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Summary record of the 911th meeting

Topic:
<multiple topics>

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112. The CHAIRMAN suggested that article 41, which, in the absence of comment he presumed was generally acceptable, be referred to the Drafting Committee.

It was so agreed.[11]

The meeting rose at 12.50 p.m.

[11] For resumption of discussion, see 938th meeting, para. 57.

911th MEETING

Wednesday, 31 May 1967, at 11.30 a.m.

Chairman: Sir Humphrey WALDOCK

Present: Mr. Ago, Mr. Albónico, Mr. Castañeda, Mr. Castrén, Mr. Ignacio-Pinto, Mr. Jiménez de Aréchaga, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Reuter, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Mr. Yasseen.

Also present: Sir Gerald Fitzmaurice, Mr. Lachs, Mr. Žourek, Mr. Caicedo Castilla, Observer for the Inter-American Juridical Committee.

Statements by Sir Gerald Fitzmaurice, Mr. Lachs and Mr. Žourek

1. The CHAIRMAN welcomed three former members of the Commission, Sir Gerald Fitzmaurice, Mr. Lachs and Mr. Žourek. He said it was a special pleasure to greet Sir Gerald who, in the years 1955 to 1960, had been special rapporteur on the law of treaties and who in that capacity had prepared five reports containing profound studies on many aspects of that branch of the law, which had been of the greatest value in furthering the Commission's work and of the greatest help to his successor.

2. As a member of the Commission, he had worked for a year with Mr. Žourek, whose excellent reports on consular relations had found fruition in the Vienna Convention on that subject.

3. He thanked Mr. Lachs for his contributions to the discussion on the law of treaties in the Commission and for his work in the Drafting Committee.

4. Sir Gerald FITZMAURICE said that the President of the International Court of Justice was to have met the Secretary-General in Geneva that week to discuss matters of common interest and had intended to visit the Commission on that occasion to convey his best wishes for the continued success of its work, already so impressive and of such moment to the community of nations. However, the planned meeting had been postponed and the President had deputed to him the task of visiting the Commission.

5. Despite the obvious difference of functions, there were close links between the Court and the Commission and a number of members of the latter had become Judges of the Court. In both cases members were elected by governments, not as representatives of countries but in their personal capacity as jurists, and they had a scientific task to perform in accordance with their consciences.

6. The two bodies had a community of interest and a common legal foundation. The Court had to declare the law, not as an arbitrary process but in accordance with the provisions of Article 38, paragraph 1, of its Statute. The Commission's task was less circumscribed, for it was the main international codifying agency, but it still had to take into account the elements laid down in that article. The work of each influenced the other and they had a joint obligation to make every effort to promote the law.

7. As a former special rapporteur on the law of treaties he wished to pay his tribute to the Commission's remarkable achievements on that topic.

8. The CHAIRMAN asked Sir Gerald to convey the Commission's thanks to the President of the Court for his message. The codification, elucidation and progressive development of the law was often said to be an essential prerequisite for extending the acceptance of the Court's jurisdiction and for its successful operation as a judicial instrument, and the process was certainly an indispensable condition for the peace and welfare of the international community.

9. He also wished to mention the feelings of personal friendship which existed between the Judges of the Court and members of the Commission.

10. Mr. LACHS said that the mutual respect that existed between the Court and the Commission was a hopeful aspect in the development of international law, and though their members came from different parts of the world with differing legal philosophies there was a considerable degree of understanding between them.

11. Mr. ŽOUREK said he was very glad of the opportunity of seeing his former colleagues in the Commission again and meeting the new members. Although he no longer took part in the work of the Commission, he still continued to follow its activities out of scientific and professional interest. During his many travels he had always endeavoured to make better known the part played by the Commission, whose work for the codification of international law contributed to the development of relations between all peoples. For instance, in the course of a symposium held in West Berlin he had recently delivered a lecture on the activities of the Commission.

12. The draft articles on the law of treaties had been successfully completed and the codification of important rules of international law had been carried through, thanks in large measure to the authority and skill of Sir Humphrey Waldock, whose merits the Commission had very properly recognized by electing him Chairman. The documents of the Commission were a valuable source of information to him and enabled him to maintain a sort of spiritual contact with the Commission.

