

Document:-
A/CN.4/SR.880

Summary record of the 880th meeting

Topic:
<**multiple topics**>

Extract from the Yearbook of the International Law Commission:-
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several committees and that the conference should be split into two parts. With regard to the appointment of committees, he pointed out that the Commission itself had at first been uncertain whether one or more conventions on the law of treaties should be drafted; thus it had contemplated some division of the work. It had subsequently found that in view of the interdependence of the rules to be stated, it would be difficult and impractical to prepare several separate texts. On the whole, that attitude had met with the approval of the Sixth Committee of the General Assembly. But it did not necessarily follow that the work of the conference should not be divided between several committees; there were practical considerations both for and against that procedure. Even if several committees were set up, each delegation formed an independent unit, and its members could and should always consult each other. Moreover the drafting committee of the conference would play a unifying role. The ideal procedure would be for all the articles to be considered in plenary, but if that raised practical difficulties, there were no technical or theoretical objections to splitting up the work between several committees.

68. As to the division of the conference into two sessions, he supported the plan suggested by Mr. Tunkin, subject to Mr. Reuter's comments: at its first session, the conference would consider all the articles and then, after a reasonable interval, the second session would be devoted to the adoption of the convention. The interval between the two sessions would not be wasted, since States would have the draft before them and could consult together and review their attitudes, which might facilitate compromises. If possible, the work should be divided between committees only during the first session, and conducted entirely in plenary during the second.

69. In conclusion, he saw no need to amend rules of procedure which had proved effective at several conferences.

The meeting rose at 1.5 p.m.

880th MEETING

Wednesday, 29 June 1966, at 11 a.m.

Chairman: Mr. Mustafa Kamil YASSEEN

Present: Mr. Ago, Mr. Amado, Mr. Bartoš, Mr. Briggs, Mr. Castrén, Mr. El-Erian, Mr. Jiménez de Aréchaga, Mr. Paredes, Mr. Pessou, Mr. Reuter, Mr. Rosenne, Mr. Ruda, Mr. Tsuruoka, Mr. Tunkin, Sir Humphrey Waldock.

Co-operation with other bodies

(resumed from the 856th meeting)

[Item 5 of the agenda]

1. The CHAIRMAN invited the representative of the European Committee on Legal Co-operation to address the Commission.

2. Mr. GOLSONG (European Committee on Legal Co-operation) said that during the second part of its seventeenth session, held in Monaco, the Commission had decided to establish a working relationship with his Committee,¹ the co-ordinating body of the Council of Europe on legal matters. In future, a representative of the Commission would be invited to attend meetings of the Committee dealing with questions of common interest to the two bodies, and there would be a full exchange of all documentation between their secretariats.

3. In Monaco, he had given the Commission a brief outline of those matters the Committee was working on which might be of interest to the Commission. They included: ratification by States associated with the Committee of the universal conventions prepared on the basis of the Commission's reports; privileges and immunities of international organizations, a question which might be of particular interest to the Commission's Special Rapporteur on relations between States and inter-governmental organizations; immunity of States from jurisdiction, a matter regarding which the Committee was drafting principles, though it had not yet decided whether or not it should become the subject of a European convention; and finally, the question of reservations to multilateral conventions, on which the Committee was seeking to establish a common position of the European States. He was convinced that the contacts established would help the Commission in its efforts to create a more orderly international legal system.

Law of Treaties

(resumed from the previous meeting)

[Item 1 of the agenda]

PROPOSED CODIFICATION CONFERENCE

ON THE LAW OF TREATIES (ILC(XVIII)MISC.1)(continued)

4. The CHAIRMAN invited the Commission to continue its discussion on the questions raised by the Legal Counsel at the previous meeting.

5. Mr. CASTRÉN thanked the Legal Counsel for the interest he was taking in the Commission's work and the United Nations Secretariat in general for its excellent memorandum on the organization of a conference on the law of treaties.

