

Document:-
A/CN.4/SR.1087

Summary record of the 1087th meeting

Topic:
Other topics

Extract from the Yearbook of the International Law Commission:-
1971, vol. I

*Downloaded from the web site of the International Law Commission
(<http://www.un.org/law/ilc/index.htm>)*

INTERNATIONAL LAW COMMISSION

SUMMARY RECORDS OF THE TWENTY-THIRD SESSION

Held at Geneva from 26 April to 30 July 1971

1087th MEETING

Monday, 26 April 1971, at 3.25 p.m.

Chairman: Mr. Taslim O. ELIAS
later: Mr. Senjin TSURUOKA

Present: Mr. Ago, Mr. Alcívar, Mr. Bartoš, Mr. Bedjaoui, Mr. Castañeda, Mr. Castrén, Mr. El-Erian, Mr. Eustathiades, Mr. Kearney, Mr. Nagendra Singh, Mr. Reuter, Mr. Rosenne, Mr. Ruda, Mr. Sette Câmara, Mr. Thiam, Mr. Ushakov, Mr. Ustor, Mr. Yasseen.

Opening of the Session

1. The CHAIRMAN, after declaring the twenty-third session of the International Law Commission open, said that in accordance with the decision taken at the last session¹ he had represented the Commission at the twenty-fifth session of the General Assembly, where he had participated in the work of the Sixth Committee from 28 September till 12 October 1970. After he had given it a fairly detailed account of the Commission's report, the Sixth Committee had begun its debate on 1 October 1970.

2. The representative of Jamaica had observed that, while it was usual for the Committee to take the International Law Commission's report as the first item on its agenda, it would be preferable in future to take that item later, in order to allow members of the Committee more time to study the report before its introduction by the Chairman of the Commission. The Committee had thereupon considered, first, the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

3. With regard to the topic of relations between States and international organizations, the Commission's draft articles² had received general approval. A number of specific suggestions had, however, been made, one being that, as promised in the Commission's report,³ an effort

should be made to reduce the length of the draft considerably by adopting the device of drafting by reference. Some members had expressed a preference for a code rather than a convention.

4. Most members had criticized articles 52 and 53 as being too restrictive. Articles 82 and 83 had been criticized on the ground that they did not sufficiently reflect existing practice and agreements. Some members had held that article 94 placed unacceptable obligations on the host State, while others had considered that the provision in article 112 giving the host State the right to demand the recall of a person violating its criminal law was not entirely satisfactory.

5. Some representatives, notably those of the United Kingdom and France, had observed that articles 78 to 116, on delegations of States to organs of international organizations and to conferences, did not sufficiently reflect existing practice and agreements, from which the Commission appeared to have departed by adopting provisions based on those of the Convention on Special Missions; in their view, privileges and immunities should be limited rather than extended, and be based solely on functional need.

6. With regard to the two alternatives proposed by the Commission for article 100, representatives appeared to be almost equally divided in their preferences, the tendency being for the western group of States to prefer alternative B, and the States of eastern Europe, Asia and Africa to favour alternative A.

7. The draft articles on State responsibility⁴ submitted by the Special Rapporteur on that topic had evoked lively discussion; members of the Sixth Committee had appeared to welcome the general approach adopted by the Commission so far. The view had been generally expressed that the articles should deal simultaneously with all forms of unlawful and lawful acts, and should continue to reflect the elements of progressive development in the Commission's task of codifying that branch of international law.

8. The majority of representatives had supported the draft articles on succession in respect of treaties submitted by the Special Rapporteur⁵ which, they thought, contained encouraging elements of progressive development of international law. Of particular interest to most

¹ See *Yearbook of the International Law Commission, 1970*, vol. II, document A/8010/Rev.1, para. 105.

² *Ibid.*, para. 26.

³ *Ibid.*, para. 20.

⁴ *Ibid.*, document A/CN.4/233.

⁵ *Op. cit.*, 1969, vol. II, document A/CN.4/214 and Add.1 and 2; vol. II, document A/CN.4/224 and Add.1.

States were articles 3 and 6, which were considered to be progressive. A small number of States, however, favoured the principle of continuity, as being more in accordance with State practice.

9. The representatives of Jamaica and a few other States had proposed that the International Law Commission should consider instituting an annual memorial lecture in honour of the late Gilberto Amado and make suitable recommendations to the General Assembly through the Secretary-General.

