Document:-
A/CN.4/SR.879

Summary record of the 879th meeting

Topic:
Law of Treaties

Extract from the Yearbook of the International Law Commission:-
1966, vol. I(2)

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

Copyright © United Nations

as the rule on the inviolability of archives, and other rules in respect of which a distinction could be made between political missions and administrative or technical missions. With regard to the latter type of rule, political missions would benefit from practically the same privileges as those extended to permanent missions by the Vienna Convention on Diplomatic Relations. Where administrative or technical missions were concerned, it could be agreed that they should benefit only from those privileges and immunities necessary for the performance of their functions.

85. That approach would leave open the question of determining which missions should be considered political and which administrative or technical. It would be left to the States concerned to decide in each case how a particular special mission would be treated.

86. Mr. AMADO said he was surprised that Mr. Tunkin found it possible to distinguish between a political mission and a technical mission. He did not see how that distinction could be made, since political questions were always bound up with technical questions; the very word " State " implied interests, and multiple interests at that. The Commission should not depart from the rules it had first formulated, which laid down minimum requirements, always bearing in mind that special missions, however important, were temporary in character and were appointed, as their name implied, to deal with special problems. Moreover, the Vienna Convention on Diplomatic Relations should be followed as closely as possible.

87. The functional theory was an easy one for the Commission, but not for States. It was not the rank of the persons concerned that counted. Some missions headed by very high ranking persons, which appeared to be of very great importance, gave rise to nothing more than a general exchange of views and settled no specific problems. The only criterion that the Commission could adopt for special missions was precisely their special, specialized and " secondary " character —the term " secondary " having no pejorative sense.

88. He wished it were possible to define two régimes, but he did not see how it could be done. In his opinion the Commission should specify the minimum of privileges and immunities necessary and possible to enable a special mission to perform its task and produce the desired results, and that should be done very cautiously, allowing States as much freedom as possible.

89. The CHAIRMAN, speaking as a member of the Commission, said he had maintained that the Commission's work on special missions was based on the functional theory. Mr. Amado also supported that theory, for indispensable privileges and immunities were precisely those which the special mission required in order to perform its functions.

90. Mr. BARTOŠ, Special Rapporteur, pointed out that he had originally proposed basing the Commission's work on the functional theory, but at the suggestion of Mr. Tunkin and in the light of the preamble to the Vienna Convention on Diplomatic Relations, the Commission had rejected that proposal.[6] It had considered that the representational and functional elements were combined and that even in the case of a purely technical mission, certain questions of prestige and the determination to safeguard certain political interests always underlay the technical aspects. Most of the delegations to the General Assembly had accepted that combination of the two elements; only a few governments had stressed the functional character of special missions. Hence it could hardly be said that, on the whole, States favoured the functional theory.

91. The CHAIRMAN, speaking as a member of the Commission, stressed that he had referred to the functional theory as one of the bases, but not the only basis, for the Commission's work. In his opinion, that theory was an essential basis of the draft, as it had been an essential basis of the two Vienna Conventions.

92. Mr. CASTRÉN pointed out that the Special Rapporteur had originally proposed fairly extensive privileges for special missions and the Commission had considered it necessary to restrict those privileges to some extent. Generally speaking, governments had approved the position taken by the Commission. The majority of the Commission supported the functional theory, and the Special Rapporteur had also upheld the representational theory.

93. Mr. BARTOŠ, Special Rapporteur, said that, on the contrary, it was he who had upheld the functional theory, according to which immunites were granted to the extent required by the official acts to be performed. But the Commission had rejected that point of view and instructed him to bring the draft into line with the Vienna Convention on Diplomatic Relations. A few States were now coming back to the opinion which he had upheld at the outset.

94. Mr. AMADO urged the Commission to leave the theoretical question aside, for, in any case, elements of the various theories were intermingled in the topic of special missions.

The meeting rose at 6.5.p.m.

879th MEETING

Tuesday, 28 June 1966, at 11.20 a.m.

