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Summary record of the 1755th meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
1983, vol. I

1754th MEETING

Wednesday, 4 May 1983, at 10.15 a.m.

Outgoing Chairman: Mr. Paul REUTER

Chairman: Mr. Laurel B. FRANCIS

Present: Mr. Balanda, Mr. Barboza, Mr. Díaz González, Mr. Evensen, Mr. Flitan, Mr. Lacleta Muñoz, Mr. Mahiou, Mr. Malek, Mr. McCaffrey, Mr. Quentin-Baxter, Mr. Razafindralambo, Sir Ian Sinclair, Mr. Stavropoulos, Mr. Sucharitkul, Mr. Thiam, Mr. Ushakov, Mr. Yankov.

Election of officers

Mr. Francis was elected Chairman by acclamation.
Mr. Francis took the Chair.

1. The CHAIRMAN thanked the outgoing Chairman for the efficient and distinguished manner in which he had conducted the proceedings of the previous session and the opening phase of the present one. He also expressed the Commission's warm appreciation of the ability with which the outgoing Chairman had represented it at the thirty-seventh session of the General Assembly. Lastly, he thanked members for the honour they had done him by electing him Chairman.

Mr. Yankov was elected first Vice-Chairman by acclamation.

Mr. Razafindralambo was elected second Vice-Chairman by acclamation.

Mr. Lacleta Muñoz was elected Chairman of the Drafting Committee by acclamation.

Mr. Jagota was elected Rapporteur by acclamation.

Adoption of the agenda (A/CN.4/361)

2. The CHAIRMAN drew attention to the fact that adoption of the provisional agenda in no way prejudged the order in which the items were to be considered.

The provisional agenda (A/CN.4/361) was adopted on that understanding.

Organization of work

3. The CHAIRMAN pointed out that, in paragraph 255 of its report on its thirty-fourth session,[1] the Commission had expressed the intention of proceeding at an early stage during the present session to a general debate in plenary on the draft Code of Offences against the Peace and Security of Mankind (item 4 of the agenda), on the basis of a first report to be submitted by the Special Rapporteur. It would also be remembered that a number of the draft articles on jurisdictional immunities of States and their property (item 2 of the agenda) had been referred to the Drafting Committee for further refinement, a process which, he hoped, would be actively pursued at the present session.

4. After a discussion in which Mr. THIAM, Mr. SUCHARITKUL, Mr. USHAKOV, Sir Ian SINCLAIR and Mr. REUTER took part, the CHAIRMAN suggested that the Commission should start its work with item 4 of the agenda (Draft Code of Offences against the Peace and Security of Mankind).

It was so agreed.

The meeting rose at 11.30 a.m.

[1] *Yearbook . . . 1982*, vol. II (Part Two), p. 121.

1755th MEETING

Thursday, 5 May 1983, at 10.15 a.m.

Chairman: Mr. Laurel B. FRANCIS

Present: Mr. Balanda, Mr. Barboza, Mr. Calero Rodrigues, Mr. Díaz González, Mr. Evensen, Mr. Flitan, Mr. Lacleta Muñoz, Mr. Mahiou, Mr. Malek, Mr. McCaffrey, Mr. Quentin-Baxter, Mr. Razafindralambo, Mr. Riphagen, Sir Ian Sinclair, Mr. Stavropoulos, Mr. Sucharitkul, Mr. Thiam, Mr. Ushakov, Mr. Yankov.

Draft Code of Offences against the Peace and Security of Mankind (A/CN.4/364,[1] A/CN.4/365, A/CN.4/368, A/CN.4/369 and Add.1 and 2[2])

[Agenda item 4]

FIRST REPORT OF THE SPECIAL RAPPORTEUR

1. The CHAIRMAN invited the Commission to begin its consideration of item 4 of the agenda. Following the Commission's decision at its thirty-fourth session,[3] the General Assembly had requested it to comply with General Assembly resolution 36/106, of 10 December 1981, and to submit a preliminary report on the draft code to the Assembly at its thirty-eighth session. The Commission was therefore giving urgent consideration to the item. The documents on the topic presented to the Commission comprised the Special Rapporteur's first report (A/CN.4/364), the analytical paper (A/CN.4/365) prepared pursuant to the request contained in paragraph 256 of the Commission's report on its thirty-fourth session and the Government comments received so far (A/CN.4/369 and Add.1 and 2). In addition, the Secretariat was preparing a compendium of relevant international

[1] Reproduced in *Yearbook . . . 1983*, vol. II (Part One).
[2] *Idem.*
[3] *Yearbook . . . 1982*, vol. II (Part Two), p. 121, para. 256.

instruments (A/CN.4/368) which would be circulated to members shortly.

