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Summary record of the 1930th meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
1985, vol. I

1930th MEETING

Thursday, 18 July 1985, at 3.10 p.m.

Chairman: Mr. Satya Pal JAGOTA

Present: Mr. Balanda, Mr. Calero Rodrigues, Mr. El Rasheed Mohamed Ahmed, Mr. Flitan, Mr. Francis, Mr. Illueca, Mr. Jacovides, Mr. Koroma, Mr. Lacleta Muñoz, Mr. Mahiou, Mr. McCaffrey, Mr. Ogiso, Mr. Razafindralambo, Mr. Reuter, Mr. Riphagen, Mr. Roukounas, Sir Ian Sinclair, Mr. Thiam, Mr. Ushakov, Mr. Yankov.

State responsibility (*concluded*) (A/CN.4/L.395, ILC(XXXVII)/Conf.Room Doc.3, ILC(XXXVII)/Conf.Room Doc.7)

[Agenda item 3]

Content, forms and degrees of international responsibility (part 2 of the draft articles)[1] (concluded)

DRAFT ARTICLE PROPOSED BY THE DRAFTING COMMITTEE (*concluded*)

ARTICLE 5[2] (*concluded*)

1. Mr. JACOVIDES said that he would be interested to know what had been said in the Drafting Committee during its consideration of article 5, paragraph 3, which had been the subject of much criticism in the Commission. Regardless of the exact wording of the paragraph, the basic concept of an "international crime" as defined in article 19 of part 1 of the draft, though controversial, should be retained. He believed the majority of members of the Commission and of the international community as a whole shared that view. Moreover, in the interests of logic and consistency, any reference to that concept should be along the lines proposed by the Special Rapporteur in the original subparagraph (*e*).

2. Mr. LACLETA MUÑOZ said that, in the Drafting Committee, he had given his approval to a text which could not be entirely satisfactory to everyone, since it was the outcome of discussions and negotiations. He himself had reservations with regard to the concept of an "international crime" which was referred to in paragraph 3 and should, in his opinion, be interpreted in the light of the content of article 19 of part 1 of the draft. The words in square brackets in that paragraph were also of considerable importance. As other speakers had pointed out, although only one State was directly injured when an international crime was committed, all other States were also injured, at least indirectly. Despite his reservations, he would not object to the adoption of article 5 as it now stood.

3. Mr. ROUKOUNAS said that paragraphs 1 to 3 of article 5 progressed from bilateral relations to institutionalized multilateral relations.

4. It had been stated in the Drafting Committee that paragraph 2 was modelled on the law of treaties. Paragraph 2 (*d*), however, did not sufficiently bring out the legal link which included a third State in the contractual framework and which consisted, on the one hand, of the intent of the parties as expressed in the treaty, and, on the other hand, of the third State's acceptance. A more specific reference to the law of treaties should therefore be added, at least in the commentary, in order to give a clearer indication of the nature of that link.

5. Paragraph 2 (*e*) (i) and (ii) appeared to be cumulative and the alternative seemed to be only between subparagraph (*e*) (ii) and (iii). A State injured in respect of a right established in its favour, however, could not be expected to wait until it had been established that the infringement of that right by the act of a State had affected the enjoyment of the rights or the performance of the obligations of the other States parties to the multilateral treaty. The word "or" should therefore be inserted at the end of subparagraph (*e*) (i).

6. Referring to the so-called origin of the obligations violated, he noted that, according to paragraph 1 of article 17 of part 1 of the draft, "An act of a State which constitutes a breach of an international obligation is an internationally wrongful act regardless of the origin, whether customary, conventional or other, of that obligation", and he drew particular attention to the word "other". The Drafting Committee had not taken account of the origin of an internationally wrongful act in article 5 and had, rather, referred to a bilateral or multilateral treaty and to customary international law, but not to the other possible sources of internationally wrongful acts and, consequently, of injury to States. The words "In particular" at the beginning of paragraph 2 nevertheless implied that that provision was not restrictive. If the implied reference was to article 17 of part 1 of the draft, it would suffice to mention that article in the commentary; some reference to that article was, however, essential.

