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Summary record of the 597th meeting

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of consular functions and, together with the inviolability of consular premises and that of the consulate's official archives, documents and correspondence, formed the foundation of all consular law. In the light of that statement, there seemed to be no reason to reverse the Commission's earlier decision.

93. Mr. FRANÇOIS asked whether, in the case of a consular bag being opened and being found to contain nothing but diamonds or drugs, the State which had opened the bag should apologize to the sending State.

94. Mr. ERIM thought that, since the Commission was debating the comments of governments it should give conclusive replies to some objections raised. For example, the Belgian Government (A/CN.4/136/Add.6) did not consider that the principle expressed in paragraph 2 was absolute and had stated that, according to usage, the authorities of the receiving State could open the consular bags if they had serious reasons for their action, but must do so in the presence of an authorized representative of the sending State. That serious objection, and others like it, deserved the Commission's full consideration. The Belgian Government's observation made it obvious that a statement of the principle as an absolute rule was an innovation in international law and a step towards identifying diplomatic with consular law.

95. Mr. ŽOUREK, Special Rapporteur, queried whether the "usage" referred to by the Belgian Government could be identified with customary law. Nor could he agree that it was the general usage to allow the authorities of the receiving State to open the consular bags. The Commission had, in the case of a number of articles, proposed the unification and development of international law; in the case of article 36, the proposed rule, was perfectly justifiable.

96. Mr. AGO suggested that, in the case cited by Mr. François, the sending State and the receiving State should apologize to each other, since each would be guilty of violating a rule of international law.

97. Since the Commission had admitted the principle that the correspondence of the consulate might be carried in either the diplomatic or the consular bag, and since the principle of absolute inviolability for the diplomatic bag had been accepted in article 27 of the Vienna Convention, it would be illogical to differentiate between the two means of communication.

98. The CHAIRMAN observed that the majority of the Commission seemed to be in favour of according the consular bag the same inviolability and freedom of movement as those accorded to the diplomatic bag. He suggested that article 36 should be referred to the Drafting Committee with instructions to recast it along the lines of article 27 of the Vienna Convention.

It was so agreed.

99. Mr. BARTOŠ stressed that the decision on article 36 had not been unanimous.

The meeting rose at 1 p.m.

597th MEETING

Friday, 26 May 1961, at 10.15 a.m.

Chairman: Mr. Grigory I. TUNKIN

Date and place of the next session

[Agenda item 7]

1. Mr. LIANG, Secretary to the Commission, observed that it had been the Commission's practice to meet towards the end of April for ten weeks until the beginning of the summer session of the Economic and Social Council, early in July. That practice was governed by operative paragraph 2 (d) of General Assembly resolution 1202 (XII), which provided that the annual session of the Commission should be held in Geneva without overlapping with the summer session of the Council. That session would begin on Tuesday, 3 July 1962; the Secretariat therefore suggested that the Commission's next session should begin on Tuesday, 24 April, and continue until Friday, 29 June 1962.

2. The CHAIRMAN suggested that the Commission should adopt the dates proposed by the Secretariat.

It was so agreed.

Co-operation with other bodies (continued)

[Agenda item 5]

3. Mr. LIANG, Secretary to the Commission, said that the Secretariat had been in touch with the legal bodies of the Organization of American States and the Asian-African Legal Consultative Committee. The previous meeting of the Inter-American Council of Jurists had been held at Santiago, Chile, in September 1959 when he had acted as observer and had reported to the Commission at its twelfth session (A/CN.4/124). At Santiago, the Council had decided to hold its next meeting at San Salvador, El Salvador, but had not decided on the date. The Secretariat had since been in correspondence with the Pan American Union and with the delegation of El Salvador to the United Nations; Mr. Urquía, the head of that delegation, had informed the Secretariat that the fifth meeting of the Inter-American Council would be held at the beginning or in the middle of 1962. An earlier date had been suggested; but, since the work of the Council was closely linked with the Conference of American States to be held at Quito, Ecuador, no definite decision could be made until after that conference. The Commission had been invited to send an observer to the fifth meeting of the Council, but the decision on that could be deferred.

