

Document:-  
**A/CN.4/SR.987**

**Summary record of the 987th meeting**

Topic:  
**Other topics**

Extract from the Yearbook of the International Law Commission:-  
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accept the text of sub-paragraph (I) as it stood for the time being; he would revert to the question when the Commission had the whole text of the draft articles before it.

82. Mr. BARTOŠ said that he knew of no term other than “host State” with which to describe a State in whose territory provision had been made for the establishment of a permanent mission.

83. Mr. USTOR said that, for those who favoured the text of sub-paragraph (I) as it stood, the host State was host to the permanent mission, whereas those who wished to replace the word “are” by the words “may be” put the emphasis on the State as host to the organization.

84. Mr. YASSEEN observed that the definitions given in article 1 were intended to facilitate application of the provisions of the future convention. If a State entered into negotiations with another State with a view to establishing a permanent mission, that other State could claim, in virtue of sub-paragraph (I) as it now stood, that it was not a host State and was not bound to apply the articles of the convention. A State unquestionably incurred certain obligations once a permanent mission had been established.

85. Mr. USHAKOV said that it was necessary to consider two separate cases. In the one case, the host State had given its consent and the mission had been established. In the other case, the State had not given its consent and another State approached it to ask whether it was possible, for example, to obtain premises. The two situations were not comparable.

86. Mr. KEARNEY said that neither side had convinced the other; the choice of wording for sub-paragraph (I) could be settled only by a vote.

*Sub-paragraph (m)*

*There were no comments.*

*Sub-paragraph (b) was adopted by 12 votes to none, with 4 abstentions.*

*Sub-paragraph (e) was adopted by 15 votes to none, with 1 abstention.*

*Sub-paragraph (h), as amended was, adopted by 13 votes to none, with 3 abstentions.*

*Mr. Rosenne's proposal to amend sub-paragraph (I) was rejected by 8 votes to 7, with 1 abstention.*

87. The CHAIRMAN invited the Commission to vote on article 1 as a whole, as amended. In sub-paragraph (d), the concluding words “that organization” had been replaced by “the Organization”; in sub-paragraph (I), two commas should be inserted, one after the word “seat” and one after the word “office”, and the word “bien” should be deleted from the French text.

*Article 1 as a whole, as amended, was adopted by 15 votes to none, with 1 abstention.*

*Adoption of draft articles 1 to 20 as a whole*

88. Mr. ROSENNE suggested that, before taking a decision on articles 1 to 20 as a whole, the Commission should consider whether or not to follow the procedure adopted in 1964, when it had submitted articles 1 to 16 of the first draft on special missions “to the General

Assembly and to the Governments of Member States for information”.<sup>12</sup>

89. After a brief discussion, in which Mr. BARTOŠ, Mr. CASTAÑEDA, Mr. ROSENNE, Mr. TABIBI and Sir Humphrey WALDOCK took part, Mr. EL-ERIAN (Special Rapporteur) explained that articles 1 to 20 were not simply a part of the draft text but a self-contained set of articles dealing with all the general aspects of the topic.

90. The CHAIRMAN suggested that the Commission might adopt draft articles 1 to 20 as a whole, and decide at a later meeting on the wording of the relevant paragraphs of its report.

*Draft articles 1 to 20 as a whole were adopted unanimously.*

91. The CHAIRMAN congratulated the Special Rapporteur on behalf of the Commission on the adoption of the set of articles.

92. Mr. EL-ERIAN (Special Rapporteur) thanked the Chairman for his kind words and the members for their co-operation.

The meeting rose at 1.30 p.m.

<sup>12</sup> See *Yearbook of the International Law Commission, 1964*, vol. II, p. 210, para. 35.

## 987th MEETING

*Thursday, 1 August 1968, at 9.30 a.m.*

*Chairman: Mr. José María RUDA*

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

### Draft report of the Commission on the work of its twentieth session

(A/CN.4/L.132 - L.135 and Addenda)

1. The CHAIRMAN invited the Commission to consider the draft report on the work of its twentieth session.

2. Mr. TABIBI (Rapporteur), introducing the draft report, said that the topic of relations between States and international organizations was dealt with in chapter II; the Commission would be called upon to take a decision on the question of the circulation of that chapter to Governments. Chapter III dealt with the succession of States and Governments. In accordance with the Commission's decision to divide that topic into two sub-items, part II of chapter III dealt separately in section A with succession in respect of matters other than treaties and in section B with succession in respect of treaties. Section A of Chapter IV (Other decisions and conclusions of the

Commission) dealt with the topic of the most-favoured-nation clause.

