

Document:-
A/CN.4/SR.1878

Summary record of the 1878th meeting

Topic:
Filling of casual vacancies

Extract from the Yearbook of the International Law Commission:-
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4. Mr. KOROMA suggested that the filling of casual vacancies should begin the following day.

5. Mr. CASTAÑEDA said that nearly all members of the Commission had been present for the opening of the current session, an unusual occurrence of which advantage should be taken to fill casual vacancies without delay. He himself might be called back to his country at any time. Perhaps the vacancies could be filled now.

6. Mr. LACLETA MUÑOZ said that the filling of casual vacancies should take place either the following day or within the next few days at the latest. When the Commission had adopted its agenda, it had decided to leave aside the question of the order in which the various topics would be taken up; that decision obviously related only to items 3 to 9, namely those concerning substantive issues. Once the discussion of the question of the organization of work, which was the subject of agenda item 1, had been completed, the Commission should, of course, go on to item 2 concerning the filling of casual vacancies.

7. Mr. BOUTROS GHALI said that, if memory served, at the last session at which the Commission had had to fill a vacancy, it had done so as early as its second meeting.

8. The CHAIRMAN said that several vacancies had to be filled at the current session and that account had to be taken of the new procedure adopted by the General Assembly in its resolution 36/39 of 18 November 1981, the relevant passage of which had been reproduced in the note by the Secretariat (A/CN.4/386 and Add.1). The Enlarged Bureau would study the question as a matter of priority in order to make specific recommendations to the Commission the following morning.

9. Mr. REUTER said that the filling of casual vacancies had higher priority than the appointment of new special rapporteurs or the order in which the agenda items would be discussed. The Enlarged Bureau should therefore meet as soon as possible.

10. The CHAIRMAN said that the views of all members would be taken into account by the Enlarged Bureau and that the question of the filling of casual vacancies would be considered with all necessary dispatch.

The meeting rose at 11.40 a.m.

1877th MEETING

Wednesday, 8 May 1985, at 10.10 a.m.

Chairman: Mr. Satya Pal JAGOTA

Present: Chief Akinjide, Mr. Balanda, Mr. Barboza, Mr. Boutros Ghali, Mr. Calero Rodrigues, Mr. Castañeda, Mr. Díaz González, Mr. El Rasheed Mohamed Ahmed, Mr. Flitan, Mr. Francis, Mr. Jacovides, Mr. Koroma, Mr. Lacleta Muñoz, Mr. Mahiou, Mr. Malek, Mr. McCaffrey, Mr. Ogiso,

Mr. Pirzada, Mr. Razafindralambo, Mr. Reuter, Mr. Riphagen, Sir Ian Sinclair, Mr. Sucharitkul, Mr. Thiam, Mr. Ushakov, Mr. Yankov.

Organization of work of the session (*continued*)

[Agenda item 1]

1. The CHAIRMAN informed members that the Enlarged Bureau had met the previous day, 7 May 1985, and had decided to make the following recommendations for consideration by the Commission.

(a) With regard to agenda item 2 (Filling of casual vacancies in the Commission), the Commission should proceed that day, 8 May 1985, to fill the four casual vacancies that had arisen in the Commission, in accordance with article 11 of its statute. A note prepared by the Secretariat in that connection (A/CN.4/386 and Add. 1) had been circulated, as well as a note setting forth the communications received concerning candidatures (ILC(XXXVII)/Misc.1). The elections would be held by secret ballot at a private meeting and the results would be announced later at a public meeting of the Commission.

(b) With regard to the substantive work of the Commission, the Enlarged Bureau recommended that the Commission should take up first the question of the draft Code of Offences against the Peace and Security of Mankind (agenda item 6). Accordingly, if the elections were completed that day (8 May 1985), the Commission would take up item 6 the following day, 9 May 1985. The decision to make that recommendation had been reached in consultation with the special rapporteurs.

(c) The Enlarged Bureau should meet again either on Thursday, 9 May 1985, or on Friday, 10 May 1985, to make further recommendations regarding the organization of work during the first four weeks of the session and other related matters.

2. If there were no objections, he would take it that the Commission approved the recommendations of the Enlarged Bureau.

It was so agreed.

3. The CHAIRMAN then invited the Commission to adjourn so that elections could be held in a private meeting to fill the casual vacancies that had arisen in the Commission.

The meeting rose at 10.15 a.m.

1878th MEETING

Wednesday, 8 May 1985, at 12.35 p.m.

