

Document:-
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Summary record of the 2046th meeting

Topic:
Programme of work

Extract from the Yearbook of the International Law Commission:-
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pation, which was incompatible with jurisdictional attribution; but a minimum of participation was also required in domestic law in matters of strict liability. Human beings were not robots: they must at least know when an activity was dangerous, and they could be presumed to know when the risk was "appreciable".

62. He did agree, however, that low risk of major harm should be covered. Further consideration was required on that point, and the word "foreseeable" might be preferable. As to non-discrimination, whether or not one accepted it as a principle, it was a notion which would have to play an important role in the attribution of liability.

63. Lastly, the question whether, in general international law, there was an obligation to exercise due diligence and a prohibition on causing any appreciable harm was still very much unsettled. In any event, States would decide the matter freely and would accept only those obligations universally recognized in general international law. The only practical result of presuming that such a prohibition existed would be to leave States affected by polluting activities defenceless.

The meeting rose at 12.55 p.m.

2046th MEETING

Tuesday, 17 May 1988, at 10.05 a.m.

Chairman: Mr. Leonardo DÍAZ GONZÁLEZ

Present: Prince Ajibola, Mr. Arangio-Ruiz, Mr. Barboza, Mr. Barsegov, Mr. Calero Rodrigues, Mr. Eiriksson, Mr. Francis, Mr. Graefrath, Mr. Mahiou, Mr. McCaffrey, Mr. Ogiso, Mr. Pawlak, Mr. Razafindralambo, Mr. Sepúlveda Gutiérrez, Mr. Shi, Mr. Solari Tudela, Mr. Tomuschat, Mr. Yankov.

Programme, procedures and working methods of the Commission, and its documentation (continued)* (A/CN.4/L.420, sect. F.4)

[Agenda item 9]

1. The CHAIRMAN reminded the Commission that it had decided to devote a meeting during the week of 16 to 20 May 1988 to discussion of its programme, procedures, working methods and documentation, with particular reference to the issues raised in paragraph 5 of General Assembly resolution 42/156 of 7 December 1987 (see 2044th meeting, para. 1.1). He welcomed the Legal Counsel of the United Nations, whose presence would be particularly useful while the Commission was discussing its programme and working methods, because the Commission's fulfilment of its functions was closely linked with the assistance provided to it by the Secretariat.

2. The meeting was also being attended by Mr. Jorge Vanossi, Observer for the Inter-American Juridical Committee, whom he welcomed on behalf of all members of the Commission. There was no need to dwell on the long-standing relationship between the Commission and the Committee, or on the fact that co-operation with regional codification organizations was mutually enriching. In paragraph 12 of resolution 42/156, the General Assembly had reaffirmed its wish that the Commission should continue to enhance its co-operation with intergovernmental legal bodies whose work was of interest for the progressive development and codification of international law. The Commission and the Inter-American Juridical Committee had common objectives and dealt with some of the same aspects of international law. Both had members from countries with different legal systems and at different degrees of development. The observer for the Committee would make a statement during the session.

3. To facilitate the Commission's discussion of its working methods, he drew attention to paragraphs 3 to 11 of General Assembly resolution 42/156. In paragraph 5, the Assembly requested the Commission to keep under review the planning of its activities for the term of office of its members, bearing in mind the desirability of achieving as much progress as possible in the preparation of draft articles on specific topics; to consider further its methods of work in all their aspects, bearing in mind that the staggering of the consideration of some topics might contribute to more effective consideration of its report in the Sixth Committee; and to indicate in its annual report, for each topic, those specific issues on which expressions of views by Governments would be of particular interest for the continuation of its work.

4. He also drew attention to the topical summary of the Sixth Committee's discussion of the Commission's report on its thirty-ninth session (A/CN.4/L.420). Suggestions on the planning of the Commission's future activities, the staggering of consideration of certain topics, and the Commission's methods of work, reporting methods and documentation were set out in paragraphs 251 to 262 of that document.

