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Summary record of the 971st meeting

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was a difference between the ambassador's residence and the chancery.

106. Mr. AGO said it was necessary to make a distinction between the different designations because, although all the premises should enjoy certain privileges, only the seat entered into consideration for certain purposes, for example, when it was stipulated that a notification must be made to the seat.

The meeting rose at 6.10 p.m.

971st MEETING

Tuesday, 9 July 1968, at 11 a.m.

Chairman: Mr. José María RUDA

Present: Mr. Ago, Mr. Albónico, Mr. Amado, Mr. Bartoš, Mr. Bedjaoui, Mr. Castrén, Mr. El-Erian, Mr. Ignacio-Pinto, Mr. Kearney, Mr. Ramangasoavina, Mr. Reuter, Mr. Rosenne, 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 957th meeting*)

STATEMENT BY THE VICE-PRESIDENT OF THE INTERNATIONAL COURT OF JUSTICE

1. The CHAIRMAN welcomed Mr. Koretsky, the Vice-President of the International Court of Justice, and invited him to address the Commission.
2. Mr. KORETSKY (Vice-President of the International Court of Justice) said he had been asked by the President and the members of the Court to visit the International Law Commission in order to wish it every success in its work, which was so important for the consolidation and development of international law.
3. There was a close and natural link between the International Court of Justice and the International Law Commission. The Commission played an increasingly active part in preparing what might be termed legislative drafts, in formulating the principles and norms of international law, and in the systematization, codification and progressive development of international law in the form of multilateral treaties. The Court, for its part, did not merely study the Commission's work; norms drafted by the Commission had crossed and continued to cross the threshold of the Peace Palace, where the Court sat, and were increasingly interpreted and applied by the Court in its examination of the cases referred to it.
4. In addition to that close link, there were the personal relations between members of the two institutions. Three of the Court's present judges had, as it were, assisted at the birth of the International Law Commission by helping

to draft its Statute, and several other judges had been members of the Commission.

5. Twenty years had passed since the establishment of the Commission. Looking back over those twenty years and weighing its achievements, the success of the Commissions' work was seen to be beyond question. After various difficulties in the early years, connected with the choice of subjects and methods of work, the Commission had produced results which had received universal acclaim, and which the General Assembly had welcomed in numerous resolutions. In the past ten years, six international conventions now in force had been adopted on the basis of the Commission's drafts, while consideration of a seventh had already begun and everyone hoped that the particularly important draft international convention on the law of treaties would be adopted in 1969. The questions still before the Commission — State succession, State responsibility, and relations between States and inter-governmental organizations — were no less important.

6. The Commission was an assembly of jurists who were not only eminent themselves, but also represented the different legal systems of the world, so that it was able to work without national bias. Thus there was good reason to view with optimism the wide field of action which lay open to the Commission for consolidating what had been gradually established in international law and for making further advances in its progressive development.

7. The CHAIRMAN, thanking Mr. Koretsky on behalf of the Commission for his appreciative words, said that there was a natural link between the International Court and the Commission, since the Commission was engaged in formulating rules for acceptance by States, which the Court would have to apply. The aim of the work of both bodies was to promote international peace and security. Rules of law had to be set above the power ideologies of States.

8. Members of the two bodies were also united by personal ties, for a number of judges had formerly been members of the Commission. The Commission, in pursuance of its Statute, had been successful in performing the task for which it had been created.

9. Mr. AMADO said it was a great pleasure to see Mr. Koretsky again. He had the honour of working with him in the earliest days of the United Nations, when the Organization had been only a promise, a forest clothed in the green leaves of hope. Mr. Koretsky had then appeared as a harbinger of peace. He had been the great revelation of the juridical culture of the Soviet Union; but he had spoken a familiar language and had quoted the writers on whose works all jurists had been trained. In the course of lively discussions in the Sixth Committee, he had revealed a perfect familiarity with the South American writers. He (Mr. Amado) welcomed the visit, to men of good will striving to honour jurisprudence, of one of its most eminent representatives.

10. Mr. YASSEEN said that Mr. Koretsky's visit to the Commission was of great consequence by reason both of his personal distinction and of the position he occupied at the International Court of Justice. He had had the pleasure of meeting Mr. Koretsky for the first

time at Geneva in 1960, during the second Conference on the Law of the Sea, when he had been able to appreciate his remarkable qualities as a jurist.

