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Summary record of the 715th meeting

Topic:
Cooperation with other bodies

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lated to render the resumption of the application of the treaty impossible." The prohibition might be understood also to apply to acts performed in order to claim the nullity of a treaty or to denounce it, in other words to exercise rights deriving from the articles under which States could resort to those procedures.

90. Mr. ROSENNE, thanking the Drafting Committee for complying with his request, said that the new article constituted a useful addition to the law of treaties.

91. He noted that the title referred to suspension of the "application" of a treaty, whereas in other articles the word used was "operation"; the same word should be used throughout the draft.

92. Mr. LACHS said that the article was a useful one, but paragraph 1 ought also to stipulate that suspension would not affect the legality of any act done in conformity with the provisions of the treaty prior to its suspension; the article would then be consistent with article 28, paragraph 3 (c).

93. Mr. AGO agreed with Mr. Lachs and thought it would be advisable to add a clause similar to that in article 28, paragraph 3 (c), so as to ensure that the legality of acts done before the suspension of the treaty was not impaired.

94. With regard to the fears expressed by Mr. Yasseen concerning paragraph 2, it was clear that that provision applied only to suspension. The termination of a treaty lay outside the scope of article 29, and an act legitimately intended to terminate a treaty could not be regarded as an act prohibited under the terms of article 29, paragraph 2.

95. Mr. ROSENNE said that Mr. Lachs' point was a pertinent one, but he thought it was already covered by paragraph 1 (b).

96. Mr. YASSEEN said he wished to be sure that paragraph 2 could not prevent a State which suspended the application of a treaty from undertaking any act required for invoking or establishing its nullity; the word "acts" might be interpreted as acts in law or material acts. It might perhaps be better to be more specific and say "unlawful acts".

97. Sir Humphrey WALDOCK, Special Rapporteur, said that Mr. Yasseen's point could be covered in the commentary. It would be quite arbitrary to interpret the provision as meaning that the parties were precluded from exercising lawful rights in connexion with the treaty.

98. Mr. BARTOŠ said that the Drafting Committee had intended the provision to prevent parties from behaving as if they had been released from their legal obligations, and to make it clear that, even though they were exempted from applying the treaty during the period of suspension, they were not thereby released from their legal obligations.

99. Mr. LACHS, replying to Mr. Rosenne, said that paragraph 1 (b) only covered the legal relation between the parties, not acts performed in conformity with the provisions of the treaty.

100. Sir Humphrey WALDOCK, Special Rapporteur, said that Mr. Rosenne had correctly interpreted the meaning of paragraph 1 (b), but in order to prevent any misunderstanding the paragraph could be amplified so as to cover the point made by Mr. Lachs more explicitly. That could be left to the Drafting Committee.

101. The Chairman put article 29 to the vote, subject to the drafting changes indicated by the Special Rapporteur.

Article 29 was adopted by 19 votes to none.

The meeting rose at 12.25 p.m.

715th MEETING

Friday, 5 July 1963, at 10 a.m.

Chairman: Mr. Eduardo JIMÉNEZ de ARÉCHAGA

Co-operation with other bodies

[Item 7 of the agenda]

1. The CHAIRMAN invited the Commission to discuss item 7 of the agenda: Co-operation with other bodies.

2. Mr. LIANG, Secretary to the Commission, said that no meeting of the Asian-African Legal Consultative Committee or of the Inter-American Council of Jurists had taken place since the Commission's last session, so that there had been no occasion for the Chairman to appoint an observer.

3. The Asian-African Legal Consultative Committee had informed the Secretariat that its next session, which was to be of two weeks' duration, would be held at Cairo starting on 15 February 1964, and that it hoped an observer from the Commission would be able to attend.

4. Members were aware that Mr. Caicedo Castilla had attended some of the Commission's meetings as an observer for the Inter-American Juridical Committee.

5. The Inter-American Council of Jurists had not yet communicated the date of its next session, which was to be held at El Salvador.

6. The CHAIRMAN invited the observer for the Asian-African Legal Consultative Committee to make a statement.

7. Mr. TAMBIAH, observer for the Asian-African Legal Consultative Committee, said he regretted that he had been unable to be present at the beginning of the session; the Committee hoped that in future years its observer would be able to attend for a longer period.

