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**A/CN.4/SR.2042**

**Summary record of the 2042nd meeting**

Topic:  
**Other topics**

Extract from the Yearbook of the International Law Commission:-  
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# INTERNATIONAL LAW COMMISSION

## SUMMARY RECORDS OF THE FORTIETH SESSION

*Held at Geneva from 9 May to 29 July 1988*

### 2042nd MEETING

*Monday, 9 May 1988, at 3.15 p.m.*

*Outgoing Chairman:* Mr. Stephen C. McCaffrey

*Chairman:* Mr. Leonardo DÍAZ GONZÁLEZ

*Present:* Prince Ajibola, Mr. Arangio-Ruiz, Mr. Barboza, Mr. Barsegov, Mr. Beesley, Mr. Boutros-Ghali, Mr. Calero Rodrigues, Mr. Eiriksson, Mr. Francis, Mr. Graefrath, Mr. Jacovides, Mr. Koroma, Mr. Mahiou, Mr. Ogiso, Mr. Pawlak, Mr. Razafindralambo, Mr. Roucounas, Mr. Sepúlveda Gutiérrez, Mr. Shi, Mr. Solari Tudela, Mr. Thiam, Mr. Tomuschat, Mr. Yankov.

#### Opening of the session

1. The OUTGOING CHAIRMAN declared open the fortieth session of the International Law Commission and extended a warm welcome to members, to the Secretary to the Commission and to all the Secretariat staff.

#### Statement by the outgoing Chairman

2. The OUTGOING CHAIRMAN said that the Commission was about to embark on 12 weeks of collective reflection and challenging work in the spirit of co-operation and friendship which was one of its most cherished features. He trusted that the session would be intellectually rewarding for all members, as well as beneficial to the progressive development and codification of international law.

3. He wished to express the grief felt by all members at the untimely death of Ms. Ann Petit, who had served them so competently and helpfully for many years. On the Commission's behalf, he thanked the Secretary for having conveyed its heartfelt condolences to her family.

4. In accordance with the mandate received from the Commission, he had represented it at the forty-second session of the General Assembly. The statement which he had made before the Sixth Committee introducing the Commission's report on its thirty-ninth session (A/42/10)<sup>1</sup> was summarized in the relevant summary record,<sup>2</sup> and there was no need to dwell on it. He would also refrain from giving a detailed account of the debate or of the wealth of interesting comments and instructive ideas put forward, since they were reflected in the sum-

<sup>1</sup> See *Yearbook* . . . 1987, vol. II (Part Two).

<sup>2</sup> *Official Records of the General Assembly, Forty-second Session, Sixth Committee, 35th meeting, paras. 1-37.*

mary records and analytically presented in the topical summary prepared by the Secretariat (A/CN.4/L.420).

5. He wished, however, to stress that the work accomplished at the Commission's thirty-ninth session had generally met with a favourable response and that the conclusions reached by the Commission regarding the planning of its activities for the term of office of its current members had received the general endorsement of the Sixth Committee. He had been particularly struck by the obvious interest which the Commission's report had elicited, by the quality of the debate it had generated and by the Sixth Committee's awareness of the need to maintain a meaningful dialogue with the Commission—an awareness which the General Assembly had expressed in paragraph 6 of its resolution 42/156 of 7 December 1987, in recommending:

. . . the continuation of efforts to improve the ways in which the report of the International Law Commission is considered in the Sixth Committee, with a view to providing effective guidance for the Commission in its work . . .

With that end in mind, the Assembly had decided that the Sixth Committee would, at the commencement of the forty-third session, hold consultations on, *inter alia*, the question of establishing a working group, the character and mandate of which were to be determined, to meet during the debate on the Commission's report in order to allow for a concentrated discussion on one or more of the topics on the Commission's agenda.

6. Referring to the question of co-operation with other bodies, he informed the Commission that, in accordance with his mandate, he had represented it at the meeting of the Asian-African Legal Consultative Committee held at Singapore in March 1988. He welcomed the election of Mr. Njenga, a member of the Commission, as Secretary-General of that Committee: his election would obviously result in even closer relations between the two bodies. Also in accordance with his mandate, he had represented the Commission at the meeting of the Inter-American Juridical Committee held at Rio de Janeiro in August 1987 and had lectured to the seminar held on that occasion, giving an account of the Commission's work.

7. He thanked Mr. Roucounas for representing the Commission, at his request, at the session of the European Committee on Legal Co-operation held at Strasbourg in May 1988. As chairman of the Commission, he had himself attended the meeting at Ottawa in August 1987 of the World Federation of United Nations Associations, at the invitation of its Secretary-General.

