

Document:-  
**A/CN.4/SR.2043**

**Summary record of the 2043rd meeting**

Topic:  
**Other topics**

Extract from the Yearbook of the International Law Commission:-  
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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. Roucouнас, 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.

5. Mr. RAZAFINDRALAMBO said it was regrettable that the Commission should begin its work by considering the report on international liability for injurious consequences arising out of acts not prohibited by international law, a document that had been circulated to members only the previous day, whereas the report on the law of the non-navigational uses of international watercourses had been sent to them at their home addresses. He wondered why the Enlarged Bureau had made such a recommendation.

6. The CHAIRMAN explained that Mr. Barboza had to be absent from 23 May and that Mr. Thiam, for personal reasons, had to return immediately to Dakar. That was why the Enlarged Bureau was recommending that priority be given to Mr. Barboza's report.

7. Mr. BARSEGOV observed that relations between States and international organizations (second part of the topic) had not yet been mentioned, and also asked when members would have copies of Mr. Ogiso's report on jurisdictional immunities of States and their property, which apparently ran to 150 pages. As a former staff member of the United Nations, he was fully aware of the work-load involved in translating and reproducing a document of that length. He was also concerned that, if the Drafting Committee was to meet because there was no work for the Commission to do, those members of the Commission who were not on the Drafting Committee might be wasting their time.

8. Mr. MAHIU said that, for reasons of *force majeure*, namely Mr. Thiam being called back to Dakar, and of documentation, in other words only Mr. Thiam's report having been issued in French, the situation was somewhat difficult. Nevertheless, members of the Commission must face up to it squarely. Some of them might, in fact, be prepared to speak after Mr. Barboza had introduced his report. The proposals of the Enlarged Bureau should be adopted, so that after the present meeting it could return in greater detail to the programme of work.

9. Mr. ROUCOUNAS said that Mr. Barboza's topic was of special interest because, on the threshold of the twenty-first century, there were psychological and other reasons why mankind was feeling the need for protection against technological and other risks. He asked whether the discussion could be resumed when the allocated seven meetings were over.

10. The CHAIRMAN said that, if necessary, the discussion could be continued when Mr. Barboza returned. In reply to Mr. Barsegov, he added that he would be submitting his own report on relations between States and international organizations at the Commission's next session.

11. Mr. PAWLAK said that, as a matter of common sense, the Commission should endorse the solution proposed by the Enlarged Bureau. He therefore supported its recommendations and asked if the Secretariat could speed up the translation of the reports submitted to the Commission.

12. Mr. KALINKIN (Secretary to the Commission) said that the Secretariat had not yet received all the reports awaited. Mr. Ogiso's report, which had arrived the previous day, would be distributed at the beginning

of July, Mr. Yankov's report at the beginning of June and Mr. Arangio-Ruiz's report towards the end of June.

13. The CHAIRMAN said that, if there were no objections, he would take it that the Commission agreed to adopt the recommendations of the Enlarged Bureau.

*It was so agreed.*

#### Drafting Committee

14. The CHAIRMAN proposed that the Drafting Committee, with Mr. Tomuschat as Chairman, should consist of the following members: Mr. Barsegov, Mr. Bennouna, Mr. Calero Rodrigues, Mr. Hayes, Mr. Koroma, Mr. Ogiso, Mr. Pawlak, Mr. Sreenivasa Rao, Mr. Razafindralambo, Mr. Reuter, Mr. Roucounas and Mr. Sepúlveda Gutiérrez. Mr. Shi would be an *ex officio* member in his capacity as Rapporteur of the Commission.

*It was so agreed.*

*The meeting rose at 10.45 a.m.*

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## 2044th MEETING

*Wednesday, 11 May 1988, at 10 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. McCaffrey, Mr. Ogiso, Mr. Pawlak, Mr. Razafindralambo, Mr. Roucounas, Mr. Sepúlveda Gutiérrez, Mr. Shi, Mr. Solari Tudela, Mr. Tomuschat, Mr. Yankov.

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### Organization of work of the session (*continued*)

[Provisional agenda item 1]

1. The CHAIRMAN made the following recommendations to the Commission, based on discussions held by the Enlarged Bureau.

1. A preliminary debate on agenda item 9 should be held the following week, while the Legal Counsel was in Geneva, and should cover the points included in paragraph 5 of General Assembly resolution 42/156.

2. Paragraph 244 of the Commission's report on its thirty-ninth session<sup>1</sup> should be interpreted and applied flexibly, the guiding principle being that the Commission should make maximum use of the time available to it, especially when there were special circumstances warranting delay in the presentation of reports by some special rapporteurs, and that all the resources made available by the General Assembly should be fully deployed.

3. The Commission should endorse all the topics on its provisional agenda (A/CN.4/408).

4. The four morning meetings each week should all be plenary meetings: the afternoons should be devoted to the work of the Drafting Committee, the Planning Group or other bodies.

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