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Summary record of the 1152nd meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
1972, vol. I

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Yearbook of the International Law Commission

56. The CHAIRMAN drew the attention of the Commission to a memorandum from the Executive Secretary of the Publications Board concerning the printing costs for volume I of the 1972 *Yearbook of the International Law Commission* and of volume II of the 1971 *Yearbook*. He suggested that the matter be referred to a group consisting of the officers of the Commission, the Special Rapporteurs and the former Chairmen of the Commission, and that the Secretariat prepare a paper showing printing costs for the documents to be published in volume II of the 1971 *Yearbook*.

*It was so agreed.*¹⁰

The meeting rose at 1.5 p.m.

¹⁰ See also 1157th meeting, paras. 43 *et seq.*

1152nd MEETING

Friday, 5 May 1972, at 10.25 a.m.

Chairman: Mr. Richard D. KEARNEY

Present: Mr. Ago, Mr. Alcívar, Mr. Bartoš, Mr. Bilge, Mr. Castañeda, Mr. Hambro, Mr. Nagendra Singh, Mr. Quentin-Baxter, Mr. Reuter, Mr. Rossides, Mr. Sette Câmara, Mr. Tabibi, Mr. Tammes, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Mr. Ustor, Sir Humphrey Waldock, Mr. Yasseen.

Tribute to the memory of the late Sir Kenneth Bailey

1. The CHAIRMAN said he regretted to have to announce the death of Sir Kenneth Bailey, the distinguished Australian jurist. He suggested that the Commission ask the Secretariat to send a telegram of condolence to Sir Kenneth's family.

It was so agreed.

On the proposal of Mr. Tsuruoka, the members of the Commission observed a minute's silence in tribute to the memory of Sir Kenneth Bailey.

Question of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law

(A/CN.4/253 and Add.1 and 2; A/CN.4/L.182)

[Item 5 of the agenda]

(*resumed from the previous meeting*)

2. The CHAIRMAN invited the Commission to resume consideration of item 5 of the agenda.

3. Mr. USHAKOV said that at its twenty-third session the Commission had unanimously decided to place item 5 on the agenda for its present session and had later decided, exceptionally, to break with its usual practice and set

up a working group to prepare a set of draft articles. There was no deed, therefore, to revert to those two points.

4. The substance of the question was, strictly speaking, the indirect protection of diplomatic agents, since the rule of direct protection had existed in international law for centuries, and after having long been applied in customary law had now been formally laid down in the provisions of various instruments, such as article 29 of the 1961 Vienna Convention on Diplomatic Relations¹ and article 28, and paragraph (3) of the commentary thereto, of the draft articles on the representation of States in their relations with international organizations,² which the Commission had adopted at its twenty-third session. Those instruments laid down the principle of the host State's obligation to take all appropriate steps to prevent any attack on the person of diplomatic agents or persons of similar status; so what the Commission was now called upon to provide was additional measures designed to help States perform that duty.

5. The draft articles should be based on the principle that there was an obligation to prosecute and punish the perpetrators of crimes committed against diplomatic agents. They should accordingly provide, first, for the obligation of the State on whose territory the crime was committed to prosecute its authors and punish the crime with the penalties applicable under ordinary law; secondly, for extraterritorial jurisdiction or, in its default, extradition; thirdly, for mutual assistance between States in preventing such crimes; and fourthly, for the exchange of information on plots, conspiracies and the like. Such steps might perhaps, as some feared, give rise to political difficulties, but, in the case in point, it was the common interest that should prevail.

6. With regard to the method of work, the Commission had undertaken at its last session to prepare a set of draft articles at its 1972 session if the General Assembly requested it to do so, and it must honour that undertaking. It had been right in deciding to depart from its usual practice by entrusting the drafting of the articles to a working group, for that would enable it to proceed with its other work at the same time. To enquire what would become of a draft which did not yet exist was premature. It would be time to consider the best procedure to follow when the draft had been completed. In any case, that was a matter for the General Assembly to decide.

7. The text submitted by the Chairman (A/CN.4/L.182) offered a sound basis for the Working Group to start on.

8. Mr. BARTOŠ said that from time to time the course of international relations was disturbed by outbreaks of terrorism, which claimed as its victims—sometimes with the connivance of governments, as had been alleged, for example, in the case of the disturbances in China caused by the Boxer Rebellion—the agents responsible for conducting international relations and protecting the interests of the international community. The State

¹ United Nations, *Treaty Series*, vol. 500, p. 110.

² See *Yearbook of the International Law Commission, 1971*, vol. II, document A/8410/Rev.1, chapter II, section D.