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COMMITTEE ON THE PROGRESSIVE DEVELOPMENT OF  
INTERNATIONAL LAW AND ITS CODIFICATION

## SUMMARY RECORD OF THE TWENTY-SEVENTH MEETING

Held at Lake Success, New York, on Friday, 13 June 1947, at 11:00 a.m.

## Present:

Chairman:	Sir Dalip Singh	(India)
	Dr. Enrique Ferrer Vileyra	(Argentina)
	Mr. A.H. Body	(Australia)
	Mr. R.S. Guerreiro	(Brazil)
	Dr. Shuhsi Hsu	(China)
	Prof. Dr. Jesus M. Yepes	(Colombia)
	Mr. Osman Ebeid	(Egypt)
	Prof. Henri Donnedieu de Vabres	(France)
	Dr. J.G. de Beus	(Netherlands)
	Prof. Aleksander Rudzinski	(Poland)
	Mr. Erik Sjöberg	(Sweden)
	Prof. J.L. Brierly	(United Kingdom)
	Prof. P.C. Jessup	(United States of America)
	Dr. Perez Perozo	(Venezuela)
	Prof. Milan Bartos	(Yugoslavia)

The CHAIRMAN opened the meeting and continued the discussions on the RAPporteur's report (A/AC.10/40) paragraph 12 (c).

Prof. DONNEDIEU DE VABRES (France) considered that the Governments should also be requested to give their opinion on the project, submitted to them. In the procedure as now envisaged the Governments would only be able to express their opinion at the end of the procedure (paragraph 13 (e)). Prof. DONNEDIEU DE VABRES pointed out that the Committee, in the paragraphs under discussion, was concerned not only with the development of international law but with codification, so a different procedure should be followed. In his opinion it would be appropriate to ask for the opinion of the Governments at the beginning of the procedure in order to avoid that the Governments impede the work of

/codification

codification by expressing their objections to the drafts at the end of the procedure. Prof. DONNEDIEU DE VABRES formally moved to insert in sub-paragraph (c) the following words "and for their opinion on the subject, if they think fit".

Prof. YEPES (Colombia) expressed his agreement with Prof. DONNEDIEU DE VABRES on this point.

Prof. JESSUP (United States of America) considered that the work of codification was primarily legal and scientific, and not political. He would still prefer the procedure outlined in the Chinese - United States proposal (document A/AC.10/33) and proposed that in paragraph 13 (e) the sentence concerning a request to the Governments for their comments be eliminated. Prof. JESSUP declared that he did not disagree in substance with Prof. DONNEDIEU DE VABRES, but he would prefer to leave the text of paragraph 12 (c) unchanged and to make the deletion suggested in paragraph 13 (e).

Dr. DE BEUS (Netherlands) expressed his support of the French representative's point of view, that is to say, he would not object to the deletion in 13 (e) suggested by Prof. JESSUP, but if the Governments were to be asked for their opinion he would have preferred this to take place at an earlier stage in the procedure.

Mr. SJOBOG (Sweden) observed that the scientific work of codification does not consist only in stating existing law but also in filling gaps and making corrections. Therefore, the comments from Governments were undoubtedly necessary. In his opinion it would be useful to consult the Governments before any draft conventions were prepared, but it would be essential that the Governments should be heard after the ILC would have completed its drafts.

Prof. DONNEDIEU DE VABRES (France) observed that he agreed to the deletion of the final sentence of paragraph 13 (e), but he wanted its provision to be inserted in paragraph 12 (c). He understood that Mr. SJOBOG's objection was based on the fundamental point of view which

he held with regard to codification, that is to say that it did not differ from the development of international law to such extent as to justify a different procedure. However, the dual method had been decided on by the Committee and, furthermore as concerns the filling in of gaps and the making of corrections in the existing law, the consultation of the Governments in the beginning of the procedure would certainly be more useful than at the end.

Prof. BARTOS (Yugoslavia) pointed out that the Committee seemed to be discussing two separate questions: of course the documentation envisaged in paragraph 12 (c) would have to be collected at an early stage of the ILC's work, but it was a different matter whether the Governments should pronounce themselves on the projects. Prof. BARTOS considered that, of course, the work of codification was scientific, but in his opinion the Governments would want to consult also the scientists outside the ILC. He expressed his agreement with the point of view taken by Mr. SJOBERG and proposed that the addition suggested by Prof. DONNEDIEU DE VABRES be made in paragraph 12 (c) but that the last sentence of 13 (e) be not deleted.

Prof. RUDZINSKI (Poland) observed that the question really was to decide at what stage of the procedure the Governments should be requested for their comments. In his opinion this would, of course, be useful at the beginning. However, he considered it was essential that it be done at the end of the proceedings. He could not agree therefore, with the French proposal to have this request made only in the preparatory stage.

