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Summary record of the 2427th meeting

Topic:
Other topics

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possible adjustment of its working methods and procedure to facilitate the efforts of parties and thus obtain the best possible result.

9. He thanked all members of the Commission for their cooperation and trust and also expressed appreciation to the officers of the Bureau and to the secretariat. He informed members that Ms. Dauchy had retired, and emphasized the valuable contribution she had made to the work of the codification and progressive development of international law. He introduced Mr. Lee to the Commission, who succeeded her as Secretary to the Commission.

10. He suggested that the meeting should be suspended to enable members to hold consultations on the election of officers.

The meeting was suspended at 3.50 p.m. and resumed at 4.35 p.m.

Election of officers

Mr. Mahiou was elected Chairman by acclamation.

Mr. Mahiou took the Chair.

11. The CHAIRMAN expressed his thanks to the members of the Commission for their trust and for the honour they had conferred upon him. He looked forward to their cooperation, in the hope that the final year of the quinquennium would be as productive as possible and that the Commission could achieve the objectives the General Assembly had set for it.

Mr. Rosenstock was elected First Vice-Chairman by acclamation.

Mr. Kusuma-Atmadja was elected Second Vice-Chairman by acclamation.

Mr. Calero-Rodrigues was elected Chairman of the Drafting Committee by acclamation.

Mr. Lukashuk was elected Rapporteur by acclamation.

Adoption of the agenda (A/CN.4/473)

12. The CHAIRMAN suggested that the provisional agenda (A/CN.4/473) should be adopted on the understanding that it would in no way prejudice the order in which the various items were taken up.

It was so agreed.

The agenda was adopted.

Organization of work of the session

[Agenda item 1]

13. The CHAIRMAN suggested that, in accordance with established practice, the Enlarged Bureau should

meet to consider the organization of work of the session. He drew attention to General Assembly resolution 50/45, to which the Acting Chairman had referred, and pointed out that, at its forty-seventh session, the Commission had decided to allow for at least three weeks' intensive work in the Drafting Committee at the beginning of its forty-eighth session. He invited the Chairman of the Drafting Committee to hold the necessary consultations on the appointment of members to the Drafting Committee as soon as possible, so that it could start its work without delay. He addressed the same request to the First Vice-Chairman in his capacity as Chairman of the Planning Group.

The meeting rose at 5.15 p.m.

2427th MEETING

Tuesday, 7 May 1996, at 10.10 a.m.

Chairman: Mr. Ahmed MAHIOU

Present: Mr. Arangio-Ruiz, Mr. Bowett, Mr. Calero Rodrigues, Mr. Crawford, Mr. de Saram, Mr. Fomba, Mr. Güney, Mr. He, Mr. Idris, Mr. Kusuma-Atmadja, Mr. Lukashuk, Mr. Mikulka, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Rosenstock, Mr. Thiam, Mr. Tomuschat, Mr. Villagrán Kramer, Mr. Yamada.

Organization of work of the session (continued)

[Agenda item 1]

1. The CHAIRMAN said that the Enlarged Bureau had recommended that the Drafting Committee should in principle devote the first three weeks of the session to the topic of the draft Code of Crimes against the Peace and Security of Mankind. The Planning Group would also be able to meet during the first three weeks, but without interpretation if its meetings clashed with those of the Drafting Committee. The Commission would also meet in plenary from time to time during the first three weeks to hear brief progress reports by the Chairmen of the Drafting Committee and the Planning Group.

2. In view of the availability of Mr. Tomuschat, Chairman of the working group on the issue of wilful and severe damage to the environment (art. 26) under the topic of the draft Code,¹ who had submitted a document on

¹ See *Yearbook . . . 1995*, vol. II (Part Two), para. 141.

that issue (ILC(XLVIII)/DC/CRD.3),² the working group might also meet, provided that it did not interrupt the work of the Drafting Committee.

3. The second report of the Special Rapporteur, Mr. Mikulka, on State succession and its impact on the nationality of natural and legal persons (A/CN.4/474)³ should be available on 21 May. A meeting of the Commission might be planned for the introduction and discussion of the report from 28 May.

4. At the end of the first three weeks and in the light of the progress of work and the availability of documents, the Commission might meet to consider the work of the Drafting Committee on the draft Code. The Drafting Committee might take up the topic of State responsibility from 24 May, and the Enlarged Bureau would meet as needed to adopt recommendations on the programme of work for the second half of the session.

