Document:-

A/CN.4/SR.999

Summary record of the 999th meeting

Topic:

<multiple topics>

Extract from the Yearbook of the International Law Commission:-

1969, **vol. I**

was appropriate to refer to such agreements if they related to international organizations, but not otherwise, since that would inject an element of bilateral diplomacy into the economy of the article. The Drafting Committee should accordingly decide whether to delete the whole clause, inasmuch as it was covered by one of the general provisions at the beginning of the draft articles, or to retain the reference to special agreements, but delete the words "between the sending and the host State".

74. He sympathized with Mr. Kearney's amendment, which raised the universally recognized problem resulting from the absence of the "*persona non grata*" procedure in respect of members of permanent missions. The amendment, as Sir Humphrey Waldock had pointed out, was designed to replace that institution in extreme cases in which there had been serious or repeated violations of the laws of the host country. But while members agreed with the idea underlying the amendment, they recognized the difficulty of drafting a satisfactory text.

75. The general view was that the question should be taken up in connexion with article 49, and suggestions had been made for strengthening that article. Article 49 envisaged consultations between the sending and host States and the organization on all the everyday, practical questions that might arise between them. Since that was the case, the reference to the "organization" could only mean the secretary-general or principal executive official, as indeed was expressly stated in paragraph (4) of the commentary on the article. Only the secretary-general could conduct the sort of unobtrusive diplomacy which was necessary if the organization was to play its role of liaison between the host State and the sending State in dealing with practical matters which did not amount to a formal dispute.

76. Paragraph 2 of article 49 was a saving clause under which, if the consultations were unsuccessful, whatever other machinery was established for the settlement of formal disputes could be applied. The article as a whole was intended to overcome the practical difficulties which arose in multilateral diplomacy as a result of the absence of institutions which existed in bilateral diplomacy.

77. He suggested that article 44 be referred to the Drafting Committee, which should also consider the question raised by Mr. Kearney, namely, whether the principle and the machinery envisaged in his amendment might not be dealt with separately—the principle in article 44 and the machinery in article 49.

78. The CHAIRMAN suggested that article 44, with Mr. Kearney's amendment, be referred to the Drafting Committee on the terms indicated by the Special Rapporteur.

It was so agreed.[5]

The meeting rose at 6 p.m.

[5] For resumption of the discussion, see 1024th meeting, para. 1.

999th MEETING

Friday, 13 June 1969, at 10.10 a.m.

Chairman: Mr. Nikolai USHAKOV

Present: Mr. Bartoš, Mr. Bedjaoui, Mr. Castañeda, Mr. Castrén, Mr. El-Erian, Mr. Eustathiades, Mr. Ignacio-Pinto, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Ruda, Mr. Tabibi, Mr. Tammes, Mr. Tsuruoka, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

Relations between States and international organizations

(A/CN.4/218/Add.1)

[Item 1 of the agenda]

(continued)

ARTICLE 45

1. *Article 45*

Professional activity

The permanent representative and the members of the diplomatic staff of the permanent mission shall not practice for personal profit any professional or commercial activity in the host State.

2. The CHAIRMAN invited the Commission to consider article 45 in the Special Rapporteur's fourth report (A/CN.4/218/Add.1). There being no comments, he suggested that the article be referred to the Drafting Committee.

It was so agreed.[1]

ARTICLE 46

3. *Article 46*

Modes of termination

The function of a permanent representative or a member of the diplomatic staff of the permanent mission comes to an end, *inter alia*:

(*a*) On notification by the sending State that the function of the permanent representative or the member of the diplomatic staff of the permanent mission has come to an end;

(*b*) If the membership of the sending State in the international organization concerned is terminated or suspended or if the activities of the sending State in that organization are suspended.

4. Mr. EL-ERIAN (Special Rapporteur) said that sub-paragraph (*b*) dealt with three cases in which the function of a permanent mission ended as a result of developments relating to the sending State's membership in the organization. The first was the case of

[1] For resumption of the discussion, see 1025th meeting, para. 1.

termination or withdrawal, for which provision was made in the constituent instruments of many organizations. The second was the case of suspension of membership, which was usually also regulated in constituent instruments. The third was the case of suspension by the sending State of its activities in the organization, by unilateral decision of that State. As he had explained in paragraph (2) of the commentary, the third case had been suggested by the example of Indonesia between 1 January 1965 and 28 September 1966. The action taken by Indonesia at that time, and the closure of its mission in New York, had been interpreted not as a withdrawal from membership of the United Nations but as a suspension of co-operation.

