Document:-
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**Summary record of the 978th meeting**

Topic:
**Programme of work**

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

76. Mr. AMADO said that he could not accept the doctrine just expounded by Mr. Yasseen. In his view, an unratified convention was entirely different from a ratified convention.

77. Mr. YASSEEN said he agreed that an unratified convention was not as effective as a ratified convention. He had simply wished to make the point that, even if unratified, a convention which had gone through the process of codification, been studied by a commission and by a conference of representatives of States and been adopted by a two-thirds majority had a certain value and could be invoked by States even if they had not ratified it.

78. On the question whether positive international law should be modified, extreme prudence was called for. The principle that ratification was a prerogative of sovereign States was so deeply rooted in international thinking that it would be difficult to make an exception to it. To contemplate measures for dispelling administrative inertia might be praiseworthy, but such measures must not bring pressure to bear on States or run counter to their vital interests. The time was not ripe for amending positive international law.

79. A start should be made, as suggested by Mr. Ago, by getting the General Assembly to adopt appropriate resolutions, either general or specific and limited to a particular convention. A general resolution would request the Secretary-General to recommend States to take certain measures, provided the measures were not obligatory, while a special resolution would be adopted at the same time as the general resolution in the case of a convention of capital importance, such as the future convention on the law of treaties.

80. Mr. BARTOŠ said he considered that conventions adopted by a two-thirds majority by conferences of representatives of States had a certain legal force as a source of international law, but could not impose obligations on States which had not ratified them.

81. Mr. RAMANGASOAVINA said that ratification of a convention was a prerogative of the sovereign authority of States. In some States the decision was taken by parliament, in others by the Government or Head of State. The machinery of ratification often worked very slowly, especially when States were not particularly interested in a convention, as Mr. Tabibi had mentioned. Parliaments, especially in the new States, sometimes did not realize the nature of the treaties they were asked to ratify, because they were not always conscious of belonging to the international community. They took little interest in treaties that stated rules of law governing international relations, in comparison with the interest they took in the rules of law governing internal relations. Some States were suspicious of treaties relating to refugees or stateless persons and showed no great concern over the question of the white slave traffic.

82. Among the solutions suggested by Mr. Ago, that of an additional protocol at a diplomatic conference seemed at first sight to be a good idea. However, it must not be forgotten that some States, especially the new States, did not have special representatives at those conferences armed with the necessary power to sign a protocol of that kind. That method then would not work. Admittedly, the big States had offices to deal specially with international agreements and explain them to parliament, but that did not apply to the new States. The United Nations had resident representatives in the new States, but most of their activities were concerned with economic and cultural questions; they should devote more time to drawing the attention of the Governments of the countries where they were stationed to the importance of ratifying treaties. Treaties were transmitted to the Minister for Foreign Affairs or the Minister of Justice without any indication of their importance. Some ILO, WHO and UNESCO conventions were of a special character, so that the new States felt themselves directly concerned and hastened to ratify them. International conventions, on the other hand, were above their heads, and that explained the delay in ratification.

The meeting rose at 1.15 p.m.

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## 978th MEETING

*Thursday, 18 July 1968, at 9.30 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. Ignacio-Pinto, Mr. Kearney, Mr. Ramangasoavina, Mr. Rosenne, Mr. Tabibi, Mr. Tammes, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

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### Review of the Commission's programme and methods of work

**(A/CN.4/205)**

[Item 4 of the agenda]

*(continued)*

1. The CHAIRMAN invited the Commission to continue its consideration of Mr. Ago's memorandum on the final stage of the codification of international law (A/CN.4/205).

2. Mr. ROSENNE said he was grateful to Mr. Ago for his memorandum and for drawing attention to a matter which was certainly within the Commission's competence by virtue of both Article 13 of the Charter and article 1 of its Statute. There was undoubtedly a problem in regard to the ratification of conventions, but he had some reservations about the facts and conclusions drawn by Mr. Ago. Bare statistics in themselves could be misleading, and it would be interesting to know not merely how many States had ratified certain conventions, but how many had taken part in codification conferences, and how the voting had gone at the final stages on individual articles. He also shared Mr. Bartoš's view that the Commission had no monopoly of codification.

3. It was natural that the Commission should be interested in the outcome of its work, but it was also striking that the General Assembly should never have asked the Secretariat to report back on the results of a codification conference; the results had only been examined in cases when such conferences had had to ask for further action on certain matters. It would be worth considering taking steps to have the results of codification conferences reported back to the General Assembly, which could then be in a position to take action to expedite the ratification of the conventions, if that was necessary.

