Document:-
**A/CN.4/SR.929**

# Summary record of the 929th meeting

Topic:
**<multiple topics>**

Extract from the Yearbook of the International Law Commission:-
**1967, vol. I**

the infringement of an international obligation of whatever kind. The Commission had adopted unanimously the conclusions submitted to it by the Sub-Committee it had set up to study the question.[9] Now that the Commission had a new membership, he would like to know whether it confirmed the instructions then given to the Special Rapporteur, so that he would be sure of continuing his work on the topic with the full support of the other members.

31. The Commission had decided[10] that, after completing its study of the law of treaties, it would give priority to State responsibility and State succession. In his view those two topics should still have absolute priority.

32. Later, the Commission should also turn its attention to other topics, such as relations between States and intergovernmental organizations. Another topic that should be borne in mind was that of unilateral acts, to which Mr. Tammes had referred. The Commission might also be requested by an appropriate organ of the United Nations to give its opinion on topics such as international bays, international rivers and international straits. In any case, the future programme could be reviewed at meetings from time to time.

33. So far as the short-term programme was concerned, his view was that in 1968 the Commission should consider the topic of State succession in respect of treaties. As that topic was linked with the problem of codifying the law of treaties, the Commission should prepare a report on it with a view to the two forthcoming international conferences on the law of treaties, and he was particularly grateful to the Chairman for having undertaken to prepare such a report.

34. He hoped to submit his report on State responsibility in 1969. Mr. Bedjaoui's report on State succession might also be included in the programme for 1969. If Mr. Bedjaoui wished, he could of course submit in March 1968 a first report on that part of the law of State succession which he had been asked to study. The Commission would then make a preliminary study of it and give Mr. Bedjaoui instructions for the preparation of the final report to be submitted in 1969.

35. Mr. USHAKOV drew attention to paragraph 6 of Mr. Ago's note on State responsibility (A/CN.4/196) in which it was stated that the questions set out in the programme of work "were intended solely to serve as an *aide-mémoire* for the Special Rapporteur when he came to study the substance of particular aspects of the definition of the general rules governing the international responsibility of States, and that the Special Rapporteur would not be obliged to pursue one solution in preference to another in that respect". He personally had some doubts about the programme of work and he therefore thought it would be preferable to consider the report rather than the programme itself, as the programme was merely an *aide-mémoire*.

36. With regard to paragraph 5 of Mr. Ago's note, he agreed with those members of the Commission who had felt that emphasis should be placed on State responsibility in the maintenance of peace.

37. As far as the report on State succession was concerned, he would once more urge the Commission to consult Mr. Bedjaoui before coming to a final decision.

38. Mr. BARTOŠ said that the new topics proposed by members of the Commission should be mentioned in the report.

39. The CHAIRMAN said that the Officers of the Commission might, at a forthcoming meeting, explain in greater detail the proposed division of the topic of succession of States and Governments.

40. When the Commission resumed consideration of item 6 of the agenda, it would also be called upon to confirm the directives it had given to the Special Rapporteur on State responsibility, concerning the general manner of dealing with that topic.

41. He suggested that Mr. Tammes should also take that opportunity of submitting more definite proposals on possible new topics, giving some indication of his own preferences and the reasons for giving priority to one or more of those new topics.

42. For the time being, he understood that the proposals put forward by the Officers of the Commission had been found broadly acceptable.

43. A letter would be written to Mr. Bedjaoui informing him of the views of the Officers of the Commission and requesting him to say whether he accepted the proposal that he should be Special Rapporteur on the second topic. The Commission would resume its discussion of item 6 of the agenda after it had received a reply from him.[11]

The meeting rose at 12.35 p.m.

[9] *Yearbook of the International Law Commission, 1963*, vol. II, p. 224, para. 55.

[10] *Yearbook of the International Law Commission, 1966*, vol. II, document A/6309/Rev. 1, part II, para. 74.

[11] For resumption of discussion, see 929th meeting, paras. 62-81.

## 929th MEETING

*Tuesday, 27 June 1967, at 10.5 a.m.*

*Chairman:* Sir Humphrey WALDOCK

*Present:* Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Eustathiades, Mr. Jiménez de Aréchaga, Mr. Kearney, Mr. Ramangasoavina, Mr. Tabibi, Mr. Tammes, Mr. Ushakov, Mr. Ustor, Mr. Yasseen.

### Special Missions

**(A/CN.4/193 and Addenda; A/CN.4/194 and Addenda)**

*(resumed from the 927th meeting)*

[Item 1 of the agenda]

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE *(resumed from the 927th meeting)*

1. The CHAIRMAN invited the Second Vice-Chairman to introduce the Drafting Committee's proposals for

articles 12-15 in the absence of the Chairman of that Committee.

