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**Summary record of the 957th meeting**

Topic:  
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Extract from the Yearbook of the International Law Commission:-  
**1968, vol. I**

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draft articles on consular relations had also been received and taken into consideration by the Commission.

68. Mr. ROSENNE thanked the Secretary for his full reply.

69. Mr. USTOR asked the Secretary whether the Secretary-General would act in the same way in the case of a non-member State other than Switzerland.

70. Mr. MOVCHAN (Secretary to the Commission) said that the information he had just given was based on twenty years of practice of the International Law Commission. He had mentioned one case in which the Swiss Government had taken the initiative; that case had been discussed in the Commission and the Secretary-General had acted in accordance with its recommendation. An account of the discussion on the matter in the Commission could be found in volume I of the *Yearbook for 1958*.<sup>10</sup>

71. Mr. BARTOŠ said he wished to draw the Secretary's attention to another point. In preparing his present report the Special Rapporteur had considered information obtained from international organizations. Moreover, the Commission had before it a study by the Secretariat on the practice of the United Nations, the specialized agencies and the International Atomic Energy Agency concerning their status, privileges and immunities (A/CN.4/L.118 and Add.1-2). The Commission was willing to take into consideration any wishes which international organizations might express concerning their relations with States. That being so, he would like to know whether international organizations had been invited to send observers to the present session, at which the Commission was discussing matters that affected them so closely. The presence of such observers, even if they were not entitled to take part in the discussion, could help the Commission by facilitating unofficial contacts. The Commission had earlier expressed its intention of strengthening its relations with international organizations in connexion with the codification of international law. The topic now being studied was one in which such relations were especially necessary.

72. Mr. AMADO said he understood Mr. Bartoš's concern, but must point out that governments, to which the texts of the Commission's drafts were always transmitted for comment, sent neither representatives nor observers to its sessions. It was difficult to see how international organizations, which were extremely numerous, could follow the meetings of the Commission. If their observers were not entitled to participate in the discussions, they would have to submit written comments afterwards. The same result could be achieved more conveniently by simply transmitting to the organizations the texts of the draft articles adopted by the Commission.

73. Mr. BARTOŠ said he agreed that that should be done, at least for the fourteen organizations related to the United Nations as specialized agencies.

74. Mr. MOVCHAN (Secretary to the Commission) said it could be assumed that international organizations were well informed about the items on the Commission's agenda at its present session. The Secretariat had received

several letters from international organizations at Geneva expressing interest in certain items; it had replied to those letters that the meetings of the International Law Commission were open to the public and that any person interested could attend as a visitor.

75. With regard to the organizations to which the Commission's documents should be sent, discussions were still in the preliminary stage and any further steps should be decided by the Commission itself.

76. Mr. BARTOŠ said he was fully satisfied with the Secretary's reply. The international organizations, in particular those connected with the United Nations, had been informed of the work undertaken by the Commission; the meetings of the Commission were public; and the Commission's report, together with the final summary records of its meetings, would be transmitted to them. They would therefore have every opportunity of submitting their comments in good time. He thought those comments would be taken into consideration during the second reading of the draft.

77. Mr. TABIBI said he was satisfied with the Secretary's reply, but he wished to draw attention to the special procedure in one organ of the United Nations, the Economic and Social Council, which reviewed the list of international organizations every year and decided which should be invited to participate in its work.

78. Mr. ROSENNE said it had been the consistent practice of the Commission not to permit the presence of observers from States. That question had last arisen in connexion with the work of the Sub-Committees on State responsibility and State succession.<sup>11</sup>

79. An entirely different question was to whom the first text of the draft articles should be sent, together with an invitation to submit comments on them. It was not the Commission's practice to ask international organizations to submit comments; in the case of the law of treaties, that had meant that the observations of the United Nations and other international organizations<sup>12</sup> had not been available to the Commission itself, and had been scrutinized only by the Vienna Conference. The Commission should consider carefully which international organizations the present draft articles should be sent to after the first reading.

The meeting rose at 1.5 p.m.