4. Incidentally, a great deal was being written about the work of the Commission which it was difficult for members to keep track of, and it would accordingly be useful if the Secretariat could furnish at each session a list of such articles and publications.

5. He was not convinced that a uniform system of dealing with the acute problem of ratification of international conventions, regardless of the nature of the treaty, was either desirable or feasible, and he agreed with Mr. Tammes's remark at the previous meeting [1] regarding the importance of the distinction between codification and progressive development for the ratification phase. The system followed by the International Labour Organisation had been rejected at the San Francisco Conference, and the discussion on article 15 of the draft articles on the law of treaties at the Vienna Conference had given an indication of the prevailing trend of opinion on the subject. It would be interesting to consider whether there existed any connexion between the reporting system of the ILO and the fact that ILO conventions were not signed at all.

6. More information was needed on national and international experience of both universal and regional codifying conferences.

7. Consistent interest had been shown by the League of Nations in the fate of treaties concluded under its auspices, and in the reasons for States failing to ratify them. The matter had been examined by the League Council, but in the United Nations the Security Council had neither the competence nor the interest, and little attention had been given to it by the General Assembly.

8. Not all the possible procedures for promoting ratification had been examined in Mr. Ago's paper. For example, there was the bilateral diplomatic effort to bring conventions into force which had been effective in the case of the Convention on Fishing and Conservation of the Living Resources of the High Seas.[2] The Secretariat had also played a discreet part in seeking to encourage ratification.

9. Mr. TABIBI had drawn attention to certain reasons for delays in ratification, such as the time required for translation of the conventions. In Israel it had taken a year each to translate the Convention on Diplomatic Relations and the Convention on Consular Relations. Governments and parliaments always had pressing domestic matters to deal with, and some international conventions appeared to be rather remote by comparison.

10. Pending some indication of the reaction of States, the Commission would have to tread cautiously. The present discussion would need to be fully reported to the General Assembly, and the item placed on the agenda for the next session when documents of a more technical character would be needed concerning the experience of the United Nations, the specialized agencies and regional organizations.

11. He would be interested in knowing whether General Assembly resolutions calling for the ratification of specific conventions had done anything to speed up the process.

12. He agreed with Sir Humphrey Waldock that the Commission should not in any way weaken the effect of completed codification work, and shared his doubts about the contents of paragraph 7 of Mr. Ago's memorandum. A different view from Mr. Ago's had been expressed by the Commission in its draft on the law of treaties and was hinted at in the jurisprudence of the International Court. Draft conventions, before entering into force, had often been applied in practice. For example, the report submitted in 1965 by the Secretary-General on depositary practice in relation to reservations [3] indicated that a number of depositaries — whether international organizations or States — had been applying the draft rules for dealing with reservations drawn up by the Commission in 1962.

13. Codification conventions had a somewhat indeterminate status among sources of international law, and that might be one reason why their formal ratification was slow, but it should not necessarily be concluded that States did not wish to accept them.

14. He would hesitate to advocate a reporting system of the kind used in the ILO, since it might have the effect of turning non-ratification into non-acceptance.

15. He also doubted whether there was any need to place on the General Assembly's agenda an item about the status of multilateral conventions, as proposed by Mr. Tabibi, in view of the fact that a complete and up-to-date report on the status of such conventions was already drawn up by the Secretary-General.

16. Mr. EUSTATHIADES said it was not essential to rely on texts to justify the Commission's claim to be entitled to discuss the question dealt with in Mr. Ago's memorandum. Since that question was closely linked with the question of codification, it was only natural that the Commission should be interested in discussing it, but it should be tackled realistically and not from the academic standpoint. It was not just a question of legal technicalities, but an important aspect of the international legal order in relation to the structure of contemporary international society. Consequently it was necessary to devise remedies that would be suitable for dealing with the obstacles which at the present day prevented or delayed ratification.

17. It was important to inquire why so many treaties had not been ratified. The problem was not a new one; it had been occurring since the days of The Hague codification conferences. Even some of the 1907 Hague Conventions had not been ratified by a large number of States. In an attempt to codify the law of war, every

[1] Para. 43.

[2] United Nations, *Treaty Series*, vol. 559, p. 285.

[3] See *Yearbook of the International Law Commission, 1965*, vol. II, pp. 74-107.

effort had been made to reconcile humanitarian concern with the needs of military reality; but those conventions had not been widely ratified. The same applied to The Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict.[4] In that case, it was the military element that had been opposed to ratification. In conventions on the law of peace, the reasons for non-ratification had been different; Governments had hesitated to bind themselves finally because of some special interest. It was true that failure to ratify had not been so frequent before the Second World War as it was now.