6. Like the other members of the Commission, he welcomed the idea of convening a conference of plenipotentiaries to complete the Commission's work by adopting a convention codifying the important rules on the law of treaties. The date of the conference could be fixed later; he would not make any proposal, but urged that it should not be too early, so as to leave sufficient time for the preparatory work.

7. Although it was important to expedite the work of the conference as much as possible, it would be very difficult to divide it up among two or more committees, because of the very close interdependence of the various parts, articles and provisions of the draft, to which

¹ Yearbook of the International Law Commission, 1966, vol. I, part I, 827th meeting, para. 2.

several members had already drawn attention. The Conference on Diplomatic Intercourse and Immunities had worked very efficiently with a single committee of the whole, but there was nothing to prevent the appointment of working groups, if necessary, in order to save time, as had already been suggested.

8. There were certainly some arguments for holding two successive conferences, but the arguments against it were stronger. In particular, he was afraid that much of the work might be repeated, and he did not believe that States were likely to change their views between the two conferences. If the conference was carefully prepared and had enough time available—say, three to four months from mid-January to mid-May—satisfactory results could be achieved at the first attempt. The Diplomatic Conference at Geneva, held in 1949 to adopt international Conventions for the protection of war victims, had met for nearly four months and adopted four conventions, two of which contained over a hundred articles and some annexes. If it proved impossible to complete the work on the law of treaties in three or four months, a second conference would, of course, have to be held; but instead of waiting a year, as had been proposed, it would be better to meet again after an interval of only a few months.

9. With regard to the procedure at the proposed conference, he did not think it would be advisable to depart from the normal rules for conferences convened by the United Nations General Assembly. Final decisions should be taken by a two-thirds majority.

10. Mr. BARTOŠ said he wished to draw the Secretariat's attention to the important part it would have to play in the preparation and proceedings of the conference. At the Conference on Consular Relations, the United Nations Secretariat had been less active than it usually was at conferences organized by the United Nations, and the work had suffered in consequence.

11. The Commission's draft formed an integral whole; the conference was not, of course, obliged to leave it as it stood, but it was to be hoped that it would not upset the balance of the draft, delete essential provisions or introduce contradictions. The draft was well-balanced and the Special Rapporteur had made great efforts to harmonize different views. Moreover, the draft was not intended to settle points of detail; it only contained general provisions designed to give legal form to relations between States. It was therefore important to preserve its unity, and he appealed to the Legal Counsel to ensure that the Secretariat would play the full part assigned to it by the rules of procedure. The representative of the Secretary-General at the conference should avail himself of the rule of procedure which authorized the Secretary-General or his representative to speak when he thought it advisable, or at the request of a delegation, in order to furnish explanations. The judicious application of that rule could contribute greatly to the success of the conference—even more than a change in the rules of procedure to extend the powers of the president.

12. The members of the Secretariat who were in close contact with the Commission had been working with it on the topic for years and knew the spirit in which

the articles had been drafted; thus they could furnish any necessary explanations to delegations which might tend, perhaps even subconsciously, to wish to introduce radical changes into the draft.

13. Furthermore, it was essential for the conference to have the assistance of first-class experts. In particular, the Special Rapporteur should be able to introduce, if not every article, at least every group of articles, and explain the spirit and general philosophy of the draft. It was also most important that delegations should be composed of highly qualified persons, as they had been at the Conference on Diplomatic Intercourse and Immunities. Even after acrimonious discussions and the amendment of certain rules, first-class jurists could find means of preserving the cohesion and unity of the system.

14. In view of the financial situation of the United Nations economy must be the watchword, but the success of such a great work of codification was certainly worth a few tens of thousands of dollars.

15. Sir Humphrey WALDOCK, Special Rapporteur, said he felt sure that the Secretariat memorandum would be of great value both to practitioners and to academic lawyers.

