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Summary record of the 1814th meeting

Topic:
Other topics

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INTERNATIONAL LAW COMMISSION

SUMMARY RECORDS OF THE THIRTY-SIXTH SESSION

Held at Geneva from 7 May to 27 July 1984

1814th MEETING

Monday, 7 May 1984, at 3.05 p.m.

Outgoing Chairman: Mr. Laurel B. FRANCIS

Chairman: Mr. Alexander YANKOV

Present: Chief Akinjide, Mr. Al-Qaysi, Mr. Calero Rodrigues, Mr. Díaz González, Mr. Evensen, Mr. Jagota, Mr. Koroma, Mr. Lacleta Muñoz, Mr. Mahiou, Mr. Malek, Mr. McCaffrey, Mr. Ni, Mr. Ogiso, Mr. Quentin-Baxter, Mr. Razafindralambo, Mr. Reuter, Mr. Riphagen, Sir Ian Sinclair, Mr. Sucharitkul, Mr. Thiam, Mr. Ushakov.

Opening of the session

1. The OUTGOING CHAIRMAN declared the thirty-sixth session of the International Law Commission open and extended a warm welcome to members, to the Legal Counsel and to all the Secretariat staff. Mr. Romanov, Director of the Codification Division and Secretary of the Commission, was on leave. The Deputy Secretary, Mr. Valencia Ospina, had recently been appointed Deputy Registrar of the International Court of Justice, and Mr. De Saram was replacing him. The Enlarged Bureau would no doubt wish to consider the manner in which the Commission's appreciation of Mr. Valencia Ospina's work might be recorded.

2. Since the thirty-fifth session, the Commission had been represented at a number of important regional meetings: by Mr. El Rasheed Mohamed Ahmed, in August 1983, and by Mr. Reuter, in January 1984, at the sessions of the Inter-American Juridical Committee; and by Mr. Evensen at the thirty-ninth session, in November 1983, of the European Committee on Legal Co-operation. He wished to thank them for so ably representing the Commission; they would, of course, be afforded an opportunity to report on those meetings if they so wished.

3. He himself had represented the Commission at the thirty-eighth session of the General Assembly, presenting the report of the Commission on the work of its thirty-fifth session (A/38/10), a report which had in general been well received in the Sixth Committee. The Secretariat had circulated a very useful topical summary of the Sixth Committee's discussions (A/CN.4/L.369) which

gave a detailed account of the General Assembly's response to the report.

4. After fulfilling his duties in the Sixth Committee, he had prolonged his stay at United Nations Headquarters for a week, so as to hold discussions with the Legal Counsel and to meet the Secretary-General, the President of the General Assembly and the Chairman of the Advisory Committee on Administrative and Budgetary Questions. All those discussions had proved very fruitful and he was grateful to the Legal Counsel and his staff for the courtesies extended to him and for their assistance in arranging the meetings.

5. Lastly, he thanked all members, and particularly the special rapporteurs, for their valuable co-operation, which he felt sure they would continue to extend to his successor.

Election of officers

Mr. Yankov was elected Chairman by acclamation.

Mr. Yankov took the Chair.

6. The CHAIRMAN thanked members for the great honour of having elected him Chairman and paid tribute to the outgoing Chairman's valuable contribution to the Commission's work. The discussions in the Sixth Committee of the General Assembly had pointed to the importance, in view of the present deterioration in international relations, of concentrating all the Commission's efforts on consolidating the international legal system and promoting friendly relations and co-operation among nations. Many speakers in the Sixth Committee had emphasized the need for the Commission not to be over-ambitious, to aim for realistic targets and to prepare a carefully considered programme of work for the remaining part of its term of office, and had stressed that the Commission's tasks called for courage, serenity and wisdom.

7. As for the provisional agenda (A/CN.4/375), General Assembly resolution 38/138 of 19 December 1983, on the Commission's report for 1983, did not set any order of priorities among the various topics. The General Assembly had thus left that question to be decided by the Commission in the light of the comments made in the Sixth Committee and of the feasibility of completing the work on certain topics before the present terms of office of some members came to an end.

