

THE COMMITTEE ON THE PROGRESSIVE DEVELOPMENT
OF INTERNATIONAL LAW AND ITS CODIFICATION

SUMMARY RECORD OF THE FOURTEENTH MEETING

Held at Lake Success, Thursday, 29 May 1947, at 10:45 a.m.

Chairman:

Sir Dalip Singh (India)

Members:

Dr. Enrique Ferrer Viera (Argentina)

Dr. W. A. Wynes (Australia)

Dr. Gilberto Amado (Brazil)

Dr. Shuhsi Hsu (China)

Dr. Antonio Rocha (Colombia)

Prof. Henri Donnedieu de Vabres (France)

Dr. J. G. de Beus (Netherlands)

Dr. Alexander Rudzinski (Poland)

Mr. 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.

The Committee now came to considering point B of paragraph I of document A/AC.10/33 submitted by the United States and Chinese delegates. The delegate of the Soviet Union had enquired whether point B of this document: "For projects and draft conventions recommended by governments, other United Nations organs, specialized agencies, or by certain other categories of international organizations", was in conformity with the provisions of the Charter.

Prof. V. KORETSKY (Union of Soviet Socialist Republics) said the Yugoslav delegate had previously expressed doubts whether point B was reconcilable with the terms of the Charter. He shared those doubts and suggested that the Chairman should seek the Secretary-General's opinion regarding the compatibility of the provisions contained in point B with the Charter. In any case he would reserve the right to return to this question later.

Dr. A. RUDZINSKI (Poland) was also of the opinion that, in accordance with the spirit and the letter of the Charter, the General Assembly alone had the right to submit material to the Commission of Experts.

Prof. P. C. JESSUP (United States of America) had no objection to the Soviet delegate's proposal. Every delegate wishing to do so might submit a short note stating his point of view on this question, to the Chairman, who would transmit it to the Secretary-General with a request for his opinion.

Prof. J. L. BRIEPLY (United Kingdom, Rapporteur) thought that no text, authorizing the Secretary-General to state his opinion on such a question, existed.

/Prof. V. KORETSKY

Prof. V. KORETSKY (Union of Soviet Socialist Republics) was of the opinion that the Committee could not decide such an important question of principle by a simple vote. As the Rapporteur considered that the Secretary-General had no authority to give such an interpretation, he would withdraw his original proposal and substitute it by the following: that the Rapporteur himself should tell the Committee whether, in his view, point B was in keeping with the provisions of the Charter.

Prof. J. L. BRIERLY (United Kingdom, Rapporteur) said it was not part of his duties as Rapporteur to go into this question. The Yugoslav delegate's point of view would be recorded in his report, but he saw no point in re-opening the discussion on point B.

Dr. J. G. DE BEUS (Netherlands) proposed the deletion of the following words from point B as a compromise: "or by certain other categories of international organizations".

Prof. V. KORETSKY (Union of Soviet Socialist Republics) did not think a compromise could be reached, since an important question of principle was involved: could the General Assembly be approached by any organ other than a State? The General Assembly had no right to delegate its powers to another organ and, most certainly, the present Committee could not recommend it to do so. The reason for his asking the Rapporteur to examine whether point B was in keeping with the provisions of the Charter was that he esteemed Prof. Brieryly highly as a jurist. Hence he asked him to undertake this task.

Prof. M. BARTOS (Yugoslavia) reminded the Committee, that at the previous meeting, he had reserved the right on behalf of his delegation, to raise the question of the compatibility of point B with the Charter, before the General Assembly. He would have a

/short report

short report prepared, which he would ask the Chairman to transmit to the Rapporteur.

The CHAIRMAN pointed out that he could not force either the Rapporteur or the Secretary-General to examine point B in the light of the Charter. He would of course accept the Yugoslav delegate's report and submit it to the Rapporteur. The final decision on this matter rested with the General Assembly.

Dr. E. FERRER VIEYRA (Argentina) also doubted whether point B conformed to the Charter; it might possibly be better not to include point B in the recommendations.

The CHAIRMAN considered the question of point B closed. The Committee now came to point C: "For topics initially considered by CEIL". He suggested taking a vote on whether this point should be included in the report.

Prof. V. KORETSKY (Union of Soviet Socialist Republics) thought there should be a discussion before the vote. When the statute of the International Court of Justice was being drawn up, the powers of that Court were carefully considered, and the same procedure should be followed in the case of the Commission of Experts.