18. What were the special reasons for the non-ratification of some existing codification conventions? Was there, so to speak, an over-production of them? And if so, why did supply exceed demand? Mr. Ago had pointed out in paragraph 2 of his memorandum that the drafts prepared by the Commission represented "carefully selected ground common to the different concepts and trends of the modern world". In paragraph 3 he had gone on to say that, consequently, diplomatic conferences were able to "adopt, by the required majority, the texts of conventions concerning important sectors of international law". In his (Mr. Eustathiades') view the texts perhaps went a little too far in the direction of conciliation, in an endeavour to arrive at an acceptable compromise for parties holding conflicting views. That could be a good thing, but it could also explain the reluctance of Governments to ratify them. And in that connexion it was of little importance that the State failing to ratify the convention had taken part in establishing the text or had even voted in favour of it, for that had merely been a question of co-operation in the search for a compromise solution at the conference and did not prejudice the State's final attitude towards the convention.

19. In paragraph 10 of his memorandum, Mr. Ago had noted two possible reasons for non-ratification. One reason was political, but the other had nothing to do with politics or indeed with opposition at all. So if it was the second reason that was the cause of the trouble there was every reason for optimism, but if the reason was political not even the most advanced techniques could ever solve the problem.

20. A distinction should be drawn between existing conventions still awaiting ratification and future conventions which would come up for ratification. It would be advisable to study more carefully the question which methods were best suited to the two categories.

21. During the present discussion, it had been claimed that even an unratified convention marked an advance in the codification of customary law. And that claim was borne out by the case of the Declaration of London of 1909,[5] which had never been ratified but which had had almost the same effect as if it had been ratified, because it was a statement of the existing rules of customary law. Today, on the other hand, texts frequently dealt with topics on which there was less certainty, so it was essential to know whether or not the text adopted at a conference reflected customary law. Codifying conventions that remained unratified could introduce a deplorable element of confusion, and that was yet another reason why the subject under discussion was of such importance.

22. Obviously, conventions must be ratified, since otherwise States were not bound; so what measures should be taken to speed up ratification? Some measures were national, others were international. With regard to the former, it seemed difficult to achieve any result. In Greece, for example, in the very large number of cases where ratification required the assent of Parliament, a summary procedure had been instituted for the purpose, whereby that assent could be secured by a decision taken in twenty-four hours, but ratification had in no way been hastened as a result. The reason was that the problem was not a purely technical one. Thus international measures seemed to be more appropriate, and in that connexion Mr. Ago suggested the adoption of a system similar to that followed by certain specialized agencies. There were several ways of making such a system general; the first of them was by the amendment of the Charter. But amendment of the Charter was not an easy matter, and the example given of a successful amendment, namely, the amendment to increase the membership of the Security Council and the Economic and Social Council seemed hardly apposite since that measure had been necessitated by the increased United Nations membership. In the case of codification conventions, the situation was entirely different and it was unlikely that the same procedure could be adopted.

23. It had to be borne in mind that, if the system followed by certain specialized agencies were to be adopted in the case of codification conventions, it would mean that there would be close international supervision, and such supervision would hardly be acceptable. If the system worked in the case of the ILO conventions, it was largely because the delegates to the International Labour Conference, operating through different channels, were able to bring effective pressure to bear in their countries for the adoption of the draft conventions.

24. Mr. Ago had next considered the adoption by the General Assembly of a recommendation either of a general character, or relating specifically to a particular convention. That suggestion would appear to be more feasible in the case of a particular convention, but it was doubtful what the result would be. It was tantamount in many cases to urging States to recommend to themselves that they should ratify a convention that they had not ratified. He was afraid that the result would be nil, but it was worth trying, not as a general measure applicable to all unratified codification conventions but in the case of a particular convention.

25. With regard to Mr. Ago's third possibility, signature of an additional protocol, he entirely agreed with Mr. Ramangasoavina; for, if the signing of such a protocol were made optional, nothing would have been achieved, while if it were made obligatory and were associated with the signature of the convention itself, the problem of non-ratification would simply have been transferred to the additional protocol.

26. He himself wished to propose a more radical and at the same time more traditional method of solving the problem of non-ratification. It was to insert in conventions

[4] United Nations, *Treaty Series*, vol. 249, p. 240.

