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Summary record of the 938th meeting

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96. Mr. AGO said that while a special mission could grant the right of asylum, if the need arose, under the terms of a special agreement, the granting of the right of asylum could scarcely be regarded as one of the functions of a special mission.

97. Mr. JIMÉNEZ de ARÉCHAGA said that there was no intention of imposing the right of diplomatic asylum, which was an institution peculiar to the Latin American States. On the other hand, it was essential not to exclude that right and that would be the effect of omitting the concluding proviso which he had proposed. That proviso had originally been introduced in order to take account of the final sentence of paragraph 1: "They also have a duty not to interfere in the internal affairs of that State", a sentence which would be construed as excluding the right of diplomatic asylum.

98. The CHAIRMAN invited the Acting Chairman of the Drafting Committee and Mr. Jiménez de Aréchaga to consult together and propose a mutually satisfactory text for paragraph 2.

99. Mr. AGO, Acting Chairman of the Drafting Committee, proposed that article 40, paragraph 2, should be drafted to read as follows:

"The premises of the special mission shall not be used in any manner incompatible with the functions of the special mission, as envisaged in the present convention, in the rules of general international law or in any special agreements in force between the sending and the receiving State".

100. Mr. EUSTATHIADES said that he did not find the new text very satisfactory and it would perhaps be necessary to give some explanation in the commentary. However, if that text met Mr. Jiménez de Aréchaga's wishes, he was prepared to accept it.

101. Mr. JIMÉNEZ de ARÉCHAGA said that he was fully satisfied with the text read out by Mr. Ago. The Latin American treaties on the subject of asylum provided for the right of asylum in any premises which enjoyed diplomatic immunities; by virtue of the provisions of those treaties, the right of asylum had been applied to special missions.

102. Mr. EUSTATHIADES, referring to paragraph 1, said that he preferred the English term "belonging" to the expression "*qui entrent dans la composition*" used in the French text.

103. Mr. REUTER asked whether the words "all persons belonging to special missions" used in paragraph 1 meant "the members of the special mission" and "the private staff", the definition of which was given in the introductory article. If so, it would probably be better to use those two terms.

104. Mr. BARTOŠ, Special Rapporteur, replied that those two terms could not be used, as the members of the family of members of the special mission also enjoyed those privileges and immunities.

105. The CHAIRMAN put to the vote article 40 with the following amendments:

106. Firstly, the words "all persons belonging to special missions and enjoying these privileges and immunities" would be replaced by "all persons enjoying these privileges and immunities under the present articles". That change would meet the point raised by Mr. Eustathiades and Mr. Bartoš.

107. Secondly, the full stop at the end of paragraph 2 would be replaced by a comma and the following words would be added: "as envisaged in the present articles or in other rules of general international law or in any special agreements in force between the sending and the receiving State".

Article 40, as amended, was adopted unanimously.

The meeting rose at 5.40 p.m.

938th MEETING

Wednesday, 12 July 1967 at 10.10 a.m.

Chairman: Sir Humphrey WALDOCK

Present: Mr. Ago, Mr. Bartoš, Mr. Castrén, Mr. Ignacio-Pinto, Mr. Jiménez de Aréchaga, Mr. Kearney, Mr. Nagendra Singh, Mr. Reuter, Mr. Tabibi, Mr. Tammes, Mr. Ushakov, Mr. Ustor, Mr. Yasseen.

Special Missions

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

(continued)

[Item 1 of the agenda]

1. The CHAIRMAN, said that, before inviting the Commission to consider the draft preamble which the Drafting Committee proposed for annexation to the draft articles, he wished to announce that a telegram had been received from Mr. Ruda expressing his regret at having been prevented from attending the present session of the Commission because he was representing his country in the Security Council. A letter had previously been received from Mr. Rosenne, expressing his regret at being prevented by his official duties from returning to Geneva to participate in the Commission's work.

DRAFT PREAMBLE PROPOSED BY THE DRAFTING COMMITTEE

2. Mr. AGO, Acting Chairman of the Drafting Committee, said that the Committee proposed the following text for the preamble to a convention on special missions:

"The States parties to this Convention.