7. As for paragraph 3 of article 5, the important question, in his view, was that of identifying the directly injured State and the indirectly injured State. That distinction had to be made, particularly where an international crime was concerned. It might be possible to draft a text which would be more accurate in legal terms and more in keeping with the Commission's wishes.

8. Mr. FLITAN said that the ideas expressed in article 5 were correct, but its wording would have to be improved on second reading. Paragraph 1, which

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[1] Part 1 of the draft articles (Origin of international responsibility), articles 1 to 35 of which were adopted in first reading, appears in *Yearbook ... 1980*, vol. II (Part Two), pp. 30 *et seq.*

For the texts of articles 1 to 16 of part 2 of the draft as submitted by the Special Rapporteur, see 1890th meeting, para. 3.

[2] For the text, see 1929th meeting, para. 26.

provided that the expression "injured State" meant any State a right of which was infringed by the act of another State, if that act constituted an internationally wrongful act, rightly referred to the infringement of a right and not, as some would have wished, to the "breach of an obligation", an expression which would be more appropriate in the case of an author State. The principle enunciated in paragraph 2 (*e*) was clearly stated in other instruments, in particular the 1969 Vienna Convention on the Law of Treaties.

9. As to paragraph 3, he was convinced that, for the purpose of defining an "injured State", it had to be made clear that what was involved was an international crime. Article 19 of part 1 of the draft referred expressly to international crimes and the Commission not only had to take account of that article, but also had to draw on all its consequences and defer to its provisions. The words in square brackets had been agreed on as a result of a compromise and had replaced the earlier formulation "subject to articles 14 and 15". Paragraph 3 would be re-examined during the Drafting Committee's discussion of articles 14 and 15. Part 2 of the draft would, moreover, have to include articles dealing with crimes other than aggression not mentioned in article 19 of part 1.

10. He did not think that paragraph 3 had to draw a distinction between the rights and obligations of the directly injured State and those of the indirectly injured State. Since its purpose was to define an injured State, it simply had to indicate that all other States had certain rights and certain obligations when a wrongful act which constituted an international crime had been committed. The words "In addition" at the beginning of paragraph 3 were, moreover, entirely appropriate because they drew attention to the fact that the situation referred to in paragraph 3 was different from those covered by paragraphs 1 and 2.

11. In conclusion, he said that article 5 had been considered at length in the Drafting Committee and that the proposed wording represented a compromise solution.

12. Mr. BALANDA said that he was somewhat concerned about the use of the words "human rights and fundamental freedoms" in paragraph 2 (*e*) (iii). There was no clear and precise definition of the concept of "human rights" and existing instruments in that field were concerned above all with "fundamental" rights and "fundamental" freedoms. In order to avoid any improper interpretation or misuse of that concept, he thought that it should be explained, if only in the commentary to article 5, that the term "human rights" meant fundamental rights and that the word "freedoms" meant fundamental freedoms.

13. Since the concept of human rights was now evolving and, in other parts of the world, consideration was also being given to the question of the rights of peoples, he did not think that the term "human rights" should be interpreted in too restrictive a manner; reference should also be made to the rights of peoples in order to make the draft articles more broadly applicable. If, for example, the Commission decided to characterize colonial domination as an international crime, that type of crime would be of concern as much to peoples and to other far larger entities as to individuals.

14. Mr. KOROMA expressed doubts regarding the wording of article 5, paragraphs 1 and 2, which, as they stood, were not very clear and appeared to give two definitions of the term "injured State". It should be possible to combine the two paragraphs without adversely affecting the article in any way.

15. Paragraph 3 might also be reworded to read: "In addition, 'injured States' means all other States, if the internationally wrongful act constitutes an international crime." That wording would flow logically from draft articles 14 and 15, under which only the most serious offences, such as aggression or massive violations of human rights, constituted international crimes. In such cases, the interests of the international community as a whole would be at stake.

16. Sir Ian SINCLAIR, referring to one of the points made by Mr. Roukounas, said that paragraph 2, subparagraph (*e*) (i), (ii) and (iii), were intended to be alternatives, rather than cumulative. Consequently the commas in subparagraph (*e*) (i) and (ii) should be replaced by semi-colons, in accordance with normal practice in English.