3. Mr. BARTOŠ proposed that chapter IV should be divided into two chapters: a chapter IV consisting of the present part A on the most-favoured-nation clause, which deserved separate treatment, and a new chapter V, containing the remainder of the present chapter IV.

4. Mr. USTOR said that only a beginning had been made on the study of the most-favoured-nation clause; if, however, the Secretariat found it convenient to divide chapter IV, he would have no objection.

*Mr. Bartoš's proposal was adopted.*

5. The CHAIRMAN said that drafting changes necessitated by that decision would be made in chapter I, paragraph 1.

### Chapter I

#### ORGANIZATION OF THE SESSION (A/CN.4/L.133)

##### Paragraphs 1 to 5

*Paragraphs 1 to 5 were approved.*

##### Paragraph 6

6. Mr. ROSENNE said he welcomed the new presentation of the passage dealing with the Secretariat in paragraph 6.

*Paragraph 6 was approved.*

##### Paragraph 7

7. Mr. USTOR noted that item 3 of the agenda, as reproduced in paragraph 7, was worded "Most-favoured-nation clause". He suggested that those words should be replaced by the full title given to the topic in the 1967 report namely, "Most-favoured-nation clauses in the law of treaties".<sup>1</sup>

8. Mr. AGO said that it would be more correct to describe the topic as "the most-favoured-nation clause in treaties".

9. Mr. BARTOŠ said that the most-favoured-nation clause had a wide application which extended beyond the realm of treaties.

10. Sir Humphrey WALDOCK suggested the retention of the short title: "The most-favoured-nation clause".

11. Mr. USTOR accepted that suggestion.

*Sir Humphrey Waldock's suggestion was adopted.*

12. The CHAIRMAN said that the topic would be entitled "The most-favoured-nation clause" wherever it appeared in the draft report.

*Paragraph 7 was approved.*

##### Paragraph 8

*Paragraph 8 was approved.*

*Chapter I as a whole was approved.*

<sup>1</sup> See *Official Records of the General Assembly, Twenty-second Session, Supplement No. 9 (A/6709/Rev.1)*, para. 48.

### Chapter IV

#### THE MOST-FAVOURLED-NATION CLAUSE

(A/CN.4/L.135, section A)

##### Paragraph 1

13. Mr. BARTOŠ proposed that the word "brief" before "questionnaire" in the last sentence of paragraph 1 should be deleted.

*It was so agreed.*

14. Mr. ROSENNE proposed that, in the same sentence, the word "questions" should be replaced by "points".

*It was so agreed.*

15. Sir Humphrey WALDOCK proposed that in the same sentence, the order of the words "submitted also" should be reversed.

*It was so agreed.*

*Paragraph 1, as amended, was approved.*

##### Paragraph 2

16. Mr. KEARNEY proposed that, in the second sentence, the words "the highest importance to the role" should be replaced by "the fundamental importance of the role", and that the words "possibly all fields of application" should be replaced by "the major fields of application". In the third sentence, the words "The Commission wishes to direct its attention to" should be replaced by "The Commission considers that it should focus on". The fourth sentence should be amended to read: "It intends to clarify the scope and effect of the clause as a legal institution in the context of all aspects of its practical application." In the fifth sentence, the word "it" should be replaced by "the Commission" and the words "wishing to enter" by "entering". In the last sentence, the words "organizations and" should be inserted before the word "agencies".

17. Mr. ROSENNE proposed that the last sentence should be made into a separate paragraph 3; that the words "Having this in mind" should be replaced by the words "In the light of the foregoing considerations,"; and that the word "accordingly" should be deleted.

18. Mr. USTOR thanked Mr. Kearney and Mr. Rosenne for their useful suggestions.

*The amendments proposed by Mr. Kearney and Mr. Rosenne were adopted.*

*Paragraph 2, as amended, and the new paragraph 3 were approved.*

*Chapter IV as a whole, as amended, was approved.*

### Chapter V

#### OTHER DECISIONS AND CONCLUSIONS OF THE COMMISSION

(A/CN.4/L.135, sections B-G, and A/CN.4/L.135/Add.1)

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

##### Paragraphs 1 and 2

19. Mr. ROSENNE noted that, according to paragraph 2, two Secretariat working papers (A/CN.4/L.128

and ILC(XX)MISC.2) on which the Commission had taken no decision were to be annexed to its report. He suggested that paragraph 39 of document ILC(XX)MISC.2 should include a reference to the fact that the Commission normally allowed two years to elapse between the submission of a draft to the General Assembly and the second reading of the draft, in order to give Governments time to make comments. It was appropriate to indicate that the Commission welcomed comments earlier but that as a general rule, it allowed two years for the completion of that process.

