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Summary record of the 628th meeting

Topic:
Other topics

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INTERNATIONAL LAW COMMISSION

SUMMARY RECORDS OF THE FOURTEENTH SESSION

Held at Geneva, from 24 April to 29 June 1962

628th MEETING

Tuesday, 24 April, 1962, at 3 p.m.

Chairman : Mr. Grigory I. TUNKIN

Later : Mr. Radhabinod PAL

Opening of the session

1. The CHAIRMAN declared the fourteenth session of the International Law Commission open.
2. After congratulating old members on their re-election and new ones on their election, he said that the increase in the Commission's membership to twenty-five reflected, though as yet not adequately, the great changes taking place in the world. One of the features of the age in which they were living had been the emergence and consolidation of the new socialist system which was playing a decisive role in international affairs; another was the dissolution of the colonial system from whose ruins new states were arising. As a result of those changes, international law was undergoing a radical transformation. Previously nations under a colonial regime and others nominally independent had been debarred from taking part in the formulation of its principles and rules, and had been subject to an international law which stronger powers had used to impose their will on the weaker. That was no longer true; international law was now becoming more nearly universal, a process that would continue as the last vestiges of colonialism disappeared in the not too distant future.
3. The nature of international law was also changing. It had become a weapon in the struggle for peace and furnished the fundamental legal concepts on which the principle of peaceful co-existence was based and which must be upheld if mankind was not to be plunged into catastrophe. The persistence of international tension and the continuance of the cold war impeded a solution of such major problems as the representation of China in the United Nations, the conclusion of a peace treaty with Germany and agreement on disarmament. The progressive development and codification of international law and the observance of its rules were indispensable for the preservation of peace, the most burning issue facing the international community.
4. The Commission had a number of solid achievements to its credit. It had provided the basis for the conventions concluded at the Geneva Conference on the Law of the Sea in 1958 and for the Convention on Diplomatic Relations concluded at Vienna in 1961. It had also prepared the draft for the diplomatic conference on consular relations which it was proposed to hold in 1963, while a number of other useful tasks had been accomplished. It must, however, take to heart the criticisms

levelled against it at the sixteenth session of the General Assembly, of which the main one was that it had not always paid enough attention to the most urgent problems of the time. He hoped that, as in the past, a spirit of co-operation would prevail and that the Commission would be successful in carrying out the General Assembly's recommendations in resolution 1686 (XVI) and in preparing drafts that would prove generally acceptable.

Election of officers

5. The CHAIRMAN called for nominations for the office of Chairman.
6. Mr. TABIBI proposed Mr. Pal, who had proved an excellent Chairman in 1958.
Mr. Pal was elected Chairman by acclamation and took the Chair.
7. The CHAIRMAN called for nominations for the office of First Vice-Chairman.
8. Mr. BRIGGS proposed Mr. Gros.
Mr. Gros was elected First Vice-Chairman by acclamation.
9. The CHAIRMAN called for nominations for the office of Second Vice-Chairman.
10. Mr. TSURUOKA proposed Mr. Amado.
Mr. Amado was elected Second Vice-Chairman by acclamation.
11. The CHAIRMAN called for nominations for the office of Rapporteur.
12. Sir Humphrey WALDOCK proposed Mr. Lachs.
Mr. Lachs was elected Rapporteur by acclamation.

Adoption of the agenda (A/CN.4/142)

13. The CHAIRMAN invited comments on the provisional agenda (A/CN.4/142).
14. Mr. LIANG, Secretary to the Commission, on behalf of the Acting Secretary-General, extended a cordial welcome to the members of the Commission. With its extended membership the Commission now represented the main forms of civilization and the principal legal systems of the world and would be in a better position to carry out its task of progressive development of international law and its codification.
15. It had unfortunately not yet been possible to reproduce and distribute Sir Humphrey Waldock's report on the Law of Treaties, owing to delay in receiving the report and to difficulties at the resumed session of the General Assembly in New York. The Commission might therefore find it advisable to take up first item 2 of its

provisional agenda (Future work in the field of codification and progressive development of international law), on which the Secretariat had produced a working paper (A/CN.4/145). As the General Assembly had devoted a good deal of time to the question, which was of great importance, there would be some advantage in devoting the first two weeks of the session to it, and the discussion would make a substantial contribution to the Commission's report to the Assembly.