17. Mr. CALERO RODRIGUES (Chairman of the Drafting Committee) said that, in the course of the Drafting Committee's consideration of article 5, Mr. Arangio-Ruiz had proposed that the words "In addition" at the beginning of paragraph 3 should be deleted. They had presumably been included to highlight the fact that the consequences of international crimes were in addition to those of international delicts. While he himself had not regarded the words in question as essential, he had not objected to their inclusion.

18. Mr. Ogiso (1929th meeting) had expressed some doubts regarding the reference in paragraph 2 (*e*) (ii) to the enjoyment of rights and the performance of obligations. As Mr. Flitan had explained, however, that wording had been taken from articles 41, 58 and 60 of the 1969 Vienna Convention on the Law of Treaties and was therefore not new. The concept of a "treaty provision for a third State", as contained in paragraph 2 (*d*) and referred to by Mr. Roukounas, had also been taken from the 1969 Vienna Convention, and specifically from its article 36.

19. Mr. Roukounas had also referred to the punctuation of paragraph 2 (*e*). In his own view, the text as it stood left no doubt that the State whose right was infringed was the injured State and it thus required no amendment.

20. It had not been deemed necessary to include a reference to article 17 of part 1 of the draft in paragraph 2, as Mr. Roukounas had suggested, since paragraph 2 was not intended as an exhaustive definition of the term "injured State". Article 17 was much broader in scope.

21. The words "human rights and fundamental freedoms" in paragraph 2 (*e*) (iii), to which Mr. Balanda had referred, were the ones normally used in international instruments. Since self-determination had, moreover, come to be considered as an individual human right, exercised collectively, the Drafting Committee had agreed that the Special Rapporteur should include a reference to that effect in the commentary to article 5.

22. Referring to Mr. Koroma's observations concerning the definitions of the term "injured State" in paragraphs 1 and 2, he said that the use of the words "In particular" at the beginning of paragraph 2 was intended to make it quite clear that the list of examples contained in the paragraph was not exhaustive. The Drafting Committee had originally intended to have the definition as an introductory clause to the other examples, but had then realized that it would be virtually impossible to include all the examples in one article and had decided to draft two paragraphs, one containing a general definition and the other setting out the most important examples. Nevertheless, in both paragraphs, an effort had been made to identify the injured State as the State whose right had been infringed.

23. As to paragraph 3, he said that the conclusion that, in the event of an international crime, all States were injured States flowed logically from article 19 of part 1 of the draft. Mr. Roukounas had proposed that a distinction should be drawn between directly injured and indirectly injured States, a point which had also been made in the Commission and in the Drafting Committee in respect of both international crimes and international delicts. The Drafting Committee had considered that, as far as international crimes were concerned, any distinction should be drawn in the articles dealing with the legal consequences of international crimes. That was why the reference to articles 14 and 15 had been included in square brackets.

24. Mr. REUTER, referring to the punctuation marks and the use of the word "or" in paragraph 2 (*e*) (i), (ii) and (iii), said that the French text, which had been drafted in conformity with treaty practice, was entirely acceptable.

25. Mr. LACLETA MUÑOZ said that he could find no fault with the punctuation and layout of the Spanish text of article 5, which were in conformity not only with correct usage, but also with legal practice.

26. The CHAIRMAN said that, if there were no objections, he would take it that the Commission agreed to adopt article 5 provisionally on first reading, together with the consequential changes to other articles set out in the Drafting Committee's explanatory note (A/CN.4/L.395) and referred to by the Chairman of the Committee (1929th meeting, para. 44).

It was so agreed.

Article 5 was adopted.

Status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier (*concluded*) (A/CN.4/390,[3] A/CN.4/L.382, sect. C, A/CN.4/L.396, ILC(XXXVII)/Conf.Room Doc.2 and Add.1)

[Agenda item 5]

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE (*concluded*)*

ARTICLE 23 and ARTICLES 28 and 29 (*concluded*)

ARTICLE 23 [18] (Immunity from jurisdiction)

27. The CHAIRMAN invited the Chairman of the Drafting Committee to present article 23 [18] as proposed by the Drafting Committee (A/CN.4/L.396), which read:

Article 23 [18]. Immunity from jurisdiction

1. The diplomatic courier shall enjoy immunity from the criminal jurisdiction of the receiving State or, as the case may be, the transit State in respect of all acts performed in the exercise of his functions.