5. Mr. BARSEGOV said that the Commission had to improve its planning and the methods and organization of its work, since a certain discrepancy was felt to exist between the demands arising as a result of the steadily growing importance of international law and the state of the Commission's work. As a member of the Commission, he was well aware of the difficulties of its task; outside observers, however, took a rather sceptical view of the Commission's efficacy and openly expressed doubts as to its ability to complete the many important instruments on which it was currently working within the present generation's lifetime.

6. The question of staggering the Commission's consideration of topics had been under discussion for a long time. To work on a large number of topics simultaneously meant delaying them all. At the end of a five-year cycle, the Commission's membership changed and special rapporteurs succeeded one another. The same issues had to be considered over and over again. The fact that only three of the six reports due for consideration at the current session were so far available

* Resumed from the 2044th meeting.

showed that the Commission could not realistically expect to handle so many topics at one time. It was clear that consideration of the three remaining reports would have to be planned realistically, since the Secretariat would be unable to produce all of them for the current session, particularly if they were voluminous, as he understood the report on jurisdictional immunities of States and their property was. The Commission might be well advised to concentrate on the shorter reports, for example those on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier and on State responsibility—a topic which, despite its importance, had been left untouched for two years.

7. The Commission's methods of work would be greatly improved if, at the beginning of its discussion of a topic, it concentrated on the nature of the text it was aiming at. Once that was decided, work on the substance of the topic would proceed much more smoothly, and the progressive development and codification of international law would be greatly advanced. The content of a text was largely determined by its form. For example, if in the light of the state of advancement of the work it was decided to aim at drafting a set of recommendations rather than a convention, many restrictions would fall away and recommendations of a more radical nature could be contemplated.

8. The Commission's efficacy was often reduced by the fact that it approached its topics the wrong way round: standards were drawn up and basic definitions were supplied only later. Consideration of the draft Code of Crimes against the Peace and Security of Mankind, for example, had begun with the elaboration of conceptual norms without the issue of conceptual definitions being settled first. If the Commission had started by identifying the fundamental issues, the work would be much further advanced.

9. The Commission should devote more attention to the question of sources. Whether it was defining acts constituting crimes, or establishing a general obligation of reparation for transboundary harm resulting from a lawful activity, the Commission should adhere strictly to accepted views on the sources of international law. It could adopt a purely legal approach and refer to Article 38 of the Statute of the ICJ, since the sources listed therein were recognized by all States. Court decisions and the doctrine of the most highly-qualified specialists in public law of all nations were admitted as supplementary means of defining legal norms. Reference to state practice, too, should not be selective. The emphasis should be shifted somewhat from the study of national practice to the study of actual normative material in international law. The Commission should also give attention to the practice of specialized agencies dealing with the same questions at the same time, for example the work of IAEA in the field of liability. Lastly, where there were gaps in international law on a given topic, the Commission should acknowledge the fact that it was breaking new ground, with all the consequences that entailed, including those of a procedural nature. In the elaboration of norms of that kind, arriving at the widest measure of agreement was of the essence.

10. With regard to documentation, he wished to point out that not all members of the Commission were in the

same position, because the summary records were established in English and French only. The Secretariat should take steps to improve the accuracy of summaries of statements delivered in languages other than English or French. For his part, he was prepared to work on a summary record in English or French which was to be translated into Russian.

11. Mr. BARBOZA said he questioned whether it would be possible, or indeed desirable, to increase the volume of material which the Commission submitted each year to the General Assembly, the academic community and the general public. The codification of international law was the result of dialogue between the Commission and Governments, in which the General Assembly also played an essential part. Requests for comments and observations on the Commission's drafts were not always answered promptly by Governments, for the good reason that developing countries, which represented the great majority of the international community, and whose assent was vital to the general acceptance of rules of international law, had only small legal departments, which were invariably overburdened. Moreover, codification was intrinsically a slow-moving process; to hurry it would be like hastening the ripening of fruit. Yet, despite its slowness, the work of codification had made great strides over the 40 years of the Commission's history, during which international instruments had been drafted on many classic problems of customary international law.