2. He invited the Special Rapporteur to introduce his first report.

3. Mr. THIAM (Special Rapporteur) said that he wished to emphasize the necessarily exploratory nature of his report, whose purpose was to place a number of questions before the Commission and elicit answers that would guide him in his work.

4. It was by resolution 177 (II), of 21 November 1947, that the General Assembly had assigned the Commission the task of elaborating a draft code of offences against the peace and security of mankind. Such a difficult topic, which had not yet resulted in an international instrument, had given rise to enthusiasm, followed by hesitation and procrastination. More than once, optimism had yielded to pessimism. A wealth of legal writings had emerged, but no positive decision had been taken. Precisely because the subject-matter was tied in with events occurring at different periods in history, efforts had been made to study it, only to be abandoned later. It was his hope, however, that the topic could at last be dealt with comprehensively and that an international instrument would be adopted. To date, it had always been after acts of violence, wars and other events which had aroused strong feelings throughout the world that the international community had been concerned to seek solutions based on law.

5. In historical terms, it was as a result of the enormity of the crimes committed during the Second World War that the subject had truly assumed an important place in the conscience of men. An effort had then been made to find ways of penalizing the atrocities and violations of human rights and breaches of the laws of war that the world had witnessed. However, even by the time of the First World War, the atrocities perpetrated had led to affirmations that war crimes would not go unpunished. Thus, following the acts of destruction committed by the retreating German troops, the French Government had stated in 1918 that all violations of the international laws of war would entail punishment. In 1919, the Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties had been established to determine the acts committed during the war and the responsibilities incurred. That Commission had prepared a report in which it proposed the establishment of an international jurisdiction to pass judgment on individuals committing war crimes.[4] However, the Allied Powers of the time had considered that it was not possible to penalize, on the basis of law, acts committed in violation of the laws of war. One of them had adopted the report only with a reservation to the effect that acts of Heads of State incurred political responsibility but not penal responsibility.[5] Consequently, the Treaty of Versailles of 1919 had in the end referred only to the political responsibility of the former Emperor William II. Since the special tribunal constituted to try the accused would have had to be guided not by law but by motives of policy, no criminal prosecution had had any chance of acceptance. It was by invoking the absence of a legal basis for such prosecution that the Government of the Netherlands had declined to surrender the former monarch to the Allies for trial.

6. During the period between the wars, the question had continued to be of concern to jurists and diplomats. Three organizations, the International Law Association, the Inter-Parliamentary Union and the International Association for Penal Law, had given impetus to major advances in legal thinking. The first of those organizations had, in 1926, prepared a draft statute for an international penal court; the International Association for Penal Law had adopted, in 1928, a draft statute for the creation of a criminal chamber within the PCIJ; and the three bodies had entrusted to the Romanian jurist, Vespasien Pella, the task of preparing a draft international penal code, which was published in 1935 (see A/CN.4/364, paras. 14–17).

7. Along with the scholars, diplomats had sought to find solutions capable of providing a legal basis for the prosecution of criminal acts constituting offences against peace or human rights. In the 1930s, many conflicts had broken out in Europe and even in Latin America and Africa. However, diplomacy had already been trying to find ways of coping with the problems. The Protocol for the Pacific Settlement of International Disputes, adopted at Geneva in 1924,[6] which had established the principle of compulsory arbitration, had for the first time qualified wars of aggression as international crimes. In 1927, the Declaration concerning Wars of Aggression, adopted at the eighth Assembly of the League of Nations,[7] had also regarded war of aggression as an international crime. Neither of those instruments had been made effective. Lastly, the Kellogg-Briand Pact, the General Treaty for Renunciation of War as an Instrument of National Policy,[8] had been signed on 27 August 1928. It, too, was never to be implemented. Mention should also be made of the adoption in 1937, at the initiative of the League of Nations, of the Convention for the Creation of an International Criminal Court[9] to deal with terrorism. That instrument, adopted following two assassinations which had kindled strong feelings in the international community, had never entered into force.

