

COMMITTEE ON THE PROGRESSIVE DEVELOPMENT OF
INTERNATIONAL LAW AND ITS CODIFICATION

SUMMARY RECORD OF THE TWENTY-FIFTH MEETING

Held at Lake Success, New York, on Thursday
12 June 1947 at 11:00 a.m.

Present:

Chairman:	Sir Dalip Singh	(India)
Members:	Dr. Enrique Ferrer Vieyra	(Argentina)
	Mr. G. C. Moore	(Australia)
	Mr. Guerreiro	(Brazil)
	Dr. Shu-hsi Hsu	(China)
	Prof. Dr. Jesus M. Yepes	(Colombia)
	Mr. Osman Ebeid	(Egypt)
	Prof. Henri Donnedieu de Vabres	(France)
	Dr. J. G. de Beus	(Netherlands)
	Mr. Robert de la Guardia	(Panama)
	Prof. Dr. Alexander Rudzinski	(Poland)
	Mr. Erik Sjoborg	(Sweden)
	Prof. Dr. Vladimir Koretsky	(Union of Soviet Socialist Republics)
	Mr. Richard Best	(United Kingdom)
	Prof. P. C. Jessup	(United States of America)
	Dr. Perez Perez	(Venezuela)
	Prof. Milan Bartos	(Yugoslavia)

The Chairman opened the meeting.

He first asked the delegate of Yugoslavia, Chairman of the Sub-Committee entrusted with drawing up a draft recommendation on the draft declaration of Panama on the Rights and Duties of States, to submit his report.

Prof. Milan Bartos (Yugoslavia) stated that the Sub-Committee had been restricted in its work by the three decisions taken by the Full Committee, namely:

1. That the question of substance should not be studied.
2. That the recommendation should not contain any suggestion about the priority which the International Law Commission should give to this Committee.
3. That the draft of the Government of Panama should be used as a basis for the work of the International Law Commission.

He pointed out that the text had been adopted unanimously though, personally, he did not agree with the third point which he had just mentioned. In addition the Sub-Committee had carried out its work in French and it was the text drafted in that language that should be considered as the original, the English translation having been made by the Secretariat with the help of the delegate of Australia who was a Member of the Sub-Committee.

Dr. Liang, Secretary of the Committee, suggested that the rapporteur be entrusted with the work of exact drafting of the recommendations in the English language.

The Chairman then read the first paragraph of the text submitted by the Sub-Committee:

"(1) The Committee on the Progressive Development of International Law and its Codification, having before it a very limited number of comments and observations from the Member States of the United Nations and from national and international bodies on the Draft Declaration of the Rights and Duties of States submitted by the Government of Panama....."

Dr. Perez Perez (Venezuela) was of the opinion that the words "a very limited number of comments" were vague. The Committee should state the exact number of replies that it received up to date and this would explain why the Committee had not been able so far to study the substance of the problem.

Dr. Liang, Secretary of the Committee, stated that six replies had been received from Governments of which two had arrived after 31 May and that three had been received from national or international bodies.

Dr. Enrique Ferrer Vieyra (Argentina) and Prof. Milan Bartos (Yugoslavia) agreed with the proposal of the Venezuelan delegate.

Prof. Henri Donnedieu de Vabres (France) proposed keeping the present text and adding to it simply the corresponding numbers, i.e., 6 and 3 in brackets.

The Chairman noted that the Committee agreed to amend the text accordingly. He then read paragraph 2:

"The majority of the comments recommend postponement of the study of the substance of this question....."

This text was approved without discussion. The Committee would now have to consider the Sub-Committee's recommendations.

"The Committee recommends:

That the General Assembly entrusts further studies concerning this subject to the International Law Commission in accordance with the procedure suggested for the progressive development of international law and its codification."

Prof. P. C. Jessup (United States) associated himself with the point of view previously expressed by the British Government, that the Draft Declaration raised a question of codification. He therefore proposed deleting the words "progressive development" so that the text would read "for the codification of international law."

