

COMMITTEE ON THE PROGRESSIVE DEVELOPMENT OF
INTERNATIONAL LAW AND ITS CODIFICATION

SUMMARY RECORD OF THE TWELFTH MEETING

Held at Lake Success, Tuesday, 27 May 1947 at 3 p.m.

Chairman:	Sir Dalip Singh	(India)
Members:	Dr. Enrique Ferrer Viera	(Argentina)
	Dr. W.A. Wynès	(Australia)
	Dr. Gilberto Amado	(Brazil)
	Dr. Shu-hsi Hsu	(China)
	Mr. Osman Ebeid	(Egypt)
	Dr. Henri Donnedieu de Vabres	(France)
	Dr. J.G. de Beus	(Netherlands)
	Dr. Alexander Rudzinski	(Poland)
	Dr. Erik Sjoborg	(Sweden)
	Prof. Vladimir Koretsky	(Union of Soviet Socialist Republics)
	Prof. J.L. Brierly	(United Kingdom)
	Prof. P.C. Jessup	(United States of America)
	Dr. Perez Perozo	(Venezuela)
	Prof. Milan Bartos	(Yugoslavia)

The CHAIRMAN called the meeting to order. He thanked the Sub-Committee for the work it had accomplished and read the text it had drafted:

Text adopted unanimously by the Sub-Committee of the
Committee on Progressive Development of
International Law and its Codification

11:00 a.m., 27 May 1947

That the Commission in carrying out its activities concerning the codification of international law shall present its recommendations to the General Assembly if it finds that codification of the subject is desirable or necessary, in the form of drafts of multipartite conventions.

The text of each draft article should be followed by a comment containing:

- (a) complete presentation of all precedents and other relevant data including treaties, views of leading publicists, etc.;
- (b) Conclusions relative to:
 - (i) the degree of unanimity in the practice of states and in doctrine on each point involved;

/(ii) the areas

(ii) the areas of divergence or disagreement in practice and doctrine;

(c) The arguments which have been advanced in favour of one or another solution in cases where divergence or disagreement exists.

If the Commission concludes that codification of the subject is not desirable or necessary, it shall in making its recommendation state fully its reasons for this conclusion.*

Prof. Vladimir KORETSKY (Union of Soviet Socialist Republics) felt he ought to make certain reservations with regard to the first sub-paragraph of the text adopted by the Sub-Committee because of the differences between the English original and the Russian translation. It was for the General Assembly alone to decide with which matters the Commission of Experts should deal.

Dr. Enrique Ferrer VIEYRA (Argentina) did not think it followed from the text drafted by the Sub-Committee that the Commission of Experts could indicate to the Assembly the subjects for which it deemed codification desirable.

Dr. Ivan KERNO (Assistant Secretary-General) shared the Argentine delegate's view.

Prof. J.L. BRIERLY (United Kingdom, Rapporteur) said that the majority of the members of the Sub-Committee, with the exception of the Soviet representative, were of the opinion that the Commission of Experts ought itself to determine what topics were fit for codification. It had been impossible to reach agreement on this point.

The CHAIRMAN wondered if, under the text as drafted by the Sub-Committee, the Commission of Experts would have the right to indicate that, in its opinion, a subject was not fit for codification even when the General Assembly had formally decided that it was.

Prof. P.C. JESSUP (United States of America) and Prof. J.L. BRIERLY (United Kingdom, Rapporteur) felt that where formal instructions had been

* The Delegate of the Soviet Union reserved his position regarding the text of this paragraph.

given by the General Assembly, the Commission could not refuse to proceed with the work of codification. Nevertheless, if the General Assembly itself expressed any doubt on the possibility of codifying a certain subject, the CEIL ought to give its opinion and, if it thought the subject should not be codified, state its reasons for this conclusion.

The CHAIRMAN noted that it was too early to take any decision on the report submitted by the Sub-Committee. He asked the representative of Australia if he had received instructions from his Government (Cf, Summary Record of the eleventh Meeting).

Dr. W.A. WYNES (Australia) replied that the answer had not yet reached him but that he would not wish to delay the Committee's work.

The CHAIRMAN thought the Committee should now consider the method of selecting the members of the Commission of Experts (document A/AC.10/33, page 2).

Dr. Enrique Ferrer VILEYRA (Argentina) proposed that in order to maintain legal equality amongst the States, the Security Council should not take part in the nomination of the members of the Commission of Experts.