Prof. P. C. JESSUP (United States) suggested simply omitting point C from the report for the following practical reason: the Commission of Experts was set up for an initial period of three years, and would have sufficient work to make it impossible for it to assume any further work, as provided in point C. But by speaking in favour of omitting point C from the report, for the practical reason just mentioned, he definitely did not wish to be understood as having dropped the principle that the Commission should take the initiative in its work.

/The CHAIRMAN

The CHAIRMAN concluded from the absence of objections by the delegates to the United States delegate's proposal that point C would not appear in the future. The Committee came to Section II of document A/AC.10/33, on the codification of international law.

Prof. P. C. JESSUP (United States) said that in consultation with the Chinese representative he had drafted a document making certain modifications to document A/AC.10/33, which they had previously submitted. What they had in mind was that the General Assembly should not have to instruct the Commission of Experts to consider a specific topic but should indicate, in general lines, what areas the Commission was to cover.

The CHAIRMAN was of the opinion that the document which had just been submitted to him replaced the preamble of Section II, paragraphs A and B, and the footnote at the bottom of page 5 of the English text.

Prof. V. KORETSKY (Union of Soviet Socialist Republics) felt the Commission of Experts should have no right of initiative in matters of codification. Codification involved the systematization of custom, of the practices of States etc. and only governments themselves could take the initiative in such matters. Moreover, during the first three years of its existence, the Commission of Experts would be amply occupied with the problems indicated in the resolution of the General Assembly. He therefore proposed that the right of initiative, accorded to the Commission of Experts, be deleted from the recommendation, as had been done with regard to point C of Section I, and for the same practical reasons.

Prof. P. C. JESSUP (United States) did not agree with the Soviet delegate's proposal. His own proposal to omit point C, which dealt with the development of international law, was made with an eye to the Commission's work in the field of codification.

But there was a great difference between the development and the codification of international law. Codification should apply to any sphere for which there were rules binding on States; all that need be done was to record these rules. The necessity for the government intervention could not be justified in such cases, as it might be in the case of development.

The CHAIRMAN put the first part of the American delegate's proposal to the vote:

"The Committee recommends to the General Assembly that it adopt a resolution instructing CEIL to survey the whole field of customary International Law with a view to selecting topics for codification, having in mind previous governmental and non-governmental projects."

The proposal was adopted by thirteen votes to three.

The CHAIRMAN then read the second part of the proposal:

"The resolution might further provide that if the General Assembly requests CEIL to prepare a draft convention on any subject or to explore the necessity or desirability of preparing a draft convention on any subject, CEIL shall give precedence to complying with such requests."

The proposal was adopted by fourteen votes, and two abstentions.

Prof. V. KORETSKY (Union of Soviet Socialist Republics) explained that he had abstained from voting on the second part of the resolution because of the vote on the first part.

Prof. MILAN BARTOS (Yugoslavia) said that he would have voted for the first part of the formula if it had not contained the words: "governmental and non-governmental".

Dr. Alexander RUDZINSKI (Poland) asking whether the resolution on which they had just voted referred solely to customary international law or included general international law as embodied in treaties and conventions.

Prof. P. C. JESSUP (United States) replied by saying that the practice of States was discernible from treaties and conventions as well as from custom.

/Prof. V. KORETSKY

Prof. V. KORETSKY (Union of Soviet Socialist Republics) thought the last vote did not cover the introductory part of Section II of document A/AC.10/33 which the Committee had failed to examine: "For Codification (which contemplates the more precise formulation of law in areas where there has been extensive state practice, precedent and doctrine)".

The CHAIRMAN considered that the vote had covered the introduction.

Prof. V. KORETSKY (Union of Soviet Socialist Republics) asked whether this part, and particularly the words in brackets, would appear in the recommendations, for he considered the definition of the word "codification" absolutely inadequate. The definition should indicate the purpose and not the procedure of codification. Surely the object of codification was not to state or compile the rules of the existing law but to systematize them which is what the General Assembly specifically stated with regard to the principles of Nurnberg. Prof. Brierly himself had emphasized the necessity for systematization in codification in a paper published by the International Law Association. He suggested that the words in brackets should be replaced by the following: "systematization of the standards of international law in specified areas thereof".