5. No provision was made in article 46 for the possibility that the government of the host State might require a person enjoying privileges and immunities to leave its territory. As he had pointed out in paragraph (4) of the commentary, the only convention which contained any such provision was the Convention on the Privileges and Immunities of the Specialized Agencies.[2] There was no corresponding provision in the Convention on the Privileges and Immunities of the United Nations or in any of the host agreements. Moreover, the replies of the legal advisers of the specialized agencies showed that there had never been a case in which the relevant provision of the Convention on the Privileges and Immunities of the Specialized Agencies had been applied. No request for the recall of a permanent representative or a member of a permanent mission had ever been made under that article.

6. The CHAIRMAN, speaking as a member of the Commission, said he thought it would be better to refer to "the permanent representative" instead of "a permanent representative" at the beginning of the first sentence. It had been justifiable to refer, in the Vienna Convention, to the functions of "a diplomatic agent", because of the number of such agents, but that did not apply to permanent representatives.

7. In the first line of sub-paragraph (*a*), the words "to the organization" should be added after the words "the sending State" in order to reproduce, *mutatis mutandis*, the corresponding article of the Vienna Convention.[3]

8. The provision in sub-paragraph (*b*) did not seem justified, for even if the sending State ceased temporarily to be a member of the organization or if its activities in the organization were suspended, it might nonetheless retain a permanent representative to the organization. Also, the words "the international organization concerned" should be replaced by the words "the organization".

9. Mr. YASSEEN said he shared the Chairman's opinion on sub-paragraph (*b*). So long as a State had not really withdrawn from the organization, or even if it had withdrawn temporarily, the situation called for a special solution in each case.

10. Sir Humphrey WALDOCK also thought it was too rigid to lay down that the function of a permanent representative, or of a member of a permanent mission, ended automatically when the activities of the sending State in the organization were merely suspended by the unilateral action of that State. It would be unfortunate if the permanent representative were to be regarded as having ceased to act in that capacity precisely at a time when diplomatic attempts to resolve the situation would probably be made.

11. The case in which the membership of the sending State was suspended by a formal decision of the organization was admittedly rather different; for it could then be said to be logical that the functions of the permanent representative, as such, should come to an end. Even then, however, he was not altogether sure that it should be a strict rule that the permanent representative must leave the host State within a reasonable time. As in the case of a rupture of diplomatic relations, there might well be advantage in some form of link being maintained between the organization and the State concerned. The permanent representative might thus remain in the country, though not in his former capacity.

12. Mr. KEARNEY said that some of the difficulties which had arisen were perhaps due to the fact that article 46 attempted to regulate two rather different matters: the first was the determination of the moment at which the function of a permanent representative, or of a member of the permanent mission, came to an end; the second was the corollary that the person concerned must leave the territory of the host State or that his privileges and immunities would cease. It would perhaps be advisable to deal expressly with the second point elsewhere.

13. With regard to the case of suspension of the activities of the sending State in the organization, it would be anomalous for a whole permanent mission, which had become totally inactive, to remain in the host State and enjoy full privileges and immunities. It would be difficult to justify extending those privileges and immunities for an indefinite period.

14. Mr. EUSTATHIADES said he agreed with the Chairman, Mr. Yasseen and Sir Humphrey Waldock that it was not advisable to state in the article that the functions of a permanent representative came to an end "if the activities of the sending State in that organization are suspended". Even when it was the sending State which decided of its own volition to suspend its activities, as Indonesia had done, that might mean that it ceased to co-operate with the organization, but not that it withdrew its permanent representative.

15. On that point, there was a certain interdependence between sub-paragraph (*b*) and sub-paragraph (*a*). If the State suspending activities decided at the same time to terminate functions of its permanent representative, it would notify the organization accordingly, as laid down in sub-paragraph (*a*). But perhaps the case of temporary cessation of membership should also be provided for. If the words "comes to an end, *inter alia*" in the introductory phrase were replaced by the words "may come to an end, *inter alia*", all the possible cases would be covered and in sub-paragraph (*b*) there would be no need to mention temporary voluntary withdrawal

[2] United Nations, *Treaty Series*, vol. 33, p. 278, section 25.

