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Report of the fifth meeting of the Inter-American Council of Jurists, by Mr. Eduardo Aréchaga, Observer for the Commission

Topic:
Cooperation with other bodies

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CO-OPERATION WITH OTHER BODIES

[Agenda item 7]

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Report on the fifth meeting of the Inter-American Council of Jurists (San Salvador, 25 January - 5 February 1965) by Eduardo Jiménez de Aréchaga, Observer for the Commission

[Original text: English]
[16 March 1965]

1. The fifth meeting of the Inter-American Council of Jurists took place in the City of San Salvador, El Salvador, from 25 January to 5 February 1965, and was attended by the representatives from Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay, Peru, United States of America, Uruguay and Venezuela and from the Organization of American States and the Inter-American Juridical Committee; and by observers from the Inter-American Development Bank, the Asian-African Legal Consultative Committee, the Inter-American Committee on the Alliance for Progress (CIAP), the Inter-American Bar Association, the Central American Institute of Comparative Law, the Institute of Hispanic Culture and the International Law Commission.

2. Mr. Miguel Urquía, representative of El Salvador, and Mr. Albano Provenzali Heredia, representative of Venezuela, were elected as Chairman and Vice-Chairman of the Council.

Agenda

3. The agenda comprised the following items:

I. LEGAL MATTERS

1. Draft Convention on industrial and agricultural use of international rivers and lakes
2. Programming of studies on the international aspect of legal and institutional problems of the economic and social development of Latin America
3. Contribution of the Americas to the principles of international law that govern the responsibility of the State
4. International sale of personal property
5. Possibility of revision of the Bustamante Code
6. Collision
7. Assistance and salvage
8. International co-operation in juridical procedures

II. MATTERS OF ORGANIZATION AND FUNCTIONING

1. Functioning and activities of the Inter-American Juridical Committee

2. Determination of the matters that should be entrusted to the Permanent Committee for study at its next meeting
3. Co-operation with the International Law Commission of the United Nations and with other agencies and institutions
4. Selection of the place of the Sixth Meeting of the Inter-American Council of Jurists.

Industrial and agricultural use of international rivers and lakes

4. The Council took as a basis of discussion a draft convention on this topic prepared by the Inter-American Juridical Committee. Several representatives presented observations and comments on the draft, and the delegations of Uruguay, Costa Rica, Honduras, Guatemala and El Salvador submitted formal amendments.

5. The Council decided to transmit to the Committee the minutes of the meetings, the draft amendments and additional observations which may be made by member States, requesting it to revise the draft convention in the light of this new material and of the principles indicated below. It also supported the proposal made by the Government of Brazil to convoke an Inter-American Specialized Conference on the utilization of waters of international rivers and lakes.

6. The Council agreed that in the preparation of the revised text of the draft convention, the Inter-American Juridical Committee should consider, among others, the following basic points:

(a) The draft convention shall contain exclusively the general standards concerning the utilization of the waters of international rivers and lakes for industrial and agricultural purposes.

(b) The specific rules relating to the use of international rivers and lakes shall be the subject of bilateral or regional agreements between the riparian States.

(c) The provisions of the Convention shall not affect bilateral or regional agreements between the contracting States.

(d) The utilization of the waters of an international river or lake for industrial or agricultural purposes must not prejudice the free navigation thereof in accordance with the applicable legal rules, or cause substantial injury, according to international law, to the riparian States, or alterations in their boundaries.

(e) It is advisable to establish an adequate procedure that will guarantee notification and consultation between riparian States in the event that one of them wishes to build works for the agricultural and industrial use of international rivers and lakes.

(f) For the case of a lack of agreement between the riparian States procedures must be provided for that will facilitate an understanding, guarantee the exercise of the rights of the parties, and further a solution of the dispute, within the spirit of equity and co-operation that inter-American good neighbourliness and solidarity require.

(g) The contracting States shall co-operate, in so far as possible, in carrying out studies concerning the industrial and agricultural use of international rivers and lakes.

(h) The contracting States shall adopt pertinent measures to prevent the contamination of the waters of international rivers and lakes.

Studies on the international aspect of legal and institutional problems of the economic and social development of Latin America

7. The Council decided to undertake a study on the international aspect of the legal and institutional questions that may obstruct or delay the process of Latin American integration, particularly in the light of the experience gained in the process of organization of the Central American Common Market and of the Latin American Free Trade Association.

8. To this end a special working group was established in order to undertake a comparative study of the legal system in effect in Latin America on matters connected with economic and social development, especially with respect to the legal and institutional problems that, in the fields of economic integration, of financing and of trade in and prices of basic products, may be retarding Latin American economic development. This working group was asked to suggest concrete legal measures to harmonize Latin American legal systems, in so far as possible, and to solve these problems on the international level.

9. The working group is to be composed of seven members: two members of the Inter-American Juridical Committee and one representative of each of the following entities: the Inter-American Committee on the Alliance for Progress (CIAP); the Inter-American Development Bank (IDB); the Legal Department of the Pan American Union; the Organization for Central American Economic Integration and the Latin American Free Trade Association.