"Recalling that the need of according a particular status to special missions of States has always been recognized,

"Bearing in mind the Purposes and Principles of the Charter of the United Nations relating to the sovereign equality of States, the maintenance of international

peace and security and the development of friendly relations and co-operation among States,

“*Recalling* the resolution of the United Nations Conference on Diplomatic Intercourse and Immunities (1961) relating to the importance of special missions,

“*Believing* that the Vienna Conventions on Diplomatic and Consular Relations have contributed to the fostering of friendly relations among nations, irrespective of their differing constitutional and social systems, and that they should be completed by a convention on special missions and their privileges and immunities,

“*Realizing* that the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of the functions of special missions as representing States,

“*Affirming* that the rules of customary international law should continue to govern questions not expressly regulated by the provisions of the present Convention,

“HAVE AGREED AS FOLLOWS:”

3. The Committee had worked on the basis of a first draft submitted by the Special Rapporteur (A/CN.4/194/Add.2). The most important parts of the text proposed by the Committee were the third, and more particularly the fourth, paragraphs. The text was to be annexed to the draft convention which the Commission was to submit to the General Assembly.

4. Mr. BARTOŠ, Special Rapporteur, said that he had not originally been in favour of the Commission's placing a preamble at the beginning of the draft, which was indeed contrary to its practice. But at the eighteenth session several members had expressed the view that a preamble was important, as it sometimes contained certain legal elements; the majority of the Commission had concurred in that view and had instructed the Special Rapporteur to draft a preamble.¹

5. The text proposed by the Drafting Committee was modelled on the preamble to the Vienna Convention on Diplomatic Relations and especially on the second, fifth and sixth paragraphs of that Convention.

6. Mr. YASSEEN said that, despite the procedure adopted by the Commission in the past, it might usefully adopt the practice of preparing a preamble as well as draft articles.

7. He accepted the proposed text, which was well-balanced, but pointed out that, in the fifth paragraph, the expression “*les buts*” in the French text should be in the singular.

8. Mr. USHAKOV said that another error had crept into the French text of the same phrase: the words “*et immunités*” should be inserted after the word “*privi-lèges*”.

9. The CHAIRMAN suggested that the English text of the paragraphs which were intended to be identical with certain paragraphs of the preambles to the two Vienna Conventions should reproduce the exact wording used

in those two Conventions. For example, in the second paragraph, the opening words “*Bearing in mind*” should be replaced by “*Having in mind*” and the words “*relating to*” by “*concerning*”.

10. If there were no further comments, he would consider that the Commission approved the text of the proposed preamble on the understanding that the Secretariat would check the English text and bring it into line with that of the two Vienna Conventions.

On that understanding, the draft preamble was adopted unanimously.

11. The CHAIRMAN invited the Commission to vote on the proposal by the Drafting Committee that the draft preamble should not be placed at the beginning of the draft articles, but should be annexed to them.

The Drafting Committee's proposal was adopted unanimously.

TITLES OF SECTIONS AND ORDER OF ARTICLES PROPOSED BY THE DRAFTING COMMITTEE

12. Mr. AGO, Acting Chairman of the Drafting Committee, said that the Committee proposed the following rearrangement of the order of the articles:

Part I

Special Missions in General

Introductory article. Use of terms.

Article 1. Sending of special missions

Article 2. Field of activity of a special mission

Article 5. Sending of the same special mission to two or more States.

Article 5 *bis*. Sending of a joint special mission by two or more States

Article 5 *ter*. Sending of special missions by two or more States in order to deal with a question of common interest.

Article 1 *bis*. Non-existence of diplomatic or consular relations and non-recognition

Article 3. Appointment of the members of the special mission.

Article 6. Composition of the special mission

Article 14. Nationality of the members of the special mission

Article 8. Notification

Article 4. Persons declared *non grata* or not acceptable

Article 11. Commencement of the functions of a special mission

Article 7. Authority to act on behalf of the special mission

Article 41. Organ of the receiving State with which official business is conducted

Article 9. Rules concerning precedence

Article 13. Seat of the special mission

Article 16. Activities of special missions in the territory of a third State

Article 15. Right of special missions to use the flag and emblem of the sending State

Article 12. End of the functions of a special mission

¹ *Yearbook of the International Law Commission, 1966*, vol. II, document A/6309/Rev.1, part II, para. 67.