11. The International Court of Justice was quite right to maintain contact with the organs in which the international legal order was developed and norms of international law were framed. For international law was not static but dynamic, and its evolution must be followed in international life. The cases of the International Court were an inexhaustible treasury of experience and were of great value in drawing up rules of international law. The International Court of Justice applied the rules of international law and the International Law Commission helped to draw them up, but on several occasions the Commission had found passages in the judgments of the Court which provided excellent formulations for rules of international law.

12. Mr. BARTOŠ said that among the intellectual fathers of the International Law Commission who should be placed in the very front rank were two of the present judges of the International Court of Justice: Mr. Koretsky and Mr. Jessup. When the Statute of the International Law Commission was being drawn up at Lake Success, there had sometimes been differences of opinion; but Mr. Jessup and Mr. Koretsky had joined in opposing the conservative upholders of the normative school, who had wished to separate codification from the progressive development of international law, whereas in Article 13 of the United Nations Charter the two aspects were closely linked.

13. Mr. Koretsky had stressed that there could be no such thing as abstract codification of international law. Codification must be adapted to the needs of international life and be based on State practice.

14. As a former member of the Commission, and as a witness of its work today, Mr. Koretsky could see that that idea had been accepted. It was by using a method which combined the codification of existing rules and the progressive development of international law in accordance with the trends to be seen in the actual life of the international community that the Commission had been able to serve that community.

15. The rational codifications undertaken in Europe and America had proved useful at a particular time. Today, the trend was towards an international synthesis — the elaboration of a universal law. As a champion of that idea Mr. Koretsky was the best qualified messenger the International Court of Justice could have sent to the Commission.

16. Mr. AGO said that relations between the International Law Commission and the International Court of Justice had evolved from a personal to an organic basis. That was the sign of a particularly important development. The International Court of Justice had grasped the great importance of the work of codification and had understood that the present age was that of the transformation of international law and that collaboration between the responsible legal organs of the United Nations was absolutely essential.

17. He agreed with Mr. Yasseen that the work of the International Court of Justice was extremely useful to the

International Law Commission. There were certain rules, such as those relating to reservations and interpretation, which merely reflected the rules established by the decisions of the International Court of Justice. As Special Rapporteur for the draft on State responsibility, he had been able to appreciate the need to refer to the awards and advisory opinions of the International Court of Justice.

18. But that was not the only important aspect. The work of the Court was even more essential with regard to the future. The conventions prepared on the basis of the Commission's drafts by diplomatic conferences must not remain abstract rules; they must be adapted to international life and applied to concrete cases. That was the task of the International Court of Justice, which could thus make a decisive contribution towards transforming the provisions of those conventions into living rules of law of the international community. The work of the International Court of Justice was valuable in that it completed, integrated and gave effect to the work which the International Law Commission was trying to accomplish.

19. He hoped that more and more States would submit their disputes to the International Court of Justice, trusting in the competence and impartiality of that high tribunal, so as to strengthen the cause of peace and promote the peaceful development of relations between States.

20. Sir Humphrey WALDOCK said he associated himself with the expressions of appreciation to Mr. Koretsky, whose presence was a symbol of the links between the Commission and the International Court of Justice. The previous year another member of the Court had paid the first visit to the Commission on behalf of the Court.

21. He fully endorsed what Mr. Ago had said. The Commission's first recourse was always to the Court's jurisprudence, since its work was based on the practice of States and that had to be interpreted in the light of the Court's findings. The Court had made a marked contribution to the development of international law, notably in the Fisheries Case¹ and in its opinion on Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide.² That opinion had marked a turning point in the development of the law of reservations and the principles it enunciated had formed the basis of the proposals accepted at the Vienna Conference on the Law of Treaties. The reports of the Commission's rapporteurs clearly showed how much its work had been inspired by the Court's decisions.

22. Undoubtedly one of the difficulties of codification was that it did not take place within a complete legal system with the full apparatus of the judicial process; there were many branches of the law in which an exact formula could not be found and the Commission had to be content with a statement of common ground. That meant that the judicial function was extremely important for consolidation of the work of codification. And that work would be established on surer foundations if the Court were able to fill out the work of the Commission.

¹ See *I.C.J. Reports*, 1951, p. 116.

² *Op. cit.* 1951, p. 15.

23. Mr. REUTER said that he associated himself with the threefold tribute which had just been paid to international law, to the International Court of Justice and to Mr. Koretsky. The establishment of an international law beyond the reach of ideologies and interests was, indeed, the only hope for mankind. The International Court of Justice symbolized three essential elements. First it symbolized creation; there was no law without creation, and the International Court of Justice was creative because it had to deal with concrete cases. Secondly, it symbolized freedom and equality; for there was no international institution before which was better displayed and represented the equality of States and their sovereign freedom to advance arguments and submit them to impartial judges able to settle questions in complete independence. Lastly, it symbolized authority, and everyone knew how difficult it was for authority to become established in international society.