12. One of the criticisms made of the Commission's methods of work concerned its practice of splitting up the consideration of agenda items. But the Commission's practices were always rooted in reality. A treaty could not be drafted in a single operation, because all the stages of the process were interrelated; each special rapporteur had to await the document containing the views of representatives in the Sixth Committee of the General Assembly, and that document then had to be translated and reproduced. Thus a special rapporteur normally received the document on the relevant debate in the Sixth Committee no earlier than January, and he then had only three months in which to prepare and submit his own report. Obviously, a full report on the subject-matter of a treaty could not be produced in three months; that was why the work had to proceed article by article, year by year.

13. He believed it was in the nature of things that comprehensive definitions had to be left till last. As in any field of scientific endeavour, topics were initially framed in terms of preconceptions or global ideas, and their scope was gradually defined in the course of discussion in the Commission. He agreed with Mr. Barsegov that an effort should be made to improve the Commission's methods of work so as to achieve greater efficiency; but he thought the chances of any radical improvement in its output were slender.

14. Mr. OGISO said that the submission of his preliminary report as Special Rapporteur for the topic of jurisdictional immunities of States and their property (A/CN.4/415) had been delayed by the late receipt of comments from Governments. The document containing those comments (A/CN.4/410 and Add.1-5) had reached him much later than 1 January, the date originally requested. The comments of Governments on

Mr. Yankov's topic, the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier (A/CN.4/409 and Add.1-5), had been similarly delayed. That explained why the reports on those two topics had been submitted to the Secretariat later than originally planned. His own report had been given to the Secretariat on the first day of the current session, and he had been told that the volume of translation and reproduction work involved would cause considerable further delay. The Commission and the Secretariat were not wholly responsible for the situation, which was chiefly due to the delayed arrival of comments from Governments. He himself had made great efforts to submit his report as early as possible.

15. One member of the Commission had asked whether it would be possible to divide the report on jurisdictional immunities of States and their property into several parts, so that the Commission could at least make progress on part of it at the current session. Assuming that the translation of the earlier parts could be completed by the end of June or the beginning of July, he would suggest dividing the report into four sections: basic principles, exceptions or limitations to the principle of immunity, enforcement measures and miscellaneous provisions. Since all those sections were interdependent, it would of course be preferable to examine the report as a whole; but the Commission might be able to save time by holding a general discussion on the first two sections. He had no intention of competing for priority with Mr. Yankov's topic, and the Commission might prefer to consider that topic in its entirety before taking up his own.

16. One advantage of holding a general discussion on the first two sections of his report would be that the differing views which still prevailed in the Commission on the subject of jurisdictional immunities could be brought into focus and a proper balance could be struck between them before proceeding to a second reading of the draft articles at the next session. In any event he did not intend to refer draft articles to the Drafting Committee at the current session.

17. Mr. McCAFFREY said that the Commission's fortieth session provided an appropriate opportunity for it to take stock of its achievements. Its work had led to the adoption of the 1958 Geneva Conventions on the Law of the Sea, the 1961 Vienna Convention on Diplomatic Relations, the 1963 Vienna Convention on Consular Relations and the 1969 Vienna Convention on the Law of Treaties, as well as many other instruments. The Commission, and States themselves, could be well proud of that record. It had rightly been said that the Commission had done more for the progressive development and codification of international law in 40 years than had ever been accomplished before. The Commission's impressive record was set out in a recent publication.¹

18. One of the reasons for that success was that the Commission maintained regular and continuing dialogue with States. In a sense, that procedure was a mixed blessing, because it inevitably slowed the pace of the Commission's work. Comparisons were sometimes

made between the output of the Commission and that of such bodies as the International Law Association or the Institute of International Law. But those comparisons were not valid, because academic bodies could produce large volumes of material without reference to States; and it was sovereign States which determined the pace of the Commission's progress. It was true, of course, that delays sometimes occurred because of the need to replace a special rapporteur who had ceased to be a member of the Commission. But the main factor was that States were not always ready for rapid progress on the topics on the Commission's agenda. When the Commission completed its work on a topic, however, the outcome did not come as a surprise to Governments, for the material had been predigested by and discussed with them.