[5] *British and Foreign State Papers*, vol. CIV, p. 242.

codifying international law a clause to the effect that signatory States were free either to ratify the convention within a reasonable period, say, five years or even longer: if they did not do so within the prescribed period, they would forfeit their right to ratify. In exceptional circumstances, a period of grace would be approved. That would be one way of bringing pressure to bear on States without infringing their sovereign rights, because they themselves would have agreed to the arrangement in advance. He would have no objection to his proposal being introduced on an experimental basis through the insertion of a clause of that kind in a particular convention. It was of no real interest to anyone that the uncertainty about ratification should be prolonged indefinitely. Moreover, the system which he proposed would not be detrimental to the aim of universality, since non-ratification led to the lack of universality, and the existence of a time-limit fixed in advance might act as a spur. It should be noted that his proposal would not constitute interference with a State's right to refuse ratification or with its right to ratify, but the latter right would have to be exercised within an agreed time limit.

27. A distinction should be drawn between punctual acceptance and acceptance in the wider sense. The first was more likely to be successful, for if the reasons for non-ratification were of a more fundamental nature, the remedies would be less effective. It would then be necessary to find a way out of the difficulty at an early stage, when the subjects to be codified were being chosen or when the text was being prepared. Part of the difficulty was due to the fact that, during the voting and at the time of signature, the question of the adoption of the text was kept separate from the question of a State's intention to adopt the convention definitively. It was significant that the Council of Europe also was concerned at the small number of ratifications of some of its conventions. It might be useful if the Director of Legal Affairs of that organization, who was due to come to Geneva, were asked for information and documents on the question. What should be proposed was not a single solution applicable to all conventions, but a study of the kind of remedy that would be best suited to each category.

28. In any event, the Commission should make a contribution to the effort to improve the present situation.

29. Mr. USTOR said that Mr. Ago had indicated that the codification and progressive development of international law depended on the agreement of States expressed in the ratification of conventions, but there was no duty upon States to ratify even those for which their representatives had voted at an international conference. That led to the question whether there existed any duty for States to participate in the work of codification and progressive development of international law. Article 13, paragraph 1 (*a*) of the Charter only indirectly called upon States to reach agreement on rules of international law.

30. The majority of States did not refuse to take part in codification conferences, though a regrettable habit had developed in the United Nations which prevented certain States from doing so, but that was a matter he would not go into at the present stage. If the practice were extended, a customary rule would come into being regarding the duty to participate in the codification and progressive development of law. Certainly, the duty enjoined upon States to co-operate in the solution of economic, social and humanitarian problems could not be discharged without the development of international law.

31. There was a conflict of interests between the sovereign right of States to decide whether or not to ratify conventions, and their interest in laying secure foundations for international law. He did not believe that States were willing to initiate drastic measures in order to speed up the ratification of conventions and it was improbable that they would agree to adopt the ILO system, but some effective action might perhaps be taken at codification conferences in order to induce States to bring the resulting instruments into force.

32. Mr. IGNACIO-PINTO said that the International Law Commission could not be held responsible for the fact that States were slow in ratifying conventions; it should persevere in the hope of changing the general attitude of States and thus promoting the codification of international law.

33. In his memorandum, Mr. Ago had suggested a whole range of methods of remedying a situation which was causing concern to the Commission. He himself agreed with Mr. Eustathiades that the Commission should be careful to deal only with subjects which were ripe for codification and did not deal with abstract considerations.

34. Failing amendment of the Charter, recommendations and resolutions were perfectly justified, since they could help to make States aware of realities and perhaps lead them to reconsider their position.

35. He agreed with Mr. Ramangasoavina that the protocol system was very useful, but it had to be remembered that very often, particularly in the case of the developing countries, representatives to codifying conferences lacked adequate training in international law and often did not realize the scope of the conventions which they agreed to sign on behalf of their Government. It would be difficult for his own country, which had very few experts in international law, to accept that method.

36. The influence of public opinion could be particularly useful in inducing countries to ratify conventions which had already been adopted. The United Nations, through the permanent representatives accredited to it, could draw the attention of countries to the advantages of ratifying particular conventions. It would also be helpful if the General Assembly were to take an interest in the matter and request the Secretary-General to report to it on the reasons advanced by States for not ratifying certain conventions; it could then perhaps consider the possibility of amending conventions which States refused to ratify.

37. Another profitable field for study would be that of the motives which induced a particular State to participate in the drafting of a convention, agree to sign it and then refuse to ratify it.