Chairman: Mr. Mustafa Kamil YASSEEN

Present: Mr. Ago, Mr. Amado, Mr. Bartoš, Mr. Briggs, Mr. Castrén, Mr. El-Erian, Mr. Jiménez de Aréchaga, Mr. Paredes, Mr. Pessou, Mr. Reuter, Mr. Rosenne, Mr. Ruda, Mr. Tsuruoka, Mr. Tunkin, Sir Humphrey Waldock.

Law of Treaties

(resumed from the 876th meeting)

[Item 1 of the agenda]

PROPOSED CODIFICATION CONFERENCE ON THE LAW OF TREATIES (ILC(XVIII)MISC.1)

1. The CHAIRMAN invited the Legal Counsel of the United Nations to introduce the Secretariat memorandum

[6] *Yearbook of the International Law Commission, 1964*, vol. I, p. 13, paras. 51 *et seq.*

(ILC(XVIII) MISC.1) on the procedural and organizational problems involved in holding a conference on the law of treaties.[1]

2. Mr. STAVROPOULOS (Legal Counsel) said that, at the last session of the General Assembly, several representatives had suggested that the Secretariat should prepare a paper on the procedural aspects of a conference to codify the Commission's work on the law of treaties. It had also been suggested that the Secretariat should informally ascertain the Commission's views on the proposals made in that paper. Document ILC/XVIII/MISC.1 had been prepared in response to those suggestions: it was a rough draft, based on the Secretariat's view that the General Assembly would probably find a conference necessary.

3. A conference on the law of treaties would clearly be a very arduous undertaking, if only because delegations would have to discuss some seventy articles, many of them of considerable technical difficulty. Governments would therefore need plenty of time to prepare for the conference and the memorandum accordingly suggested that it should not be held before 1968 at the earliest.

4. The next point was whether there should be a committee of the whole or two committees of the conference and, in the latter event, how the work should be divided. Then there was the question whether the conference should be held in two parts with an interval between them, in which case the work in committee would be done during the first part and only plenary meetings held during the second. That course would make the conference more expensive, but it would unquestionably ensure a more thorough study of the draft articles and it might make governments more willing to accept compromises.

5. A further question was that of the rules of procedure. Mr. Verosta, who had been President of the Vienna Conference on Consular Relations, had made a number of suggestions when speaking as Austrian representative in the Sixth Committee of the General Assembly.[2] He had criticized the rule that decisions on matters of substance taken in plenary required a two-thirds majority, claiming that it enabled a minority of delegations to reverse a decision reached by a simple majority in committee. That point had been thoroughly discussed before the United Nations Conference on the Law of the Sea, and, despite the opposition of Mr. François, the Special Rapporteur, it had been decided to maintain the two-thirds rule.

6. Mr. Verosta had also said it was desirable that the president of the conference should be given power to suspend a meeting in order to consult representatives before giving a ruling. But a conference was usually prepared to allow its president to adopt that course and a rule on the matter might not be necessary.

7. Another matter raised in the Sixth Committee had been the rule of procedure under which only two speakers could be heard in favour of a motion for the division of proposals and two against. One of the committee chairmen at the Conference on Consular Relations had said that that left representatives insufficient time to consider the implications of a divided vote.

8. The Secretariat's view was that the rules of procedure hitherto used had proved their worth and should be retained, perhaps with some minor changes.

9. He would welcome the Commission's views on those problems and the other questions raised in the memorandum.

10. Mr. BARTOŠ said he thought the point raised by Mr. Verosta should be examined, but not his proposals. Account should also be taken of the experience of other participants in the Conference on Consular Relations, for when Mr. Verosta was in the chair, he had been found to be in a minority on several occasions when his rulings had been challenged. The Commission should seek rational rules which would ensure full freedom of expression for the representatives of sovereign States in discussing such an important matter as the law of treaties, as well as speed and efficiency in the work of the conference.

11. It would be inadvisable to devote part of the conference to technical questions, and hold no plenary meetings during that period. Vital matters of principle arose from time to time on which participants had to express their views, not only in committees, but also in the plenary conference from which even committees of the whole received their instructions.

