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Summary record of the 985th meeting

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985th MEETING

Tuesday, 30 July 1968, at 10 a.m.

Chairman: Mr. José María RUDA

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

Co-operation with other bodies

[Item 5 of the agenda]

(resumed from 971st meeting)

STATEMENT BY THE OBSERVER FOR THE EUROPEAN COMMITTEE ON LEGAL CO-OPERATION

1. The CHAIRMAN invited the Observer for the European Committee on Legal Co-operation to address the Commission.
2. Mr. GOLSONG (Observer for the European Committee on Legal Co-operation) said that since the Commission's last session, the following four new conventions had been adopted or concluded within the Council of Europe: the European Convention on Consular Functions, which had been opened for signature in 1967 and which supplemented the Vienna Convention on Consular Relations; the European Convention on the Abolition of Legalisation of Documents executed by Diplomatic Agents or Consular Officers, which supplemented the 1961 Hague Convention abolishing the requirement for Legalisation for Foreign Public Documents; the European Convention on Information on Foreign Law, which also had been opened for signature in 1967 and the purpose of which was to institute a procedure for enabling national judicial authorities to obtain information on foreign law; and, lastly, the European Convention on the Adoption of Children, the purpose of which was to harmonize the national law of member States and avoid conflicts of law when adoption involved a transfer from one country to another.
3. The Committee of Ministers had recommended that the Governments of member States should publish digests of national State practice in the field of public international law. The Committee was trying to ensure that such publication became general so as to obtain a complete series of documents on the practice of the different States. To assist the work, a general index was being prepared of all such digests already existing. A committee of experts, under the chairmanship of Mr. Eustathiades, had prepared a model classification plan of documents concerning State practice in the field of public international law, which would be communicated to the competent organs of the United Nations as a first contribution by the Council of Europe towards the implementation of General Assembly resolution 2099 (XX).
4. In three recent judgements, the European Court of Human Rights had already had occasion to apply the rules of interpretation which the Commission had incorporated in its draft on the law of treaties.
5. The Secretary-General of the Council, in his capacity as depositary, had had to settle a number of problems, including a problem of State succession in connexion with a treaty the application of which had been extended to a State which had acceded to full sovereignty, by a State member of the Council of Europe, which had previously been responsible for the external affairs of the former State.
6. The Committee's work in progress included a study of the problem of State immunity from jurisdiction and that of the privileges and immunities of international organizations, which was being approached from the narrow angle of the functional needs of the international organization. The United Nations was represented in the committee dealing with the latter question by Mr. Raton.
7. In addition, the Committee was preparing a series of glossaries of legal terms, including the general terminology employed in European conventions, and on problems of establishment and regional planning. The Committee was also preparing a guide to the law libraries in Europe.
8. The Committee had followed with interest the work of the Vienna Conference on the Law of Treaties and hoped to be able to assist in finding a solution to some of the differences which had arisen, particularly in connexion with article 62.
9. With regard to the topic of special missions, an exchange of views would be held before the meeting of the Sixth Committee of the General Assembly, in the hope of finding a formula acceptable to the majority of Members of the United Nations and to the international community at large.
10. The ratification problems raised by the sixty agreements concluded within the Council of Europe were not the same as those raised by universal codifying conventions. Most of the provisions of the agreements drafted within the Council of Europe concerned domestic law and were designed to harmonize national legislation, whereas universal conventions concerned relations between States. The political problems of ratification were easier to solve within the Council of Europe because members of parliament from the various countries took part in its Consultative Assembly and helped to accelerate the process of ratification in their respective parliaments.
11. The Committee was trying to help countries with only limited legal departments which were not in a position to grasp the full significance of new texts.
12. Next year a number of seminars of experts, jurists and members of parliament, some from States which had ratified a particular convention and some from States which had not, would be held under the auspices of the Council of Europe. The first conventions to be examined in that way would be the European Convention on Extradition and the European Convention on Mutual Assistance in Criminal Matters.
13. He hoped the Commission would be represented at the next meeting of the European Committee on Legal Co-operation, which would open in Strasbourg on 11 November 1968. The agenda would include among other items a review of the number of ratifications of universal conventions by member States. In that connexion, the Secretariat was proposing to draw up a table of the codi-

fying conventions which had been ratified by States members of the Council of Europe.

14. Mr. EUSTATHIADES said that legal affairs were one of the most noteworthy of the Council's activities. Its efforts to promote the unification of internal law, although limited to the regional scale, were a great help to the work of universal codification as a whole.