8. Serious consideration should be given, as pointed out in the Sixth Committee, to ensuring that the important work of the Drafting Committee kept in step with that of the Commission itself. In view of the heavy workload facing it, the Drafting Committee should be appointed at the earliest possible opportunity, so that it could hold its first meeting during the first week of the session. The same was true in the case of the Planning Group, so that it could meet while the Legal Counsel was still in Geneva.

9. Lastly, he was optimistic about the outcome of the session, given the co-operation of members and the competent assistance of the Secretariat.

The meeting was suspended at 3.45 p.m. and resumed at 4.15 p.m.

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

Mr. Barboza was elected Second Vice-Chairman by acclamation.

Mr. Mahiou was elected Chairman of the Drafting Committee by acclamation.

Mr. Evensen was elected Rapporteur by acclamation.

Adoption of the agenda (A/CN.4/375)

10. The CHAIRMAN invited the Commission to adopt the provisional agenda (A/CN.4/375). He suggested that it might first wish to consider item 5 (Draft Code of Offences against the Peace and Security of Mankind), leaving it to the Enlarged Bureau to decide on the order in which the other items were to be considered.

11. Mr. AL-QAYSI said that, bearing in mind the very flexible terms of General Assembly resolution 38/138, the Commission should not at the present stage decide which item to take up first. There were many factors involved and, for practical reasons, consultations should be held among members.

12. Mr. THIAM said he had no objection to the Enlarged Bureau discussing the order of consideration of the items on the agenda, more particularly in the light of the availability of the special rapporteurs and their reports. He had none the less asked the Secretariat for his second report on the draft Code of Offences against the Peace and Security of Mankind (A/CN.4/377) to be considered early on, if possible.

13. Sir Ian SINCLAIR, agreeing on the need to have regard to whether the special rapporteurs were available, said he would have no objection at this stage to dealing first with item 5. The Enlarged Bureau could, however, perhaps consider the matter in the context of the other items. A number of them were ready for debate and, in his view, item 7 (International liability for injurious consequences arising out of acts not prohibited by international law) should be placed fairly high on the list.

14. Mr. DÍAZ GONZÁLEZ pointed out that, at the previous session, the Commission and the Planning Group had agreed on two important points, which had

been endorsed by the General Assembly. First, rather than strive to consider all the items on the agenda—which could be done only superficially because of time restrictions—the Commission should endeavour to move ahead in considering the topics on which it already had the requisite documentation. Secondly, priority should be attached to the meetings of the Drafting Committee, so that it could complete consideration of the draft articles already referred to it.

15. Consequently, the Commission should concentrate on only some of the items, those for which documents were available, such as the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, and also State responsibility, a topic on which scarcely any headway had been made for three years.

16. Mr. AL-QAYSI, agreeing with Mr. Díaz González, said it was hard to understand why item 9 (Programme, procedures and working methods of the Commission, and its documentation) figured on the agenda, since it was a matter normally dealt with by the Planning Group. Consideration of any given item, moreover, depended not only on the availability of the special rapporteur but also on whether the relevant report had been made ready at an early date, whether members had had time to digest it, and also on the time available to the Commission itself.

17. Furthermore, in view of the backlog of work, there was no reason why the Commission should not set up a Drafting Committee and a Planning Group in the first week of its session, and indeed of all its sessions. It would then be possible to pin-point any priority items immediately and also give a lead to the Sixth Committee so far as its own deliberations were concerned.

18. In his opinion, the Commission should proceed to adopt the provisional agenda; the Enlarged Bureau could then meet and consultations could be held with a view to achieving the progress that everyone wanted.

19. Mr. USHAKOV proposed that the Commission should adopt the agenda and leave it for the Enlarged Bureau to decide the order in which the items were to be considered.

It was so agreed.

The provisional agenda (A/CN.4/375) was adopted unanimously.

Organization of work of the session

[Agenda item 1]

20. The CHAIRMAN announced that a meeting of the Enlarged Bureau would be held the following morning, 8 May 1984, to consider the Commission's programme of work.

21. Mr. CALERO RODRIGUES said it would be helpful if the Enlarged Bureau could set an early date for the Drafting Committee to begin its work.

22. The CHAIRMAN, in response to a question by Mr. KOROMA, said that the Enlarged Bureau would be composed of the members of the Bureau of the Commission itself and Mr. Castañeda, Mr. Díaz González, Mr. Francis, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Thiam and Mr. Ushakov. Any other member so wishing could, of course, attend the meetings of the Enlarged Bureau.