12. At the Conference on Consular Relations, the two committees which had been set up had worked independently, with the result that disputes had arisen over the co-ordination of their work, the second committee having refused to apply to questions within its competence certain solutions adopted by the first. It should therefore be decided whether co-ordination was to be effected at the last moment, when the committees had completed their work, or at each stage of their proceedings.

13. Personally, he was convinced that the plenary conference should meet not only at the beginning and the end of the work, but also while the committees were sitting, in order to reach compromises. Experience had shown that members of committees made a practice of submitting technical solutions, without attempting to find political ones, thus jeopardizing the success of the conference and of the convention it adopted. It should therefore be possible for plenary meetings to be convened at any time by the officers of the conference, in order to settle questions requiring a compromise.

14. The Commission itself was not always concerned solely with the technical aspect of a matter; the political aspect often dominated its thinking, whether consciously or subconsciously. At a conference of some 118 States, not counting representatives of the specialized agencies, at which delegates who were neither experienced nor technically expert would have to settle technical questions, it would be difficult to obtain any kind of majority, even a simple one, and experience showed that small groups would tend to form holding three or four different opinions. Compromises would therefore have to be reached by adding a few words to certain texts to make

[1] This memorandum was subsequently issued in revised and expanded form as document A/C.6/371.

[2] *Official Records of the General Assembly, Twentieth Session, Sixth Committee*, 851st meeting, paras. 23-26.

them acceptable and provide a sound basis for a majority. For when adopting a law-making treaty it was important to have a large majority.

15. In short, he hoped that the conference would at all times be able to meet concurrently in plenary, in committees, in sub-committees and in working groups, which would have the task of studying the really technical questions, reaching a compromise, and referring it back to the committees. In other words, he was in favour of rules which would be flexible, but would be based on strict principles and provide all the necessary safeguards.

16. Mr. AGO said that the task of codifying the law of treaties was the heaviest responsibility the United Nations had yet assumed in the codification of international law. It was therefore most important that the conference or conferences carrying out the final stage of a task to which the Commission had devoted so many years should be well prepared.

17. The undertaking was certainly a very difficult one, and he was glad the Legal Counsel considered that there should be no haste. He himself would be in favour of holding the conference in the autumn of 1968 or the spring of 1969; he believed, for several reasons, that all the intervening time would be needed to organize the conference satisfactorily. Above all, governments should have time to study the draft carefully, to appreciate its importance and its difficulties and to choose delegations equal to the task. The United Nations, for its part, should have time to give careful consideration to the choice of a meeting-place and of a president—two matters which were often interdependent. A conference of that kind needed a really first-class president; much depended on where it was held and how its work was directed.

18. Before expressing a definite opinion on whether the conference could or should work in committees, he would wait to hear Sir Humphrey Waldock's views on the matter. His first reaction was that a conference on the law of treaties could not be subdivided into several committees, since the draft formed a logical whole from beginning to end and all its provisions were interconnected. The case of the Conference on the Law of the Sea had been quite different, for it had been called upon to deal with a series of separate questions, such as the régime of the high seas, the continental shelf, the territorial sea and living resources.

19. Where the law of treaties was concerned, two committees working concurrently and along parallel lines might reach conclusions which would be hard to reconcile. Members of the Commission could see for themselves that, after having worked together for years on the subject, they were now finding it necessary to revise certain articles approved a year or two previously, because they had adopted a different text in the last part of the draft.

20. It might therefore be wiser to provide for two conferences, one to deal with the first part of the draft and the other with the second part. The first conference could work as a committee of the whole, so as to be able to adopt a text by a simple majority, at least at the first stage, and then review it all in plenary, where a two-thirds majority would be required—that being a well-established practice, which it would be difficult to change. The second conference, which might be held a year later, would deal with the second part of the draft and the co-ordination of the whole.