38. Mr. EL-ERIAN said that, before making some preliminary observations on Mr. Ago's memorandum, he wished to welcome the initiative which had enabled the Commission to discuss an important problem. He hoped that it would stimulate action by the Sixth Committee to undertake appropriate measures for securing the wider

acceptance and application of multilateral treaties, especially those codifying international law.

39. The memorandum clearly stated the problem and analysed the causes that stood in the way of the acceptance of codifying conventions. There had been virtually no attempt by legal scholars of official bodies to enquire into the reasons why there was not wider acceptance of multilateral treaties adopted by the United Nations. Scholars had been more concerned with treaty provisions, their relation to existing rules and their interpretation. Only in isolated instances had studies been made of constitutional and political problems raised by multilateral treaties. A comprehensive examination of the matter should be undertaken, but with due regard for the sensitivity of States about any effort to force them into ratification.

40. He hoped Mr. Ago's study would be expanded beyond the question of the submission of international instruments to the appropriate national authorities for ratification, and would deal with the reasons why ratification was delayed. In May 1968, the United Nations Institute for Training and Research (UNITAR) had made a study of the subject of ratification, including a section on the acceptance of multilateral treaties. It had also made a study concerning the acceptance of human rights treaties, which had been submitted to the International Conference on Human Rights.

41. The Commission should concentrate on codification conventions of general interest, because there were a vast number of multilateral treaties at present — some 400 — adopted under the auspices of the United Nations and the specialized agencies, of which about 120 had been adopted either by the General Assembly or by specially convened conferences.

42. Mr. AMADO said that the Commission should study the problem of ratification, thus showing its sense of responsibility and its desire to ensure that the work to which it had contributed so much did not remain a dead letter. He was not entirely in agreement with those members who thought that conventions adopted by conferences, but not ratified, had a substantial influence on international law. In his opinion, the Commission should adopt Mr. Ago's proposals.

43. The Commission should continue its efforts in the years to come to draw attention to the fact that a large number of States had not ratified the codifying conventions. The existence of two sets of laws, the one signed but not ratified by States and the other both signed and ratified by States, was regrettable and the Commission should not remain indifferent in the face of that problem.

44. Mr. USHAKOV said that the International Law Commission was not the appropriate body to discuss the matter raised in Mr. Ago's memorandum, which was a political rather than a legal matter.

45. But in any case, a most pertinent preliminary problem arose, namely, the fact that certain States were prevented, for purely political reasons, not only from participating in the drafting of codifying conventions, but also from acceding to them. So long as that underlying problem was not examined, any discussion of the matter must necessarily be vitiated.

46. Sir Humphrey WALDOCK said that he would not like his remarks at the previous meeting to be understood as meaning that he in any way minimized the importance of obtaining ratifications, following the important stage of the adoption of the text. He attached importance to the treaty's receiving at least the number of ratifications necessary to bring it into force; and any additional ratifications would, of course, then give further strength to the status of the treaty as representing the generally accepted law.

47. Mr. IGNACIO-PINTO suggested that participants in the seminar on international law might draw the attention of their Governments to the problem.

48. Mr. EUSTATHIADES said that if, as some members had indicated, the failure of new States to ratify conventions was also due to an administrative problem, namely, the lack of qualified legal staff, it might be useful to draw up a list of experts to advise new States.

49. The CHAIRMAN, speaking as a member of the Commission, said that it was quite legitimate that the Commission should be concerned over the fate of its work and should draw the attention of the General Assembly to the problem raised by Mr. Ago.

50. It was true to say that a great success had been achieved in the preparation of drafts for the codification of international law and also in the adoption of those drafts in the form of international conventions; it was equally true, however, that there had been much less success with regard to the ratification of the codification conventions.

51. The statement in paragraph 11 of Mr. Ago's memorandum that the reasons for that situation were "mainly inherent in the inertia of the political and administrative machinery of the modern State" placed an undue emphasis on what was only one of the causes of the delay in the ratification of codification conventions. An examination of the figures given by Mr. Ago in paragraph 8 of his memorandum showed that the codification convention which had attracted most ratifications was the 1961 Vienna Convention on Diplomatic Relations, which had attained the very satisfactory figure of seventy-one. There were two reasons for that. The first was that the 1961 Vienna Convention was extremely useful to foregin ministries in their daily work; those who, like himself, had worked as legal advisers to Foreign Ministries knew that the problems of privileges and immunities counted for half the total work of the legal department of a foreign ministry. The second reason was that the subject of diplomatic relations had been ripe for codification in 1961; the subject-matter of a codification convention was decisive.