/Prof. Alexander Rudzinski

Prof. Alexander Rudzinski (Poland) was of the opinion that the Draft Declaration raised a problem of codification. In any case certain of its articles, particularly that relating to the right to existence went beyond the question of codification. He therefore proposed keeping the formula submitted by the Sub-Committee.

Prof. Henri Donnedieu de Vabres (France) also preferred to keep the present text because in certain respects the Panamanian Draft raised problems of new legislation.

The Chairman asked the delegate of the United States if he insisted on his proposed amendment.

Prof. P. C. Jessup (United States) did not insist on his proposal provided the report stated that it was for the International Law Commission to decide on the procedure to be followed in this matter.

The Chairman noted that the first recommendation of the Sub-Committee had been approved by the Committee.

He then read the second recommendation:

"The Committee also recommends that the International Law Commission should take the Draft Declaration on Rights and Duties of States submitted by the Government of Panama as the basis of study."

Prof. Alexander Rudzinski (Poland) agreed with this formula but proposed that the following phrase be added: "It being understood that the matters already provided for by the Charter of the United Nations and by the United Nations Declaration of 1 January 1942 do not require further examination." It would in fact be dangerous to reopen the discussion on certain principles which had been laid down by recent fundamental multi-partite conventions.

Mr. Guérreiro (Brazil) opposed the amendment proposed by the delegate of Poland. It was clear that the International Law Commission would take into account in its work the principles already laid down in the United Nations Charter, but the amendment referred to a question of substance and it had already been decided not to discuss the substance.

Prof. Dr. Jesus M. Yepes (Colombia) also rejected the Polish proposal. There was no good cause for limiting the powers of the International Law Commission. The Charter itself might one day be amended.

Prof. P. C. Jessup (United States) associated himself with the opinion of the delegate of Colombia.

Prof. Alexander Rudzinski (Poland) did not mean to limit the powers of the International Law Commission. Those powers included certain items that were not covered by the Charter, but others had been recently codified

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either by the Charter or by the United Nations Declaration and it was on these items that he wished to avoid a discussion.

Mr. Erik Sjoborg (Sweden) also thought the Polish amendment touched on the question of substance and should not be included in the recommendation.

Prof. Milan Bartos (Yugoslavia) informed his colleagues that he was speaking as the delegate of Yugoslavia, not as the Chairman of the Drafting Sub-Committee. His delegation had come out against using the Panamanian draft as the basis of the work of the International Law Commission. This question had, however, been decided by a majority vote. He proposed a compromise formula; for example the words might be added: "it being understood that other existing sources of international law shall be taken into account."

Prof. Henri Donnedieu de Vabres (France) supported by Mr. Richard Best (United Kingdom) was definitely opposed to any amendment of the text submitted by the Committee. It went without saying that the International Law Commission would be able to utilize or take into account other existing sources of international law.

The Chairman stated that the words used in the first recommendation "in accordance with the procedure suggested for the progressive development of international law and its codification" clearly covered the Polish and Yugoslav amendments. Other sources would not be excluded. But, as delegate of India, he was in entire agreement with the delegates of Poland and Yugoslavia on the substance of the matter. He asked these two delegates if they insisted on their respective amendments.

Prof. Alexander Rudzinski (Poland) said he withdrew his amendment.

Prof. Milan Bartos (Yugoslavia) was also prepared to withdraw his amendment provided the Summary Record mentioned that the Committee's recommendation that the draft submitted by the Panamanian Government should serve: "as a basis of study" did not exclude consideration of other sources of international law.

The Chairman noted that the Sub-Committee's text had been approved.

Prof. Dr. Jesus M. Yepes (Colombia) proposed adding a new paragraph to the recommendations:

"The Committee also recommends that the Secretariat of the United Nations should again appeal to the governments that have not yet answered the questionnaire on the Draft Declaration on the Rights and Duties of States to be good enough, to reply, if possible, before the next session of the General Assembly, in order to facilitate the study of this important problem."

