal. That proposal went too far, however: the draft was bound to affect the policies, and perhaps the classifications, of internal law. What the draft could not do was to modify internal law *ipso jure*. If the treaty which the Commission was preparing were adopted by a country like the United States, where treaties became the law of the land, it would become internal law, not because of the provisions of the draft, but because of the constitutional provisions of the United States.

15. The general rule was that the instrument that was later in date would prevail and it had presumably been for that reason that the saving clause had been introduced; he doubted, however, whether the future convention was the appropriate place for it. It was for the country concerned to make the appropriate saving clause when acceding to the convention.

16. He was unable to understand the exact relationship between article 1, paragraph 2, and article 31. Article 31 seemed to suggest that, even though a constitutional provision requiring submission to the legislative body had not been complied with, the treaty would in some cases become binding. His suggestion would be that paragraph 2 should be worded: "Nothing contained in this article shall modify the characterization or classification of international agreements under the internal law of any State for the purposes of its domestic constitutional processes."

17. Sir Humphrey WALDOCK, Special Rapporteur, said that the original text of article 1, paragraph 2, had been drafted primarily with sub-paragraphs (a), (b) and (c) of paragraph 1 in mind; nevertheless, the Commission had always regarded it as having a somewhat broader context, because there were a number of constitutional procedures in which internal law might differ in its understanding of institutions, also known to international law, such as approval and ratification.

18. On reading the comments of governments he had gained the impression that the Commission had underestimated the extent of the problem of making a reservation in favour of the procedures of domestic constitutional law. Mr. Briggs had made it clear that there was a larger problem to be discussed, even if the Commission retained the rather narrower formulation of the existing paragraph 2 instead of expanding it in the manner suggested in his report.

19. But was it adequate merely to reserve the characterization and classification of agreements? If, under its constitution, a State made the draft articles part of its internal law, there might be a possibility of conflict with other articles of the draft dealing with actual processes such as ratification, accession and acceptance. It was inadmissible that whatever was included in the draft about the international processes should automatically

³ *Ibid.*, p. 163.

affect internal constitutional processes. That would be wholly unacceptable to States ; it might, indeed, be regarded as placing an undue burden on States to require them to readjust their constitutional processes to fit the language of the new convention on the law of treaties. He had therefore thought it might be necessary in any event to cover more than characterization and classification, and had accordingly formulated a wider form of reservation for submission to the Commission.

20. Article 31 embodied a compromise : it stated that the provisions of internal law had no effect on the international validity of a treaty except in cases where failure to comply with internal law was manifest. There were many other cases covered by the draft articles which might come before a municipal court, for example when, as had happened more than once, a breach of a treaty was invoked by a government as a reason for terminating the treaty. The tendency was for the domestic court to accept the decision of its government that there had been a breach of the treaty and to hold that that was sufficient cause for terminating it. The Commission had felt that those were delicate grounds of invalidity or termination, and had therefore provided a special procedure for invoking grounds of termination and invalidity and tried to formulate the actual grounds, such as *rebus sic stantibus*, in very careful terms.

21. It was surely in the highest degree desirable that, if agreement was reached by States on the formulation of the articles regarding invalidity and termination, those general rules of international law should be observed also by domestic courts. That was a good reason for not endeavouring to remove from domestic law those general provisions of the law of treaties. With regard to article 31, there might be cases where under the draft articles, a treaty would be held to be internationally valid between two States, but where a different view might be taken by a municipal court of one of the States as a result of views expressed by its government.

22. Members of the Commission should state whether they considered the existing text of article 1, paragraph 2 to be sufficient or to require expansion to cover certain of the procedures of treaty-making such as ratification and approval.

23. Mr. de LUNA said that paragraph 2 had originally confined the reservation to the characterization or classification of international agreements. Since the Commission had now adopted an amended version of paragraph 1 (a) omitting the details on classification and characterization, paragraph 2 no longer appeared to be necessary and could be dispensed with.

24. It was true that, in his report, the Special Rapporteur had proposed a new text containing not only the reservation on characterization and classification, but a second reservation concerning the requirements of internal law regarding the negotiation, conclusion or entry into force of agreements. Nevertheless, the Special Rapporteur had shown in his statement that it was not advisable to include the second reservation. He had referred to the provisions on the consequences of the breach of an agreement.