[3] *Op. cit.*, vol. 500, p. 122, article 43.

from the organization or to make a distinction between suspension of activities decided on by the sending State and suspension decided on by the organization.

16. If the solution he suggested was not adopted, it would not be appropriate to include the phrase "or if the activities of the sending State in that organization are suspended" in sub-paragraph (*b*).

17. Mr. EL-ERIAN (Special Rapporteur) said that in the case of a formal decision by an organization expelling a member, it was difficult to imagine that the permanent representative would be allowed to continue to act in any capacity.

18. He had not been convinced by the doubts expressed by some members concerning the inclusion of a reference to suspension by the sending State of its activities in the organization. The case was admittedly a very special one, but since it had occurred in practice, there was a good reason for covering it in article 46.

19. The problem of Indonesia had been solved pragmatically by the United Nations. His conclusion was that the Drafting Committee should endeavour to separate suspension of activities from the other cases covered by article 46, since the consequences were not the same. Another solution would be to explain in the commentary that in the special case of suspension of the sending State's activities in the organization, decided by the sending State itself, the function of the permanent representative could come to an end; the situation was different from termination of membership, when the function necessarily came to an end.

20. The CHAIRMAN suggested that article 46 be referred to the Drafting Committee.

It was so agreed.[4]

ARTICLE 47

21. *Article 47*

Facilities for departure

The host State must, even in the case of armed conflict, grant facilities in order to enable persons enjoying privileges and immunities, other than nationals of the host State, and members of the families of such persons irrespective of their nationality, to leave at the earliest possible moment. It must, in particular, in case of need, place at their disposal the necessary means of transport for themselves and their property.

22. The CHAIRMAN suggested that, as there were no comments, article 47 be referred to the Drafting Committee.

It was so agreed.[5]

ARTICLE 48

23. *Article 48*

Protection of premises and archives

1. When the functions of a permanent mission come to an end, the host State must, even in the case of armed conflict, respect and protect the premises as well as the property and archives of the permanent mission. The sending State must withdraw that property and those archives within a reasonable time.

2. The host State is required to grant the sending State, even in the case of armed conflict, facilities for removing the archives of the permanent mission from the territory of the host State.

24. The CHAIRMAN suggested that, as there were no comments, article 48 be referred to the Drafting Committee.

It was so agreed.[6]

ARTICLE 49

25. *Article 49*

Consultations between the sending State, the host State and the organization

1. Consultations shall be held between the sending State, the host State and the organization on any question arising out of the application of the present articles. Such consultations shall in particular be held as regards the application of articles 10, 16, 43, 44, 45 and 46.

2. The preceding paragraph is without prejudice to provisions concerning settlement of disputes contained in the present articles or other international agreements in force between States or between States and international organizations or to any relevant rules of the organization.

26. Mr. EL-ERIAN (Special Rapporteur) said that the question of consultations between the sending State, the host State and the organization had already been discussed by the Commission when considering article 44 and Mr. Kearney's amendment to it [7] at the last two meetings.

27. The last sentence of paragraph 1 made specific reference to a number of articles which were particularly relevant. Paragraph 1 was intended to deal with everyday difficulties in the application of such articles as article 16, on the size of the permanent mission, and article 44, on the obligation to respect the laws and regulations of the host State. It was not intended to deal with formal disputes on the application or interpretation of the draft articles. For such disputes, other means of settlement should be provided, possibly in the final clauses of the present draft, or should be worked out on an *ad hoc* basis for particular disputes.

28. The saving clause in paragraph 2 accordingly stipulated that paragraph (1) was without prejudice to any provisions concerning settlement of disputes which were contained in the draft articles, or which might be applicable under other international agreements in force or under any relevant rules of the organization. On that last point, it was explained in paragraph (7) of the commentary that the expression "relevant rules" was broad enough to cover constituent instruments, resolutions and the practice of the organization.

29. During the discussion on article 44, it had been

[4] For resumption of the discussion, see 1025th meeting, para. 4.

[5] For resumption of the discussion, see 1026th meeting, para. 1.

[6] For resumption of the discussion, see 1026th meeting, para. 1.

[7] See 997th meeting, para. 71.

asked which was the appropriate organ of the organization to participate in the consultations. As indicated in paragraph (4) of the commentary, that organ could only be the principal executive official of the organization, namely, its secretary-general or director-general, as the case might be. The delicate questions which would form the subject of such consultations could be more suitably handled by the quiet diplomacy of a principal executive official than in general discussion by a deliberative body of the organization.