52. Similar conclusions could be drawn from a comparison of the situation in respect of the four Geneva Conventions of 1958: the Convention on the High Seas had received forty ratifications, accessions or succession ratifications; the Convention on the Continental Shelf had received thirty-seven; the Convention on the Territorial Sea and the Contiguous Zone had received thirty-three, and the Convention on Fishing and Conservation of the Living Resources of the High Seas only twenty-five. It was particularly significant that, of those four conventions,

the one which now bound the largest number of States was that which, as stated in its preamble, embodied provisions adopted "as generally declaratory of established principles of international law." [6]

53. Of the various solutions which Mr. Ago had put forward, amendment of the Charter was undoubtedly impeccable from a legal point of view; it was also the least feasible and indeed, could almost be described as impossible. There was no doubt that the problem had many implications of a practical character which were by no means exclusively legal.

54. In practice, the issue really was to determine what solution would prove acceptable to States. He himself had not reached any conclusions on that point, but was inclined to favour the idea of an independent protocol of signature for each codification convention, the solution put forward in paragraph 37 of Mr. Ago's memorandum.

55. He fully concurred with the view that the Commission should limit its consideration to those multilateral conventions which had emerged from the Commission's own work.

56. He would suggest that the Commission's best course was to draw the General Assembly's attention to the problem by mentioning it in the report on the present session and expressing the Commission's interest in the matter. The Commission should not make any specific recommendation but merely point out the various possible courses of action. The reaction of the Sixth Committee of the General Assembly would indicate to the Commission the best course of action for the future.

57. Mr. STAVROPOULOS, Legal Counsel of the United Nations, said that unquestionably the Commission had been well advised to consider the problem of the final stage of the codification of international law. States could not be forced to act against their will, but they could be persuaded. The present discussion was merely preliminary and the Commission would be wise to refrain from making definite proposals, particularly as he was certain that the matter would be examined by the Sixth Committee.

58. The conditions obtaining in the International Labour Organisation were special and its system might not function effectively within the United Nations. The experience of the United Nations with the reporting system did not offer much hope that it would induce States to ratify more quickly.

59. He was inclined to favour the suggestion by Mr. Tabibi [7] for inserting in the General Assembly's agenda an item concerning the status of multilateral treaties, but thought it should appear only every three or five years so as to renew interest in the matter; very often at the outset a treaty received a considerable number of ratifications, but then interest subsided.

60. He had been informed by the secretariat of UNITAR that a paper on the subject of ratification in response to General Assembly resolution 2099 (XX) should be ready by December 1968.

61. The Secretariat could meet Mr. Rosenne's request for a bibliography of articles and books on the Commission's work to be submitted at each session.

62. Mr. AGO said he believed that the question he had raised in his memorandum fell clearly within the competence of the Commission. The Commission had been set up to deal with the task of the progressive development of international law and its codification; if it did not concern itself with the fate of the articles it had drafted, its contribution to the progressive development of international law would be incomplete.

63. It seemed to him that there was a contradiction between the desire that the work of codification should be carried out by means of general conventions, to all intents and purposes excluding any other method, and indifference to the situation created by insufficient ratifications.

64. Some members had pointed out that unratified conventions had a certain value, and he accordingly suggested that the following paragraph, which had been contained in the original draft, be reinserted in his memorandum:

> "Of course, even before this condition (i.e. wide-scale ratification) is fulfilled, what has been accomplished is not without importance. The value of a text adopted by a large majority, and sometimes unanimously, by a general conference of State representatives can hardly be called in question, even by a country which has not yet ratified or accepted it and even if it is not yet in force. International arbitral tribunals and courts will also probably tend to recognize this value, especially if, in the text in question, codification *stricto sensu* preponderates over the development of law. But all this is conditional on the final consent of a large and in some way representative part of the States which participated in the preparation and adoption of the convention being given within a reasonable time. On the other hand, if the years go by and only a small number of parties can be gathered round the convention, even the value initially attributed to the text will gradually diminish and the fruits of all these successive efforts may finally be lost."

65. Conventions which had been adopted and signed possessed a certain value, but they certainly did not have the same force as conventions which had been ratified.

66. The Secretariat might attach to his memorandum a note containing a list of States which had agreed to ratify codifying conventions. A study of that list would show that the States which had ratified conventions were not always those most interested in the subject of the convention. For example, the Convention on the Territorial Sea had been ratified by thirty-two States, four of them land-locked States. The argument that land-locked States were less interested in that type of convention could not, therefore, be accepted.

