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A/CN.4/SR.1414

Summary record of the 1414th meeting

Topic:
Other topics

Extract from the Yearbook of the International Law Commission:-
1977, vol. I

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INTERNATIONAL LAW COMMISSION

SUMMARY RECORDS OF THE TWENTY-NINTH SESSION

Held at Geneva from 9 May to 29 July 1977

1414th MEETING

Monday, 9 May 1977, at 3.15 p.m.

Chairman: Mr. Abdullah EL-ERIAN
later: Sir Francis VALLAT

Members present: Mr. Ago, Mr. Bedjaoui, Mr. Calle y Calle, Mr. Castañeda, Mr. Dadzie, Mr. Díaz González, Mr. Francis, Mr. Pinto, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Šahović, Mr. Schwebel, Mr. Sette Câmara, Mr. Sucharitkul, Mr. Tsuruoka, Mr. Ushakov, Mr. Verosta, Mr. Yankov.

Opening of the session

1. The CHAIRMAN declared open the twenty-ninth session of the International Law Commission, and welcomed the new members.

Tribute to the memory of Mr. Edvard Hambro

2. The CHAIRMAN said that, regrettably, the meeting today could not but evoke feelings of sadness in all present at the loss of their esteemed friend and colleague Edvard Hambro, who had been one of the most distinguished members of the Commission. On behalf of the Commission, he had sent a cable to the Minister for Foreign Affairs of Norway expressing the Commission's sense of loss and requesting the Minister to convey its condolences to the Government of Norway and to Mrs. Hambro; he had received a reply expressing the appreciation of the Minister and of Mrs. Hambro for the Commission's message. He took it that, in accordance with practice, the Commission might wish to hold a special meeting to pay tribute to the memory of Edvard Hambro.¹

3. He would now invite the representative of the Secretary-General to say a few words.

4. Mr. SUY (Legal Counsel, representative of the Secretary-General) said he knew from experience that Mr. Hambro, whose merits were so well-known, disliked praise. He would therefore respect what he was sure would have been Mr. Hambro's wish and confine himself to quoting the sublime phrase of St. Augustine: "Death is not to be regarded as a misfortune when a good life has gone before it".

¹ 1419th meeting.

On the proposal of the Chairman, the members of the Commission observed a minute's silence.

5. The CHAIRMAN said that as the Ambassador of Norway was present at the meeting, he would ask him also to convey the condolences of the Commission to the Norwegian Government and to Mrs. Hambro.

6. A message had been received from the President of the Inter-American Juridical Committee stating that the Committee had adopted a resolution expressing its grief at the loss of Mr. Hambro and conveying its sincere condolences to the Commission.

7. The representative of the Secretary-General of the United Nations had made a special request that the name of Mr. Hambro should remain at his place on the members' table until a new member had been elected to fill the vacancy.

Statement by the outgoing Chairman

8. The CHAIRMAN said he would make only a very brief statement, since the report of the Sixth Committee² gave a clear and comprehensive account of its discussion on the report of the International Law Commission on its twenty-eighth session, which he had introduced in the Committee. He was gratified to be able to report that the discussions had been helpful and constructive. There had been general agreement on the high standard of the Commission's work, and appreciation of the scholarly character of its commentaries as well as of its methods of work. But, as was to be expected, there had been some criticism of the length of the commentaries, the size of the report and the delay in issuing it.

9. There had been general approval of the Commission's approach to the three main topics for its twenty-eighth session, namely, the most-favoured-nation clause, State responsibility, and succession of States in matters other than treaties. He would not go into detail, but would content himself with saying that article 19 of the draft articles on State responsibility had given rise to a very lively discussion, and the different schools of thought represented were reflected in the Committee's report.³ The Sixth Committee had also welcomed the progress made with regard to non-navigational uses of international watercourses, and had hoped that States would reply as fully as possible to the Commission's questionnaire.

² *Official Records of the General Assembly, Thirty-first Session, Annexes*, agenda item 16, document A/31/370.

³ *Ibid.*, paras. 124 *et seq.*

10. The draft resolution approved by the Sixth Committee⁴ had endorsed the order of priority fixed by the Commission, but the question of the relationship between the Enlarged Bureau and the Planning Group had resulted in the same division of opinion as in the Commission. However, he had assured the Sixth Committee that the matter would be carefully considered by the Commission.