8. During the Second World War, the Allied Powers had undertaken not to permit a repetition of the hesitations and errors which had characterized the attitude of the Allies after the First World War. It was possible to mention, in that connection, the Inter-Allied Declaration

[4] See the relevant extract from this report in United Nations, *Historical survey of the question of international criminal jurisdiction*, memorandum by the Secretary-General (Sales No. 1949.V.8), p. 47, appendix 1.

[5] *Ibid.*, p. 52, appendix 2.

[6] League of Nations, *Official Journal, Special Supplement No. 21*, p. 21.

[7] *Ibid. No. 54*, p. 155.

[8] League of Nations, *Treaty Series*, vol. XCIV, p. 57.

[9] League of Nations, document C.547(1). M.384(1). 1937.V, reproduced in United Nations, *Historical survey of the question of international criminal jurisdiction* . . ., p. 88, appendix 8.

signed at St. James's Palace in 1942 by the United Kingdom Government and the Governments-in-exile in London, the Inter-Allied Declaration of 1942, issued simultaneously in London, Moscow and Washington, and the Moscow Declaration, done in the name of the "Big Three" in 1943 (*ibid.*, para. 24). All had expressed the need to punish those responsible for war crimes. It was for that reason that the Agreement for the prosecution and punishment of the major war criminals of the European Axis,[10] which established the International Military Tribunal of Nürnberg, had been adopted on 8 August 1945. The Nürnberg system had been criticized for violating the principle *nullum crimen sine lege* and for setting up *ad hoc* jurisdictions.

9. The soul-searching to which the Nürnberg Judgment had given rise in the international community had led the United Nations General Assembly to request the Commission to scrutinize the Judgment in order to determine its guiding principles. Simultaneously, the Commission had been entrusted with the task of elaborating a draft code of offences against the peace and security of mankind. Prepared in 1951, that draft had been submitted to the General Assembly, which had referred it back to the Commission; the Commission had submitted a new version to the Assembly in 1954.[11] However, the General Assembly had postponed consideration of the draft on the grounds that it was preferable to await the adoption of a definition of aggression.[12] As that definition had been adopted only in 1974, it was possible that the draft code had been overtaken by developments in the international community.

10. The text of the draft code adopted by the Commission at its sixth session in 1954 read as follows:

Article 1

Offences against the peace and security of mankind, as defined in this Code, are crimes under international law, for which the responsible individuals shall be punished.

Article 2

The following acts are offences against the peace and security of mankind:

(1) Any act of aggression, including the employment by the authorities of a State of armed force against another State for any purpose other than national or collective self-defence or in pursuance of a decision or recommendation of a competent organ of the United Nations.

(2) Any threat by the authorities of a State to resort to an act of aggression against another State.

(3) The preparation by the authorities of a State of the employment of armed force against another State for any purpose other than national or collective self-defence or in pursuance of a decision or recommendation of a competent organ of the United Nations.

(4) The organization, or the encouragement of the organization, by the authorities of a State, of armed bands within its territory or any other territory for incursions into the territory of another State, or the toleration of the organization of such bands in its own territory, or the toleration of the use by such armed bands of its territory as a base of operations or as a point of departure for incursions into the territory of another State, as well as direct participation in or support of such incursions.

(5) The undertaking or encouragement by the authorities of a State of activities calculated to foment civil strife in another State, or the toleration by the authorities of a State of organized activities calculated to foment civil strife in another State.

(6) The undertaking or encouragement by the authorities of a State of terrorist activities in another State, or the toleration by the authorities of a State of organized activities calculated to carry out terrorist acts in another State.

(7) Acts by the authorities of a State in violation of its obligations under a treaty which is designed to ensure international peace and security by means of restrictions or limitations on armaments, or on military training, or on fortifications, or of other restrictions of the same character.