15. Although there were a number of factors calculated to accelerate the ratification of European regional codifying conventions drafted within the Council of Europe, such as the presence of members of parliament in the Consultative Assembly, the limited range of the codification work, and the fact that the experts who prepared the codification drafts received guidance from the Committee of Ministers, a great many member States had not ratified the conventions. The implication was that probably the best solution was to prepare texts which had the maximum chance of immediate and wide-scale ratification.

16. He certainly thought that the Commission should be represented at the next session of the European Committee on Legal Co-operation.

17. Mr. BARTOŠ said that the Commission should co-operate fully with the European Committee on Legal Co-operation. Regional codification problems were closely linked to those of universal codification; the European Committee considered that universal codification set the example for regional codification, but the comparative study of regional codifications was one of the sources of universal codification.

18. He had taken part as the representative of the Commission in a session of the European Committee on Legal Co-operation and had noted that the members of the Committee were anxious to establish very close relations with the International Law Commission. The Commission should send one of its representatives so that he could reply to questions raised by the Committee, particularly with regard to the interpretation of the law of treaties.

19. Mr. EL-ERIAN said that, in his work on relations between States and inter-governmental organizations, he had had the benefit of consultations with Mr. Golsong who, like the legal advisers of other organizations, had provided him with much valuable material. He therefore wished to take that opportunity to thank Mr. Golsong for his co-operation.

20. Sir Humphrey WALDOCK said he was very appreciative of the kindness shown to him by Mr. Golsong at Strasbourg in 1967 when, as Chairman for the nineteenth session, he had represented the Commission but had only been able to contribute by letter to the work of the European Committee on Legal Co-operation. He regretted having been unable to attend the meetings of the Committee, and hoped that in 1968 the present Chairman of the Commission would be able to make a personal appearance before the European Committee.

21. The CHAIRMAN, thanking the Observer for the European Committee on Legal Co-operation, said his statement on the work of the Committee had been of great interest to the Commission, particularly his account of its efforts in connexion with the ratification of conventions.

Relations between States and inter-governmental organizations

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

[Item 2 of the agenda]

(*resumed from the previous meeting*)

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE (*continued*)

22. The CHAIRMAN invited the Commission to resume its consideration of the draft articles proposed by the Drafting Committee.

ARTICLE 15 (Notifications)¹

23. Mr. CASTRÉN (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for article 15:

Notifications

1. The sending State shall notify the Organization of:

(a) The appointment of the members of the permanent mission, their position, title and order of precedence, their arrival and final departure or the termination of their functions with the permanent mission;

(b) The arrival and final departure of a person belonging to the family of a member of the permanent mission and, where appropriate, the fact that a person becomes or ceases to be a member of the family of a member of the permanent mission;

(c) The arrival and final departure of the private staff and the fact that they are leaving the employ of the member of the mission;

(d) The engagement and discharge of persons resident in the host State as members of the mission or private staff entitled to privileges and immunities.

2. The Organization shall transmit to the host State the notifications referred to in paragraph 1 of this article.

3. The sending State may also transmit to the host State the notifications referred to in paragraph 1 of this article.

4. Whenever possible, prior notification of arrival and final departure shall also be given.

24. Since the members of the Commission had not proposed any changes of substance during the general discussion, the Committee had made only drafting changes to the text submitted by the Special Rapporteur.

25. The introductory phrase in the Special Rapporteur's text did not indicate by whom the organization was to be notified. The Drafting Committee had made that clear by stating that the obligation to notify lay with the sending State.

26. Sub-paragraph (a) had been supplemented by the addition of the words "their position, title and order of precedence". As would be seen from the alternative text proposed for article 17,² the Drafting Committee had decided not to extend the scope of that article, which dealt with precedence among permanent representatives to an international organization. Consequently, the problem of precedence among members of a permanent mis-

¹ For earlier discussion, see 968th meeting, paras. 27-62.

² See below, para. 55.

sion would be regulated by that addition to sub-paragraph (a).

27. The Drafting Committee had decided to delete the words "where appropriate" in sub-paragraph (c), although they appeared in the corresponding article of the Vienna Convention on Diplomatic Relations,³ because they added nothing to the provision concerned; on the other hand, it had decided to retain them in sub-paragraph (b) where they did serve a purpose.

28. The Drafting Committee had replaced the words "*domestiques privés*" in the French version of sub-paragraphs 1 (c) and 1 (d) by the words "*personnes au service privé*", which were used in article 1 (Use of terms). The words "*en tant que*" in sub-paragraph 1 (d) had been replaced by "*en qualité de*".

