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Summary record of the 1302nd meeting

Topic:
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INTERNATIONAL LAW COMMISSION

SUMMARY RECORDS OF THE TWENTY-SEVENTH SESSION

Held at Geneva from 5 May to 25 July 1975

1302nd MEETING

Monday, 5 May 1975, at 3.30 p.m.

Chairman: Mr. Endre USTOR

later: Mr. Abdul Hakim TABIBI

Members present: Mr. Ago, Mr. Bedjaoui, Mr. Bilge, Mr. Castañeda, Mr. El-Erian, Mr. Elias, Mr. Hambro, Mr. Kearney, Mr. Martínez Moreno, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Reuter, Mr. Šahović, Mr. Sette Câmara, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Yasseen.

Opening of the Session

1. The CHAIRMAN declared open the twenty-seventh session of the International Law Commission and welcomed the members and the Legal Counsel of the United Nations.

Statement by the outgoing Chairman

2. The CHAIRMAN said that he had presented the Commission's report on the work of its previous session to the Sixth Committee of the General Assembly, at its twenty-ninth session. On that occasion the Committee, presided over by Mr. Šahović, had paid a moving tribute to their late colleague, Professor Bartoš.

3. He had made a long statement in the Sixth Committee, for the benefit of representatives who had found it difficult to study the Commission's voluminous report (A/9610/Rev.1). His statement had begun with a summary of all the Commission's activities, followed by a more detailed description of its work on the topic of succession of States in respect of treaties; that difficult, intricate and delicate topic was, on the whole, new to the Sixth Committee, and he had therefore felt justified in speaking on it at some length, at the expense of the topics of State responsibility, treaties between States and international organizations and the law of the non-navigational uses of international watercourses. He had also commented in some detail on the report of the Joint Inspection Unit (A/9795) in so far as it touched on the so-called problems of the International Law Commission. The debate on his statement was summarized in the relevant report of the Sixth Committee (A/9897), which gave most prominence to the draft articles on succession of States in respect of treaties.

4. In his closing statement, he had thanked the Sixth Committee for its appreciation of the Commission's work and had promised that the criticisms expressed would be duly taken into account. The debate had led to the adoption of General Assembly resolution 3315 (XXIX)

of 14 December 1974. The most important provisions of that resolution were paragraph 1 of part II, in which the General Assembly expressed its appreciation to the International Law Commission for its valuable work on the question of succession of States in respect of treaties and to the Special Rapporteurs on the topic for their contribution to that work; paragraph 6 of part I, in which the Assembly recognized the efficacy of the methods and conditions of work by which the Commission had carried out its tasks, and expressed confidence that it would continue to adopt methods of work well suited to the realization of the tasks entrusted to it; and paragraph 5 of part I in which the Assembly approved a twelve-week period for the Commission's annual sessions, subject to review by the General Assembly whenever necessary. In paragraph 8 of part I, the Assembly expressed the wish that, in conjunction with future sessions of the Commission, further seminars might be organized, which should continue to ensure the participation of an increasing number of jurists of developing countries. Although the resolution was the result of a compromise, the Commission would note that the Sixth Committee had expressed general appreciation of its work.

5. He had attended the annual session of the Asian-African Legal Consultative Committee held at Teheran, and Mr. Martínez Moreno had represented the Commission at the session of the Inter-American Juridical Committee. The Commission had been represented by Mr. Tabibi at the 1975 session of the European Committee on Legal Co-operation.

6. An event of importance to the Commission, which had occurred since its previous session, had been the United Nations Conference on the Representation of States in their Relations with International Organizations, held at Vienna in February and March 1975. The Conference, whose work had been based on the Commission's draft articles, had been presided over by Mr. Sette Câmara. In its Final Act (A/CONF.67/15), it had adopted two resolutions of particular interest to the Commission, one paying a tribute to the International Law Commission for its outstanding contribution to the codification and progressive development of the rules of international law on the representation of States in their relations with international organizations, and the other paying a tribute to Mr. El-Erian, the Expert Consultant, and expressing deep appreciation of the invaluable contribution he had made in his capacity both as Special Rapporteur of the International Law Commission and as Expert Consultant to the Conference. The Conference had adopted a Convention on the Representation of States in their Relations with International Organizations of a Universal Character (A/CONF.67/16).

7. In conclusion, he thanked the Commission for the confidence it had placed in him by electing him Chairman for its twenty-sixth session; he would always look back with pleasure to the term during which he had held that office.