ARTICLE 12 (End of the functions of a special mission) [20][1]

2. Mr. USTOR, Second Vice-Chairman, said that the Drafting Committee proposed the following text for article 12:

"1. The functions of a special mission shall come to an end, *inter alia*, upon:
" (*a*) The mutual agreement of the States concerned;
" (*b*) The completion of the task of the special mission;
" (*c*) The expiry of the duration assigned for the special mission, unless it is explicitly extended;
" (*d*) Notification by the sending State that it is terminating or recalling the special mission;
" (*e*) Notification by the receiving State that it considers the special mission terminated.

"2. The severance of diplomatic or consular relations between the sending State and the receiving State shall not automatically have the effect of terminating special missions existing at the time of the severance of relations."

3. The Drafting Committee had slightly amplified the earlier text of article 12, which had become paragraph 1 of the new text, by adding an additional sub-paragraph (*a*); a few minor drafting changes had also been made in the other sub-paragraphs.

4. The Committee had introduced a new paragraph 2, the provisions of which had been taken from the former paragraph 2 of article 44.

5. Mr. CASTRÉN said that he found the new text a great improvement on the old. In particular, the new paragraph 1 (*a*), providing that the functions of a special mission would come to an end by agreement of the States concerned, was entirely appropriate. The transposition of the two following sub-paragraphs also helped to make the article more satisfactory. Paragraph 1 (*d*) might be simplified by saying "that it is recalling the special mission" instead of "that it is terminating or recalling the special mission".

6. The adverb "automatically" in paragraph 2 might well be replaced by the expression "in itself", which the Commission had already used, for instance, in its draft on the law of treaties. The expression "terminating special missions existing" seemed to be too general; it would be more correct to say "terminating their special missions to each other".

7. Mr. YASSEEN said that he too considered the new wording better and clearer than the old. Paragraphs 1 (*d*) and (*e*) very properly emphasized the fact that either party was entitled to terminate a special mission.

8. The word "mutual" in paragraph 1 (*a*) was unnecessary. He agreed with Mr. Castrén that it would be better to replace the adverb "automatically" in paragraph 2 by some such expression as "in itself", "*ipso facto*" or, in the French text, "*de plein droit*".

9. Subject to those comments, he accepted the new wording.

10. Mr. BARTOŠ, Special Rapporteur, said that he agreed to the deletion of the word "mutual" in paragraph 1 (*a*), which might be redrafted to read "Agreement between the States concerned". He was also prepared to substitute the words "*de plein droit*" for "*automatiquement*" in the French text of paragraph 2.

11. On the other hand, it seemed to him essential to maintain, in paragraph 1 (*d*), the distinction between cases where the sending State terminated the special mission and cases where it recalled it. Both actions produced the same effect, but the causes were slightly different; if the sending State terminated the special mission, it was giving expression to its view that the mission had ceased to serve any purpose, whereas, if it recalled the mission, it usually did so because of some external event or of a change in the relationship between the two States which made it impossible for the special mission to continue its task.

12. Mr. CASTRÉN said he would not press his proposal that paragraph 1 (*d*) should be reworded.

13. The CHAIRMAN noted that there had been no objection to the suggestion that the word "mutual" should be deleted in paragraph 1 (*a*). It also seemed to be the general feeling that the word "automatically" in paragraph 2 was inappropriate. The Special Rapporteur had suggested as an alternative the phrase "*de plein droit*", for which it was difficult to find an English equivalent, although the Latin *ipso jure* might be used.

14. Mr. EUSTATHIADES suggested "*nécessairement*".

15. Mr. KEARNEY said that he would prefer to avoid using a technical legal term in the English text; he therefore suggested "of itself" or "in itself".

16. Mr. BARTOŠ, Special Rapporteur, said that he would have no objection to the words "*en soi*" being used in the French text.

17. The CHAIRMAN, speaking as a member of the Commission, said that the concluding words "existing at the time of the severance of relations" in paragraph 2 were too vague, since the paragraph dealt with two separate hypotheses: the severance either of diplomatic or of consular relations. He therefore suggested that the phrase should read: "existing at the time of such severance".

18. Mr. USTOR thought that the whole phrase could perhaps safely be deleted.

19. Mr. BARTOŠ, Special Rapporteur, said it was necessary to make it clear that the special missions referred to in paragraph 2 were those which existed at the time of the severance of relations.