4. The Asian-African Legal Consultative Committee's session at Tokyo in February-March 1961 had been attended by Mr. García Amador, as the Commission's observer, pursuant to the decision at the twelfth session (A/4425, chap. IV, para. 43). Mr. García Amador's written report would be circulated as a document of

the Commission.¹ The Asian-African Legal Consultative Committee had sent the Secretariat a letter, dated 13 May 1961, expressing the Committee's appreciation of Mr. García Amador's attendance and stating that Mr. Hafiz Sabek, the head of the delegation of the United Arab Republic, would attend meetings of the Commission as an observer from 7 June 1961 to the end of the session. The letter further stated that the next session of the Committee would be held at Rangoon, Burma, for two weeks between 15 January and 15 February 1962. Although the exact dates and the agenda had not been settled, it was believed that the agenda would include such subjects as the problem of the legality of nuclear tests, the diplomatic protection of citizens abroad, the question of the maltreatment of aliens, avoidance of double taxation and arbitral procedure. The Commission had been invited to send an observer to that session.

5. The CHAIRMAN, speaking as a member of the Commission, observed that arrangements had been made for the Asian-African Legal Consultative Committee and the Inter-American Council of Jurists to provide the Commission with documents, a matter of great interest. With regard to the question of sending observers to sessions of those bodies, the Committee could hardly establish the principle of regular representation, in view of the considerable expense involved, which was, moreover, all the less justified in view of the extensive exchange of material. Every case should therefore be decided on its own merits and in the light of such possibilities as sending members who happened to be near the locality of the session. With regard to the question of designating an observer to attend the session of the Asian-African Legal Consultative Committee, the Commission as in a rather awkward situation, since 1961 was the last year of its existing composition.

6. Mr. GARCÍA AMADOR suggested that the question relating to the co-operation with other bodies, so far as the Asian-African Committee was concerned, should be deferred until the Committee's observer arrived at Geneva.

7. Mr. GROS said he doubted the advisability of settling such a delicate internal question in the presence of that Committee's observer. Furthermore, it seemed to be very difficult to take a decision on the matter at that session.

8. Mr. GARCÍA AMADOR said that he had made the suggestion as a matter of elementary courtesy to the Committee's observer. He agreed that the appointment of the Commission's observer to the fifth session of the Committee could be decided separately.

9. Mr. EDMONDS suggested that, since the Chairman's term of office would continue until the end of the year, the Commission might authorize him to designate an observer after the elections had been held.

10. Mr. SANDSTRÖM proposed that the Secretariat should inform the Asian-African Legal Consultative Committee that it was not in a position to send an observer for the reasons stated by several speakers.

It was so agreed.

11. The CHAIRMAN invited the observer for the Inter-American Juridical Committee to make a statement.

12. Mr. CAICEDO CASTILLA (Observer for the Inter-American Juridical Committee) paid a tribute to the work of the Commission and emphasized the usefulness of strengthening the co-operation between the legal organs of the United Nations and the Organization of American States.

13. The Inter-American Council of Jurists and its permanent Committee, the Inter-American Juridical Committee of Rio de Janeiro, were entrusted with the codification of international law in America. Their task in the American region was thus similar to that performed on a world basis by the International Law Commission. It was therefore extremely important to ensure the smooth exchange of information and material between them. Administrative arrangements should be made to ensure that the most important documents of the Commission should be sent directly to the members of the inter-American organs and vice versa.

14. For example, members of the Commission would find it useful to have the report prepared by the Committee at the end of each of its sessions containing a brief description of the topics examined and the decisions reached, together with precise references to the relevant documents.

15. It was worth noting that, whenever the Committee had found that a topic referred to it had been the subject of an earlier codification in the form of a convention — universal or European — it had not hesitated to recommend that the American States should refrain from preparing a regional instrument and should instead accede to the existing convention. For example, when the Committee had been asked to prepare a convention or a uniform law on the rules concerning the immunity of State ships, it had recommended that the American States accede to the International Convention for the Unification of Certain Rules relating to the Immunity of State-owned ships, signed at Brussels on 10 April 1926 and its additional Protocol of 24 March 1934. Those States had endorsed the recommendation unanimously. A similar approach had been adopted by the Committee to the question of collision, on which it had found that there was no need for a regional instrument in view of the existence of the Convention for the Unification of Certain Rules of Law respecting Collisions between Vessels signed at Brussels on 23 September 1910.²

¹ Subsequently circulated as A/CN.4/139.

² Inter-American Juridical Committee, *Report on Rules concerning the Immunity of State Ships* (CIJ-36), Pan American Union, Washington, D.C., January 1958 and *ibid*, *Collision* (CIJ-45), Pan American Union, Washington, D.C., November 1960.

