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Summary record of the 1042nd meeting

Topic:
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INTERNATIONAL LAW COMMISSION

SUMMARY RECORDS OF THE TWENTY-SECOND SESSION

Held at Geneva from 4 May to 10 July 1970

1042nd MEETING

Monday, 4 May 1970, at 3.15 p.m.

Chairman: Mr. Nikolai USHAKOV
later: Mr. Taslim O. ELIAS

Present: Mr. Ago, Mr. Albónico, Mr. Bartoš, Mr. Castrén, Mr. El-Erian, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Reuter, Mr. Rosenne, Mr. Tsuruoka, Mr. Ustor, Sir Humphrey Waldoock, Mr. Yasseen.

Opening of the Session

1. The CHAIRMAN, after declaring open the twenty-second session of the International Law Commission, expressed his great sorrow at the death of Mr. Gilberto Amado, the senior member of the International Law Commission, an eminent professor and ambassador, an outstanding jurist, diplomatist, writer, poet and personality, who had been universally esteemed for his culture, his wit and his profound humanism. The Sixth Committee had devoted a special commemorative meeting to Mr. Amado at the General Assembly's last session. During that meeting, as Chairman of the International Law Commission, he had requested the Chairman of the Sixth Committee to convey to the Brazilian Government and to Mr. Amado's family the condolences and deep sympathy of the members of the International Law Commission.

On the proposal of the Chairman, the members of the Commission observed a minute's silence in tribute to the memory of Mr. Amado.

2. He had great pleasure in informing the Commission that two of its members, Mr. Jiménez de Aréchaga and Mr. Ignacio-Pinto, had been elected Judges of the International Court of Justice and that he had congratulated them personally and on behalf of the Commission.

3. He wished to extend his warm congratulations to Mr. Bartoš, the Special Rapporteur for special missions, on whose work the General Assembly had placed the seal of its approval by adopting, at its twenty-fourth

session, the Convention on Special Missions prepared by the International Law Commission on the basis of Mr. Bartoš's draft articles. The Sixth Committee had paid a tribute to Mr. Bartoš in its report to the General Assembly.¹

4. In accordance with the Commission's decision, he had attended the meetings of the Sixth Committee devoted to consideration of the report of the International Law Commission. The Sixth Committee and the General Assembly had expressed, in resolution 2501 (XXIV) of 19 November 1969,² their appreciation of the valuable work accomplished by the International Law Commission at its twenty-first session. He drew the Commission's attention to paragraph 5 of that resolution, in which the General Assembly recommended that the Commission should study the question of treaties concluded between States and international organizations or between two or more international organizations as an important question. The Sixth Committee had deferred taking a decision on the extension of the term of office of the Commission's members and on the question whether the Commission should hold an extended or additional session in 1971, and had meanwhile invited the Commission to give further consideration to the various possible solutions that might be applied.³

5. He had received a letter from the Secretary-General (A/CN.4/231) drawing the Commission's attention to General Assembly resolution 2499 (XXIV)⁴ relating to the celebration of the twenty-fifth anniversary of the United Nations, and in particular to part A, paragraph 11, concerning the contribution of United Nations organs to the celebration. In his letter the Secretary-General suggested that the International Law Commission might wish to be associated with the celebration.

6. In accordance with the Commission's decision, he had attended the proceedings of the Asian-African Legal Consultative Committee, on which he would report to the Commission in due course.

¹ See *Official Records of the General Assembly, Twenty-fourth Session, Annexes*, agenda item 87, document A/7799, para. 12.

² *Op. cit.*, *Supplement No. 30*, p. 97.

³ *Op. cit.*, *Annexes*, agenda items 86 and 94 (b), document A/7746, para. 117.

⁴ *Op. cit.*, *Supplement No. 30*, p. 1.

Election of Officers

7. The CHAIRMAN called for nominations for the Office of Chairman.

8. Mr. EL-ERIAN proposed Mr. Elias, who had played an important part in making possible the adoption of the Vienna Convention on the Law of Treaties. The Commission had never yet elected a national of an African State as Chairman, and the election of Mr. Elias would emphasize the importance of the role of African States in international law. His many qualities included a firm faith in the rule of law and dignity, objectivity and moderation.