24. He joined in the tribute to Mr. Koretsky, whose outstanding qualities were his greatness and strength of character. Those qualities reflected the greatness and strength of the nation he represented — not only physical greatness, but also greatness in ideals; everyone knew with what constancy and moderation that quality had been applied to the service of peace and the maintenance of the international order. Mr. Koretsky's presence was a sign of the strength of sacrifice — the sacrifice of all those in his country who had given their lives for an ideal.

25. Mr. EL-ERIAN said he associated himself with the tributes paid to Mr. Koretsky. One of the Court's functions was to interpret and create law, and its advisory opinions provided a rich source of international law for the Commission and for scholars. Mr. Koretsky was a representative of a great legal system and of a country which was playing an important part in keeping the peace and creating a world legal order. Immediately after the Russian revolution, the Soviet Government had unilaterally denounced the Capitulations system; it had also denounced the practice of secret diplomacy, which it regarded as a source of friction.

26. Mr. ALBÓNICO said that, in associating himself with the tributes paid to the Vice-President of the International Court of Justice, he wished to recall how much the American continent owed to international law and its institutions. His country, Chile, was small, lacking in wealth and situated at the end of the earth; its only riches were the stability of its republican institutions, its steadfast observance of treaties and its invariable respect for fundamental human rights.

27. The principles of self-determination, non-intervention, mutual assistance and peaceful settlement of disputes were binding on all the States of America. Moreover, the American Treaty on Pacific Settlement — the Pact of Bogotá of 30 April 1948³ — made provision for compulsory adjudication by the International Court of Justice where all other means of settlement had been exhausted, which was the best contribution to the prestige of the Court and the most valuable recognition of its authority.

28. Mr. KEARNEY said that the close links between the Court and the Commission were of great importance,

and in preparing its draft conventions the Commission had taken the jurisprudence of the Court into account. He particularly deplored the fact that no provision had been made in the draft articles on the law of treaties for interpretation by the Court to settle disputes, and hoped that that defect would be remedied at the second session of the Vienna Conference.

29. Mr. ROSENNE said he wished to join in the tributes paid to the Vice-President of the International Court of Justice, whose ability and tact he had so much admired in 1958 when he (Mr. Koretsky) had been Rapporteur of the First Committee of the Geneva Conference on the Law of the Sea.

30. Mr. Koretsky's welcome visit was a suitable opportunity to stress the extremely subtle and not always evident intellectual ties which had always bound the Court and the Commission in the past and, it was hoped, would continue to bind them in the future. Just as the Court studied the Commission's drafts and records, the Commission frequently studied the pleadings submitted to the Court and the position taken on behalf of the parties both by eminent counsel and by representatives of States. The Commission and the Court shared, from different viewpoints, a general responsibility for the improvement and modernization of the whole body of international law so urgently needed in the contemporary world.

31. Mr. IGNACIO-PINTO said he associated himself with those members who had preceded him in paying a tribute to Mr. Koretsky. He was particularly gratified by Mr. Koretsky's presence, because he had had the honour of being the guest in Moscow a few days earlier of Mr. Alexander Gorkin, the President of the Supreme Court of the Soviet Union, and that visit had enabled him to appreciate the value of the work accomplished by Soviet jurists in a system which formed part of the international community's institutions.

32. The achievements of the International Court of Justice were the foundations of a future structure in which all would be able to live under the rule of law. He hoped that, with the development of the notion of justice in international relations, it would be possible to fashion a new society in which the aim of all States would be to respect the law.

33. The CHAIRMAN said that the views and comments of members on relations between the International Court of Justice and the Commission were very important. He once more thanked the Vice-President of the Court for his visit.

Relations between States and inter-governmental organizations

(A/CN.4/195 and Add.1; A/CN.4/203 and Add.1-3; A/CN.4/L.118 and Add.1-2; A/CN.4/L.129)

[Item 2 of the agenda]

(resumed from the previous meeting)

ARTICLE 18 (Seat of the permanent mission) and
ARTICLE 19 (Offices away from the seat of the permanent mission)⁴

34. The CHAIRMAN invited the Special Rapporteur

³ See United Nations, *Treaty Series*, vol. 30, p. 84.

⁴ See previous meeting, para. 55.

to sum up the discussion on articles 18 and 19 (A/CN.4/203/Add.2).