Part II

Facilities, Privileges and Immunities

Article 17 *quater*. Status of the Head of State and persons of high rank

Article 17. General facilities

Article 18. Accommodation of the special mission and its members

Article 19. Inviolability of the premises

Article 20. Inviolability of archives and documents

Article 21. Freedom of movement

Article 22. Freedom of communication

Article 23. Exemption of the premises of the special mission from taxation

Article 24. Personal inviolability

Article 25. Inviolability of the private accommodation

Article 26. Immunity from jurisdiction

Article 28. Exemption from social security legislation

Article 29. Exemption from dues and taxes

Article 30. Exemption from personal services and contributions

Article 31. Exemption from customs duties and inspection

Article 32. Administrative and technical staff

Article 33. Members of the service staff

Article 34. Private staff

Article 35. Members of the family

Article 27. Waiver of immunity

Article 27 *bis*. Settlement of civil claims

Article 36. Nationals of the receiving State and persons permanently resident in the receiving State

Article 39. Transit through the territory of a third State

Article 37. Duration of privileges and immunities

Article 38. Property of a member of the special mission or of a member of his family in the event of death

Article 43. Right to leave the territory of the receiving State

Article 44. Consequences of the cessation of the functions of the special mission

Part III

General Clauses

Article 40. Obligation to respect the laws and regulations of the receiving State

Article 42. Professional activity

Article 40 *bis*. Non-discrimination

13. The plenipotentiary conference which adopted the convention would certainly add final clauses: they might either form a separate part IV or be added to part III, which would then be entitled "General and final clauses".

14. Mr. BARTOŠ, Special Rapporteur, said that final clauses were always drafted at the final stage by the conference secretariat, which ensured that such clauses were uniform in all international conventions.

15. The CHAIRMAN invited the Commission first to consider the titles of the three parts of the draft.

16. Mr. REUTER suggested that the word "provisions" should be substituted for the word "clauses" in the title of part III.

17. Mr. AGO said that he would prefer the title "General clauses" to be retained so that the conference could add the final clauses in part III; the term "clauses" was traditionally used in the case of final clauses.

18. Mr. BARTOŠ, Special Rapporteur, supported Mr. Reuter's suggestion. It would be preferable for the final clauses to be placed in a part IV left blank by the Commission.

19. Mr. AGO observed that the title "General provisions" would not be very satisfactory for part III, since the true general provisions concerning special missions were in part I. The term "clauses", which was more limited, was appropriate to the few articles of secondary importance which were brought together in part III.

20. Mr. YASSEEN said that, in his view, the three articles in part III stated general rules which might very well be placed in part I.

21. The CHAIRMAN, speaking as a member of the Commission, said that the difficulty arose largely from the title proposed for part I, in which the word "general" was used. That part dealt in fact with the sending of special missions and their activities. Part III contained a number of provisions which, in the draft on the law of treaties, had been included under the heading of "Miscellaneous provisions."

22. Mr. AGO suggested that part I should be entitled: "Sending and functions of special missions". Another solution would be to include in part I the three articles which the Drafting Committee had proposed should be placed in part III.

23. Mr. BARTOŠ, Special Rapporteur, said that the latter suggestion could, if necessary, be applied to articles 40 *bis* and 42, but not to article 40, since the rule stating the obligation to respect the laws and regulations of the receiving State also applied to all the rules in part II.

24. Mr. IGNACIO-PINTO suggested that part I might be entitled simply: "Special missions", as the phrase "in general" gave the impression that the draft went on to deal with special missions in particular.

25. Mr. REUTER supported Mr. Ago's first suggestion concerning the title of part I. The term "sending" was well chosen, as it reappeared in the titles of several articles in that part. The term "functions" was also suitable. An alternative wording might be: "Sending and activities of special missions".

26. Mr. YASSEEN proposed the title "Sending and conduct of special missions".

27. The CHAIRMAN pointed out that chapter I, section I of the Vienna Convention on Consular Relations was entitled "Establishment and conduct of consular relations".

28. Mr. USTOR said that article 40 (Obligation to respect the laws and regulations of the receiving State) and article 42 (Professional activity) corresponded to articles 55 and 57 of the Vienna Convention on Consular Rela-

tions, to be found in chapter II, section II of that Convention, which dealt with facilities, privileges and immunities. It might be possible to adopt that same system in the present draft.

29. The CHAIRMAN said that, if there were no further comments, he would put to the vote the titles proposed for the three parts, namely, part I: "Sending and conduct of special missions"; part II: "Facilities, privileges and immunities" and part III: "General provisions".

The proposed titles were adopted unanimously.

30. The CHAIRMAN said that, if there were no comments, he would consider that the Commission approved the order proposed by the Drafting Committee for the articles in part I.

It was so agreed.

31. The CHAIRMAN invited the Commission to consider the order proposed by the Drafting Committee for the articles in part II.