8. Mr. PAL had said at the opening of the session (673rd meeting, para. 2) that international law must be largely the creation, not of professors, but of statesmen capable of judging where focal points of tension lay and where adjustments must be made to take account

of far-reaching political, economic and social developments. Although Grotius, Vattel and others had founded modern international law on the *jus naturale* and had enunciated principles to be upheld by all nations, later lawyers, such as Westlake, had claimed that it was the exclusive preserve of peoples of European descent. With the emergence of many new States throughout the world and with international law rapidly developing under United Nations auspices as a just and equitable system of universal application, that view was no longer tenable. The Commission, as a body of experts, was making a vital contribution to the maintenance of peace.

9. The Asian-African Legal Consultative Committee, whose Member States accounted for almost three-fifths of the world's population, had been set up not only to discuss problems of public law, but also to examine the kind of topics considered by the Commission, with which it was anxious to co-operate fully. It hoped that the Commission would continue to be represented at its sessions by an observer.

10. He intended to suggest that some of the important subjects being dealt with by the Commission should be taken up by the Committee, which would then be able to communicate its views and thus help the Commission to frame rules that would be acceptable to Asian and African countries.

11. The Committee had been considering a number of topics of interest to the Commission, including restrictions on the immunity of States in respect of commercial transactions entered into by, or on behalf of, States or state trading corporations; the principles of extradition; the status and treatment of aliens; free legal aid; the legality of nuclear tests; state responsibility for the maltreatment of aliens; and dual nationality. Although the agenda for the Committee's forthcoming session had not been finally agreed, it was likely to include such items as the United Nations Charter from the point of view of Asian and African States; the rights of refugees; the law of the territorial sea; the law of treaties; and state succession.

12. Mr. PAL proposed that the Commission should be represented by its Chairman at the Committee's next session.

13. Mr. TSURUOKA said he gladly seconded Mr. Pal's proposal. It was particularly appropriate that the Commission should appoint its Chairman, Mr. Jiménez de Aréchaga, to represent it at the Cairo session of the Asian-African Legal Consultative Committee. The Committee would certainly be glad to meet Mr. Jiménez de Aréchaga, not only because he was an eminent professor and jurist of international repute, but also because he came from a region remote from Asia and Africa and would therefore be able to offer fresh suggestions.

14. The CHAIRMAN suggested that the Commission should allow some flexibility in the matter and, as before, authorize the member selected to represent it as an observer to appoint another member or the Secretary to take his place if he were unable to perform that duty.

15. Mr. BRIGGS said he supported Mr. Pal's proposal and agreed with the Chairman that a substitute should be appointed if necessary. It was certainly desirable that the Commission should be represented at sessions of other bodies working in co-operation with it.

16. Mr. LACHS said that experience had shown the advantages of keeping in touch with the work being carried out by other bodies, particularly those of a regional character, when they were studying the same topics as the Commission. The importance of developments in Asia and Africa and their contribution to international law could not be over-estimated, and every effort should be made to strengthen existing links with the Asian-African Legal Consultative Committee.

17. He supported Mr. Pal's proposal, it being, of course, understood that if the Chairman were unable to go to Cairo, he would be free to appoint a substitute.

18. Mr. BARTOŠ supported Mr. Pal's proposal and associated himself with the remarks of previous speakers.

19. He stressed the importance of the codification and study of international law for the Asian and African countries, where certain problems of international law had a different aspect from that which they presented in countries whose history had taken a different course.

20. In the circumstances, it was certainly necessary to establish co-operation between the countries which claimed to be better qualified to codify international law and those which were struggling to free it from a certain routine and formalism and aspiring to a freedom and equality based on justice.

21. He had the highest esteem for those great civilizations of the East which had contributed so much to the development of other civilizations. The Commission's duty was to make contact with the jurists of Asia and Africa and with the trends that were shaping international law in those regions. No one seemed better qualified to make that contact on the Commission's behalf than Mr. Jiménez de Aréchaga. If he accepted the mission which the Commission was asking him to undertake, he might perhaps have to sacrifice other duties and some of his work projects, but the mission would be a real contribution to the achievement of the Commission's ideal and to the accomplishment of its task.

22. Needless to say, the Commission would authorize its Chairman to appoint another member to replace him if necessary, but he (Mr. Bartoš) hoped that that necessity would not arise, and that the Commission would be represented by its Chairman at the important Cairo meeting.

23. Mr. TUNKIN said that he too supported Mr. Pal's proposal and hoped that the Chairman would be able to attend the Committee's session at Cairo; if not, he should of course be authorized to appoint someone to replace him.