<sup>11</sup> See *Yearbook of the International Law Commission, 1963*, vol. II, pp. 228-9 and 262.

<sup>12</sup> A/6827/Add.1. Parts B and C; A/CONF.39/7 and Add.1.

## 957th MEETING

Wednesday, 19 June 1968, at 10.10 a.m.

Chairman: Mr. José María RUDA

*Present:* Mr. Ago, Mr. Albónico, Mr. Amado, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. El-Erian, Mr. Eustathiades, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Reuter, Mr. Rosenne,

<sup>10</sup> *loc. cit.*

Mr. Tabibi, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

### Co-operation with other Bodies

[Item 5 of the agenda]  
(resumed from the 952nd meeting)

#### STATEMENT BY THE OBSERVER FOR THE INTER-AMERICAN JURIDICAL COMMITTEE

1. The CHAIRMAN invited the Observer for the Inter-American Juridical Committee to address the Commission.
2. Mr. CAICEDO CASTILLA (Observer for the Inter-American Juridical Committee) said that in 1967 he had informed the Commission that the Inter-American Conference at Buenos Aires had adopted various amendments to the Charter of Bogotá,<sup>1</sup> which was the basic statute of the Organization of American States (OAS). Those amendments had not yet been ratified by the necessary two-thirds of the signatory States, but that number was expected to be achieved within the year. When the amended Charter entered into force, the American regional organization would be able to play a more positive role in dealing with the problems that arose. Its present highest organ, the Inter-American Conference, which met every five years, would be replaced by a General Assembly, meeting annually. It would thus be possible to study the questions which arose in good time, to make an annual evaluation of the results obtained and to draw up a concrete programme of work for the following year.
3. The OAS considered the problems of the American continent from three points of view: political, economic and legal. Article 2 of the amended Charter provided that the essential purposes of the Organization were: first, to strengthen the peace and security of the Continent; secondly, to prevent possible causes of difficulties and to ensure the pacific settlement of disputes that might arise among the Member States; thirdly, to provide for common action on the part of those States in the event of aggression; fourthly, to seek the solution of political, juridical and economic problems that might arise among them; and fifthly, to promote, by co-operative action, their economic, social and cultural development. Those provisions clearly showed the unexceptionable nature of the Organization's aims.
4. The new article 3 (b) reaffirmed the principle that "International order consists essentially of respect for the personality, sovereignty and independence of States, and the faithful fulfilment of obligations derived from treaties and other sources of international law".
5. In the political sphere, the OAS had a system of consultations through its Meeting of Ministers of Foreign Affairs, which considered urgent problems of common interest to the American States, and acknowledged the obligation of solidarity in the event of an armed attack against any American State. It had a system of peaceful

settlements, ranging from conciliation commissions to international arbitral tribunals and judicial proceedings before the International Court of Justice at The Hague. It also supported the principle of non-intervention by one State in the internal or external affairs of another as a basic and indispensable rule for protection of the sovereignty, independence and juridical equality of Members of the Organization.

6. In the economic sphere, the main purpose in amending the Charter of Bogotá had been to adopt rules which took into account the urgent needs of the American Continent. The new Charter contained fourteen articles on economic matters, as against four in the old Charter. Some of them were recommendations rather than obligations and, consequently, as an idealistic expression of human aspirations, might create some confusion in the minds of the general public, which looked for concrete achievements by international bodies and not mere doctrinaire statements. Nevertheless, the new Charter represented a considerable advance on the old one. Article 26 of the old Charter had merely stated that: "The Member States agree to co-operate with one another, as far as their resources may permit and their laws may provide, in the broadest spirit of good neighbourliness, in order to strengthen their economic structure, develop their agriculture and mining, promote their industry and increase their trade".

7. The provisions of the new Charter were fuller and designed to achieve concrete aims. Article 29 read: "The Member States, inspired by the principles of inter-American solidarity and co-operation, pledge themselves to a united effort to ensure social justice in the Hemisphere and dynamic and balanced economic development for their peoples, as conditions essential to peace and security". That was undoubtedly a stronger provision than the one at present in force, and was directed towards two highly important objectives: first, social justice, which meant improved living conditions for human beings; and, secondly, the economic development of the American States.