Dr. Alexander RUDZINSKI (Poland) recalled that he had proposed a different formula for the nomination of the members for the Commission of Experts. He was prepared, however, to accept the formula proposed by the representatives of the United States and of China.

Prof. J.L. BRIERLY (United Kingdom, Rapporteur) recalled that in his report he had proposed that the members of the Commission of Experts should be nominated by the International Court of Justice. Such procedure would assure the independence of the members of the Commission of Experts and equitable representation of the various legal systems of the world. Since his proposal was further removed than the Argentine amendment to the proposal submitted by the delegates of the United States and of China, he thought his proposal ought to be put to the vote first.

Prof. Vladimir KORETSKY (Union of Soviet Socialist Republics) was in

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favour of the system advocated in the United States and China proposal for the nomination of the members of the Committee. He felt that the co-operation of the Security Council and of the General Assembly in that task would help to assure the Committee of the authority it needed.

Dr. Ivan KERNO (Assistant Secretary-General) agreed with Prof. Brierly that a vote should be taken first on the latter's proposal; then on the amendment submitted by the Argentine delegate and finally on the text of the proposal of the delegates of the United States and China.

Dr. Alexander RUDZINSKI (Poland) drew the attention of the United Kingdom delegate (Rapporteur) to the fact that neither the Charter nor the Statute of the International Court of Justice made any provision for the nomination of members of the Commission of Experts by the judges of the International Court of Justice.

Prof. J.L. BRIERLY (United Kingdom, Rapporteur) said that the Court of International Justice had, on many occasions, had to fulfil tasks for which no provision had been made in its Statute and which had been entrusted to it by virtue of international conventions, as for example, the designation of arbitrators on international tribunals. In reply to a question from the Yugoslav delegate, he said he did not think the International Court of Justice would refuse that task.

The CHAIRMAN put the United Kingdom proposal to the vote. Result of the voting: three in favour - nine against - two abstentions. The proposal was rejected.

He then called for a vote on the amendment proposed by the Argentine delegate. Result of the voting: one in favour - five against - six abstentions. The amendment was rejected.

Before the vote on the proposal submitted by the delegates of the United States and of China, Prof. Milan BARTOS (Yugoslavia) asked for clarification on the point he had raised previously: Could two nationals of the same State be members of the Commission?

Prof. Vladimir KORETSKY (Union of Soviet Socialist Republics) did not wish the Committee to vote on the question of the number of candidates that might be proposed by Governments.

The CHAIRMAN asked the delegates of the United States and of China if they would agree to have the text put to the vote sub-paragraph by sub-paragraph (Cf document A/AC.10/33). The two delegates having expressed their agreement, he put the first sub-paragraph to the vote. Result of the voting: fourteen in favour - 0 against - two abstentions.

He then called for a vote on the second sub-paragraph, which had been amended as follows:

"The panel of nominees should then be submitted by the Secretary-General to the Security Council and the General Assembly, which would proceed to the election of nine persons, following the procedure prescribed in Articles 3, and 8 to 12 of the Statute of the International Court of Justice..."

Result of the voting: twelve in favour - one against - three abstentions.

The CHAIRMAN read the third sub-paragraph: "Vacancies should be filled by a similar procedure."

Prof. P.C. JESSUP (United States of America) pointed out that the French translation said "même méthode" ("same procedure") whereas the original English said "similar procedure".

Prof. Vladimir KORETSKY (Union of Soviet Socialist Republics) noted that in filling any vacancies which might occur in the Commission of Experts it would be impossible to follow a procedure similar to that used in the case of the International Court of Justice. Since the Commission consisted of only nine members, it was obvious that it could not function if one or more of them ceased to participate in its work. It would therefore be necessary to provide for their replacement, at least until the following regular session of the General Assembly. There were two possible procedures: Either the State to which the member belonged would provide a substitute, or else they

/would designate

would designate alternates who would, if necessary, replace the regular members.

Prof. J.L. BRIERLY (United Kingdom, Rapporteur) felt that such nomination by a single State would conflict with the principle of having the members of the Committee chosen by the Security Council and the General Assembly.

Dr. Alexander RUDZINSKI (Poland) supported the second suggestion made by the representative of the Union of Soviet Socialist Republics and proposed the nomination of two alternates in addition to the nine regular members.

Prof. Milan BARTOS (Yugoslavia) supported the first formula proposed by the delegate of the Union of Soviet Socialist Republics.