25. Another relevant provision was that on the requirements for the expression of the external will of the

State, in article 31. The discussion of article 31 (formerly article 5) had led to a thorough exchange of views at the fifteenth session and the present text represented a compromise between the views then expressed.⁴ His own feeling was that it did not go far enough in the direction of the supremacy of international law ; other members, however, feared that it might not be consistent with the constitutional provisions of certain countries. If an attempt were made to go back on the compromise reached, an element of insecurity would be introduced into international transactions. A party to a treaty could not be required to know the intricacies of the constitutional law of another party.

26. For those reasons, it was clear that the reservation in paragraph 2 (a) proposed by the Special Rapporteur was no longer necessary, because of the changes which had been made in paragraph 1 (a). Paragraph 2 (b) would have to provide for reservations to a great many articles, especially article 31, thereby weakening that provision, which would be extremely dangerous. He therefore urged that paragraph 2 be deleted.

27. Mr. TUNKIN said he shared Mr. Briggs's misgivings, especially with regard to the Special Rapporteur's new draft. It was surely going too far to say that " the requirements of internal law regarding the negotiation, conclusion or entry into force of such agreements " was not affected by the articles. For instance, the provisions of the internal laws of various countries differed regarding full powers. In some countries, full powers were obligatory even for the Minister for Foreign Affairs ; in others they were not. For negotiation, one country might require full powers, whereas the law of another country laid down no such requirement. There might also be different provisions on entry into force.

28. The question therefore arose what would be the effect of the convention if such a saving clause was incorporated ? His own view was that an international treaty was concluded with a view to binding the States concerned ; if the internal law of a particular State contained some obstacles to the fulfilment of the obligations undertaken under the treaty, the internal law should be amended.

29. He accordingly preferred Mr. de Luna's proposal to dispense with paragraph 2 altogether. If any difficulty arose in a State that became a party to the convention, it should be dealt with by that State in the way it considered preferable. If a saving clause were regarded as necessary, he would not oppose it, but it should be confined to article 1 and specifically to the classification of international agreements.

30. Mr. ROSENNE said that two points arose out of the Special Rapporteur's proposal ; the idea itself, and the question whether that idea should be expressed in the form of an article or otherwise. So far as the idea itself was concerned, the Special Rapporteur was correct, although when paragraph 2 had been drafted in 1962, the words " present articles " had referred to articles 1 to 29, whereas they now referred to articles 1 to 73. That in itself gave rise to a number of major problems. Never-

⁴ Yearbook of the International Law Commission, 1963, Vol. I, 674th-676th meetings.

theless, he agreed that the reservation should find a place in the Commission's final text.

31. Was it really possible, however, for the Commission to include a stipulation stating in so many words what did and what did not affect domestic legal systems? The point had to be considered in relation to the whole topic. The Commission had repeatedly emphasized that it was dealing exclusively with the international and not the domestic law of treaties. That being so, there was good reason for considering the article redundant in its existing form, though it might be too drastic to omit the idea altogether.

32. The idea could not be considered in isolation from the problem of definitions and, while it was quite true that some previous drafts on other topics had begun with a fairly elaborate article on definitions, that was not the Commission's invariable practice, or that of the codification conferences. For example, it was worth noting that the 1956 draft on the law of the sea (which had also contained 73 articles)⁵ had contained no such general article: definitions of such terms as "bay" were included in the text where substantively needed, and not necessarily where the term was first used. At the same time the Commission's report for 1956 included in the introduction to chapter II⁶ a number of observations applying to the whole draft on the law of the sea, and they established the context in which the articles as a whole had to be read. It might be possible to adopt a similar approach in the present case and include the Special Rapporteur's new version of paragraph 2 in the introduction to the Commission's final report as part of the description of the context in which all the articles had to be read. In any case, he did not think the paragraph could properly be included in article 1. If a majority of the members of the Commission considered it desirable to retain the paragraph, it should form a separate article.

33. Mr. REUTER said that paragraph 2 of article 1 was open to two very different interpretations. On first reading it, he had taken it as a supererogatory statement having no other purpose than to develop what was already said in the article's opening sentence, namely, that the terminology used in the articles did not affect the meaning attached to the same terms in the internal law of States. If that was indeed the effect of the paragraph it could be deleted, for it added nothing. If the Commission preferred to retain it, the drafting should be amended to make it clear that it related only to terminology; furthermore, the reference to the internal law of States should be supplemented by a reference to other international instruments, for it was possible that in the Charter, for example, the words "international agreement" or the word "treaty" might be used in a different sense.