20. The CHAIRMAN proposed that the various drafting suggestions which had been made, particularly those relating to the word "automatically" and to the concluding phrase of paragraph 2, should be referred to the

[1] For earlier discussion, see 906th meeting, paras. 69-92.

Drafting Committee. The Commission would take a final decision on article 12 when the Drafting Committee submitted a definitive text.

*It was so decided.*[2]

ARTICLE 13 (Seat of the special mission) [17][3]

21. Mr. USTOR, Second Vice-Chairman, said that the Drafting Committee proposed the following text for article 13:

"1. A special mission shall have its seat at the place agreed upon by the States concerned.

"2. In the absence of agreement, the special mission shall have its seat in the place where the Ministry of Foreign Affairs of the receiving State is situated.

"3. If the special mission's functions involve travel or are performed by different sections or groups, the special mission may have more than one seat; one of such seats may be chosen as its principal seat".

22. Paragraph 1 stated a self-evident principle. Paragraph 2 introduced a new idea, while paragraph 3 was very similar to the former paragraph 2.

23. The Drafting Committee had considered a suggestion that article 13 should mention the case of a special mission which was sent to more than one State, but it had felt that no such mention was necessary because that case was implicitly covered by the text of article 13 as now proposed.

24. Mr. KEARNEY thought that the words "involve travel or are performed by different sections or groups" in paragraph 3 were rather ambiguous.

25. The CHAIRMAN, speaking as a member of the Commission, said that he did not think the use of the word "place" was very happy in paragraph 2 to render the French "*localité*", for it would almost seem to suggest that the special mission of the sending State must be sited in the same building as the Ministry of Foreign Affairs of the receiving State. He suggested that a more satisfactory term should be found and should also be used in paragraph 1.

26. Mr. TABIBI said that the words in paragraph 2 "shall have its seat" were too strong; normally, when a State agreed to receive a special mission, it would also consent to the seat. He suggested that the words should be toned down to read: "may have its seat".

27. Mr. BARTOŠ, Special Rapporteur, said that, in order to meet Mr. Kearney's criticism, he would propose that the words "involve travel or" be omitted from paragraph 3, which would then refer only to cases where the mission had more than one seat at the same time. The ambiguity would thus be removed.

28. With regard to Mr. Tabibi's remark, he wished to point out that paragraph 1 stated the general rule that the seat of the special mission should be agreed upon by the States concerned. By providing that, in the absence of agreement, the special mission should have its seat in the place where the Ministry of Foreign Affairs of the receiving State was situated, the article precluded a unilateral decision by the receiving State, a decision which would infringe the principle of the sovereign equality of States and might make the presence of the special mission inconvenient or unacceptable. The Drafting Committee had preferred to state that residual rule in positive form rather than to use some such expression as "it is assumed that the special mission will have its seat...".

29. He once again wished to emphasize that agreement on the seat of the special mission did not necessarily have to be reached in advance.

30. Mr. CASTRÉN said that, if paragraph 3 were altered as suggested by the Special Rapporteur, it would be better to insert the words "stationed in different places" after the words "sections or groups", as it was also possible that several groups of the special mission might be operating in the same place.

31. Mr. EUSTATHIADES, supporting Mr. Castrén's remark about paragraph 3, suggested that the passage should be worded "... in several places by different sections or groups". In paragraph 2, it would be better to say "town" than "place".

32. The CHAIRMAN noted the proposal to drop the words "involve travel or". In that connexion, the question arose whether the Drafting Committee had intended those words to cover a situation different from that envisaged in the main provision "If the special mission's functions... are performed by different sections or groups". They might be taken to refer to the case where the special mission as a whole performed its functions successively in several places; the provision would then mean that the special mission changed its seat when it travelled from one place to another to perform its functions. If the words "involve travel or" were omitted, the seat of the special mission would be unaffected by mere travel; that seat would normally remain in the capital of the receiving State or at the main headquarters of the mission, regardless of any journeys made by the mission during the performance of its functions.

33. Mr. BARTOŠ, Special Rapporteur, said he had no objection to saying "town" instead of "place" in paragraph 2, but it was important not to use the word "capital" because there were cases where the Ministry of Foreign Affairs was situated elsewhere than in the capital.

34. He could accept either Mr. Castrén's or Mr. Eustathiades's suggestions for paragraph 3.

35. The CHAIRMAN proposed that the Drafting Committee should be invited to consider the various suggestions which had been made regarding the use of the term "place" *(localité)*, the suggestion to drop the words "involve travel or" and the other drafting amendments proposed to paragraph 3.

*It was so agreed.*[4]

[2] For resumption of discussion, see 931st meeting, paras. 64-67.