Prof. RUDZINSKI would prefer that the vote be not taken on a selection between the request for Government comments in paragraph 12 (c) or in paragraph 13 (e), but that votes be taken separately on the suggested addition to 12 (c) and on the deletion from 13 (e). Upon the RAPPORTEUR's suggestion that a vote be taken now on the proposed addition to paragraph 12 (c) and that the deletion from 13 (e) be only voted on when

/the discussion

the discussion had proceeded to this paragraph, Prof. JESSUP (United States of America) observed that in his opinion the intervention of the Governments in the scientific work of codification should not be stressed and if the addition to paragraph 12 (c) were accepted and the deletion from 13 (e) rejected, the result would be that their intervention would be increased. In his opinion the Governments could always give their opinion and nothing prohibited them from doing so, but it was unnecessary to ask them for comments at two different stages of the procedure.

Prof. DONNEDIEU DE VABRES (France) suggested that the two points be linked as far as the voting was concerned. His suggestion, i.e. an addition to 12 (c) and a deletion from 13 (e), met Prof. JESSUP's objection.

Dr. DE BEUS (Netherlands) agreed with the suggestion made by the representative from France and, subject to the latter's approval, formally moved that in paragraph 12 (c) after the word "data" be inserted the word "and for their opinion on the subject" and to delete the last sentence from paragraph 13 (e). Prof. DONNEDIEU DE VABRES and Dr. HSU (China) supported this motion.

Prof. RUDZINSKI (Poland) invoked Rule 74 of the Rules of Procedure and formally requested that the two parts of the French proposal be voted on separately.

The CHAIRMAN observed that in his opinion Rule 74 did not apply as the mover of the proposal considered the parts inseparable.

Prof. BARTOS (Yugoslavia) on a point of order observed that the French text of Rule 74 read: "La division est de droit si elle est demandée." It is true that later on the Security Council had changed this Rule and provided that the mover must agree with the request for voting in parts, but this Committee was bound by the General Assembly Rule.

Dr. LIANG (Secretary) observed that what Prof. BARTOS stated was

/entirely right

entirely right for the French text of Article 74, however the English text reads: "Parts of a proposal may be voted on separately if a representative requests that the proposal be divided". This discrepancy between the French and English text of Rule 74 had already come up several times. It had not been settled yet in view of the difficulty that both texts were equally authoritative.

Prof. BARTOS (Yugoslavia) wanted it to be recorded that the Secretary stated that the French text had no authority.

Dr. VIEYRA (Argentina) observed that in his recollection the Sixth Committee had decided that any member could ask for a vote in parts.

Prof. JESSUP (United States of America) asked the representative for France whether the French text of Rule 74 meant that voting in parts was compulsory whenever a representative made a request to that effect, also if the proposal could not really be divided in two parts. Could a representative insist that every word be voted on separately?

The CHAIRMAN also requested Prof. DONNEDIEU DE VABRES to give his opinion on the exact meaning of the French text. He would have preferred to proceed to a vote on the whole of the French proposal as he considered the parts inseparable and he was now before the difficulty that he would have to apply both the English and French text of Rule 74 in conjunction with one another.

Prof. DONNEDIEU DE VABRES (France) said that the French text made the voting in parts compulsory.

Dr. HSU (China) suggested the following solution of the difficulty: that it be stated in advance that a vote in favour of the addition to paragraph 12 (c) bound the members recording such a vote to vote also in favour of the deletion from paragraph 13 (e).

Dr. DE BEUS (Netherlands) proposed another solution to the effect that first the deletion from paragraph 13 (e) be voted on and then the addition to paragraph 12 (c).

Prof. BARTOS (Yugoslavia), in respect of the proposal made by Dr. HSU, reserved the right to say what interpretation should be given to the vote of the Yugoslav delegation. It was not permissible for the Committee to give an interpretation to the vote of any representative.

On Mr. SJOBERG's proposing not to vote on the deletion from paragraph 13 (e) before the discussion had proceeded to that sub-paragraph, Dr. DE BEUS (Netherlands) observed that he moved his proposal on a point of order.

The CHAIRMAN rules that there was nothing unconstitutional in voting on the deletion from paragraph 13 (e) first and asked whether any member wanted to appeal from this ruling.

Prof. BARTOS (Yugoslavia) on a point of order considered that paragraph 13 (e) should be opened for discussion first.

The CHAIRMAN thereupon opened for discussion the proposal that the last sentence of paragraph 13 (e) be deleted. After a further discussion on the procedure to be followed with regard to this point, in which Prof. RUDZINSKI, the CHAIRMAN and Prof. DONNEDIEU DE VABRES took part, the CHAIRMAN stated that there was general agreement that the deletion from paragraph 13 (e) be voted on first.