34. However, several speakers, in particular Mr. Briggs and Mr. Tunkin, had shown that paragraph 2 raised another question: that of the effects of the convention on internal law. That question had nothing to do with the definitions; it was one which the Commission might, indeed, discuss, but which might take it very far because it involved the fundamental character of the whole draft.

The effects of the convention on internal law would vary according to national conceptions of the relationship between international law and municipal law—even though international law ought ultimately to prevail over municipal law.

35. But the scope of the draft varied according to the article considered. There was, for example, at least one article in the draft as it stood which postulated the existence of *jus cogens*. Other articles embodied general principles of law—and there the Commission was carrying out codification, since some State constitutions already provided that the general principles of international law were embodied in and prevailed over national law. In addition, the draft contained provisions that were entirely new. States would be free either to accept those provisions and take steps to implement them, or to reject them, or possibly to make reservations concerning them.

36. It was therefore necessary to decide whether paragraph 2 dealt solely with matters of terminology. The question of substance should be left in abeyance for the time being.

37. Mr. AGO said he wondered whether too much importance was not being attached to a provision whose scope had originally been very narrow. The commentary adopted by the Commission at its fourteenth session showed that the Commission had thought it advisable to insert the saving clause after the definitions.⁷ The clause had been justified because paragraph 1 (a) had contained an enumeration of the different kinds of instrument which the Commission regarded as treaties.

38. Some countries had rather strict constitutional rules on the ratification of treaties, however, and one way of mitigating their severity was not to qualify as treaties, for the purposes of internal law, certain international acts which were treaties for the purposes of the draft articles; an exchange of notes, for example, might not be regarded as a treaty and consequently not require the approval of certain organs. That was why the Commission had thought fit to explain that the articles did not in any way affect the characterizations or classifications adopted by States for internal purposes.

39. In fact, even if the definitions were left as they stood, paragraph 2 would not really be necessary, for each State could adopt whatever criteria it wished in its internal law, for its internal purposes. But since the Commission had moved towards a more succinct definition, the paragraph had become practically useless and he agreed with Mr. de Luna that it should be deleted. If a State was particularly concerned about its position under constitutional law, it would be for that State to take due precautions and formulate reservations.

40. The discussion had raised another far-reaching problem: that of the effects of the convention on the internal law of States. Like several other speakers, in particular Mr. Tunkin, he thought it would be dangerous to try to establish, for example, by adopting the second part of the text proposed by the Special Rapporteur, that the draft articles did not in any way affect the validity of internal provisions on the conclusion of treaties. In fact,

⁵ *Yearbook of the International Law Commission, 1956*, Vol. II, pp. 256-264.

⁶ *Ibid.*, pp. 254-256.

⁷ See *Yearbook of the International Law Commission, 1962*, Vol. II, p. 163, para. 15.

it was possible that some provisions of internal law might become inadmissible as a result of the conclusion of the convention, in which case they would have to be amended. A State which ratified the convention would have to bring its internal law into line with that instrument. In any case there was no need to deal with that matter. Paragraph 2 could therefore be deleted ; it should certainly not be expanded.

41. Mr. YASSEEN said it was clear from the position of the provision in the draft that it related solely to questions of terminology. Nevertheless, the comments of some governments, the proposal by the United States of America and the proposal in the Special Rapporteur's fourth report tended to give it an entirely different scope.

42. It was being suggested that the paragraph should deal with the very delicate question of the relationship between international law and internal law. A treaty was, of course, the outcome of co-operation between international law and internal law. There was no denying that some phases of the treaty-making process were governed by internal law. It was therefore necessary to draw a line of demarcation between the spheres of internal law and international law ; that line might be disputed, and it differed according to State and the writer concerned. But when the Commission considered the law of treaties, it did so solely from the international standpoint ; it was not called upon to regulate the law of treaties in so far as it was governed by internal law. Consequently, if the proposed saving clause related to that part of the treaty-making process which came under internal law, it was unnecessary because it was self-evident ; and if it related to that part of the treaty-making process which came under international law, it was not justified. On that point he shared Mr. Ago's opinion. The Commission should avoid giving paragraph 2 the scope which some recent proposals sought to give it.