[3] For earlier discussion, see 907th meeting, paras. 1-49.

[4] For resumption of discussion, see 931st meeting, paras. 68-77.

ARTICLE 14 (Nationality of the members of the special mission) [10][5]

36. Mr. USTOR, Second Vice-Chairman, said that the Drafting Committee proposed the following title and text for article 14:

"*Nationality of the members of the special mission*"

"1. The representatives of the sending State and members of the diplomatic staff in the special mission should in principle be of the nationality of the sending State.

"2. Nationals of the receiving State may not be appointed to a special mission except with the consent of that State, which may be withdrawn at any time.

"3. The receiving State may reserve the right provided for in paragraph 2 with regard to the nationals of a third State who are not also nationals of the sending State."

37. Apart from the title and a drafting change in the introductory phrase of paragraph 1, the text of article 14 was similar to the text which had been referred to the Drafting Committee by the Commission.

38. Mr. YASSEEN said it would be preferable to use the word "*nationaux*" rather than "*ressortissants*" in the French text of paragraphs 2 and 3.

39. Mr. BARTOŠ, Special Rapporteur, said that the majority of the members of the Drafting Committee, including Mr. Ago, had opposed that change in the French text because they considered it advisable not to depart from the terminology used in the two Vienna Conventions. It had also been pointed out that there were still people who were "*ressortissants*" of a State without, strictly speaking, possessing its nationality; that appeared to be the position of the Puerto Ricans, who were "*ressortissants*" of the United States, and of the Tahitians, who were "*ressortissants*" of France. In his opinion, both terms were acceptable; the matter was one of minor importance, especially since the word used in the English text was "nationals", which was also taken from the Vienna Conventions.

40. Mr. USHAKOV said that, in his view, the word "*nationaux*" would be better in the French text, for one reason because it was nearer to the word used in English. It seemed to him that the French words "*nationaux*" and "*ressortissants*" were practically synonymous, the term "*nationaux*" being wider in scope than "*citoyens*".

41. Mr. BARTOŠ, Special Rapporteur, said that, in the Drafting Committee, Mr. Ago had maintained that the word "*nationaux*" had an essentially ethnic connotation, whereas "*ressortissants*" was a legal term. In Yugoslavia, a distinction was drawn between the word "people", which had a sociological and legal meaning, and the word "nationality", which had an ethnological meaning.

42. Mr. RAMANGASOAVINA said he too wished to emphasize that the Drafting Committee had preferred to retain the French word "*ressortissants*" in order to allow for the fact that there were still people who did not possess the full citizenship of the State to which they belonged. That was the position, for instance, of the inhabitants of the Comoro Islands or of the French Territory of the Afars and the Issas, the former French Somaliland; when they went abroad, they were given a French passport and they stated, when asked, that they were French nationals, but they did not possess all the civic rights associated with French nationality. The Drafting Committee had therefore feared that the use of the word "*nationaux*" might prevent the appointment of certain persons as members of special missions.

43. Mr. KEARNEY pointed out that Puerto Ricans were nationals of the United States who, by their own choice and for a variety of reasons, including fiscal advantages, had opted for a separate form of government.

44. The CHAIRMAN said that the difficulty which had arisen in connexion with paragraph 2 was due to the use in both Vienna Conventions of the French word "*ressortissants*" to render the English "nationals". Mr. Yasseen had suggested, for reasons of principle, that the French text should be brought into line with the English, but it had been objected that the French term "*ressortissants*" was intended to cover the case of certain persons who were not full nationals. Since the suggestion involved a departure from the language used in the two Vienna Conventions, the Commission would have to take a formal decision on the matter. He therefore suggested that the point should be settled later when the Commission took a final decision on article 14.

45. Mr. BARTOŠ, Special Rapporteur, said that he favoured Mr. Yasseen's proposal but, in view of Mr. Ago's absence, he would abstain if there was a vote.

46. The CHAIRMAN, drawing attention to the use in paragraph 1 of the expression "members of the diplomatic staff", said that the Drafting Committee should consider the definition of that expression, together with the other definitions, before the Commission itself was called upon to take a decision on the articles as a whole.

47. Mr. BARTOŠ, Special Rapporteur, said that in any case there would be a definition of "diplomatic staff" in the article on the composition of the special mission. In defining the expression "diplomatic staff", which would include the advisers, experts and secretaries of the special mission, he proposed to base himself on the text of the Convention on the Privileges and Immunities of the United Nations.[6] The expression would also be included in his proposed article on definitions which he wished to revise before sending it to the Drafting Committee and then submitting it to the Commission for its approval.