67. Some members had suggested that the slowness of new States in ratifying conventions was due to primitive organization, inadequacy of legal departments, and difficulty in translating the texts of conventions. Yet a glance at the list of States which had ratified the Conventions on Diplomatic Relations and Consular Relations would show that it was the new States that had been the

[6] See United Nations, *Treaty Series*, vol. 450, p. 82.

[7] See 977th meeting, para. 67.

quickest to ratify those conventions, and that the most advanced States, with highly-developed and complex administrative machinery, had been the slowest.

68. As for the need to respect the sovereignty of States, the intention of his proposals was precisely to induce States to perform an act of sovereignty. It meant establishing general legal rules concerning relations between States, and the sovereignty or vital interests of States could hardly be affected by the existence of general rules of international law in such fields as the law of treaties or diplomatic relations. Sovereignty implied, among other things, responsibility and a conscious respect for the rules governing mutual relations within the international community.

69. He had not intended to advocate particularly the system in force at the International Labour Organisation, WHO and UNESCO; what he had had especially in mind was the League of Nations system. A resolution had been unanimously adopted with regard to the codifying conventions which the League of Nations wanted to see accepted on the occasion of the Hague Conference. The resolution recommended the insertion, in each general codifying convention adopted by the League, of a protocol containing two fundamental rules, namely, that texts must be submitted to the competent authorities for ratification within a certain period, and that a report on progress towards ratification must be submitted to the Council of the League. A time-limit must exert some pressure, but it was understood that if the time-limit had been exceeded, States still had the opportunity to ratify conventions. The information to be given by States in the reports which they would be required to submit regarding conventions which had not yet been ratified did not seem to him to be of a kind that was likely to make ratification more difficult.

70. He had no particular preference for any of the systems he had suggested; what he wanted was concrete results. Some means had to be found of securing wider and quicker ratification of certain conventions. He was particularly concerned over the prospects of the future convention on the law of treaties; if it were ratified by only a small number of States which were not representative of the international community as a whole, that would be a serious setback. So far as practical measures were concerned, the Secretariat could, as had been proposed, undertake to report periodically on progress in the ratification of certain conventions.

71. Some members were not convinced of the utility of recommendations. But the joint appeal by the United Nations and the specialized agencies for ratification of the human rights conventions had produced excellent results. A similar appeal for the codifying conventions might prove equally effective. Admittedly, with human rights the United Nations enjoyed the support of the national human rights committees, which operated in individual countries and brought some pressure to bear on Governments. Perhaps the idea of an International Law Decade should be reconsidered and possibly committees should be set up to study codification problems in the various countries so as to exert pressure on the responsible authorities to ratify the conventions.

72. He endorsed the proposal for the drafting of an additional clause which the General Assembly might consider at the same time as the draft on special missions.

73. It was the duty of the United Nations and the Commission to concern themselves with the problem of codifying conventions, which were different from all other treaties. States were, of course, formally entitled not to ratify codifying conventions, but had they really the right to refuse to participate in a necessary collective effort? Attention must be drawn to the fact that codification problems were not solved simply by creating an International Law Commission. Unless and until the final stage of codification was accomplished, the task of the United Nations would remain unfinished.

74. Mr. BARTOŠ said that a perusal of the summary records of the Vienna Conference on Diplomatic Relations would show why Italy had not ratified the two Conventions prepared by those Conferences. The representative of Italy, like the representative of France, had repeatedly emphasized that if certain articles were adopted, his country would not be able to ratify the convention.

75. The problem was no longer a legal one; it was political. Political considerations often supplied States with reasons for not proceeding to ratification. A number of States had joined together in opposing treaties in simplified form, treaties that did not need ratification, because they were afraid they would be removed from parliamentary control, and that the big States could then exert pressure on the smaller States. It must be remembered that some conventions contained clauses which States regarded as dangerous.

76. Mr. AGO said he would like to point out that, by a law passed in 1967, Italy had authorized the ratification of both the Convention on Diplomatic Relations and the Convention on Consular Relations. The delay in ratifying those Conventions was to a large extent due to the Italian administrative machinery, which required an inordinate number of operations before ratification became final.

77. Mr. TABIBI said that although it was difficult for new States to examine, interpret and ratify new conventions, they were likely to ratify quickly any which affected their vital interests; that was why so many had ratified the Convention on Diplomatic Relations so promptly.

78. Mr. YASSEEN said that certain circumstances could prevent States from ratifying a convention. It was said that the codification and progressive development of international law represented, to some extent, a compromise. But compromises could be detrimental to the vital interests of some States, and vital interests were a matter for the sovereign judgment of the States themselves, especially matters which fell within their exclusive competence, of which ratification was one.

