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Summary record of the 1940th meeting

Topic:
Other topics

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INTERNATIONAL LAW COMMISSION

SUMMARY RECORDS OF THE THIRTY-EIGHTH SESSION

Held at Geneva from 5 May to 11 July 1986

1940th MEETING

Monday, 5 May 1986, at 3.15 p.m.

Outgoing Chairman: Mr. Satya Pal JAGOTA

Present: Chief Akinjide, Mr. Arangio-Ruiz, Mr. Balanda, Mr. Boutros Ghali, Mr. Calero Rodrigues, Mr. Díaz González, Mr. Flitan, Mr. Francis, Mr. Koroma, Mr. Lacleta Muñoz, Mr. Mahiou, Mr. Malek, Mr. McCaffrey, Mr. Ogiso, Mr. Pirzada, Mr. Razafindralambo, Mr. Reuter, Mr. Riphagen, Mr. Roukounas, Sir Ian Sinclair, Mr. Sucharitkul, Mr. Thiam, Mr. Ushakov.

Opening of the session

1. The OUTGOING CHAIRMAN declared open the thirty-eighth session of the International Law Commission.

Statement by the outgoing Chairman

2. The OUTGOING CHAIRMAN welcomed the members of the Commission and said that he would briefly review developments since the previous session.

3. As decided by the Commission, he had represented it at the fortieth session of the General Assembly. Item 138 of the agenda, concerning the report of the International Law Commission on the work of its thirty-seventh session, and item 133, concerning the draft Code of Offences against the Peace and Security of Mankind, had been allocated to the Sixth Committee, which had considered them together, although representatives had been free to make separate statements on the draft code of offences.

4. At the invitation of the Chairman of the Sixth Committee, he had, on 28 October 1985, introduced the Commission's report on its thirty-seventh session (A/40/10),¹ including its consideration of the draft code of offences,² and had summarized the main points examined by the Commission under the different items on its agenda, indicating the points that particularly called for comments by representatives of Governments.³ The debate in the Sixth Committee had continued from 28 October to 12 November 1985, and at the invitation

of the Chairman he had made a brief concluding statement.⁴

5. The summary records of the debate in the Sixth Committee, the report of that Committee⁵ and the resolutions adopted by the General Assembly on 11 December 1985 on the two items considered⁶ had been made available to members of the Commission. A topical summary of the Sixth Committee's debate (A/CN.4/L.398) had been prepared by the Secretariat, pursuant to paragraph 9 of General Assembly resolution 40/75, as an aid to the work of the Commission. Those documents fully explained how the Commission's report on its previous session had been received by the General Assembly and what was expected of the Commission at its present session.

6. By and large the Sixth Committee's response to the Commission's work had been positive and appreciative. As to the substantive items on the Commission's agenda, it was expected that the Commission would complete in 1986, that was to say before the expiry of its current members' term of office, its first reading of the drafts on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, and on the jurisdictional immunities of States and their property, despite the strong views of some representatives regarding the need for more intensive reflection on the topic of State immunities without any time constraint.

7. On the draft code of offences, despite reservations on the usefulness of consideration of the topic by the Commission at the present time and criticism of certain provisions, the Sixth Committee had approved the Commission's general approach and stressed the need for making further progress quickly. Some concrete suggestions had also been made concerning the content of the introduction to the code and the place of general principles therein, the desirability and scope of a definition of such an offence, and the list of offences to be included.

8. On the topic of State responsibility, the progress made had been appreciated. Some representatives had emphasized the urgency of considering the topic of the law of the non-navigational uses of international water-courses.

9. All those views and concrete suggestions had been comprehensively dealt with in the topical summary (A/CN.4/L.398) and had been noted by the special rapporteurs in their reports to be considered by the Commission at the present session.

⁴ *Ibid.*, 36th meeting, paras. 34-35.

⁵ *Official Records of the General Assembly, Fortieth Session, Annexes*, agenda item 138, document A/40/961.

⁶ Resolution 40/69 on the draft Code of Offences against the Peace and Security of Mankind, and resolution 40/75 on the report of the International Law Commission on the work of its thirty-seventh session.

¹ *Yearbook ... 1985*, vol. II (Part Two).

² See *Yearbook ... 1985*, vol. I, pp. 4 *et seq.*, 1879th to 1889th meetings.

³ See *Official Records of the General Assembly, Fortieth Session, Sixth Committee*, 23rd meeting, paras. 2-57.