2. He shall also enjoy immunity from the civil and administrative jurisdiction of the receiving State or, as the case may be, the transit State in respect of all acts performed in the exercise of his functions. This immunity shall not extend to an action for damages arising from an accident caused by a vehicle the use of which may have involved the liability of the courier where those damages are not recoverable from insurance.

3. No measures of execution may be taken in respect of the diplomatic courier, except in cases where he does not enjoy immunity under paragraph 2 of this article and provided that the measures concerned can be taken without infringing the inviolability of his person, temporary accommodation or the diplomatic bag entrusted to him.

4. The diplomatic courier is not obliged to give evidence as a witness in cases involving the exercise of his functions. He may be required to give evidence in other cases, provided that this would not cause unreasonable delays or impediments to the delivery of the diplomatic bag.

5. The immunity of the diplomatic courier from the jurisdiction of the receiving State or the transit State does not exempt him from the jurisdiction of the sending State.

28. Mr. CALERO RODRIGUES (Chairman of the Drafting Committee) said that, by adopting article 23, the Commission would be in a position to forward to the General Assembly a complete set of draft articles, from article 1 to article 35, without gaps or provisions appearing in square brackets. At the Commission's next session, the Drafting Committee should be in a position to examine the remaining articles which had been proposed by the Special Rapporteur and referred to it, namely articles 36, 37 and 39 to 43. He paid tribute to the Special Rapporteur and to the members of the Drafting Committee for the dedication and spirit of co-operation they had shown in the work on the topic.

29. As in the case of the articles previously proposed by the Drafting Committee on the topic, article 23 bore two numbers, the first being the number originally assigned by the Special Rapporteur in his

[3] Reproduced in *Yearbook ... 1985*, vol. II (Part One).

* Resumed from the 1913th meeting.

set of draft articles and the second being the number which the article would bear once it had been adopted.

30. Article 23 had been the subject of considerable discussion.[4] At the thirty-sixth session, the Drafting Committee had been unable to agree on all the paragraphs of the article and had returned paragraphs 1 and 4 to the Commission in the form originally submitted by the Special Rapporteur, but in square brackets. After a thorough debate in the Commission, it had been decided to defer a decision on the article until the current session.[5] Taking account of that debate, as well as of the comments made in the Sixth Committee of the General Assembly (A/CN.4/L.382, paras. 141-159), the Special Rapporteur had proposed a revised version of article 23 in his sixth report (A/CN.4/390, para. 29)[6] and the article had again been referred to the Drafting Committee for consideration in the light of the debate held at the current session. The various positions maintained in the past with regard to the article had been set out in the Commission's report on its thirty-sixth session,[7] as well as in the Special Rapporteur's sixth report (*ibid.*, paras. 13-25). The main controversy had concerned the diplomatic courier's immunity from criminal jurisdiction (paragraph 1) and the question of his being required to give evidence as a witness (paragraph 4).

31. Paragraph 1, as currently proposed, represented a compromise between two schools of thought, one holding that the diplomatic courier should enjoy complete immunity from criminal jurisdiction and the other holding that the entire article was unnecessary and that, in particular, no immunity from criminal jurisdiction should be afforded the diplomatic courier. The Drafting Committee had opted for a version of paragraph 1 which followed the rule stated in paragraph 2 with regard to immunity from civil and administrative jurisdiction. Thus, under the current text, the courier enjoyed immunity from the criminal jurisdiction of the receiving State or transit State "in respect of all acts performed in the exercise of his functions". A functional approach had thus been adopted.

32. The Drafting Committee had recognized that the phrase "all acts performed in the exercise of his functions" might be susceptible to varying interpretations, but had entrusted the Special Rapporteur with the task of explaining the meaning and scope of the phrase in the commentary. In particular, it should be noted that the functional rule as currently presented should not be interpreted as sanctioning abuses by a diplomatic courier. Article 23 must be read together with articles 5, 10 and 12.