Prof. BARTOS (Yugoslavia) observing that he had asked for the right to discuss this proposal before the vote was proceeded to, considered that the conventions prepared for the ILC, even if they were not signed by all the Governments, would always have a great authority. Therefore, all the Governments should have the right and the opportunity to give their opinions on the draft. Probably some Governments would make comments which others could not accept: there always was much difference in conception of customary international law. Prof. BARTOS observed that the Statute of the International Court of Justice provided in Article 38 that the Court should apply the "international custom as evidence of a general practice accepted as law" and "general principles of law recognized by

/civilized nations".

civilized nations". If a convention drawn up by the ILC were not accepted universally, the Governments which signed it, even if they constituted a majority, would not have the right to say that these drafts were a universally accepted law. Prof. BARTOS pointed out that the work of codification is not purely scientific but also political: all the Governments had not only the right but also the duty to find the most exact expression of existing international law. If they were restricted to giving their opinion on any projects in the beginning of the procedure, it would mean that they could give their comments on abstract subjects only, not on their concrete formulation. This point was very important particularly for those Governments whose conception of customary international law often diverged from that of others. In this connection Prof. BARTOS observed that there were even differences of conception between the French and English points of view.

Prof. BARTOS feared that if the Governments were not consulted after the drafts had been prepared, the draft would risk being rejected by the General Assembly on account of objections to certain provisions which might perhaps not even be essential. This could be avoided if the Governments were consulted after the drafts had been prepared and before they were submitted to the General Assembly.

Prof. BARTOS was therefore opposed to the deletion of the last sentence of paragraphs 13 (e) as in his opinion this would result in codification becoming a monopoly of the fifteen scientists of the ILC and as it was a basic principle of the Charter of the United Nations that this organization was not a super-State: all the Governments should at any time be entitled to give their opinion on any law which would govern the relationship between them.

Prof. DONNEDIEU DE VAREES (France) observed that Prof. BARTOS had reopened the whole problem. He had merely repeated all the arguments which he had brought forward when the point was discussed whether different

methods would be followed for the development of international law and for codification. If this difference was not expressed in the texts under discussion, in his opinion, there was no need to make any distinction. Prof. BARTOS' arguments would be to the point if there was really question of international legislation being envisaged, however such was not the case. The work of the ILC would always finish in a draft convention.

The CHAIRMAN put to the vote the motion that the last sentence of paragraph 13 (e) be deleted. The motion was lost with 6 votes in favour, 7 against and 2 abstentions.

Prof. DONNEDIEU DE VABRES (France) considered that it was not necessary to vote now on the proposed addition to paragraph 12 (c) as this was superfluous now that the deletion from paragraph 13 (e) had been rejected.

Prof. BARTOS moved that part of the French proposal as his own.

Dr. VIEYRA (Argentina) wanted the word "opinion" in the French proposal to be replaced by "comment" to which the Committee agreed.

The CHAIRMAN put to the vote the following addition to paragraph 12 (c): after "data", the words: "and for their comments on the subject". This addition was rejected by 6 votes in favour and 8 against.

The CHAIRMAN opened the discussion on paragraph 12 (d). The first sentence was accepted without discussion. With regard to the second sentence Prof. JESSUP (United States of America) referred to the discussion on the point at the previous meeting with regard to paragraph 12 (b) and proposed that it might be put to the vote at once.

Dr. HSU (China) observed that sub-paragraph (d) really dealt with a different matter.

The CHAIRMAN put to the vote the motion that the second sentence of sub-paragraph (d) be deleted which motion was carried by 8 votes in favour with 6 against and 1 abstention.

PROF. BARTOS (Yugoslavia) observed that he wished it to be recorded

/that he brought



that he brought forward his arguments against the ILC having Rapporteurs from outside at the previous meeting, which arguments also held with regard to Sub-Committee members.

The CHAIRMAN opened the discussion on paragraph 13 which was accepted up to sub-paragraph (b) (ii) without discussion, but for a drafting change in sub-paragraph (a) to the effect that "draft articles for multipartite conventions" was replaced by "draft articles of multipartite conventions".

With regard to sub-paragraph (b) (ii) (1) Prof. YEPES (Colombia) asked what was the meaning of the term "degree of unanimity" as in his opinion there was either unanimity or no unanimity.

Prof. BRIERLY (Rapporteur) suggested to use the words "measure of agreement" to which the Committee agreed.

Prof. BARTOS (Yugoslavia) observed that the practice of States being a political matter, it would be dangerous to leave it to the ILC to state whether and to what degree there was an agreement between the States as to their practice.

