

Document:-
A/CN.4/SR.1292

'Summary record of the 1292nd meeting

Topic:
Cooperation with other bodies

Extract from the Yearbook of the International Law Commission:-
1974, vol. I

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

article 6 might have to be reconsidered in the light of subsequent articles.

65. The CHAIRMAN said that if there were no further comments he would take it that the Commission approved article 6, as proposed by the Drafting Committee, on the understanding that the commentary would contain a passage on the lines indicated by the Special Rapporteur.

It was so agreed.

The meeting rose at 12 noon.

1292nd MEETING

Wednesday, 10 July 1974, at 12.10 p.m.

Chairman: Mr. Endre USTOR

Present: Mr. Ago, Mr. Bedjaoui, Mr. Bilge, Mr. Calle y Calle, Mr. El-Erian, Mr. Elias, Mr. Hambro, Mr. Kearney, Mr. Ramangasoavina, Mr. Reuter, Mr. Šahović, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Yasseen.

Co-operation with other bodies

(A/CN.4/L.214)

[Item 10 of the agenda]

(resumed from the 1278th meeting)

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

1. The CHAIRMAN welcomed the observer for the European Committee on Legal Co-operation and invited him to address the Commission.

2. Mr. GOLSONG (Observer for the European Committee on Legal Co-operation) said that it had been under the chairmanship of Mr. Bartoš that the Commission had decided, in 1966, to establish links of co-operation with the then recently established European Committee on Legal Co-operation. The passing of that great jurist, who had been wholeheartedly devoted to the cause of justice and peace in the world, was a loss not only to the Commission, but to the international community as a whole. He expressed his sympathy to the Commission and congratulated it on having elected Mr. Šahović to succeed Mr. Bartoš as a member.

3. He had been unable to attend the special meeting which the Commission had held on 27 May 1974 to celebrate its twenty-fifth anniversary, but he had already conveyed his Committee's sentiments of admiration in a message he had addressed to the General Assembly of the United Nations on the occasion of its celebration of that anniversary. In addition, the European Committee on Legal Co-operation had associated itself with that event by stressing, at its own tenth anniversary, the objectives which linked it with the Commission, namely, the codification and progressive development of interna-

tional law. The European Committee would seek to ensure the widest possible application of the drafts on which the Commission was engaged; Mr. Tabibi, who had attended its recent meeting as observer for the Commission, had encouraged the Committee to follow that course.

4. The activities of the European Committee on Legal Co-operation related to a number of subjects, three of which deserved special mention: the protection of human rights, water pollution control and practice relating to the law of treaties. The international protection of human rights was, of course, one of the Committee's main activities. It took the form, first, of action based on the European Convention on Human Rights,¹ and, secondly, of connected measures which might even lead to the formulation of more highly specialized treaties to supplement that Convention. France had recently ratified both the Convention and its additional protocols, with the exception of the protocol which conferred a consultative jurisdiction, though of a very limited character, on the European Court of Human Rights. That ratification had been accompanied by reservations which were of considerable interest with regard to international treaty practice in the matter of reservations. In addition, the application of the Convention had been developed by the European Court of Human Rights in a judgment that had awarded monetary compensation to an injured person on the basis of provisions which were to be found, in an almost identical form, in human rights treaties of a universal character.

5. During the twenty-five years since its signature, the European Convention on Human Rights had naturally given rise to procedural problems with regard to its application, and studies had recently been undertaken with a view to simplifying and speeding up procedure. It should be noted that the Court of Justice of the European Communities had recently invoked the Convention as a reference text, that was to say, in an area not formally within its scope.

6. With regard to the protection of water resources and, particularly, of international watercourses against pollution, a draft convention had been prepared² which was now before the Committee of Ministers of the Council of Europe; only political difficulties could now prevent its finalization. That draft contained legal innovations of some importance. It took the form of a basic instrument which laid down the obligation of the future contracting parties to enter into negotiations with each other, with a view to concluding co-operation agreements between the riparian States of the same international watercourse. In its present form, that *pactum de contrahendo*, which was set forth in articles 12 and 13 of the draft, was without precedent.

7. The draft convention also imposed specific material obligations on contracting States to maintain the quality of the waters in accordance with minimum quality standards, and to enact regulations to prohibit or re-

¹ United Nations, *Treaty Series*, vol. 213, p. 222.