32. Mr. AGO said that he would prefer article 23 (Exemption of the premises of the special mission from taxation) to be placed later in the text, so as to avoid interrupting the series of articles concerning freedom of movement and communication, personal inviolability and inviolability of the private accommodation. That article would be better placed among the articles concerning exemption from dues and taxes, customs duties and inspection, and so forth.

33. Mr. BARTOŠ, Special Rapporteur, suggested that article 23 should rather be placed after 19 (Inviolability of the premises) or after article 18 (Accommodation of the special mission and its members). The three articles concerning the premises would then be grouped together. In any event, it would be better not to place article 23 with the articles laying down the exemptions granted to persons.

34. Mr. CASTRÉN said that if article 23 was moved, he would prefer article 19 (Inviolability of the premises) not to be separated from article 20 (Inviolability of archives and documents).

35. Mr. USHAKOV observed that in the Vienna Convention on Diplomatic Relations, articles 21, 22 and 23 formed a series dealing with the premises of the mission and the accommodation of its members, the inviolability of the premises and the exemption of the premises from taxation. That model should be followed; in other words, article 23 should be placed after article 19, as the Special Rapporteur had proposed.

36. Mr. AGO said that he preferred the Special Rapporteur's second suggestion, namely, that article 23 should be placed after article 18.

37. The CHAIRMAN said that, if there were no further comments, he would consider that the Commission had decided to place article 23 after article 18.

It was so agreed.

38. Mr. JIMÉNEZ de ARÉCHAGA proposed that article 27 (Waiver of immunity) and article 27 *bis* (Settle-

ment of civil claims) should be moved up to come immediately after article 26 (Immunity from jurisdiction). That order would be more logical than the one proposed by the Drafting Committee and would facilitate a correct interpretation of the scope of articles 27 and 27 *bis*.

39. Mr. CASTRÉN pointed out that the question raised by Mr. Jiménez de Aréchaga had already been discussed; the Commission had concluded that the article concerning waiver of immunity (article 27) should follow the articles concerning the immunities granted to the different categories of staff.

40. Mr. JIMÉNEZ de ARÉCHAGA said it would be dangerous to separate the article on waiver of immunity (article 27) from the article on immunity from jurisdiction (article 26) to which it was directly related. Any such separation might create the erroneous impression that waiver of immunity could apply to other privileges as well. With regard to article 27 *bis* on the settlement of civil claims, that article related exclusively to the question of immunity from civil jurisdiction; it was therefore essential that it should come immediately after articles 26 and 27.

41. Mr. BARTOŠ, Special Rapporteur, proposed that articles 27 and 27 *bis* should come after article 36 (Nationals of the receiving State and persons permanently resident in the receiving State), since the State might also either waive immunity or endeavour to bring about a just settlement of claims in the case of the persons referred to in that article.

42. Mr. USHAKOV said he shared the view of Mr. Jiménez de Aréchaga. In the Vienna Convention on Diplomatic Relations, the article on waiver of immunity (article 32), which followed the article on immunity from jurisdiction, was placed before the provision relating to members of the family, members of the administrative and technical staff, members of the service staff and private servants (article 37). The same system should be adopted in the present draft.

43. Mr. AGO said he did not agree. In his opinion, it was the titles of the articles which were misleading. Article 26 dealt solely with immunity from jurisdiction for representatives and members of the diplomatic staff, whereas articles 32, 33, 34 and 35 in fact dealt with the same problem in the case of the categories of persons covered by those articles.

44. The CHAIRMAN said it was quite logical to propose an arrangement different from that adopted in the 1961 Vienna Convention. The waiver of immunity dealt with in article 27 related not only to article 26, dealing with the immunity from jurisdiction of representatives and members of the diplomatic staff, but also to a number of other articles, such as article 32 (Administrative and technical staff), article 33 (Members of the service staff), article 34 (Private staff) and article 35 (Members of the family).

45. Mr. JIMÉNEZ de ARÉCHAGA said that the important point was the link between the subject-matter of articles 27 and 27 *bis* and that of article 26, not the

secondary question of the persons who enjoyed privileges and immunities under articles other than article 26, which was the basic article.

46. Mr. BARTOŠ, Special Rapporteur, observed that article 27 related not merely to immunity in respect of civil proceedings but to immunities in general, whereas article 27 *bis* dealt only with civil claims.