30. It was not uncommon for an international agreement to make provision for obligatory consultations and he had given some information on the subject in paragraph (5) of the commentary.

31. Mr. TAMMES said that the Special Rapporteur had made a distinction between difficulties of a practical character and more formal disputes on the application or interpretation of the draft articles. The former category would include disputes arising from provisions of the draft in respect of which abuses were possible. Such provisions could only be interpreted in a precise manner in the light of concrete situations; it was not possible to give interpretation *in abstracto* for such elastic notions as the size of a mission, non-discrimination, professional activity and interference in internal affairs.

32. The latter category would cover the more precise legal rules embodied in the draft. Any dispute relating to the application or interpretation of those rules would be subject to the regular procedure for the settlement of disputes. The discussion had shown that article 46, on modes of termination, embodied one of those precise legal rules and he was accordingly a little surprised to see it included in the list of articles that were particularly relevant for the purposes of paragraph 1 of article 49.

33. The provisions of article 44, which was also included in that list, appeared to belong to both categories, since they could lead not only to practical difficulties, but also to disputes of a more formal nature. The discussion at the previous meeting on Mr. Kearney's proposal to insert a new paragraph 3 in article 44 pointed in that direction. He therefore suggested that the list of articles be deleted from paragraph 1, especially as it was not intended to be exhaustive.

34. In international practice, it was customary to make provision for negotiations as a first stage in the process of settling a dispute. That stage of quiet diplomacy would, in the case of practical difficulties covered by article 49, be represented by the consultations procedure that article laid down. Only if the negotiations failed would the dispute be dealt with by one of the more formal modes of settlement.

35. Mr. KEARNEY said that the Convention on the Law of Treaties signed at Vienna on 23 May 1969 would probably come into effect before any future convention on the subject of permanent missions. Thus if a dispute arose between the host State and a sending State over the application of any of the provisions of the articles of the present draft, one of the parties would probably charge the other with a material breach of those articles and that charge would bring into play the provisions of the Vienna Convention on the Law of Treaties.

36. Unfortunately, those provisions would exclude the international organization from any formal proceedings taken under the Vienna Convention. That was an undesirable result because a dispute of that kind would be very much the concern of the organization. The Commission should in due course consider that problem carefully, so as to ensure that the draft on permanent missions was complete in regard to consultations and other procedures for the settlement of disputes.

37. Sir Humphrey WALDOCK said that there appeared to be general agreement that the Special Rapporteur and the Drafting Committee should endeavour to strengthen or improve the provisions of article 49 in the light of the discussion on article 44 at the two previous meetings.

38. It would be a mistake to single out certain articles for special mention in paragraph 1 of article 49. There was no reason, for example, why other articles, such as article 48, on the protection of premises and archives, should not also be mentioned; modern experience in diplomatic relations had shown that differences might well arise in regard to the host State's duty to protect the premises and archives of a mission. It was clearly desirable, therefore, that the consultation procedure should be made applicable to many articles other than those mentioned in the present text of paragraph 1.

39. The CHAIRMAN, speaking as a member of the Commission, said he fully supported the principle on which article 49 was based. The Drafting Committee should, however, find more felicitous wording for the phrase "on any question arising out of the application of the present articles", for some of the articles, article 10 in particular, did not concern the host State at all. Moreover, it would be better not to refer to specific articles.

40. In the first sentence of paragraph 1, the words "*doivent avoir lieu*" in the French version should be replaced by the words "*auront lieu*"; and it should be specified that the consultations would be held at the request of one of the parties concerned.

41. Mr. EUSTATHIADES said that an article on consultations should be included in the draft, but he could not approve of the wording proposed for article 49. It should merely be stated that consultations were desirable and could be held in certain circumstances. It was not enough to mention in the commentary that the consultations would not necessarily be tripartite; it should be made clear in the article itself who would be parties to them, depending on the circumstances.

42. Then, although the commentary provided some explanations concerning the settlement of disputes, it should be specified in the article what kind of practical difficulties were contemplated. On the other hand, no specific reference should be made in it to certain articles whose application might necessitate consultations.

43. It was undesirable to mention, as in paragraph (7) of the commentary, the practice prevailing in the organization among the sources of the "relevant rules" referred to in paragraph 2 of the article, since if the

practice did not include consultations, article 49 would not be applicable.