19. He wished to make a few general points on agenda item 9. With regard to planning, the Commission should start by identifying its targets for the quinquennium and note them in its report. It should also determine whether the work on certain topics could be staggered, so that more concentrated attention could be given to a few items.

20. As to methods of work, he noted Mr. Barsegov's suggestion that when taking up a topic the Commission should first decide on the nature of the instrument to be drafted. It was suggested that the special rapporteur concerned would then be able to adopt a bolder approach in drafting the substantive articles. There was some truth in that suggestion, but it would be very difficult for members of the Commission to agree on the nature of an instrument before the special rapporteur put his substantive proposals before them. At that early stage, it would be difficult to reach even a tentative conclusion as to whether the draft should take the form of a convention or of a set of recommendations. The Commission's experience had shown the great difficulty of drawing a distinction between what constituted codification and what constituted progressive development. In that respect, the system envisaged in the Commission's statute had not worked in practice. As stated in the publication he had mentioned, the Commission had generally considered that its drafts constituted both codification and progressive development of international law.²

21. He suggested that the Commission should try to discuss the reports of the Drafting Committee as soon as the Committee had approved a set of articles. The Drafting Committee should also consider some draft of the commentaries at the same time as the articles. Under the present system, it was difficult for members to give careful consideration to commentaries. At the previous session, there had been some discussion concerning the inclusion of extensive recitals of authorities in commentaries. He himself believed that it was useful, because States often referred to the authorities cited. Some members, however, did not favour the inclusion of such references. Perhaps the Commission would examine that question and take a decision on it, although the decision taken was likely to vary with the topic.

22. On the suggestion that consideration of certain topics should be staggered, he thought that any decision

¹ United Nations, *The Work of the International Law Commission*, 4th ed. (1988) (Sales No. E.88.V.1).

² *Ibid.*, p. 15.

could only be taken in consultation with the special rapporteurs concerned. It should be remembered that a special rapporteur usually had professional duties and could not devote all his time to the preparation of a report. In the circumstances, it would be difficult for a special rapporteur to prepare a report extensive enough to keep the Commission occupied for one third of its session.

23. He reserved his more detailed comments for the Planning Group. In conclusion, he observed that the Commission had been remarkably successful over a period of 40 years. There was no point in trying to mend something that was not broken; the Commission could perhaps do with some fine tuning, but it did not need any radical overhaul.

24. Mr. FRANCIS said that, some 25 years before, when he had first participated in the deliberations of the Sixth Committee of the General Assembly, the Committee's approach to the Commission's work had been quite different from what it was now. For one thing, the Committee used to take up the agenda item on the Commission's report very early in the Assembly's session, and it had fewer items on its agenda. The Sixth Committee's approach to the Commission's work was now quite different because of changed circumstances, and it was therefore appropriate for the Commission to re-examine its methods of work.

25. He wished to deal with some of the many interesting points raised by Mr. Barsegov. The first concerned definitions and whether they should be examined at the beginning of the work on a topic. It had been the practice of the Commission to adopt the inductive method, which ruled out the consideration of definitions at the outset except to a limited extent, as definitions generally emerged gradually as work on a topic progressed.

26. Mr. Barsegov had urged the Commission to pay more attention to the sources of law. Actually, it based its work on State practice. As he understood him, Mr. Barsegov wished more research to be conducted on the multiplicity of practice.

27. On the question of the form which the Commission's drafts should take—draft convention or code—the choice was largely determined by the Sixth Committee. It was worth noting, in regard to the law of treaties, that Sir Gerald Fitzmaurice, as Special Rapporteur, had had a code in mind. But the Commission's last Special Rapporteur on the topic, Sir Humphrey Waldock, had worked on a draft convention, leading ultimately to the adoption of the 1969 Vienna Convention on the Law of Treaties.