21. Mr. BRIGGS said that he knew of no clearer document on the preparations for a conference than the excellent memorandum submitted by the Secretariat. He had been glad to hear the Legal Counsel say that the Secretariat believed such a conference would be found necessary. The Commission should express the same opinion in its report to the General Assembly.

22. As to the date of the conference, the Commission would conclude its work on the law of treaties during the coming month. The General Assembly would thus receive the draft not long before its twenty-first session and was therefore unlikely to discuss it in detail before its twenty-second session in 1967. Consequently, the conference could not be held before the spring of 1968. On the other hand, too long a delay would be inadvisable and 1968 therefore seemed the obvious choice.

23. He was attracted by the proposal, originally made by Mr. Tunkin, that the conference should be held in two parts, with an interval of a year or less between them, but he was not sure that committee work could be entirely dispensed with during the second part.

24. He was sceptical about the possibility of dividing the work between two committees. In dealing with certain articles, the Commission itself had encountered difficulty in recalling exactly how it had drafted comparable passages in earlier articles; moreover, the interrelationship between the articles was very close. That being so, it seemed unwise to divide the work between two committees, and any decision on how the division would be made was bound to be arbitrary.

25. In paragraph 44 of the memorandum it was stated that the Drafting Committee at the first Conference on the Law of the Sea had been responsible for the final drafting and co-ordination of the instruments approved by the Committees of the Conference, whereas at the Conference on Consular Relations the rule had been revised to provide that the Drafting Committee was to give advice on drafting as requested by other committees and by the Conference. In his view, the drafting committee at the future conference on the law of treaties should be responsible for co-ordination and for all drafting; its work should not be confined to giving advice.

26. Mr. EL-ERIAN said it was sometimes asked whether the Sixth Committee could not undertake the drafting of the convention. In view of the limited facilities at its disposal, however, and the fact that the complexity of the subject would necessitate the continuous presence of experts, it was difficult to see how it could do so. The best course therefore seemed to be to follow previous practice and hold an international conference.

27. He agreed with Mr. Briggs that momentum should not be lost and that undue delay would be harmful. The conference should therefore be held in 1968; the time interval would then correspond to that allowed for the first Conference on the Law of the Sea.

28. It seemed quite feasible to divide the work of the conference between two committees, one of which would deal with part I of the draft and the other with parts II and III. Such a division was, of course, arbitrary, but it should be remembered that the conference would have a basic text before it; the drafting committee would have to be given ample power to co-ordinate.

29. The question of the rules of procedure at conferences had been carefully investigated by a committee of experts convened by the Secretary-General, which had suggested rules substantially the same as those of the General Assembly. Those rules had successfully met the needs of the Conferences on the Law of the Sea and on Diplomatic Intercourse and Immunities, which were landmarks in the work of codification. As to the two-thirds rule, it had been adopted by the Commission itself in article 6 of its draft on the law of treaties and was also applied by organizations outside the United Nations system; it would therefore be best to retain it.

30. He saw no reason for any change in the powers of the president of the conference. A president could always suggest a recess or arrange with a representative to do so.

31. The drafting committee should be given more authority and should have powers similar to those of the Commission's own Drafting Committee.

32. He was attracted by the idea of dividing the conference into two parts with an interval between them. One difficulty which arose at conferences was that of taking proper account of all the amendments. The work could perhaps be so arranged that, during the first part of the conference, there was a first reading at which all amendments would be submitted, and governments would then have an opportunity of considering them. It might be feasible merely to provide for the possibility of holding the conference in two parts; if everything went smoothly during the first part, the second might prove unnecessary.

33. Mr. ROSENNE said it had been his suggestion, made in the Sixth Committee as his country's representative, that the Secretariat should prepare, for submission to the General Assembly at its twenty-first session, a memorandum on the lines of the one now under discussion. The Secretariat had taken the matter one stage further and had decided to submit a first draft of the memorandum to the Commission.