(8) The annexation by the authorities of a State of territory belonging to another State, by means of acts contrary to international law.

(9) The intervention by the authorities of a State in the internal or external affairs of another State, by means of coercive measures of an economic or political character in order to force its will and thereby obtain advantages of any kind.

(10) Acts by the authorities of a State or by private individuals committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group as such, including:

(i) Killing members of the group;

(ii) Causing serious bodily or mental harm to members of the group;

(iii) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(iv) Imposing measures intended to prevent births within the group;

(v) Forcibly transferring children of the group to another group.

(11) Inhuman acts such as murder, extermination, enslavement, deportation or persecutions, committed against any civilian population on social, political, racial, religious or cultural grounds by the authorities of a State or by private individuals acting at the instigation or with the toleration of such authorities.

(12) Acts in violation of the laws or customs of war.

(13) Acts which constitute:

(i) Conspiracy to commit any of the offences defined in the preceding paragraphs of this article; or

(ii) Direct incitement to commit any of the offences defined in the preceding paragraphs of this article; or

(iii) Complicity in the commission of any of the offences defined in the preceding paragraphs of this article; or

(iv) Attempts to commit any of the offences defined in the preceding paragraphs of this article.

Article 3

The fact that a person acted as Head of State or as responsible government official does not relieve him of responsibility for committing any of the offences defined in this Code.

Article 4

The fact that a person charged with an offence defined in this Code acted pursuant to an order of his Government or of a superior does not relieve him of responsibility in international law if, in the circumstances at the time, it was possible for him not to comply with that order.

11. At the present stage, it was important first of all for the Commission to determine what should be added to or deleted from the draft. The problems in that regard could be divided into three categories, according to whether they concerned the scope of the draft, the methodology of codification or the implementation of the draft.

12. The first category encompassed the question of the offences to which the codification applied and the question of the subjects of law to which international criminal responsibility might be attributed. With regard to the first question, under article 1 of the 1954 draft code, offences against the peace and security of mankind defined in the code were crimes under international law. By confining itself to the study of crimes under inter-

[10] United Nations, *Treaty Series*, vol. 82, p. 279.

[11] *Yearbook . . . 1954*, vol. II, pp. 149–152, document A/2693, chap. III.

[12] General Assembly resolution 897 (IX) of 4 December 1954.

national law, the Commission had taken into account only crimes that were defined directly by international law, without any reference to internal law. It even seemed to have had no desire to make its list of crimes under international law exhaustive in character.

13. Crimes under international law were indeed to be included among international crimes, which could be classed into three categories. The first were international crimes by their very nature, the ones which the Commission had perhaps had in mind when it had referred to crimes under international law. Such crimes assailed sacred principles of civilization and, as it were, fell under *jus cogens*. Aggression, genocide, racism, forced labour and colonization were to be included in that category.

14. Then there were crimes that were not international by their nature but became so by virtue of a convention or because of the circumstances in which they were committed. Modern means of communication enabled offenders to travel easily from one point of the world to another and they provided each other with assistance across national boundaries in order to escape from justice. For their part, Governments had been induced to co-operate with one another, on the basis of international conventions, for the purpose of punishing the guilty parties. Consequently, certain crimes were elevated from the national to the international level.

15. Lastly, the personality of the author of a crime under internal law could give that crime an international character. Where a State was the author of or an accomplice in a crime under internal law, that crime became international.

16. It was very difficult to make a clear-cut distinction between those three categories of international crimes, since it was possible that a crime regarded at one point in history as a crime under internal law could later be regarded as an international crime. For example, a crime under internal law such as counterfeiting became an international crime if it was committed with the complicity or connivance of a State. Similarly, crimes such as traffic in narcotic drugs and hijacking of aircraft seemed to be becoming increasingly international in nature, in view of the dangers they posed for mankind.