43. Mr. ELIAS said he fully agreed with those members who considered that paragraph 2 should be deleted, especially as the main reason for it had disappeared as a result of the Commission's decision on paragraph 1 (a). If some sort of reservation were found to be necessary owing to the peculiarities of the internal law of certain States, the Commission should postpone its formulation until it took up the substance of the relevant article.

44. An alternative solution might be to include some kind of reservation in article 3, but he doubted whether that would be satisfactory.

45. Mr. LACHS said that Mr. Ago had done well to remind the Commission of the dangers it was facing. The issues which had arisen were bound to open the door to a discussion of the relationship between international law and domestic law. It was true that, from the point of view of international law, paragraph 2 was unnecessary, but it would be well to bear in mind the problems confronting the representatives of governments who would ultimately be called upon to discuss the draft at a conference of plenipotentiaries. A representative wishing to protect the interests of his State would be concerned not to affect its sovereign rights in domestic law. The Special Rapporteur had made an attempt to extend the scope of paragraph 2, but had not gone the whole way. Even going half way, however, he was already treading dangerous ground.

46. He (Mr. Lachs) was accordingly inclined to agree with Mr. de Luna's suggestion that paragraph 2 should be deleted. In order to reassure future participants in a conference of plenipotentiaries, however, the idea expressed in the paragraph should be included in the commentary.

47. Mr. CASTRÉN said he agreed that paragraph 2 should be either deleted or reduced in scope, as suggested by Mr. Briggs and Mr. Tunkin. The Special Rapporteur's revised version went too far and was open to dangerous misinterpretation because it weakened the force of the draft articles and over-emphasized the freedom of States. If a satisfactory formula could not be found it would be better to delete the provision.

48. He supported the proposal made by the Government of Israel (A/CN.4/175, section I.9 para. 6) and by Mr. Lachs that the matter should be dealt with in the commentary.

49. The CHAIRMAN, speaking as a member of the Commission, said that the Commission had to choose between giving precedence to international law and providing that certain questions governed by international law should be settled by internal law.

50. He could not approve of the use of an expanded formula referring those questions to internal law and associated himself with those members of the Commission who thought that, since the list of different types of treaties had been deleted, paragraph 2 was unnecessary. Hence, he could not accept the text proposed by the Special Rapporteur.

51. Sir Humphrey WALDOCK, Special Rapporteur, said it would be very undesirable to suggest that the main body of the draft articles was not fully applicable in internal law as well as in international law.

52. His purpose in proposing a new version of paragraph 2 had been to cover, in addition to the questions of characterization and classification, certain elements of procedure which could give rise to difficulties in internal law. Even if the expression "the present articles" were taken to cover only the articles in Part I, it should be remembered that those articles covered such matters as full powers and ratification, in respect of which it would perhaps be appropriate to reserve certain rules of internal law which might otherwise appear to be affected by those articles.

53. He fully agreed that, since the draft articles were intended to form the basis of a convention, the Commission was only dealing with the law of treaties at the international level. However, the Commission could not afford to disregard the whole question of the effects on internal law, because it could not ignore the susceptibilities of governments. In the interests of the Commission's future work, governments should not be given the impression that they might be required to contemplate the need for constitutional amendments in order to conform with the provisions of the draft articles. Governments were usually disinclined to accept any treaty that might require changes in domestic law for its implementation, particularly if constitutional provisions were affected. If fears of that kind were aroused, the reaction might well be a move to adopt the draft articles merely as a General Assembly recommendation. It was significant that a number of governments had stated in their comments that they were

in favour of transferring from the commentary to the body of the articles a number of indications by the Commission that certain matters of procedure were left for municipal law to regulate.

54. It was therefore clear that the mere deletion of paragraph 2 would not remove all the Commission's difficulties. He fully agreed that the provision should not be enlarged to cover matters of substance, but a reservation must be made regarding the right to deal in internal law with questions of internal terminology and procedure. One example was article 4, on the authority to negotiate and conclude a treaty; another was the question of provisions on entry into force which were silent on the subject of publication, on which most constitutions contained provisions. He urged the Commission not to take any decision on paragraph 2 at that stage, since its final attitude could well depend on the fate of the various articles in Part I.

