

Document:-
A/CN.4/SR.775

Summary record of the 775th meeting

Topic:
Other topics

Extract from the Yearbook of the International Law Commission:-
1965, vol. I

*Downloaded from the web site of the International Law Commission
(<http://www.un.org/law/ilc/index.htm>)*

INTERNATIONAL LAW COMMISSION

SUMMARY RECORDS OF THE FIRST PART OF THE SEVENTEENTH SESSION

*Held at Geneva from 3 May to 9 July 1965**

775th MEETING

Monday, 3 May 1965, at 3.15 p.m.

Chairman : Mr. Roberto AGO

Later : Mr. Milan BARTOŠ

Present : Mr. Amado, Mr. Briggs, Mr. Castrén, Mr. El-Erian, Mr. Elias, Mr. de Luna, Mr. Paredes, Mr. Pessou, Mr. Reuter, Mr. Rosenne, Mr. Tsuruoka, Mr. Tunkin, Sir Humphrey Waldock, Mr. Yasseen.

Opening of the Session

1. The CHAIRMAN, after declaring the seventeenth session of the Commission open, explained that he had not been able to submit the Commission's last report to the General Assembly because the Assembly's nineteenth session had not proceeded normally. The General Assembly should be able to consider the Commission's report at its next session, in September 1965.

2. In April he had attended the Baghdad meeting of the Asian-African Legal Consultative Committee. He had been greatly impressed by the Committee's serious approach to its work and had been glad to note that it desired to co-operate closely with the Commission. As one of the items on the Committee's agenda was the law of treaties, he had recommended it to transmit its comments on that topic to the Commission in due course, so that the Commission could take them into consideration. The Commission had a special interest in knowing the views of the many new countries represented on the Committee. He would submit a written report on the Committee's session under item 7 of the agenda, "Co-operation with other bodies".

3. Mr. PALTHEY (Deputy Director, European Office of the United Nations), welcoming the Commission for its annual session at the European Office, said that although at times of political anxiety like the present the legal aspects of questions tended to be overlooked, the importance of the Commission's work was fully recognized. Since the end of the War, the Commission had endeavoured to foster the spirit of law and to adapt international law to the new situations. In order to give the

Commission's work the publicity it merited and to arouse the interest of young people studying law, the European Office was organizing, in 1965, as an experiment, a seminar on international law which would take place from 10 to 21 May and would enable some twenty young teachers and advanced students to learn something from the Commission and to absorb the spirit in which it worked. He relied on the Commission itself to ensure that the experiment would be successful and would be a first step towards the establishment of a centre for legal studies at the European Office.

4. The CHAIRMAN said that was an excellent idea. It would help to make the Commission and its work better known and understood, and to spread knowledge of international law. He thanked the Deputy Director and wished the Seminar every success.

5. He welcomed Mr. Baguinian, the new Director of the Codification Division, who was to be Secretary to the Commission.

6. Mr. BAGUINIAN, Secretary to the Commission, said he felt greatly honoured by the responsibility placed on him. He could assure the Commission that the Secretariat would, as in the past, do everything in its power to ensure the successful outcome of the session. The bulk of the comments by governments on the Commission's draft articles on the Law of Treaties (A/CN.4/175 and Add.1, 2 and 3) as well as the first and second parts of the Special Rapporteur's fourth report on the law of treaties (A/CN.4/177 and Add.1) had been circulated. The second report on special missions was expected to be circulated by 24 May in all the working languages.

Election of Officers

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

8. Mr. ROSENNE proposed Mr. Bartoš, whose outstanding qualifications as a jurist and great diplomatic experience eminently fitted him for the post.

9. Mr. AMADO seconded the proposal.

10. Mr. BRIGGS, Mr. YASSEEN, Mr. de LUNA, Mr. PAREDES, Mr. TSURUOKA, Mr. EL-ERIAN and Mr. PESSOU supported the proposal.

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

* The Second Part of the Seventeenth Session was held in Monaco from 3 to 28 January 1966.

11. The CHAIRMAN paid a tribute to the outgoing Chairman, and thanked the Commission for the honour it had done both to himself and to his country in electing him. He would endeavour to merit the Commission's trust, but in performing his duties he would have to rely on the support of all the members of the Commission and the assistance of the Secretariat and all who served the Commission, whether inside or outside the meeting room.