34. The importance of that new development in codification technique should not be underestimated. For the first time, the Commission was being called upon to consider in advance the implications of a conference which would give final form to its work. It would give some consideration to the organizational and administrative implications of such a conference, although they were not perhaps its direct concern; for the Commission, the most important implications were those relating to its own work and the presentation of that work to the General Assembly.

35. As a member of the Commission, he wished to thank the Legal Counsel and the Codification Division of the Office of Legal Affairs for an extremely thoughtful and well-prepared memorandum which would ensure that the Commission and the Sixth Committee did not take decisions without adequate information.

36. He hoped the Commission would recommend to the General Assembly that a conference of plenipotentiaries should be convened to consider its work on the law of treaties.

37. The Secretariat memorandum raised three main points. The first was the date of the conference. He appreciated some of the arguments put forward against losing momentum, but it would not be wise to convene the conference too early. The legal departments of Foreign Ministries would have to make a careful study of the Commission's report, its draft articles and its discussions, and that would be in addition to their other legal work; moreover, some of the points raised by the draft articles went beyond the competence of Foreign Ministries. For those reasons, the Commission should avoid undue haste and he had some doubts about proposing 1968 as the year for the conference.

38. The second point was the division of the draft articles between two committees. He felt strongly that such an arrangement would undermine the work the Commission had done on the law of treaties over a period of many years. Any division of the material would necessarily be arbitrary; there was also a very real danger that it would lead to the conclusion of more than one convention on the law of treaties. Moreover, experience of previous codification conferences had shown the difficulty of transferring material from one part of the text to another when a conference was divided into two or more committees.

39. In 1959, when the General Assembly had last discussed the question of reservations, the Sixth Committee had reached the conclusion—contrary to the one it had reached in 1950 and 1951—that that question could not be separated from the other parts of the law of treaties. The Assembly had accordingly not instructed the Commission to prepare a separate report on reservations, but had called upon it to study that subject in the general context of the law of treaties.[3]

40. A further argument against having two committees working concurrently was that it would be extremely difficult for most Members of the United Nations to send sufficiently large delegations to work on both committees at once, and failure to do so might endanger the cohesion of the text finally adopted.

41. He fully approved of the suggestion that the conference should be held in two stages and thanked Mr. Tunkin for putting forward that excellent idea.

42. With regard to the rules of procedure, he saw no reason to depart from those used at the 1963 Vienna Conference, except for any modifications that were necessary to bring them up to date in the light of experience.

43. There was, however, one organizational problem which deserved consideration, but did not necessarily call for any change in the rules of procedure. It related to the time at which a vote took place, especially at the committee stage of a discussion. The Commission had for a number of years followed the practice of not

[3] See General Assembly resolution 1452 B (XIV), para. 2.

voting on a text until it had come back from the Drafting Committee and discussion on that Committee's proposals was exhausted. It had thus avoided tying the hands of the Drafting Committee at too early a stage. The results had been very satisfactory, and since that method of work had been adopted very few votes had been cast against any of the articles adopted by the Commission. During the early years, it had almost invariably been those texts which the Commission had adopted by narrow majorities that had caused difficulties subsequently. He therefore urged that the conference on the law of treaties should avail itself of the Commission's experience with its Drafting Committee.

44. Mr. JIMÉNEZ de ARÉCHAGA said he wished to associate himself with the tributes paid to the Secretariat memorandum. He was in general agreement with the views expressed by Mr. El-Erian, particularly as to the date of the conference and the desirability of not losing momentum.

45. As to the possibility of dividing the work of the conference between two committees, he thought that such an arrangement would have great practical advantages. In particular, the reduction in cost which would result from shortening the conference was an important consideration. The articles on the law of treaties could be divided as suggested by Mr. El-Erian: the first committee could deal with part I, the preamble, the final clauses and the final act, and the second committee, with parts II and III. The indivisibility of the draft articles was a point that should not be overstressed; after all, the method of working in several committees had been followed by many international conferences, including the San Francisco Conference, which had adopted the Charter of the United Nations— an instrument requiring an even closer relationship between its various chapters.