Co-operation with other Bodies

(resumed from the 898th meeting)

[Item 5 of the agenda]

13. The CHAIRMAN invited the observer for the Inter-American Juridical Committee to address the Commission.

14. Mr. CAICEDO CASTILLA (Observer for the Inter-American Juridical Committee), after paying a tribute to the work accomplished by the Commission in the codification of international law, said that, in the inter-American sphere, there had been three outstanding achievements in the past twelve months: first, the technical meeting held by the Inter-American Juridical Committee from July to October 1966; secondly, the Protocol for the amendment of the Charter of the Organization of American States (OAS), prepared by the Third Special Inter-American Conference held at Buenos Aires in February 1967, and thirdly, the Declaration on economic integration by the Presidents of the American Republics at the April 1967 meeting at Punta del Este.

15. At its 1966 meeting the Committee had examined first the question of a code of private international law for the countries of America. A number of codes were already in existence, but they conflicted with one another to some extent; they were the 1928 Bustamante Code, the Montevideo Treaties of 1889 and 1940, and the unofficial North American codification entitled the *Restatement of the Law of Conflict of Laws*. The Committee had stressed the importance of preparing a unified code, because hundreds of thousands of nationals of American States lived in other American States of which they were not nationals; the formulation of rules to solve the conflicts of laws which thus arose would promote good relations between the American States. The proposed economic integration of the region also made it urgent to facilitate the settlement of conflicts of laws on such matters as international contracts, insurance and banking. The work on the preparation of a new code of private international law was well advanced and a specialized conference of representatives of American States would meet in the forthcoming months to pronounce on the problem.

16. The Committee had also examined the question of the gap in the OAS system for the peaceful settlement of disputes, a gap which arose from the fact that the American Treaty on Pacific Settlement—the Pact of Bogotá of 30 April 1948[1]—had not been ratified by all the countries of the region. That Treaty made provision for such methods of peaceful settlement as mediation, conciliation, arbitration and judicial settlement by the International Court of Justice; some countries of the region, however, did not accept compulsory arbitration, while others were not prepared to accept the compulsory jurisdiction of the International Court. The Committee had urged the ratification of the Treaty by those countries which had not yet done so.

17. The Committee had also dealt with the law of outer space and had recommended Governments of the American States to adhere to the "Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space" set forth in the Declaration embodied in General Assembly resolution 1962 (XVIII) of 13 December 1963 and in subsequent General Assembly resolutions on outer space. The Committee had urged the Governments of the American States to co-operate in all efforts to give legal effect to those principles by means of a world-wide convention, and had specifically reiterated Principle 3: "Outer space and celestial bodies are not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means". It had also recommended to those Governments to promote the setting up of a world body with a sufficient measure of jurisdiction in matters of outer space to deal with controversies arising from the use of such space, including damage caused by outer space activities.

18. The Committee took the view that the traditional Latin American doctrine in the matter of State responsibility, which ruled out concepts of objective liability with regard to claims by aliens, did not stand in the way of the acceptance of the recommendations adopted by the United Nations General Assembly with regard to the international responsibility of States for injuries caused as a result of outer space activities. Latin America rejected the notion of objective liability which had been put forward in connexion with claims by aliens in respect of injuries sustained by them at the hands of authorities or private individuals in their country of residence and the diplomatic protection of such injured aliens. On that point, a firm stand had been adopted in Latin America, based on the equal treatment of nationals and aliens and the need to prove an actual delinquency on the part of the State, and to show that legal remedies had been exhausted before international responsibility could arise; in addition, the Latin American concept of denial of justice was a restrictive one. The international responsibility of a State for its activities in the exploration and use of outer space concerned damage to aliens living outside its territory. The Latin American principles to which he had referred related to claims by resident aliens against the State in whose territory they resided and were therefore not applicable in the matter.

19. Lastly, the Committee had examined the question of amendments to the Charter of the Organization of American States, in respect of which it had been claimed that a distinction could be drawn between certain amendments which entered into force immediately and others which required ratification. The Committee had rejected that distinction and had stated that, in all cases, amendments to the OAS Charter would enter into force only after ratification by two-thirds of the member States, as specified in that Charter.

20. The Buenos Aires Conference of February 1967 had formulated a Protocol embodying a number of important amendments to the OAS Charter, intended to accelerate and render more flexible the operation of the Organization. One amendment would have the effect of replacing the Inter-American Conference, which met every five years, by an annual General Assembly, as the supreme authority of the Organization. Another amendment dealt with the question of the admission of new members, for which no provision had been made in the OAS Charter; the Protocol specified a two-thirds majority of the member States for such admissions.

21. The Inter-American Treaty of Reciprocal Assistance signed at Rio de Janeiro on 2 September 1947[2] would continue to govern the whole question of aggression and

[1] United Nations, *Treaty Series*, vol. 30, p. 84.