28. Turning to the suggestion regarding staggering of topics, he pointed out that some years previously the Planning Group had submitted to the Enlarged Bureau a document recommending that consideration of certain topics should be staggered, so that the Commission could deal with only a few items at each session. It was interesting to note that Mr. Barsegov, who had become a member of the Commission only the previous year, was now making a similar suggestion. He himself found some merit in the idea, but believed that the consent of the special rapporteurs concerned would be necessary. He would certainly advise the Commission to try to

stagger the consideration of topics, so as to have fewer items on its agenda for each session.

29. It would be recalled that the Commission had undertaken to endeavour to complete consideration of at least two topics on second reading within the five-year term of office of its current membership.³ It would be difficult for the Commission to fulfil that task without changing its methods of work. He suggested that the Commission should discuss that organizational problem in plenary at the current session, with a view to concentrating at its next session on two topics, namely the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, and jurisdictional immunities of States and their property. He urged special rapporteurs to go ahead with their work even in the absence of comments from Governments. The fact that Governments did not send in their comments in good time, or did not send any at all, should not stand in the way of the Commission's progress. Once the topics of the status of the diplomatic courier and jurisdictional immunities of States had been completed, it would be easier for the Commission to move ahead. The question of strategy needed to be studied in view of the Commission's heavy agenda over the past few years.

30. Mr. YANKOV agreed that the Commission should make it a general rule not to deal with more than two, or at the most three, topics at any one session on the understanding that texts which had reached second reading stage would have priority. Of course, reports on any topic could be submitted during a session.

31. The work of the Drafting Committee should start immediately at the beginning of the session. Furthermore, the Committee should report to the Commission as soon as it had a few articles ready. Indeed, he could recall a case—on the topic of State responsibility—in which the Drafting Committee had submitted one article to the Commission. It should not wait until it could submit a comprehensive report on a topic; it should submit the results of its work to the Commission piecemeal.

32. With regard to consideration of the reports of special rapporteurs, once a special rapporteur had introduced his report as a whole, it would be advisable to examine its various parts separately. There could thus be a debate on each part of the report, with brief statements by members, often in the form of questions and answers. Reading the *Yearbooks* for the Commission's early sessions, he had been struck by the fact that debates then took the form of brief statements and lively exchanges; that was quite different from current discussions, in which all too often members engaged in parallel monologues for some two weeks, at the end of which the special rapporteur made an extensive reply.

33. Before the end of the quinquennium, the Commission should make suggestions regarding its future programme to the Sixth Committee of the General Assembly. Those suggestions would be made in the light of developments in international life, bearing in mind the codification work already being done by other United Nations bodies: for example, the work being done by UNEP on international environmental law

³ *Yearbook* . . . 1987, vol. II (Part Two), p. 54, para. 232.

through a group of legal experts. Taking care to avoid duplication with other bodies, suggestions should be made for bringing the Commission's long-term programme of work up to date, so that the Sixth Committee and the General Assembly could establish that programme for the next 10 or 15 years.

34. Prince AJIBOLA said that further consideration should be given to the work of special rapporteurs, in which connection he wished to draw attention to article 16 (a) and (d) of the Commission's statute. He had been struck in particular by the problem encountered when a special rapporteur could not attend a session of the Commission or had to leave it. To deal with such situations and to ensure continuity, the time had perhaps come to provide special rapporteurs with assistants. That was in no way contrary to the Commission's statute, and there was no reason why a special rapporteur should not be asked to appoint a member of the Commission to assist him.

35. Another point was the perennial problem of language and, specifically, the difficulties of interpreting from one language into another. In view of those difficulties, it might be desirable for any member wishing to be clearly understood on a particularly important point to make the text of his statement available to the Secretariat, so that there would be a permanent record of exactly what had been said.

36. He agreed that it would help to accelerate the Commission's work if members' statements were more in the nature of contributions to a general discussion, and he saw no objection to allowing members to discuss a report paragraph by paragraph or article by article. In his view, however, that would take up more time than the traditional procedure; so perhaps some other method could be devised to encourage shorter and more general statements.