16. The Commission's work on the codification of the law of treaties was one of the most important tasks ever undertaken in the codification of international law. The law of treaties was an essential element of international law, and part of its very basis. Consequently, if a conference of plenipotentiaries was to be held on that topic, it was essential that it should succeed. Nothing could be more damaging to the work of codification and to the essential unity of the international legal system than for a conference to be convened on the law of treaties—to deal not with questions of detail, but with the fundamental operation of the law of treaties—and for that conference to fail to adopt a text.

17. It was highly desirable that the draft articles, with any revisions that might be considered appropriate, should be endorsed by a conference of plenipotentiaries. However valuable the Commission's work might be, and despite the fact that some of its members acted as representatives of their countries elsewhere, the endorsement of one of its texts by representatives of governments gave that text an authority which it would not otherwise possess. Although representatives were empowered only to vote on a text and not to bind their governments, their endorsement of a text by a two-thirds majority at a conference gave that text an entirely different status. It was, of course, highly desirable that a large number of States should ratify a convention adopted by a conference of plenipotentiaries. But even if States were slow in ratifying a convention, the text adopted by a conference convened by the United Nations and representing all groups of States in the international community had an intrinsic value and authority.

18. With regard to the date of the conference, the year 1968 seemed the earliest that could be considered; but it should not be held much later, as there might then be some lessening of interest in the work of codification. The conference should be convened as soon as was practicable from the point of view of governments.

19. He appreciated that it might be necessary to hold the conference in two stages, but he thought it would be unwise to stress the difficulties of dealing with the draft articles on the law of treaties at a conference, as that would provide arguments for those who were against convening a conference at all.

20. As to the division of the work between two committees of the conference, he thought it would be technically possible to divide the articles into two sections for separate study on the understanding that, at a certain stage, the whole text could be co-ordinated by a drafting committee. Part I could be treated as a self-contained body of articles and be allocated to the first committee, together with a few other articles that could be conveniently associated with those in part I, such as the articles on interpretation. The first committee could also deal with the preamble and final clauses. But the Commission had not yet taken a final decision on the arrangement of the draft articles, and all that had been said about their division was naturally subject to that decision.

21. With regard to the problems of conference procedure, of which the Secretariat memorandum gave a well balanced account, he wished to refer only to the question of the adoption of final decisions by a two-thirds majority. He felt strongly that, from the standpoint of codification, the adoption of a text by a simple majority—with a substantial number of dissentient votes and perhaps many reservations—would have nothing like the value of adoption by a two-thirds majority. A vote taken by such a substantial majority would have the great advantage of carrying conviction in legal circles.

22. Mr. JIMÉNEZ de ARÉCHAGA said he wished to revert to the question of holding the conference in two stages. Towards the end of international conferences, a consensus of opinion and a feeling of solidarity among the participants often began to emerge. It was undesirable that, precisely at that moment, the conference should be broken off and the issues referred back to governments, as there was serious danger that positions might then become hardened. The holding of a conference in two stages might also result in the replacement of open discussion by private negotiations, perhaps even by restricted or bilateral negotiations. That would not be consistent with the spirit in which the Charter had entrusted the General Assembly with responsibility for promoting the codification of international law.

23. Mr. AGO said he thought the Commission was unanimous in thinking that, in applying itself to the codification of the law of treaties, the United Nations was taking a great risk: if that ambitious enterprise was successful, the result would be magnificent, but failure would be disastrous for the future of the codification of international law. Preparations for the conference should therefore be taken very seriously and everything should be done to ensure its success. The Commission had been working on its draft for years, but it must not overlook the fact that there were some people who disliked the draft, thought that it should have been differently conceived or were even opposed to codification of the law of treaties. An offensive by those people could therefore be expected. Moreover, hundreds of amendments might be submitted, and some participants

would again put forward the idea of drafting a code rather than a convention, which could only create confusion and increase the risk of failure. It was necessary not only that the conference should adopt a convention, but that it should depart as little as possible from the draft prepared by the Commission; that draft was not perfect and could no doubt be improved, but it would be very easy to make it worse.