² See *Legal problems relating to the non-navigational uses of international watercourses* (A/CN.4/274), part III, para. 377.

strict the discharge of certain dangerous or harmful substances into the waters. The obligations thus laid down raised the question of the international responsibility that would arise from their breach. A long discussion on that question had led to the formulation of article 21, which read: "The provisions of this Convention shall not affect the rules applicable under general international law to any liability of States for damage caused by water pollution". That provision left it to general international law to determine the consequences of the breach of an international obligation of the kind specified in the draft convention. On that point, the draft thus relied on the results of the work in progress in the Commission on the topic of State responsibility.

8. The system embodied in the draft for the settlement of disputes was more specific. It was based on the obligation to submit any dispute to an *ad hoc* arbitral tribunal to be set up for each individual case. Provision had had to be made for cases that were, perhaps, peculiar to problems of pollution of an international watercourse crossing the territory of several States—cases in which the dispute involved several States not having the same interests. It was difficult, when providing for *ad hoc* arbitration, to devise a system that would satisfy a diversity of interests. A tentative formula was embodied in an appendix to the draft, which made provision for the establishment of links between two or more arbitral tribunals seized of applications with identical or analogous subject-matters.

9. With regard to practice relating to the law of treaties, he drew attention to the increasing difficulties arising from the existence of several treaties covering more or less the same subject-matter or related subject-matters. Within the Council of Europe, for instance, there were successive agreements on criminal law which were applicable to different groups of States. That had led to an overlapping of international treaty obligations, because in the Council of Europe treaties were not binding on member States unless they individually expressed their consent to be bound. Studies were now in progress with a view to solving the problems of overlapping raised by the application of such treaties.

10. The position was complicated by the fact that, while the number of treaties was increasing, the structures of international society remained rudimentary, and were inadequate for the purpose of ensuring the harmonious development of international law. Perhaps there was no remedy for that state of affairs, but there were, at least, palliatives. For instance, in the matter of water pollution control it should be possible to co-ordinate closely the application of the draft European convention with the application of such other international instruments as the Oslo Convention³ protecting the North Sea against dumping, the quite recent Paris Convention for the Prevention of Marine Pollution from Land-Based Sources⁴ and the conventions protecting the Baltic Sea against pollution. The Council of Europe had taken care to establish links with the bodies

set up under the Oslo and Paris Conventions to supervise their application.

11. The European Communities could, moreover, simply accede to those conventions as subjects of international law. Such accession would not be anything new, but the participation of an entity other than a State in a multilateral treaty between States was bound to create some problems. Those problems had been raised during the preparation of the Paris Convention, but no definitive solution had been found; in that Convention each contracting party was presumed to possess full capacity to perform treaty obligations. It was not clear, however, what would happen if the European Communities acceded to the Paris Convention at the same time as one or more of their member States. Would capacity be shared between the Communities and the State or States concerned? The question became further complicated where a convention contained clauses relating to the supervision of its application and to arbitration. Such problems were associated with the question of treaties concluded between States and international organizations, which was on the Commission's agenda.

12. The last point he wished to mention concerned the final stage of the codification of international law. He had doubts about the wisdom of adopting resolutions in the General Assembly of the United Nations instead of concluding international codification treaties negotiated at diplomatic conferences. The European Committee on Legal Co-operation was faced with a similar situation, a major factor in which was the political will of States. Both the Committee and the International Law Commission were in duty bound to seek, in their respective spheres, legal solutions which were conducive to the progressive development of international law and were acceptable to as many States as possible.

13. The CHAIRMAN, thanking the observer for the European Committee on Legal Co-operation, said it had been decided by the Commission that his address should be answered only by the Chairman. The reason for that decision was that the end of the session was near and the Commission was running out of time, so that it was desirable to avoid repetitive oratory. The Commission would adopt the same procedure when observers for other regional bodies addressed it, and the fact that the new procedure was being followed for the first time at the present meeting should not be construed in any way as discrimination against the European Committee for Legal Co-operation. The observer for that Committee would certainly appreciate the Commission's desire to organize its work and time as efficiently as possible.

14. On behalf of the Commission as a whole, he wished to congratulate the observer on his lucid statement and on his description of the work of the European Committee on Legal Co-operation. The Commission greatly appreciated the Committee's work, and its documents, like those of the other regional legal bodies, were studied by members with great interest.

15. That being said, he wished to make a few remarks expressing his own personal views, which were shared no doubt by some, but not necessarily by all the other

³ See *International Legal Materials*, vol. XI (1972), p. 262.