*It was so agreed.*

*Paragraph 1 and 2 were approved.*

*Paragraph 3*

*Paragraph 3 was approved.*

*Paragraph 4*

20. Mr. ROSENNE proposed that the second sentence of sub-paragraph (b) should be amended to begin with the words "It further agreed to recommend that a special allowance should be made available to Special Rapporteurs...". It was not appropriate to say that the Commission itself agreed that such an allowance should be given.

21. Mr. USHAKOV proposed that the words "a special allowance" should be amended to read "an additional special allowance", since Special Rapporteurs already received an allowance.

22. Mr. KEARNEY proposed the following changes in sub-paragraph (a): in the first sentence, to insert after the word "suitable" the words "to propose"; in the second sentence, to replace the words "the completion of the Commission's work, particularly in the case of a major topic" by the words "the completion of a programme of work, particularly when the programme included a major topic"; in the third sentence, to insert at the end the words: "even though the larger membership necessarily required more time for discussion"; and in the fourth sentence, to replace the words "increase in efficiency" by "increased ability to plan and execute a balanced programme".

*The amendments proposed by Mr. Rosenne, Mr. Ushakov and Mr. Kearney were adopted.*

23. Mr. KEARNEY suggested that sub-paragraph (b) should be expanded to give a more detailed picture of the expenses which were at present borne by Special Rapporteurs, and which the proposed additional allowance should cover.

24. After a brief discussion, the CHAIRMAN noted that most members of the Commission did not consider it advisable to expand sub-paragraph (b).

*Paragraph 4, as amended, was approved.*

*Paragraph 5*

*Paragraph 5 was approved.*

*Paragraph 6*

25. Mr. KEARNEY proposed that, in the first sentence, the words "it was felt that it had enough topics and that nothing could be added to that programme" should be deleted and that the second sentence should be combined

with the first, so that the paragraph would begin: "With regard to the Commission's present programme of work, for the next three years...".

*It was so agreed*

26. Sir Humphrey WALDOCK proposed that, in the last sentence, the word "could" should be replaced by "might"

*It was so agreed*

*Paragraph 6, as amended, was approved.*

*Paragraph 7*

*Paragraph 7 was approved.*

*Paragraph 8*

27. Mr. ROSENNE said that, in the first sentence, the words "the fate of conventions" seemed inadequate.

28. Sir Humphrey WALDOCK agreed. It would be better to say "the outcome of conventions codifying international law after the adoption of the text by a diplomatic conference".

*It was so agreed.*

29. Mr. AGO proposed that the remedies mentioned should include the system envisaged by the League of Nations.

30. Mr. BARTOŠ opposed that proposal. A large number of States had been unable to participate in the formulation of the codification drafts considered by the first Conference on the Progressive Codification of International Law, held at The Hague in 1930. In his view, the Commission should avoid mentioning League of Nations precedents in the matter of codification.

31. Mr. AGO said that the system in question had been adopted unanimously by the League of Nations. It would be giving an incomplete picture to mention the rules applied by the ILO, UNESCO and WHO with regard to conventions and to omit all mention of the system proposed by the League of Nations for codification conferences.

32. He proposed that, in the sixth sentence, the words "could be applied in the United Nations" should be replaced by "could be applied in connexion with the codification work undertaken by the United Nations".

*Mr. Ago's amendment to the sixth sentence was adopted.*

33. Mr. EUSTATHIADES proposed that, in the sixth sentence, the word "report" should be replaced by "memorandum" and the words "the convention" by the words "a convention".

*It was so agreed.*

34. Mr. USHAKOV said that the fourth sentence appeared to be critical of States; it was not for the Commission to criticize States.

35. Mr. ROSENNE suggested that the sentence should be redrafted so as to omit any reference to States.

36. Mr. AGO suggested the following: "The memorandum focussed on the drawbacks which result for the codification of international law from the fact that a long period often elapses before a sufficiently large and sufficiently representative number of ratifications or accessions are obtained for a codification convention".

37. Mr. BARTOŠ supported that suggestion. The problem was not to obtain a sufficiently large number, but to obtain a sufficiently representative number of ratifications; some conventions had been ratified by a large number of States but not by the States most closely concerned with the subject-matter.