24. The importance of keeping in close touch with the Asian-African Legal Consultative Committee was

generally accepted, because of the need to keep abreast of the opinions of new States on problems of international law. The Committee should be informed of the work already done by the Commission and of its plans for the future.

25. He wished to take the opportunity of renewing an appeal he had made some years previously, for a full exchange of documentary material between the Commission, the Asian-African Committee and the Inter-American Juridical Committee. An effort had been made in that direction, but the arrangements had been allowed to lapse.

26. Mr. YASSEEN said he fully supported Mr. Pal's proposal that the Commission should appoint its Chairman to represent it at the Cairo session of the Asian-African Legal Consultative Committee, not only because of the eminent position occupied by Mr. Jiménez de Aréchaga as Chairman of the Commission, but also because of his personal merits and qualifications.

27. It was becoming increasingly necessary for the Commission to co-operate with bodies concerned with international law in all parts of the world, especially intergovernmental bodies. With the large-scale emancipation of peoples, many new States had entered the international community. They formed an integral part of that community, but their differences in background, needs and interests were such that, just as their internal law differed, several differences were also to be observed in their conceptions of international law. Some jurists had spoken of an American international law, while about ten years previously the Chilean judge Alejandro Alvarez had maintained that an Asian-African international law was in process of formation.

28. The countries of Asia and Africa had their own history and their own difficulties. Many Asian-African jurists considered that there were few rules of classical international law, which some called European international law, that could be applied to their problems. It might be thought that classical international law had been conceived to regulate relations between States with approximately the same economic and cultural level and the same political status. Without sharing the extremist opinion that classical international law was essentially an instrument of colonialism, it could be recognized that many of its rules did not suit the new States. If they were to be made into general international rules, they must accordingly be adapted to existing conditions.

29. Under its statute, one of the functions of the Asian-African Legal Consultative Committee was to study the topics on the agenda of the International Law Commission; that showed that there were points of contact between the Commission and that Committee. If the Commission was to achieve really universal results in the codification and progressive development of international law, it must take account of the views of such organs, which were not only learned bodies, but represented States. If it was to be of practical value too, the Commission's work must develop a common basis from all the differing and sometimes conflicting opinions. In

keeping in touch with such intergovernmental bodies the Commission would be following a commendable practice.

30. Mr. PAREDES said that co-operation with other bodies concerned with international law was important because no progressive development was possible without examining the main trends in all parts of the world. Although international law had been created in Europe, other regions had their special contributions to offer. For example, certain new principles which had originated in the Latin-American continent had now gained wide acceptance. The Commission could not properly perform its functions and secure universal support for its drafts unless it kept in touch with events in the different continents of the world. It must also take account of the great impetus given to international law by the emergence of new States.

31. He welcomed Mr. Pal's proposal because the Chairman, with his European training and special knowledge of Latin-American law, was particularly well qualified to study the trends of opinion in the Asian-African Legal Consultative Committee and to inform it of the Commission's own work.

32. Mr. VERDROSS said that he too supported Mr. Pal's proposal. In its earlier work, the Commission had taken account of the Harvard draft and of the results of the Havana Conference of 1928;¹ clearly, it should also take account of the legal opinions of the new States. If it intended to codify a universal international law, it must keep itself informed of all the opinions advanced in different parts of the world.

33. Mr. EL-ERIAN, supporting Mr. Pal's proposal, said he hoped the Chairman would be able to attend the Committee's session. He subscribed to everything that had been said about the importance of the Commission maintaining close relations with the governmental bodies working to strengthen the role of international law in the maintenance of peace.

34. He fully agreed with Mr. Tunkin that proper arrangements ought to be made for the exchange of documents; that was a matter that could be considered by the Sixth Committee under the item placed on the agenda for the eighteenth session of the General Assembly by resolution 1816 (XVII): "Technical assistance to promote the teaching, study, dissemination and wider appreciation of international law".

35. Mr. ROSENNE said he supported Mr. Pal's proposal and looked forward with interest to the report on the Committee's deliberations.

36. He entirely agreed with Mr. Tunkin that the exchange of documentary material between the Commission and intergovernmental bodies concerned with international law should be placed on a more regular and satisfactory basis. Perhaps it would be appropriate for the Commission to express the hope in its report that any administrative difficulties encountered within the United Nations would be overcome.