/Dr. Kern

Dr. Kern (Assistant Secretary-General) proposed that the word "Secretariat" be replaced by "The Secretary-General of the United Nations" which would be in conformity with the observed practice and with the Charter.

Dr. Liang (Secretary of the Commission) pointed out that the Committee's report would be addressed to the General Assembly, while this was a question of a request to be addressed to the Secretary-General. It would, therefore, be preferable that the Chairman of the present Committee send a letter to the Secretary-General in the sense mentioned by the delegate of Colombia.

Dr. Enrique Ferrer Vieyra (Argentina) asked if the Charter allowed the Committee to address the Secretary-General.

Dr. Kern (Assistant Secretary-General) replied that on such matters it would certainly do so since it was a question of complying with the wishes of the General Assembly.

Prof. Milan Bartos (Yugoslavia), Dr. Enrique Ferrer Vieyra (Argentina) and Prof. P. C. Jessup (United States) supported the proposal of the delegate of Colombia.

The Chairman noted that it was accepted.

The Committee had now to consider the rapporteur's report (document A/C.10/40). The paragraph to be studied was No. 9, which began as follows:

"9. By a majority, the Committee decided to recommend that the International Law Commission should be authorized to consider projects and draft conventions recommended by Governments, other United Nations organs, specialized agencies and those official bodies established by inter-governmental agreement to further the progressive development of international law and its codification, transmitted to it through the Secretary-General and that in such cases the Committee should follow a procedure on the following lines:"

Does anyone wish to speak on the wording of this text?

Prof. Milan Bartos (Yugoslavia) said the text showed that the majority agreed that the initiative for the work of the International Law Commission might come from Governments, from other organs of the United Nations, etc., while the minority thought the exclusive initiative belonged to the General Assembly. Now the minority also admitted that the initiative might come from the Economic and Social Council; it should be stated in the report that on this particular point unanimity had been reached.

At the request of the Chairman, the delegate of Yugoslavia formulated his proposal for an amendment: "with the exception of the Economic and Social Council whose right of initiative within the sphere of its competence has been recognized by all the Members of the Committee."

/Prof. Alexander Rudzinski

Prof. Alexander Rudzinski (Poland) reminded the Committee that he had submitted a memorandum on the right of the Economic and Social Council to take the initiative and that he had reserved his right to take up this question later on.

Prof. Henri Donnedieu de Vabres (France) proposed adding the Yugoslav delegate's proposal at the bottom of the page as a footnote. This proposal was accepted.

Prof. Vladimir Koretsky (Union of Soviet Socialist Republics) drew the attention of the Committee to the fact that the opinion of the minority was noted at the end of paragraph 9 of the report, in such a way as to suggest that it related only to sub-paragraph 3 of this paragraph. To reflect accurately the view of the minority, its opinion should be mentioned in the introductory part of paragraph 9 of the report.

Prof. Alexander Rudzinski (Poland) and Dr. Enrique Ferrer Viqueira (Argentina) proposed including the mention in question at the bottom of the page in the same footnote as the mention of the right of the Economic and Social Council to take the initiative.

The Chairman said the Committee was jumping ahead a little since for the time being it was considering only the first part of paragraph 9. He was not opposed, however, to settling immediately the question of the form in which the minority opinion should be mentioned and of its position in the report.

Prof. Vladimir Koretsky (Union of Soviet Socialist Republics) was of the opinion that the last sentence of paragraph 9 ("these members therefore do not concur in the recommendations contained in this paragraph") was useless. This statement was already made in the Summary Record. The only thing which it was important to emphasize in the report was the opinion of the minority that the right of initiative accorded the different organs or agencies listed was contrary to the Charter.

Prof. Alexander Rudzinski (Poland) preferred maintaining the sentence under discussion because without it the text would not render faithfully the idea of the minority.