48. Mr. EUSTATHIADES said that the expression "the representatives... and members of the diplomatic staff *in* the special mission" did not appear to him to be very well chosen. He would prefer "*of* the special mission" or "forming part of the special mission".

[5] For earlier discussion, see 907th meeting, paras. 50-87.

[6] United Nations, *Treaty Series*, vol. 1, page 16.

49. Mr. BARTOŠ, Special Rapporteur, said that on the previous day the Drafting Committee had decided to use the wording "the representatives of the sending State in the special mission and the members of its diplomatic staff". The text of that amendment had not yet been circulated.

50. The CHAIRMAN suggested that the Drafting Committee should be invited to consider the various suggestions made with regard to article 14.

*It was so agreed.*[7]

ARTICLE 15 (Right of special missions to use the flag and emblem of the sending State) [19][8]

51. Mr. USTOR, Second Vice-Chairman, said the Drafting Committee proposed that article 15 should be deleted. After some discussion, the members of that Committee had come to the conclusion that, in view of the character of special missions, it was unnecessary to make specific provision for their right to use the flag and emblem of the sending State. The deletion of the article would not, of course, mean that a special mission could not make use of that flag or emblem; there would in fact be instances in which, by reason of the representative character of a special mission, the receiving State would allow such use.

52. Mr. BARTOŠ, Special Rapporteur, said that all the members of the Drafting Committee had agreed that article 15 should be deleted. Many small special missions of a technical character had no need to display a flag or emblem, although it was true that there were other special missions, such as those engaged on frontier demarcation or operating in frontier zones, which needed to have that right owing to the nature of their work. That was a question which could be settled on the spot or in advance by agreement between the States concerned. Moreover, whereas the use of the flag and emblem might be an essential safeguard in the case of a permanent diplomatic mission, that was not so in the case of a special mission which indeed often had good reason for remaining incognito.

53. The Drafting Committee's decision to recommend the deletion of article 15 should be mentioned in the commentary on article 18, on accommodation, so as to make it clear that the Commission had considered the matter but had decided that it was unnecessary to give detailed reasons for dropping the article.

54. Mr. EUSTATHIADES said that, by deciding to delete article 15, the Commission would be going from one extreme to the other. Although there was no need to stress the right to use the flag and emblem of the sending State, it nevertheless had to be borne in mind that, in certain circumstances, it was most desirable that the special mission should have that right. The Commission should decide either to retain article 15 and make it optional—the right to use the flag and emblem being dependent on an agreement between the States concerned—or to mention the right to use the flag or emblem in the text of the commentary on the article on accommodation. If the second solution were adopted, the commentary would not confine itself to mentioning the Drafting Committee's decision to recommend the deletion of article 15 but would state that, although the Commission had not drafted a separate article on the matter, it recognized that there should be a right to use the flag and emblem if circumstances made it necessary.

55. Mr. CASTRÉN said that he fully supported the second solution. In his view, it would also be necessary to give some reasons for the deletion of article 15 in the text of the commentary on the article on the accommodation of special missions.

56. Mr. BARTOŠ, Special Rapporteur, suggested tha he should reconsider the matter with the Drafting Committee. It might be best to adopt Mr. Ushakov's suggestion[9] that, in the absence of a special agreement on the point, the use of the flag and emblem of the sending State should be governed by the practice in force in the receiving State. Reference would thus be made to the problem, the solution to which would be made dependent on practice or on arrangements concluded between the States concerned.

57. Mr. USHAKOV said that, in principle, he had no objection to the retention of article 15, but it seemed to him to be difficult to enunciate a general rule on the point. According to article 20 of the Vienna Convention on Diplomatic Relations, only the head of mission had the right to use the flag and emblem on his means of transport; in the case of special missions, however, it was impossible to restrict that right to the head of the mission. Again, although it might be necessary for the special mission to be able to display the flag of the sending State, there were occasions when it might be a source of danger to the mission. Any general rule on the point would, therefore, be inapplicable in practice.

58. The CHAIRMAN, speaking as a member of the Commission, said he would hesitate to drop article 15 because the omission of a provision which appeared in the two Vienna Conventions might be construed to mean that a special mission had no right to use the flag and emblem of the sending State. He favoured retaining the article, provided that a satisfactory, more facultative formula could be devised. However, if no article on the subject was ultimately retained in the draft, it would be essential for the commentary to include some explanation of the omission.

