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Summary record of the 722nd meeting

Topic:
Other topics

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INTERNATIONAL LAW COMMISSION
SUMMARY RECORDS OF THE SIXTEENTH SESSION

Held at Geneva, from 11 May to 24 July 1964

722nd MEETING

Monday, 11 May 1964, at 3 p.m.

Chairman : Mr. Eduardo JIMÉNEZ de ARÉCHAGA

Later : Mr. Roberto AGO

Opening of the Session

1. The CHAIRMAN, after opening the sixteenth session of the International Law Commission, said that since the last session he had represented the Commission before the Sixth Committee of the General Assembly and the Asian-African Legal Consultative Committee.

2. The General Assembly, in resolution 1902 (XVIII), had expressed "appreciation to the Commission for the work accomplished at its fifteenth session, especially with regard to the law of treaties". It had rejected the Commission's proposal to hold a three weeks' session in January 1964, but only because it considered that the cost might not be altogether justified for so short a period. He believed that the Assembly could be expected to approve a winter session if it was not too short. He understood that several members of the Commission thought the ten-week summer session too long, but would be prepared to devote 14 or 15 weeks a year to the Commission, if the time was more evenly spread over two sessions. The Commission would no doubt wish to bear those facts in mind when it came to consider item 2 (Question of the continuation of the present session) and item 6 (Question of the organization of future sessions) of its provisional agenda.

3. The sixth session of the Asian-African Legal Consultative Committee had been held at Cairo from 23 February to 6 March 1964. Since he had prepared a report on the subject which would soon be circulated to members of the Commission, he would confine himself to saying that the Consultative Committee had considered not only subjects of indirect interest to the Commission, such as the legality of nuclear tests in connexion with State responsibility, but also one subject of direct interest — the law of treaties — and had

decided to send an observer to the Commission's meetings.

Election of Officers

4. The CHAIRMAN called for nominations for the office of Chairman.

5. Mr. VERDROSS proposed Mr. Ago, whose qualities both as a scholar and as a member of the Commission made him eminently fitted for the post.

6. Mr. TUNKIN seconded the proposal.

7. Mr. AMADO, Mr. BRIGGS, Mr. de LUNA, Mr. ROSENNE and Mr. PAREDES supported the proposal.

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

8. The CHAIRMAN called for nominations for the office of First Vice-Chairman.

9. Mr. JIMÉNEZ de ARÉCHAGA proposed Mr. Briggs.

10. Mr. CADIEUX, Mr. PAL, Mr. PESSOU, Mr. TSURUOKA, Mr. VERDROSS, Mr. EL-ERIAN, Mr. YASSEEN and Mr. AMADO supported the proposal.

Mr. Briggs was unanimously elected First Vice-Chairman.

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

12. Mr. de LUNA proposed Mr. Tunkin.

13. Mr. AMADO, Mr. TSURUOKA, Mr. PESSOU, Mr. PAL, Mr. VERDROSS, Mr. YASSEEN, Mr. BARTOŠ, Mr. CASTRÉN and Mr. TABIBI supported the proposal.

Mr. Tunkin was unanimously elected Second Vice-Chairman.

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

15. Mr. TSURUOKA proposed Mr. Yasseen.

16. Mr. VERDROSS, Mr. TUNKIN, Mr. BARTOŠ, Mr. BRIGGS, Mr. EL-ERIAN, Mr. ELIAS,

Mr. AMADO, Mr. TABIBI, Mr. PESSOU, Mr. PAL, Mr. ROSENNE and Mr. de LUNA supported the proposal.

Mr. Yasseen was unanimously elected Rapporteur.

Adoption of the Agenda

The provisional agenda (A/CN.4/164) was adopted.

17. Mr. LIANG, Secretary to the Commission, expressed the hope that the Commission would take up item 2 at an early stage, so as to give the Secretariat time to make the necessary arrangements if it were decided to prolong the session beyond the proposed date of closure.

18. The CHAIRMAN said that the item would be taken up as early as possible.

19. Mr. BRIGGS said he hoped that in future the Commission's yearbooks would be published more promptly. Neither the printed version of the two volumes for the fourteenth session nor the final mimeographed text of the summary records of the fifteenth session had yet reached him.

20. Mr. ROSENNE suggested that the drafting committee should be made responsible for preparing the texts of draft articles in all three working languages, not only in English and French as in the past.

21. Mr. de LUNA said he supported that suggestion, particularly because representatives in the Sixth Committee of the General Assembly had had occasion to point out imperfections in the Spanish text of the draft articles on the law of treaties.

22. The CHAIRMAN said that suggestion would be borne in mind, but he hoped the Commission would not take a hasty decision, lest responsibility for the Spanish text might prevent the drafting committee from completing what was already an onerous task.

23. Mr. LIANG, Secretary to the Commission, informed the Commission that Mr. Lachs would not be arriving until the following week and Mr. Liu not until 25 May.

The meeting rose at 3.45 p.m.

723rd MEETING

Wednesday, 13 May 1964, at 10 a.m.

Chairman: Mr. Roberto AGO

Filling of casual vacancies in the Commission (Article 11 of the Statute) (A/CN.4/168 and Add.1)

[Item 1 of the agenda]

1. The CHAIRMAN announced that, at a private meeting, the Commission had elected Mr. Paul Reuter of France and Mr. José María Ruda of Argentina to

fill the casual vacancies caused by the resignations of Mr. André Gros and Mr. Luis Padilla Nervo on their election to the International Court of Justice.

Special Missions

(A/CN.4/166)

[Item 4 of the agenda]

2. The CHAIRMAN invited the Commission to consider item 4 of the agenda and called on the Special Rapporteur for special missions to introduce his report (A/CN.4/166).

3. Mr. BARTOŠ, Special Rapporteur, said he had thought it necessary to preface his draft articles with a fairly long introduction, because the question was a new one which had not been clearly settled either in the literature or in case-law; even the concept of *ad hoc* diplomacy had been a subject of controversy.

4. As to the object of the report, the question was whether the concept of *ad hoc* diplomacy should be treated entirely by analogy with that of resident, permanent diplomacy. It was hardly possible to proceed from the premise that resident diplomacy was normal diplomacy and that *ad hoc* diplomacy was exceptional, for history showed that up till the Treaties of Westphalia, and even as recently as the Congress of Vienna, resident diplomacy had been the exception. The existing rules on resident diplomacy could not be automatically applied to *ad hoc* diplomacy, for a distinction in kind should be drawn between two forms, *ad hoc* diplomacy having become more important in consequence of more frequent use.

5. He would hesitate to say whether the concept of *ad hoc* diplomacy should include visits by heads of State and ministers for foreign affairs, specialized permanent missions working alongside regular diplomatic missions, government delegations to institutional commissions set up under international agreements, whose status was established beforehand, and certain classes of diplomats representing their governments in international organizations, who in fact constituted a new class of resident diplomat. Before he could define special missions, he thought it necessary to ascertain the views of the Commissions as to whether they included only missions of a strictly political nature or technical missions as well. He himself was firmly convinced that the distinction should be based not on the mission's purpose, but on its nature; in other words, on whether or not it represented a State vis-à-vis other subjects of public international law.

6. Another preliminary question was whether the rules governing special missions should also cover the legal status of delegations and delegates to international conferences and congresses. In his opinion, the position of delegations and delegates to conferences convened by States and not by international organizations was in every respect assimilable to, and even almost identical with, that of special missions. He suggested, however, that that preliminary question should not be discussed until the main question, and Mr. El-Erian's report on