55. He was particularly anxious that the final text adopted by the Commission should not be such as to discourage governments from taking part in a diplomatic conference.

56. Mr. BRIGGS said he was surprised at the suggestion that a wholesale amendment of constitutions might result from the provisions of the draft articles. However, he agreed that it would be wise to postpone a decision on paragraph 2.

57. Mr. de LUNA suggested that the Special Rapporteur should prepare, in the light of government comments, a list of the provisions which might give rise to difficulties. The only provisions which seemed to him likely to create any serious problem were those of article 31, on which he himself had made all the concessions he thought possible, bearing in mind the importance of the security of international transactions.

58. Mr. LACHS said that, although he was in favour of deleting paragraph 2, he agreed with the Special Rapporteur that it would be wise to postpone a decision for the time being.

59. The CHAIRMAN said that, if there were no objection, he would consider that the Commission agreed to defer its decision on paragraph 2.

*It was so agreed.*⁸

60. Mr. TUNKIN proposed that consideration of sub-paragraphs (d), (e), (f) and (g) of paragraph 1 should also be deferred. Since the Commission had already disposed of article 2, it could then proceed to discuss article 3.

*Mr. Tunkin's proposal was adopted.*⁹

Other Business

[Item 8 of the agenda]

EUROPEAN OFFICE SEMINAR ON INTERNATIONAL LAW

61. The CHAIRMAN invited Mr. Raton, Legal Adviser to the European Office of the United Nations, to

address the Commission on the seminar arranged by the Office.

62. Mr. RATON, Legal Adviser to the European Office of the United Nations, said that the seminar on international law would open on Monday, 10 May. It had been organized by the European Office under the rather broad terms of General Assembly resolution 1968 (XVIII) on technical assistance to promote the teaching, study, dissemination and wider appreciation of international law¹⁰ and should enable advanced students and young civil servants or teachers to learn something about the problems of codification on which the International Law Commission was engaged. It would last for two weeks, during which time the participants, of whom there were sixteen, would attend the meetings of the Commission and lectures followed by discussions.

63. The organizers had encountered two difficulties: first, no funds had been appropriated to meet expenses—which explained why only two of the sixteen participants were from countries outside Europe—and secondly, they had had very little time, as the decision to hold the first seminar had been taken as recently as January. It had therefore been necessary to proceed empirically and that accounted for certain defects that would be remedied later. Members of the Commission, who had been consulted individually about the plan, had responded favourably, and that had encouraged the European Office to proceed. During the two weeks of the 1965 seminar, the participants would hear a number of lectures, seven of which would be given by members of the Commission — Mr. Ago, Mr. Jiménez de Aréchaga, Mr. Lachs, Mr. de Luna, Mr. Reuter, Mr. Tunkin and Sir Humphrey Waldock. It was to be hoped that the seminar would lead to useful contacts and that another could be arranged in 1966.

64. The CHAIRMAN, thanking Mr. Raton, suggested that after the Seminar the members of the Commission should hold a private meeting with the organizers to exchange comments, which would be useful for the future.

65. Mr. de LUNA congratulated the organizers of the seminar, which should serve to disseminate among scholars a greater knowledge and understanding of the Commission's work. It would lead to contacts between members of the Commission and young scholars, which were bound to be of mutual benefit.

66. There were, however, one or two points he would like to mention. First, efforts should be made to secure as universal a participation as possible. Secondly, the topic of the seminar should be fairly narrow; the law of treaties, for example, was too wide a subject. Thirdly, a bibliography should be circulated at least six months before each seminar, as had been done for those organized by the Academy of International Law at the Hague.

67. Mr. AGO said that the organizers had expressed the hope that members of the Commission would attend the lectures, but he feared that might affect their tone and content. The same applied to the discussions following the lectures, where the presence of members of the

⁸ For resumption of discussion, see 820th meeting, paras. 15 and 16.

⁹ For resumption of discussion, see 820th meeting, paras. 15-26.

¹⁰ *Official Records of the General Assembly, Eighteenth Session, Supplement No. 15, p. 71.*

Commission might intimidate the trainees. He thought it would be preferable to restrict attendance to the trainees themselves.