37. The Commission's representative to the General Assembly, or to any other body, should take every

¹ Hudson, *International Legislation*, Vol. 4, pp. 2378 ff.

opportunity of impressing on government representatives the importance which the Commission attached to obtaining the comments of governments on its first drafts. The position in that regard was not entirely satisfactory and the number of governments which replied was not very large.

38. Mr. TABIBI said that the Chairman was particularly well qualified to represent the Commission at the forthcoming session of the Asian-African Legal Consultative Committee. The Committee's programme had many points in common with that of the Commission, and close relations between the two bodies were highly desirable. The time when international law had been regarded as the property of the so-called civilized nations was past and the views of new States must be taken into account. It was satisfactory to see that the Asian-African Legal Consultative Committee was being joined by many African countries.

39. In its report, the Commission should stress the need for a regular exchange of documents; so far, at least, as the United Nations was concerned there were no financial difficulties.

40. Mr. AGO said that at that stage in the discussion custom required him to congratulate the Chairman on the unanimity of his appointment to represent the Commission; besides congratulating him, however, he would most earnestly beg him to accept the assignment and carry it out in person.

41. The task with which the Commission wished to entrust the Chairman was a particularly delicate and important one. He would have to make contacts with a new world in full ferment, which was filled with the desire to contribute its own genius to the building of that great edifice, the law of the world community. Mr. Jiménez de Aréchaga came from a country in the continent which was traditionally known as the New World, but which nowadays, after the recent revolution in international society, might well be regarded as part of the Old World. In any case his country did represent the Latin civilization which had been established on both sides of the Atlantic. His penetrating intelligence and understanding specially qualified him to participate in a meeting such as that to be held at Cairo and to grasp any new elements emerging from it which might help the Commission in its work of developing international law and making it better fitted to meet the requirements of a really world-wide international community.

42. At the same time, his origin and personal qualities also fully qualified Mr. Jiménez de Aréchaga for another task which he should perform at the Cairo meeting. Exchanges could not be in one direction only, and he thought that it was sometimes useful to make the enthusiastic representatives of the newly independent countries understand that it would be a pity to confuse international law with certain political practices, largely abandoned in modern times, which had had far less influence on the formation of international law than certain people and certain countries tended to believe. After all, it must not be forgotten that the fundamental

rules of international law had been developed at a time when colonialism, in its most important aspects, did not yet exist, and that the application of those rules had by no means been confined to relations between States belonging to similar civilizations. It was not only Christian States that had contributed to the formation of international law, but also, in large measure, the Moslem and other States. It would therefore be wrong to confuse international law with the certain policies followed by a few Powers in the nineteenth century, and it would be a pity for that error to be too deeply rooted in the minds of the representatives of the new nations.

43. Admittedly, it was sometimes necessary to modify certain rules when they were to be given a wider field of application. But it must not be thought that everything had to be changed. Just as the older States should make an effort to understand the tendencies, demands and aspirations of all the new nations, so the new nations should make an effort to understand the *raison d'être* of certain rules which had evolved in the western world, but were not bound up with particular political conditions. On the contrary, those rules were made to be perfectly adaptable to relations between political entities of every kind irrespective of their origin, civilization, geographical situation or the period when they were established.

44. The Commission's representative at the Cairo meeting of the Asian-African Legal Consultative Committee should therefore try to grasp everything that might be useful to the Commission in its work and at the same time make it understood that international law and its classical rules were a precious heritage which belonged, not to Europe or the Old World alone, but to the whole of mankind, and the loss of which would be a grave danger not only to the old States, but also to the new.

45. Mr. de LUNA said he warmly supported the proposal to appoint the Chairman as the Commission's representative at the forthcoming session of the Asian-African Legal Consultative Committee. His satisfaction was all the greater because the Chairman belonged to the same legal family as himself. That did not mean that he believed there was such a thing as a Latin-American legal system; there was not. Nor did he accept the idea that the Latin-American countries were daughter nations of Spain; the truth was that the Mexicans, Uruguayans, Ecuadorians and Spaniards of today were all the heirs of sixteenth-century Spain. The characteristic features of the Spanish tradition were the rejection of absolute rule, respect for the principle of equality before the law and a system of internal law which had its roots in Roman law.

46. Where international law was concerned, he did not claim, as some did, that such Spanish writers as Vitoria were its real founders. International law had existed ever since independent States had had mutual relations. But it was the merit of that great sixteenth-century Spanish jurist that he had asserted the principles of law in defiance of the King and the Pope.

