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Summary record of the 990th meeting

Topic:
Other topics

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INTERNATIONAL LAW COMMISSION

SUMMARY RECORDS OF THE TWENTY-FIRST SESSION

Held at Geneva from 2 June to 8 August 1969

990th MEETING

Monday, 2 June 1969, at 3.20 p.m.

Chairman: Mr. José Maria RUDA
later: Mr. Nikolai USHAKOV

Present: Mr. Ago, Mr. Bartoš, Mr. Castañeda, Mr. Castrén, Mr. El-Erian, Mr. Ignacio-Pinto, Mr. Nandera Singh, Mr. Ramangasoavina, Mr. Tabibi, Mr. Tammes, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

Opening of the Session

1. The CHAIRMAN, after declaring open the twenty-first session of the International Law Commission, said that he had submitted the Commission's report on the work of its twentieth session to the Sixth Committee of the General Assembly on 3 October 1968. Subsequently, in accordance with the Commission's decision, he had given an account of the work it had accomplished during the twenty years since it had been established; that work had been praised by representatives of the various geographical groups in the General Assembly.

2. Comments had been made in the Sixth Committee on each of the topics on the Commission's agenda. On the topic "Relations between States and international organizations" there had been some general observations, and the draft articles so far prepared by the Commission¹ had been welcomed as a useful contribution to the study of a new sector of international law which differed in many respects from that of traditional inter-State relations. Various delegations had also commented on many of the individual articles of the draft.

3. The Sixth Committee had welcomed the fact that the International Law Commission had begun consideration of the topic "Succession of States and Governments". A number of representatives had approved of

the Commission's decision to divide the topic into three parts under the headings: "succession in respect of treaties"; "succession in respect of rights and duties resulting from sources other than treaties"; and "succession in respect of membership of international organizations".² While the decision to give priority to succession in respect of treaties had been approved, the view had also been expressed that work on succession in respect of membership of international organizations should begin as soon as a convention on relations between States and international organizations was adopted. In addition, it had been urged that succession of governments should also be studied.

4. With regard to the "most-favoured-nation clause", general satisfaction had been expressed at the Commission's commencement of the study of that important topic.

5. The Commission's decision to adopt a long-term programme of work had been noted by the General Assembly in its resolution 2400 (XXIII), by which it had also approved the Commission's decision to prepare, in accordance with article 18 of its Statute, a "new survey of the whole field of international law referred to in paragraph 99 of the Commission's report".

6. Delegations had stated that they would welcome a study by the Commission of the question of treaties concluded between States and international organizations or between two or more international organizations, if the General Assembly accepted the recommendation to that effect made by the United Nations Conference on the Law of Treaties.³

7. Many delegations had stressed the importance of Mr. Ago's suggestions concerning the final stage of the codification of international law⁴ and some had considered that the International Law Commission should be invited to study that question more thoroughly and submit its recommendations to the Sixth Committee. General Assembly resolution 2400 (XXIII) did not, however, refer to that problem. It recommended that the Commission should:

² *Ibid.*, chapter III, para. 34.

³ See Final Act of the United Nations Conference on the Law of Treaties (A/CONF.39/26), annex, resolution relating to article 1 of the Vienna Convention on the Law of Treaties.

⁴ See *Yearbook of the International Law Commission, 1968*, vol. II, document A/CN.4/205/Rev.1.

¹ See *Yearbook of the International Law Commission, 1968*, vol. II, Report of the Commission to the General Assembly, chapter II, section E.

“(a) Continue its work on succession of States and Governments and relations between States and international organizations, taking into account the views and considerations referred to in General Assembly resolutions 1765 (XVII) and 1902 (XVIII);

“(b) Continue its study of the most-favoured-nation clause;

“(c) Make every effort to begin substantive work on State responsibility as from its next session, taking into account the views and considerations referred to in General Assembly resolutions 1765 (XVII) and 1902 (XVIII).”