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

13. Sir Humphrey WALDOCK proposed Mr. Jiménez de Aréchaga.

14. Mr. de LUNA seconded the proposal.

15. Mr. AMADO, Mr. CASTRÉN and Mr. ELIAS supported the proposal.

Mr. Jiménez de Aréchaga was unanimously elected First Vice-Chairman.

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

17. Mr. AGO proposed Mr. Reuter.

18. Mr. de LUNA seconded the proposal.

19. Mr. PESSOU, Mr. TSURUOKA and Mr. AMADO supported the proposal.

Mr. Reuter was unanimously elected Second Vice-Chairman.

20. Mr. REUTER congratulated the Chairman on his election and thanked the members for the honour they had done him in electing him Second Vice-Chairman.

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

22. Mr. AGO proposed Mr. Elias.

23. Mr. PESSOU seconded the proposal.

24. Mr. EL-ERIAN, Mr. TUNKIN, Mr. YASSEEN, Sir Humphrey WALDOCK, Mr. BRIGGS, Mr. de LUNA, Mr. ROSENNE and Mr. AMADO supported the proposal.

Mr. Elias was unanimously elected Rapporteur.

25. Mr. ELIAS congratulated the Chairman and Vice-Chairmen on their election and thanked the members for the honour they had done him in electing him Rapporteur.

Documentation and Records of the Commission

26. Mr. PAREDES said he wished to raise two questions connected with the documentation and records of the Commission. The first related to the drafting of the summary records. The United Nations existed for the purpose of preventing war and maintaining peace, a purpose which could only be achieved by extending the rule of law in every sphere, and the International Law Commission was one of its most important organs. Even if the United Nations were to disappear, the work of the

Commission would endure, just as the work of the ILO had continued after the demise of the League of Nations. Because of the great importance of the Commission's work, the records of its discussions were also of great importance to all peoples. He did not approve of the method by which those records were prepared. In the first place, they were too brief; it was essential that the ideas expressed by speakers should be reproduced at greater length. Another grave defect was that statements made in Spanish were summarized in English and the summary was then translated back into Spanish; after that double translation process the speaker's ideas were no longer accurately reproduced—they were sometimes even misrepresented. He urged that all statements made in an official language should not only be taken down in notes in that language, but should also be summarized in it and not go through a double process of translation.

27. The second question was the difficulty created for readers of Volume I of the Commission's Yearbook, which contained the summary records of the session, by the fact that the text being discussed was not always clearly identifiable, usually because of changes in the numbering of articles as the Commission's work progressed. When the Commission began its discussion of any article, the text of that article should be reproduced in the summary record, regardless of whether it was already available in some other document. He had urged on previous occasions that the Commission should always begin its discussion of a text with the reading of that text. If that suggestion were adopted, it would be much easier for the reader of Volume I to follow the changes undergone by a text as the discussion progressed.

28. Mr. BRIGGS said he supported Mr. Paredes' suggestion that the text of each article should be reproduced in the summary record of the meeting at which the article was first discussed. Of course, Volume I of the Yearbook had to be read in conjunction with Volume II, which reproduced the reports containing the articles as proposed, but the need to refer to Volume II did create difficulties, which were increased by changes in numbering. It should not add much to the cost of the Yearbook to reproduce the text of each article when it was introduced.

29. Mr. de LUNA said he supported Mr. Paredes on both the points he had raised. Even though notes might be taken in Spanish when a member spoke in that language, the fact that the summary record was drafted in English and subsequently translated into Spanish involved a process of double translation which could not but detract from the accuracy with which the thoughts expressed by the speaker were rendered.

30. Whenever there was a change in the numbering of an article, that at least should be made clear.

31. Mr. ROSENNE said that the validity of the second point raised by Mr. Paredes was demonstrated by a comment of the Government of Portugal on article 49,¹ from which it was clear that that Government had had difficulty in understanding the article because some of the documents relating to it had not been received. It might

¹ A/CN.4/175, p. 132.

therefore be appropriate to make some adjustment in the presentation of the Yearbook and the Commission's annual report to cover that point. The Commission should not take a hasty decision, however, and he suggested that the question be examined by the Chairman and officers in consultation with the Secretariat, so that specific proposals could be made later in the session.