47. The overseas possessions of the King of Spain had never been regarded as colonies; their inhabitants, whatever their race, had been deemed to be Spanish

citizens, and universities had been founded for them within twenty years of the conquests of ancient Mexico and Peru. That had been the origin of the Spanish legal tradition represented by the Chairman and the other members from Spanish-speaking countries in the Commission, which was called upon to harmonize the ideas deriving from the different legal systems of the world.

48. Mr. CADIEUX associated himself with the previous speakers and said that the whole Commission would be grateful to its Chairman if he accepted the mission offered him. He was, indeed, particularly well fitted by his personal qualities to speak for the Commission, and coming from the Americas he represented a region which it was important to bring into contact with the members of the Asian-African Committee.

49. He also wished to endorse Mr. Ago's comments. Canada was a country that was neither European nor old, and certainly not imperialist, but it had been able to accept the rules of international law which had existed before it appeared on the world scene; and Canada had never felt that it had lost by doing so. On the contrary, it had welcomed with deference the rules evolved through the centuries, which everyone was in duty bound to treat with the greatest respect. He believed that Canada's point of view was shared by a number of American countries and that to present the existing rules as capable of bringing together the different elements of the international community would serve the interests of the new countries no less than those of the old. Far from making for division, those rules were a force for unity and coherence which might be of the greatest value.

50. As to Mr. Rosenne's suggestion regarding comments from governments, he agreed that they should be invited to send whatever comments they could. But in the past fifteen years international activities had increased considerably and perhaps the machinery of State had not evolved at the same rate. If States had enough officials to prepare comments at every stage, the idea was feasible; but under present conditions it would be unreasonable to ask them for comments too often. It was an internal administrative problem. The Commission could ask governments to do their best, but it should avoid any suggestion that they were guilty of negligence if they failed to supply all the documentation asked of them.

51. Mr. GROS said that he personally would be very glad if the Chairman would agree to represent the Commission at the Cairo meeting.

52. As to the substance of the discussion, he fully agreed with Mr. Ago's remarks; they reflected his own views exactly.

53. Sir Humphrey WALDOCK said he supported Mr. Pal's proposal and agreed with Mr. Ago's comments on certain general issues involved.

54. The CHAIRMAN, thanking the Commission for proposing that he should represent it as an observer at the forthcoming session of the Asian-African Legal Consultative Committee, said he looked forward to attending the Committee's deliberations, particularly in

view of the interesting agenda that was proposed. In the unlikely event of his being unable to go to Cairo in February, he would ask another member or the Secretary to replace him.

55. Mr. LIANG, Secretary to the Commission, said that the Secretariat had distributed to members all the documents and proceedings of earlier sessions of the Asian-African Legal Consultative Committee which had been received.

56. The United Nations had regulations concerning the distribution of documents and perhaps similar regulations were applied by other bodies. The Commission might therefore wish to mention in its report that it was desirable to modify the United Nations regulations with a view to ensuring an adequate exchange of documents and to authorize the Secretariat to negotiate with other bodies to that end.

The meeting rose at 11.30 a.m.

716th MEETING

Monday, 8 July 1963, at 5.20 p.m.

Chairman: Mr. Eduardo JIMÉNEZ de ARÉCHAGA

Programme of work for 1964

1. The CHAIRMAN announced that at its private meeting the Commission had approved the following programme of work for 1964:

1. Law of Treaties: Application, interpretation and effects of treaties;
Treaties of international organizations (as part of topic of Law of Treaties);
2. State Responsibility: Preliminary report;
3. Succession of States and governments: Aspect of treaties (preliminary report);
4. Relations between States and Intergovernmental Organizations: First report and general directives; second report, with draft articles;
5. Special Missions: First report, with draft articles.

2. Since it would not be possible to deal with all the items at the main summer session, which should be mainly devoted to the Law of Treaties and, if possible, to a discussion of the preliminary reports on State Responsibility and State Succession, it was suggested that a three-week winter session of the Commission should be held from 5 January to 24 January 1964.

3. At that session the Commission would consider the draft articles submitted by the Special Rapporteur on Special Missions, the first report on Relations between States and Intergovernmental Organizations and the general directives to be given to the Special Rapporteur on that subject. If time permitted, a first reading might also be given to the draft articles submitted by the Special