Election of officers

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

9. Mr. YASSEEN, after congratulating the outgoing Chairman on the masterly way in which he had conducted the business of the preceding session and pleaded the Commission's cause in the General Assembly, nominated Mr. Tabibi, who had on many occasions distinguished himself in the Sixth Committee and at United Nations codification conferences. As the champion of the interests of land-locked countries, Mr. Tabibi had contributed notably to the acceptance of those countries' point of view in the international bodies concerned with the law of the sea.

10. Mr. ELIAS seconded the nomination and associated himself with the tribute paid to the outgoing Chairman.

11. Mr. CASTAÑEDA, speaking also on behalf of Mr. Martínez Moreno and Mr. Sette Câmara, and Mr. HAMBRO supported the nomination of Mr. Tabibi and also congratulated the outgoing Chairman on the manner in which he had represented the Commission at the General Assembly's twenty-ninth session.

12. Mr. EL-ERIAN wholeheartedly associated himself with those sentiments. He thanked the outgoing Chairman for his reference to the recent Vienna Conference and paid his own tribute to Mr. Sette Câmara for his outstanding leadership as its President, to the Legal Counsel and to the staff of the Secretariat who had contributed to the success of the work.

13. He welcomed the nomination of Mr. Tabibi, whose long and sincere devotion to the International Law Commission eminently fitted him for the office of Chairman.

14. Mr. USHAKOV supported the nomination of Mr. Tabibi and associated himself with the tributes to the outgoing Chairman.

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

15. The CHAIRMAN thanked the Commission for the honour it had done him in electing him Chairman—an honour which he took as a tribute to the devotion to international law and international co-operation shown by the Asian-African region to which he belonged. He would do his utmost to discharge his duties in accordance with the traditions of the Commission and to follow in the footsteps of his distinguished predecessors.

16. The adoption by the 1975 Vienna Conference of the Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character constituted a further success for the International Law Commission. The preparation of the draft articles for that Convention had been a distinguished contribution by the Commission to the codification and progressive development of international law

and to the working of international organizations. In his own name and on behalf of the Commission he congratulated Mr. El-Erian for his outstanding work as Special Rapporteur for the topic in the Commission, and as Expert Consultant at the Vienna Conference. He also congratulated Mr. Sette Câmara for the distinguished services he had rendered as President of that Conference.

17. He associated himself with the tributes paid to the outgoing Chairman for the able manner in which he had conducted the Commission's deliberations at its previous session and for the tact and wisdom with which he had represented the Commission at the General Assembly.

18. He then called for nominations for the office of first Vice-Chairman.

19. Mr. USHAKOV nominated Mr. Bedjaoui.

20. Mr. AGO, Mr. YASSEEN, Mr. RAMANGASOAVINA, Mr. REUTER, Mr. EL-ERIAN, Mr. ELIAS, Mr. MARTÍNEZ MORENO, speaking also on behalf of Mr. Castañeda and Mr. Sette Câmara, and Mr. ŠAHOVIĆ seconded the nomination.

Mr. Bedjaoui was unanimously elected first Vice-Chairman.

21. Mr. BEDJAOUI thanked the Commission for electing him.

22. The CHAIRMAN called for nominations for the office of second Vice-Chairman.

23. Mr. USTOR nominated Mr. Šahović.

Mr. Šahović was elected second Vice-Chairman by acclamation.

24. Mr. ŠAHOVIĆ thanked the members of the Commission for electing him.

25. The CHAIRMAN called for nominations for the office of Chairman of the Drafting Committee.

26. Mr. AGO nominated Mr. Quentin-Baxter.

Mr. Quentin-Baxter was elected Chairman of the Drafting Committee by acclamation.

27. Mr. QUENTIN-BAXTER thanked the members of the Commission for electing him.

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

29. Mr. YASSEEN nominated Mr. Martínez Moreno.

Mr. Martínez Moreno was elected Rapporteur by acclamation.

30. Mr. MARTÍNEZ MORENO thanked the members of the Commission for electing him.

Adoption of the agenda

The provisional agenda (A/CN.4/284) was adopted unanimously.

Organization of Work

31. Mr. KEARNEY congratulated the Chairman and officers on their election and associated himself with the tributes paid to the outgoing Chairman.

32. Announcing his intention to propose the establishment of a planning committee, he suggested that the document he had submitted on the subject might be

given consideration at an early stage, so that the planning committee, if the Commission decided to establish it, should be able to function during the present session.