24. No matter how the conference was organized, it would have less time than the Commission had devoted to the draft. It would probably be necessary to hold two conferences, or two sessions of the conference, but it would be wise merely to hint at that possibility; for if it were decided from the outset that a second session was to be held, the first session might be almost entirely taken up with useless theoretical discussions. It would be better for the conference to apply itself from the beginning to preparing a final text, though the possibility of holding a second session if necessary should not be excluded.

25. With regard to the question of committees, he agreed with the Special Rapporteur that it was theoretically possible to divide up the draft: for instance, parts I and II could be referred to one committee and parts III and IV to the other. But as Mr. Rosenne had pointed out at the previous meeting, the position of some of the provisions in the draft was still open to discussion. From the practical viewpoint, moreover, it was doubtful whether all delegations could count on several qualified jurists capable of following such difficult problems—certainly more difficult than those examined at the Conference on Consular Relations. It had been said that that drawback would be partly overcome by the existence of a single drafting committee; but the Commission's experience had shown that the reason why its own Drafting Committee was able to work so well was that all its members had followed the discussion in the Commission itself. The situation at the conference would be different, for some members of the drafting committee would have followed the work of one committee and some the work of the other; no one would have an over-all view, and that was bound to cause practical difficulties.

26. Furthermore, in the light of the experience of the two Conferences on the Law of the Sea and of the Conference on Diplomatic Intercourse and Immunities, he thought it essential that as many members of the Commission as possible should attend the conference to explain why the Commission had chosen a certain course, to point out that it had already discussed certain points and to give the reasons why it had rejected certain proposals.

27. Finally, too much weight should not be given to theoretical arguments in favour of dividing the conference into several committees; it would be better for the whole draft to be examined by a single committee of the whole, if that were possible.

28. Mr. TUNKIN said that the question whether the conference was to be held in two sessions or one session should be decided in advance, if only for practical reasons: to make arrangements for the conference, it was necessary to know its probable duration. If it

was to be held in a single session, it would take about four months; if it was divided into two sessions, each session might be of two months duration, and the sessions might be held, say, in March-April 1968 and in March-April 1969.

29. He saw little justification for the fears expressed by Mr. Ago. The system of adopting a convention in two stages separated by an interval of a year had been followed by the International Labour Organisation for some forty years. A convention was adopted provisionally at an International Labour Conference, and its final adoption took place at the next Conference; that arrangement made it possible to correct many defects in the text and, as the number of ratifications had shown, to produce a final text that was more acceptable to governments.

30. The final decision was, of course, a matter for governments. If it were decided to hold the conference in two stages, however, the whole text should be provisionally adopted at the first stage. Governments were unlikely to change their positions in the interval between the two sessions of the conference; moreover, the time available for reflection would make it possible to improve the text. He did not think there was much substance in the suggestion that the first stage of the conference might be taken up with theoretical discussions; it was also possible to waste time in general discussion in the early stages of a single long conference.

31. Mr. STAVROPOULOS (Legal Counsel) said that the discussion had been invaluable. He had been particularly glad to find that the members of the Commission were in unanimous agreement on the need for a conference on the law of treaties and he hoped that that view would be reflected in its report.

32. As to the places where the conference might be held, there was really not much choice. New York would not be acceptable for a number of reasons; that left Geneva or, if a government was willing to pay the additional expenses involved, possibly one of the major European capitals where conference facilities were available. When a conference was held in a country by invitation of its government, it was customary for the president of the conference to be a national of that country. It was important that the president of the proposed conference should be a member of the International Law Commission and thus fully conversant with the topic. Subject to the requirements of geographical distribution, the same might be said of the chairmen of committees. It was also desirable that members of the International Law Commission should sit on the drafting committee; he noted the general feeling in the Commission that the drafting committee of the conference should be given considerable powers.

33. He thought it would be necessary to hold the conference in two parts, if only because it was unreasonable to expect that people holding important posts in their own countries would be able to be absent for as long as four months; moreover, some of them would have been attending the General Assembly not long before the conference and some would have to attend the session of the International Law Commission

afterwards. It was important to decide in advance whether the conference was to be in two parts; it would be unsatisfactory to have to return to the General Assembly and ask it to convene a second conference.