59. Mr. USTOR said that, at the Vienna Conference of 1961, there had been some discussion on the question whether the faculty to use the flag and emblem of the sending State constituted a privilege or a right. Since the 1961 Vienna Convention on Diplomatic Relations was not subdivided into chapters, the relationship was not clear between article 20, dealing with the right of a permanent mission to use the flag and emblem of the sending State, and paragraph 1 of article 41, which required all persons enjoying privileges and immunities "to respect the laws and regulations of the receiving

[7] For resumption of discussion, see 931st meeting, paras. 78-84.

[8] For earlier discussion, see 908th meeting, paras. 1-37.

[9] See 908th meeting, para. 19.

State". It was thus a matter of interpretation whether, under the 1961 Vienna Convention, a permanent mission would have to abide by the laws and regulations of the receiving State in such matters as the limitation of the right to display the flag to certain days in the year. His own belief was that those laws and regulations would have to be observed, on the understanding that they did not have the effect of frustrating the right set forth in article 20 of the 1961 Vienna Convention.

60. Mr. YASSEEN said that the Chairman's arguments had convinced him. Not to mention the difficulty in the draft might cause misunderstanding, but to oblige the sending State to comply with the regulations of the receiving State, as Mr. Ustor had suggested, did not seem to be satisfactory. It was necessary to state clearly that the Commission had not intended to refuse the special mission the right to use the flag or emblem but had wished the scope of that right to be determined by agreement between the States concerned.

61. The CHAIRMAN suggested that the Drafting Committee should be invited to consider the possibility of drafting article 15 on slightly different lines and to report to the Commission, which would then decide whether or not to include an article on the use of the flag and emblem of the sending State by a special mission.

*It was so agreed.*[10]

## Organization of Future Work

**(A/CN.4/195, 196; A/CN.4/L.119)**

*(resumed from the 928th meeting)*

[Item 6 of the agenda]

62. The CHAIRMAN invited the Commission to continue its consideration of the organization of its future work.

63. Mr. TAMMES said he was speaking in response to the request made by the Chairman at the previous meeting[11] that he should state his preferences among the new topics he had mentioned during that meeting. There had been some positive reactions to his statement. Thus, Mr. Ago had endorsed the suggestion that unilateral acts as a source of international law might be the subject of a systematized draft, which would, in a limited degree, become a counterpart to the draft on the law of treaties. A study of the interrelationship between positive and negative unilateral acts, such as recognition, confirmation, statements at international meetings and conferences, rejections, renunciations, waivers and protests would serve to clarify the legal significance of those acts and would contribute to the codification of international law.

64. Mr. Reuter had supported the idea that the Commission could do useful work on institutional development, in contrast to preparing draft conventions. He (Mr. Tammes) had quoted as an example of such work the preparation of a draft statute for a fact-finding body. The question of setting up such a body was, admittedly, still before the General Assembly, but the Assembly might well wish to have a draft statute before it took its final decision. Work on such a statute would, of course, be much more limited than the preparation of a draft on unilateral acts.

65. Another limited though highly important topic was that of granting the United Nations the status of a possible party in cases before the International Court of Justice. That work would entail amendment of the Statute of the Court, which was an integral part of the United Nations Charter. The problem had often been discussed in the past, but had been left in abeyance because no strong practical need had been felt for action in the matter; in modern times, however, in view of the many questions of great interest to the international community which were being referred to the Court, for instance in connexion with human rights and with the principle of non-discrimination, it was widely considered that the United Nations should be able to take public action in cases of that kind.

66. Accordingly, he would suggest that those three topics, of which only the first was a long-term undertaking, might be considered by the Commission for its future programme. They would not compete with the topics the Commission already had before it or with such new topics as that of international rivers.

67. Mr. CASTAÑEDA said that, like the other members of the Commission, he considered that the two main topics in the Commission's programme of work for the future were State responsibility and succession of States and Governments.

68. A re-reading of the records of the discussions at the fifteenth and sixteenth sessions of the Sixth Committee and of the General Assembly, had convinced him that most of the subjects that were ripe for codification had already been dealt with or were included in the programme of work for the future. The question of friendly relations and co-operation among States, which was essentially political rather than legal, had been referred to the Special Committee on Principles of International Law relating to that subject, which was to hold its third session in 1967.

69. There had been several references to the criteria which the Commission should apply in selecting topics for inclusion in its programme and it had been urged that to achieve useful results, it should in the main choose topics that were ready for codification. In his view, the best criterion was whether the topic was one on which a set of rules was required. For instance, there was the question of the continental shelf: that was a matter on which there had been no uniform practice, nor any treaties which might have assisted codification, yet the Convention on the Continental Shelf[12] had been adopted by the United Nations Conference on the Law of the Sea in 1958 and a sufficient number of instruments of ratification or accession had been deposited to enable it to come into force. The same was true of the Convention on Fishing and Conservation of the Living Resources

[10] For resumption of discussion, see 933rd meeting, paras. 90-102.

