

GENERAL
ASSEMBLYASSEMBLEE
GENERALEA/AC.10/SR.22
13 June 1947
ENGLISH
ORIGINAL: FRENCHCOMMITTEE ON THE PROGRESSIVE DEVELOPMENT OF INTERNATIONAL LAW
AND ITS CODIFICATION

SUMMARY RECORD OF THE TWENTY-SECOND MEETING

Held at Lake Success on Tuesday 10 June 1947 at 11:00 a.m.

Present:

Chairman:	Prof. Vladimir Koretsky	(Union of Soviet Socialist Republics, Vice-Chairman)
Members:	Dr. Enrique Ferrer Vileira	(Argentina)
	Mr. A. H. Body	(Australia)
	Mr. Guerreiro	(Brazil)
	Dr. Shu-hsi Hsu	(China)
	Prof. Jesus M. Yepes	(Colombia)
	Mr. Osman Ebeid	(Egypt)
	Prof. Henri Donnedieu de Vabres	(France)
	Mr. S. M. Sikri	(India)
	Dr. J. G. de Beus	(Netherlands)
	Mr. Roberto de la Guardia	(Panama)
	Prof. Dr. Alexander Rudzinski	(Poland)
	Mr. Erik Sjoborg	(Sweden)
	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 Item 5 of its agenda, relating to the draft declaration on the rights and duties of States, submitted by Panama (document A/285) and referred to the present Committee in accordance with the General Assembly's resolution (document A/AC.10/4). Other documents before the Committee were document A/AC.10/45, containing the Argentine Delegation's suggestions on that subject, and document A/AC.10/39, prepared by the Secretariat, containing the comments and observations received by the Secretary-General up to 1 June 1947 from the Governments of Member States

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as well as from national and international bodies concerned with international law. Four of these comments were from Governments and three from international bodies. Only one of these communications, that of El Salvador, referred to the substance of the Panama draft by approving it unreservedly.

The Canadian Government simply stated that the national bodies of that country would not be in a position to make a statement, within the stipulated time, and it would therefore not be able to give a useful answer much before the end of July.

The reply of the United Kingdom Government stated in substance that the Panama draft raised a problem of codification, and that it should therefore be dealt with in whatever manner was decided upon as appropriate for codification in general.

The United States Government stated that the present Committee was only concerned with the procedures to be established, and that further, it would be impracticable to give adequate consideration to such an important and complex subject in the limited time at its disposal.

The Chairman had been informed, by the Secretary of the Committee, that two further replies had been received after the expiration of the time limit and he requested the Secretary to give some further information on this subject.

Dr. LIANG (Secretary of the Committee) stated that on 9 June the Secretary-General had received the comments and observations of the Swedish and Mexican Governments, which it had been impossible to incorporate in document A/AC.10/39. The comments and observations of the Mexican Government were in Spanish and were now in the process of being translated into French. Both these replies would be distributed as an Addendum to document A/AC.10/39.

The CHAIRMAN suggested that the Argentine representative explain to the Committee the salient points of his document A/AC.10/45, which might

serve as a basis for discussion. He would then call upon the representative of Panama to speak, as he was sure that the latter would want to add his observations, since his Government was the author of the draft declaration on the rights and duties of States.

Dr. Enrique Ferrer VILEYRA (Argentina) stressed the importance of the initiative taken by the Panama Government. The question of the rights and duties of States had been a matter for study for over a century, but it was only since the First World War that it became the subject of certain codification conventions. However, document A/AC.10/39 only contained seven comments and observations, out of which only one referred to the substance of the question, which was not enough to form an opinion on the attitude of States to this important fundamental problem. He therefore proposed that his draft recommendation, as given in document A/AC.10/45, should be included in the report.

Dr. PEREZ PEROZO (Venezuela) said that on the whole he was in agreement with the views of the Argentine representative. However, he felt that, in view of its terms of reference, it was not within the Committee's powers to suggest, in its report, that the Panama Government's draft should be used as a basis for the ILC's work.

Mr. GUERREIRO (Brazil) was also of the opinion that the report to the General Assembly should state that the Committee had been unable to deal with the question owing to lack of time. However, he considered that the report should point out that the Panama draft should form the foundation of the work of the ILC, which should give this problem priority.

Professor Jesus M. YIEES (Colombia) pointed out that the question of a declaration on the rights and duties of States was on the agenda of the next Pan-American Conference, to be held at Bogota. In view of this he considered that the Committee should at least have a general discussion of the problem.

Professor P. C. JESSUP (United States of America) stated that his

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Government attached great importance to the Panama draft. However, in view of the lack of time, he agreed with the Argentine delegate's suggestion.

Professor Henri DONNEDIEU DE VABRES (France) associated himself with the Argentine delegate's proposal. In addition to the arguments put forward by earlier speakers, he wanted to stress the three fundamental reasons which argued in favour of postponing the discussion of the Panama draft:

1. Although such a declaration might seem familiar to the American Republics, the same was not true for the European States, which did not clearly grasp the binding force of such a document.
2. The draft appeared to modify certain provisions of the Charter, and hence co-ordination with the latter was called for.
3. Finally, it contained a certain number of new provisions which ought possibly to be incorporated in the Charter.