The text of the document read:

"1. The Planning Committee of the International Law Commission will consist of five members. The Chairman of the Committee will be the First Vice-Chairman of the Commission. The membership will reflect the composition of the Commission.

"2. The tasks of the Committee will include:

"(a) development, on a continuing basis, of a long range program of work;

"(b) review of the working methods of the Commission and development of proposals for any appropriate changes in working methods, either in general or for particular items on the Commission's agenda;

"(c) examination of the working conditions of the Commission, including the requirements of the Secretariat in supporting the work of the Commission, and formulation of suggestions for any needed improvements.

"3. The representative of the Secretary General or his designee will be invited to attend all meetings of the Committee.

"4. The Committee will submit a report of its decisions and proposals two weeks prior to the close of each session for consideration by the Commission."

33. Mr. USHAKOV suggested that Mr. Kearney's proposal should be considered under item 7 of the agenda: Organization of future work.

34. Mr. BEDJAOUÏ welcomed Mr. Kearney's proposal that a committee should be set up to plan the Commission's long-term programme of work and to review its working methods. He thought, however, that, as Mr. Ushakov had suggested, the proposal should be dealt with later in the session under item 7 of the agenda, in order not to upset the order of the Commission's work. In order to hasten consideration of the proposal without delaying the Commission's work, he suggested that it should first be considered by the Bureau, or by the enlarged Bureau, and that, when a consensus had been reached, the Commission should be invited to take a decision.

35. The CHAIRMAN said that the enlarged Bureau would examine Mr. Kearney's proposal and report back to the Commission.

The meeting rose at 5.5 p.m.

1303rd MEETING

Tuesday, 6 May 1975, at 11.55 a.m.

Chairman: Mr. Abdul Hakim TABIBI

Members present: Mr. Ago, Mr. Bedjaoui, Mr. Bilge, Mr. El-Erian, Mr. Elias, Mr. Kearney, Mr. Martínez Moreno, Mr. Quentin-Baxter, Mr. Ramangasoavina, Mr. Reuter, Mr. Šahović, Mr. Sette Câmara, Mr. Tammes, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Mr. Yasseen.

State responsibility

(A/CN.4/264 and Add.1;¹ A/9610/Rev.1²)

[Item 1 of the agenda]

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR ARTICLE 10

1. The CHAIRMAN invited the Special Rapporteur to introduce article 10 of his draft, which read:

Article 10³

Conduct of organs acting outside their competence or contrary to the provisions concerning their activity

1. The conduct of an organ of the State or of an entity empowered to exercise elements of the governmental authority which, while acting in its official capacity, exceeds its competence according to internal law or contravenes the rules of that law concerning its activity shall nevertheless be considered as an act of the State under international law.

2. However, such conduct shall not be considered as an act of the State if, by its very nature, it was wholly foreign to the specific functions of the organ or if, even from other aspects, the organ's lack of competence was manifest.

2. Mr. AGO (Special Rapporteur) said that in considering article 10 of the draft articles on State responsibility, the Commission would be continuing its work on the problem of the attribution to the State of an act which could be considered as internationally wrongful and, hence, as generating international responsibility. In draft articles 5 to 9, adopted at its twenty-fifth and twenty-sixth sessions (A/9610/Rev.1, chapter III, section B) the Commission had covered the different classes of conduct which must be recognized as constituting an "act of the State", and had thus stated the different cases in which the subjective condition for the existence of an internationally wrongful act must be considered to be fulfilled.

3. In article 5, it had defined the basic category of acts of the State by affirming the principle that the "conduct of any State organ having that status under the internal law of that State shall be considered as an act of the State concerned under international law, provided that organ was acting in that capacity in the case in question". Having established that principle, the Commission had added further particulars to it in article 6, by affirming that "The conduct of an organ of the State shall be considered as an act of that State under international law, whether that organ belongs to the constituent, legislative, executive, judicial or other power, whether its functions are of an international or an internal character and whether it holds a superior or a subordinate position in the organization of the State". That was a very important provision, for in the practice of States and in the arguments of foreign ministries there was often a traditional tendency to try to relieve the State of its responsibility whenever the organ which had acted was a subordinate organ. The Commission had taken a very clear position on that issue by affirming that, even if the organ which had acted in a certain way was a

¹ *Yearbook* . . . 1972, vol. II, pp. 71-160.

² *Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 10* (see *Yearbook* . . . 1974, vol. II, Part One, pp. 157-331).

³ Text as revised by the Special Rapporteur.