[11] Para. 41.

[12] United Nations Conference on the Law of the Sea, *Official Records*, vol. II, p. 142.

of the High Seas, also adopted by that Conference in 1958.[13] On the other hand, it might have been thought that, after the end of the war and the establishment of the Nuremberg Tribunal, international criminal law was ready for codification, but States had displayed little interest in that matter and no action had been taken on the proposal for codification.

70. Another matter which the Commission should consider in the distant future was the law of international economic co-operation, which was continually developing within the United Nations, the specialized agencies and the regional and world-wide economic organizations. But it was necessary to wait until practice had become established and ideas on the subject had crystallized.

71. The Commission had prepared draft conventions on the topics submitted to it, but in the future it should perhaps be less ambitious and devote one or two years to a systematic study of the basic factors of a problem. That was a task it could undertake with greater authority than an institute or academy of international law.

72. Mr. EUSTATHIADES said that the Commission should take two factors into account: the advisability of establishing a set of rules on certain topics, and what had already been known in the days of the League of Nations as the ripeness of those topics. But, whichever of those factors predominated, the fact remained that estimation of the time required was all-important for the Commission's future work. State responsibility and the succession of States and Governments were topics of major importance, and would take up much time, so that it would be difficult for the Commission to include in its programme other major subjects that nevertheless were unquestionably important, such as the use of international rivers.

73. The Commission might, subject to the time at its disposal, take up some topics of more limited scope. For instance, without considering the principles of peaceful co-existence as a whole, it might perhaps study one aspect of that topic, namely, the peaceful settlement of disputes—a subject which the United Kingdom intended to propose to the General Assembly—and pay particular attention to some matter arising out of that aspect, such as commissions of inquiry. Or again, the Commission might consider drawing up a set of model rules on conciliation, on the same lines as the model draft on arbitral procedure which it had adopted at its tenth session in 1958.[14]

74. Mr. TABIBI said that the Commission's approach to the organization of its future work should be based on the fact that it was an organ of the General Assembly and, as such, should follow the instructions of its superior body. Accordingly, priority should be given to topics suggested by the Assembly itself, such as the right of asylum and the juridical régime of historic waters, including historic bays.

75. He agreed with Mr. Castañeda that the Commission should consider topics which were ripe for codification and the codification of which was required by the community of nations. Perhaps the Commission's Officers could form a group which would select such topics and report back to the Commission. It should also be borne in mind that bodies other than the United Nations, such as the International Law Association and the Institute of International Law, had been dealing with certain topics for a considerable time.

76. There was also a category of topics in which the General Assembly had taken a great interest in the early years of the United Nations, but had since left in abeyance, such as the rights and duties of States, on which a tentative draft had already been prepared, the establishment of an international criminal jurisdiction, which was in a similar situation, and the codification of offences against mankind, on which valuable work had already been done.

77. He wished to draw particular attention to the question of duplication between the Commission's work and that of other United Nations organs. It might be wise to stress in the Commission's annual report that every effort should be made to avoid such duplication: for example, the Legal Sub-Committee of the United Nations Committee on the Peaceful Uses of Outer Space was currently dealing with matters which were properly the responsibility of the Commission, and the question of the right of asylum had been examined by the Third Committee of the General Assembly before it had finally been referred to the Sixth Committee.

78. Lastly, he wished to advocate a rather drastic departure from the Commission's traditional approach to codification. In his opinion, the Commission was the proper body to deal with topics having a political connotation, since its members acted in their private capacity and could probably succeed where governmental bodies had failed to reach final conclusions on a number of interesting topics.

79. Mr. JIMÉNEZ de ARÉCHAGA said he had only one small point to make in connexion with the organization of the Commission's future work. An idea which he had put forward at earlier sessions, but which had not been accepted by the Special Rapporteur on the law of treaties or by the majority of the Commission was that two or three articles on the legal aspects of the most-favoured-nation clause should be incorporated in the draft on the law of treaties. Those articles should, of course, not refer to the economic questions raised by the application of the clause, particularly in multilateral trade, such as the question whether most-favoured-nation treatment called for a reciprocal concession by the recipient State and whether the granting of such treatment was subject to certain exceptions; all those matters were related to the rules of law governing international trade, which were being studied actively by regional bodies in Europe and Latin America. Nevertheless, some specific legal issues involved in the operation of the clause had been raised and discussed in recent cases before the International Court of Justice, such as the *Case concerning rights of nationals of the United States of America in Morocco*[15]

[13] *Ibid.*, p. 139.