8. Again, article 35 read: "The Member States agree to join together in seeking a solution to urgent or critical problems that may arise whenever the economic development or stability of any Member State is seriously affected by conditions that cannot be remedied through the efforts of that State". The term "agree" was significant, since it implied an obligation on the part of the Member States. There had thus been established a kind of collective economic action of capital importance for the future—a system of consultation on economic matters between the American countries.

9. As far as juridical organs were concerned, the new Charter retained only the Inter-American Juridical Committee, to which it assigned as fields of work: the progressive development and codification of international law in America; the unification, wherever possible, of the laws of American countries; the provision of advisory opinions to American governments or to the OAS itself; the study of juridical problems related to the integration of the developing countries of the Hemisphere; and the studies and preparatory work assigned to it by the Organization.

<sup>1</sup> See United Nations, *Treaty Series*, vol. 119, p. 48.

10. In the past, the Committee had carried out numerous codification projects, such as the American Declaration of the Rights and Duties of Man,<sup>2</sup> the American Treaty on Pacific Settlement,<sup>3</sup> which had been ratified by a majority of the American States, and the Conventions on territorial and diplomatic asylum, which had also been generally ratified. It had also prepared a draft convention on the industrial and agricultural use of international rivers and a draft code of private international law, both of which were to be considered at specialized conferences of plenipotentiaries during the next few months.

11. In addition, the Committee had prepared a draft convention on extradition, which would replace the present bilateral agreements by an instrument of continental scope, a convention on the definition of a political crime for the purposes of the application of the conventions on asylum, and other conventions on the breadth of the territorial sea and double or multiple taxation.

12. The Committee had expressed in concrete rules the doctrines recognized by Latin-American customary law. That applied, for instance, to the legal effects of reservations to multilateral treaties and to the international responsibility of States, two subjects concerning which Latin-American law advocated new and very interesting rules.

13. With regard to reservations, Latin-American law did not require their unanimous acceptance by the contracting parties, but permitted partial acceptance. With regard to international responsibility, the Committee had set out ten principles, representing the Latin-American contribution in that field, which included the principle of equality between nationals and aliens, namely, that the State was not responsible for acts or omissions relating to aliens except in the same cases and under the same conditions as prescribed by law for its own nationals. A State could not present a claim through the diplomatic channel to protect its nationals or initiate proceedings before an international tribunal unless those nationals had exhausted the legal remedies available in the courts of the other State. Further, the State was freed from all international responsibility if an alien had contractually renounced the diplomatic protection of his government. State responsibility for contractual debts could not be enforced by recourse to armed force, even if the State had not answered a proposal for arbitration or had failed to comply with an arbitral award.

14. The Committee had drafted a convention on commercial arbitration, paying special attention to American problems, which endorsed the validity of the *compromis*, allowed arbitrators to be either nationals or aliens, and laid down that arbitral awards had the force of final judgments; it provided that, in the absence of express agreement between the parties, the arbitral procedure should be as laid down by local law, or failing that as laid down in the rules of the Inter-American Committee on Peaceful Settlement. It had also drafted a convention on the simplification of migration formalities for nationals of American States. It had performed the task of drafting a uniform law for all American States concerning the

international sale of moveable property, and, on the basis of the Hague draft of 1964, had examined the question of guaranteeing investments, though it had not yet reached final agreement on the matter.

15. Lastly, with regard to co-operation between the Committee and the International Law Commission, to which the Latin-American Juridical Committee attached the greatest importance, it was encouraging to note that there had been an exchange of correspondence between the two concerning the Commission's work at its present session. The Committee would be honoured if the International Law Commission would send an observer to its next session.

16. The CHAIRMAN, thanking the Observer for the Inter-American Juridical Committee for his very informative statement, said that the work being done by the Committee in the field of public and private law, as well as in other important fields, was of the greatest interest, particularly in view of the recent change in the fundamental structure of the Committee. He could assure the Observer that the Commission would continue to co-operate closely with the Inter-American Juridical Committee and would give careful consideration to its invitation to send an observer to the Committee's next session.