29. In paragraph 4, the Drafting Committee had replaced the word "where" by "whenever".

30. Some members of the Commission had proposed the deletion of paragraph 3, but the Drafting Committee had considered that paragraph 3 reflected a fairly common practice and its retention would confirm that the host State was required to receive the notification.

31. Mr. NAGENDRA SINGH said that he was in agreement with the proposed formulation of article 15 but would suggest two drafting improvements; first, to replace in sub-paragraph 1 (c) the words "the member" by "a member"; and secondly, to insert in sub-paragraphs 1 (c) and 1 (d) the word "permanent" before "mission" in order to bring the wording into line with sub-paragraphs 1 (a) and 1 (b).

32. Mr. USTOR proposed that, in sub-paragraphs 1 (c) and 1 (d), the words "private staff" be replaced by the words "members of the private staff" in order to bring them into line with the French version, "*personnes au service privé*". The term "member of the private staff" had first been used in paragraph 1 (i) of the definitions of article 2 of the 1963 Vienna Convention on Consular Relations. The corresponding term in the 1961 Vienna Convention on Diplomatic Relations had been "private servant".

33. If that change were made in sub-paragraph 1 (c) and 1 (d), it would also have to be made in sub-paragraph (k)⁴ of article 1.

34. Mr. CASTRÉN (Chairman of the Drafting Committee) said he could accept the drafting changes proposed by Mr. Ustor and Mr. Nagendra Singh.

35. Mr. ROSENNE said he was prepared to accept article 15 for the time being, although he was not convinced of the need for the words "where appropriate", in sub-paragraph 1 (b).

36. He wished to reserve an issue of principle arising from the provisions of article 15. Those provisions rightly specified that certain notifications must be made to the organization, and also that the organization had the duty to transmit those notifications to the host State. What he wished to reserve for a later stage of the Commission's

work was the question whether the organization should not also be obliged to notify the other member States.

37. Mr. USHAKOV proposed that the words "the employ of the member of the mission" in sub-paragraph 1 (c) be replaced by the words "the employ of members of the mission".

38. Mr. EUSTATHIADES said that, under paragraph 2 the organization was obliged to transmit to the host State the notifications referred to in paragraph 1. He asked whether the same obligation applied to the notifications referred to in paragraph 4.

39. Mr. CASTRÉN (Chairman of the Drafting Committee) said that the Drafting Committee had followed the model of article 10 of the Vienna Convention on Diplomatic Relations, where prior notification was dealt with in a separate paragraph at the end of the article.

40. Mr. EUSTATHIADES said he wondered whether there was any point in the organization also advising the host State of prior notification of arrival and final departure.

41. Mr. USHAKOV said that the expression "private staff" was not clear; it would be better to say "private staff of members of the permanent mission".

42. Mr. BARTOŠ said he supported Mr. Ushakov's proposal.

43. He thought that Mr. Eustathiades's point would be met by moving paragraph 4 to follow paragraph 1, to be followed by the present paragraphs 2 and 3 which would become 3 and 4. In those paragraphs it would then be sufficient to say "referred to in paragraphs 1 and 2 of this article".

44. Mr. CASTRÉN (Chairman of the Drafting Committee) said he could accept the following wording for article 15, which incorporated the various changes proposed:

1. The sending State shall notify the organization of:

(a) The appointment of the members of the permanent mission, their position, title and order of precedence, their arrival and final departure or the termination of their functions with the permanent mission;

(b) The arrival and final departure of a person belonging to the family of a member of the permanent mission and, where appropriate, the fact that a person becomes or ceases to be a member of the family of a member of the permanent mission;

(c) The arrival and final departure of persons employed on the private staff of members of the permanent mission and the fact that they are leaving that employment;

(d) The engagement and discharge of persons resident in the host State as members of the permanent mission or as private staff entitled to privileges and immunities.

2. Whenever possible, prior notification of arrival and final departure shall also be given.

3. The organization shall transmit to the host State the notifications referred to in paragraphs 1 and 2 of this article.

4. The sending State may also transmit to the host State the notifications referred to in paragraphs 1 and 2 of this article.

45. Sir Humphrey WALDOCK said that he had no strong views in the matter. Even if paragraph 4 were to remain in its present position, the meaning would still be the same.

³ See United Nations, *Treaty Series*, vol. 500, p. 102, article 10, para. 1 (c).

⁴ Formerly sub-paragraph (i)

46. The CHAIRMAN put to the vote the text of article 15 as amended in the French version read out by the Chairman of the Drafting Committee, on the understanding that the English version would be adjusted accordingly.