16. Sir Humphrey WALDOCK explained that he had not been able to start work on his report as soon as he had anticipated, as he had been unable to obtain release from his duties as President of the European Commission on Human Rights. The report was fairly long, but he thought that its length would eventually save the Commission's time since he had tried to make a synthesis of the very considerable discussion which had already taken place in the Commission.

17. Mr. ROSENNE asked whether the other two questions on which the General Assembly had laid special emphasis, in sub-paragraph 3 (a) of resolution 1686 (XVI)—namely, state responsibility and the succession of states and governments—would be discussed under item 2 or under item 6 (Other business). If they were discussed under item 2, two weeks would hardly be sufficient.

18. Mr. LIANG, Secretary to the Commission, said that he had not meant to imply that item 2 would require only two weeks. If the discussion had not been concluded by the beginning of May, the Commission might then follow its usual practice and take up its main item, reverting to the subject of its earlier discussion later. His interpretation of General Assembly resolution 1686 (XVI) was that the Commission was asked to give priority to the topic of the succession of states and governments and during the present session to discuss it only in so far as it pertained to its programme of work; the Commission was not asked to devote a great deal of time to the merits of the question. As to state responsibility, the Commission would consider how to plan its future work on the question. Of course the Commission might, if it so wished, devote some time to a general survey of both questions.

19. The CHAIRMAN proposed that the Commission should discuss item 2 of the agenda for two weeks, then take up the law of treaties, reverting to item 2, if it so wished, at a later stage.

It was so agreed.

The provisional agenda (A/CN.4/142) was adopted.

The meeting rose at 3.55 p.m.

629th MEETING

Wednesday, 25 April 1962, at 10 a.m.

Chairman: Mr. Radhabinod PAL

Future work in the field of the codification and progressive development of international law (General Assembly resolution 1686 (XVI)) (item 2 of the agenda) (A/CN.4/145)

1. The CHAIRMAN invited the Commission to consider item 2 of its agenda, on which the Secretariat had prepared a working paper (A/CN.4/145).

2. It was stated in paragraph 7 of that paper that sub-paragraph 3 (a) of General Assembly resolution 1686 (XVI) required no comment. He read that observation as meaning that the recommendation amounted to a direction, first, that so far as the law of treaties was concerned, the Commission's prearranged work should continue; secondly, that so far as the topic of state responsibility was concerned, the Commission should continue to work on it and should take the necessary steps to continue the work, maintaining its place in the priority list; and thirdly, that so far as the topic of succession of states and governments was concerned, the Commission should take up its study and include it in the priority list in preference to other topics. In his view, the Commission would have to appoint special rapporteurs for those two topics.

3. With regard to sub-paragraph 3 (b) of the resolution, he observed that the Commission was thereby called upon, first, to prepare a new list of topics for the codification and progressive development of international law with a view to bringing the international community under the rule of law; secondly, to plan its method of work for the future; and thirdly, to report its conclusions on those matters to the General Assembly at its seventeenth session.

4. Mr. TUNKIN said that, as he understood it, operative paragraph 3 of resolution 1686 (XVI) reflected the Sixth Committee's intention that the Commission should reconsider its whole programme of work, taking into consideration the discussions in the Sixth Committee and the new circumstances of international life. The Commission could hardly approach any of the subjects, even those mentioned in sub-paragraph 3 (a) of the resolution, from a purely technical point of view. It should therefore not limit its discussion at that stage to any specific topic, but enter into a general discussion; that discussion could lead to specific proposals on the three topics mentioned in sub-paragraph 3 (a).

5. The Commission should also consider the importance of new methods of work, a topic which had been the subject of much discussion both in the Commission itself and in the Sixth Committee and which was still alive.

6. For those reasons, he suggested that the Commission should begin by discussing paragraph 3 of the resolution as a whole, without endeavouring to single out the topics mentioned in sub-paragraph (a). At a later stage the Commission would of course take a separate decision on each topic.