10. Some States had expressed the wish that the volumes of the United Nations *Treaty Series* should be published with greater regularity. The Netherlands representative had noted that no action had been taken on that matter despite his warning in the Sixth Committee the previous year, and had suggested that there should be no more than twelve months' interval between the registration and publication of treaties. He had also expressed a wish for the early publication of a list of sources of State practice.

11. It had become clear during the discussion of the Commission's request for an extended session of fourteen weeks in 1971 that the overwhelming majority were in favour of such a session; in the voting in the General Assembly in December, 100 delegations had voted in favour, 10 had abstained and only 3 had voted against it. In the Sixth Committee, the Liberian representative had asked why the Commission had not made any recommendation regarding the extension of the term of office of its members, although the Committee had invited it to give further consideration to the matter.⁶

12. The report on the Seminar on International Law⁷ had been almost unanimously approved. Representatives had noted with satisfaction the offers of scholarships and fellowships for the annual seminar which had been made by the Netherlands, Sweden and Israel in the Sixth Committee.

13. The representative of Denmark had expressed the view that, in drawing up its future programme of work, the Commission should arrange topics in order of priority, even if several were to be dealt with simultaneously. Among the topics suggested by various members for inclusion were historic bays, international waterways, unlawful seizure or "hijacking" of aircraft, and the protection of diplomats.

14. Owing to other engagements, he had been unable to attend the November 1970 session of the Council of Europe's European Committee on Legal Co-operation but, at the suggestion of the Commission's Secretary, he had cabled to Mr. Paul Reuter appointing him to attend in his place. Mr. J. M. Ruda had been appointed to represent the Commission at the meeting of the Inter-American Juridical Committee at Rio de Janeiro. Finally, he had himself attended the twelfth session of the Asian-

African Legal Consultative Committee, held at Colombo from 18 to 28 January 1971, a report on which would be submitted to the Commission in due course.⁸

Election of Officers

15. The CHAIRMAN called for nominations for the office of Chairman.

16. Mr. YASSEEN, after paying a tribute to the outgoing Chairman for the able manner in which he had represented the Commission at the General Assembly, proposed Mr. Tsuruoka, whose culture, objectivity and legal ability were well known to all members, and whose diplomatic talent had been displayed in other United Nations bodies, particularly during his Presidency of the Security Council.

17. Mr. NAGENDRA SINGH, seconding the proposal, said that Mr. Tsuruoka's impartiality and the fact that he enjoyed the full confidence of all the members of the Commission eminently fitted him for the office of Chairman. He wished to associate himself with the tribute paid to the outgoing Chairman, who had represented the Commission so well at the twelfth session of the Asian-African Legal Consultative Committee.

18. Mr. AGO, Mr. CASTRÉN, Mr. USHAKOV, Mr. BARTOŠ, Mr. REUTER, Mr. EUSTATHIADES, and Mr. EL-ERIAN associated themselves with the tribute to the outgoing Chairman and expressed their support for the nomination of Mr. Tsuruoka.

Mr. Tsuruoka was unanimously elected Chairman and took the Chair.

19. The CHAIRMAN thanked the Commission for the honour it had done him and the confidence it had placed in him by electing him to the Chair. With the co-operation of his colleagues and by following the example of his predecessor he hoped to contribute to the success of the work of the present important session of the Commission.

20. He associated himself with the tributes paid to the outgoing Chairman and expressed his gratitude to Mr. Reuter, who had represented the Commission at the November session of the European Committee on Legal Co-operation.

21. He called for nominations for the office of First Vice-Chairman.

22. Mr. KEARNEY congratulated the Chairman on his election and proposed Mr. Ago.

23. Mr. YASSEEN seconded the proposal.

24. Mr. USTOR, Mr. USHAKOV, Mr. BARTOŠ and Mr. ALCÍVAR supported the proposal.

25. Mr. EL-ERIAN, also supporting the proposal, said that as a Special Rapporteur, he wished to take that opportunity of expressing his appreciation and thanks to Mr. Kearney for his resourcefulness and patience as Chairman of the Drafting Committee at the previous session.

⁶ See *Official Records of the General Assembly, Twenty-fourth Session, Annexes*, Agenda items 86 and 94 (b), document A/7746, paras. 99-103 and 117.

⁷ *Yearbook of the International Law Commission, 1970*, vol. II, document A/8010/Rev.1, paras. 106-110.

⁸ A/CN.4/248.

26. Mr. ROSENNE joined in the tributes paid to the outgoing Chairman. In congratulating the newly elected Chairman, he drew attention to his outstanding contribution as President of the Security Council in very difficult circumstances. He supported the nomination of Mr. Ago for the office of First Vice-Chairman.

