

GENERAL  
ASSEMBLYASSEMBLEE  
GENERALEA/AC.10/ER.16  
3 June 1947

ORIGINAL: ENGLISH

COMMITTEE ON THE PROGRESSIVE DEVELOPMENT OF INTERNATIONAL LAW  
AND ITS CODIFICATION

## SUMMARY RECORD OF THE SIXTEENTH MEETING

Held at Lake Success, New York, 2 June 1947 at 3:00 p.m.

## Present:

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. Jorge Ortiz Rodriguez	(Colombia)
	Mr. Osman Ebeid	(Egypt)
	Mr. Michel Leroy-Beaulieu	(France)
	Dr. J. G. de Beus	(Netherlands)
	Mr. Roberto de la Guardia	(Panama)
	Prof. Alexander Rudzinski	(Poland)
	Mr. B. Q. S. Petren	(Sweden)
	Prof. Dr. 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 asked the representative of Australia to present the report of the Sub-Committee on Item 3 (b) of the agenda.

Dr. WYNES (Australia) presented his report and observed that its text was self-explanatory. It tried to bring out more clearly than in his original draft the idea of co-operation with United Nations organs. The Sub-Committee had considered mentioning such organs by name, but this had proved too difficult on account of their various natures and functions. The last paragraph made special mention of the International Court of Justice, which was a judicial and not a legislative body. There was some doubt as to whether the International Court would have the right to comment on drafts

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of the International Law Commission in view of the fact that it might have to apply and interpret the same texts later. Dr. WYNES formally asked the Committee to adopt the report.

The CHAIRMAN received the report on behalf of the Committee.

Professor KORETSKY (Union of Soviet Socialist Republics) considered that the report might give rise to a general discussion and proposed that any decision on it be postponed to the next meeting in order that the representatives had occasion for a closer examination of the text. He therefore wanted the Committee to have now a general discussion on Item 3 (b), not take a decision on this item, and then pass on to Item 3 (c) in regard to which he also proposed the setting up of a Sub-Committee.

In reply to an observation by Professor JESSUP (United States of America) Professor KORETSKY observed that there was no objection against a general discussion at the present meeting as several points had already drawn the attention of the representatives, particularly the relationship of the ICC with the International Court of Justice as opposed to that with other United Nations Organs.

In reply to questions from Professor BRIERLY (Rapporteur) and Dr. AMADO (Brazil), Dr. KERNO (Assistant Secretary-General) stated that the International Court of Justice received the most important of the United Nations documents, but the fact of these documents being transmitted did not mean that the Court was asked for comment. However, the Court was a United Nations organ and would automatically be included in any decision taken with regard to Item 3 (b) if it were not expressly excluded.

The CHAIRMAN asked whether the representatives agreed to postpone discussion of Item 3 (b) to the next meeting. The proposal was carried by twelve votes in favour, none against and one abstention.

/Item 3 (c)

Item 3 (c)

The CHAIRMAN opened the discussions on Item 3 (c) of the agenda and read out a proposal handed in by the representative for Poland:

"The International Law Commission should be authorized to approach national and international associations and bodies enumerated in the list approved by the General Assembly for preparatory or drafting work, comments or suggestions on any matter entrusted to the Commission by the General Assembly if and when the Commission thinks that such a procedure might aid it in the attainment of its objectives."

The CHAIRMAN observed that the representative for Argentina had also handed in a proposal reading as follows:

"That the Committee request the Rapporteur to include in his Report a special reference to the importance and necessity of co-operation between the International Law Commission and the Pan-American Union. The Rapporteur is also requested to indicate that the Commission to be appointed should consider the convenience of being in permanent communication with the organs of the Pan-American Union whose task is the Codification of the International Law in the Inter-American system."

The Polish proposal was of a general nature, the Argentine one more specific. Moreover, the Secretariat document, A/AC.10/22, in Point 4 (page 2) also contained a proposal on the same subject.

Professor RUDZINSKI (Poland) introduced his own proposal. In view of the fact that the International Law Commission would be restricted to nine members, the Commission would not be able to perform all of the work on its own. The same consideration formed the basis of Item 3 (b) and (c) in the Committee's terms of reference. As the bodies under consideration could help the International Law Commission in many ways, his proposal did not

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work out any specific plans or methods of co-operation, but this was left to the International Law Commission itself which sometimes may need no help at all, sometimes at an early stage of the procedure, sometimes at a more advanced stage.