33. As to presentation, the Committee had believed it more appropriate to maintain paragraph 1 as a separate paragraph dealing with immunity from criminal jurisdiction than to merge it with paragraph 2, which concerned immunity from civil and administrative jurisdiction. The subject-matters of the two paragraphs were quite distinct and the second sentence of paragraph 2 militated in favour of separate treatment of the two types of immunity from jurisdiction.

34. Some members had maintained their reservations on paragraph 1, as well as on the article as a whole, believing that it was an unnecessary provision given the adoption of article 16 on the personal protection and inviolability of the courier and in view of the uncertainty as to the meaning of the phrase "acts performed in the exercise of his functions".

35. Paragraphs 2 and 3 remained exactly as presented by the Drafting Committee to the Commission at the previous session.

36. As to paragraph 4, the Drafting Committee had adopted the revised version proposed by the Special Rapporteur in his sixth report. The essential point was that the courier could be required to give evidence as a witness in cases not involving the exercise of his functions, provided that that would not cause unreasonable delays or impediments to the delivery of the bag. An explanation would be given in the commentary to highlight the fact that the situation envisaged in paragraph 4 was quite distinct from the situations envisaged in paragraphs 1 and 2. Thus the courier could well be required to testify in a case involving an action for damages arising from an accident caused by a vehicle in the circumstances described in the second sentence of paragraph 2. In addition, the commentary would explain that nothing prevented a receiving State or transit State from requesting written testimony from a courier, in accordance with its internal procedural rules or with bilateral agreements providing for that possibility.

37. A minor change had been made to paragraph 5 as submitted to the Commission at its previous session. The word "Any" had been replaced by the word "The", in accordance with the wording of the relevant codification conventions.

38. The title remained as proposed by the Special Rapporteur.

39. Finally, he recalled that, when the Commission had taken up articles 28 and 29 as proposed by the Drafting Committee, it had decided to leave aside certain paragraphs linked to the question of immunity from jurisdiction, pending a decision on article 23. Those paragraphs were paragraph 3 of article 28 and paragraphs 3, 4 and 5 of article 29. In view of the text of article 23 currently before the Commission, the Drafting Committee recommended that the Commission should adopt the texts of those provisions without change.

40. Mr. USHAKOV said he still thought that the inclusion of the words "in respect of all acts performed in the exercise of his functions" in paragraph 1 would pave the way for future difficulties of interpretation. In his view, it was understood that the diplomatic courier, permanent or *ad hoc*, was always

[4] The Commission considered article 23 at its thirty-fifth session, see *Yearbook ... 1983*, vol. I, pp. 167 *et seq.*, 1784th meeting (paras. 1-37), and pp. 256-258, 1799th meeting (paras. 12-29); and at its thirty-sixth session, see *Yearbook ... 1984*, vol. I, pp. 56 *et seq.*, 1824th meeting (paras. 22 *et seq.*) and 1825th meeting.

[5] See *Yearbook ... 1984*, vol. I, pp. 292 *et seq.*, 1863rd meeting and 1864th meeting (paras. 1-22). See also *Yearbook ... 1984*, vol. II (Part Two), pp. 41-42, paras. 188-193.

[6] See also 1903rd meeting, para. 1.

[7] *Yearbook ... 1984*, vol. II (Part Two), p. 21, para. 84, and pp. 29-30, para. 122.

engaged in the exercise of his functions. That view had, however, not been shared by all members of the Drafting Committee. He therefore formulated reservations with regard to the wording of paragraph 1 of article 23. If not for the contentious wording, he would be entirely willing to accept the article as a whole.

41. Sir Ian SINCLAIR said that, although he continued to be of the opinion that article 23 was unnecessary, he commended the efforts made by all members of the Drafting Committee to find a compromise solution to the problems to which the article as a whole, and in particular its paragraphs 1 and 4, gave rise. Some improvements had, of course, been made, especially in paragraph 1, in which the diplomatic courier's immunity from criminal jurisdiction had been qualified, and in paragraph 4, which was based on the revised text submitted by the Special Rapporteur.

42. Despite those improvements, however, article 23 was unnecessary because article 16, which provided for the courier's personal inviolability and freedom from arrest and detention, gave him all the protection he needed in order to perform his functions. It was also undesirable because it created a new category of persons, namely diplomatic couriers, who enjoyed immunity and such a step was not justified by any functional necessity, since the courier's functions were of a peripatetic nature.