5. He suggested that the secretariat should schedule plenary meetings on Tuesday and Friday mornings during the first three weeks. Those meetings would be immediately followed by meetings of the Drafting Committee.

6. Mr. IDRIS said that he took it that the topic of international liability for injurious consequences arising out of acts not prohibited by international law was not a priority topic for the session and would be taken up only as time allowed.

7. The CHAIRMAN said that the Commission was to give priority to its second reading of the draft Code and completion of its first reading of the draft articles on State responsibility. Any remaining time would be devoted to the other topics before the Commission. The Commission must bear in mind the budgetary constraints which he had mentioned at the previous meeting; it might be difficult to have all the reports on all the topics available for discussion in time.

8. Mr. VILLAGRÁN KRAMER said that Mr. Idris was right to bring up the topic of international liability for injurious consequences arising out of acts not prohibited by international law, to which the Commission had devoted little attention in the past two years. He suggested that time should be found in June for discussion of the topic, which was more than ready for a first reading.

9. The CHAIRMAN said that the recommendations of the Enlarged Bureau covered the programme of work for the first half of the session, until mid-June. It could of course decide that changes were needed in that programme and it would meet at a later date to consider the programme of work for the second half of the session.

10. In reply to a question from Mr. Crawford, he said that the Commission would have before it the second report by the Special Rapporteur, Mr. Mikulka, on State succession and its impact on the nationality of natural and legal persons (A/CN.4/474), the second report by the

Special Rapporteur, Mr. Pellet, on reservations to treaties (A/CN.4/477 and Add.1 and A/CN.4/478)⁴ and the twelfth report by the Special Rapporteur, Mr. Barboza, on international liability for injurious consequences arising out of acts not prohibited by international law (A/CN.4/475 and Add.1).⁵

11. Mr. THIAM (Special Rapporteur on the topic of the draft Code of Crimes against the Peace and Security of Mankind) pointed out that the time allocated for consideration of the draft Code in the Drafting Committee—until 23 May—was considerably shorter than three weeks.

12. The CHAIRMAN said that the arrangements were flexible and more time would be found if necessary.

13. Mr. HE said that, in addition to the time allocated for work in the Drafting Committee, sufficient time must be made available for discussion of the various topics by the Commission in plenary. If there was no consensus on a set of draft articles, a vote would be needed and minority views would have to be stated and recorded. He reminded the Commission that there were substantial differences of opinion on the topics in question both in the Commission and in the Sixth Committee.

14. He also wished to point out that little time was usually found for discussion of the commentaries to draft articles. The view had been expressed in the Sixth Committee that commentaries should be shorter and drafted in accordance with article 20 of the Commission's statute.

15. The CHAIRMAN said that, after the first three weeks of the session, when priority would be given to the work of the Drafting Committee, the Commission would resume its normal schedule of plenary meetings. He suggested that the Special Rapporteurs should try to have their commentaries ready for consideration in good time.

16. Mr. ARANGIO-RUIZ (Special Rapporteur on the topic of State responsibility) said that his eighth report on the topic (A/CN.4/476 and Add.1)⁶ was basically concerned with parts two and three, where some of the articles already adopted had some minor defects. The Drafting Committee must at least complete its consideration of the so-called acts characterized as crimes in article 19 of part one,⁷ on which he felt it was his duty to offer some comments. There was probably no need for his report to be considered by the Commission in plenary before being passed to the Drafting Committee, and he suggested that the report should be split into two parts, so that at least one would be ready by 24 May.

17. Mr. GÜNEY asked whether the Commission would meet in plenary automatically on Tuesday and Friday mornings or whether the scheduling of the meetings would depend on the progress of work in the Drafting Committee. He supported the implicit suggestion by

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

⁷ *Yearbook . . . 1976*, vol. II (Part Two), pp. 95 et seq.

² Reproduced in *Yearbook . . . 1996*, vol. II (Part One).

³ Ibid.

the Special Rapporteur on the draft Code that the Drafting Committee would need three full weeks for consideration of the draft Code.

18. The CHAIRMAN said that the plenary meetings had already been scheduled: it was necessary for members who did not attend the Drafting Committee or Planning Group to have regular opportunities to meet.