10. It was further recommended to convoke a meeting of the Council for the primary purpose of considering the report of this working group, the date of that meeting to be co-ordinated with that of the Inter-American Eco-

nomical and Social Council in such a way that a joint meeting of the two Councils may be held.

Contribution of the Americas to the principles of international law that govern the responsibility of the State

11. The Inter-American Juridical Committee presented a report on the Latin American contribution to the principles of international law which govern the responsibility of the State, pointing out the standards that in its view reflect its general orientation. Such standards were summarized in the following terms:

"I. Intervention in the internal or external affairs of a State is not admissible to enforce the responsibility of said State.

On the contrary, intervention establishes the responsibility of the intervening State.

"II. The State is not responsible for acts or omissions with respect to foreigners except in those same cases and conditions where, according to its own laws, it has such responsibility towards its own nationals.

"III. The responsibility of the State for contractual debts claimed by the government of another State to be due to it or its nationals cannot be enforced by recourse to armed force.

This principle applies even where the debtor State fails to reply to a proposal for arbitration or fails to comply with an arbitral award.

"IV. A State is relieved of all international responsibility if the alien has, by contract, renounced the diplomatic protection of his government, or if domestic legislation subjects the contracting alien to the jurisdiction of the local courts, or if it places him in a similar status with nationals for all purposes of the contract.

"V. Damages suffered by aliens as a consequence of disturbances or commotion of a political or social nature and injuries caused to aliens by acts of private parties create no responsibility of the State, except in the case of the fault of duly constituted authorities.

"VI. The theory of risk as the basis for international responsibility is not admissible.

"VII. The State responsible for an aggressive war is responsible for damages that may arise therefrom.

"VIII. The obligation of the State regarding judicial protection shall be considered as having been fulfilled when it places at the disposal of foreigners the national courts and the legal remedies essential to implement their rights. A State cannot initiate diplomatic claims for the protection of its nationals nor bring an action before an international tribunal for this purpose when the means of resorting to the competent courts of the respective State have been made available to the aforementioned nationals.

Therefore:

a. There is no denial of justice when aliens have had available the means to place their

case before competent domestic courts of the respective States.

- b. The State has fulfilled its international obligations when the judicial authority pronounces its decision, even if it disallows the claim, action or appeal brought by the foreigner.
- c. The State is not internationally responsible for a judicial decision that is not satisfactory to the claimant.

“IX. The State is responsible if it provides, within its territory or abroad, assistance to persons who conspire or encourage hostile movements against a foreign State, or when it fails to take the available legal measures to prevent such situations from arising.

“X. The definition and enumeration of the basic rights and duties of the States, contained in American international declarations and treaties, also represent a contribution to the development and codification of the international law regarding the responsibility of the State.”

12. Since this report and summary statement of the Latin American contribution to the principles of State responsibility is intended to assist the International Law Commission in the codification of this topic, I felt obliged to make a statement in the capacity of observer of the International Law Commission in order to express the appreciation of the Commission for such a study, pointing out that it would undoubtedly be taken into consideration, as an illustrative document, by the International Law Commission, since it condenses the opinion of a distinguished group of American jurists about what has been, in their opinion, the American contribution to the topic. The reasoned dissenting votes of several members of the Juridical Committee would also contribute to the usefulness of the report.

13. In the observer's statement the question was raised, however, of whether a formal approval of this document by the Council would be advisable or would add something to the intrinsic doctrinal value of the report and statement.

14. It was pointed out in this connexion that there is now a lack of adjustment between this report, approved by the Inter-American Juridical Committee in August 1961, and the method according to which the International Law Commission decided in 1963 to codify this subject. Thus, many of the rules presented by the Juridical Committee could not be included in the codification of the general principles of State responsibility since they refer to substantive duties of States and not to the responsibility arising from their violation.

15. This applies, for instance, to rules I, III, VII, IX and X. Also, in view of the decision of the International Law Commission to divorce the subject of State responsibility, properly so called, from that of treatment of foreigners, rules II and part of VII might also be devoid of interest for the International Law Commission codification as organized at present. It was also pointed out that the summarized statement did not contain other topics directly relevant to State responsibility, strictly so called, and where the American contribution is of great interest,

such as the lack of specific reference to the local remedies rule; the requirement of nationality of claims; and that of continuity of nationality from the inception of the claim until the date of the award.

16. After a discussion, the Council passed a resolution which, without approving formally the statement, reproduces it in the preamble and decides:

1. To express to the Inter-American Juridical Committee its strong appreciation for the praiseworthy work it has done up to the present on such a delicate subject.

2. To recommend to the Inter-American Juridical Committee that it expand its valuable work by incorporating the contribution of all the American States.

3. To instruct the Inter-American Juridical Committee, when this task has been completed and it has the opinions issued by the Governments of the American States in the subject, to forward the results of its labours to the International Law Commission of the United Nations.

International sale of personal property

17. On this item the Council had before it a draft Convention on a Uniform Law on the International Sale of Tangible Personal Property, prepared by the Inter-American Juridical Committee.