27. Mr. EUSTATHIADES, Mr. CASTRÉN, Mr. REUTER, Mr. NAGENDRA SINGH and Mr. ELIAS also supported the nomination of Mr. Ago.

Mr. Ago was unanimously elected First Vice-Chairman.

28. Mr. AGO thanked the Commission for his election.

29. The CHAIRMAN called for nominations for the office of Second Vice-Chairman.

30. Mr. USHAKOV proposed Mr. Bartoš.

31. Mr. YASSEEN and Mr. EL-ERIAN supported the proposal.

Mr. Bartoš was unanimously elected Second Vice-Chairman.

32. Mr. BARTOŠ thanked the Commission for his election.

33. The CHAIRMAN called for nominations for the office of Rapporteur.

34. Mr. RUDA proposed Mr. Sette Câmara.

35. Mr. CASTAÑEDA, Mr. NAGENDRA SINGH, Mr. USHAKOV, Mr. AGO, Mr. EL-ERIAN and Mr. BARTOŠ supported the proposal.

Mr. Sette Câmara was unanimously elected Rapporteur.

36. Mr. SETTE CÂMARA thanked the Commission for his election.

Adoption of the Agenda

37. The CHAIRMAN invited the Commission to consider the provisional agenda (A/CN.4/242).

38. Mr. KEARNEY said that there was a great and growing increase in the number of cases involving the kidnapping of diplomats and their murder or injury for political reasons. That was a subject of direct concern to the Commission, which had been foremost in developing diplomatic and consular law. He proposed, therefore, that the Commission place on its agenda, as a matter of high priority, the preparation of a set of draft articles on the protection of diplomats. Despite the crowded condition of the agenda and the need to complete the draft articles on permanent missions and delegations to conferences, he thought it would be possible for the Commission to produce a set of draft articles at the present session if it adopted a suitable method of work.

39. Mr. USHAKOV said he thought Mr. Kearney's proposal could be discussed either under item 7: "Updating of the Commission's long-term programme of work", or under item 11: "Other business". Perhaps the

proposal could be taken up a little later, when members had time to reflect on it. For the moment he would propose that the Commission adopt the provisional agenda.

40. Mr. ROSENNE proposed that the word "Updating" in the title of item 7 of the agenda, be replaced by the word "Review".

It was so agreed.

41. Mr. ELIAS said that, while fully appreciating the views expressed by Mr. Kearney and Mr. Ushakov, he would like to propose the adoption of the provisional agenda as it stood.

42. Mr. EUSTATHIADES said that the Commission should take a decision without delay on the urgency of the question and on how to deal with it. It was clear from the statement made by the outgoing Chairman that the problem of the protection and inviolability of diplomatic agents fell within the scope of the Commission's work.

43. Mr. REUTER said that Mr. Kearney's proposal was obviously important, but its acceptance would compel the Commission to change its methods of work. He suggested that Mr. Kearney be asked to submit a brief note setting out not only the purpose of his proposal, but also the method of work and the timing he suggested. The note might also indicate whether the Commission should simply express a wish, adopt a resolution on general principles or prepare an actual draft of articles. In any event, the Commission must take a decision.

44. Mr. YASSEEN said that the question which had been raised was becoming more and more alarming, but the Commission's methods of work were ill-suited to its urgent character. The Commission's work of codification was necessarily slow, because it was carried out in close co-operation with the General Assembly and with States. There could, therefore, be no question of putting forward draft articles without first submitting the question to the General Assembly and to governments. The problem of the protection and inviolability of diplomatic agents called for reflection; it raised many political issues on which the General Assembly should pronounce before a draft of articles could be formulated.

45. Mr. BEDJAOUÏ said he thought Mr. Kearney's proposal might entail the adoption of a new method of work. The Commission's work of codification was a long-term undertaking which did not always allow it to examine topical questions, however important they might be. In view of its very heavy agenda, the Commission was unlikely to be able to achieve any constructive results in the matter. Moreover, Mr. Kearney's proposal called for the formulation of draft articles, and that was something which could not be done in a hurry.

46. He therefore considered that the Commission should not attempt to formulate and adopt draft articles on that subject at the present session.

