

Document:-
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Summary record of the 2282nd meeting

Topic:
International liability for injurious consequences arising out of acts not prohibited by international law

Extract from the Yearbook of the International Law Commission:-
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Commission, the activities of CDCJ were bound to be very useful. There were many other subjects, such as the environment and human rights, in which work of great value was being done at the European level. He looked forward to receiving the Committee's documents on the international criminal court and on the subject of liability.

20. Mr. VERESHCHETIN expressed sincere appreciation for a very informative report. He said that all of the aspects touched upon were of vital interest to members of the Commission and he wished to draw particular attention to the Committee's work on an international criminal court.

21. Mrs. KILLERBY (Observer for the European Committee on Legal Cooperation) thanked members for their kind words. She said that the Asian-African Legal Consultative Committee had observer status with CDCJ, and it was with great pleasure that the latter welcomed cooperation with the Asian-African Committee. As to Mr. Koroma's question, under the draft Convention on civil liability for damage resulting from activities dangerous to the environment, operators could be liable although not in breach of the law. If the law stated that they must not exceed certain pollution levels, operators could be liable for damage even if they had not exceeded the level. There was, however, an exception to the rule, for under article 8 of the draft an operator would not be liable if he could prove that the harm resulted necessarily from compliance with a specific order or compulsory measure by a public authority. She would be pleased to supply the text of the draft Convention to members on request.

22. Several members had referred to problems of State succession in Europe, problems which European bodies had considered on a number of occasions. In January 1991, a special meeting had been held to study the matter. Moreover, the Council of Europe was always prepared to give technical assistance to European countries on the subject of State succession. With regard to legal problems on State succession that arose for the Commonwealth of Independent States, a meeting was scheduled to be held in Moscow in a few days' time.

23. Lastly, she thanked the Commission for the invitation to attend the meeting and stressed that the Council of Europe would welcome further cooperation with the Commission.

The meeting rose at 10.55 a.m.

2282nd MEETING

Wednesday, 8 July 1992, at 10 a.m.

Chairman: Mr. Christian TOMUSCHAT

Present: Mr. Al-Baharna, Mr. Al-Khasawneh, Mr. Arangio-Ruiz, Mr. Barboza, Mr. Bennouna, Mr. Bowett, Mr. Calero Rodrigues, Mr. Crawford,

Mr. de Saram, Mr. Eiriksson, Mr. Fomba, Mr. Güney, Mr. Idris, Mr. Kabatsi, Mr. Koroma, Mr. Kusuma-Atmadja, Mr. Mahiou, Mr. Mikulka, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Razafindralambo, Mr. Rosenstock, Mr. Shi, Mr. Szekely, Mr. Thiam, Mr. Vargas Carreño, Mr. Vereshchetin, Mr. Villagran Kramer, Mr. Yamada, Mr. Yankov.

International liability for injurious consequences arising out of acts not prohibited by international law (*concluded*)* (A/CN.4/443,¹ A/CN.4/L.469, sect. D, A/CN.4/L.470, A/CN.4/L.476, ILC(XLIV)/Conf. Room Doc.2)

[Agenda item 5]

REPORT OF THE WORKING GROUP

1. The CHAIRMAN drew attention to the report of the Working Group set up by the Commission at its 2273rd meeting, on 16 June 1992, to consider general issues relating to the scope, methodology and possible direction of the Commission's future work on the topic, contained in document A/CN.4/L.470. The report summarized the conclusions and recommendations of the Working Group.²

2. Mr. BENNOUNA, referring to the French version, said that he would prefer the expression "remedial measures" to be translated by the word *remèdes* rather than by the words *mesures correctives*.

3. Mr. IDRIS said that, in his view, the report called for some modification. The second sentence of paragraph 5, starting with the words "However, priority should be . . ." did not make it sufficiently clear that what was meant was simply priority in time, not an order of priority in which the issues were to be considered. It would be preferable to state: "However, the issue of prevention should first be considered by the Commission". In paragraph 8, the phrase reading "the Working Group recommends that the Commission adopt as a working hypothesis . . ." was inaccurate, since the decision on that point had been taken a long time before. It would be better to say "recommends that the Commission should continue with the working hypothesis . . .". The first sentence of paragraph 9 should be expanded to read: "The Working Group took note with appreciation of the previous reports . . .". The recommendation, in the second sentence of the same paragraph, that the Special Rapporteur should "re-examine the issues" went a little too far, since it suggested that he would have to reopen the whole topic. The words "examine further" would be more appropriate. Lastly, he would like the words "a complete and a final set of draft articles", in the last line

* Resumed from the 2273rd meeting.

¹ Reproduced in *Yearbook . . . 1992*, vol. II (Part One).

² The full text of the recommendations, as approved by the Commission, is to be found in *Yearbook . . . 1992*, vol. II (Part Two), chapter IV.

of paragraph 9, to be replaced by the words “a revised set of draft articles”.