17. Mr. ALBÓNICO congratulated Mr. Caicedo Castilla on his very able statement and said that the Commission took the greatest interest in the work done by the Committee for the unification of public and private international law on the American continent.

18. Mr. YASSEEN said he was glad to welcome Mr. Caicedo Castilla as an eminent jurist from Latin America, a part of the world which had contributed so much to the development of 'the international legal order and which also deserved recognition for having undertaken the democratization of international law. The Commission's task could be greatly facilitated by such useful contacts with qualified representatives of the world's various legal systems.

19. Mr. KEARNEY said that he too wished to congratulate Mr. Caicedo Castilla on his excellent report. The draft convention on commercial arbitration recently prepared by the Committee was an important contribution to the equitable settlement of international disputes and augured well for the work which could be expected of the Committee in the future.

20. Sir Humphrey WALDOCK, after congratulating Mr. Caicedo Castilla on his full and detailed report, said that all members of the Commission shared his views concerning the importance of co-operation with other bodies dealing with the codification of international law. Since regional bodies had recently become more active in that field, it was increasingly difficult for the average international lawyer to maintain adequate contacts with legal developments in all parts of the world. He hoped, therefore, that the Commission would be able to send an observer to the Committee's next session. He also hoped that Mr. Caicedo Castilla's report, which was deserving of careful study, could be circulated as an informal document, or reproduced in very full form.

21. Mr. AMADO, speaking also on behalf of Mr. Castañeda, said he wished to thank the Observer for the

<sup>2</sup> Resolution No. 8 of the 1948 Bogotá Conference.

<sup>3</sup> See United Nations, *Treaty Series*, vol. 30, p. 84.

Inter-American Juridical Committee for his very full, precise and enlightening report. It was not so long ago that the jurists of countries like Brazil, whose training in the past had been essentially European, and above all French, had first begun to think as Americans. The work of the Inter-American Juridical Committee on questions such as reservations to multilateral treaties bore witness to that development. He was glad that the Committee had not confined itself to theoretical studies, but had set about practical problems with an unflinching concern for efficiency.

22. Mr. EUSTATHIADES congratulated Mr. Caicedo Castilla on his very clear and interesting statement and paid a tribute to the contribution of Latin America to the progress of the science of international law. He stressed that the activities of the Inter-American Juridical Committee had included work not only on subjects such as extradition and political crimes, but also on State responsibility with regard to equality between nationals and aliens, which had provided material of great value to the International Law Commission in its task of codification.

23. Mr. NAGENDRA SINGH, speaking also on behalf of Mr. Tabibi, thanked Mr. Caicedo Castilla for his informative report and expressed his sincere wishes for the success of the Committee's future work.

24. Mr. EL-ERIAN, speaking also on behalf of Mr. Ramangasoavina, said he wished to convey to Mr. Caicedo Castilla the appreciation of the jurists of Africa and the Middle East for the work being done by the Inter-American Juridical Committee. When the African States had met at Addis Ababa in 1963 to establish the Organization of African Unity, they had been inspired by the example of the Organization of American States and had taken its Charter and rules of procedure as models. The contribution of the Latin-American States to the progressive development of international law, particularly with respect to the principle of non-intervention, the right of asylum and commercial arbitration, was of lasting value to the whole world.

#### **Review of the Commission's Programme and Methods of Work**

[Item 4 of the agenda]

#### **Organization of Future Work**

[Item 6 of the agenda]

25. The CHAIRMAN invited Mr. Stavropoulos, the Legal Counsel of the United Nations, to address the Commission.

26. Mr. STAVROPOULOS (Legal Counsel) said that, during the first session of the Vienna Conference on the Law of Treaties, the Committee of the Whole, assisted by the Drafting Committee of the Conference, had considered the Commission's draft articles and the amendments thereto. On the basis of the Drafting Committee's reports, most of the articles of the Commission's draft had been adopted by the Committee of the Whole. Remarkable progress had been made during the first session of the Conference, but there still remained some

important controversial issues which would have to be settled before the convention could be adopted. During its second session, which was to be held from 9 April to 21 May 1969, the main task of the Conference would be to reach compromise solutions on those issues.