⁴ Op. cit., vol. XIII (1974), p. 352.

members of the Commission. The visit of the observer for the European Committee, like other similar visits by representatives of regional bodies, was an occasion for informal discussions among members of the Commission on the nature and importance of its co-operation with regional legal bodies. There was general appreciation of the fact that the regional bodies were taking due note of the Commission's work and that the Commission, in its turn, was being kept informed of their work. The question arose, however, whether arrangements for the mutual exchange of information could not be improved. The Commission's documents and the records of its proceedings were, of course, available in its *Yearbooks*, but those volumes were published with some delay.

16. Apart from that question of information, he wished to draw attention to an interesting point of difference between the European Committee and the Asian-African Legal Consultative Committee. The latter body had its own Statute, which specified that one of the Committee's purposes was to study the work of the International Law Commission and possibly comment on it. The Asian-African Committee had in fact submitted comments concerning the Commission's work on the law of treaties, but the possibilities of that provision of its Statute had not yet been fully exploited. He understood that no similar provision existed in the case of the European Committee on Legal Co-operation.

17. So far as co-operation between the Commission and the European Committee was concerned, some members of the Commission considered that the present arrangements were fully satisfactory. His own view, however, was that some thought should be given to the possibility of improving the arrangements for co-operation, not only with the European Committee, but also with the other regional legal bodies.

18. The Commission could certainly learn much from the experience of the regional bodies. Since the members of the European Committee came from highly developed countries, the Committee dealt with problems such as water pollution which, in time, would be of increasing interest in other parts of the world. The Committee's experience in that field could certainly be useful to the Commission, which was considering a recommendation concerning commencement of work on the law of non-navigational uses of international watercourses, under item 8(a) of its agenda. He had been particularly interested by the observer's remarks on the idea of a *pactum de contrahendo* whereby riparian States were placed under an obligation to conclude agreements on questions of water pollution control. That obligation was clearly derived from the general principle of the duty of States to co-operate with one another in accordance with the Charter of the United Nations, a duty solemnly proclaimed in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.⁵

19. He hoped that the time was not far off when co-operation in the legal sphere would extend beyond the

present membership of the European Committee on Legal Co-operation and include the whole of Europe. He was aware that such a development would involve some sensitive political problems, but his personal view, which did not, of course, bind the other members of the Commission, took account of the fact that a conference dealing with both security and co-operation was now in session at Geneva, attended by representatives from all European States. At the previous session, on a similar occasion, he had drawn attention to the preparations then under way for the Conference on Security and Co-operation in Europe, "the purpose of which would be to lower the barriers between the two parts of the old continent and to unite their peoples in their common interest and for the benefit of mankind".⁶

20. On behalf of the Commission he thanked the observer for his kind words about the Commission's twenty-fifth anniversary and for the sympathy he had expressed regarding the loss suffered by the Commission through the death of Mr. Bartoš. He hoped that co-operation with the European Committee would continue to develop and wished the Committee and its observer every success.

21. Mr. GOLSONG (Observer for the European Committee on Legal Co-operation) said he wished to assure the Chairman that he did not feel at all discriminated against by the adoption of the new procedure, which meant that the Commission spoke with one voice through its Chairman.

22. He hoped that European jurists like the Commission's Chairman would have fruitful meetings with the Europeans on the Committee he had the honour to represent, which covered only part of Europe. He trusted that principles would be worked out to strengthen the arrangements for co-operation and mutual exchange of information between the Commission and the European Committee.

The meeting rose at 12.55 p.m.

⁶ *Yearbook ... 1973*, vol. I, p. 177, para. 56.

1293rd MEETING

Friday, 12 July 1974, at 10.10 a.m.

Chairman: Mr. Endre USTOR

Present: Mr. Ago, Mr. Bilge, Mr. Calle y Calle, Mr. El-Erian, Mr. Elias, Mr. Hambro, Mr. Kearney, Mr. Ramangasoavina, Mr. Reuter, Mr. Šahović, Mr. Sette Câmara, Mr. Tabibi, Mr. Thiam, Mr. Tsu-ruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Yasseen.

Succession of States in respect of treaties

(A/CN.4/275 and Add.1 and 2; A/CN.4/278 and Add.1-6; A/CN.4/L.209/Add.2 and L.215; A/8710/Rev.1)

[Item 4 of the agenda]

(resumed from the 1290th meeting)

⁵ General Assembly resolution 2625 (XXV), Annex.