16. A world body and a regional body could be called upon to deal with the same questions. Thus, the General Assembly of the United Nations had decided, by its resolution 1505 (XV) of 12 December 1960, to consider, at its sixteenth session, the question of the future work in the field of the codification and progressive development of international law. That same problem had been examined by the Inter-American Juridical Committee, which had prepared a plan enumerating the topics susceptible of inclusion in an American codification. Those topics included the following: subjects of international law; sources of international law; juridical principles on which the Inter-American System is based; fundamental rights and duties of States; recognition of new governments; territorial waters; international rivers; non-recognition of acquisitions of territory by force; non-intervention; diplomatic and territorial asylum; treaties; diplomatic officers; consular officers; pacific settlement of disputes; rules applicable in case of war, whether civil or international; rules of neutrality.³

17. The Committee had also decided, in pursuance of the provisions of the Charter of Bogotá, to continue to deal with the codification of private international law, which was the subject of two general international instruments in America: the Code of Private International Law adopted by the Sixth International Conference of American States held at Havana in 1928,⁴ known as the "Bustamante Code" and ratified by fifteen countries (five of which had made reservations) and the Montevideo Treaties signed in 1889,⁵ and 1940⁶ and ratified by six countries.

18. It was therefore all the more important that there should be a steady exchange of information and documents, particularly concerning those subjects which had special features either in American international law, such as the legal effects of reservations to multilateral treaties, or in Latin American law, such as diplomatic asylum and the international responsibility of States.

19. Latin America was represented on the International Law Commission by four eminent jurists, well able to convey the views held in that region. However, it was also important that the reports and drafts which expressed the official view of a group of countries, or of a whole continent, should be made known to the members of the Commission even in the intervals between sessions.

20. On the subject of reservations to multilateral treaties, a draft had been approved at Santiago, Chile, by the Inter-American Council of Jurists (A/CN.4/124, para. 94); the draft was to be submitted to the Eleventh Inter-American Conference scheduled to meet at Quito. The draft reaffirmed the Pan American doctrine of partial acceptance of reservations, according to which

such reservations would be in force as between States which accepted them; that doctrine differed from the system which required the unanimous consent of the ratifying parties for the acceptance of a reservation.

21. On the subject of State responsibility, the Inter-American Juridical Committee, at its 1960 session, had discussed an extensive preliminary draft, consisting of seventeen chapters and dealing with the contribution which the American Continent had made to the development and the codification of the principles of international law on the subject. Chapter III set forth thirteen principles which, in the Committee's view, expressed the American doctrine in the matter. The other chapters contained comments on the various principles in question, and indicated the sources (provisions of inter-American treaties, declarations of inter-American conferences, court decisions, relevant rules of municipal law, messages issued by heads of State, Foreign Ministries' circulars and teachings of authoritative writers). Five chapters of the preliminary draft had been approved by the Committee, with the negative vote or the abstention of the representative of the United States of America in respect of some sections. The remaining chapters would be discussed by the Committee at its session to be held from July to September 1961.

22. He would stress that the Committee's work was limited to the consideration of the rules accepted by the countries of America, rules which were adjusted to their special needs, and conformed with the realities of their social conditions and national and international circumstances. The preliminary draft to which he had referred therefore differed in structure from the reports submitted to the International Law Commission by the Special Rapporteur on the topic of State responsibility, Mr. García Amador, which dealt with the question on a world basis and which constituted remarkable treatises of great original value. A statement of the American position in the matter was, in his opinion, necessary in order to arrive in the not too distant future at a solution on a world basis. The twenty Latin American countries, with over 200 million inhabitants, had reached a high level of civilization; they hoped that the new rules advocated by them on the international responsibility of States deserved, because of their inherent justice, to become part of universal international law. The Latin American countries, and the jurists of those countries, were grateful for the special study of the American contribution in regard to the international law on State responsibility; he recalled that it was Mr. García Amador himself who had proposed at the Tenth Inter-American Conference, held at Caracas in 1954, that the study in question should be undertaken.

23. In conclusion, he stressed that co-operation among jurists, men of peace dedicated to the rule of law, would undoubtedly tend to strengthen international institutions and uphold the highest principles of justice. That co-operation was particularly useful in those difficult times and it was for that reason that the Organization of American States and its organs had been particularly gratified to see the International Law Commission so ably represented by its Secretary, Dr. Liang, at the

³ *Ibid.*, Report on the Plan for the Development and Codification of Public and Private International Law, reproduced in *Handbook, First Meeting of the Inter-American Council of Jurists*, Pan American Union, Washington, D.C., 1950, p. 116.