17. It would perhaps also be appropriate to reconsider another choice the Commission had made in 1954. It had taken the view that the draft should be limited to crimes which contained a political element and which endangered or disturbed the maintenance of international peace and security. The distinction between "political" and "non-political" depended frequently on a person's philosophical, ideological or political convictions. The world was divided into different political systems; therefore the old saying "What is true on this side of the Pyrenees becomes a fallacy on the other side" remained entirely valid. The same consideration applied with regard to time, since the fallacies of today were sometimes the truths of tomorrow. Moreover, the political element was generally considered to be a factor for making the conditions of detention more humane and it often precluded extradition. Would it not be dangerous, in such circumstances, to invoke the concept of a political crime, when the draft concerned the authors of the most heinous crimes? Furthermore, most of those crimes were politically inspired.

18. As to the question of the subjects of law to which international criminal responsibility might be attributed, under article 1 of the 1954 draft code, any person responsible for committing a crime against the peace and security of mankind was liable to punishment. The Commission had therefore excluded the question of the criminal responsibility of other entities, notably States. In so doing, it had followed the Nürnberg Tribunal, which had stated that crimes were committed by men, not by abstract entities, and had to be punished under international law.

19. He wondered whether such a position could be upheld despite the clear tendency at the present time to consider that subjects of law other than individuals could be prosecuted for such crimes. The question of the criminal responsibility of legal entities was not posed solely in international law. Many systems of internal law admitted the concept of the criminal responsibility of legal entities, and commercial companies were sometimes tried and convicted for economic crimes. Under international law, the question was to be seen in a different light since the elaboration of article 19 of part 1 of the draft articles on State responsibility, which listed a number of offences considered to be international crimes attributable to States.[13] The Commission would have to find a way of harmonizing that provision with article 1 of the 1954 draft.

20. Growing numbers of writers advocated the concept of criminal responsibility of States, in addition to the individual responsibility of the leaders of those States. That theory had come increasingly to the fore as a result of the efforts of Vespasien Pella, who considered it essential that the author of the criminal act should be made to realize that it was being prosecuted not because it had been vanquished but because it was guilty. Furthermore, Pella upheld the theory of the collective will, according to which States, as human groups, had a will distinct from that of each of their members. According to that theory, which could be dangerous if carried to extremes, the concept of collective psychology conferred on a national community a direct responsibility which was distinct from that of its members. The difficulty of that argument lay particularly in the fact that it was hard to inflict on States criminal sanctions which were necessarily coercive in nature. Some had thought it possible to inflict on States penalties appropriate to their nature, such as reprimands and fines. A kind of *capitis diminutio* could also be imposed on States, one which would deny them, for example, the right to manufacture certain types of armaments. To date, however, decisions along those lines had been taken by the Governments of victorious States, not by courts. In view of the evolution in legal thinking, it

[13] For the text of draft article 19 (International crimes and international delicts) and the commentary thereto, see *Yearbook . . . 1976*, vol. II (Part Two), pp. 95 *et seq.*

would perhaps be appropriate for the Commission to re-examine the position it had taken in 1954, when it had decided to take account only of individuals.

21. As for the methodology, in 1954 the Commission had adopted a pragmatic method and had listed the offences regarded as crimes under international law, without necessarily referring to a specific criterion. Furthermore, no reference had been made to any general principle of criminal law, such as *nulla poena sine lege*, the theory of justified acts, or that of extenuating circumstances. Admittedly it could be argued that they had become general principles, and had to be respected even if they were not enunciated. Moreover, in the meantime they had been set forth in part 1 of the draft articles on State responsibility.[14] In the light of the evolution of *jus cogens*, it might well be asked, however, whether the Commission should not seek to formulate a criterion that would make it possible to define crimes against the peace and security of mankind. Enunciating a criterion would doubtless be a difficult task, but all of the crimes listed could then be linked to a common denominator. Although it was not possible to proceed as in the case of internal law, where most criminal codes contained a general part which defined crimes by specific criteria, it would be useful to formulate a principle making it possible to determine which were the crimes against the peace and security of mankind.

22. Implementation of the code was a question that the Commission should not necessarily have to consider. In the 1954 draft, it had expressed no views on the question and had made no mention of penalties. However, a code which did no more than define crimes without providing for penalties was not truly a criminal code. It was essential that the principle *nullum crimen sine lege* should be supplemented by the principle *nulla poena sine lege*. It was, of course, possible either to draw on the Nürnberg precedent, leaving it to the judge to establish the applicable penalties, or to refer to national legislation. In both cases, however, it was necessary to be explicit.