38. Mr. EUSTATHIADES said that it should be sufficient to draw attention to the fact that States often took a long time to transmit their instruments of ratification or accession, and to mention the insufficient number of ratifications of codification conventions.

39. Mr. MOVCHAN (Secretary to the Commission) suggested that the sentence should be redrafted in positive form to read: "The memorandum focussed on the desirability of expediting the process of ratification of or accession to codification conventions in order to shorten the final stage of the codification of international law".

*It was so agreed.*

40. Mr. AGO proposed that the opening words of the fifth sentence should be reworded accordingly; the words "It dealt with possible remedies for that situation" might be replaced by "It dealt with the possible means of attaining that end".

*It was so agreed.*

41. Mr. CASTRÉN said that the text of paragraph 8 was incomplete: the last sentence did not say what decision had been taken on the question raised by Mr. Ago.

42. The CHAIRMAN reminded the Commission that, at the 978th meeting,<sup>2</sup> it had decided to deal with the matter in conjunction with the consideration of its report.

43. Mr. USTOR said that perhaps it should be left to the Sixth Committee to decide whether the problem of the final stage of the codification of international law was to be examined or not.

44. After a brief discussion, Mr. AGO proposed that the following words be inserted at the end of the second sentence: "and a more thorough discussion at the 977th and 978th meetings". He further proposed that, in the third sentence, the words "At the 977th meeting" should be replaced by "In the course of these discussions", and that the words "in final form" should be inserted after the word "introduced". The last sentence of the paragraph should be deleted.

*It was so agreed.*

*Paragraph 8, as amended, was approved.*

### *C. Organization of future work*

45. The CHAIRMAN invited the Commission to examine a time-table of work for the years 1969-1971 prepared by the officers of the Commission and the Special Rapporteurs, except Mr. Bedjaoui. The purpose of the document was to make a definite allocation of time to each topic at the Commission's twenty-first session and to show what items were to be taken up at the succeeding sessions. The plan was to conclude the work on relations between States and international organizations, and on succession in respect of treaties, by the expiry of

the terms of office of the present members of the Commission. If they were re-elected, adjustments would have to be made in the time-table. It would be recalled that in 1963 the Commission had decided to give priority to the topic of succession in respect of treaties;<sup>3</sup> the convening of the United Nations Conference on the Law of Treaties had made consideration of that topic even more urgent.

46. Mr. ROSENNE said that the time-table was reasonable and should be included in the Commission's report. However, the wording introducing the time-table, should not be too rigid.

47. In his opinion, the Commission should sometimes meet twice a day, particularly when holding general debates on reports; however, the arrangements would have to be made well in advance.

48. Mr. USHAKOV suggested that, with reference to the two topics mentioned by the Chairman, the Commission should state in its report that at the 1971 session it would complete its work, after taking into account the comments by Governments. There would not be enough time between the 1970 and 1971 regular sessions to receive and examine Governments' comments on those two topics, and they should be left out of the programme for the 1970 regular session.

49. Mr. EUSTATHIADES said he thought that, in drawing up its programme, the Commission should give more attention to two topics with which it had been dealing for a long time and to which the General Assembly attached great importance: first, succession in respect of matters other than treaties, and secondly, State responsibility.

50. Mr. USTOR said that he did not contemplate submitting a full report on the most-favoured-nation clause at the 1969 session because he had to await the submission of information by specialized agencies.

51. In his opinion, succession in respect of matters other than treaties, the most-favoured-nation clause and the adoption of the Commission's report could be grouped together in the time-table under the general heading of "Other business".

52. Mr. KEARNEY disagreed with that suggestion. The Commission would do well to list in its report all the topics on its agenda, in support of the suggestion that the terms of office of its members might be extended in order to enable the Commission to complete its work on these topics.

53. Sir Humphrey WALDOCK said he had not understood that the time table was to be included in the Commission's report to the General Assembly. That had never been done before, and the suggested time allocations were a purely internal matter. All the Commission need say in its report was that, at its next session, it intended to take up relations between States and international organizations, succession in respect of treaties, and State responsibility, and would take up other items if time permitted.

54. The Commission must concentrate on a few topics if it was to complete a series of articles suitable for submission to Governments for their comments. The

<sup>2</sup> See paras. 86-90.