Chairman: Mr. Satya Pal JAGOTA

Present: Chief Akinjide, Mr. Balanda, Mr. Barboza, Mr. Boutros Ghali, Mr. Calero Rodrigues,

Mr. Castañeda, Mr. Díaz González, Mr. El Rasheed Mohamed Ahmed, Mr. Flitan, Mr. Francis, Mr. Jacovides, Mr. Koroma, Mr. Lacleta Muñoz, Mr. Mahiou, Mr. Malek, Mr. McCaffrey, Mr. Ogiso, Mr. Pirzada, Mr. Razafindralambo, Mr. Reuter, Mr. Riphagen, Sir Ian Sinclair, Mr. Sucharitkul, Mr. Thiam, Mr. Ushakov, Mr. Yankov.

Filling of casual vacancies in the Commission (article 11 of the statute) (A/CN.4/386 and Add.1, ILC(XXXVII)/Misc.1)

[Agenda item 2]

1. The CHAIRMAN announced that, at a private meeting held that morning, the Commission had elected, in conformity with its statute and taking into account General Assembly resolution 36/39, Mr. Gaetano Arangio-Ruiz, Mr. Jiahua Huang, Mr. Emmanuel J. Roukounas and Mr. Christian Tomuschat to fill the casual vacancies caused by the election of Mr. Zhengyu Ni and Mr. Jens Evensen to the International Court of Justice and by the deaths of Mr. Robert Q. Quentin-Baxter and Mr. Constantin A. Stavropoulos.

2. He intended to send telegrams to the four new members of the Commission, congratulating them on their election and inviting them to participate as soon as possible in the present session.

The meeting rose at 12.45 p.m.

1879th MEETING

Thursday, 9 May 1985, at 10.10 a.m.

Chairman: Mr. Satya Pal JAGOTA

Present: Chief Akinjide, Mr. Balanda, Mr. Barboza, Mr. Boutros Ghali, Mr. Calero Rodrigues, Mr. Castañeda, Mr. Díaz González, Mr. El Rasheed Mohamed Ahmed, Mr. Flitan, Mr. Francis, Mr. Jacovides, Mr. Lacleta Muñoz, Mr. Mahiou, Mr. Malek, Mr. McCaffrey, Mr. Njenga, Mr. Ogiso, Mr. Pirzada, Mr. Razafindralambo, Mr. Reuter, Mr. Riphagen, Mr. Sir Ian Sinclair, Mr. Sucharitkul, Mr. Thiam, Mr. Tomuschat, Mr. Ushakov, Mr. Yankov.

Welcome to Mr. Tomuschat

1. The CHAIRMAN congratulated Mr. Tomuschat on his election and, on behalf of the Commission, extended a warm welcome to him.

Draft Code of Offences against the Peace and Security of Mankind¹ (A/39/439 and Add.1-5, A/CN.4/368 and Add.1, A/CN.4/377,² A/CN.4/387,³ A/CN.4/392 and Add.1 and 2,⁴ A/CN.4/L.382, sect. B)

[Agenda item 6]

**DRAFT ARTICLES SUBMITTED BY THE
SPECIAL RAPPORTEUR**

2. The CHAIRMAN recalled that the General Assembly, in paragraph 1 of its resolution 39/80 of 13 December 1984, had requested the Commission

... to continue its work on the elaboration of the draft Code of Offences against the Peace and Security of Mankind by elaborating an introduction as well as a list of the offences, taking into account the progress made at its thirty-sixth session, as well as the views expressed during the thirty-ninth session of the General Assembly.

3. In the same resolution, the General Assembly had also requested the Secretary-General to seek the views of Member States and intergovernmental organizations regarding the conclusions contained in paragraph 65 of the report of the Commission on the work of its thirty-sixth session.⁵ The replies of Governments would be communicated to members of the Commission when received. One reply had already been circulated (A/CN.4/392).

4. He invited the Special Rapporteur to introduce his third report (A/CN.4/387), together with the draft articles contained therein, which read:

PART I

SCOPE OF THE PRESENT ARTICLES

Article 1

The present articles apply to offences against the peace and security of mankind.

PART II

PERSONS COVERED BY THE PRESENT ARTICLES

Article 2

First alternative

Individuals who commit an offence against the peace and security of mankind are liable to punishment.

Second alternative

State authorities which commit an offence against the peace and security of mankind are liable to punishment.

¹ The draft code adopted by the Commission at its sixth session, in 1954 (*Yearbook ... 1954*, vol. II, pp. 151-152, document A/2693, para. 54), is reproduced in *Yearbook ... 1984*, vol. II (Part Two), p. 8, para. 17).

² Reproduced in *Yearbook ... 1984*, vol. II (Part One).

³ Reproduced in *Yearbook ... 1985*, vol. II (Part One).

⁴ *Ibid.*

⁵ *Yearbook ... 1984*, vol. II (Part Two), p. 17.