The second point was what form the assistance of the bodies concerned should take. His proposal mentioned four different kinds. The recommendation however, should be worded very broadly in order to leave scope for the requirements of various circumstances. In the third place it had to be determined what bodies should be approached for co-operation. Professor RUDZINSKI (Poland) expressed some objections to the contents of document A/AC.10/22, which, for instance, listed the Penal and Penitentiary Commission, which was an official body whose position had already been discussed by the Economic and Social Council. It counted among its members Franco Spain and the General Assembly Resolution of 12 December 1946, No. 39, excluded from participation in United Nations activities all organizations associated with the Franco regime. It might be possible that other organizations mentioned in the Secretariat document would be in a similar position. Professor RUDZINSKI therefore submitted the following additional proposal:

"Pursuant to the Resolution of the General Assembly of December 12, 1946, No. 39, the Committee directs the Secretariat to check on the activities and membership of international organizations, both official and unofficial, in order to eliminate organizations of which Franco Spain is a member."

The amended list should be approved by the General Assembly and transmitted to the International Law Commission for its use.

Of course the International Law Commission could not pass on its work to these national and international bodies. The latter should only do auxiliary work which would have to be examined by the International Law Commission that would have sole responsibility.

/Dr. KERNO

Dr. KERNO (Assistant Secretary-General) observed that with regard to influence of Franco Spain in international organizations the same end might be attained in another way: the international organizations could be asked to eliminate Franco Spain as a member and the United Nations might put such elimination as a condition for co-operation with the International Law Commission. This procedure had been followed by the International Civil Aviation Organization.

At the suggestion of the CHAIRMAN that the Polish text could be re-worded to this effect, Professor RUDZINSKI (Poland) observed that some organizations had already compromised themselves, for instance, those who took part in the international conference convened at Rome in 1940. Such organizations should not be allowed to co-operate at all with United Nations organs.

In reply to Professor BRIERLY (Rapporteur), who asked whether Franco Spain could be a member of unofficial organizations, Professor RUDZINSKI (Poland) said that he had thought of that point. It was possible that some unofficial organizations might have Franco Spain members, so that the General Assembly Resolution would apply. He was not able to cite any specific examples. In reply to a question by Dr. WYNES (Australia), Professor RUDZINSKI observed that specialized agencies would come under international bodies and he pointed out that this was also the point of view of the Secretariat as appeared from Annex I to document A/AC.10/22.

Dr. de BEUS (Netherlands) considered that the first Polish proposal was contrary in one point to the decision taken at the previous meeting under which governments and other agencies were also asked to make comments, etc. Dr. de BEUS proposed to replace the words "by the General Assembly" by the words "in accordance with document A/AC.10/33".

Professor KORETSKY (Union of Soviet Socialist Republics) referred to the decision Dr. de BEUS had just mentioned, but doubted whether the Committee at that time also had in mind unofficial agencies. If so, he could not

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approve of this interpretation.

Dr. de BEUS (Netherlands) observed that he understood that I.B.1 (b) of document A/AC.10/33 mentioned "other bodies" and as it referred to Item 3 (c) he had taken it to be an elucidation of it. However, the Committee was now discussing consultation of other bodies after a definite task had been entrusted to the International Law Commission. While document A/AC.10/33 referred to such consultation before the International Law Commission had been given a specific task. Therefore, there was some discrepancy.

Professor JESSUP (United States of America) asked the representative for Poland whether in his second proposal by elimination he understood elimination from the list prepared by the Secretariat and published in document A/AC.10/22, or whether he had another procedure in mind.

Professor RUDZINSKI (Poland) replied that in his opinion this Committee should make a list which was to be screened by the Secretariat, approved by the General Assembly and then sent to the International Law Commission. He had not in mind the list to be found in document A/AC.10/22, but the final official list which was to be much more extensive.