23. The main question in connection with implementation of the code was that of the establishment of an international criminal jurisdiction. In response to a question put to it by the General Assembly,[15] the Commission had said that it was possible and desirable to establish such a jurisdiction.[16] The General Assembly had then set up, in 1950, a committee of representatives of 17 member States which was assigned the task of preparing proposals; and in 1952 it had established a new committee, with the task of re-examining the draft prepared in 1951 by the previous committee.[17] In 1954, the General Assembly decided to suspend consideration of the draft pending completion of the Definition of Aggression.[18] In his opinion, the matter must now be taken up, since it was not possible to imagine how a code which passed over in silence the question of penalties and of the competent jurisdiction could be implemented. Opponents of the establishment of an international criminal court considered that a Head of State or Government could not be tried before such a court unless his Government had been overthrown or his State defeated; accordingly, it would be preferable to leave the question aside. Those in favour of an international jurisdiction referred to Articles 94 and 39 of the Charter of the United Nations, which dealt, respectively, with giving effect to decisions of the ICJ and with measures under Chapter VII of the Charter. However, opponents of an international criminal jurisdiction pointed out that any such jurisdiction would contravene the principle of the sovereignty of States and that of the territoriality of criminal law. Yet if the international community considered that the situation had altered sufficiently to allow for the establishment of such a jurisdiction, it was because the principle of territoriality had become subject to certain necessary exceptions.

24. The Commission could, of course, confine itself to elaborating the code requested of it; but in order to gain the impression of doing useful work, it might find it necessary to envisage the creation of an international criminal jurisdiction. Indeed, it could well consult the General Assembly on that point. In the event of an affirmative reply, the preparation of a draft would inevitably require more time.

25. In conclusion, he wished to thank the Secretariat for its valuable assistance and to pay tribute to the memory of Jean Spiropoulos, who had been the first Special Rapporteur entrusted with the topic and whose work had served as a very useful guide.

26. The CHAIRMAN congratulated the Special Rapporteur on his masterly introduction of his first report, which raised a number of fundamental issues that called for the attention of the Commission.

Organization of work (*continued*)

27. The CHAIRMAN submitted the recommendation of the Enlarged Bureau concerning the organization of the work of the session (ILC (XXXV)/Conf.Room Doc. 2); the schedule proposed by the Bureau was as follows:

1.	Draft Code of Offences against the Peace and Security of Mankind (item 4)	5–13 May
2.	Jurisdictional immunities of States and their property (item 2)	16–27 May
3.	State responsibility (item 1)	30 May–10 June
4.	The law of the non-navigational uses of international watercourses (item 5)	13–24 June
5.	Status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier (item 3)	27 June–1 July

[14] *Yearbook . . . 1980*, vol. II (Part Two), pp. 30 *et seq.*

[15] General Assembly resolution 260 B (III) of 9 December 1948.

[16] See the report of the Commission on its second session in *Yearbook . . . 1950*, vol. II, p. 379, document A/1316, para. 140.

[17] See "Report of the Committee on International Criminal Jurisdiction on its session held from 1 to 31 August 1951" (*Official Records of the General Assembly, Seventh Session, Supplement No. 11* (A/2136)); and "Report of the 1953 Committee on International Criminal Jurisdiction, 27 July – 20 August 1953" (*ibid., Ninth Session, Supplement No. 12* (A/2645)).

[18] General Assembly resolution 898 (IX) of 14 December 1954.

6.	Relations between States and international organizations (second part of the topic) (item 7)	4–8 July
7.	International liability for injurious consequences arising out of acts not prohibited by international law (item 6)	11–15 July
8.	Draft report of the Commission and related matters	18–22 July

28. It should be noted that the Drafting Committee still had before it a number of draft articles on the topics of jurisdictional immunities of States and their property (item 2), State responsibility (item 1) and the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier (item 3). The Drafting Committee thus already had quite a full workload. No provision had been made in the proposed schedule for item 8 (Programme and methods of work) because it was the custom to decide on that item in the light of the recommendations made by the Planning Group, which was traditionally chaired by the first Vice-Chairman of the Commission.