8. In conclusion, he expressed his heartfelt appreciation to the other officers of the Commission and to all members for their support and co-operation. He also wished to thank the Legal Counsel, Mr. Fleischhauer, who had been unable to attend the opening of the present session, being detained in New York by the resump-

tion of the forty-second session of the General Assembly, as well as the Secretary to the Commission and the entire Secretariat for their unfailing support.

*The meeting was suspended at 3.35 p.m. and resumed at 3.45 p.m.*

#### Election of officers

*Mr. Díaz González was elected Chairman by acclamation.*

*Mr. Díaz González took the Chair.*

9. The CHAIRMAN thanked the Commission for the confidence it had shown in him.

*Mr. Graefrath was elected First Vice-Chairman by acclamation.*

*Mr. Mahiou was elected Second Vice-Chairman by acclamation.*

*Mr. Tomuschat was elected Chairman of the Drafting Committee by acclamation.*

*Mr. Shi was elected Rapporteur by acclamation.*

10. The CHAIRMAN drew attention to General Assembly resolution 42/156 of 7 December 1987, and suggested that the request in paragraph 5 of that resolution should be taken up under agenda item 9 (Programme, procedures and working methods of the Commission, and its documentation).

*It was so agreed.*

11. Mr. FRANCIS said that it would be helpful if members could know which topic the Commission would be taking up first.

12. Mr. BARSEGOV, agreeing with Mr. Francis, pointed out that the documents pertaining to a number of agenda items had not yet been issued. He believed it had been agreed that the Commission should not deal with any topic if the relevant documents had not been distributed in advance.

13. Following a brief discussion, the CHAIRMAN suggested that the meeting should be adjourned to allow the Enlarged Bureau to consider those points in the general context of the organization of work of the session.

*It was so agreed.*

*The meeting rose at 4.40 p.m.*

### 2043rd MEETING

*Tuesday, 10 May 1988, at 10.05 a.m.*

*Chairman: Mr. Leonardo DÍAZ GONZÁLEZ*

*Present: Prince Ajibola, Mr. Arangio-Ruiz, Mr. Barboza, Mr. Barsegov, Mr. Beesley, Mr. Boutros-Ghali, Mr. Calero Rodrigues, Mr. Eiriksson, Mr. Francis, Mr. Graefrath, Mr. Jacovides, Mr. Mahiou, Mr. McCaf-*

*frey, Mr. Ogiso, Mr. Pawlak, Mr. Razafindralambo, Mr. Roucounas, Mr. Sepúlveda Gutiérrez, Mr. Shi, Mr. Solari Tudela, Mr. Thiam, Mr. Tomuschat, Mr. Yankov.*

#### Organization of work of the session

[Provisional agenda item 1]

1. The CHAIRMAN said that, in the light of the information from the special rapporteurs on the stage reached in preparing their reports and the Commission's stated intention, in its report on its thirty-ninth session,<sup>1</sup> "not to discuss at a given session any report made available to its members less than two weeks before the opening of that session, unless special circumstances dictate otherwise", the Enlarged Bureau, which had met the day before, recommended that, in May, the Commission should consider the following agenda items:

International liability for injurious consequences arising out of acts not prohibited by international law (item 7): fourth report by Mr. Barboza (A/CN.4/413) .....	13 to 20 May
The law of the non-navigational uses of international watercourses (item 6): fourth report by Mr. McCaffrey (A/CN.4/412) .....	24 to 27 May
Consideration of that item would be resumed when addenda 1 and 2 to the report were available.	
Draft Code of Crimes against the Peace and Security of Mankind (item 5): sixth report by Mr. Thiam (A/CN.4/411).....	from 31 May

The organization of the Commission's work for the months of June and July would be considered by the Enlarged Bureau at a later stage, when it had a better idea of the dates on which the reports of the other special rapporteurs could be distributed and introduced.

2. Mr. BARBOZA said that if, at the end of the seven meetings allocated for consideration of his report (A/CN.4/413), there were still members of the Commission wishing to comment on it, one or two additional meetings should be scheduled in order to continue the discussion. He recalled that, at the previous session, eight meetings had been found sufficient for a wide-ranging exchange of views on the topic.

3. Mr. BARSEGOV asked for some indication, however sketchy, of the situation regarding the reports to be dealt with in June and July, so that he could express an informed opinion on the Enlarged Bureau's recommendations for the month of May.

4. The CHAIRMAN replied that, for the moment, the Commission had only the three reports he had mentioned. Three other reports still had to be translated and distributed: on jurisdictional immunities of States and their property, on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, and on State responsibility. Until they had been distributed, the Commission could not take any decision concerning them. On the other hand, it could allocate part of its time to the Drafting Committee and the Planning Group.

<sup>1</sup> Yearbook . . . 1987, vol. II (Part Two), p. 55, para. 244.