Dr. VIEYRA (Argentina) introduced his proposal. He considered that it was unnecessary for him to refer in detail to the work done by the American Republics under the Inter-American system in the field of international law and codification. The memorandum prepared by the Secretariat, document A/AC.10/8, had given an almost complete survey of the work done. Dr. VIEYRA referred to the many international conferences of American States, to the meetings of the Foreign Ministers, to the National Committees, and to the three Permanent Committees in Rio de Janeiro, Montevideo and Havana, the results of which filled many volumes. It would be necessary to co-ordinate the work of the International Law Commission with the Inter-American system through the intermediary of the Pan-American Union. It could be left to the discretion of the International Law Commission how this co-operation could

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be effected, but it was indispensable.

Dr. PEROZO (Venezuela) expressed the support of the Venezuelan delegation to the Argentine proposal and emphasized once more the importance of the work done under the Inter-American system in which the Pan-American Union was the co-ordinating body. In his opinion co-operation was not only indispensable but he deemed it desirable that the RAPPORTEUR should in his report express the Committee's wish that the Pan-American Union should send an official observer to all the meetings of the International Law Commission to take part in the discussions, though perhaps not to vote.

Mr. LEROY-BEAULIEU (France) formally protested against the absence of French translations of the proposed texts and asked the representatives and the Secretariat to observe the binding rule that all documents should be presented in two languages. His objection was supported by Professor BARTOS (Yugoslavia).

The CHAIRMAN and the ASSISTANT SECRETARY GENERAL expressed their entire agreement with the attitude taken by the said representatives, but pointed out that often the representatives handed in their texts at the beginning of the meeting only.

The CHAIRMAN promised that the Secretariat would conform to his request and asked the representatives to keep in mind that the Secretariat should be given sufficient time for preparing the translations.

Professor JESSUP (United States of America) expressed his support of the Argentine proposal in view of the importance of the work of the Inter-American system.

Professor KORETSKY (Union of Soviet Socialist Republics) asked the Secretary how the list of organizations in Annex I to document A/AC.10/22 was drawn up, whether it was based on information from governments or on information at the disposal of the Secretariat.

Dr. LIANG (Secretary) replied that the list was based principally on  
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information received from Member States in answer to an inquiry made by the Secretariat asking for a list of national organizations and of international organizations having their seat in the countries concerned. Information received after 7 May 1947, had been published in the addenda to document A/AC.13/22.

Professor KORETSKY (Union of Soviet Socialist Republics) now understood that the government replies were not the only source of information.

After a question by Mr. PETREN (Sweden) whether the discussion on the Polish proposal was continued, the CHAIRMAN asked whether the Committee wanted to discuss first the general proposal made by Professor RUDELSKI (Poland) or the special one made by Dr. VIEIRA (Argentina).

Professor KORETSKY (Union of Soviet Socialist Republics) observed that as both proposals were fragments of the whole the general discussion could be continued.

Professor BRIERLY (Rapporteur) expressed his support of the Argentine proposal and hoped that all the members would agree to accept it.

Professor KORETSKY (Union of Soviet Socialist Republics) considered that certain aspects of it needed a closer examination. Firstly, it had to be considered whether the national or international organizations brought into relationship with the International Law Commission should have the right to initiate questions and to submit their own drafts. Secondly, the order should be determined in which the national and international bodies would be consulted.

As to the first question Professor KORETSKY considered that the Committee had gone too far; in opening the way for all organizations to co-operate with the International Law Commission it turned the latter into a kind of general forum and its task would be too complicated. Some limitation would be necessary.

/The United Nations



The United Nations is a inter-governmental organization and this characteristic should be respected in setting up the procedure for the relationship envisaged. The experience of the past one and a half years of the United Nations had already shown the difficulty of defining the right of initiative and of consultation. The previous decisions on this subject matter should be examined. Professor KORETSKY recalled the agreement concluded with ICAO and UNESCO which laid down special provisions for relationship with other bodies working in the same field. It had always been limited to consultation and only a few organizations were allowed to propose items on the agenda of the Economic and Social Council. The present proposal in Professor KORETSKY'S opinion is far too liberal. It was his conviction that the nine members of the International Law Commission would have to work out drafts on specific subjects which were ripe for codification. The first stage was the specific instructions to the International Law Commission. The second stage was the work by the International Law Commission which would prepare a draft, publish it and thereby subject it to the supervision of public opinion. The national and international organizations were sure to make known their opinions which would have to be studied by the International Law Commission. Professor KORETSKY preferred another procedure than that of allowing all organizations to co-operate with ICC.