4. Mr. CALERO RODRIGUES, Mr. EIRIKSSON, Mr. GÜNEY, Mr. KOROMA, Mr. PELLET, Mr. Sreenivasa RAO, Mr. RAZAFINDRALAMBO, Mr. ROSENSTOCK, Mr. VERESHCHETIN, Mr. VILLAGRAN KRAMER and Mr. YANKOV took part in a discussion on those proposals and on the advisability of amending the text.

5. Mr. EIRIKSSON, Mr. ROSENSTOCK and the Special Rapporteur proposed that the phrase “and the Commission should not deal, at this stage, with other activities which in fact cause transboundary harm” should be added after the first sentence of paragraph 6 and that the second part of the third sentence of the paragraph, reading “, namely whether to continue with the same or a similar exercise in respect of activities causing transboundary harm.” should be deleted.

6. Mr. BARBOZA (Special Rapporteur) said that, as he had already submitted two reports on prevention, it would suffice if, with a view to submitting a revised set of draft articles on the question of activities involving risk, he re-examined the draft provisions on prevention proposed in those two reports. On that point, his next report would thus contain nothing that was really new. With a view to making progress on the consideration of the topic and since his mandate under the terms of paragraph 9 of the Working Group’s report was not restrictive, he therefore intended to propose, at the next session, draft articles on civil liability as well as on other aspects of activities involving risk.

7. The CHAIRMAN, summing up the discussion, noted that the Commission did not wish to reopen the substantive debate, which was precisely what it had sought to avoid when setting up the Working Group.

8. If there was no objection, he would take it that the Commission decided to take note of the report of the Working Group on the topic of international liability for injurious consequences arising out of acts not prohibited by international law (A/CN.4/L.470), as orally amended by Mr. Eiriksson, Mr. Idris and Mr. Rosenstock, whose proposals had received general support.

It was so agreed.

The meeting rose at 12.10 p.m.

2283rd MEETING

Friday, 10 July 1992, at 10.05 a.m.

Chairman: Mr. Christian TOMUSCHAT

Present: Mr. Al-Baharna, Mr. Al-Khasawneh, Mr. Arangio-Ruiz, Mr. Barboza, Mr. Bennouna, Mr. Bowett, Mr. Calero Rodrigues, Mr. Crawford, Mr. de Saram, Mr. Eiriksson, Mr. Fomba, Mr. Güney,

Mr. Idris, Mr. Kabatsi, Mr. Koroma, Mr. Kusuma-Atmadja, Mr. Mahiou, Mr. Mikulka, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Razafindralambo, Mr. Rosenstock, Mr. Shi, Mr. Szekely, Mr. Thiam, Mr. Vereshchetin, Mr. Villagran Kramer, Mr. Yamada, Mr. Yankov.

State responsibility (continued)* (A/CN.4/440 and Add.1,¹ A/CN.4/444 and Add.1-3,² A/CN.4/L.469, sect. F, A/CN.4/L.472, A/CN.4/L.478 and Corr.1 and Add.1-3, ILC(XLIV)/Conf.Room Doc.1 and 4)

[Agenda item 2]

THIRD AND FOURTH REPORTS OF THE SPECIAL RAPPOREUR
(continued)

ARTICLE 5 *bis* and

ARTICLES 11 TO 14³ (continued)

1. Mr. ARANGIO-RUIZ (Special Rapporteur), summing up the discussion, said he wished first to express his gratitude to his colleagues for their contributions to the debate. Whether they had agreed or disagreed with his proposals, the members of the Commission had performed with great merit the vital task of monitoring his work and providing him with their critical appraisals, without which no progress could be made on a difficult topic.

2. He wished to emphasize two points. First, the debate had been so rich that he could not hope to respond fully and adequately to all the points made. However, none of those valuable remarks would be lost and due account would be taken of them in the Commission’s report. Second, he would not be endorsing all of the suggestions for changes in the draft articles in question. The final decision would, in any case, be up to the Drafting Committee and the Commission as a whole. If he found himself in the minority on any particular issue, he would bow to the will of the majority and have his dissenting opinion put on record.

3. In respect of draft article 11 (Countermeasures by an injured State), there appeared to be general approval of the idea that resort to countermeasures was subject to two basic conditions: the actual existence of an internationally wrongful act committed by the State against which the countermeasures were taken, and a prior demand for cessation and/or reparation. One question had been how specific such demands should be and it had been stressed that an excessive burden should not be imposed on the injured State. In his view, while it did not necessarily have to be formulated in such precise terms as those required when a case was brought before an arbitral tribunal or before ICJ, the prior demand or claim

* Resumed from the 2280th meeting.

¹ Reproduced in *Yearbook . . . 1991*, vol. II (Part One).

² Reproduced in *Yearbook . . . 1992*, vol. II (Part One).

³ For texts of proposed draft articles 11 and 12, see 2273rd meeting, para. 18; for 5 *bis*, 13 and 14, see 2275th meeting, para. 1.