The meeting rose at 5.45 p.m.

1815th MEETING

Tuesday, 8 May 1984, at 12.05 p.m.

Chairman: Mr. Alexander YANKOV

Present: Chief Akinjide, Mr. Al-Qaysi, Mr. Calero Rodrigues, Mr. Díaz González, Mr. Evensen, Mr. Francis, Mr. Jagota, Mr. Koroma, Mr. Laclea Muñoz, Mr. Mahiou, Mr. Malek, Mr. McCaffrey, Mr. Ni, Mr. Ogiso, Mr. Quentin-Baxter, Mr. Razafindralambo, Mr. Reuter, Sir Ian Sinclair, Mr. Sucharitul, Mr. Thiam, Mr. Ushakov.

Organization of work of the session (*continued*)

[Agenda item 1]

1. The CHAIRMAN informed members that the Enlarged Bureau had that morning considered the tentative timetable for the session. After a detailed discussion on the organization of work, the Enlarged Bureau submitted the following recommendations:

I. The Commission could begin by considering the following two topics:

Draft Code of Offences against the Peace and Security of Mankind (item 5)	9-18 May
Status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier (item 4)	21 May-6 June

Should any time be left over from the discussion of item 5, this time could be allocated to item 4.

II. The Commission could then consider the following topics. The dates mentioned were approximate and would depend on the specific requirements of each topic and on the progress of work:

Jurisdictional immunities of States and their property (item 3)	7-19 June
International liability for injurious consequences arising out of acts not prohibited by international law (item 7)	20-27 June
The law of the non-navigational uses of international watercourses (item 6)	28 June-6 July
State responsibility (item 2)	9-20 July
Draft report of the Commission and related matters	23-27 July

2. The Enlarged Bureau further recommended that, in view of the financial implications, the two official holidays on 31 May and 11 June 1984 should be observed by the Commission.

3. Mr. KOROMA asked when the Drafting Committee could be expected to begin its work.

4. The CHAIRMAN said that every effort would be made to convene the Drafting Committee and the Planning Group as soon as possible. Consultations were under way regarding membership of the two bodies.

5. Mr. McCaffrey, noting that the Enlarged Bureau's recommendations made no reference to item 8 (Relations between States and international organizations (second part of the topic)), said he assumed that the Special Rapporteur for that topic had given his consent in that connection, so as to allow more time for consideration of other items.

6. As many as eight working days had been allotted to item 5 but only seven to, for instance, item 6, which seemed quite inadequate in view of the fact that the report on the topic under item 6 contained a full set of draft articles.

7. The CHAIRMAN said that Mr. McCaffrey's assumption regarding item 8 was correct. As mentioned earlier, the number of days for item 5 had been allotted on the understanding that, if any time was left over, the Commission would immediately take up consideration of item 4. All the suggested dates were subject to adjustment in the light of the exigencies of the situation.

8. In response to a question by Sir Ian SINCLAIR regarding item 4, and speaking also in his capacity as Special Rapporteur for that topic, he said it was his intention to suggest that the Commission should start where it had left off at the previous session, dealing first with the articles outstanding and then taking up the new articles.

9. Mr. REUTER said he could endorse the recommendation that, purely for financial reasons, the Commission should not meet on Thursday 31 May (Ascension Day) or on 11 June (Whit Monday), which were official holidays at the United Nations Office at Geneva. Nevertheless, because of its extremely heavy work-load, the Commission had frequently met on Ascension Day in the past. Obviously, the Commission was again ready to meet at least on Ascension Day if, despite the financial implications, the competent services of the United Nations so wished.

10. The CHAIRMAN said that Mr. Reuter's views undoubtedly expressed the feelings of all members and should be reflected in the Commission's records.

11. In response to a question by Mr. AL-QAYSI, he said that the Legal Counsel would be available for a meeting of the Planning Group on 21 May 1984. There was no reason, however, why the Planning Group should not meet before that date.

12. Sir Ian SINCLAIR said it was his understanding that the question of varying the length of the Commission's sessions, which had been discussed in the Planning Group the previous year, would be considered in plenary