As to the list of official organizations, the United Nations was already consulting governments and through the governments it would also get the opinion of the official organizations. It was now proposed, however, that an international governmental organization, not directly connected with the United Nations, should also be consulted. In this way such organization would replace the governments which in Professor KORETSKY'S opinion was a wrong procedure, as such committee would only repeat the points of view of the governments, or it would give a contrary opinion which would also be undesirable. He asked Professor RUDEINSKI (Poland) to study this side of his /proposal.

proposal. Of course he agreed that all organizations affiliated with the Franco regime were unacceptable. In Professor KORETSKY'S opinion all the unofficial organizations ought to be eliminated from direct consultation in order not to submerge the International Law Commission under their observations. They would be able to present their observations through their governments or through the international organizations to which they belong. Professor KORETSKY was in favour of consultation of unofficial organizations but opposed to granting them a right of initiative.

In the second place, Professor KORETSKY considered that co-operation with national organizations was much more important than that with international organizations. It was essential to hear the views of those states which represented different legal systems. The International Law Commission should study not only the international law as already crystalized in large countries which for many centuries had been developing international law, but it should also hear the voice of those countries now elevated to an equal rank with the other states. In Professor KORETSKY'S opinion the national organizations of new states members of the United Nations should be heard even prior to the organizations of the great powers which had already developed their international law. This was all the more important as among the nine members of the International Law Commission the great powers would be represented almost as a matter of course, but the voice of the younger states should have equal force. Professor KORETSKY observed that the work done under the Inter-American system had aided in the crystalizing of international law in those republics, but for many of the new countries the codification of international law held the same interest. He therefore proposed that the Argentine motion should be accepted in such a way that it would give no priority to the American Republics.

Professor KORETSKY referred to the work done in past centuries. In the seventeenth century already there was a period in which international /law was

law was crystalized: Holland (Grotius, Huber, etc.) and England contributed largely to the development of international law, in the United States the Independence Declaration of Professor Jefferson was based on a close study of the teachings of the French Revolution. The last century brought reactionary changes besides progressive development. All of this would have to be sorted out. The ancient Dutch lawyers already stressed the interest of small nations. The small countries were now liberated from tyranny and they should be heard as equals. Even if they were as yet unable to present large volumes containing their contribution to international law. However, they had proved their right to be heard as they had suffered owing to the absence of international law or the violation of its rules. Consequently, their national organizations should be heard, although obviously not all of them. When Mr. Vyshinski (document A/AC.10/22/Add.1) mentioned two such organizations for the Union of Soviet Socialist Republics this did not mean that they were the only ones, but that these two were worthy of co-operation with the United Nations. Professor KORETSKY wanted to leave open the question which organizations should be consulted, but he wanted the Committee to decide that they should not be given the right of initiative, which should be reserved to the General Assembly.

Professor KORETSKY did not consider that it was necessary for international organizations to send observers. This might be indispensable at some political meetings but not at meetings of the legal commission. Moreover, the admission of observers would again create inequality between the states, as it would be easy for American organizations to send observers but practically impossible for remote countries such as China, India and the Union of Soviet Socialist Republics. He therefore proposed to admit no observers but written consultation only and he asked that the Argentine proposal be re-drafted so as not to constitute a privilege for some states but to ensure consultation of all legal systems.

Dr. VIEYRA (Argentina) observed that the charge of Professor KORETSKY (Union of Soviet Socialist Republics) that the Argentine proposal would bring into relief the Pan-American Union to the detriment of other states was unfounded. The American Republics had always appreciated any effort at codification of international law wherever made. The intention of the proposal was that, in view of the fact that under the Inter-American system the results of the work were laid down in conventions, a close co-operation with the United Nations Codification Committee would be essential and a co-ordination of the Inter-American work with the United Nations work.

Dr. RODRIGUEZ (Colombia) expressed his regret that Dr. ROCHA, President of the Pan-American Union, could not be present to give his point of view, and supported whole-heartedly the Argentine proposal with the Venezuelan amendment.

Dr. AMADO (Brazil) had not taken part in the Argentine proposal, but observed that the part of Brazil in the development of international law and its codification were well known. He supported the Argentine and Venezuelan proposals and in reply to Professor KORETSKY observed that the Inter-American system could not be compared to other systems as there is none of the same importance. In his opinion it was essential that this system should be given, if not priority, at least full recognition.