34. As to the date, he thought that the conference might be expected to begin in mid-February or early March, 1968; it could not be held in the autumn.

35. As an argument against having two committees instead of one committee of the whole, it had been suggested that difficulties would be created for the delegations of the smaller countries. That might be true, but in his experience it applied to very few delegations; if governments were informed in advance that there were to be two committees, they made their arrangements accordingly.

36. He welcomed the Commission's view that there was nothing wrong with the rules of procedure used hitherto. There was no reason to suppose that the difficulties at a conference were any greater than in the General Assembly. Much depended on the skill of individual chairmen in applying the rules.

37. He hoped that Sir Humphrey Waldock, the Special Rapporteur, would attend the conference as an expert and that many members of the Commission would be present as members of their delegations. If the conference was attended by lawyers and diplomats it would be a success and the texts it adopted would become part of international law. The Secretariat would do everything in its power to contribute to that end.

Other Business

[Item 6 of the agenda]

RESPONSIBILITIES OF UNITED NATIONS ORGANS IN FURTHERING CO-OPERATION IN THE DEVELOPMENT OF THE LAW OF INTERNATIONAL TRADE AND IN PROMOTING ITS PROGRESSIVE UNIFICATION AND HARMONIZATION (ILC(XVIII) MISC.2)

38. Mr. STAVROPOULOS (Legal Counsel) said that, at the nineteenth session of the General Assembly, the delegation of Hungary had requested that an item be placed on the agenda concerning steps to be taken for the progressive development of private international law with a particular view to promoting international trade. The item had not been discussed at the nineteenth session, but following its re-submission at the twentieth session it had been decided that the Secretary-General should prepare a comprehensive report for submission to the General Assembly at its twenty-first session, after consultation with the International Law Commission.² The general attitude in the Sixth Committee had been favourable to the idea of work in that field, but it had been considered that insufficient information was available about what would be entailed.

39. The Hungarian proposal had been based on the idea that the International Law Commission was empowered by its Statute to deal from time to time with topics of private international law.

40. The Secretariat had studied the question with the help of Professor Clive Schmitthof, an authority on the

² General Assembly resolution 2102 (XX).

law of international trade and it had reached the conclusion, subject to the Commission's views, that it was not a matter of concern to the International Law Commission. Moreover, it had become apparent that the question was not really one of private international law, in other words of resolving a conflict of laws when it occurred, but rather one of harmonizing the laws of the different countries in such a way as to ensure that no conflict could occur. The subject was important, but it was primarily a question of co-ordination rather than formulation, and there were already a number of bodies dealing with it, such as the regional economic commissions of the United Nations, the International Institute for the Unification of Private Law, the International Chamber of Commerce, the Council for Mutual Economic Assistance and the Council of Europe. Generally speaking, those bodies prepared model texts which, if adopted by States, brought about unification of the law. The United Nations should encourage those bodies and co-ordinate their work. The Secretariat's idea was to set up a committee of States, the members of which would be appointed by the Secretary-General on the proposal of governments; it would meet once a year for a few weeks to co-ordinate the work on the subject. It would be interesting to know whether that idea met with the Commission's approval.

41. Mr. BARTOŠ thought that the question should be carefully examined by the Commission, because, in his opinion, it was wrong to regard the Hungarian delegation's proposal as relating to private international law. In fact, international economic law was a new branch, which did not belong to private international law and was concerned, not with the conflict of laws, but with matters which were certainly not entirely foreign to the United Nations. For instance, the Economic Commission for Europe had prepared several drafts on the subject, including some model contracts for the supply of plant and machinery. The distinction between the law dealt with by the Commission and the law dealt with by The Hague Conference on Private International Law was not applicable to the matter under discussion. The Commission had not placed questions of private international law on its agenda up to the present, and had thought it wiser not to concern itself with a matter which called for extreme specialization.