68. Mr. TSURUOKA said he would inform his Government and university circles in Japan of that welcome venture, so that Japanese students could take part in future seminars. He would accordingly like to know what qualifications were required of participants, what languages would be used at the seminar, and whether there would be an interpretation service.

69. Mr. ELIAS, referring to the fact that only two of the sixteen participants in the seminar came from outside Europe, said that one of those two had been sent by the Government of Nigeria. The Commission should make some recommendations for grants to pay the return fare of participants from distant countries, leaving it to the government of the participant's country, or some other sponsor, to defray his expenses while at Geneva. Alternatively, the grants could be for living expenses and the fares could be paid by governments or other sponsors.

70. There was a great need to encourage the study and practice of international law in newly independent countries, particularly in Africa and Asia. He was aware of the present financial difficulties of the United Nations, but it was of the greatest importance to those continents that the influence of the Commission's work should be widely disseminated.

71. Mr. RATON, Legal Adviser to the European Office of the United Nations, said he had noted the comments of members of the Commission. Replying to Mr. de Luna, he explained that the organizers appreciated the need for preparatory work, but that in 1965 they had not had sufficient time for it. In reply to Mr. Tsuruoka he said that the minimum qualification required was the equivalent of a doctorate of law from a French university. For 1966, the organizing committee intended to send full particulars to governments. The working languages would be English and French and there would be interpretation into those languages. In reply to Mr. Elias he said that the organizers were aware of the inadequate results achieved in 1965 in regard to the geographical distribution of the participants, but that it had been impossible to do better owing to the total lack of funds. It was to be hoped that, if the Commission's report contained a paragraph on the seminar, it would be less difficult to obtain some positive action from the financial authorities.

72. The CHAIRMAN asked the Rapporteur to mention the seminar in his report.

73. Mr. EL-ERIAN said he welcomed the initiative of the organizers of the seminar ; it was a most appropriate form of the "Technical assistance to promote the teaching, study, dissemination and wider appreciation of international law" which was the subject of General Assembly resolution 1968 (XVIII).

74. As to the question of financial assistance to participants, he suggested that the organizers might contact

the various societies interested in international law. The Egyptian Society of International Law, for example, had helped young students to finance their passages to the Hague to attend a seminar there.

75. Mr. ROSENNE also congratulated the organizers of the seminar and welcomed the Chairman's announcement that, after it was concluded, the Commission would have an opportunity of discussing the results at a private meeting.

76. He had been struck by Mr. Ago's remark that if members of the Commission were to attend the lectures, that might inhibit discussion by the participants. Perhaps informal meetings, as distinct from the formal classes and discussions, could be arranged, at which the participants in the seminar and the members of the Commission would have an opportunity of exchanging views.

77. Mr. RATON, Legal Adviser to the European Office of the United Nations, said he thought it would be rather difficult to hold a meeting of the kind contemplated by Mr. Rosenne ; perhaps a reception given by the European Office might take its place. Mr. El-Erian's suggestions were valuable, but on the present occasion it had been necessary to organize the seminar quickly. It would be possible to approach the General Assembly later and perhaps obtain funds.

78. Mr. de LUNA thought that the organization of the Geneva seminar might perhaps be co-ordinated with that of the Hague seminar. The travelling expenses of students from distant countries were certainly very heavy, but it would be possible for a Japanese trainee, for instance, to come to Geneva and then go on to the Hague. The organizers should get into touch with the Curatorium of the Academy of International Law at the Hague, which would certainly be interested in the possibility of such co-ordination.

79. Mr. AGO pointed out that the Hague Academy gave its own courses in July. If the results were encouraging he was quite prepared to approach the Curatorium himself.

80. The CHAIRMAN said that the courses given at Geneva by the Carnegie Foundation should also be taken into account. The organizers should, in fact, make contact with quite a number of institutions, in particular in the interests of candidates from distant countries, in order to help them benefit from their stay in Europe. With regard to Mr. Rosenne's suggestion, he thought that during the recesses members of the Commission could make personal contact with the participants, who could then ask questions about problems they had heard discussed at the meetings.

81. He wished to assure the Administration of the European Office that the members of the Commission would do everything in their power to contribute to the success of the first seminar.

The meeting rose at 12.55 p.m.