27. It went without saying that the excellence of the draft prepared by the International Law Commission had been the main factor in the remarkable progress made by the Conference. The presence in Vienna of many members of the Commission in the capacity of officers of the Conference, representatives of States or expert consultant had also contributed to the harmony of the proceedings. He firmly believed that the work already accomplished by the Conference at its first session would be concluded in 1969 with the adoption of a convention on the law of treaties which would be a most important landmark in the history of international law.

28. The Committee of the Whole had adopted a draft resolution recommending to the General Assembly that it refer to the International Law Commission the study of the question of treaties concluded between States and international organizations or between two or more international organizations. If that resolution were adopted by the Conference at its second session, the General Assembly would consider it in 1969 at its twenty-fourth regular session, and the topic, if the Assembly so decided, should be on the Commission's agenda in 1970, which would be two sessions before the expiry of the term of office of the present members of the Commission.

29. With regard to the draft articles on special missions, the General Assembly had decided to place on the provisional agenda for its next session an item entitled "Draft Convention on Special Missions". The Assembly itself had therefore assumed the task of preparing and adopting the text of a convention on that topic. The Sixth Committee would, for the first time, have an opportunity to prepare the text of a codification convention on the basis of a draft adopted by the International Law Commission. When the Sixth Committee had concluded its work, it would recommend the General Assembly to adopt the text of the convention by means of a resolution. That resolution would, at the same time, open the convention for signature and ratification or accession by States.

30. Thus the final steps in the codification of the law relating to special missions would follow a new path. The General Assembly and the Sixth Committee would replace a conference and its committee of the whole. New methods of work and new procedures would have to be found to solve the problems involved; for instance, the establishment of a special committee and a drafting committee within the Sixth Committee should not be excluded. The presence in New York of the Commission's Special Rapporteur on special missions, and of other members of the Commission as representatives of their respective States, would be of great assistance, not only in the substantive work on the topic, but also in finding appropriate means for dealing with it. The Secretariat would, in due course, submit to the Sixth Committee a paper on organization and methods of work in considering the draft articles on special missions, and any suggestions which members of the Commission might have to make would, of course, be welcome.

31. At its last regular session, the General Assembly had adopted a resolution urging States Members of the United Nations which had not yet done so to accede to the Convention on the Privileges and Immunities of the United Nations of 13 February 1946, and States Members of the United Nations, whether or not they had acceded to that Convention, to take every measure necessary to secure the implementation of the privileges and immunities accorded under Article 105 of the Charter to representatives of Members and to officials of the Organization.<sup>4</sup>

32. In view of that resolution, the active consideration by the Commission at its present session of one of the aspects of the topic of "Relations between States and Inter-Governmental Organizations" was even more timely. That aspect, "The legal position of representatives of States to international organizations", was, for obvious reasons, of considerable interest to the United Nations. Also, its consideration offered an opportunity to the Secretariat to draw on its experience to assist the Commission. Some help had already been given in the form of a comprehensive study entitled: "The practice of the United Nations, the specialized agencies and the International Atomic Energy Agency concerning their status, privileges and immunities" (A/CN.4/L.118 and Add. 1 and 2), but the Secretariat was also prepared to furnish, when appropriate, additional information on any concrete questions that might arise in connexion with particular provisions of the Commission's draft.

33. With regard to other topics on the Commission's programme of work, a number of documents prepared by the Secretariat had been submitted to the Commission during the last few years. At the present session, the Commission had before it a new volume of the legislative series, "Materials on Succession of States" (ST/LEG/SER.B/14), which contained material provided by governments, and a series of studies on "Succession of States to Multilateral Treaties" (A/CN.4/200 and Add. 1 and 2), which the Secretariat intended to supplement with further papers at the Commission's next session. With the means at its disposal, in spite of the demands from the many bodies dealing with legal questions within the United Nations—to which had been added in 1967 an "Ad Hoc Committee to Study the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the limits of National Jurisdiction" and a "Special Committee on the Question of Defining Aggression"—and in spite of the fact that the Commission on International Trade Law, a permanent body, had held the first of its annual sessions in January 1968, the Secretariat would continue to give the Commission all the assistance it might require to facilitate its important task.