[2] United Nations, *Treaty Series*, vol. 21, p. 93.

threats to the peace and security of the continent; the system of collective security in that treaty had worked satisfactorily in practice and had made it possible to solve a number of very grave problems.

22. At present, the Organization of American States had a Council which, in turn, had three organs: the Inter-American Economic and Social Council, the Inter-American Cultural Council and the Inter-American Council of Jurists. The Protocol for the amendment of the OAS Charter would have the effect of setting up independent councils, each with its own functions: a Permanent Council, an Economic and Social Council and a Council for Education, Science and Culture. The Inter-American Council of Jurists would be abolished, but the Inter-American Juridical Committee would continue as the main legal organ of the Organization and would report directly to the annual General Assembly, instead of to the five-yearly Conference through the Inter-American Council of Jurists.

23. In addition, the Committee would be enlarged from nine to eleven members, elected for a period of four years by the OAS General Assembly. Its terms of reference would include the promotion of the codification and progressive development of international law and the study of legal problems relating to the integration of the developing countries of America.

24. The amendments to the OAS Charter would also have the effect of strengthening the Inter-American Economic and Social Council, which would meet annually at the ministerial level, and would have an executive committee in the shape of the Inter-American Committee on the Alliance for Progress. Indeed, the emphasis on economic problems was a characteristic feature of the amendments embodied in the Protocol.

25. Some of the economic provisions thus amended had a legally binding character, such as the recognition by all the member States that the integration of the developing countries of the continent constituted one of the objectives of the Inter-American system; States accordingly bound themselves to take all necessary steps to accelerate the process of integration. All member States undertook to avoid any policies and measures which could have an adverse effect on the economic and social development of other member States; they also agreed to join together in seeking a solution to any urgent or serious problems which might arise regarding the development or economic stability of any member State. The more economically developed countries undertook not to require reciprocal concessions from the developing countries when granting them tariff reductions or concessions regarding non-tariff barriers.

26. No amendment had, however, been approved in respect of the main principles on which the Organization of American States was based, such as the equality of States and the non-recognition of territorial changes brought about by force. The Buenos Aires Protocol also expressly maintained in force article 15 of the Charter of the Organization of American States, which specified that:

> "No State or group of States has the right to intervene directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. The foregoing principle prohibits not only armed force but also any other form of interference or attempted threat against the personality of the State or against its political, economic and cultural elements."[3]

27. The question of non-intervention had given rise, after the events in the Dominican Republic, to much earnest discussion in the American continent. At the 1965 Rio de Janeiro Conference, the Colombian delegation had proposed the reaffirmation of the principle of non-intervention in strong and unambiguous terms. As a result of that proposal, the Rio de Janeiro Conference had recommended to the Third Special Inter-American Conference the retention of such fundamental principles as that of non-intervention when formulating amendments to the OAS Charter.

28. The meeting of Heads of State held at Punta del Este in April 1967 had adopted a Declaration for the progressive establishment, as from 1970, of a Latin American common market, which was to be substantially operative within fifteen years. Admittedly, that meeting had not given rise to any legal obligations but it did constitute a point of departure towards a new stage in the history of Latin America, since it had been convened to promote the economic emancipation of the peoples of the continent. The Declaration would of course need to be implemented by means of legal instruments, the first of which would be a general integration treaty.

29. Co-operation between the International Law Commission and the Inter-American Juridical organs should be strengthened, especially as certain items appeared on the agendas of both. For instance, the Inter-American Juridical Committee had studied the question of State responsibility from the American point of view and in 1967 would consider the topic of the succession of States and Governments.

30. The exchange of observers should therefore continue. The International Law Commission had been ably represented by Mr. Jiménez de Aréchaga at the meeting of the Inter-American Council of Jurists at San Salvador in February 1965. Now that the Committee was to continue as the main legal organ of the Organization of American States, he had the privilege of inviting the Commission to be represented at the next session of the Committee, to be held from 10 July to 9 October 1967 at Rio de Janeiro.

31. Co-operation between the two bodies could also take the form of efforts by the Committee to urge the member Governments of OAS to ratify the international conventions which had resulted from the work of the International Law Commission. The Committee could do useful work in that respect because its recommendations were generally heeded by the Governments of the American States. He proposed to raise that question at the next meeting of the Committee and fully expected satisfactory results.

32. He extended to the Commission his sincere wishes for the success of its work in the codification and progressive development of international law.

[3] United Nations, *Treaty Series*, vol. 119, p. 56.