44. He also doubted whether it was wise to state in paragraph 1 that consultations "shall be held", since that made them obligatory. Consultations should only be held if they were necessary.

45. Mr. USTOR said he supported the idea contained in article 49 and on the whole was satisfied with the drafting of the article.

46. With regard to the commentary, however, less rigid language should be used in paragraph (4). It was going too far to say that the term 'organization' "must be understood to refer to the principal executive official" of the organization, or that "practical considerations make it necessary that the consultations envisaged in article 49 be conducted" with that official. In most cases, a secretariat official would in fact be responsible for carrying out the consultations, but it would not be correct to lay down a rigid rule to that effect. One could well imagine cases in which a small group of representatives might be the more appropriate body to conduct the consultations.

47. Sir Humphrey WALDOCK said it was important to retain an obligatory element in article 49. The whole point of the article was to specify that there was an obligation to carry out consultations.

48. To speak of "any question arising out of the application of the present articles" was perhaps too broad. The real intention was to deal only with questions which could not be settled between the host State and the other State concerned. The difficulty mentioned by Mr. Eustathiades could probably be overcome by a change in the wording of the article.

49. Mr. NAGENDRA SINGH said that the discussion on article 49 had brought out four points. First, there appeared to be a distinct need for an article of that kind, which would provide for appropriate consultation machinery. Second, as Sir Humphrey Waldock had urged, the article should be mandatory. Third, as other speakers had also pointed out, it would be better to omit any reference to specific articles in paragraph 1. Fourth, the article should be so worded as to permit both bipartite and tripartite consultations.

50. Mr. TSURUOKA said that article 49 was very useful, if not indispensable, in particular for the settlement of disputes arising between a sending State and a host State between which there were no direct diplomatic relations; in all other cases, matters were generally settled in the respective capitals through the usual channels. The Drafting Committee should bear that consideration in mind.

51. Mr. CASTAÑEDA said be agreed with Sir Humphrey Waldock that the compulsory nature of the consultations should be maintained. With regard to the term "any question", it was in the sense of "difficulty" that it should be interpreted, not in the sense of "subject", which was much too broad. The Drafting Committee would have to find a more suitable term.

52. He agreed with other members that it would be well to specify that the consultations would be held at the request of one of the parties concerned and that it was not necessary to mention certain specific articles whose application could necessitate consultations.

53. Mr. EL-ERIAN (Special Rapporteur) said that Mr. Tammes, supported by a majority of the Commission, had questioned the need to include in article 49 an express reference to particular articles. That reference had been included in an attempt to fill a gap in the draft caused by the absence of the remedies which were available to a receiving State in bilateral diplomacy. He had considered that article 49 should not be too restrictive and that, though drafted in a general way, it should place special emphasis on those articles under which the host State was deprived of the customary remedies.

54. With regard to the word "question" in paragraph 1, he had considered a number of other terms, such as "dispute", "difference", "situation" and "problem"; but he had thought that the words "dispute" and "difference" were more appropriate to articles concerning the settlement of disputes in the final clauses of treaties, and he had hesitated to use the word "problem" because he did not think it was really a legal term. With some reluctance, therefore, he had decided to use the word "question" in order to indicate the kind of practical situation which he expected to be the subject of consultations.

55. Mr. Eustathiades had expressed doubts as to whether a practice necessarily prevailed in organizations with respect to consultations and whether the lack of such practice might not mean that there would be no consultations. He (the Special Rapporteur) was confident that there would be consultations in any case, but the article was designed to safeguard any practice which might already exist. The replies so far received from specialized agencies seemed to indicate that no such practice existed, but he hoped to elicit more precise information in the future.

56. The Chairman had criticized the reference to the sending State, the host State and the organization as being too general and had pointed out that the draft contained some articles which did not concern the host State. He (the Special Rapporteur) had never been entirely satisfied with that wording and would endeavour, in collaboration with the Drafting Committee, to find some formula which would cover as wide a range of situations as possible.

57. He agreed with Mr. Ustor that paragraph (4) of the commentary was too rigid, particularly the use of the word "must" in the first sentence, and he would try to find a less absolute wording.