34. With regard to the review of its programme and methods of work, which was item 4 of the agenda for the Commission's present session, it would serve a valuable purpose if, through such a review, something could be done to achieve a measure of regularity in the Commission's output. To try to hasten the codification process might easily prove counter-productive in terms both of the intrinsic value of the drafts finally proposed and of the attitude of States towards them, but regularity of output

would produce a more positive response from States at the various stages of the Commission's work. If, as a result of such a review, the Commission were to establish a schedule giving a more explicit indication of the time required for the various stages of its work, that would give Member States and the Commission itself a firm foundation on which to base their long-term approach to the process of codification and development of international law.

35. Mr. BARTOŠ said that the Commission still had three major topics to consider during the term of office of its present members. Besides State responsibility, it might also be required to study a further topic as a result of the recommendation of the Vienna Conference on the Law of Treaties. The subjects concerned were all of capital importance for the codification of international law and required detailed preparatory work by members.

36. The Commission would probably need to hold two winter sessions if it was to complete its programme, and there would undoubtedly be opposition in view of the financial implications. The Commission would be grateful if the Legal Counsel would give his full support to help it obtain a favourable decision on that point.

37. Another question which needed attention was the amount of the daily subsistence allowance paid at Geneva.

38. Mr. TABIBI said he hoped that, before the General Assembly discussed the draft articles on special missions at its forthcoming session, the Secretariat would send a reminder to governments drawing attention to the importance of their being represented by specially qualified persons. Unless that were done, there was a danger that some governments might entrust their representation to junior members of their permanent missions who were unfamiliar with the topic.

39. With regard to the second session of the Vienna Conference on the Law of Treaties, arrangements should be made to provide technical services and other facilities for committees to meet concurrently with the plenary Conference. Only in that way could the Conference hope to deal in six weeks with all the questions left outstanding at the end of the first session.

40. Mr. NAGENDRA SINGH noted that there was a feeling not only in the United Nations, particularly in the Sixth Committee of the General Assembly, but also in the academic world, that the Commission's work should be expedited. There was, of course, no ready answer to the problem of devising ways and means of producing more draft conventions than hitherto. One possibility, however, was suggested by the success of the four-week winter session at Monaco in January 1966. The Commission could perhaps hold, in addition to its regular session at Geneva, an extraordinary session at some other place, possibly New Delhi or somewhere in the African or Latin American regions.

41. Mr. ALBÓNICO said he supported the suggestion that sessions of the Commission—whether ordinary or extraordinary—be held at places other than Geneva, including, perhaps, from time to time, New York. Meetings in other regions of the world would provide valuable opportunities for contacts with jurists and organizations in those regions.

<sup>4</sup> General Assembly Resolution No. 2328 (XXII).

42. With regard to documentation, it would be useful if all members of the Commission could be provided with a set of the documents of the 1961 and 1963 Vienna Conferences, the documents on special missions, and those of the first session of the Vienna Conference on the Law of Treaties.

43. Mr. ROSENNE said he was very appreciative of the important work done by the Codification Division of the Office of Legal Affairs in providing the Commission with documents on item 2 of its agenda, as well as the valuable set of studies on the succession of States and governments. The compilation of those studies had involved considerable difficulties and required much thought and juristic skill.

44. While he agreed that it was desirable that the Commission should maintain a regular rhythm in its output, he must warn members that there were risks in attempting to establish too detailed a programme of work. Unexpected factors could interfere with the execution of such a programme. In 1958, for example, the Commission had planned to complete its work on consular relations in 1959, but despite all its careful planning that had proved impossible, because the Special Rapporteur on consular relations had been appointed a judge *ad hoc* at the International Court of Justice and so had been unable to attend the Commission's session. Any planning, however careful, could thus be thrown out of joint by extraneous circumstances.