79. The CHAIRMAN said that the Commission's report should include a section on the question, together with a summary of the views expressed during the discussion. It was evident that most members were not in favour of putting forward definite recommendations at that stage.

80. Mr. ROSENNE asked whether the item would be placed on the agenda for the next session.

81. Mr. AMADO suggested that it be stated in the report that the Commission considered it to be its duty

to draw the attention of the Sixth Committee to the question raised by Mr. Ago.

82. Mr. EUSTATHIADES said it was necessary to decide whether the question should appear on the agenda as a separate item, or whether it should simply be stated that the Commission would continue its consideration of the question.

83. Mr. USTOR said that the Sixth Committee could decide whether or not the item should be included on the agenda for the next session.

84. Mr. USHAKOV said that the discussion of the problem raised by Mr. Ago had taken place under item 4 of the agenda. He had opposed the placing of the question on the agenda as a separate item, and now wished to reaffirm his position.

85. Sir Humphrey WALDOCK proposed that no decision be taken until the text of the passage for inclusion in the report had been circulated.

86. Mr. YASSEEN supported Sir Humphrey Waldock's proposal.

87. Mr. AGO also supported Sir Humphrey Waldock's proposal. He wished to add that he rejected the notion that the Commission depended upon the Sixth Committee in drawing up its agenda.

88. Mr. ROSENNE said he agreed with Mr. Ago.

89. The CHAIRMAN suggested that the Commission follow the course advocated by Sir Humphrey Waldock.

*It was so agreed.*

The meeting rose at 1.30 p.m.

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## 979th MEETING

*Monday, 22 July 1968, at 3 p.m.*

*Chairman:* Mr. José María RUDA

*Present:* Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. El-Erian, Mr. Eustathiades, Mr. Kearney, Mr. Nagendra Singh, Mr. Rosenne, Mr. Tabibi, Mr. Tammes, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

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### Decisions taken by the Commission at its private meetings

1. The CHAIRMAN said that, at its private meetings the previous week, the Commission had decided:

First, that its next session would be held at Geneva from 2 June to 8 August 1969.

Secondly, to include in its report to the General Assembly a general statement expressing concern at the situation regarding honoraria and *per diem* allowances, and suggestions that a special allowance be paid for the travel and incidental expenses of Special Rapporteurs. It would also stress the need to increase the staff of the Codification Division of the Office of Legal Affairs so that it could provide additional assistance to the Commission and its Special Rapporteurs.

Thirdly, to include in its report a statement in general terms concerning the extension of the term of office of members from five to six or seven years, giving objective reasons for doing so, such as the volume of work of the Commission, the increase in its membership to twenty-five and the general need for codification demonstrated by the number of United Nations bodies dealing with international law.

Fourthly, to mention in its report that a winter session might be needed early in 1970.

Fifthly, that the Chairman in his statement to the General Assembly should give a general account of the Commission's work during the past twenty years.

### Most-favoured-nation clause

**(A/CN.4/L.127)**

[Item 3 of the agenda]
*(resumed from the 976th meeting)*

2. The CHAIRMAN invited the Commission to resume its consideration of item 3 of the agenda.

3. Mr. EL-ERIAN said the Special Raporteur had given a masterly and complete exposition of the history of the subject.

4. His answer to the first question in the Special Rapporteur's questionnaire [1] was that the purpose of the clause should be dealt with primarily but not exclusively from the viewpoint of its role in international trade.

5. His answer to the second question was that the study would be breaking fresh ground as it was outside the strictly traditional discipline of international law and would embrace many economic problems.

6. His answer to the third question was that the content of the study should include some reference to the special problems of developing countries.

7. His answer to the fourth question was that the draft articles ought to take the form of an independent series and not be treated as a sequel to the law of treaties.

8. His answer to the last question was that the Special Rapporteur should certainly consult interested agencies, an experience from which he himself, as Special Rapporteur on another subject, had greatly benefited.

9. Mr. NAGENDRA SINGH said that his answer to the first question was in the affirmative, as was his answer to the second, though of course the study could not be a purely legal one, entirely divorced from economics. At the second session of UNCTAD, held at New Delhi, a number of developing countries had mentioned the importance of the most-favoured-nation clause and the need to examine many of its aspects.

10. His answer to the third, fourth and fifth questions was also in the affirmative. The articles should be inde-

[1] See 975th meeting, para. 62.