33. The CHAIRMAN thanked the observer for the Inter-American Juridical Committee for his very full and informative statement on the legal work being done in the Organization of American States. He said it was particularly interesting to learn that the Committee would be studying State responsibility and the succession of States, since those two topics were on the Commission's own agenda. As Mr. Caicedo Castilla had himself been present at the 898th meeting, when item 5 had been discussed, there was no need for him to repeat what he had said about the importance of developing links with regional legal organizations and of preventing an undue divergence in the development of legal philosophies.[4] The inter-American Organization had been a pioneer in the codification and harmonization of law on a regional plane.

34. Mr. CASTAÑEDA said that 1966 had been a fruitful year in the Latin-American continent with the completion of agreements on economic integration and the amendment of the Charter of the Organization of American States. Mr. Caicedo Castilla had taken part in the latter process and was particularly well qualified to make his statement. In addition, he was the author of a study on collective action and non-intervention.

35. He reserved his right to comment on Mr. Caicedo Castilla's statement once he had had the opportunity to study it, particularly in regard to strengthening the links between the Inter-American Juridical Committee and the Commission.

The meeting rose at 12.45 p.m.

[4] See 898th meeting, para. 23.

912th MEETING

Thursday, 1 June 1967, at 10 a.m.

Chairman: Sir Humphrey WALDOCK

Present: Mr. Ago, Mr. Albónico, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. Ignacio-Pinto, Mr. Jiménez de Aréchaga, Mr. Kearney, Mr. Nagendra Singh, Mr. Ramangasoavina, Mr. Reuter, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Mr. Yasseen.

Special Missions

(A/CN.4/193 and Addenda; A/CN.4/194 and Addenda)

(resumed from the 910th meeting)

[Item 1 of the agenda]

ARTICLE 44 (Cessation of the functions of the special mission) [47 and 20, para. 2]

1. *Article 44* [47 and 20, para. 2]

Cessation of the functions of the special mission

1. When a special mission ceases to function, the receiving State must respect and protect its property and archives, and must allow the permanent diplomatic mission or the competent consular post of the sending State to take possession thereof.

2. The severance of diplomatic relations between the sending State and the receiving State shall not automatically have the effect of terminating special missions existing at the time of the severance of relations, but each of the two States may terminate the special mission.

3. In case of absence or breach of diplomatic or consular relations between the sending State and the receiving State and if the special mission has ceased to function,

(*a*) The receiving State must, even in case of armed conflict, respect and protect the property and archives of the special mission;

(*b*) The sending State may entrust the custody of the property and archives of the mission to a third State acceptable to the receiving State.

2. The CHAIRMAN invited the Commission to consider article 44, the Special Rapporteur's proposals for which were contained in paragraph 13 of the section on that article in his fourth report (A/CN.4/194/Add.2) and in his additional comments in document A/CN.4/194/Add.4.

3. Mr. BARTOŠ, Special Rapporteur, said that the cases when the functions of special missions came to an end were listed in article 12 and that the purpose of article 44, which corresponded to article 45 of the Vienna Convention on Diplomatic Relations, was to set out rules on the consequences of cessation of functions.

4. The Belgian Government considered that paragraph 2 of article 44 would be better placed in article 12, and that the final words, "but each of the two States may terminate the special mission", were superfluous. He was quite willing to transfer the provisions of paragraph 2, but saw no strong reason for putting them in one of the two articles rather than the other. On the other hand, he considered that the final words of the paragraph were useful, for although it was true that the severance of diplomatic relations did not entail cession of the functions of the special mission, each State must nevertheless have the right to terminate the special mission if relations were broken off. Such action should not be considered an arbitrary act. Even if, for instance, the two States had previously agreed to hold conversations through special missions at given intervals, in the event of severance of diplomatic relations each of them would be able to release itself from that undertaking.

5. Referring to the first two comments by the Government of Israel (A/CN.4/188) he confirmed, first of all, that if the sending State had no permanent diplomatic mission or consular post in the receiving State, paragraph 1 of article 44 did not, of course, apply. It would be for the Commission to decide whether it wished to retain that provision or not. Similarly, paragraph 3 (*b*) could not apply if no third State agreed to take charge of the property and archives of the special mission; but the same was true of article 45 (*c*) of the Vienna Convention on Diplomatic Relations. The sending State could not compel another State to protect its interests. In his view the receiving State was responsible for protecting the property and archives of the special mission so long as they had not been taken over by a third State.

6. The third comment by the Government of Israel was justified; the Commission should consider whether it was advisable to ensure that the sending State could remove