47. Mr. USHAKOV said he still did not see why the Commission should depart from the order followed in the Vienna Convention on Diplomatic Relations.

48. The CHAIRMAN said that both the proposals made with regard to the placing of articles 27 and 27 *bis* produced the same legal result, although the order adopted in the 1961 Vienna Convention arrived at that result more obliquely.

49. Mr. JIMÉNEZ de ARÉCHAGA said he was still firmly convinced that it would be misleading to separate articles 27 and 27 *bis* from article 26, which was the basic provision on immunity from jurisdiction. The proposal to place articles 27 and 27 *bis* after articles 32, 33, 34, 35 and 36 would not improve the presentation of the draft. The arrangement of the corresponding articles in the 1961 Vienna Convention was infinitely more logical, because it grouped together articles which had a substantive link between them. The present proposal would have the effect of separating articles which were linked in substance in order to take account of other links of a secondary character.

50. The CHAIRMAN pointed out that there was no danger of misunderstanding with regard to the scope of article 27, because the text of that article² specified that the sending State could waive "the immunity from jurisdiction". It was therefore perfectly clear that the possibility of waiver for which provision was made in article 27 related solely to immunity from jurisdiction and not to other privileges.

51. He invited the Commission to vote on the Drafting Committee's proposal, as amended by the Special Rapporteur, to place articles 27 and 27 *bis* immediately after articles 28 to 36.

That proposal was adopted by 9 votes to 1, with 3 abstentions.

52. The CHAIRMAN asked whether members of the Commission had any further comments on the order of the articles in part II.

53. Mr. AGO said it would be more logical to group together articles 19 and 20 (Inviolability of the premises and Inviolability of archives and documents), on the one hand, and articles 24 and 25 (Personal inviolability and Inviolability of the private accommodation), on the other.

54. Mr. BARTOŠ, Special Rapporteur, said he did not agree. The inviolability of the premises, of archives and documents, as well as freedom of movement and communication concerned the conduct of the special mission, whereas personal inviolability and inviolability of the

private accommodation were part of the personal immunities.

55. Mr. AGO said that he would not press his suggestion.

56. The CHAIRMAN said that if there were no further comments he would consider that the Commission approved the order proposed by the Drafting Committee for the articles in parts II and III, subject to the amendments adopted in the course of the discussion on part II.

It was so agreed.

DRAFT ARTICLES PROPOSED BY THE
DRAFTING COMMITTEE

(resumed from the previous meeting)

ARTICLE 41 (Organ of the receiving State with which official business is conducted) [15]³

57. Mr. AGO, Acting Chairman of the Drafting Committee, pointed out that the only change related to the last phrase, which now read: "or with such other organ of the receiving State as may be agreed".

Article 41 was adopted unanimously.

ARTICLE 42 (Professional activity) [49]⁴

58. Mr. AGO, Acting Chairman of the Drafting Committee, explained that the Drafting Committee had decided against the addition of a clause stipulating that the members of a special mission might practice certain professional or other activities with the special permission of the receiving State, since if that question were raised, it would normally be dealt with in the special agreement between the two States. The general rule was therefore sufficient.

Article 42 was adopted unanimously.

ARTICLE 44 (Consequences of the cessation of the functions of the special mission) [47]⁵

59. Mr. AGO, Acting Chairman of the Drafting Committee, said that the Committee proposed the following title and text for article 44:

*"Consequences of the cessation of the functions
of the special mission"*

"1. When the functions of a special mission come to an end, the receiving State must respect and protect the premises of the special mission so long as they are allocated to it, as well as the property and archives of the special mission. The sending State must withdraw that property and those archives within a reasonable time.

"2. In case of absence or breach of diplomatic or consular relations between the sending State and the receiving State and if the functions of the special mission have come to an end, the sending State, even if there is an armed conflict, may entrust the custody of the property and archives of the special mission to a third State acceptable to the receiving State."

² See 933rd meeting, para. 14.

³ For earlier discussion, see 910th meeting, paras. 105-112.

⁴ For earlier discussion, see 910th meeting, paras. 82-104.

⁵ For earlier discussion, see 912th meeting, paras. 1-44.

60. The wording of the article had given rise to some problems because the consequences of the cessation of the functions of a special mission were not the same as those of the cessation of the functions of a permanent diplomatic mission. The Drafting Committee had taken into account Mr. Kearney's observation regarding the sending State's obligation to withdraw its property and archives within a reasonable time so that the receiving State should not be committed beyond a certain period.