Prof. Milan Bartos (Yugoslavia) pointed out that two members of the minority, himself and the delegate of the Soviet Union, had limited themselves to stating that the recognition of the right of initiative of organs, agencies, etc. was contrary to the Charter and consequently even though they had taken part in the discussion of the recommendation contained in paragraph 9, they had not taken part in the vote. He associated himself with the representative of the Soviet Union in requesting the deletion of the last sentence of paragraph 9. The English version of this sentence seemed to him to express less faithfully the minority opinion than the French version

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because use of the word "concur" seemed to imply that the minority had not taken part in the discussion.

Dr. Liang (Secretary of the Committee) said the term "concur" in the English version did not imply that the members of the minority had not taken part in the discussion of the recommendation.

The Chairman noted that the majority of the Committee agreed to delete the last sentence of paragraph 9 which should therefore not be included in the final report.

Prof. Alexander Rudzinski (Poland) requested that the note on the minority opinion be supplemented by introducing after the sentence, "it was therefore their view that the International Law Commission was constitutionally precluded from making recommendations to the General Assembly on projects other than those referred to it by the General Assembly itself", the following words, "and under the authority of the General Assembly by the Economic and Social Council." This would be in accordance with Article 62 of the Charter.

Prof. Milan Bartos (Yugoslavia) did not agree with this proposal. The Economic and Social Council had certain powers by virtue of Article 62 but not that of bringing matters directly before the International Law Commission without going through the General Assembly.

Prof. Alexander Rudzinski (Poland) asked in that case, that the sentence proposed by himself should be included in the report, special mention being made that it corresponded to the opinion of the Polish representative.

Dr. Kernó (Assistant Secretary-General) drew attention to the fact that the report spoke of three members of the Committee without naming them. In this case it was not logical to mention the representative of Poland.

Prof. Vladimir Koretsky (Union of Soviet Socialist Republics) proposed substituting for the words, "three of the members of the Committee" the words, "the minority" which would allow subsequent mention to be made of Poland.

Mr. Richard Best (United Kingdom) drew attention to the fact that the minority had insisted several times that the number of its members be specified in the report in such a way as to show clearly that the majority in favour of a certain resolution had only with difficulty won a victory over the minority.

Prof. Vladimir Koretsky (Union of Soviet Socialist Republics) stated that this had been done when the minority was a large one so as to indicate that the vote had been won with difficulty.

/Prof. P. C. Jessup

Prof. P. C. Jessup (United States) thought that if in one case it should be pointed out that the minority was a large one, there was just as much reason to indicate in another case that the minority was small.

The Chairman put to the vote the Soviet representative's proposal to replace the words "three members" by "the minority". The result of the vote was: 5 for, 6 against, with 5 abstentions. It was decided to retain the phrase as it stood.

The delegate of Poland having stated that he did not insist that the note on the right of initiative of the Economic and Social Council should mention him by name, the Chairman said this note would read: "one of the three members of the minority, etc."

The Committee had now to consider various points of paragraph 9. Point I read: "If the International Law Commission is asked to consider a project not yet formulated as a draft convention, it should....."

Prof. Vladimir Koretsky (Union of Soviet Socialist Republics) reminded the Committee that paragraph 8 of the report described only one procedure for progressive development. On the other hand paragraph 9 described three different procedures in its sub-paragraphs, (I), (II), and (III). The fact was that the International Law Commission was being given tasks, which, in the opinion of the Soviet Union representative, did not belong to it so that in certain respects it becomes a Consultant on conventions which were to be signed and sometimes even, a promoter of ratifications to a convention, when States were not eager to sign them. Doubtless the majority meant to grant the right of initiative to organs, agencies, etc. other than the General Assembly. But this did not preclude an indication that in all cases the procedure would be that laid down in paragraph 8, except that for Drafts introduced otherwise than by the General Assembly, the relations of the Assembly with the International Law Commission would have to be defined. This was an important question and the representative of the Soviet Union requested his colleagues to give him all of their attention. He proposed that the meeting be adjourned in view of the lateness of the hour.

The Chairman adjourned the meeting at 12:50 p.m.