58. He noted that a majority of the Commission was in favour of making the consultations obligatory, and that the Chairman had suggested that the words "*doivent avoir lieu*" in the French text should be replaced by the words "*auront lieu*". Mr. Eustathiades had suggested that it be made clear in the article who would be parties to the consultations, depending on the circumstances. He had also questioned whether the consultations should be obligatory and had expressed a preference for a more general provision. He (the Special Rapporteur) had understood it to be the Commission's

desire that obligatory consultations should be provided for, and he had referred to a number of examples of such provisions in his commentary. In his opinion, even if such provisions were not accompanied by any definite sanctions, they were valuable in themselves inasmuch as they tended to set in motion a process of quiet diplomacy and in that way to ensure a certain "cooling-off" period when disputes arose.

59. The CHAIRMAN suggested that article 49, together with the amendment by Mr. Kearney, be referred to the Drafting Committee.

It was so agreed.[8]

60. The CHAIRMAN said that the Commission had concluded its examination of the draft articles on permanent missions to international organizations contained in the Special Rapporteur's fourth report (A/CN.4/218 and Add.1) and it only remained for him to congratulate Mr. El-Erian on his excellent work.

61. Mr. TABIBI, speaking also on behalf of Mr. Ruda, expressed his deep appreciation to the Special Rapporteur for his successful accomplishment of a very difficult task. He suggested that Mr. El-Erian's fourth report on relations between States and international organizations be submitted to Member States in time for their comments to be taken into consideration at the Commission's second reading of the draft articles.

62. Mr. EL-ERIAN (Special Rapporteur) expressed his appreciation of the sympathy and consideration with which the Commission had received his report.

Co-operation with other Bodies

(A/CN.4/215 and A/CN.4/217)

[Item 5 of the agenda]

Statement by the Observer for the Inter-American Juridical Committee

63. The Chairman invited the observer for the Inter-American Juridical Committee to address the Commission.

64. Mr. CAICEDO CASTILLA (Observer for the Inter-American Juridical Committee) said that the previous year the Inter-American Juridical Committee had been honoured by the attendance of Mr. Ruda, as observer for the International Law Commission, at a number of its meetings and had adopted the following resolution.

65. "The Inter-American Juridical Committee,

"*Considering:*

"That for some years the Committee has maintained co-operative relations with the International Law Commission of the United Nations,

"That the International Law Commission has carried out, and is carrying out, work of the highest importance on the codification and progressive development of international law,

"That the International Law Commission has sent Ambassador José María Ruda to attend the meetings of the Committee this year as an observer,

"That Mr. Ruda, who is at present Chairman of the International Law Commission, is a distinguished figure in Latin America and holds the important diplomatic post of Head of the Delegation of the Argentine Republic to the United Nations in New York,

"*Resolves*

"1. To express its pleasure at receiving an observer from the International Law Commission;

"2. To record its gratification that this observer should be the Chairman of the Commission and an eminent Latin American jurist;

"3. To reaffirm its intention to maintain close co-operative relations with the International Law Commission;

"4. To transmit this resolution to the Secretary of the International Law Commission."

66. Mr. Ruda had given an account of the activities of the Committee in 1968 in his report (A/CN.4/215), in which he summarized the discussions on the items of substance dealt with by the Committee, namely: harmonization of the legislation of the Latin-American countries on companies, including the problem of international companies; an inter-American convention on reciprocal recognition of companies and juridical persons; a uniform law for Latin America on commercial documents; and the rules of private international law applicable to the above matters.

67. Questions of a private and commercial character had been given priority because they were directly related to the economic integration of the Latin American countries, which was one of the new goals of the Organization of American States. The Inter-American Juridical Committee had been entrusted with the study of the legal aspects of economic integration—an arduous task, but one that would be well rewarded if institutions could be established which would work for the progress of the nations of Latin America and enable them to achieve their full development.

68. Another task mentioned by Mr. Ruda was the preparation of the preliminary draft of the Committee's Statutes, which would be found annexed to his report. The draft prescribed how the Committee would function once the Protocol of Buenos Aires amending the Charter of the Organization of American States entered into force and the Committee became the principal juridical organ of the OAS. In order to enter into force, the Protocol required ratification by fourteen American States; thirteen States had already ratified it, and there appeared to be an agreement between Governments that the ratifications still lacking would be made at the end of 1969, so that the new Charter could enter into force in 1970, in order to avoid the serious problem which would arise if fourteen countries should ratify it and seven should fail to do so.

[8] For resumption of the discussion, see 1027th meeting, para. 31.