61. The CHAIRMAN said that he was not altogether satisfied with the term "allocated", which was used in paragraph 1 to render the French "affectés" in connexion with the premises of the special mission.

62. Mr. KEARNEY said that the Drafting Committee had experienced some difficulty with regard to the choice of the appropriate English term. The term "allocated" had the disadvantage of having an official connotation that was not altogether suitable for most of the premises to which article 44 would relate. The Committee had considered the possibility of using the word "assigned" but that word had a similar connotation and was even stronger than "allocated".

63. Mr. REUTER suggested that, for ease of translation into English, the French text should describe the premises as being "à la disposition de la mission" rather than "affectés". However, the word "affectés" better conveyed the idea that the premises were definitely recognized as those of the special mission.

64. Mr. AGO agreed that "affectés" was a better term to express the rule that the premises remained those of the special mission after its departure, as long as the property and archives had not been withdrawn.

65. The CHAIRMAN noted that, in the light of the explanations given in the course of the discussion, there was no need to modify the Drafting Committee's text for article 44.

Article 44 was adopted unanimously.

MISCELLANEOUS DRAFTING POINTS

66. Mr. JIMÉNEZ de ARÉCHAGA said that, in concurring the Spanish text of the articles with the originals, it had been noted that there were some discrepancies between the English and French texts or that the terms used had varied from one article to another. Thus, in article 26, paragraph 4,⁶ the word "residence", which corresponded to the wording of the Vienna Convention, had been used, although the Commission had decided to avoid that word in article 25 where reference was made to "accommodation". The English and French versions of the title of article 30 did not correspond, for the English title read "Exemption from personal services and contributions", and the French "*Exemption des prestations personnelles*". The French text of article 31, paragraph 1,⁷ was clumsy because of the repetition of the word "autres". Finally, there was a discrepancy between the use of the

singular and the plural in the phrase denoting the members of the family in article 31, paragraph 1, and article 39, paragraph 2.⁸

67. Mr. AGO, Acting Chairman of the Drafting Committee, said that in the French text of article 31, paragraph 1, the word "autres" preceding "redevances" should be deleted so that the phrase would read: "*taxes et redevances connexes autres que*".

68. In sub-paragraph (b) of that paragraph the expression "les familles" should be in the singular, and the whole phrase should read: "*des membres de leur famille qui les accompagnent*".

69. The CHAIRMAN suggested that the word "accommodation" should be used in article 26 to bring it into line with article 25.

It was so agreed.

70. Mr. AGO suggested that in the French text the last sentence of paragraph 1 of article 6 (Composition of the special mission)⁹ should be replaced by the following: "*Elle peut comprendre en outre un personnel diplomatique, un personnel administratif et technique ainsi qu'un personnel de service*", for the wording as it stood gave the impression that the diplomatic staff and the administrative and technical staff made up a single category.

71. The CHAIRMAN said that the Special Rapporteur and the Secretariat would no doubt find other small drafting points which would have to be adjusted in the final text.

72. On the occasion of the completion of the Commission's substantive work on special missions, he wished to congratulate the Special Rapporteur on the successful accomplishment of his arduous task. It was the enthusiasm, hard work and outstanding legal gifts of the Special Rapporteur which had made that happy situation possible.

73. Mr. BARTOŠ, Special Rapporteur, said he was deeply grateful to all the members of the Commission, and especially to Mr. Ago, for their collaboration, advice and interest, which had enabled him to complete his task. He expressed his thanks to the Chairman for the wisdom and intelligence with which he had conducted the debates. He would also like to thank the members of the Secretariat, the interpreters and the précis-writers; he had greatly appreciated the professional conscientiousness and care with which they had faithfully rendered the views which had been expressed.

Organization of Future Work

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

(resumed from the 929th meeting)

[Item 6 of the agenda]

74. The CHAIRMAN, summing up the position with regard to the Commission's future work, said that, after considering item 3 of its agenda concerning State respon-

⁶ For text, see 933rd meeting, para. 2.

⁷ For text, see 933rd meeting, para. 78.

⁸ For text, see 931st meeting, para. 7.

⁹ For text, see 931st meeting, para. 124.

sibility, the Commission had confirmed Mr. Ago in the office of Special Rapporteur on that topic and had reaffirmed in general terms the instructions given to him as Special Rapporteur in 1963.¹⁰ It had also noted that Mr. Ago would submit a substantive report on the topic to the Commission at its twenty-first session in 1969.