43. He would not request a vote on article 23, but wished it to be recorded in the Commission's report to the General Assembly that, if the article had been put to the vote, one member at least would have voted against it. The same reservations logically applied to paragraph 3 of article 28 and to paragraphs 3, 4 and 5 of article 29, although he would not, of course, object to their provisional adoption by the Commission in the form recommended by the Drafting Committee.

44. Mr. McCAFFREY said that his position was similar to that just outlined by Sir Ian Sinclair. While he appreciated the efforts made by the Special Rapporteur, the Drafting Committee and the Commission to find a satisfactory compromise solution, he continued to maintain, as he had done consistently in the past, that there was no need for article 23 as a whole. His continuing doubts with regard to paragraph 1 were based not only on the fact that the protection afforded the diplomatic courier under article 16 appeared to make article 23 superfluous, but also on the fact that the limitation of the courier's immunity from criminal jurisdiction to "all acts performed in the exercise of his functions" gave rise to a difficulty already referred to in connection with articles 10 and 11, namely that of defining the temporal and substantive scope of the functions of the diplomatic courier. If, as some members apparently believed, the diplomatic courier should be considered to be in the exercise of his functions from the moment he became a courier until the moment he ceased to be one, the limitation provided for in paragraph 1 was of little use. While taking some comfort from the assurance that the Special Rapporteur would, in the commentary, explain the meaning which should be attached to the words in question and also elucidate the relationship between paragraph 1 of article 23 and articles 10 and 11, he continued to entertain doubts about the matter.

45. Mr. OGISO, recalling that the Chairman of the Drafting Committee had said in his introductory comments that article 23 had to be read in conjunction with article 5, 10 and 12, said that he would be prepared to accept the text proposed by the Drafting Committee if article 32, paragraph 1, were added to that list. It would then be clear that if, contrary to article 32, paragraph 1, the diplomatic courier intentionally carried in the diplomatic bag items such as narcotic drugs or weapons to be used for terrorist purposes, he was not performing his functions and that article 23, paragraph 1, would not apply. He would have no objection to the adoption of paragraph 1 on that understanding and could also accept paragraph 4 on the understanding that the words "involving the exercise of his functions" in that paragraph would be interpreted in the same way as the similar wording used in paragraph 1.

46. Mr. REUTER said he was concerned that the Commission might appear to be doing nothing but handing out diplomatic immunities. Furthermore, if the members of the Commission were unable to agree on an interpretation of the 1961 Vienna Convention on Diplomatic Relations, and especially of the concept of "inviolability", he was at a loss to see how they could agree on the interpretation of a text which represented a purely stylistic compromise. The Commission should leave the task of interpretation to diplomats and concentrate on being as clear as possible. He was therefore unable to give his approval to paragraph 1 of article 23.

47. Mr. LACLETA MUÑOZ said that, if paragraph 1 of article 23 gave rise to difficulties, that was because it was inevitable that a text should be open to more than one interpretation.

48. The CHAIRMAN speaking as a member of the Commission, said that he could accept the text of article 23 as proposed by the Drafting Committee provided that the commentary made it clear that the words "all acts performed in the exercise of his functions" in paragraph 1 should be understood to mean "all acts performed by the diplomatic courier in the exercise of his functions".

49. The CHAIRMAN said that, if there were no objections, he would take it that the Commission agreed to adopt article 23 [18] provisionally on first reading in the form proposed by the Drafting Committee.

Article 23 [18] was adopted.

ARTICLE 28 [21] (Duration of privileges and immunities)[8] *and*

ARTICLE 29 [22] (Waiver of immunities)[9] *(concluded)**

[8] For the text proposed by the Drafting Committee, see 1911th meeting, para. 18.

[9] For the text proposed by the Drafting Committee, see 1912th meeting, para. 21.

* Resumed from the 1912th meeting, paras. 20 and 28.

50. The CHAIRMAN drew attention, as the Chairman of the Drafting Committee had done (paragraph 39 above), to the Committee's recommendation concerning the decision the Commission had to take, following the adoption of article 23, on articles 28 and 29 as proposed by the Committee (A/CN.4/L.396, note).