8. General approval of the methods of work so far adopted by the Commission had also been expressed.

9. A number of representatives had expressed support for the Commission's proposal, contained in its 1968 report, that the term of office of its members should be extended from five years to six or seven years.⁵ Some representatives had pointed out that the Commission had not specified whether its proposal referred to the term of office of its present members or of future members. Other representatives had opposed the proposal, but, as recorded in the report of the Sixth Committee, the majority of those who had spoken on the question had considered that it should be studied more thoroughly and that a decision on it should be postponed until a later session of the General Assembly.

10. Various delegations had expressed sympathy with the Commission's concern at the present situation regarding honoraria and *per diem*, and the proposed additional allowance to help special rapporteurs defray travel and incidental expenses in connexion with their work.⁶ On that point, operative paragraph 6 of General Assembly resolution 2400 (XXIII) merely noted that “the Secretary-General has under study the questions raised in paragraphs 98 (b) and 98 (c) of the report of the International Law Commission”. The view had prevailed that the matter should be examined in the general context of the study of the question of honoraria and *per diem* which was being made by the Secretary-General and the Advisory Committee on Administrative and Budgetary Questions.

11. The Commission's decisions on the organization of its future work had been welcomed, but with regard to the proposed winter session in 1970, the General Assembly, in operative paragraph 3 of its resolution 2400 (XXIII), had decided “to defer a final decision until its twenty-fourth session”.

12. The Sixth Committee had again approved the idea of holding seminars in connexion with the Commission's sessions.

13. In accordance with the Commission's decision the previous year, he had appointed Mr. Tabibi to attend, as observer for the Commission, the tenth session of the Asian-African Legal Consultative Committee in December 1968. He himself had attended, as observer for the Commission, the 1968 meeting of the Inter-American Juridical Committee and had sub-

mitted a report on it to the Commission (A/CN.4/215).

14. Through the Secretariat, he had tried to make arrangements for the Commission to be represented at the meetings of the European Committee on Legal Co-operation, but unfortunately, owing to professional commitments, that had not been possible.

15. He could not conclude his report on the past year's activities without expressing his satisfaction at the success of the United Nations Conference on the Law of Treaties, held at Vienna, and paying a tribute to the outstanding work done there by several members of the Commission, in particular Mr. Ago, the President of the Conference.

Election of Officers

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

17. Mr. USTOR proposed Mr. Ushakov, whose outstanding qualities as a writer on international law and as Director of the International Law Department of the Institute of Law of the Academy of Sciences of the Soviet Union so well fitted him for the task. The election of Mr. Ushakov as Chairman would be an appropriate tribute to his great country, the notable achievements of which in a comparatively short period of time owed much to the work of its scientists and scholars. As one of those men of learning, Mr. Ushakov had played a leading role in shaping the Soviet Union's outstanding contribution to the development of international law.

18. Mr. EL-ERIAN warmly supported that nomination. In addition to his personal qualities, Mr. Ushakov belonged to a country which had made some striking contributions to the progress of international law. The USSR had been the first State to proclaim the abolition of extra-territorial jurisdiction, and in publishing some of the secret treaties of the First World War it had acted in accordance with the principle of open diplomacy, which was reflected in the system of registration of treaties adopted first by the League of Nations and then by the United Nations.

19. Mr. AGO said that the success of the Vienna Conference was also a success for the Commission and an encouragement to it to pursue its work of codifying international law. He paid a tribute to those members of the Commission who had made a personal contribution to the work of the Conference, particularly Sir Humphrey Waldock, who had played an outstanding part in preparing the Vienna Convention on the Law of Treaties.

20. He supported the nomination of Mr. Ushakov for the office of Chairman of the Commission.

21. Mr. BARTOŠ also supported that nomination.

22. Sir Humphrey WALDOCK said he welcomed the nomination of Mr. Ushakov.

23. He thanked Mr. Ago for his kind words, but felt bound to stress the very great contributions made to the success of the Conference on the Law of Treaties by Mr. Yasseen as Chairman of the Drafting Committee and Mr. Elias as Chairman of the Committee of the Whole. Unfortunately, he had not been able to attend

⁵ *Ibid.*, Report of the Commission to the General Assembly, para. 98 (a).