The CHAIRMAN observed that in his opinion the ILC would only state if there was agreement between the States or not. As there was no formal motion before the Committee, the CHAIRMAN proceeded to sub-paragraph (b) (iii) which was accepted without discussion.

With regard to sub-paragraph (c) Prof. BARTOS (Yugoslavia) wanted it to be recorded in the Report that the decision of the Committee with regard to the consultation of individual experts was only taken by a majority.

Prof. JESSUP (United States of America) observed that the Summary Record did not show that the minority had expressed a desire that the number of votes be recorded.

At the request of Prof. BARTOS, for a mention of the fact that this point was decided by a majority, the RAPPORTEUR proposed to add after "individual experts" the following sentence: "The consultation with individual experts was recommended by a majority".

The CHAIRMAN stated that paragraph 13 (d) was accepted. With regard to paragraph 13 (e) Prof. DONNEDIEU DE VABRES (France) observed that the French translation of the final sentence was incomprehensible and needed correction. He also requested that the word "investigation" be avoided in the French translations and in general observed that the French translations were in need of correction.

Prof. BARTOS (Yugoslavia) supported the observations made by Prof. DONNEDIEU DE VABRES.

Dr. LIANG (Secretary) pointed out that all the translations had been made under pressure of time and that they would all be subjected to a revision.

The CHAIRMAN stated that sub-paragraph (e) was accepted. Paragraph 14 was accepted without discussion.

With regard to paragraph 15 (a) Prof. DONNEDIEU DE VABRES (France) asked what was the meaning of the words "autres actions".

Dr. LIANG (Secretary) observed that this was an incorrect translation from the English "further action" and suggested that the word "ultérieure" be used or that the word "autre" be omitted.

The CHAIRMAN stated that paragraph 15 (a) was accepted.

With regard to paragraph 15 (b) Mr. SJOBOG (Sweden) observed that he was opposed to this sub-paragraph. He also considered that it should be mentioned in the Report that this sub-paragraph was the result of a majority decision.

In view of drafting difficulties, the RAPPORTEUR suggested that a footnote be added to this effect. This was agreed to.

With regard to sub-paragraph (c) Prof. RUDZINSKI (Poland) observed that the footnote to this sub-paragraph did not refer only to that sub-paragraph but to the whole of paragraph 15.

Prof. BRIERLY (Rapporteur) agreed to placing the contents of the footnote in a second paragraph to paragraph 15.

/Prof. BARTOS

Prof. BARTOS (Yugoslavia) proposed to insert in the text of the footnote after the word "might" the words "in any of these cases" which was agreed to.

With regard to paragraph 16 Prof. DONNEDIEU DE VABRES observed that in the French translation the second sentence was incomprehensible and at the request of Prof. BARTOS the interpreter gave a translation of the sentence as worded in the English original.

Dr. LIANG (Secretary) stated that the French translation would be corrected.

The CHAIRMAN stated that paragraph 16 was accepted and paragraph 17 was also accepted without discussion.

With regard to paragraph 18 Prof. JESSUP (United States of America) observed that "of international law questions" in the last line should read "on international law questions" which was agreed to.

Prof. YEPES (Colombia) asked whether the Committee only recognized customary international law. If so, he wanted to make a reservation and he recalled the observations he had made at the previous meeting with regard to scientific international law.

The CHAIRMAN pointed out that paragraph 18 did not mean to say that there were no other sources of international law, but only that the evidence of customary international law was not easily available in contradistinction to the evidence of scientific international law which was always laid down in books.

Prof. YEPES (Colombia) desired that his observation be noted in the Report.

The CHAIRMAN stated that the RAPPORTEUR's Report subject to the changes made was accepted by the Committee.

Dr. LIANG (Secretary) referring to the discussion on Rule 74 of the Rules of Procedure quoted from the verbatim record of the thirtieth meeting of the Sixth Committee of the General Assembly of 6 December 1946. The

Sixth Committee had not taken a decision with regard to the question whether the French or the English text of this rule should be applied. With regard to the proposal in connection with which the discrepancy between the French and English texts had been raised, the Sixth Committee had decided that the voting in parts should be allowed, but had expressly stated that it was not to be taken as a precedent. At that meeting Dr. KERNO (Assistant Secretary-General) had intervened in the discussion and observed that when the Provisional Rules of Procedure were revised, the attention of the Committee entrusted with this task would be drawn to the necessity of Rule 74 being worded in such a way that there would be no discrepancy between the two authoritative texts.

Prof. BARTOS (Yugoslavia) requested that the Secretariat prepare the correct French translations of the Report before the departure of the representatives from New York.

Prof. YEPES (Colombia) observed that he wanted to make a reservation to the Report at the beginning of the next meeting.

The meeting adjourned at 1:10 p.m.

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