The CHAIRMAN asked whether or not Dr. Rudzinski wished to submit a formal amendment.

Dr. Alexander RUDZINSKI (Poland) replied in the affirmative and proposed a formula for the nomination of two alternate members.

There was an exchange of views, in which the representatives of Poland, France, China, the Union of Soviet Socialist Republics and Argentina took part.

The CHAIRMAN noted that the Committee had agreed on the following formula: to fill vacancies which might occur in the Commission, the Commission itself would draw up a double panel based on the list of previous nominees and would present it to the Security Council, which would be responsible for filling the vacancies provisionally until the following regular session of the General Assembly. After the meeting of the General Assembly, the vacancies would be filled in accordance with the procedure followed for the designation of the nine regular members.

The Committee proceeded to consider Section I of document A/AC.10/33, concerning the methods for the development of international law.

Dr. Vladimir KORETSKY (Union of Soviet Socialist Republics) proposed omitting the words in parentheses "which contemplates the extension of law to new areas not yet regulated by law or in which the law has not yet been

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highly developed or formulated in the practice of States", for at that stage only the technique of the future Commission's work and not the definitions was being considered.

Dr. HSU (China) on a point of order, asked what it was proposed to do with the Sub-Committee's report.

The CHAIRMAN pointed out that this report had not yet been adopted by the plenary Committee.

There was an exchange of views, in which the delegates of Egypt, the United Kingdom, the Union of Soviet Socialist Republics, Brazil, Sweden and the Netherlands and the Secretary of the Committee took part. The point under debate was whether, according to the Sub-Committee's recommendations, the same procedures should be followed for the codification of international law as for its progressive development. The members of the Sub-Committee were divided on this point. The delegates of the Union of Soviet Socialist Republics and of Sweden maintained that the text referred both to codification and to development, while the delegates of Brazil and Great Britain and the Secretary of the Committee held the opposite view.

The CHAIRMAN asked the members for their opinion on the Soviet delegate's proposal to omit the words in parentheses in the introductory part of Section I of document A/AC.10/33 (page 3).

Prof. Vladimir KORETSKY (Union of Soviet Socialist Republics) said he was only asking them to postpone consideration of the question raised by the words in parentheses.

Prof. Milan BARTOS (Yugoslavia) pointed out that since the delegate of the Union of Soviet Socialist Republics had submitted a motion for adjournment, his motion should be taken first when it came to voting.

The CHAIRMAN concurred in this view and called for a vote on the Soviet delegate's proposal for postponement. Result of the voting: four in favour - eight against - three abstentions. The Committee had thus adopted the whole of the introductory part of Section I.

/Dr. Vladimir KORETSKY

Dr. Vladimir KORETSKY (Union of Soviet Socialist Republics) reserved the right to raise the question of the definition of the term "progressive development" again.

The CHAIRMAN said the Committee now came to Section A: On projects referred by the General Assembly.

Prof. Vladimir KORETSKY (Union of Soviet Socialist Republics) thought the words used might give the impression that it was open to the Commission to consider projects other than those referred by the General Assembly.

The CHAIRMAN explained that the Committee would have a chance to consider that question when dealing with Section B. He asked for views on Section A, sub-paragraph 1: "Appointment of Rapporteur, who may or may not be a member of CEIL".

Prof. Milan BARTOS (Yugoslavia) proposed deleting the phrase "or may not be". All the Rapporteurs should be members of the Committee. This amendment was seconded by the delegate of the Union of Soviet Socialist Republics.

Prof. P.C. JESSUP (United States) was of the opinion that each Rapporteur should be an expert in the subject under consideration; in agreement with the representative of China, he therefore suggested that the Rapporteur might be somebody not a member of CEIL.

The CHAIRMAN called for a vote on the amendment proposed by the Yugoslav delegate. Result of the voting: four in favour - eleven against - 0 abstentions.

He took it that in rejecting the amendment the Committee had adopted sub-paragraph 1.

Prof. J.L. BRIERLY (United Kingdom, Rapporteur) impressed on the members that the work should be speeded up.

Mr. Henri Donnedieu de VABRES (France) supported this view, since the Committee ought not only to consider the problem of development and codification but also the Nuremberg principles expressly referred to by the General Assembly for their importance.

The members of the Committee exchanged views on the procedures to be adopted with a view to expediting the work.

The meeting rose at 6:05 p.m.