19. Mr. de SARAM said that, while all members of the Commission were mindful that the importance of the work of the Drafting Committee at the session, the eighth report of the Special Rapporteur on State responsibility must certainly be considered by the Commission in plenary, even if briefly, before being passed to the Drafting Committee.

20. Mr. VILLAGRÁN KRAMER said that all members of the Commission had the greatest respect for the reports submitted by the Special Rapporteur on State responsibility. However, the draft articles were now complete and no further reports should be needed unless the Commission or the Drafting Committee so decided. He wondered therefore whether the eighth report of the Special Rapporteur was necessary as he had kept the Commission in a legal limbo on the question of countermeasures for three years. Just one draft article was still awaiting adoption—because of fundamental differences of opinion between the Special Rapporteur and some other members. The Commission must try to complete its adoption of the draft articles at the current session. He therefore requested clarification from the Special Rapporteur as to whether his report contained new draft articles or merely further thoughts on controversial points.

21. The CHAIRMAN said he was sure that the purpose of any new report was to help the Commission to make progress in its work.

22. Mr. MIKULKA said that the Commission was wasting its time by discussing what to do with a report which did not yet exist. Everyone was agreed that the report should first be submitted to the Commission, and that was enough for the time being.

23. Mr. ARANGIO-RUIZ (Special Rapporteur on the topic of State responsibility) said that he agreed with Mr. Mikulka. The brief document in question was his eighth report and contained no new draft articles. It must of course be viewed first by the Commission, but a substantive debate would not be necessary. He was suggesting some minor drafting changes for consideration in the Drafting Committee. As to the matter of the Commission's spending three years in a legal limbo, it was entirely up to the Commission and the Drafting Committee to do what they pleased with the draft article in question.

24. The CHAIRMAN, replying to a question from Mr. PELLET, said that article 26 of the draft Code (Wilful and severe damage to the environment)⁸ had already been discussed by the Commission and had been passed to the Drafting Committee. Mr. Tomuschat's document

(ILC(XLVIII)/DC/CRD.3) was on that issue and should be considered by the Drafting Committee.

25. Mr. PELLET said that the Commission had not taken a firm decision to send article 26 to the Drafting Committee.

26. Mr. ARANGIO-RUIZ noted that Mr. Mikulka had made a point about wasting the Commission's time. The Commission had originally been conceived as a commission of scholars who would discuss legal topics. Now members were continually asking technical questions about the status of documents, whether they would be discussed in the Commission or in the Drafting Committee, whether firm decisions had been taken, and so forth. That was indeed a waste of the Commission's time.

27. The CHAIRMAN said that the Commission did need information about the status of documents and the time and place of their discussion. He urged the Commission to bring the present discussion to a close.

28. Mr. TOMUSCHAT suggested that members should first read his document and then decide whether it should be discussed by the Commission or in a working group.

29. Mr. ROSENSTOCK (Chairman of the Planning Group) said that so far the Planning Group consisted of Mr. Bowett, Mr. Calero Rodrigues, Mr. Crawford, Mr. de Saram, Mr. Idris, Mr. Pellet, Mr. Sreenivasa Rao, and Mr. Yamada.

30. The CHAIRMAN said that Mr. Güney and Mr. Kusuma-Atmadja were also candidates for the Planning Group.

31. Mr. CALERO RODRIGUES (Chairman of the Drafting Committee) said that, for the draft Code, the Drafting Committee would consist of Mr. de Saram, Mr. Fomba, Mr. He, Mr. Kusuma-Atmadja, Mr. Lukashuk, Mr. Mikulka, Mr. Rosenstock, Mr. Tomuschat and Mr. Yamada.

32. For the topic of State responsibility, the Drafting Committee would consist of Mr. Bowett, Mr. Crawford, Mr. de Saram, Mr. He, Mr. Lukashuk, Mr. Mikulka, Mr. Pellet, Mr. Rosenstock, Mr. Tomuschat, Mr. Villagrán Kramer and Mr. Yamada. Mr. Tomuschat and Mr. Yamada were willing to withdraw if necessary.

33. The CHAIRMAN said that minor changes might be made in the composition of the Drafting Committee and the Planning Group when the other members of the Commission had arrived in Geneva. In any event, meetings of the Planning Group were normally open-ended.

