

GENERAL
ASSEMBLYASSEMBLEE
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22 May 1947

ORIGINAL: ENGLISH

COMMITTEE ON THE PROGRESSIVE DEVELOPMENT OF
INTERNATIONAL LAW AND ITS CODIFICATION

SUMMARY RECORD OF THE FIFTH MEETING

Held at Lake Success, New York, on Monday 19 May 1947, at 3:00 p.m.

Present:

Chairman: Sir Dalip Singh	(India)
Dr. Enrique Ferrer Vileya	(Argentina)
Dr. W. A. Wynes	(Australia)
Mr. Gilberto Amado	(Brazil)
Dr. Shuhsi Hsu	(China)
Dr. Antonio Rocha	(Colombia)
Mr. Osman Ebeid	(Egypt)
Prof. Henri Donnedieu de Vabres	(France)
Dr. J. G. de Beus	(Netherlands)
Dr. Alexander Bramson	(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)

1. Summary of Records of Previous Meetings.

The CHAIRMAN opened the meeting and with reference to the summary record of the second meeting of 13 May asked the Secretariat to add to the last but one paragraph on page 8, dealing with the question of an International Criminal Court, the words "leaving open the question whether under the terms of reference this matter could be taken up at all", observing that this point was raised by several representatives during the discussions.

Dr. KERNO (Assistant Secretary-General) observed that the representative of Yugoslavia at that meeting mentioned that members of the Committee would want instructions from their governments on this matter of an International Criminal Court, and had asked

/Prof. DONNEDIEU

Prof. DONNEDIEU DE VABRES (France) to submit a written proposal. As the latter had complied with this request (document A/AC.10/21, with correction 1), and as his memorandum was now in the hands of the Committee members, they would be able to ask for those instructions.

Prof. BARTOS (Yugoslavia) observed that he had already telegraphed the contents of the French proposal to his government and asked for instructions.

Mr. AMADO (Brazil) regretted that he had not understood that the members of the Committee were expected to ask for publication of any speeches. As the speech he made at the fourth meeting gave the opinion of his government, he asked that it still be published. Mr. AMADO emphasized once more the five points he made in his speech.

Dr. HSU (China) asked that his statement made at the third meeting be likewise published.

Dr. LIANG (Secretary) pointed out that the Committee had agreed the summary records should be as complete as possible and that separate speeches might be published as documents at the request of the speaker or any other member of the Committee. This procedure had been followed. As the Secretariat could not assume the responsibility for the selection of speeches to be so published, he therefore once more requested the members of the Committee who wanted their speeches to be published as documents to make the request in Committee and to hand in two copies of the same.

Dr. de BEUS (Netherlands) asked for a precision in the summary records of the second meeting on page 8 and wanted the second paragraph to be replaced by the following words: "and also wished that the question as to whether the matter of the International Criminal Court could be discussed under the terms of reference would be taken up under Item 4".

The CHAIRMAN observed that it had not been the practice at United Nations meetings formally to approve the minutes of Committee meetings, but the representatives and delegates might send in corrections in writing. Of course, if the Secretariat did not agree with any correction submitted,

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this would have to be discussed by the Committee.

2. Discussion of the Memorandum Prepared by the Rapporteur at the Request of the Committee on the Methods for Encouraging the Progressive Development of International Law and its Eventual Codification

The CHAIRMAN opened the discussion on Prof. BRIERLY's report. With a view to bringing order into the discussions and avoiding repetitions, the CHAIRMAN suggested that it would be necessary to formulate precise questions to be decided and he read out a list of such questions under each of which reference was made to the points raised by the various representatives. These questions were as follows: (1) Should there be formed a Committee or Committees; should it (they) be permanent or temporary, and if temporary for how long a period should they be set up. (2) Should a distinction be made between the development of international law and codification. (3) If this distinction were made, would two Committees be necessary, each to deal with one part of the task. (4) Should a distinction be made between public international law, private international law and penal international law. This question was subdivided under various headings. (5) How many Committees would be needed and if more than one, how should priority be provided for. (6) What should be the method of their appointment and how many members should each of them have. (7) What would be the procedure for each Committee. The procedure might vary for each of them in connection with the special task assigned to the various Committees. The CHAIRMAN pointed out that in his opinion the answers to the questions should in the first instance be only tentative as the decision on any question may influence an earlier decision taken in respect to other questions.