<sup>3</sup> See *Yearbook of the International Law Commission, 1963*, vol. II, p. 224, para. 60, and p. 261, para. 9.

receipt of those comments dictated the rhythm of codification work. There was no doubt that the three topics he had mentioned would require lengthy discussion and should be given priority.

55. Mr. ROSENNE suggested that a general programme might be drawn up for 1969 and for the winter session of 1970, without going into too much detail. That programme should include the completion of the first reading of Mr. El-Erian's topic (relations between States<sup>5</sup> and international organizations); further work on Sir Humphrey Waldock's topic (succession in respect of treaties); and a preliminary discussion on Mr. Ago's topic (State responsibility). In 1970 and 1971 Mr. El-Erian's topic would be given a second reading in the light of the observations received from Governments.

56. Mr. TABIBI (Rapporteur) said he agreed with Sir Humphrey Waldock that the time allocations should not be included in the Commission's report to the General Assembly. But the report should mention the need for a winter session in 1970.

57. Mr. BARTOŠ said that the topics dealt with by Sir Humphrey Waldock and Mr. Bedjaoui were so closely connected that it was impossible to study them separately. It would be absurd to try to draw a distinction between the rules applicable to succession in respect of treaties and those applicable to succession in respect of matters other than treaties.

58. The CHAIRMAN confirmed that the time-table was purely for internal use and that the time allocations would not appear in the Commission's report.

59. Sir Humphrey WALDOCK suggested that the Secretariat might prepare, for inclusion in the Commission's report, a suitable passage on the organization of its future work.

*It was so agreed.*<sup>4</sup>

The meeting rose at 1.10 p.m

<sup>5</sup> See 989th meeting, para. 74.

## 988th MEETING

*Thursday, 1 August 1968, at 3.10 p.m.*

*Chairman:* Mr. José María RUDA

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

### Draft report of the Commission on the work of its twentieth session

*(continued)*

#### Chapter V

OTHER DECISIONS AND CONCLUSIONS OF THE COMMISSION (A/CN.4/L.135, sections B-G, and A/CN.4/L.135/Add.1) *(continued)*

1. The CHAIRMAN said that, until there was a quorum, it would be impossible for the Commission to

take any decisions at that meeting. He invited the Commission to continue its discussion of chapter V of the draft report, starting with section D.

#### D. Date and place of the twenty-first session

*Section D was noted.*

#### E. Co-operation with other bodies

2. Mr. BARTOŠ thought that section E should perhaps mention that Sir Humphrey Waldock had reported to the Commission on his participation in the work of the General Assembly and the Council of Europe in his capacity as Chairman of the Commission.

3. Mr. MOVCHAN (Secretary to the Commission) said that it was not customary to indicate in the Commission's report what information had been given by its previous Chairman to the Sixth Committee of the General Assembly.

#### Paragraph 1. International Court of Justice

4. Mr. MOVCHAN (Secretary to the Commission) said that the passage on the International Court of Justice should form a separate section of chapter V. Since, in the final text of the Commission's report, sections B to D would be re-lettered A to C, the new section could be lettered D and the succeeding sections beginning with section E, on co-operation with other bodies, would remain unchanged.

5. Mr. USHAKOV suggested that the existing text of the new section D should be amended to read as follows:

"The Vice-President of the International Court of Justice, Mr. Vladimir M. Koretsky, visited the Commission at its 971st meeting and addressed it on behalf of the President and the members of the Court."

6. The CHAIRMAN noted that that suggestion met with general approval.

#### Paragraph 2. Asian-African Legal Consultative Committee

7. Mr. MOVCHAN (Secretary to the Commission) said that the first sentence had been expanded, so as to begin with the words: "Mr. Mustafa Kamil Yasseen reported orally at the 952nd meeting and later in writing (A/CN.4/207) on his attendance as an observer...". An additional sentence reading as follows had been inserted at the end of the paragraph: "The Commission requested its Chairman, Mr. José María Ruda, to attend the Committee's session or, if he were unable to do so, to appoint another member of the Commission for the purpose". That was in accordance with previous practice.

8. When the whole of section E had been approved, the passage on the Asian-African Legal Consultative Committee would be placed at the beginning.

#### Paragraph 3. European Committee on Legal Co-operation

9. Mr. MOVCHAN (Secretary to the Commission) said that the text had been drafted as follows: "The Commission had before it document A/CN.4/L.126, reproducing the letters exchanged between Sir Humphrey Waldock, Chairman of the International Law Commission at its nineteenth session, and Mr. H. Golsong, Director of