United Nations | *Nations Unies* | UNRESTRICTED

GENERAL ASSEMBLY | **ASSEMBLEE GENERALE**

A/AC.10/SR.3
16 May 1947

ORIGINAL: ENGLISH

COMMITTEE ON THE PROGRESSIVE DEVELOPMENT OF INTERNATIONAL LAW AND ITS CODIFICATION

SUMMARY RECORD OF THE THIRD MEETING

Held at Lake Success, New York, on Wednesday, 14 May 1947, at 3:00 p.m.

Present:

Chairman:	Sir Dalip Singh	(India)
	Dr. Enrique Ferrer Vieyra	(Argentina)
	Dr. W. A. Wynes	(Australia)
	Mr. Gilberto Amado	(Brazil)
	Dr. Shuhsi Hsu	(China)
	Dr. Antonio Rocha	(Colombia)
	Prof. Henri Donnedieu de Vabres	(France)
	Dr. J. G. de Beus	(Netherlands)
	Mr. Roberto de la Guardia	(Panama)
	Dr. Alexander Rudzinski	(Poland)
	Mr. Erik Sjoborg	(Sweden)
	Prof. Dr. Vladimir Koretsky	(Union of Soviet Socialist Republics)
	Prof. J. L. Brierly	(United Kingdom)
	Prof. P. C. Jessup	(United States of America)
	Dr. Carlos Eduardo Stolk	(Venezuela)
	Prof. Milan Bartos	(Yugoslavia)

The CHAIRMAN opened the meeting.

Mr. SJOBORG (Sweden) observed that no country was more gratified than Sweden at the fact that the United Nations had taken up the question of the progressive development and codification of International law. It was on the initiative of Sweden that the League of Nations set up a committee in 1924 to select topics suitable for codification, and a Swede was chairman of that committee.

Mr. SJOBORG expressed his admiration for the various papers submitted but wished to point out that the procedure set up by the resolution of the League of Nations in 1931 after the Hague Conference on Codification of International Law might still be found practicable. In the preamble to that resolution it was stated that the work of codification should be

/continued

continued in order to give a solid and stable basis to international law, without compromising customary law resulting from judicial decisions and jurisprudence. The failure of the Hague Conference was attributed to defective preparation. The methods proposed in 1931 were based on the observations made during the Conference and afterwards by the various governments. No new fact had occurred after 1931 justifying a change in this procedure. Therefore the Geneva procedure might be maintained in principle, taking into account any differences between the provisions of the Covenant and the Charter. In addition, he associated himself with the ideas set down in the Secretariat's memorandum and in those of the United Kingdom and the United States, particularly as to the setting up of a committee of experts and the method of their selection. With respect to the scientific re-statement of international law, Mr. SJOBORG suggested that a considerable period of time should be allowed for studying such re-statements. The results of the work of the experts should be submitted to special international conferences - not to the General Assembly - whilst the task of these conferences should be wide in scope and they should draw up international conventions to decide the rules.

According to a plan submitted to the League of Nations in September 1930 by Germany, Great Britain, France, Greece and Italy, the task of re-statement was not one for the League of Nations. The same view was taken by the Netherlands Government and by the Governments of Sweden and Switzerland in letters addressed to the League of Nations in 1931. The League of Nations should introduce new rules which would develop international law and fill gaps in the existing law. The Hague Conference had proved that the attempt to have existing law codified by a conference might be disastrous and that the concessions required to attain unanimity might result in a retrograde step.

Dr. RUDZINSKI (Poland) emphasized the fact that Poland had had much experience in the field of codification. Poland regained her independence

/after the

after the first World War and a special committee was appointed to bring into harmony the various systems of law prevailing in the different parts of the country. Unification was achieved in the field of procedure and in the field of criminal law. The laws of 1926 on private international law and private inter-provincial law might well be used as examples of codification by this committee. Poland also contributed towards codification undertaken by the League of Nations. After the second World War the task of codification, begun in 1919, was finished in record time and now the whole field of private law had been codified. However, codification of municipal law was easier than that of international law where far greater difficulties would have to be overcome.