29. With regard to item 3, the status of the diplomatic courier, for which only one week had been allocated, it was the understanding of the Enlarged Bureau that some additional meetings would be devoted to it at a later stage. That could be done through the use of meetings allocated but not actually used for other topics. Furthermore, he would personally suggest the possibility of holding some afternoon meetings.

30. Sir Ian SINCLAIR said that he had no objection to the proposed schedule of work for the session, on the understanding that it was in the nature of a set of guidelines. With regard to item 4, for example, he agreed with the remark by Mr. Reuter at the previous meeting that it might prove necessary at a later stage to devote one or two meetings to that topic in order to discuss the contents of the relevant passage to be included in the report. Adoption of the schedule recommended by the Enlarged Bureau did not necessarily preclude the allocation later of one or two meetings for item 4.

31. The CHAIRMAN said that allowance should, of course, be made for the contingency mentioned by Sir Ian Sinclair. Every effort should be made by the Commission to give the fullest possible consideration to the various items on its agenda within the time available to it. He urged members to exercise some discipline with regard to the length of their statements. For his part, he would confine his own remarks in a personal capacity to that which was absolutely necessary, such as a point not mentioned in the course of the discussion.

32. Mr. DÍAZ GONZÁLEZ said that, in principle, he approved the programme of work under consideration, but stressed its purely indicative value. The Commission should not seek to study each and every topic in detail, for it was clear, if not from the resolutions of the General Assembly then at least from its discussions, that the Commission should study certain topics as a matter of priority. Some were in the process of being concluded, while others, such as that of international watercourses, still required considerable work. The Commission should therefore concentrate on the topics on which progress was being made, such as that of the diplomatic bag, and those which should be studied as a matter of urgency.

33. The CHAIRMAN said that there was considerable merit in what Mr. Díaz González had said. However, the Enlarged Bureau, in its recommendation to allocate one week to the status of the diplomatic courier (item 3), had taken into account the fact that 14 articles on that topic were now pending in the Drafting Committee. As for the topic of State responsibility (item 1), there were also some articles before the Drafting Committee. Lastly, it should be borne in mind that the decisions of the Enlarged Bureau did not in any way prejudice the priority given by the General Assembly, or by the Commission itself, to any topic.

34. Mr. BALANDA, referring to the possibility that the Commission might hold afternoon meetings, observed that afternoons were generally set aside either for meetings of the Drafting Committee or for the study of documents by members of the Commission. Like Mr. Díaz González, he was of the opinion that the Commission should examine in detail the topics that it did take up. Rather than try to consider everything rapidly, it was preferable to try to produce work of good quality.

35. The CHAIRMAN explained that his suggestion for possible afternoon meetings had been made on the understanding that any such meetings would never coincide with meetings of the Drafting Committee. Some afternoon meetings might also be necessary to compensate for the impossibility of holding meetings on certain official holidays.

36. Mr. BARBOZA stressed the provisional nature of the programme under consideration. The Commission had always set out the main outlines of its programme, modifying it in accordance with the progress of its work. In addition to the difficulties already mentioned, there was also the need for a second examination of the topics on the agenda. During consideration of the Commission's report in the Sixth Committee of the General Assembly, the impression had been gained that the Drafting Committee was somewhat behind in its work. The Drafting Committee's task was likely to be particularly difficult during the current year. He did not think that it would be possible for the Commission to hold afternoon meetings, in view of the need for members to study the reports that were to be considered and for the Drafting Committee to have afternoons available in order to carry out its task.

37. Mr. USHAKOV said that the programme of work recommended by the Enlarged Bureau seemed acceptable, inasmuch as it would be possible to modify it in the course of the session.

38. Sir Ian SINCLAIR said that the points raised by Mr. Díaz González were important and merited discussion, possibly within the framework of the Planning Group rather than in connection with the recommendation of the Enlarged Bureau now under consideration. He hoped that the recommendation did not preclude the possibility

of a reasonable number of meetings of the Planning Group at the present session.