42. There was a body dealing with the unification of private law which was affiliated to the United Nations: the International Institute for the Unification of Private Law in Rome.

43. The major defect of the Hungarian proposal was that the idea had not been properly developed. In the present state of legal science, there was no precise line of demarcation between public international law and private international law, or between those two branches and the new economic branch of international law; hence, it was difficult to know where to place the proposal in question.

44. The International Academy of Comparative Law, of which he was general rapporteur, was concerned with the legal régime of the investment of foreign capital, which was a question of public international law, international economics, private international law and economic law, and on which a conference was to

be held at Uppsala in August 1966. The Institute of International Law had placed a similar item on the agenda for the session it was to hold at Athens in 1967.

45. International economic law had really broken away from private international law without quite becoming part of public international law. There were still a few more stages to be completed in developing the subject and the International Bank for Reconstruction and Development (IBRD) deserved great credit for its contribution to the progress achieved. It seemed that UNCTAD was now also concerned with that branch of law.

46. The Commission had a heavy programme of work comprising some twenty topics, eleven of which had priority. Consequently, even if it decided to take up the question and appointed a Special Rapporteur in 1967, it could not reach any firm conclusions for four or five years. International economic law was becoming more important every day, as conflicts arose which no one was competent to settle. The rules of that law were derived from private law and, hence, also from the rules on the conflict of laws, but they no longer belonged to private international law. If the Commission were to classify them among the topics of public international law, it might retard their study.

47. Consequently, the Legal Counsel's suggestion that a special subsidiary body of the United Nations General Assembly or of UNCTAD should be set up to deal exclusively with economic law seemed to him the best way of obtaining rapid results. It should be borne in mind, however, that the subject was primarily economic and was accordingly becoming increasingly political, rather to the detriment of legal solutions. The group to be set up should, of course, consist of jurists, but they should be jurists with sound economic and political knowledge. The aim of the Hungarian delegation had been to reach legal solutions in a sphere which was daily giving rise to more acute problems in inter-State relations, where commercial contracts properly so called were losing some of their force and importance, and considerations of public law were giving way to the concept of the collective economy, followed by that of the international collective economy.

48. In short, he thought that the topic, which was urgent and worth studying, was not one of private international law, and hence not one for the Commission to take up; it was a matter for specialists in international economic law. A special body should be set up to codify the topic, concerning which there were as yet few usages and few recognized international rules.

49. Mr. AGO considered that the Hungarian delegation's proposal had the serious defect of not explaining clearly what that delegation had in mind and that it was probably not clear even to its authors. In particular, the term "trade" was very vague.

50. Public international law might be involved, but he wondered whether the Hungarian delegation had envisaged problems relating to economic relations between States, rather than to trade properly so-called, and the international law governing the whole subject of economic relations and international investments. If the Hungarian delegation was concerned with the

latter, the subject would, theoretically, be within the Commission's province; but the Commission had a very heavy programme of work. Moreover, the topic was not really ready for codification: it was in a state of flux and was criss-crossed by different trends, which should be left to settle down.

51. A number of institutions were dealing with those problems. Most of them were private institutions, which often also represented certain interests, so that the solutions they proposed were not entirely objective. In addition, United Nations bodies such as the IBRD were working on the topic. Was it necessary for the United Nations to set up a special body? He had some doubts on the matter, but he did not think it was for the Commission to decide.

52. His impression was that the Hungarian delegation had been thinking of other matters than the rules of international law governing economic relations between States, and he saw two possibilities. The unification of rules on the conflict of laws or of jurisdiction might be what was intended; that was a real problem of private international law in commercial matters, but one with which the Commission was in no way concerned. Besides, there would be a danger of duplicating the work of The Hague Conference on Private International Law, which was undertaking the study of such questions. Alternatively, the aim might be to arrive at uniform laws on commercial matters, in which case it was not a question of private international law, but of the unification of private law on commercial matters. The competent body would then be the International Institute for the Unification of Private Law. Since the object of the Hungarian proposal was so uncertain, he thought the Commission could conclude that, for the time being at least, it was not called upon to deal with the matter.