37. Mr. CALERO RODRIGUES said that, while he did not think the Commission's methods of work were wrong, there was always room for improvement. At the current session, for instance, the Commission found that it did not have much material to work on during the month of May, and that the backlog of work in the Drafting Committee would probably soon be exhausted. That was because not enough reports had been received from special rapporteurs. The fault did not lie with them, however: it was quite impossible for special rapporteurs to expedite the presentation of their reports if they had to wait for comments from Governments or the General Assembly.

38. The existing situation regarding submission of reports was very inconvenient for members. After the reports—some of them very substantial—had been received, members had only a week in which to consider them, while also sitting in the Commission and the Drafting Committee, so that the reports could not possibly receive proper consideration. In the long run, therefore, the solution would be to stagger the debates and to deal with, say, three or four topics at any one session. Members would then have time to study the reports and make a more useful contribution to their discussion.

39. He, too, had noted from the summary records of earlier sessions that members' statements used to be far

shorter. Long statements might be necessary at the beginning of the debate on a topic, when theoretical considerations were at issue and material had to be examined in detail; but once the stage of drafting articles had been reached, they should be much shorter. In many instances, there would be no need to consider a report as a whole and the Commission could at once proceed to discuss it article by article or chapter by chapter, which would be an improvement on the current method of work.

40. There was also the problem of the relationship between the Commission and the Drafting Committee. While not too much time should elapse between the examination of articles by the Commission and their submission to the Drafting Committee, there were times when the Committee was overwhelmed by material and could not produce adequate results. His suggestion, therefore, was that two full weeks should be allotted to the Drafting Committee at the beginning of each session. Although he appreciated that there were certain organizational difficulties, he believed that, once it was decided to adopt that procedure, the difficulties could be overcome. What the Drafting Committee produced in those two weeks would probably compare very favourably what it had previously produced in a whole session.

41. The Commission was faced with a special situation at the current session, since it was supposed to be undertaking the second reading of the draft articles on two topics but had still not received the relevant reports. It might therefore wish already to consider staggering consideration of those topics, perhaps by dealing first with the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier—the less controversial of the two—which could be taken up at the end of the current session and at the beginning of the 1989 session. Even if the report on the other topic—jurisdictional immunities of States and their property—was circulated at the current session, it could not be taken up in plenary until 1989 or in the Drafting Committee until 1990.

42. It was, of course, impossible to state definitely that the Commission would conclude its consideration of a certain topic at a particular time, since views had to be accommodated and difficulties could arise. The Commission had an obligation of performance, but no obligation of result could be imposed upon it.

43. Mr. EIRIKSSON, endorsing the remarks made by Mr. Yankov and Mr. Calero Rodrigues, said he trusted that there would be an opportunity to discuss their proposals in more detail in the Planning Group. He also hoped that the Planning Group would be able to deal more fully with two questions whose consideration it had not completed at the previous session and which were referred to in the Commission's report on that session,⁴ namely the format of the Commission's report to the General Assembly and the possibility of the Chairman of the Commission preparing an introduction to the report to be circulated to Governments immediately after the closure of each session. Those questions were of particular interest in view of the General Assembly's recommendation in paragraph 6 of resolution 42/156

⁴ *Ibid.*, p. 55, para. 246.

that a working group should be set up by the Sixth Committee to consider specific topics on the Commission's agenda. He hoped that the Legal Counsel would be able to attend the discussion in the Planning Group and perhaps advise the Commission on some of the financial aspects of the proposals made.

44. The success of the Commission's work was largely dependent on the results achieved in the Drafting Committee. He therefore endorsed the suggestion that the Committee's reports should be made available much earlier, and should preferably be accompanied by commentaries. It would also be helpful for those who were not members of the Drafting Committee if the Planning Group could be informed of the status of the Committee's work at the current session. He reminded members of the proposal that the Drafting Committee should be flexible in composition, so as to reduce the heavy burden of work on its members, and of the decision that the Chairman of the Commission should, whenever possible, indicate the main trends of opinion revealed by the debate in plenary.³ On the topic of international liability for injurious consequences arising out of acts not prohibited by international law, for example, it was evident that there were two schools of thought; but the Drafting Committee should work on the basis of only one. It was therefore incumbent on the Chairman to assist the Special Rapporteur in giving the Drafting Committee the necessary guidance.