11. With regard to the Commission's activities of a scholarly nature, such as the Gilberto Amado Memorial Lecture and the International Law Seminar, he had expressed the hope that more Governments would give fellowships for participation in such activities. The present year's session of the International Law Seminar would be known as the Edvard Hambro Seminar.

12. With regard to the length of the commentaries and the size of the report, he had emphasized the usefulness of the commentaries. The fact that they were included in the reports of the Special Rapporteurs did not mean that they should not also be included in the Commission's reports, since the former were given a limited distribution only whereas the latter provided the basis on which Governments determined their positions; it was therefore essential that they should include as much as possible of the source material on which the Commission had based its own conclusions.

13. In response to the criticisms that had been made of unduly lengthy references to General Assembly resolutions, he had pointed out that international law was in a state of flux and that as the Commission wished to indicate the trends by which it was guided in formulating new rules, it was obliged to refer to its sources in order to clarify the development of its thinking. In its work of codification, on the other hand, the practice of States was well-defined, so that constant references to sources were not necessary.

14. Finally, he had received a letter from the Acting Permanent Representative of Indonesia to the United Nations, in his capacity as Chairman of the Asian Group for the month of February 1977, pointing out that the Asian Group at present occupied four out of the five seats allocated to it in the Commission under the gentlemen's agreement,⁵ and requesting the Commission to review the position. He believed that the letter had already been circulated to members of the Commission. He had now received another letter from the Japanese Ambassador in Bern, stating that he had received a cable from the Permanent Representative of Japan to the United Nations, in his capacity as Chairman of the Asian Group for the month of May 1977, reaffirming the position of the Asian Group as already expressed. He would be grateful if the Secretariat would circulate that letter also to members of the Commission.

Election of officers

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

⁴ *Ibid.*, para. 251.

⁵ *Ibid.*, agenda item 23, document A/31/134, para. 4.

16. Mr. AGO said he wished first to congratulate the outgoing Chairman on the efficiency with which he had directed the work of the Commission and the way in which he had defended the interests of the Commission in the General Assembly. The outgoing Chairman was particularly to be commended for the manner in which he had answered those members of the Sixth Committee who had expressed surprise at the length of the Commission's last report. Perhaps in that connexion he could dispel a misunderstanding: if the Commission considered it necessary to provide lengthy explanations in support of its proposals, that was because it was convinced that it bore an immense responsibility in its work of codifying international law. Before expressing in a written formulation a rule which had previously been only a customary rule, and before, where appropriate, proposing its progressive development, the Commission had a duty to furnish detailed explanations of its reasons to the members of the Sixth Committee who, even though they might be experienced jurists, could not be expected to be familiar with all the detail of all the different topics studied by the Commission.

17. He now wished to propose Sir Francis Vallat for the office of Chairman. Sir Francis was an eminent European jurist who had become celebrated both in his own country and abroad and had distinguished himself in the Commission as a Special Rapporteur.

18. Mr. BEDJAoui, Mr. USHAKOV and Mr. TSURUOKA, after congratulating the outgoing Chairman, seconded the proposal.

Sir Francis Vallat was unanimously elected Chairman and took the Chair.

19. The CHAIRMAN thanked the Commission for electing him and said that he would strive to follow the example set by the previous Chairmen of the Commission. In his opinion, the last session had been exceptionally successful because of the way in which the outgoing Chairman had conducted the Commission's meetings and guided it through its difficulties. He also wished to thank the outgoing Chairman for the excellent way in which he had defended the interests of the Commission in the General Assembly. He thanked all those who had proposed or supported his nomination for their gracious words. He wished, in particular, to assure Mr. Ago that he considered that any techniques that might be adopted to reduce the length of the Commission's reports or make them more manageable must not be at the expense of the quality of the absolutely essential work performed by Mr. Ago and the other Special Rapporteurs.

20. The CHAIRMAN called for nominations for the office of first Vice-Chairman.

21. Mr. CALLE Y CALLE proposed Mr. Sette Câmara.

22. Mr. ŠAHOVIĆ and Mr. EL-ERIAN seconded the proposal.

Mr. Sette Câmara was unanimously elected first Vice-Chairman.