18. It was decided to return to the Committee the draft convention in order that it may make a revision thereof, taking into account a draft submitted by the delegation of El Salvador and the Hague Conventions of 1964 on the subject.

Possibility of revision of the Bustamante Code

19. The Council recommended the convocation of a specialized conference on private international law, to meet in 1967, to undertake a revision of parts (a) General Rules, (b) International Civil Law, and (c) International Commercial Law of the Bustamante Code, taking into account the advances in legal science and the Montevideo treaties of 1889 and 1940.

Collision and assistance and salvage

20. The Council, acting on the report of its Committee, declared that there is no reason to create a regional or separate system of the treaty law set forth in the Brussels Conventions of 23 September 1910, concerning the unification of certain rules on the subject of collision, and respecting assistance and salvage.

International co-operation in juridical procedures

21. On this item the Council, approving a report of the Inter-American Juridical Committee, recommended to the Council of the Organization of American States the inclusion of the topic on the agenda of the Eleventh Inter-American Conference. It was also recommended to the member States that they study the 1964 Hague Convention on the service abroad of judicial and extra-judicial documents, with a view of adhering thereto.

Matters of organization and functioning

22. The Inter-American Juridical Committee was asked to study the following topics: subjects of international law; territorial sea; differences between intervention and collective action; preliminary studies on space law; protection of industrial property; and a comparative study of the organization of the public ministry in the American States.

23. To this end it was recommended that members of the Committee should devote themselves exclusively to this work during the period of meetings.

24. It was decided that the sixth meeting of the Council should take place in Caracas, Venezuela.

Co-operation with the International Law Commission

25. The Council expressed, in a formal resolution, its pleasure at the presence of an observer from the International Law Commission and recommended that measures be taken to make possible attendance by a member of the Inter-American Juridical Committee at the sessions of the International Law Commission.

26. In thanking the Council for this resolution I took occasion to reiterate the deep interest of the International Law Commission in maintaining the closest relationship with both inter-American juridical bodies and, through them, with the successful work of codification of international law which they carry on at the regional level.

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Report on the seventh session of the Asian-African Legal Consultative Committee (Baghdad, 22 March - 1 April 1965) by Roberto Ago, Observer for the Commission

[Original text: English]
[11 May 1965]

1. The seventh session of the Asian-African Legal Consultative Committee took place at Baghdad (Iraq) from 22 March to 1 April 1965. The session was attended by the delegations of Ceylon, Ghana, India, Iraq, Japan, Pakistan and the United Arab Republic. Burma, Indonesia and Thailand were not represented. On the other hand, observers were sent by Cameroon, Malaysia and the United Republic of Tanzania. The Arab League, the International Law Commission, the United Nations and the Office of the United Nations High Commissioner for Refugees were also represented by observers. Mr. Hafez Sabeq, President of the sixth session of the Committee, ex-President of the Court of Cassation of the United Arab Republic, legal adviser to the Ministry of Justice of Iraq, was specially invited to attend the Committee's session.

2. The Prime Minister of the Republic of Iraq, H. E. Tahir Yehya, in his capacity as the personal representative of the President of the Republic, made an address to the Committee at the inaugural meeting. Referring to the Committee's earlier resolutions and recommendations concerning nuclear tests, the Prime Minister suggested that it would be advisable for the Committee to study and make recommendations also on the harmful effects resulting from underground nuclear tests. Referring to the agenda of the session, he mentioned, particularly, the United Nations Charter, the law of treaties and refugees.

3. The leader of the delegation of Iraq (Mr. Shaker Al Ani) was elected President of the Committee. The leader of the delegation of Ceylon (Hon. T. S. Fernando) was elected Vice-President.

4. The agenda of the session comprised the following items:

I. ADMINISTRATIVE AND ORGANIZATIONAL MATTERS

1. Adoption of the agenda
2. Election of the President and Vice-President of the session.

3. Admission of observers to the session.
4. Consideration of the Secretary's report.
5. Consideration of the Committee's programme of work for 1965-1966.
6. Question of extending the term of the Committee after November 1966.
7. Date and place of the eighth session.

II. MATTERS ARISING OUT OF THE WORK DONE BY THE INTERNATIONAL LAW COMMISSION UNDER ARTICLE 3 (a) OF THE STATUTES

1. Consideration of the report on the work done by the International Law Commission at its sixteenth session.
2. Law of treaties.

III. MATTERS REFERRED TO THE COMMITTEE BY THE GOVERNMENTS OF THE PARTICIPATING COUNTRIES UNDER ARTICLE 3 (b) OF THE STATUTES

1. Status of aliens (referred by the Government of Japan)
 - (a) Diplomatic protection of aliens by their home States; and
 - (b) Responsibility of States arising out of maltreatment of aliens.
2. The rights of refugees (referred by the Government of the United Arab Republic)
3. United Nations Charter from the view of Asian-African countries (referred by the Government of the United Arab Republic)
4. Law of the territorial sea (referred by the Governments of Ceylon and the United Arab Republic)
5. Enforcement of judgments, the service of process and recording of evidence among States both in civil and criminal cases (referred by the Government of Ceylon)
6. Law of outer space (referred by the Government of India)