75. Mr. El-Erian had submitted his second report on relations between States and inter-governmental organizations (A/CN.4/195). He had indicated in a letter that the first half of his set of draft articles was already completed¹¹ and that he would be in a position to submit the second half in time for the Commission's twentieth session.

76. During the discussion of its future work at the 928th and 929th meetings, the Commission had generally shared the view of its officers that priority should be given to the topic of State succession. It had been proposed that he himself should act as Special Rapporteur for State succession in respect of treaties and that Mr. Bedjaoui should be invited to act as Special Rapporteur on State succession in respect of rights and duties resulting from sources other than treaties. He had agreed to undertake the work, and had received a letter from Mr. Bedjaoui also accepting the office, but suggesting that a general debate might be held on the broad topic assigned to him, to see whether one Special Rapporteur would suffice and to obtain general directives from the Commission on the way in which the topic should be handled.

77. He invited the Commission to approve that general outline for the programme of its twentieth session.

The general programme was approved unanimously.

78. The CHAIRMAN said that a useful discussion had been held on new topics which the Commission might consider. Thus, Mr. Tammes had suggested the topic of unilateral acts,¹² which was a vast subject, comparable in interest and importance to those which the Commission was already considering. Accordingly, all that the Commission could do for the time being was to note the suggestion. Mr. Tammes had also suggested that the Commission might offer to undertake an investigation of institutional procedures, such as fact-finding;¹³ but that subject, like the topic of international rivers, was too extensive to be undertaken at the same time as the Commission's current work.

79. On the other hand, the topic of the most-favoured-nation clause, mentioned by Mr. Jiménez de Aréchaga,¹⁴ was more limited in scope and might well be taken up during the fourth or fifth year of the current term of office of the Commission's members. The subject had been raised in connexion with the law of treaties, but had not been discussed in relation to the effect of treaties on third States because it had been thought that such a course might lead to complications. The Commission's budget did not, however, preclude the appointment of

another Special Rapporteur, and it would be useful to have such a limited topic in reserve to discuss at the convenient points during the Commission's deliberations.

80. Mr. JIMÉNEZ de ARÉCHAGA pointed out that another reason for dealing with the topic during the current term of office of the Commission's members was that the United Nations was undertaking a study of the law of international trade: the Special Rapporteur might take advantage of the conclusions of that study in preparing his draft.

81. Mr. BARTOŠ said that the Sixth Committee of the General Assembly had criticized the International Law Commission for failing to include in its programme the questions to which that Committee gave priority. The Commission had, for instance, declined to take up the topic of international trade law, the study of which had been recommended by the General Assembly, because it had thought that it did not have the necessary time. It could hardly now include new topics on its programme. Furthermore, the General Assembly had never proposed the topic of international rivers for study, since the developing countries regarded the formulation of rules for navigation on such waterways as likely to infringe their sovereignty. The Commission should not reject topics recommended by the General Assembly and accept topics which had been rejected by it. It already had too many items on its agenda; if it nevertheless added yet another item, it would be preferable to choose unilateral acts, which bore some relation to the law of treaties.

82. Mr. TABIBI said that in his view the Commission should not take any hasty decision on new topics for its future work. It was essential to study topics which corresponded to the modern requirements of the world at large and of various regions, and also to comply with the instructions of the General Assembly. Since the programme for the forthcoming session had already been established, it might be wise to set up a subsidiary body of the Commission to study the wishes of the General Assembly, the topics which had been given some consideration and then left in abeyance, and perhaps even the possibility of altering the Commission's Statute. Another important point which such a body should examine was duplication of work: subjects which should properly be dealt with by the Commission were gradually being encroached upon by other United Nations bodies.

83. Mr. YASSEEN agreed that the Commission should proceed very cautiously and, above all, should take proposals by the General Assembly into account before placing any fresh topic on its agenda. In that connexion, he recalled that when the Sixth Committee had adopted the resolution recommending the study of the topic of the right of asylum,¹⁵ several delegations had wished to insert in the operative part a paragraph requesting that priority should be given to the topic. The Chairman of the International Law Commission had then pointed out that such an addition was not necessary, as the Commission took into account any wish expressed by the Sixth

¹⁰ See 935th meeting, para. 14.

¹¹ Document A/CN.4/195/Add.1.

¹² See 928th meeting, para. 6.

¹³ *Ibid.*, para. 10.

¹⁴ See 929th meeting, para. 79.