The CHAIRMAN, speaking as the representative of India, stated that in the first place he approved of the second Polish proposal to eliminate from co-operation with the International Law Commission the organizations which had members bound up with the Franco regime.

With regard to the Argentine proposal Sir Dalip SINGH observed that he fully recognized the importance of the Pan-American Union. He pointed out however that certain conditions made it easy for the American Republics to develop their international law. They all speak Spanish with the exception of Brazil, which speaks a sister language. Their peoples are not  
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so intermingled that it was difficult to say what was a nation. They had a large territory and were all republics and democracies. Other countries had different problems which made development of international law a much more difficult enterprise. Of course any codification commission to be set up would frequently have to consult the development of international law within the Pan-American Union and also the American ideology which originated from the European ideology, but other countries had not reached that stage.

Sir Dalip SINGH observed that though he did not reject the Argentine proposal, in his opinion the co-operation with the Pan-American Union should not be stressed too much, as this would constitute a danger to the work of codification. China, India, the Middle East had different ideas of the term state, embryonic ideas of nationality, confused ideas of nations. This difference of conception should be taken into account.

India had made contributions to international law already in 1500 B. C. the Indian lawyer Manu made rules on the law of war (the laws of Manu, Chapter VII, verses 90-93): inter alia on the prohibition of the use of certain arms, on rules of chivalrous warfare, on the distinction between combatants and non-combatants, on the prohibition of the slaughter of women and children in battle. This showed that the Indian lawyers had the capacity to work in the field of international law, but they should be given time. Their voices should be heard, however. Sir Dalip SINGH therefore supported Professor KCRETISKY (Union of Soviet Socialist Republics) in his proposal that more importance be given to consultation of national bodies. In the Indian ideology the conception of a state was given less importance than the conception of a cultural society. To the Indian mind territorial boundaries mattered less than cultural ties. Historical reasons were the basis for this phenomenon. As in his country there are now two cultural societies it would, before the solution of this problem, be difficult for India to decide what constituted a nation. European and American conceptions were hardly understandable by Indian jurists just as Indian conceptions would be incomprehensible to European and American lawyers.

/Sir Dalip SINGH

Sir Dalip SINGH supported the Argentine proposal if it were accepted to replace in the first sentence the word "co-operation" by "consultation" and in the second sentence the word "permanent" by "frequent" and if the following words were added at the end: "without disregarding the claims of other systems of law." Sir Dalip SINGH also shared Professor KORETSKY'S objection to the admission of permanent observers as the practical impossibility of remote countries to send such an observer would result in a privileged position for the Pan-American Union.

In view of the objections raised by Professor KORETSKY (Union of Soviet Socialist Republics) and Sir Dalip SINGH (India) the Venezuelan representative withdrew his proposal regarding a permanent observer and the Argentine representative agreed to the changes suggested by the representative for India.

Mr. EEEID (Egypt) stressed the importance of consulting the Middle Eastern countries through the Arab League. He agreed however that the new wording of the Argentine proposal met his point.

Mr. PETREN (Sweden) asked whether in the first Polish proposal the General Assembly was to do all the work or could it be left to the International Law Commission itself to select organizations for co-operation.

The CHAIRMAN considered that the Sub-Committee to be set up would consider all aspects of the matter. The CHAIRMAN proposed a Sub-Committee of five members which was agreed to unanimously and appointed the representatives for Argentina, China, Egypt, Poland and the United States, with the assistance of the Secretary.

At the suggestion of Professor KORETSKY (Union of Soviet Socialist Republics) that the RAPPORTEUR be included, Professor BRIERLY asked to be excused as he needed all his time to write his report on Item 3 (a) of the agenda.

/Professor RUDZINSKI

Professor RUDZINSKI (Poland) was not able to accept the appointment on the Sub-Committee in view of other engagements, whereupon the CHAIRMAN asked the representative for the Union of Soviet Socialist Republics to accept a place on the Sub-Committee. The representative for China was asked to act as convener and it was decided that the Sub-Committee would meet the next morning at 10:45.

The meeting was adjourned at 5:50 p.m.

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