[14] *Yearbook of the International Law Commission, 1958*, vol. II, p. 12.

[15] *I.C.J. Reports, 1952*, p. 176.

and the *Anglo-Iranian Oil Co.* case.[16] Failure to deal with the matter would leave a gap in the codification of the law of treaties with respect to such points as the extent to which the revocation of a stipulation could deprive a third State of most-favoured-nation treatment, the extent to which the renunciation of benefits arising from the operation of the clause would deprive private persons of benefits derived from international arrangements and the type of benefits which were attracted by the clause. Those were precise technical legal problems and lay within the sphere of the law of treaties, and particularly of the rules of interpretation which were part of the Commission's draft.

80. Mr. KEARNEY suggested that the Commission's difficulties in drawing up its programme for the following session might be minimized by introducing the system of a five-year plan for the consideration of topics, to be revised annually in the light of developments. If the consideration of topics already on the Commission's agenda could be fitted into a general plan with greater precision, it would be easier for the Commission to assess the possibility of undertaking additional work. Where new topics were concerned, he considered that the question of international rivers was in urgent need of, and ripe for, codification, in the sense that a considerable amount of background knowledge was now available.

81. The CHAIRMAN, speaking as a member of the Commission, said that, in drawing up a plan for its work, the Commission must take into account the amount of work it could do in ten weeks as well as the need to avoid dissipating its energies in too many directions. The Commission could not obtain useful results and maintain its position as a codifying body unless it completed the study of the topics it undertook to consider. Generally speaking if a major topic was under active consideration, the best procedure was to treat that topic as the main item, and to hold one or two more limited topics in reserve for consideration during periods when the main topic could not be dealt with. [17]

The meeting rose at 1 p.m.

[16] *I.C.J. Reports, 1952*, p. 93.

[17] For resumption of the discussion of this agenda item, see 938th meeting, paras. 74-88.

## 930th MEETING

*Wednesday, 28 June 1967, at 10 a.m.*

*Chairman:* Sir Humphrey WALDOCK

*Present:* Mr. Ago, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Eustathiades, Mr. Jiménez de Aréchaga, Mr. Kearney, Mr. Ramangasoavina, Mr. Tabibi, Mr. Tammes, Mr. Ushakov, Mr. Ustor, Mr. Yasseen.

### Special Missions

**(A/CN.4/193 and Addenda; A/CN.4/194 and Addenda)**

*(resumed from the previous meeting)*

[Item 1 of the agenda]

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE ON SECOND READING

1. The CHAIRMAN invited the Commission to consider the articles adopted by the Drafting Committee on second reading, which would be introduced by Mr. Ustor, as Acting Chairman of the Drafting Committee. He pointed out that there was no quorum, so that the Commission would have to accept the articles provisionally, to enable the Special Rapporteur to prepare his commentaries.

ARTICLE 1 (Sending of special missions) [2 and 7][1]

2. Mr. USTOR, Acting Chairman of the Drafting Committee, said that the Drafting Committee proposed the following text for article 1:

> "1. A State may, for the performance of a specific task, send a [temporary] special mission to another State with the consent of the latter.
>
> "2. The existence of diplomatic or consular relations is not necessary for the sending or reception of special missions.
>
> "3. A State may send a special mission to a State, or receive one from a State, which it does not recognize."

3. The text remained practically unchanged, except that the word "temporary" had been placed in square brackets, to show that it might be deleted from the paragraph if the temporary nature of special missions was mentioned in the article containing definitions.

4. Mr. BARTOŠ, Special Rapporteur, said he was not in favour of deleting the word "temporary". There were specialized diplomatic missions which had a particular task, such as the recruitment of labour, but they were permanent and were not special missions in the sense of the draft articles.

5. It was not at all certain that a definition of a special mission would be given in the definitions article; indeed no convention contained a definition of the institution that was its subject. Consequently, the characteristics of a special mission should be stated in the substantive articles, and the essential characteristic of such a mission was that it was temporary.

6. Mr. USTOR said he agreed that the word "temporary" was very important in the context of the draft, but its inclusion in paragraph 1 of article 1 and its omission from all the subsequent articles might imply that that paragraph referred to a kind of mission different from those mentioned elsewhere in the draft.

7. The CHAIRMAN observed that a final decision on the question would have to be deferred until the Commission came to consider the article containing definitions.

[1] For earlier discussion, see 926th meeting, paras. 2-22.