Professor Dr. RUDZINSKI (Poland) remarked on the ambiguity of the terms of the General Assembly's resolution, which might mean that the Committee was to study the substance of the Panama draft, or that it was merely to prepare a report on the comments and observations of the Governments and international bodies. For his part, he believed that it was the Committee's duty to deal with both the one and the other, but in view of the small number of replies it would be impossible to achieve a useful piece of work. The study of the Panama draft would also raise a considerable number of delicate points, and therefore great prudence would have to be observed. This particularly concerned the bearing of the draft declaration on the Charter of the United Nations, as well as the terms of Articles 4 and 8 of the draft which dealt with both the rights and the duties of States. Again, the declaration only referred to the rights and duties of States, whereas it was now admitted (partly owing to the Charter) that not only States but peoples and nations might have both rights and duties. He associated himself with the Argentine delegate's proposal, suggesting, however, that it should be amended

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in such a way as to bring it into line with the report already prepared by the Rapporteur on the procedure to be followed.

Professor J. L. BRIERLY (United Kingdom) (Rapporteur) agreed with the Polish delegate that the terms of the General Assembly's resolution were ambiguous. He did not share the Venezuelan delegate's point of view, for the Assembly wished the present Committee to submit a recommendation on the Panama draft. Hence, he whole-heartedly endorsed the Argentine delegate's proposal.

Mr. A. H. BODY (Australia) also felt that the present Committee would be unable to study the substance of the Panama draft. He agreed with the Argentine delegate that the problem should be referred to the ILC for study but wished to make an amendment to the Argentine delegate's proposal: according to him, the establishment of a convention on the rights and duties of States should follow and not precede the work of the ILC.

Dr. PEREZ PEROZO (Venezuela) reminded the Committee of his previous remarks. He felt that the Australian delegate's proposal was more in agreement with his point of view than the proposal formulated by the Argentine delegate.

The CHAIRMAN stated that the Committee had to decide whether to study the Panama draft declaration or not. If the Committee decided not to consider the substance of that proposal, the Argentine representative's draft resolution, amended if necessary, might be used as a basis for the discussion.

Dr. Enrique Ferrer VIEYRA (Argentina) maintained that it was open to the Committee, in its report, to say that it approved the principles which formed the basis of the Panama draft declaration.

The CHAIRMAN did not agree with the Argentine delegate's views on the last point. He called on the Swedish delegate to state his Government's views, as set forth in its reply to the Secretariat, and on the Colombian delegate to explain the subject matter of the reply received from the Mexican Government.

/Mr. Erik SJOBORG

Mr. Erik SJOBORG (Sweden) replied that he had scarcely had time to make a detailed study of the document received from his Government. The Swedish Government too asked that the study of the Panama proposition should be postponed and dealt with in the manner appropriate for the codification of international law. He agreed with the Argentine delegate that the question should be referred to the ILC for further study, and did not think that there should be a recommendation to draw up a draft Convention.

Professor Dr. Jesus M. YEPES (Colombia) summarized the memorandum received from the Mexican Government; after expressing satisfaction at Panama's having taken such an initiative, the memorandum pointed out that Mexico had submitted similar proposals at San Francisco. The Mexican Government wished to be informed of the results of the present Committee's work, in order to be able to formulate an opinion. The memorandum went on to consider the Articles of the Panama draft, approving some and proposing amendments to others.

Professor Milan BARTOS (Yugoslavia) was also of the opinion that the present Committee should not study the Panama Government's draft declaration. A political rather than a legal question was involved; this was proved by the fact that the Assembly had referred the draft to its First Committee for consideration, and not to its Sixth Committee. Contrary to the opinion of certain delegates, the Assembly's terms of reference to the present Committee were clear. It should be remembered that the work of the First Committee was carried on in French, and that the original of the resolution adopted by the General Assembly was in that language. Now, the original text was not at all ambiguous: it said that the Committee was merely to consider the comments and observations from Governments and international bodies. The Committee was faced with a dilemma: should it recommend that the ILC be instructed to prepare without delay a draft Convention, which
/would reflect

would reflect the draft submitted by Panama, without waiting for the political directives which could only be given by the States; or should it refrain from making such a recommendation, leaving the ILC to proceed with a new study of the question? He personally was in favour of the second solution.

The CHAIRMAN noted that all but three members of the Committee had stated their views. None had suggested the consideration of the substance of the draft declaration submitted by Panama. He would therefore propose to take it as decided that, in the absence of comments and observations from Governments, the Committee was not in a position to proceed with the study of the substance of the Panama draft. Any delegate wishing to make a statement on the substance should do so in writing, so that it might be incorporated in the Summary Record.