*Article 15, as thus amended, was adopted by 15 votes to none.*⁵

ARTICLE 16 (*Chargé d'affaires ad interim*)⁶

47. Mr. CASTRÉN (Chairman of the Drafting Committee) said that the Drafting Committee proposed the following text for article 16:

Chargé d'affaires ad interim

If the post of permanent representative is vacant, or if the permanent representative is unable to perform his functions, a chargé d'affaires *ad interim* shall act provisionally as head of the permanent mission. The name of the chargé d'affaires *ad interim* shall be notified to the Organization either by the permanent representative or, in case he is unable to do so, by the sending State.

48. Of the various terms suggested by the Commission to designate the person acting provisionally as permanent representative, the one favoured by the majority in the Drafting Committee was "*chargé d'affaires ad interim*".

49. The Committee had tried not to depart from the wording of article 19, paragraph 1, of the Vienna Convention on Diplomatic Relations and, for that reason, had not accepted some of the suggestions. In the French version the words "*sera notifié*" in the second sentence had been replaced by the words "*est notifié*".

50. Mr. ROSENNE said that article 16 was acceptable except for the word "provisionally" in the first sentence, which suggested that any action performed by the chargé d'affaires would require subsequent confirmation. Presumably what was meant was that he would act temporarily as head of the permanent mission.

51. Mr. EUSTATHIADES said that Mr. Rosenne's remark also applied to the French text. The phrase "*dans l'intervalle*" might be used, or else the words "*à titre provisoire*" might be omitted altogether.

52. Mr. CASTRÉN (Chairman of the Drafting Committee) said he agreed that those words were not essential.

53. The CHAIRMAN, speaking as a member of the Commission, said he was in favour of deleting the word "provisionally".

54. Mr. USHAKOV said that it would be best to delete the word "provisionally" and include an explanation in the commentary.

It was so agreed.

Article 16, as thus amended, was adopted by 15 votes to none.

ARTICLE 17 (Precedence)⁷

55. The CHAIRMAN invited the Commission to

⁵ For a later amendment to the text of article 15, see 986th meeting, para. 61.

⁶ For earlier discussion, see 968th meeting, paras. 63-82, and 969th meeting, paras. 1-53.

⁷ For earlier discussion, see 969th meeting, paras. 54-83, and 970th meeting, paras. 1-54.

consider the three alternatives for article 17 submitted by the Drafting Committee, which read:

Precedence

Alternative A

Precedence among permanent representatives to an international organization shall be determined in accordance with the order applied in that organization.

Alternative B

Precedence among permanent representatives to an international organization shall be determined in accordance with the date and time of presentation of their credentials to the competent organ of that organization.

Alternative C

Precedence among permanent representatives to an international organization shall be determined in accordance with the alphabetical order applied in that organization.

56. Mr. CASTRÉN (Chairman of the Drafting Committee) said that the Drafting Committee had not changed the title of article 17 because brief titles were to be preferred.

57. For the text of the article, the Committee had drafted three alternatives and it was for the Commission to decide whether to submit one or more of them. Personally he thought it would be best to submit two or more alternatives to the General Assembly so as to enable Governments to make a choice. Or the Commission could adopt one alternative and mention the others in the commentary.

58. Mr. YASSEEN said that he preferred alternative B, which conformed to the rules of classical diplomacy.

59. Mr. BARTOŠ said he was not in favour of adopting alternative B, since although it was a rule of classical diplomacy it was not applicable in practice to international organizations and was not in the spirit of their constitutions. He could accept either alternative A or alternative C, but the latter should be amended to read "the alphabetical order applied in that organization at the time": the alphabetical order could change since in practice lots were drawn.

60. Mr. EUSTATHIADES said that alternatives A and B might be merged by inserting, between the words "shall" and "be determined" in alternative B, the words "if no specific order is applied in that organization". Then organizations which had already established a system could continue to apply it, whereas new organizations could adopt the other system, which would represent some progress towards uniformity.

61. If the Commission did not like that suggestion, he would be in favour of alternative B.

62. Mr. USHAKOV said he saw no advantage in merging alternatives A and B, as there would then be no rule left at all. Alternative B seemed to be preferable, but there would be no objection to submitting several alternatives.

63. Mr. YASSEEN asked whether the rule in alternative B was not in fact the rule applied in the United Nations.

64. Mr. EL-ERIAN (Special Rapporteur) said that there was no established practice regarding precedence. The material furnished by the Secretariat indicated that the alphabetical system was used in the United Nations, but

there was no information on what was the practice in the specialized agencies.