46. The suggestion that the conference should be held in two stages had drawbacks in regard to cost, both for States and for the United Nations. There was also a danger of losing momentum, and difficulties would be caused by changes in the composition of delegations. Certain participating States might even lose interest in the interval. In the circumstances, he preferred the solution suggested by Mr. El-Erian, namely, that the conference should aim at completing its work in one session, but should have the option of holding a second session if complications arose. Should it be decided to hold the conference in two stages, he could not accept the division of work suggested by Mr. Ago, which would have all the disadvantages of division without its one advantage, that of providing an interval for reflection.

47. Lastly, with regard to the rules of procedure, he agreed that decisions in plenary should be taken by a two-thirds majority, and he supported the other suggestions made in the memorandum.

48. Mr. TUNKIN thanked the Legal Counsel for the Secretariat memorandum and for his enlightening statement.

49. He had no doubt that it would be necessary to hold an international conference to codify the law of treaties. Experience had shown how important it was for a complex branch of international law to be considered by special delegations which were solely concerned with the draft prepared by the International Law Commission.

50. With regard to the date and the organization of the conference, the primary considerations should be the topic and the object.

51. As to the topic, the law of treaties occupied a special place in international law as a whole. Every article of the draft involved not one, but several problems, and problems of much greater complexity than those which had arisen, for example, at the 1958 Conference on the Law of the Sea. The topic was also one of great practical importance to States, which were daily confronted with problems of the law of treaties.

52. The object of the conference would be the same as that of the 1958 and 1960 Geneva Conferences and the 1961 and 1963 Vienna Conferences, namely, the codification and progressive development of general international law—a fact which had not always been appreciated by some representatives speaking in the Sixth Committee of the General Assembly. The aim should therefore be to obtain the support of the largest possible number of States for the draft as a whole, not to force the acceptance of particular proposals. In view of the nature of a codification conference, the suggestion that decisions in plenary should be taken by simple majority could only be based on a superficial view of the object of the conference. A convention adopted by a narrow majority might never become part of general international law and might even do more harm than good. The two-thirds majority rule provided a guarantee of broad support; moreover, the existence of that rule was an inducement to negotiate agreed solutions.

53. In view of the complexity of the subject and the need to obtain the broadest possible support for the text, if was important that the arrangements for the conference should allow time for reflection. It was for that reason that he had put forward, some years previously, the idea of a conference in two stages. A realistic appraisal of the problem of codifying the law of treaties would show that it was impossible to deal with the whole draft in ten to thirteen weeks. It might be possible to do so in four months, but a conference of that length was not feasible. He had therefore suggested that the conference should be divided into two stages, which would have the great advantage of giving participants an interval to reflect on the issues brought to the fore during the first stage.

54. He did not believe that there was any real danger of loss of momentum. The law of treaties was a subject to which States attached great importance and it was inconceivable that they would lose interest in it in one or two years.

55. The question of the division of work between the two stages of the conference would be one for governments to settle. It would be possible either to divide the draft into two parts, or to have a first reading of the whole draft during the first stage and a final reading during the second stage.

56. He shared some of the doubts which had been expressed about working in two committees, but the

Commission should not at that stage exclude the possibility of the conference setting up two committees if that arrangement could accelerate its work. The Sixth Committee of the General Assembly should consider that matter and see whether it was feasible to have two committees, one to deal with the preamble, the final clauses and part I and the other to deal with the rest of the draft.

57. Mr. Rosenne had made some particularly useful comments about the drafting committee of the conference. It would be remembered that the Drafting Committee at the 1961 Vienna Conference had worked in much the same way as the Commission's own Drafting Committee.

58. With regard to the date of the Conference, he thought that the earliest it could be held was in 1968. But if it was decided to hold it in 1969, governments would have more time to study the draft.