45. Moreover, as he had always stressed, it would be a great mistake ever to sacrifice the quality of the Commission's work on the altar of speed. If it was true that the rate of production of final drafts had slowed down a little in recent years, that was largely due to the change in the Commission's methods of work. In recent years the Commission had sought to achieve virtual unanimity on all aspects of its drafts and the search for unanimity took time; but the value of the method had been amply demonstrated by the remarkable results achieved at the first session of the Vienna Conference on the Law of Treaties.

46. Another factor that had to be taken into account was the capacity of governments to absorb the Commission's work, to study it and to prepare for the final diplomatic phase. For most governments, the limit of that capacity had already been reached. In a single year there would be in effect two diplomatic conferences on the codification of international law: the Vienna Conference on the Law of Treaties, and the consideration in the Sixth Committee of the draft articles on special missions. He did not believe that any more major draft codification conventions could be contemplated with equanimity for another two or three years.

47. As to the speed of the Commission's work, he was not impressed by arguments from academic sources. The Commission worked for the United Nations and for governments, not for the academic side of the law.

48. Sir Humphrey WALDOCK said he deeply appreciated the contribution of the Secretariat, and notably of the Legal Counsel, to the work of the Vienna Conference on the Law of Treaties. The Commission owed a debt of gratitude to the Legal Counsel for the manner in which he had made the preliminary arrangements for

the first session of the Conference, which had contributed so greatly to its success.

49. He agreed with Mr. Rosenne's remarks on the question of expediting the work of the Commission. The great lesson to be learned by the Commission from the experience of the first session of the Vienna Conference was the extreme responsibility it had in the preparation of its drafts. The fact that the work of the Conference had proceeded comparatively smoothly and rapidly had been largely due to the fact that the texts of the draft articles had provided a satisfactory basis for it.

50. The draft articles on the law of treaties had proved satisfactory largely for two reasons. The first was the great effort made to secure unanimity, as far as possible, in the Commission, with the result that quite a lot of the diplomatic work of compromise had already been done before the draft reached the Conference. The second was the care taken by the Commission to produce a workmanlike text; as a result, that text, though of course improved in certain respects, had withstood the impact of very numerous other proposals for its amendment.

51. It was natural to wish to expedite the work of the Commission, but that should not be done at the expense of the excellence of the work. Since the codification of the law of the sea, the Commission had invariably sought to maintain a high standard. Increasingly difficult subjects were now being undertaken and the Commission should not commit itself to speeding up its work at the risk of detracting from the quality. The work of the Commission was in many respects a task of scholarship, and it could only be done within the limits of exact scientific work. That made the Commission's responsibility all the greater.

52. Mr. AGO said that, in planning for the second session of the Vienna Conference on the Law of Treaties, the financial problem should not be separated from the question of how best to organize the work. The necessary funds would clearly have to be obtained, so that the session could last as long as was required and provision could be made for work by the Committee of the Whole at the beginning. It would be bad tactics not to draw up, from the start, a strict timetable for the work of the Committee, because of the unresolved difficulties over a number of articles which had secured only small majorities—difficulties which might take up the time of the plenary Conference.

53. The Commission could not cease to take an interest in the fate of conventions once they had been adopted. It was necessary to ensure the maximum number of ratifications and accessions. That was a difficult problem, but he was sure something could be done about it; he would revert to the subject on another occasion.

54. With regard to the work of the Commission itself, he associated himself with Sir Humphrey Waldock's remarks. The high quality and soundness which had established the reputation of the Commission's work were the best guarantees for the successful codification of international law. The question therefore arose what the Commission could do to maintain its prestige and continue its work of codification as successfully, and at the same level, as before. That was not a task that could be accomplished in a day. They could try to speed up the work of

the Commission and of international conferences, but there was a limit to exceed which would hinder the attainment of the desired result.

55. Extraordinary sessions could, of course, be arranged, as Mr. Bartoš had suggested, but only to finish work in progress at the end of the Commission's term of office. The Commission's sessions must not be unduly prolonged, or it might lose the services of some members who could not spare the extra time because of their other activities.