Prof. KORETSKY (Union of Soviet Socialist Republics) whilst appreciative of the CHAIRMAN's effort to make the discussions more realistic wanted to make some reservations as to his own statements which the CHAIRMAN referred to. He had not meant to make his points quite so strongly as the CHAIRMAN had apparently taken them, e.g., as

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to the continuance or not of this Committee after the next session of the General Assembly. Prof. KORETSKY had merely wanted to point out that Dr. KERNO's opinion that this Committee would finish its task by the submission of its report to the next session of the General Assembly, was not the only conclusion possible under the text of the General Assembly resolution. Likewise Prof. KORETSKY was somewhat critical of Prof. BRIERLY's point that the members of any future Committee should not be appointed by governments. It seemed useful to him to decide first on the following two basic questions: (a) The method by which the development of international law and codification should be encouraged, i.e., by a general convention or by restatements and (b) the mechanism by which this should be done, i.e., the organization of any Committee or Committees, their appointment, etc. If these two questions were decided, the decisions on the other points would follow quite easily.

The CHAIRMAN promised to make changes in his references to the observations made by the representatives of the Union of Soviet Socialist Republics and also of the United Kingdom at their request.

Dr. HSU (China) requested that the CHAIRMAN'S plan should be made into a document* in order to facilitate discussions.

Prof. DONNEDIEU DE VABRES (France) observed that the Committee should now take up discussion of the question whether there should be one or more Committees whilst the question of their organization, task, appointment, etc., could be taken up later. As to the question whether there should be a Commission for criminal international law which - as the CHAIRMAN gave to understand, could also deal with the matter of an International Criminal Court, if this could be brought under the study of methods, - Prof. DONNEDIEU DE VABRES emphasized that the Committee's terms of reference were restricted to the study of methods only with regard to public and private international law, but with regard to criminal international law, the Committee was directed to proceed to codification

* Document A/AC.10/27

itself as is shown by the item on the principles of the Nuremberg Charter. Prof. DONNEDIEU DE VABRES asked the Committee to proceed now with the question as to whether a Committee of Experts would have to be set up.

Prof. KORETSKY (Union of Soviet Socialist Republics) would prefer that the first point of discussion should be on the methods to be followed for the development of international law and codification. The Argentine representative had stressed the difference between the two parts of the Committee's task. Prof. KORETSKY was of the opinion that it was necessary to decide whether a different approach should be made in respect to each of them.

Dr. LIANG (Secretary) appreciated the point made by the representative for the Union of Soviet Socialist Republics as to the order of the discussions and observed it would be useful if the Committee now started discussions on paragraph 11 of Prof. BRIERLY's report without prejudice to any decision which might be taken subsequently on the organization of the machinery for the development of international law and codification. As to the question whether the method of a general convention or of restatements should be selected, Dr. LIANG pointed out that for development of international law, that is to say, for laying down rules in fields where there is no existing international law, the convention method is the only possible one. As to codification, however, two methods are possible of which each have their advantages and disadvantages as pointed out in the memoranda submitted by the representative for the United Kingdom and for the Secretariat. For the development of international law, however, the distinction between the method of international conventions and of restatements is not of particular value.

Dr. VIEYRA (Argentina) observed that the Dumbarton Oaks proposals only mentioned the development of international law, codification having been added at San Francisco. He therefore considered the task in this field to be twofold and would like the Committee to study the two parts of the problem.

Prof. DONNEDIEU DE VABRES (France) expressed his agreement with the view brought forward by the representative of the Union of Soviet Socialist Republics and confirmed by Dr. LIANG, that the Committee should first pronounce itself on the methods to be followed as based on a distinction between development and codification of international law. Personally Prof. DONNEDIEU DE VABRES had great doubts as to the usefulness of such a distinction. In his opinion it would be perfectly right to make it in respect of municipal law where it might be necessary to state exactly what are the elements of existing law. However, international law is always developing and it is formed not only by rules but also by judicial decisions and by the opinions of jurists as expressed in their writings. In international law, therefore, it is conceivable to make a statement of the law as one would desire it to be, taking into account certain social and other demands, but development and codification cannot be separated as they are really one and one result should be achieved.