65. It would be worth considering a rule for establishing precedence according to the date and time of presentation of credentials on the lines of that applied in bilateral diplomacy.

66. Mr. ROSENNE said that the discussion had confirmed his view that for the time being the Commission should submit no rule on precedence, which varied according to circumstances. The Secretariat's note (A/CN.4/L.129) indicated that the precedence of permanent representatives might easily raise delicate problems. The Commission might perhaps mention the three possible alternatives in the introduction to its report on item 2 of the agenda.

67. As far as the three variants were concerned, there was little difference between A and C because in all cases article 4 would apply. The choice would lie between A and B and he preferred the former.

68. Once all the articles had been adopted and the Commission had more information about how precedence was established, it could decide whether or not to include a rule on the subject.

69. Sir Humphrey WALDOCK said it would be useful to put forward a residual rule on the subject so as to elicit the views of Governments. In his opinion alternative B was the usual system applied to permanent representatives and was in accordance with the principle of the equality of States. The alphabetical system gave an unfair advantage to certain States.

70. Mr. RAMANGASOAVINA said that, if the aim was to harmonize the practice of the various organizations, then alternative B was the most reasonable.

71. The CHAIRMAN, speaking as a member of the Commission, said he agreed with Sir Humphrey Waldock that the Commission should formulate a residual rule, but he favoured alternative C because the alphabetical system was used at United Nations Headquarters.

72. Mr. USHAKOV said that, when discussing alternative C, the Drafting Committee had been aware that the alphabetical order was established by drawing lots, but it had found that notion difficult to express. The point could be explained in the commentary if the Commission submitted all three alternatives.

73. Mr. CASTRÉN (Chairman of the Drafting Committee) said that the majority of the Commission favoured alternative B, but he thought it would be best to submit all three alternatives. In alternative C, the amendment suggested by Mr. Bartoš should be adopted.

74. Mr. YASSEEN said that alternative A added nothing to what was already provided by article 4. Similarly, there was no advantage in merging the first two alternatives, since alternative B combined with article 4 led to the same result. The Commission might therefore submit alternative B, and state in the commentary that some members had favoured alternative C.

75. Mr. ROSENNE said that he was opposed to submitting more than one alternative. The Commission should put forward only the text which was supported by the majority and leave the other two to be mentioned in the

commentary. It was difficult for Governments to comment on three variants and to submit alternatives was an undesirable practice.

76. Mr. CASTAÑEDA said that alternative C corresponded most closely to actual practice.

77. Mr. BARTOŠ said he agreed with that view; alternative C was the easiest to apply in the light of the principle of equality of nations laid down in the United Nations Charter.

78. However, it should not be forgotten that questions of precedence often gave rise to problems not only of form but also of substance. That being so, it would probably be best for the Commission to submit all three alternatives and leave it to Governments to take a decision.

79. Mr. YASSEEN suggested that the Commission choose one alternative by vote; the other alternatives could then be mentioned in the commentary.

80. Mr. USTOR said that there was no uniform practice in the matter of precedence, and alternative B had the greatest merit as a new rule that should be acceptable to organizations.

81. Mr. EL-ERIAN (Special Rapporteur) suggested a new text for article 17 reading: "Precedence among permanent representatives shall be determined by the alphabetical order or according to the time and date of the submission of their credentials to the competent organ of the Organization, in accordance with the practice established in the Organization".

82. That text would cover alternatives B and C. In the unlikely event of there being any other system, it would be covered by article 4.

83. Mr. NAGENDRA SINGH said that the most prevalent system was that of the alphabetical order. He supported the Special Rapporteur's formula which would leave the choice of system to the organization concerned.

84. Mr. YASSEEN formally proposed that a vote be taken on alternative B as the text to be submitted by the Commission.

85. The CHAIRMAN said the Commission should choose between alternative B, as proposed by Mr. Yasseen and the new text put forward by the Special Rapporteur. He would put alternative B to the vote first, and then the Special Rapporteur's new text.

6 votes were cast in favour of alternative B and 8 votes in favour of the Special Rapporteur's new text.

86. The CHAIRMAN declared that the Special Rapporteur's new text was adopted for submission to the General Assembly.

The meeting rose at 1 p.m.

986th MEETING

Wednesday, 31 July 1968, at 9.30 a.m.

Chairman: Mr. José María RUDA

Present: Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. El-Erian, Mr. Eustathiades, Mr. Kearney, Mr.