34. Mr. PELLET said that he was not a member of the Drafting Committee on the draft Code and was still worried about what action the Drafting Committee was going to take on the topic. With regard to article 26, at its preceding session the Commission had decided to send the draft articles on four of the crimes to the Drafting Committee.⁹ However, the Commission had not decided

⁸ For the text of the draft articles provisionally adopted on first reading, see *Yearbook . . . 1991*, vol. II (Part Two), pp. 94 et seq.

⁹ See *Yearbook . . . 1995*, vol. I, 2387th meeting, para. 1.

to set up a working group on the environment. If the Drafting Group were to take up other subjects in addition to the four crimes, such subjects must first be considered by the Commission.

The meeting rose at 11 a.m.

2428th MEETING

Friday, 10 May 1996, at 10.10 a.m.

Chairman: Mr. Ahmed MAHIOU

Present: Mr. Arangio-Ruiz, Mr. Bowett, Mr. Calero Rodrigues, Mr. de Saram, Mr. Fomba, Mr. He, Mr. Idris, Mr. Kusuma-Atmadja, Mr. Lukashuk, Mr. Mikulka, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Rosenstock, Mr. Szekely, Mr. Thiam, Mr. Tomuschat, Mr. Villagrán Kramer, Mr. Yamada.

Organization of work of the session (continued)

[Agenda item 1)

1. Mr. CALERO RODRIGUES (Chairman of the Drafting Committee), reporting to the Commission on the status of the work of the Drafting Committee, said that it had made considerable progress in its consideration of the articles contained in part two of the draft Code of Crimes against the Peace and Security of Mankind,¹ which dealt with the definition of the crimes. It had completed its consideration of article 22 on war crimes² and had established a small working group, led by the Special Rapporteur and Mr. Bowett, to consider the wording of a proposal submitted by the Special Rapporteur concerning article 15, on aggression.³ The Drafting Committee had also begun work on article 21, on crimes against humanity,⁴ and had already agreed on a number of acts which should be included in that category of crimes. On completion of its consideration of article 21, it would take up the *chapeau* to the articles.

¹ See 2327th meeting, footnote 8.

² For the new text of the draft article proposed by the Special Rapporteur in his thirteenth report, see *Yearbook . . . 1995*, vol. II (Part Two), footnote 57.

³ *Ibid.*, footnote 40.

⁴ *Ibid.*, footnote 52.

2. The Drafting Committee was thus working to schedule within the time-limits set, but without too much haste. A number of questions remained to be settled and all the articles would have to be reviewed before submission to the Commission, but he hoped that the Drafting Committee would be able to conclude its second reading of the draft articles within the three weeks allocated to it for that purpose.

3. Mr. ROSENSTOCK (Chairman of the Planning Group) said the Planning Group had concluded that it would in fact be useful, as already envisaged, to consider the Commission's practices and procedures with a view to improving their effectiveness and that recommendations might be made to that end. It had therefore decided to set up a small working group, consisting of Mr. Bowett, Mr. Crawford, Mr. Idris, Mr. Pellet and Mr. Sreenivasa Rao, to study the question in depth and submit a report on the basis of which the Planning Group would make recommendations to the Commission. He believed that the working group had made good progress and therefore hoped that the Planning Group would be reporting to the Commission on the subject quite soon. The Planning Group would then be able to move on to examine other matters such as the future programme of work.

4. The CHAIRMAN thanked the Chairmen of the Drafting Committee and the Planning Group, respectively, for their very useful reports on the work done in the Drafting Committee and the Planning Group.

5. He said that at the forty-seventh session, the Commission had decided to establish a working group to meet at the beginning of the current session to consider the possibility of taking up the question of wilful and severe damage to the environment within the framework of the draft Code and it had reaffirmed at the same time its intention, in any event, to complete the second reading of the draft Code at the forty-eighth session.⁵ The working group would consist, of course, of Mr. Thiam Special Rapporteur on the topic, together with Mr. Tomuschat, who had submitted a document on the question (ILC(XLVIII)/DC/CRD.3),⁶ Mr. Kusuma-Atmadja, Mr. Szekely and Mr. Yamada, who were willing to take part in it. The working group would consider that document and decide whether it should be submitted to the Commission. It would therefore have to report to the Commission, at an early date, on the outcome of its discussions.

The meeting rose at 10.25 a.m.

⁵ *Ibid.*, para. 141.

⁶ Reproduced in *Yearbook . . . 1996*, vol. II (Part One).