⁶ *Ibid.*, para. 98 (b).

the last few days of the Conference, when serious difficulties had arisen and Mr. Ago, its President, assisted by the Legal Counsel of the United Nations, had done so much to help to save the work of the Commission.

24. Mr. NAGENDRA SINGH said he fully supported the nomination of Mr. Ushakov.

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

25. The CHAIRMAN thanked the Commission for his election and said that he regarded it as a mark of esteem for the Soviet Union and for Soviet law.

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

27. Mr. YASSEEN said he wished to place on record the great debt owed by the Vienna Conference to Mr. Ago, its President, to Sir Humphrey Waldock, the Expert Consultant, who had always intervened to great effect, and to Mr. Elias, who had evolved the final compromise solution.

28. He proposed Mr. Castañeda as First Vice-Chairman.

29. Mr. RUDA supported the nomination of Mr. Castañeda, the distinguished Latin American jurist.

30. Mr. EL-ERIAN also supported that nomination; as Special Rapporteur, he welcomed the fact that Mr. Castañeda would be called upon to act as Chairman of the Drafting Committee.

Mr. Castañeda was unanimously elected First Vice-Chairman.

31. Mr. CASTAÑEDA thanked the members for his election.

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

33. Mr. RAMANGASOAVINA proposed Mr. Nagendra Singh.

34. Mr. TABIBI seconded that proposal.

Mr. Nagendra Singh was unanimously elected Second Vice-Chairman.

35. Mr. NAGENDRA SINGH thanked the members for his election.

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

37. Mr. CASTRÉN proposed Mr. Eustathiades.

38. Sir Humphrey WALDOCK seconded that proposal.

Mr. Eustathiades was unanimously elected Rapporteur.

Adoption of the Agenda

39. The CHAIRMAN invited the Commission to consider its provisional agenda (A/CN.4/211).

40. Mr. BARTOŠ said he would like the Commission to be in a position to discuss certain questions connected with its Chairman's report to the twenty-third session of the General Assembly, such as the holding of winter sessions. There was perhaps no need to make that

question a separate item of the agenda, but the Commission might agree to discuss under item 6 (organization of future work) or item 8 (other business).

41. The CHAIRMAN suggested that the Commission should adopt the provisional agenda, on the understanding that the matter to which Mr. Bartos had referred could be taken up under items 6 or 8.

It was so agreed.

Statement by the Legal Counsel

42. Mr. STAVROPOULOS (Legal Counsel) drew the Commission's attention to the following resolution, which had been adopted by the United Nations Conference on the Law of Treaties at the close of its second session:

TRIBUTE TO THE INTERNATIONAL LAW COMMISSION

The United Nations Conference on the Law of Treaties,

Having adopted the Vienna Convention on the Law of Treaties on the basis of the draft articles prepared by the International Law Commission,

Resolves to express its deep gratitude to the International Law Commission for its outstanding contribution to the codification and progressive development of the law of treaties.

43. In his opinion, the Vienna Convention on the Law of Treaties was one of the greatest and most important works of codification ever undertaken by the United Nations—possibly even more important than the Conventions on the Law of the Sea. It had been adopted by 79 votes to 1, with 19 abstentions, and two countries whose representatives had been absent during the voting had subsequently indicated their intention to sign. The International Law Commission's contribution to that Convention had been most impressive; the draft prepared by it had exceeded all expectations and many of the amendments made during the Conference had been prompted by political rather than purely legal considerations.

44. The success of the Conference had been due in no small measure to the presence of a number of members of the Commission: Mr. Ago had served brilliantly as President of the Conference, Mr. Elias had played a key role as Chairman of the Committee of the Whole, and Mr. Yasseen had shown much patience and skill as Chairman of the Drafting Committee. Special mention should be made of Sir Humphrey Waldock, the Expert Consultant, whose outstanding personal qualities of modesty and moderation, as much as his immense knowledge, had made him the very heart of the Conference.

45. Lastly, he said that there was some possibility of another conference on the law of the sea being held in three years or so; he hoped that the Commission could be relied on to produce a draft for that conference.

46. The CHAIRMAN said that the Commission was grateful to the Vienna Conference for its resolution.

The meeting rose at 4.45 p.m.