39. Mr. CALERO RODRIGUES asked for an assurance that the recommendation of the Enlarged Bureau took due account of the availability of documents. He would be strongly opposed to embarking upon the consideration of any item unless the basic documentation had been circulated to members at least two weeks in advance. As for the possibility of afternoon meetings, the Drafting Committee had enough work to keep it occupied on most afternoons throughout the session, so the issue hardly arose.

40. Mr. LACLETA MUÑOZ (Chairman of the Drafting Committee) said that, in view of its particularly heavy programme of work, the Drafting Committee would have to begin its work the following week and perhaps schedule other meetings in addition to those in the afternoon. It would examine successively the draft articles on jurisdictional immunities of States and their property, the draft articles on State responsibility and the draft articles on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, work that would take it approximately up to mid-June.

41. Mr. DÍAZ GONZÁLEZ said that he shared the view expressed by Sir Ian Sinclair and asked Mr. Yankov, as Chairman of the Planning Group, to arrange for the Group to hold a meeting as soon as possible.

42. Mr. YANKOV said that he, too, was of the view that the recommended timetable should be regarded as indicative and tentative and should be reviewed from time to time. In particular, he noted that only five working days were set aside for the discussion of item 3, for which he was the Special Rapporteur. It was to be hoped that additional time could be gained, either as a result of early completion of the consideration of other items, or by some other rearrangement of the programme. With regard to the question of meetings of the Planning Group referred to by Sir Ian Sinclair, several speakers in the Sixth Committee had stressed the desirability of the Group holding more meetings at the present session. In his capacity as first Vice-Chairman of the Commission, he intended to start consultations forthwith on the Group's membership and schedule of meetings.

43. Mr. MAHIOU said that, at first sight, the recommendation of the Enlarged Bureau seemed to set a timetable which made it possible to examine all the topics on the agenda, in keeping with their priority and the progress of work on them. However, it seemed that it would be difficult to adhere strictly to the timetable. It was certain that, in practice, the detailed nature of the discussion on any given question would mean that the timetable would not be followed. When a report as important as that of Mr. Evensen on the law of the non-navigational uses of international watercourses was circulated, it would be necessary for members of the Commission and the Drafting Committee to have the requisite time to study it. The order indicated by the Chairman of the Drafting Committee for the examination of the draft articles was already different from that of the work of the Commission. Hence some degree of flexibility would be necessary.

44. Mr. ROMANOV (Secretary to the Commission), replying to the point raised by Mr. Díaz González, said that, according to information available to him, the basic documents on items 1 and 5 would be available for distribution in time to enable members to study them well in advance of the dates recommended for the consideration of those items. The Secretariat would urge the responsible services to expedite the production of the documents in question. As for the compendium of international instruments relevant to item 4, the text was to be sent from New York for reproduction at Geneva on 9 May.

45. The CHAIRMAN said that, if he heard no objection, he would take it that the recommendation of the Enlarged Bureau (ILC(XXXV)/Conf.Room Doc.2) was approved on the understanding that the programme for the organization of work would be applied with considerable flexibility.

It was so agreed.

46. Mr. ROMANOV (Secretary to the Commission) said that Thursday, 12 May and Monday, 23 May (Ascension Day and Whit Monday, respectively) had been designated as official holidays of the United Nations Office at Geneva, and he drew attention to official memoranda to the effect that arrangements for meetings to be held on those days should be made only in exceptional circumstances.

47. The CHAIRMAN said that, in the light of that information, he assumed that the Commission would not wish to meet on 12 May and 23 May 1983.

It was so agreed.

The meeting rose at 12.45 p.m.

1756th MEETING

Friday, 6 May 1983, at 10 a.m.

Chairman: Mr. Laurel B. FRANCIS

Present: Mr. Balanda, Mr. Barboza, Mr. Calero Rodrigues, Mr. Díaz González, Mr. Evensen, Mr. Flitan, Mr. Lacleta Muñoz, Mr. Mahiou, Mr. Malek, Mr. McCaffrey, Mr. Ogiso, Mr. Quentin-Baxter, Mr. Riphagen, Sir Ian Sinclair, Mr. Stavropoulos, Mr. Sucharitkul, Mr. Thiam, Mr. Ushakov, Mr. Yankov.