Referring to the terms of reference of this Committee from the General Assembly, Dr. RUDZINSKI felt that the following conclusions might be drawn: that the progressive development of international law and its codification was a dual task. Sometimes the two parts were incompatible and codification might result in stultification. It should be borne in mind that even codification of Roman law was only undertaken after centuries of gradual development, and it remained one of the most splendid examples of codification. However, legislation was necessary wherever there was uncertainty about the existing law and where obsolete rules should be abolished and new ones laid down. The General Assembly resolution mentioned both private and public international law. These parts of the Committee's task should be distinguished as the methods suitable for codification of public international law would not be suitable for codification of private international law. Dr. RUDZINSKI pointed out that consequently it might prove necessary to decide on topics for codification before settling on the methods. Several fields of international law have already been codified by the Charter and its rules now need only implementation and observance. One of the first requirements would be that the peace treaties should be concluded. Several fields of international

law must after the war be undertaken in a different way. In this connection Dr. RUDZINSKI referred to the enormous field covered by the Economic and Social Council, its commissions and the specialized agencies and suggested that the Committee might ask the General Assembly whether it should also concern itself with those fields. Dr. RUDZINSKI mentioned various subjects where he considered codification desirable either by multilateral convention or by way of model treaties. Codification should be handled with the utmost care, otherwise this would hinder rather than further the development of international law. The failure of the Hague Conference had a bad psychological effect on subsequent efforts, therefore codification should only be undertaken if there was an urgent need for it and a reasonable certainty of success. The changes in economic and social conditions were of the greatest importance in this connection. The ultimate object should always be to achieve peace through the rule of law.

Dr. RUDZINSKI reserved the right of his Delegation to make further observations at a later stage.

Dr. VIEYRA (Argentina) referred to the memorandum submitted by him (document A/AC.10/10) and to the various memoranda submitted during the Second Part of the First Session of the General Assembly to the Sixth Committee and its First Sub-Committee. The Argentine memorandum gave suggestions for the preparatory task of this Commission.

Dr. VIEYRA emphasized the difference between progressive development and codification, the former laying down the law as it ought to be, the latter formulating the law as it was. Dr. VIEYRA was also in agreement with the setting up of a special committee of experts. He stressed the distinction between public and private international law, although there were jurists who deny this distinction and consider that all international law is public law. In Dr. VIEYRA's opinion, the bodies dealing with these two aspects of international law would have to be different. There should be two committees and in this respect he differed from the memorandum

/submitted

submitted by the United Kingdom. He asked whether an intermediate body should not be set up between the committees of experts and the General Assembly. This might conceivably be this present committee. This would also afford a compromise between those who are in favour of government representatives and those who want personal experts to be charged with the task. He also agreed with the Brazilian representative that codification was a continuous task, and should be organized as such.

Dr. HSU (China) expressed his appreciation of the papers produced by the Secretariat and submitted by the various representatives. He pointed out where the memoranda submitted by the United Kingdom and the United States were in agreement and where they differed. He observed that during the time of the League of Nations, codification by international convention was the only possible means. This was now slightly discredited and the same results might be achieved by a resolution of the General Assembly. On the whole Dr. HSU preferred the plans suggested in the United States memorandum. As to the setting up of special committees, personal competence of the members might be combined with geographical distribution.

Dr. HSU considered codification to be part of the development of international law; the two are closely related and influence one another. The world expected codification, much had been achieved already by the masters of the past, and this committee should take up with courage the task entrusted to it and carry forward the torch transmitted to it by past masters.

Prof. BRIERLY (United Kingdom), in reply to the observation made by the representative for Argentina, observed that the memorandum submitted by him certainly dealt primarily with public international law, but was not at all intended to exclude consideration of private international law. He doubted, however, whether it would be useful to set up two committees; there was a borderline between the two fields of international law and it would be difficult to define their respective spheres of action.

Prof. BRIERLY praised the record of the Netherlands in the field of the codification of private international law and asked the representative for the Netherlands whether his Government intended to continue the work of the Hague Conferences for the codification of private international law.

Dr. DE BEUS (Netherlands) mentioned that he had just handed in a statement to the Secretary for distribution on which he would like to speak at the next meeting. In reply to Prof. Brierly he stated that, to his knowledge, the Hague Conferences would certainly be continued.

Prof. KORETSKY (Union of Soviet Socialist Republics) mentioned that he had several observations to make and questions to ask in connection with the memoranda submitted, but that he preferred to do this at the next meeting.

The CHAIRMAN summarized the memoranda submitted and the speeches made, and emphasized the dual task of the Committee. He referred to the distinction made between the re-statement of international law and its codification, the necessity for distinguishing between the committee's task with respect to private and public international law, and the various special commissions which had been suggested. There seemed to be a consensus of opinion that a committee of experts would be necessary. The CHAIRMAN invited the Rapporteur to prepare an analysis of the various points made in the memoranda and statements for discussion and action by the Committee.

The meeting adjourned at 5:10 p.m.