51. If there were no objections, he would take it that the Commission agreed, in accordance with the Committee's recommendation, to adopt without change paragraph 3 of article 28 [21] and paragraphs 3, 4 and 5 of article 29 [22].

Article 28 [21] was adopted.

Article 29 [22] was adopted.

The meeting rose at 5.30 p.m.

1931st MEETING

Friday, 19 July 1985, at 12.05 p.m.

Chairman: Mr. Satya Pal JAGOTA

Present: Mr. Arangio-Ruiz, Mr. Balanda, Mr. Calero Rodrigues, Mr. El Rasheed Mohamed Ahmed, Mr. Flitan, Mr. Francis, Mr. Illueca, Mr. Jacovides, Mr. Koroma, Mr. Lacleta Muñoz, Mr. Malek, Mr. Ogiso, Mr. Razafindralambo, Mr. Reuter, Mr. Riphagen, Mr. Roukounas, Sir Ian Sinclair, Mr. Sucharitkul, Mr. Thiam, Mr. Tomuschat, Mr. Ushakov, Mr. Yankov.

Co-operation with other bodies (*concluded*)*

[Agenda item 11]

STATEMENT BY THE OBSERVER FOR THE ARAB COMMISSION FOR INTERNATIONAL LAW

1. The CHAIRMAN welcomed Mr. Ennaifer, Observer for the Arab Commission for International Law, and invited him to address the Commission.

2. Mr. ENNAIFER (Observer for the Arab Commission for International Law) said that many years of co-operation had strengthened relations between the International Law Commission and the Arab Commission for International Law, which hoped to see such co-operation develop still further. Such was also the wish of the Council of Ministers of the League of Arab States.

3. The International Law Commission had now begun the final stage of its work at the present session, having made good progress in the consideration of most items on its agenda. Such progress always had repercussions on the work of the Arab Commission for International Law, whose agenda had for the past three years included some of the topics before the International Law Commission: jurisdictional immunities of States and their property; the draft Code of Offences against the Peace and Security of Mankind; the law of the non-navigational uses of international watercourses; and relations between States and international organizations. The Arab Commission had adopted a procedure similar to that of the International Law Commission. It appointed a special rapporteur for each topic; the special rapporteur then submitted his conclusions for consideration by the Arab Commission; and the final report was eventually submitted to the Council of Ministers of the League of Arab States for adoption. The Arab Commission was endeavouring, with some success, to define a common approach which might be adopted by Arab countries during the consideration of those topics by the Sixth Committee of the General Assembly and at plenipotentiary conferences.

4. The law of the sea was, however, still the main topic of concern to the Arab Commission for International Law, which was trying to bring the regulations in force in the Arab States into line with the provisions of the 1982 United Nations Convention on the Law of the Sea, and in particular those relating to the delimitation of maritime zones, by formulating a set of standard rules which the Arab States would undertake to incorporate in their internal law.

5. Speaking also on behalf of the Chairman of the Arab Commission for International Law, he wished the International Law Commission every success in its work.

6. Mr. USHAKOV, speaking also on behalf of Mr. Flitan and Mr. Yankov, thanked the Observer for his account of the activities of the Arab Commission for International Law. He noted with pleasure that the agenda of the Arab Commission included some of the same items as that of the International Law Commission and he wished the Arab Commission success in its work.

7. Mr. EL RASHEED MOHAMED AHMED said that the Arab heritage in the human sciences, the natural sciences and international law, which had very ancient origins, had been inherited from Greek and Persian civilization and had then been passed on to Europe. The Arabs had thus made their own distinctive contribution to humanity in the form of the establishment of regular co-operation and contacts which would promote better understanding, the harmonization of all points of view and the unification of the world for the peace, happiness and development of all mankind.

8. Mr. MALEK, speaking on behalf of the members of the Commission from the Asian region and as a national of a country which was a member of the League of Arab States, congratulated the Observer on his interesting account of the work done by the Arab Commission for International Law on a wide variety of topics and in many fields of international law. He also welcomed the close relations and

* Resumed from the 1915th meeting.