9. Mr. YASSEEN, supporting the nomination, said that the Vienna Conference on the Law of Treaties indeed owed much to Mr. Elias, who had devised the final compromise.

10. Mr. RAMANGASOAVINA said he wholeheartedly supported the nomination of Mr. Elias.

11. Mr. NAGENDRA SINGH and Mr. AGO also supported the nomination.

12. Sir Humphrey WALDOCK said that the Commission would be honoured by the election of Mr. Elias, who had won the respect and admiration of the entire international community by his work at the Conference on the Law of Treaties.

13. Mr. BARTOŠ, Mr. USTOR and Mr. ALBÓNICO warmly supported the nomination of Mr. Elias.

Mr. Elias was unanimously elected Chairman and took the Chair.

14. The CHAIRMAN thanked the Commission for the honour it had done him in electing him Chairman. He would do his best to ensure that the objectives set for the session were attained, and he felt sure he could rely on the co-operation of all members of the Commission.

15. He called for nominations for the office of First Vice-Chairman.

16. Mr. AGO proposed Mr. Kearney.

17. Sir Humphrey WALDOCK seconded the nomination.

18. Mr. BARTOŠ, Mr. NAGENDRA SINGH, Mr. USHAKOV, Mr. RAMANGASOAVINA, Mr. REUTER and Mr. EL-ERIAN supported the nomination.

Mr. Kearney was unanimously elected First Vice-Chairman.

19. Mr. KEARNEY thanked the members of the Commission for his election.

20. The CHAIRMAN called for nominations for the office of Second Vice-Chairman.

21. Mr. YASSEEN proposed Mr. Albónico.

22. Mr. BARTOŠ, Mr. AGO, Mr. USHAKOV, Sir Humphrey WALDOCK and Mr. REUTER supported the nomination.

Mr. Albónico was unanimously elected Second Vice-Chairman.

23. Mr. ALBÓNICO thanked the members of the Commission for his election.

24. The CHAIRMAN called for nominations for the office of Rapporteur.

25. Mr. USHAKOV proposed Mr. Bartoš.

26. Mr. AGO, Mr. CASTRÉN, Mr. REUTER, Mr. ROSENNE, Sir Humphrey WALDOCK, Mr. EL-ERIAN, Mr. RAMANGASOAVINA, Mr. YASSEEN and Mr. USTOR supported the nomination.

Mr. Bartoš was unanimously elected Rapporteur.

27. Mr. BARTOŠ thanked the members for his election.

Adoption of the Agenda

The provisional agenda (A/CN.4/222) was adopted unanimously.

Organization of work

28. Mr. MOVCHAN (Secretary to the Commission) said that messages had been received from Mr. Bedjaoui, who would be participating in the Commission's work from 11 May, and from Mr. Ruda, who would arrive in Geneva the following week. The Commission had also received communications from the Inter-American Juridical Committee, which was to send two observers, the European Committee on Legal Co-operation, whose representative would attend from 10 to 13 June, and the Asian-African Legal Consultative Committee, whose Chairman would attend as an observer.

29. The CHAIRMAN suggested that, in view of the absence of Mr. Ruda and Mr. Castañeda, the filling of casual vacancies in the Commission should be postponed to 11 May, when the Commission might also pay its tribute to the memory of Mr. Amado.

30. He suggested that the Commission should begin its work with item 2 of the agenda (Relations between States and international organizations).

It was so agreed.

31. Mr. ROSENNE said it might be useful to begin the discussion of item 7 (Survey of topics suitable for codification) and to consider the Secretary-General's letter regarding the celebration of the twenty-fifth anniversary of the United Nations, at a time when the Legal Counsel could be present. Perhaps the Officers of the Commission could prepare a programme of work for at least the first few weeks of the session.

32. Mr. MOVCHAN (Secretary to the Commission) said that the Legal Counsel would be arriving in Geneva on either 6 or 15 June.