53. Mr. ROSENNE said he had found the Hungarian proposal interesting and in some respects constructive. He was looking forward to the fuller study which had been promised by the Secretariat.

54. For the time being, he accepted the view that the Commission could assume additional responsibilities with respect to the law of international trade only at serious sacrifice to its present work.

55. It was difficult as yet to express any firm opinion on the steps to be taken if the Commission could not undertake the work. He had been impressed by some of the arguments of the International Institute for the Unification of Private Law in the explanatory note which it was submitting to its general assembly at its sixteenth session in July 1966, and by some of the material contained in the memorandum of 23 May 1966 by the Secretary-General of The Hague Conference on Private International Law. The views of those two bodies and of other interested bodies would no doubt be taken into consideration in the Secretariat's study.

56. He had listened with interest to the Legal Counsel's remarks on the co-ordinating role of the United Nations in the sphere in question, and thought that was probably the right approach. But in due course, when the subject had been adequately defined and properly analysed, there might possibly be a part for the Commission to play.

57. He wished to take advantage of the presence of the Legal Counsel to say that the improvements in the presentation of the Commission's *Yearbook* for 1965 had been of great value and had greatly facilitated its use. They met nearly all the points of criticism which he had made the previous year.

58. Mr. AMADO pointed out that the Commission had been set up to codify the law. There was nothing to prevent it from codifying private law if it had the time and the means to do so and if the present needs of the international community so required, since article 1, paragraph 2, of its Statute provided that "The Commission shall concern itself primarily with public international law, but is not precluded from entering the field of private international law". Nevertheless, the Commission had a clearly-defined task, which was to single out existing rules of international law that were recognized by the international community; its role was that of a research worker attempting to discover the rules on which States had agreed and which they applied in practice. The Commission had been established not to aspire to the general well-being of mankind, but to work for it by ascertaining the rules and customs in force.

59. If, when codifying the law of treaties, the topic on which its members had most experience, the Commission needed several meetings and sometimes the help of its Drafting Committee to formulate a rule set out in two lines, how could it be expected to codify rules which did not exist? He did not believe there was a single rule establishing the procedures by which States conducted their trade, even in any one sector, not to mention maritime trade or commodity trade. Hence he did not think the Commission need look for any excuses for openly expressing its regret that it could not act on the Hungarian delegation's proposal.

60. Mr. RUDA said he would confine himself to the practical aspects of the question. The history of the International Law Commission could be divided into two stages: during the first it had received a mandate from the General Assembly to consider certain topics; during the second the General Assembly had left it to the Commission itself to determine the topics of public international law with which it would deal. The success achieved during the second stage was demonstrated by the Conventions on the Law of the Sea and the Convention on Diplomatic Relations. The Commission should therefore be left to work on the four major topics to which it was already committed and which would certainly occupy it for the next five years; it should not assume responsibility for the new topic under discussion.

61. The CHAIRMAN, speaking as a member of the Commission, said that the Commission was not precluded from considering questions of private international law; but did the proposed topic come within that category? If it was a matter of unified private law, he personally did not regard it as belonging to private international law.

62. In its resolution 2102(XX), the General Assembly had referred to "harmonization of the law of international trade", in other words the formulation of rules on the conflict of laws which would lead to harmonization of the commercial law of different countries.

International rules on the conflict of laws were regarded as rules of private international law. Many such rules were formulated in treaties themselves, but that ideal was not always attained. If the proposal related only to that aspect of the matter, namely, harmonization of the commercial law of different countries by means of rules on conflict, he thought the Commission was competent to deal with it.

63. If the problem was approached from that particular standpoint, he could not quite agree with Mr. Ago. In his opinion, the Commission's work on the subject would not duplicate that of The Hague Conference on Private International Law, which, although it had become a permanent institution, retained a rather special character, because it consisted of the European States and only three or four countries outside Europe.