⁴ League of Nations, *Treaty Series*, vol. LXXXVI, p. 111.

⁵ De Martens, N.R.G. (2nd series), p. 443.

⁶ *International Legislation*, Edit. Manley O. Hudson and Louis B. Sohn, vol. VIII (1938-1941), Washington 1949, No. 583, p. 498 and No. 584, p. 513.

fourth meeting of the Inter-American Council of Jurists (1959). He expressed the hope that the Commission would be represented at future meetings of the Council and, if possible, at meetings of the Inter-American Juridical Committee. The Committee, which was a permanent organ, meeting for three months of every year, was in a position to study problems in detail and to scrutinize thoroughly the drafts which were to embody the binding rules of law of the future. Lastly, he would thank the Chairman for the opportunity which had been given to him to address the Commission.

24. The CHAIRMAN thanked the representative of the Inter-American Juridical Committee for his statement and expressed the Commission's appreciation of the Committee's interest in its work. All the members, he was sure, would welcome the steady and mutually beneficial relationship that had been established between the two bodies.

**Representation of the Commission
at the sixteenth session of the General Assembly**

25. Mr. EDMONDS proposed that the Chairman should be asked to represent the Commission at the sixteenth session of the General Assembly.

26. Mr. PAL and Mr. BARTOŠ seconded the proposal.

That proposal was adopted.

**Planning of future work of the Commission
(A/CN.4/138)**

[Agenda item 6]

27. The CHAIRMAN invited the Commission to consider the subjects which should be discussed at its fourteenth session and pointed out that the decision would be closely connected with any item that might be discussed during the current session in addition to the draft articles on consular intercourse and immunities.

28. Mr. VERDROSS observed that, since the term of office of the present members of the Commission would end in 1961, there would be no certainty of the attendance of any members except those nominated by States permanent members of the Security Council. Accordingly, the only specific proposal that could be made was that Sir Humphrey Waldock should be asked to continue Sir Gerald Fitzmaurice's work on the law of treaties.

29. Mr. AGO said that the Commission was in the delicate position of being unable to predict its membership in 1962 and yet of being obliged to provide a topic for discussion at the fourteenth session. The law of treaties had been discussed at a number of earlier sessions, and detailed debates had been held on a considerable part of Sir Gerald Fitzmaurice's report. It would be extremely desirable to conclude consideration of that highly important topic. He therefore supported Mr. Verdross's proposal, and suggested that the new Special Rapporteur on the subject should be given specific directives as to the form of the project. The Commission at its fourteenth session would thus be given an alternative

topic to that of State responsibility, and with those two subjects its work would be well assured.

30. Mr. ERIM supported the views expressed by Mr. Verdross and Mr. Ago.

31. The CHAIRMAN, speaking as a member of the Commission, said that the Commission was not in a position to propose a new subject for discussion, because it could not anticipate its composition in 1962. He therefore agreed with previous speakers that it would be advisable to take up the question of the law of treaties and that certain instructions concerning the presentation of the subject should be given to the new Special Rapporteur.

32. Sir Humphrey WALDOCK said he was greatly honoured by the proposal that he should succeed his learned predecessors in acting as Special Rapporteur for the law of treaties. In view of his lack of experience of the Commission's work, it might have been desirable for a member of longer standing to undertake the work; in the particular circumstances, however, it seemed to be the wish of the whole Commission that he should assume the task. He hoped that the Commission would make allowance for his inexperience and give him the most precise directives possible.

33. The CHAIRMAN observed that, since the consensus of the Commission seemed to be to appoint Sir Humphrey Waldock as Special Rapporteur for the law of treaties, he would suggest that a general debate on the subject be held, with a view to giving Sir Humphrey the necessary instructions, as soon as the discussion on consular intercourse and immunities was completed.

It was so agreed.

34. The CHAIRMAN drew attention to General Assembly resolution 1505 (XV) and the Secretariat note (A/CN.4/138) concerning future work in the field of the codification and progressive development of international law. Governments were asked to submit their views on the subject in time for the General Assembly's sixteenth session. Some members of the Commission had intimated that it might be useful to hold an exchange of views on the matter at the current session.

35. He suggested that, since such a discussion required considerable preparation, it should be postponed until the subject of consular intercourse and immunities had been completed.

It was so agreed.

The meeting rose at 11.15 a.m.