59. Mr. REUTER said he would confine himself to a few very general remarks because, unlike many other members of the Commission, he had only a limited experience of international conferences. The Secretariat memorandum was excellent, as had been the statement made by the Legal Counsel. The proposed conference would be an outstanding event and could hardly be compared with previous codification conferences, for it would be the first attempt to codify material which was of such a definitely constitutional nature, not only for the international community, but also in relation to the United Nations Charter, which was specifically mentioned in several articles of the draft, in relation to United Nations practice, which was referred to several times, and in relation to national constitutions. It was thus an entirely new undertaking, which must succeed; in other words, it must secure the support of a large number of States belonging to all the main groups of the international community. It was of course difficult to satisfy everyone, but success would not be achieved if the conference resulted in a text establishing a partial view, even though it was adopted by a large majority, but one which did not include certain groups of States representative of the family of nations. With a view to success on those lines, he wished to take up some of the points raised by the Legal Counsel.

60. As to the organization of the conference, it seemed clear that the work could not be completed in a single stage, for two reasons: the wide scope of the topic, stressed by several speakers, and, even more important, the constitutional character of the text to be studied. In the first stage, delegations might consider the draft as a whole, in order to determine which provisions could be agreed on fairly easily and quickly despite their technical difficulty, and which raised questions of principle and might therefore bring groups of States into opposition. The first stage could be conducted in plenary and probably also in committees; the arrangements could be left to the Secretary-General. He did not wish to reject *a priori* the idea of setting up several committees to examine certain parts of the draft during the first stage, provided that a method of work was adopted which would make it possible to avoid the most serious disadvantages of such a division. During the second stage, the conference might adopt a text which would be acceptable to all representative States; when that point was reached, it would probably be less desirable to divide up the work among several committees.

61. The Commission could not disregard the work done by other bodies. For instance, the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States had studied some of the questions dealt with in the draft, and many governments would naturally see some connexion between the Commission's draft and that Committee's work.

62. With regard to the date of the conference, he endorsed the views of the previous speakers. It would be well to lose no time in making the first contacts and to arrange for a reasonable interval between the two stages of the conference. He had no objection to the choice of 1968; after all, three years had already elapsed since governments had begun to study the draft.

63. The question of majorities was very important. He was not opposed to applying the two-thirds majority rule at the final stage of the conference, but more easily obtainable majorities would probably be preferable in the earlier stages. In view of what he had said about the kind of success the conference should achieve, however, even a two-thirds majority would not be sufficient at the final stage: it would be necessary to approach unanimity. In that connexion, Mr. Rosenne had stressed the importance of choosing the right time for a vote. In the introduction to his latest annual report on the work of the Organization,[4] the Secretary-General had welcomed the institution of conciliation machinery in the United Nations Conference on Trade and Development; the United Nations would certainly have to extend such measures in coming years. Perhaps the rules of procedure of the coming conference might provide for conciliation procedures.

64. The CHAIRMAN thanked the Legal Counsel and the Office of Legal Affairs as a whole for their careful preparatory work which would undoubtedly contribute to the success of the Commission's efforts.

65. Speaking as a member of the Commission, he said that the draft on the law of treaties was vitally important, for apart from the constitutional aspect stressed by Mr. Reuter, the whole future of the codification of international law would depend on what happened to it. Treaties were becoming an increasingly important source of international law, and the purpose of the Commission's draft was to formulate that source clearly and precisely. Undue haste must therefore be avoided, and it was essential that the Commission's draft be submitted to a conference of plenipotentiaries who would be called upon to make it into an international convention. He thought he could safely say that that was the consensus of opinion in the Commission.

66. The date proposed by the Secretariat seemed suitable. It could, of course, be put back, but it would be difficult, not to say impossible, to advance it.

67. It had been suggested that the work of drawing up the future convention should be divided between

[4] *Official Records of the General Assembly, Twentieth Session, Supplement No. 1A*, p. 4.

several committees and that the conference should be split into two parts. With regard to the appointment of committees, he pointed out that the Commission itself had at first been uncertain whether one or more conventions on the law of treaties should be drafted; thus it had contemplated some division of the work. It had subsequently found that in view of the interdependence of the rules to be stated, it would be difficult and impractical to prepare several separate texts. On the whole, that attitude had met with the approval of the Sixth Committee of the General Assembly. But it did not necessarily follow that the work of the conference should not be divided between several committees; there were practical considerations both for and against that procedure. Even if several committees were set up, each delegation formed an independent unit, and its members could and should always consult each other. Moreover the drafting committee of the conference would play a unifying role. The ideal procedure would be for all the articles to be considered in plenary, but if that raised practical difficulties, there were no technical or theoretical objections to splitting up the work between several committees.