33. Sir Humphrey WALDOCK suggested that the date for the discussion of item 7 of the agenda should be given further consideration.

It was so agreed.

34. Mr. EL-ERIAN said he might be unable to stay

until the end of the session, so he hoped that the Drafting Committee would be appointed early.

The meeting rose at 5.10 p.m.

1043rd MEETING

Tuesday, 5 May 1970, at 10.10 a.m.

Chairman: Mr. Taslim O. ELIAS

Present: Mr. Ago, Mr. Albónico, Mr. Bartoš, Mr. Castrén, Mr. El-Erian, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Reuter, Mr. Rosenne, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

Relations between States and international organizations

(A/CN.4/221 and Add.1; A/CN.4/227)

[Item 2 of the agenda]

1. The CHAIRMAN invited the Special Rapporteur to introduce his fifth report.
2. Mr. EL-ERIAN (Special Rapporteur) said that his fifth report, contained in document A/CN.4/227, and the addenda to follow, had been prepared in accordance with the Commission's declared intention at its previous session "to consider at its twenty-second session draft articles on permanent observers for non-member States and on delegations to sessions of organs of international organizations and to conferences convened by such organizations".¹
3. At its twentieth session, the Commission had adopted twenty-one articles forming Part I (General Provisions) and section 1 (Permanent missions in general) of Part II (Permanent missions to international organizations). At its twenty-first session, the Commission had adopted a further twenty-nine articles forming section 2 (Facilities, privileges and immunities) of Part II, thus completing its first reading of all the articles on permanent missions.
4. The twenty-one articles adopted at the twentieth session had already been submitted to the governments of States Members of the United Nations and comments had so far been received from ten governments (A/CN.4/221 and Add.1).
5. At its last session, the Commission had decided that the draft articles should also be submitted to the specialized agencies and to the Swiss Government. Since the specialized agencies had submitted a good deal of material for the preparation of the draft articles, it was only

logical to seek their views. The Swiss Government's comments would also be useful and were necessary, since that Government was host to the Geneva Office of the United Nations and to a large number of specialized agencies. The earlier articles had also been submitted to the specialized agencies and to the Swiss Government, but only belatedly, so that the comments so far received on them came only from States Members of the United Nations.

6. He would clearly be unable to complete his work on the first fifty articles until comments has been received from governments and from the specialized agencies. In respect of the articles to be considered at the present session, it would probably be necessary to depart from the practice of giving governments two years in which to submit their comments, otherwise the Commission would not be able to adopt those articles on second reading by the end of 1971.

7. Introducing Chapter II of his fifth report (A/CN.4/227), dealing with Part III (Permanent observers of non-member States to international organizations), he said he had prefaced the draft articles on permanent observers with an introduction containing a summary of the Commission's discussions at its twenty-first session. The decision to include a section on permanent observers had been reached without much difficulty, but opinion had been divided on whether articles on delegations to conferences should also be included. At the 993rd meeting the Commission had decided to authorize him as Special Rapporteur "to draft a chapter on the legal status of delegations of States to international conferences convened by international organizations, on the understanding that the Commission would take no decision of substance on the matter until it had examined that chapter".²

8. The introduction also gave a summary of the discussion in the Sixth Committee, at the twenty-fourth session of the General Assembly, on relations between States and international organizations. The views expressed there had been very similar to those expressed in the Commission; a number of representatives had had reservations about including articles on delegations to conferences.

9. He had also included a summary (paras. 9 to 13) of the discussion in the Sixth Committee, at the same session, on the draft convention on special missions. During that discussion, there had been an important development: the United Kingdom delegation had proposed that an article on conferences should be included in the draft convention. The Expert Consultant, Mr. Bartoš, had favoured that course, but had pointed out that, if it was decided to include rules relating to international conferences in the draft convention on representatives of States to international organizations, it should be made clear that the article proposed by the United Kingdom, if adopted, must be considered as provisional and applicable only until such time as that draft convention was adopted.

¹ See *Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 10*, para. 17.

² See *Yearbook of the International Law Commission, 1969*, vol. I, p. 13, para. 26.