35. Mr. EL-ERIAN (Special Rapporteur) said that at the previous meeting he had been asked if he could quote instances of permanent missions to an organization being established elsewhere than in the city where the organization was situated. The normal practice was, of course, for a sending State to establish the premises of its permanent mission in the same city as the organization. But there were a number of exceptions. For instance, the permanent missions accredited to the United Nations Office at Geneva were all at Geneva, except two, which were at Berne, and one, which was in Paris. In addition, the International Atomic Energy Agency had stated that "the premises of some permanent missions accredited to IAEA are not in Austria, but in other European countries".

36. With regard to terminology, the Drafting Committee should consider the proper use of the terms "premises", "seat" and "offices". It should be noted that both the title and the text of article 17 of the 1967 draft on special missions referred to the "seat" of the mission. Admittedly, the 1961 Vienna Convention on Diplomatic Relations did not use the term "seat", but in the Commission's 1958 draft on diplomatic intercourse and immunities, article 11 had been entitled "Offices away from the seat of the mission".⁵ The 1961 Vienna Conference had, of course, decided to drop the titles from the final text of the Convention on Diplomatic Relations. The main point was that a mission must have a principal office where communications should be addressed to it; it could also have additional offices elsewhere.

37. To sum up, there seemed to be general agreement on the presumption that the seat of the permanent mission would be in the locality where the organization was established; it was also agreed that an element of flexibility should be introduced so as to allow permanent missions to establish offices elsewhere and even to allow a sending State to have premises in a country other than the host State.

38. Mr. Castrén's proposal to combine articles 18 and 19 would be a useful drafting improvement.

39. He therefore suggested that articles 18 and 19 be referred to the Drafting Committee for consideration in the light of the discussion.

*It was so agreed.*⁶

The meeting rose at 12.50 p.m.

⁵ See *Yearbook of the International Law Commission, 1958*, vol. II, p. 92.

⁶ For resumption of discussion, see 986th meeting, paras. 1-5.

972nd MEETING

Wednesday, 10 July, 1968, at 10 a.m.

Chairman: Mr. José María RUDA

Present: Mr. Ago, Mr. Albónico, Mr. Amado, Mr. Bartoš, Mr. Castrén, Mr. El-Erian, Mr. Ignacio-Pinto,

Mr. Kearney, Mr. Ramangasoavina, Mr. Reuter, Mr. Rosenne, Mr. Tabibi, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

Relations between States and inter-governmental organizations

(A/CN.4/195 and Add.1; A/CN.4/203 and Add.1-3; A/CN.4/L.118 and Add.1-2; A/CN.4/L.129)

[Item 2 of the agenda]
(continued)

ARTICLE 20

1.

Article 20

Use of flag and emblem

The permanent mission and the permanent representative shall have the right to use the flag and emblem of the sending State on the premises of the mission, including the residence of the permanent representative, and on his means of transport.

2. The CHAIRMAN invited the Special Rapporteur to introduce article 20 of his draft (A/CN.4/203/Add.2).

3. Mr. EL-ERIAN (Special Rapporteur) said that article 20 was modelled on article 20 of the 1961 Vienna Convention on Diplomatic Relations.¹

4. Paragraphs 2 and 3 of the commentary gave particulars of the practice of the United Nations and the specialized agencies. The fact that many permanent representatives were members of diplomatic missions and that many premises of permanent missions were also used as embassies or consulates appeared to have prevented any clear or uniform practice from emerging. The article would thus serve the useful purpose of stating a uniform rule on a point on which practice varied.

5. Mr. CASTRÉN said that there was a gap in article 20 of the Vienna Convention on Diplomatic Relations, on which article 20 of the present draft was based, for it mentioned only the means of transport of the heads of diplomatic missions and did not make allowance for the fact that the mission itself might have means of transport registered in the name of the sending State, which should also be entitled to use the national flag. Article 19 of the draft on special missions² empowered those missions, under certain conditions, to use the flag and emblem of the sending State on the special mission's means of transport, but did not refer to the case of the head of the special mission.

6. Mr. USTOR said that, since article 20 was not placed in section II, on facilities, privileges and immunities, but in section I, on permanent missions in general, it must presumably be read together with article 42, on the obligation to respect the laws and regulations of the host State,³ which opened with the words "Without prejudice

¹ See United Nations, *Treaty Series*, vol. 500, p. 106.

² See *Official Records of the General Assembly, Twenty-second Session, Supplement No. 9*, p. 13.

³ A/CN.4/203/Add.5.