56. In his view, the Commission's term of office was too short, for five years were not long enough for full consideration of even one important draft. The adoption of a term of nine years, with a system of renewing one third of the membership every three years, as was done in the International Court of Justice, might be considered, but it must not be allowed to impair the continuity of the work. Even filling casual vacancies meant time lost in familiarization. The question required careful study with a view to establishing a longer term of office that would provide the stability and continuity the Commission's work required.

57. With regard to the place for meetings, he thought the Commission could work best at Geneva. The social commitments involved in sessions in other countries caused loss of time and it would be difficult for many members to spend ten weeks very far away from their main centre of activity. Nevertheless, the idea of the Commission holding a shorter extraordinary session in another country could be followed up.

58. The Commission still had three major topics before it. That of relations between States and inter-governmental organizations, which it was in the process of considering, seemed more difficult and more extensive every day. It was not based on any long-established practice, like diplomatic relations between States. To be hasty would be unwise; before making specific recommendations to the United Nations, it might be better to wait until the Commission had studied the topic from several angles and, in particular, until it had decided whether it should be the subject of more than one instrument.

59. The other two topics were State succession and State responsibility. The former would doubtless involve major difficulties; attempts to deal with the latter in the League of Nations had failed, and he was anxious that it should not suffer the same fate again now that he was the Special Rapporteur for it. He was convinced that State responsibility, together with the law of treaties, was the most difficult problem in the codification of international law, since it gave rise to the most acute conflicts of interests and ideas. There again, undue speed would jeopardize the chances of success.

60. The Commission would be grateful if the Legal Counsel could act as its spokesman in the United Nations in order to ensure that everything possible was done to facilitate its work and ensure the continuity it needed.

61. Mr. AMADO said he fully endorsed Mr. Ago's remarks, which showed a notable concern for efficiency. He too believed that Geneva, with its long tradition and prestige, was the most suitable place for the Commission's meetings.

The meeting rose at 1.10 p.m.

## 958th MEETING

Thursday, 20 June 1968, at 10 a.m.

Chairman : Mr. José María RUDA

*Present* : Mr. Ago, Mr. Albónico, Mr. Amado, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. El-Erian, Mr. Eustathiades, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Reuter, Mr. Rosenne, Mr. Tabibi, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldoock, Mr. Yasseen.

### Review of the Commission's Programme and Methods of Work

[Item 4 of the agenda]  
(continued)

### Organization of future work

[Item 6 of the agenda]  
(continued)

1. The CHAIRMAN invited the Commission to continue consideration of items 4 and 6 of the agenda.
2. Mr. EL-ERIAN said he was very grateful for the help he had received from the Office of Legal Affairs, particularly the Codification Division, in his work on relations between States and inter-governmental organizations. He hoped that the Secretariat study on the practice of the United Nations, the specialized agencies and the International Atomic Energy Agency concerning their status, privileges and immunities (A/CN.4/L.118 and Add. 1-2) would eventually be printed, since it contained a lot of extremely valuable information.
3. Mr. CASTAÑEDA, referring to the suggestion made by the Legal Counsel at the previous meeting concerning the regularity of the Commission's output, said there were bound to be difficulties in speeding up the work of codification. Some of them were material, such as the impossibility of lengthening the Commission's sessions, and some were inherent in the codification process itself; but there were still other factors which must be considered in planning the work of the Commission.
4. One such factor was the more or less urgent character of the topics examined. Succession of States, for example, was a new topic with political overtones of outstanding importance, since over fifty States had acquired independence in the last fifteen years or so. To give priority to such a topic owing to its urgency was in no way incompatible with a desire to study it with the necessary care. Similarly, in his first report on succession of States and governments in respect of treaties (A/CN.4/202), the Special Rapporteur had indicated that a wish to solve problems concerning new States in the light of the principles of the United Nations Charter should not preclude a detailed study of earlier precedents.
5. Another factor was the choice of topics considered ripe for codification. It had frequently been maintained