¹⁵ General Assembly resolution 1400 (XIV).

Committee of the General Assembly.¹⁶ The Commission had not, however, so far tackled that topic.

84. Mr. AGO thought that the Commission should begin by drawing a distinction between very broad topics and topics of more limited scope. With regard to the former, the Commission had already placed on its agenda succession of States and State responsibility. As the term of office of members of the Commission expired in four years' time, it was useless to contemplate studying another topic of that magnitude; it was questionable whether the Commission would be able to complete the codification of those two topics. On the other hand, it was desirable that the Commission should always have on its agenda more limited topics which it could take up, if necessary, in the absence of the special rapporteur responsible for a broader topic.

85. He himself feared that a codification of the question of the right of asylum might disturb the balance which seemed to have established itself in practice. As to the question of historic bays, also proposed by the General Assembly, its codification would perhaps complete the law of the sea, but it was not an urgent problem.

86. On the other hand, the question of the most-favoured-nation clause was of great importance and was connected with international trade, the study of which had been recommended by the General Assembly. Indeed, the Commission had touched on that topic in preparing the draft convention on the law of treaties, and had expressed the view that a special study should be devoted to it. It would therefore be logical to place it on the agenda.

87. Mr. NAGENDRA SINGH also thought that the Commission should complete its work on the topics already before it before adopting new ones. Perhaps it was because the Commission took so long to complete its work that the General Assembly was tempted to entrust topics to other bodies.

88. The CHAIRMAN pointed out that there was no question of including any more major topics in the Commission's programme for the time being. Indeed, work on relations between States and inter-governmental organizations, State succession and State responsibility was likely to take up the remainder of the term of office of the Commission's members and possibly another five years. It was useful, however, to have in reserve a more limited topic which could be discussed in the intervals when the Special Rapporteur and the Drafting Committee were preparing texts on a major topic. The subject of the most-favoured-nation clause, which was complementary to the law of treaties, was not urgent, but might be completed during those intervals.

The meeting rose at 1.5 p.m.

¹⁶ For discussion of this subject in the Sixth Committee, see *Official Records of the General Assembly, Fourteenth Session, Sixth Committee, 602nd-612th meetings.*

939th MEETING

Thursday, 13 July 1967, at 10.10 a.m.

Chairman: Sir Humphrey WALDOCK

Present: Mr. Ago, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Ignacio-Pinto, Mr. Jiménez de Aréchaga, Mr. Kearney, Mr. Nagendra Singh, Mr. Reuter, Mr. Tabibi, Mr. Tammes, Mr. Ushakov, Mr. Ustor, Mr. Yasseen.

Organization of Future Work

(A/CN.4/L.119)

(continued)

[Item 6 of the agenda]

1. The CHAIRMAN said he wished to assure Mr. Tabibi and other speakers that the Commission had always been careful to respect the wishes of the General Assembly. The working paper on the organization of future work (A/CN.4/L.119) showed the position with regard to the various topics in the Commission's general programme, including those proposed by the General Assembly, and he himself had drawn the Commission's attention at the 896th meeting¹ to the report of the Sixth Committee to the General Assembly at its twenty-first session.² The Commission's earlier discussions had shown that all its members were aware of the importance of the General Assembly's directives; indeed, the Commission's current programme had been handed down to it from its previous members, and the decision to give priority to State succession in respect of treaties had been taken in response to the Assembly's instructions.

2. It should be borne in mind, however, that the Commission's programme was very heavy and that even if all the Special Rapporteurs submitted reports and draft articles in time and could be at the Commission's disposal when required, the programme was likely to take not only the current five-year period, but also the next, to complete. That could be used as an argument against adding any further topics to the programme, but it was wise to have a limited topic in reserve for consideration during periods when the major topic could not be discussed because the Special Rapporteur was unavoidably absent or had not completed his report in time.

3. While he fully appreciated Mr. Tabibi's wish to have the whole question of the Commission's work studied by a subsidiary body of the Commission, it should be remembered that the choice of any major topic would commit the Commission far into the future. Care must be taken not to give the General Assembly the impression that there was any possibility of adding new topics to the Commission's present programme or to arouse undue expectations.

4. Mr. NAGENDRA SINGH said he considered that Mr. Jiménez de Aréchaga's proposal for the inclusion of

¹ Para. 4.

² *Official Records of the General Assembly, Twenty-first Session, Annexes, agenda item 84, document A/6516.*