45. Mr. PAWLAK said he agreed that the number of topics considered by the Commission at each session should be reduced to two or three. That would not prevent reports on other topics from being submitted, but the Commission should concentrate on topics that were ripe for codification by the drafting of articles.

46. Co-operation between the Commission and the Sixth Committee of the General Assembly should be increased, possibly by means of an annual report submitted in advance by the Chairman of the Commission for the information of the Committee.

47. Very little information regarding the codification process in other international forums was available to the Commission. Possibly the Secretariat could submit a bulletin or an annual report on that subject. Preparations for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, to be held in 1990, were under way, and some of the subjects proposed for discussion were related to the Commission's work, in particular its work on the draft Code of Crimes against the Peace and Security of Mankind. In its future work, the Commission might wish to take up some of the items to be discussed at the Eighth Congress, such as international terrorism and the codification of international criminal law. The Secretariat should find ways of bringing the Commission's work into the mainstream of the process of codification of international law, so as to make it more efficient.

48. Mr. FRANCIS, referring to a point raised by Mr. Pawlak, said that when he had represented the Commission at the nineteenth session of the Asian-African Legal Consultative Committee, held at Doha (Qatar) in 1978, Judge Nagendra Singh, then Vice-President of the

ICJ, had drawn attention to the need for a coordinating agency, given the multiplicity of codification efforts within the United Nations family. He hoped that the matter could be taken further at an appropriate time.

49. The CHAIRMAN, noting that there had been a full discussion on agenda item 9, said that members wishing to make further statements would be free to do so later. As to the suggestion that the question of staggering the consideration of topics should be discussed in plenary, the appropriate time for that discussion would be when the Enlarged Bureau introduced the report on the work of the Planning Group.

The meeting rose at 1 p.m.

2047th MEETING

Wednesday, 18 May 1988, at 10 a.m.

Chairman: Mr. Leonardo DÍAZ GONZÁLEZ

Present: Prince Ajibola, Mr. Arangio-Ruiz, Mr. Barboza, Mr. Barsegov, Mr. Beesley, Mr. Calero Rodrigues, Mr. Eiriksson, Mr. Francis, Mr. Graefrath, Mr. Mahiou, Mr. McCaffrey, Mr. Ogiso, Mr. Pawlak, Mr. Razafindralambo, Mr. Sepúlveda Gutiérrez, Mr. Shi, Mr. Solari Tudela, Mr. Tomuschat, Mr. Yankov.

International liability for injurious consequences arising out of acts not prohibited by international law (continued)* (A/CN.4/384,¹ A/CN.4/405,² A/CN.4/413,³ A/CN.4/L.420, sect. D)⁴

[Agenda item 7]

FOURTH REPORT OF THE SPECIAL RAPPORTEUR (continued)

- ARTICLE 1 (Scope of the present articles)
- ARTICLE 2 (Use of terms)
- ARTICLE 3 (Attribution)
- ARTICLE 4 (Relationship between the present articles and other international agreements)
- ARTICLE 5 (Absence of effect upon other rules of international law)
- ARTICLE 6 (Freedom of action and the limits thereto)
- ARTICLE 7 (Co-operation)

* Resumed from the 2045th meeting.

¹ Reproduced in *Yearbook . . . 1985*, vol. II (Part One)/Add.1.

² Reproduced in *Yearbook . . . 1987*, vol. II (Part One).

³ Reproduced in *Yearbook . . . 1988*, vol. II (Part One).

⁴ Consideration of the present topic is based in part on the schematic outline submitted by the previous Special Rapporteur, R. Q. Quentin-Baxter, at the Commission's thirty-fourth session. The text is reproduced in *Yearbook . . . 1982*, vol. II (Part Two), pp. 83-85, para. 109, and the changes made to it are indicated in *Yearbook . . . 1983*, vol. II (Part Two), pp. 84-85, para. 294.

³ *Ibid.*, paras. 238-239.