Prof. P. C. JESSUP (United States) pointed out that a question of principle and not simply a matter of words was involved. The delegate of the Union of Soviet Socialist Republics did not want to admit the difference between the development of International Law and its codification; but the Committee had already established this distinction based on the idea that development dealt with that part of International Law for which there were, as yet, no rules, or very few rules, whereas

/codification

codification could only be undertaken in areas where there was extensive state practice. But he had no objection to the Rapporteur's stating that systematization was the object of codification.

After an exchange of views, in the course of which Prof. P. C. JESSUP (United States) explained, at the request of Dr. Enrique FERRER VIEYRA (Argentina), that codification could only deal with positive law and not with law as it should be, the CHAIRMAN read the following formula which incorporated an amendment proposed by Prof. Henri DONNEDIEU DE VABRES (France):

"For codification (which, as regards the methods referred to below, contemplates the more precise formulation and the more systematic arrangement of the law in areas where there has been extensive state practice, precedent and doctrine)".

The CHAIRMAN asked the USSR representative if he still wanted his amendment to be put to the vote before this formula.

Prof. Vladimir KORETSKY (Union of Soviet Socialist Republics) replied in the negative, but said that he would abstain from voting, and reserved the right to raise this point during the discussion of the report by the Committee.

The CHAIRMAN put the formula, which he had just read, to the vote, which was adopted by 11 votes in favour, 0 against, with 4 abstentions.

The CHAIRMAN said the next point to be considered was paragraph C: "Appointment of Rapporteur, who may or may not be a member of CEIL".

Dr. Enrique FERRER VIEYRA (Argentina) considered that the Rapporteur should always be a member of CEIL.

/Prof. Vladimir KORETSKY

Prof. Vladimir KORETSKY (Union of Soviet Socialist Republics)

seconded this proposal. When the Argentine delegate said that he did not intend to submit an amendment, but only a simple suggestion, the delegate for the Union of Soviet Socialist Republics proposed amending the formula to the effect that only a member of CEIL could act as Rapporteur.

The CHAIRMAN put the Soviet delegate's amendment to the vote, which resulted in 6 votes in favour, 8 against with 1 abstention. The amendment was rejected.

Prof. Vladimir KORETSKY (Union of Soviet Socialist Republics) asked that the report should place it on record that the amendment was defeated by a small majority.

Dr. Alexander RUDZINSKI (Poland) explained that he had voted for the amendment, as he considered that nobody but a member of CEIL could take the responsibility of acting as Rapporteur.

The CHAIRMAN then put paragraph C to the vote. The text was adopted by 7 votes in favour, 6 votes against with 2 abstentions.

The Committee then proceeded to consider paragraph D:

"Formulation of problem and of a detailed request to governments for texts of pertinent laws, decrees, judicial decisions, treaties, diplomatic correspondence, and other comparable data".

The CHAIRMAN suggested leaving it to the Rapporteur to work out the exact wording: in particular the word "problem" should be replaced by the words "plan of work".

The next point for discussion was paragraph E:

"Appointment of a small advisory group to work with Rapporteur on preparation of interim drafts pending receipt of comments and suggestions".

Here the Rapporteur might substitute the words "sub-committee" for the words "small advisory group".

/The next point

The next point for discussion was paragraph F: "The Rapporteur should proceed according to the following plan, etc...."

Prof. P. C. JESSUP (United States): thought that the paragraph which the Committee was considering having already been studied by the sub-committee, there might not be any need for the plenary committee to consider the text in detail. He suggested that sub-paragraph (1) of Document A/AC.10/33, page 5, should be allowed to stand in its present wording, but that sub-paragraph 2 be amended in accordance with the text adopted by the sub-committee.

Dr. Alexander RUDZINSKI (Poland) enquired whether the text adopted by the sub-committee covered the whole of sub-paragraph 2 of paragraph F.

Prof. Vladimir KORETSKY (Union of Soviet Socialist Republics) reminded the Committee that some doubt had been voiced as to whether the word "it", in the first paragraph of the text adopted by the sub-committee on 27 May, referred to the General Assembly or to CEIL. As the author of the text, adopted by the sub-committee, he explained that this word applied to the General Assembly, which meant that CEIL could not take the initiative with regard to codification.

Prof. Henri DONNEDIEU DE VABRES (France) thought that on the contrary the French translation of the text adopted by the sub-committee, made it clear that it was not for the General Assembly but for the Commission to decide whether the codification of a subject was necessary or not before submitting recommendations to the General Assembly.

The meeting rose at 1:05 p.m.