68. As to the division of the conference into two sessions, he supported the plan suggested by Mr. Tunkin, subject to Mr. Reuter's comments: at its first session, the conference would consider all the articles and then, after a reasonable interval, the second session would be devoted to the adoption of the convention. The interval between the two sessions would not be wasted, since States would have the draft before them and could consult together and review their attitudes, which might facilitate compromises. If possible, the work should be divided between committees only during the first session, and conducted entirely in plenary during the second.

69. In conclusion, he saw no need to amend rules of procedure which had proved effective at several conferences.

The meeting rose at 1.5 p.m.

880th MEETING

Wednesday, 29 June 1966, at 11 a.m.

Chairman: Mr. Mustafa Kamil YASSEEN

Present: Mr. Ago, Mr. Amado, Mr. Bartoš, Mr. Briggs, Mr. Castrén, Mr. El-Erian, Mr. Jiménez de Aréchaga, Mr. Paredes, Mr. Pessou, Mr. Reuter, Mr. Rosenne, Mr. Ruda, Mr. Tsuruoka, Mr. Tunkin, Sir Humphrey Waldock.

Co-operation with other bodies

(resumed from the 856th meeting)

[Item 5 of the agenda]

1. The CHAIRMAN invited the representative of the European Committee on Legal Co-operation to address the Commission.

2. Mr. GOLSONG (European Committee on Legal Co-operation) said that during the second part of its seventeenth session, held in Monaco, the Commission had decided to establish a working relationship with his Committee,[1] the co-ordinating body of the Council of Europe on legal matters. In future, a representative of the Commission would be invited to attend meetings of the Committee dealing with questions of common interest to the two bodies, and there would be a full exchange of all documentation between their secretariats.

3. In Monaco, he had given the Commission a brief outline of those matters the Committee was working on which might be of interest to the Commission. They included: ratification by States associated with the Committee of the universal conventions prepared on the basis of the Commission's reports; privileges and immunities of international organizations, a question which might be of particular interest to the Commission's Special Rapporteur on relations between States and inter-governmental organizations; immunity of States from jurisdiction, a matter regarding which the Committee was drafting principles, though it had not yet decided whether or not it should become the subject of a European convention; and finally, the question of reservations to multilateral conventions, on which the Committee was seeking to establish a common position of the European States. He was convinced that the contacts established would help the Commission in its efforts to create a more orderly international legal system.

Law of Treaties

(resumed from the previous meeting)

[Item 1 of the agenda]

PROPOSED CODIFICATION CONFERENCE ON THE LAW OF TREATIES (ILC(XVIII)MISC.1) *(continued)*

4. The CHAIRMAN invited the Commission to continue its discussion on the questions raised by the Legal Counsel at the previous meeting.

5. Mr. CASTRÉN thanked the Legal Counsel for the interest he was taking in the Commission's work and the United Nations Secretariat in general for its excellent memorandum on the organization of a conference on the law of treaties.

6. Like the other members of the Commission, he welcomed the idea of convening a conference of plenipotentiaries to complete the Commission's work by adopting a convention codifying the important rules on the law of treaties. The date of the conference could be fixed later; he would not make any proposal, but urged that it should not be too early, so as to leave sufficient time for the preparatory work.

7. Although it was important to expedite the work of the conference as much as possible, it would be very difficult to divide it up among two or more committees, because of the very close interdependence of the various parts, articles and provisions of the draft, to which

[1] *Yearbook of the International Law Commission, 1966,* vol. I, part I, 827th meeting, para. 2.