Dr. Jesus M. YEPES (Colombia) announced that he wanted to make a general statement on the substance of the problem. In deference to the Chairman's suggestion, however, he would read his statement after the close of the debate.

The CHAIRMAN suggested using the proposal submitted by the Argentine delegate as a basis for discussion.

Mr. GUERREIRO (Brazil) proposed that the draft resolution be amended by dividing into three points:

"According to the general idea resulting from the few comments and observations received, the Committee feels that:

- (a) The Declaration on Rights and Duties of States should be dealt with according to the methods eventually to be adopted by the General Assembly for the progressive development of international law and its codification;
- (b) The draft Declaration proposed by Panama should be the basis of study;
- (c) The subject be considered as one of the first to be taken up in the work of codification."

/He pointed

He pointed out that the Committee had given priority to the Nuremberg principles, and it would lead to confusion if it were now to recommend that the question of the rights and duties of States should be likewise given priority.

Mr. A. H. BODY (Australia) proposed the following formula:

"That the draft declaration on the Rights and Duties of States presented by the Government of Panama be referred to the ILC with the request that the ILC give consideration at an early date as to the appropriate action which might be taken in respect thereto."

Prof. Milan BARTOS (Yugoslavia) then proposed the following text:

"Since the Committee on the Progressive Development of International Law and its Codification has received only a small number of comments and observations from the Member States of the United Nations and from national and international bodies on the draft declaration on Rights and Duties of States submitted by the Government of Panama, therefore this Committee decides:

- (a) To refrain from submitting to the General Assembly the report requested in the resolution of 11 December 1946, #38 (1).
- (b) To recommend to the General Assembly to entrust the further studies concerning this subject to the ILC in accordance with the procedure suggested for the progressive development of international law and its codification."

Prof. Henri DONNEDIEU DE VABRES (France) agreed with the views of the Brazilian delegate.

Mr. Erik SJOBORG (Sweden) was inclined to think that they should not say, not even in the mild form proposed by the Brazilian delegate, what priority should be given to this problem. This in itself would constitute a judgment of the substance and he could not associate himself with it. He suggested that the Committee should purely and simply recommend that the problem be referred to the ILC.

The CHAIRMAN asked the delegates to formulate their amendments in concrete form.

Prof. P. C. JESSUP (United States of America) remarked that under the resolutions already adopted by the Committee it was for the General Assembly

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to indicate to the ILC what priority should be given to questions referred to it. He asked the Australian delegate to explain a point: The Australian text would seem to imply that the problem of the rights and duties of States should be dealt with by the ILC, not by virtue of the procedure already suggested by that Committee, but by a special procedure to be decided upon by the General Assembly.

Mr. A. H. BODY (Australia) replied that that had not been his intention.

Mr. GUERREIRO (Brazil) urged that the report to the General Assembly should indicate that a certain priority should be given to the question in the work of codification.

The CHAIRMAN pointed out that if they picked out some problems for priority, they would reach the paradoxical result of having to select certain problems for top priority. He agreed therefore with the views of the United States delegate and suggested that a sub-committee be appointed to prepare a draft recommendation for inclusion in the report. This draft recommendation might contain the following three points:

1. An indication of why the Committee was unable to formulate a concrete proposal.
2. A recommendation that the General Assembly should refer the problem to the ILC for study.
3. A statement that this study should be conducted in accordance with the methods recommended by that Committee for the development of international law and its codification.

He noted that the Committee had failed to reach agreement on two points only:

1. Whether it should be indicated that the question of the declaration on the rights and duties of States should be given a certain priority or not; and

/2. Whether

2. Whether the report should mention that the Committee considered that the Panama draft should be used as a basis for the ILC's work.

The last two questions were put to the vote with the following result:

First question: 9 for, 7 against; the Committee thus decided against mentioning in the report that the question should be given priority.

Second question: 9 for, 4 against, with 3 abstentions; the Committee considered that the Panama draft should be used as a basis for the work of the ILC.

The CHAIRMAN then suggested that the drafting sub-committee should include among its members the Argentine, Brazilian and Yugoslav delegates.

Mr. GUERREIRO (Brazil) proposed either Prof. J. L. Brierly (United Kingdom) or Prof. P. C. Jessup (United States of America) as members of the sub-committee to deal with the English text.

As both these delegates declined the appointment, Dr. Perez Perozo (Venezuela) suggested the Australian delegate as a fourth member in addition to the three delegates suggested by the Chairman. This proposal was adopted.

The CHAIRMAN instructed the Yugoslav delegate to call a meeting of the sub-committee. In view of the lateness of the hour, he asked the Colombian delegate to postpone the reading of his declaration, which he had mentioned earlier, until the afternoon meeting.

Prof. Dr. Jesus M. YEPES (Colombia) agreed to this request.

The CHAIRMAN said that he would like to ask the Netherlands delegate to make a small amendment to the text of his resolution adopted at the preceding meeting, by replacing the words "international legislation" by "international multipartite convention." However, he would bring this question up at the afternoon meeting.

The meeting rose at 1:20 p.m.