23. Mr. SETTE CÂMARA thanked the members of the Commission for electing him.

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

25. Mr. USHAKOV proposed Mr. Yankov, an eminent jurist, diplomat and politician, who had represented his country in the United Nations General Assembly for many years and had served as Chairman of the Third Committee of the United Nations Conference on the Law of the Sea.

26. Mr. REUTER, Mr. CASTAÑEDA and Mr. FRANCIS seconded the proposal. They also associated themselves with the congratulations extended to the Chairman and to the first Vice-Chairman and with the tribute paid to the outgoing Chairman for the masterly fashion in which he had conducted the work of the Commission at its twenty-eighth session and for the way in which he had represented it at the thirty-first session of the General Assembly.

Mr. Yankov was unanimously elected second Vice-Chairman.

27. Mr. YANKOV thanked the Commission for electing him.

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

29. Mr. ŠAHOVIĆ proposed Mr. Tsuruoka.

30. Mr. USHAKOV and Mr. AGO seconded the proposal.

Mr. Tsuruoka was unanimously elected Chairman of the Drafting Committee.

31. Mr. TSURUOKA thanked the members of the Commission for electing him.

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

33. Mr. EL-ERIAN proposed Mr. Bedjaoui.

34. Mr. PINTO seconded the proposal.

Mr. Bedjaoui was unanimously elected Rapporteur.

35. Mr. BEDJAOUI thanked the Commission for electing him and congratulated the other officers of the Commission on their election.

Adoption of the agenda (A/CN.4/297/Rev.1)

The provisional agenda (A/CN.4/297/Rev.1) was adopted unanimously.

The meeting rose at 5.25 p.m.

1415th MEETING

Tuesday, 10 May 1977, at 12.10 p.m.

Chairman: Sir Francis VALLAT

Members present: Mr. Ago, Mr. Bedjaoui, Mr. Calle y Calle, Mr. Castañeda, Mr. Dadzie, Mr. Díaz González, Mr. Francis, Mr. Njenga, Mr. Pinto, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Šahović, Mr. Schwebel, Mr. Sette Câmara, Mr. Sucharitkul, Mr. Tsuruoka, Mr. Ushakov, Mr. Verosta, Mr. Yankov.

Communications from former members of the Commission

1. The CHAIRMAN said that, before discussing the organization of work for the session, he wished to read out the text of a cable from Mr. Martínez Moreno and of a letter from Mr. Ramangasoavina expressing their best wishes to the Commission and, in particular, their congratulations to the newly elected members. He would, of course, send replies to Mr. Martínez Moreno and Mr. Ramangasoavina on behalf of the Commission as a whole.

Organization of work

2. The CHAIRMAN said that the Enlarged Bureau recommended that the Commission should not meet on Whit Monday, 30 May 1977, which was a public holiday in Geneva, but should meet on Ascension Day, 19 May, which was also a public holiday. If there was no objection, he would take it that the Commission agreed to that recommendation.

It was so agreed.

3. The CHAIRMAN said the Enlarged Bureau recommended that the Commission allot three weeks to the consideration of succession of States in respect of matters other than treaties (item 3 of the agenda), followed by four weeks for consideration of the question of treaties concluded between States and international organizations or between two or more international organizations (item 4 of the agenda), and three weeks for the topic of State responsibility (item 2 of the agenda). If there was no objection, he would take it that the Commission agreed to that recommendation.

It was so agreed.

4. The CHAIRMAN said that the Enlarged Bureau's recommendation regarding item 5 of the agenda (proposals on the elaboration of a protocol concerning the status of the diplomatic courier and the diplomatic bag not accompanied by the diplomatic courier (para. 4 of General Assembly resolution 31/176)), was that a group of five members of the Commission be appointed to begin consideration of the item and prepare a number of draft articles. Such a course would not preclude the possibility of appointing a Special Rapporteur at a later stage, but that matter could be considered after the group had reported to the Commission. If there was no objection, he would take it that the Commission agreed to that recommendation.

It was so agreed.

5. The CHAIRMAN said the Enlarged Bureau recommended that Mr. Ushakov be appointed Special Rapporteur for the topic of the most-favoured-nation clause, to replace Mr. Ustor.

6. Mr. USHAKOV said that he would accept the appointment with great pleasure and would do everything possible to ensure that the Commission accomplished the task it had set itself.

7. The CHAIRMAN said that, if there was no objection, he would take it that the Commission agreed to appoint