69. During the present year, the Committee would also study the important problem of improving the inter-American system for the peaceful settlement of disputes. The Pact of Bogota [9] laid down procedures for the pacific settlement of any disputes which might arise between the American States, including good offices and mediation, procedures for investigation, conciliation and arbitration, and recourse to the International Court of Justice. Its efficacy had, however, been reduced by the fact that there was still a minority of States which were reluctant to be bound by the Pact, so that in practice any dispute which might arise with them would not be settled—a misfortune which had, in fact, already occurred.

70. The Committee would also consider the problem of the juridical status of so-called "foreign guerillas" —persons who participated in revolutionary movements and guerilla activities in foreign countries jointly with local revolutionaries. Because such activities had given rise to differences between various Latin-American countries with respect to extradition, the rules governing political asylum, the question whether guerillas should be considered as political offenders or criminals and the question whether they should be interned in the country of asylum or returned to their country of origin, the Council of the Organization of American States had asked the Committee to make a study of those problems with a view to determining whether regulations, a convention or a protocol on the subject could be drawn up. The Government of Mexico had taken the view that the question was one which should not be subject to international regulation, but should be left to the domestic legislation of each country concerned.

71. The Committee was also concerned with the question of State responsibility, a topic on the present agenda of the Commission. In his recent report (A/CN.4/217), Mr. Ago, the Special Rapporteur, referred to the report adopted by the Committee in 1961, entitled "Contribution of the American Continent to the principles of international law that govern the responsibility of the State". In that report, the Committee had laid down ten principles which expressed Latin American law on the subject and which stated that intervention in the internal or external affairs of a State was not admissible as a sanction for enforcing the responsibility of that State. It had then laid down the principle of complete equality between nationals and aliens, by affirming that a State is not responsible for acts or omissions relating to aliens, except in the same cases and on the same conditions as are specified in its own legislation for its own nationals.

72. The same principles also established a restrictive concept of the denial of justice, according to which no denial of justice existed when aliens had exhausted their remedies before the local courts competent in the matter. Principle VIII, for example, stated: "(*b*) The State has fulfilled its international duty when the judicial authority hands down its decision, even if the latter declares that the petition, action or appeal lodged by the alien is inadmissible. (*c*) The State has no international responsibility for a judicial settlement if that settlement is unsatisfactory for the claimant".

73. In discussing the topic of State responsibility, he hoped that the Commission would take the Latin-American position into account as a new element which had introduced a change in the previously accepted rules of international law. In its report, the Committee had said: "This American contribution has changed the ideas previously held in international law. This American contribution has substantially altered specific situations, as may be seen by referring to any of these principles, for example, the Drago Doctrine, and asking whether the events which gave rise to it have recurred in recent years. The negative reply to this question bears witness to the effectiveness of the doctrine with particular eloquence and shows that it has become a part of the universal concert of nations".

74. The Committee had then gone on to add: "What is happening is that international law is not immutable, it is evolving and should continue to evolve .... When new States appear, as they have on the American continent, different doctrines and different concepts of law must emerge, which establish themselves in the course of time by the force of their justice. The Latin-American countries, which today number more than 200 million inhabitants and have reached a high level of civilization, have pointed out norms which should be incorporated in universal law. For international law is changed or is created as a result of the law of necessity or the law of conservation; there are needs of nations which call for new norms if they are to be satisfied, or else such norms must emerge in order to maintain the principles which are essential for the functioning of a nation or an international community".

75. In closing, he wished to express his satisfaction at the successful conclusion of the United Nations Conference on the Law of Treaties in Vienna. The adoption of the Vienna Convention on the Law of Treaties marked the culmination of an outstanding effort in the codification of international law on the part of the Commission as a whole, and of certain of its members in particular. He was proud of the fact that, among the first thirty-two signatories of the Vienna Convention, there had been sixteen Latin American States.

76. The CHAIRMAN, after thanking Mr. Caicedo Castilla for his very interesting statement and for his kind remarks about the Commission and its members, asked him to convey the Commission's thanks to the Inter-American Juridical Committee for the flattering resolution it had adopted at its last session concerning the International Law Commission. On behalf of the Commission, he expressed the hope that the co-operative relationship established between the Commission and the Inter-American Juridical Committee would endure.