47. Mr. AGO said he agreed with Mr. Yasseen and Mr. Bedjaoui that Mr. Kearney's proposal, as submitted, did not quite fit in with the Commission's usual methods of work and that it would be difficult to put it on the

agenda forthwith. The question of the protection and inviolability of diplomatic agents was none the less urgent, and the Commission should make every effort to consider it. He therefore supported Mr. Reuter's suggestion that Mr. Kearney be asked to submit a note. If the provisional agenda were adopted, that would not prevent the Commission from amending it later, and in any case the question raised by Mr. Kearney could always be considered under "Other business".

48. Mr. ROSENNE said he could agree to Mr. Reuter's suggestion.

49. He proposed that the Commission adopt the provisional agenda subject to minor drafting amendments and without prejudice to the order in which the various items would be discussed.

50. The CHAIRMAN suggested that the Commission should adopt the provisional agenda with the drafting amendment suggested, namely, that the word "Up-dating" in item 7 be replaced by the word "Review".

51. Mr. KEARNEY would submit a more detailed proposal in writing concerning the protection of diplomats.

The provisional agenda was adopted as amended.

The meeting rose at 5.40 p.m.

1088th MEETING

Wednesday, 28 April 1971, at 10 a.m.

Chairman: Mr. Senjin TSURUOKA

Present: Mr. Ago, Mr. Alcívar, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. El-Erian, Mr. Elias, Mr. Eustathiades, Mr. Kearney, Mr. Reuter, Mr. Rosenne, Mr. Ruda, Mr. Sette Câmara, Mr. Thiam, Mr. Ushakov, Mr. Ustor, Mr. Yasseen.

Relations between States and international organizations

(A/CN.4/221 and Add.1; A/CN.4/238 and Add.1 and 2; A/CN.4/239 and Add.1 and 2; A/CN.4/240 and Add.1 to 3; A/CN.4/241 and Add.1 and 2)

[Item 1 of the agenda]

1. The CHAIRMAN invited the Special Rapporteur to introduce his sixth report.

2. Mr. EL-ERIAN (Special Rapporteur) said that his sixth report, which was contained in document A/CN.4/241 and the addenda thereto, has been prepared in accordance with the Commission's instructions; it reviewed the 116 articles adopted at the twentieth, twenty-first and twenty-second sessions in the light of the comments of delegations in the Sixth Committee at the

twenty-fifth session of the General Assembly, and of the written observations of governments and international organizations (A/CN.4/221 and Add.1; A/CN.4/238 and Add.1; A/CN.4/239 and Add.1 and 2; A/CN.4/240 and Add.1 to 3).

3. The 116 articles were divided into three groups. The first, consisting of articles 1 to 21,¹ contained general provisions and provisions regulating the legal modalities of the institution of permanent missions. The second, consisting of articles 22 to 50,² dealt with the facilities, privileges and immunities of permanent missions to international organizations and with related matters. The third, consisting of articles 51 to 116,³ consisted of two parts, one dealing with permanent observer missions to international organizations and the other with delegations of States to organs of international organizations and to conferences convened by, or under the auspices of, an international organization.

4. His review of articles 1 to 116 (A/CN.4/241 and addenda) was preceded by an introduction and preliminary considerations on the form, scope and title of the draft articles, all matters which had been thoroughly discussed by the Commission at previous sessions and on which decisions had already been taken. The first question the Commission had to decide was whether, now that it had before it the observations of governments and international organizations, it wished to confirm its previous decisions on those matters.

5. An examination of the dates of issue of the various documents would show that the observations had not all been submitted in time, and it was only thanks to the efforts of the Codification Division that it had been possible to place before the Commission at the opening of the present session a substantial part of his sixth report and the bulk of the observations by governments and international organizations.

6. The general philosophy of the draft articles, their basic underlying assumptions, and the approach and methods adopted by the Commission, had received the support of governments and international organizations. Issue had only been taken on the drafting of certain articles and, of course, on the subject of privileges and immunities. That had never been a popular subject with governments and the Commission's past experience with its draft articles on diplomatic intercourse and immunities, on consular relations, and on special missions had shown that governments, at least in the early stages, always opposed any extension of privileges and immunities.

7. One example of the general approval of governments, was the written comment of the United States, which was host in New York to the United Nations and in Washington to a number of other organizations, both universal and regional, that "The United States considers that these twenty-one draft articles have been carefully and

¹ See *Yearbook of the International Law Commission, 1968*, vol. II, pp. 196 *et seq.*

² *Op. cit.*, 1969, vol. II, pp. 207 *et seq.*

³ *Op. cit.*, 1970, vol. II, document A/8010/Rev.1, para. 26.