Prof. BARTOS (Yugoslavia) observed that the discussions seemed to be drifting back into a general discussion on organization of the Committee's work. He pointed out that the CHAIRMAN had suggested a plan for the discussions and that the representative for the Union of Soviet Socialist Republics had made an almost formal proposal of the order of the items. Prof. BARTOS would like the Committee to discuss first, what was its task, secondly, how this task could be performed, and thirdly, what organ or organs should be created for this purpose. Prof. BARTOS agreed with Prof. KORETSKY as to the impossibility of making a clear separation between development of international law and codification as they overlap, certainly as far as methods are concerned. In France, for instance, the codes had often gone beyond giving a statement of existing laws and customs, and had laid down new rules. Prof. BARTOS observed that the CHAIRMAN in his plan suggested topics for discussion, but not the order of them and he preferred the order proposed by Prof. KORETSKY.

Prof. JESSUP (United States of America) said that the Committee had the difficulty of making a choice from a rich variety of suggestions. He supported Prof. BARTOS where he recommended accepting Prof. KORETSKY's proposal for discussion as clarified by Dr. LIANG, and suggested that the Committee might take up for discussion Items 10 to 13 of Prof. BRIERLY's report.

Mr. SJOBOG (Sweden) referring to his observations at the third meeting to the effect that codification should not be a mere restatement of existing law but also lay down new rules, asked the Committee whether it accepted this point of view. He agreed with the proposal made by Prof. JESSUP to commence the discussion on paragraph 10 of Prof. BRIERLY's report.

At the request of the CHAIRMAN for formulation of a specific question for discussion Prof. DONNEDIEU DE VABRES proposed the question as to whether a distinction should be made between the development of international law and its codification.

Dr. de BEUS (Netherlands) supported the proposal of the representative from France with the amendment that at the same time the question be discussed as to whether or not the two problems should be separated, which point was stressed by the representative for Yugoslavia.

Dr. VIEYRA (Argentina) agreed to the proposal of Prof. DONNEDIEU DE VABRES as amended by Dr. de BEUS. He wished, however, to emphasize that codification is a stage in the development of international law and that consequently these stages should be separated, but otherwise no distinction should be made.

Prof. BARTOS (Yugoslavia) emphasized that in his opinion a distinction between development and codification can and must be made, but that for practical reasons it was impossible to make a separation between the two. Science in international law had great influence, but it had not a creative force. In practice, however, it would hardly be possible to draw a clear demarcation line between rules of law and doctrine.

Dr. de BEUS (Netherlands) pointed out that he was in entire agreement with Prof. BARTOS that a separation should not be made. In the amendment he proposed to the question as formulated by Prof. DONNEDIEU DE VABRES he merely wanted the Committee to discuss and decide on this issue.

Mr. AMADO (Brazil) observed that whether the Committee should decide to separate the development of international law from codification there would always be a connection between the two. Any Committee dealing with codification would encounter subjects where there were differences of opinion, gaps in the existing rules, etc., which would have to be settled and filled. This would be development of international law and not codification although it would follow as a natural result from the task of codification. Mr. AMADO agreed with Dr. VIEYRA (Argentina) that codification is a stage in the development of international law and that a clear separation cannot be drawn between the two. In his opinion there should be only one Committee for the two parts of the task envisaged in Article 13 (a) of the Charter.

Dr. HSU (China) asked what exactly the Committee members understood by separation between development of international law and codification. The former term is much wider than the latter as was clearly shown by the memorandum submitted by the Secretariat. Some of the methods elaborated in that memorandum for the development of international law such as the development of customary international law and the development by judicial process could not be connected at all with the task of codification. Consequently in the discussions as to whether one body should deal with both parts of the task envisaged in Article 13 (a) of the Charter, only international legislation as one of the forms of development of international law could be considered but not the other forms. Dr. HSU was in favour of entrusting international legislation and codification to one and the same body.

The CHAIRMAN stated that the discussions were not yet exhausted and he proposed at the next meeting to open the discussion on the question

as to whether a distinction should be drawn and a separation made between methods for the development of international law and codification as proposed by Prof. DONNEDIEU DE VABRES and amended by Dr. de BEUS.

Dr. LIANG (Secretary) hoped that the Committee would bear in mind that it would be unnecessary to decide upon an academic distinction between development and codification. If a distinction is to be decided upon, the distinction between the task of development of international law and the task of its codification should be in terms of methods.

The meeting was adjourned at 5:45 p.m.