77. Mr. CASTAÑEDA thanked Mr. Caicedo Castilla for his very constructive and interesting statement, which pointed out the need for further close relations between the Commission and the Inter-American Juridical Committee. The subject of consultations in particular, which the Commission had been discussing at

[9] United Nations, *Treaty Series*, vol. 30, p. 84.

that same meeting, was one on which the Latin American countries had made an important contribution to the development of international law. The Latin American continent had also made original and important contributions to the study of the topic of State responsibility, which was also on the Commission's agenda for the present session. He hoped that co-operation between the Commission and the Committee would continue, not only in respect of those topics on which their views were identical, but also in respect of those on which they started from different viewpoints, as exemplified by the fresh efforts being made in Latin America to develop an appropriate legal system for its economic integration.

78. Mr. KEARNEY thanked Mr. Caicedo Castilla for his very interesting report and said that his country, which was a member of the Inter-American Juridical Committee although not a Latin American State, was participating actively in that Committee's work and regarded it as a great world forum for the development of international law.

79. Mr. TABIBI said that the Asian region also had a deep respect for the work of the Inter-American Juridical Committee. He himself had been particularly impressed by the solidarity of the Latin American countries with the countries of Africa and Asia when they had been among the first signatories of the Vienna Convention on the Law of Treaties.

80. Mr. USTOR and Mr. EL-ERIAN thanked Mr. Caicedo Castilla for his statement.

The meeting rose at 1.5 p.m.

1000th MEETING

Monday, 16 June 1969, at 3.15 p.m.

Chairman: Mr. Nikolai USHAKOV

Present Mr. Bartoš, Mr. Bedjaoui, Mr. Castañeda, Mr. Castrén, Mr. Eustathiades, Mr. Ignacio-Pinto, Mr. Kearney, Mr. Rosenne, Mr. Ruda, Mr. Tabibi, Mr. Tammes, Mr. Tsuruoka, Mr. Ustor, Mr. Yasseen.

Fifth Seminar on International Law

1. The CHAIRMAN welcomed the participants in the fifth Seminar on International Law and invited its Director to address the Commission.

2. Mr. RATON (Director of the Seminar on International Law) said that a determined effort had been made to improve the geographical distribution of participants in the Seminar. Out of 23 participants, 13 were from developing countries, thanks to the generosity of several States and to the co-operation of UNITAR, which had financed the granting of fellowships. He wished to thank those members of the International Law Commission who had agreed to address the participants and without whose collaboration the Seminar could not take place.

3. The CHAIRMAN thanked Mr. Raton on behalf of the Commission and congratulated him on his continued efforts to ensure the success of the Seminar ever since its inception.

Succession of States and Governments: Succession in Respect of Matters other than Treaties

(A/CN.4/216)

[Item 2 (*b*) of the agenda]

4. The CHAIRMAN invited Mr. Bedjaoui, the Special Rapporteur, to introduce his second report on succession of States in respect of matters other than treaties (A/CN.4/216).

5. Mr. BEDJAOUI (Special Rapporteur) said that at its previous session the Commission had decided to begin by examining the economic and financial aspects of the succession of States. He had decided to start with acquired rights, so as to clarify without delay a confused problem which he thought was of capital importance. He did not wish to dwell on the decisive importance of the political considerations which distorted the purely technical and legal aspects of the problem and which were to some extent responsible for the contradictory solutions hitherto adopted for it. Unfortunately, those considerations made the Commission's task an extremely delicate one, but the subject had to be clarified.

6. He had decided to take as his starting point the equality of States, in particular, the equality of the predecessor State and the successor State. In public international law there were no categories of States such as the ordinary State and the successor State and, if there were any differences with regard to the obligations devolving on the successor State, the following points would have to be taken into consideration: first, the fact that in a number of resolutions the General Assembly had invited States to take into account the experience and problems of the newly independent States with a view to strengthening their sovereignty and independence; secondly, the extent to which acquired rights were compatible with the permanent sovereignty of peoples and nations over their wealth and natural resources, which had been recognized in a General Assembly resolution;[1] thirdly, the question of the impact on acquired rights of the principle of the right of peoples to self-determination, which was proclaimed in the Charter—that principle, and the recognition of permanent sovereignty over natural resources, suggested a break rather than continuity in the relations between the predecessor State and the successor State, thus making the problem of acquired rights even more acute; fourthly, the extent to which the Declaration on Rights and Duties of States,[2] an International Law

[1] General Assembly resolution 2158 (XXI).

[2] See *Yearbook of the International Law Commission, 1949*, p. 287.