32. Mr. YASSEEN said that he had himself been hindered in his research by the second of the difficulties mentioned by Mr. Paredes. The Commission's Yearbook was an important part of the *travaux préparatoires* for international conventions; it should therefore give a clear account of all the stages in the drafting of an article, and the summary records should accordingly embody the texts discussed, including those subsequently dropped or amended.

33. The CHAIRMAN said that Mr. Paredes had raised two important points. First, the summary records should faithfully record the thinking of members, which might be distorted by subsequent translation. Secondly, it was certainly difficult to use the Yearbook; he himself had often had to refer to his personal files in order to get to the bottom of a discussion. The difficulty must be much greater for anyone who had not taken part in the discussion.

34. He suggested that the Commission ask the Secretariat to consider those two questions and report to the Commission's officers.

It was so decided.

Adoption of the Agenda

35. The CHAIRMAN invited the Commission to adopt the provisional agenda (A/CN.4/174/Rev.1), explaining that adoption of the agenda as it stood would not mean that the Commission must take the items in the order in which they were set out.

36. Mr. AGO proposed that consideration of item 1 of the agenda, " Filling of a casual vacancy in the Commission ", should be deferred for a time, because the vacancy had only just occurred.

37. Mr. BRIGGS seconded that proposal.

Mr. Ago's proposal was adopted.

38. Mr. ROSENNE, referring to item 7, " Co-operation with other bodies ", said that at its previous session the Commission had examined the question of the exchange of documentation with other bodies.² After some discussion it had considered the possibility of setting up, at the present session, a small committee to study the problems involved. He hoped that the Commission would be able to discuss those problems early in the present session.

39. The CHAIRMAN said that the point raised by Mr. Rosenne would be borne in mind.

The provisional agenda (A/CN.4/174/Rev.1) was adopted.

The meeting rose at 5.5 p.m.

776th MEETING

Tuesday, 4 May 1965, at 10.5 a.m.

Chairman : Mr. Milan BARTOŠ

Present : Mr. Ago, Mr. Amado, Mr. Briggs, Mr. Castrén, Mr. El-Erian, Mr. Elias, Mr. Lachs, Mr. de Luna, Mr. Paredes, Mr. Pessou, Mr. Reuter, Mr. Rosenne, Mr. Tsuruoka, Mr. Tunkin, Sir Humphrey Waldock, Mr. Yasseen.

Organization of Work

1. The CHAIRMAN informed the Commission of messages received from several absent members. Mr. Liu was detained at New York, but hoped to arrive soon. Mr. Cadieux was detained by his official duties and Mr. Verdross by the celebration of the sixth centenary of the University of Vienna; both hoped to arrive on 17 May. Mr. Pal had written to say that he was prevented from attending by illness. If members of the Commission agreed he (the Chairman) would send a telegram to Mr. Pal wishing him a speedy recovery.

2. As Mr. Rosenne had reminded them at the previous meeting, the Commission had decided at its last session to set up a committee to discuss the question of the distribution of documents of the Commission; he suggested that Mr. Rosenne should prepare draft terms of reference for that committee.

3. Mr. ROSENNE said that he had nothing to add to paragraph 49 of the Commission's last report¹; it seemed hardly necessary to be more specific.

4. The CHAIRMAN said that in that case the Commission would appoint the committee the next day.

Law of Treaties

(A/CN.4/175 and Add.1-3, A/CN.4/177 and Add.1, A/CN.4/L.107)

[Item 2 of the agenda]

5. The CHAIRMAN invited the Commission to take up item 2 of the agenda.

6. Sir Humphrey WALDOCK, Special Rapporteur, introducing his fourth report on the law of treaties (A/CN.4/177 and Add.1), drew attention to the accompanying documents, namely, the two volumes of comments by governments on Parts I and II of the draft articles drawn up by the Commission at its fourteenth and fifteenth sessions (A/CN.4/175 and Add.1-3) and a document prepared by the Secretariat (A/CN.4/L.107), containing the text of all the draft articles adopted by the Commission. If it proved necessary, he would later submit a further series of draft articles, on which he was at present engaged. At its last session the Commission had expressed the hope that a document setting out the comments of governments in full under each article would be made available. For technical reasons it had proved

² Yearbook of the International Law Commission 1964, Vol. I, pp. 300-302.

¹ Yearbook of the International Law Commission, 1964, Vol. II, p. 227.