64. A clear idea of the question could only be formed by studying its other aspects, which were of course the commercial aspect and that relating to the peaceful coexistence of different political and social systems. That was why, for practical reasons, he thought the Commission could not undertake to study the question as a whole, since it could deal with it only from the standpoint of private international law.

65. He would not express any opinion on the suggestion made by the Secretariat in paragraph 6 of its note, as he thought it was for the United Nations to decide whether it was desirable and feasible to establish a new commission to deal with the matter.

66. Mr. STAVROPOULOS (Legal Counsel) noted that there was clearly a consensus of opinion in the Commission that it should not undertake responsibility for studying the topic in question.³

The meeting rose at 1.5 p.m.

³ See document A/6396.

881st MEETING

Thursday, 30 June 1966, at 11.15 a.m.

Chairman: Mr. Mustafa Kamil YASSEEN

Present: Mr. Ago, Mr. Amado, Mr. Bartoš, Mr. Briggs, Mr. Castrén, Mr. El-Erian, Mr. Jiménez de Aréchaga, Mr. Paredes, Mr. Pessou, Mr. Reuter, Mr. Rosenne, Mr. Ruda, Mr. Tsuruoka, Mr. Tunkin, Mr. Verdross, Sir Humphrey Waldock.

Special Missions

(A/CN.4/188 and Add.1 and 2, A/CN.4/189 and Add.1 and 2)

(resumed from the 878th meeting)

[Item 2 of the agenda]

1. The CHAIRMAN invited the Commission to continue consideration of the second general question raised by the Special Rapporteur concerning the draft

articles on special missions, namely, the distinction between the different kinds of special mission (A/CN.4/189, chapter II).

2. Mr. BARTOŠ, Special Rapporteur, said that many States had not expressed an opinion on that question, but he did not infer from that that they were in agreement with the Commission. He found it very difficult to accept the Czechoslovak Government's suggestion that a distinction should be made between political missions and technical or administrative missions (A/CN.4/188). It was hard to see on what basis such a distinction could be made; for instance, were special missions entrusted with the delimitation of frontiers or the conclusion of commercial treaties or financial agreements to be regarded as political missions?

3. The Austrian Government thought that a distinction should be made between diplomats and non-diplomats serving on the same special mission (A/CN.4/188/Add.2). He was rather in favour of such a distinction, but it would be hard to maintain that a member of a special mission who was a first secretary of embassy was a diplomat, whereas the chancellor of a university, an eminent scientist or a politician leading, or serving on, a special mission was not.

4. He would therefore prefer to leave it to States to decide how far they would follow the rules to be proposed by the Commission.

5. Mr. TSURUOKA said he agreed that it was difficult to draw a very clear distinction between special missions described as "diplomatic" or "political" and other special missions. The matter was one that could be left to the judgement of the parties concerned without endangering the development of international relations.

6. He would like to know whether the Special Rapporteur wished the Commission, at that stage, to go into the extent of the specific privileges and immunities to be accorded to special missions in the draft articles.

7. Mr. BARTOŠ, Special Rapporteur, said he had not wished to make a list of privileges and immunities. He had first thought that they should be granted within the limits of functional necessity; but the Commission had rejected that idea, and after reflection he thought it had been right. It would be better to state what the privileges and immunities were, using the Convention on Diplomatic Relations as a guide.

8. The Commission had a choice of two alternatives. It could follow the system it had established and specify privileges and immunities, subject to certain limitations where subordinate staff were concerned, leaving States free to derogate from the relevant provisions by a mutual agreement to restrict the enjoyment of privileges and immunities; or it could produce a theoretical solution, within the limits set by functional necessity, leaving it to States to decide what was required to enable a special mission to function.

9. He preferred the first alternative and thought it advisable to specify the limitations. For example, where freedom of movement was concerned, it was necessary to specify that what was meant was a special mission's freedom to enter the country concerned, to travel in it for the purpose of performing its functions and to go