10. As to the organizational and procedural aspects of the Commission's work, its approach had been endorsed by the General Assembly, although some concrete suggestions had also been put forward on how the work could be made more effective and realistic. Among other things, the Commission's concern about the effective continuation of the International Law Seminar had been fully shared by the Sixth Committee, and concrete suggestions had been made.

11. Since 1985 had been the fortieth anniversary of the United Nations, some statements had been made calling for increased effectiveness of international law against a background of statistical analysis of acceptance of the conventions adopted since 1945 and acceptance of the compulsory jurisdiction of the ICJ. Those statements were summarized in the topical summary (*ibid.*, paras. 16-20 and 25-28).

12. The general response of the Sixth Committee and the General Assembly to the Commission's work in 1985 had thus been positive. No doubt the Commission would reflect on the concrete suggestions made.

13. With regard to representation at the sessions of regional organizations, and as decided by the Commission, Mr. El Rasheed Mohamed Ahmed had attended the meetings of the Asian-African Legal Consultative Committee held at Arusha from 3 to 10 February 1986; Sir Ian Sinclair had attended the meetings of the European Committee on Legal Co-operation held at Strasbourg from 2 to 6 December 1985; and he himself had attended the meetings of the Inter-American Juridical Committee held at Rio de Janeiro from 12 to 17 January 1986.

14. He had received a letter from the Secretary-General of the Inter-American Juridical Committee informing him that the Committee would be represented at the present session by Mr. Seymour J. Rubin, as an observer. He had also received an invitation from the President of the ICJ to attend the ceremony commemorating the fortieth anniversary of the Court on 29 April 1986, in his capacity as Chairman of the Commission. After consulting the Legal Counsel to the United Nations, he had accepted that invitation and attended the ceremony. In his statement, the President of the ICJ had referred extensively to the cordial relations between the Court and the Commission.

15. Lastly, he wished to draw attention to three other matters. The first was the adoption of the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations⁷ by the plenipotentiary conference held at Vienna from 18 February to 21 March 1986; the draft of that Convention had, of course, been prepared by the Commission. The conference had also adopted, among others, two resolutions paying tribute to its Expert Consultant, Mr. Paul Reuter, and to the Commission.⁸

16. The second matter was a communication he had received, as Chairman of the Commission, from Mr. Viacheslav A. Ustinov, Under-Secretary-General for Political and Security Council Affairs, enclosing copies of General Assembly resolutions 40/3 and 40/10 concerning 1986 being declared the International Year of Peace. He had replied on 21 January 1986, saying that

the text of those two resolutions would be circulated to members of the Commission and that the Chairman elected for the present session would keep the Secretary-General informed of the Commission's activities relating to the International Year of Peace. The Commission would no doubt give its urgent attention to that matter during the present session.

17. The third matter was the financial stringency besetting the United Nations and its effect on the duration of the Commission's present session. The time available to the Sixth Committee for consideration of the Commission's report on its thirty-eighth session might also be reduced if the forty-first session of the General Assembly was to be shortened. Members had already received communications on that subject from the Secretary of the Commission and no doubt the Commission would take the matter up when it dealt with the organization of work of the present session.

Organization of work of the session

[Agenda item 1]

18. The OUTGOING CHAIRMAN said that the African members of the Commission would need some time for consultation before proposing a candidate for the office of chairman.

The meeting rose at 3.50 p.m.

1941st MEETING

Tuesday, 6 May 1986, at 10.15 a.m.

Outgoing Chairman: Mr. Satya Pal JAGOTA

Chairman: Mr. Doudou THIAM

Present: Chief Akinjide, Mr. Arangio-Ruiz, Mr. Balanda, Mr. Boutros Ghali, Mr. Calero Rodrigues, Mr. Díaz González, Mr. Flitan, Mr. Francis, Mr. Koroma, Mr. Lacleta Muñoz, Mr. Mahiou, Mr. Malek, Mr. McCaffrey, Mr. Ogiso, Mr. Pirezada, Mr. Razafindralambo, Mr. Reuter, Mr. Riphagen, Mr. Roukounas, Sir Ian Sinclair, Mr. Sucharitkul, Mr. Tomuschat, Mr. Ushakov.

Election of officers

Mr. Thiam was elected Chairman by acclamation.

Mr. Thiam took the Chair.

1. The CHAIRMAN paid tribute to his predecessor and thanked the members of the Commission for the confidence they had placed in him by electing him Chairman.

2. The thirty-eighth session, the last one before the renewal of the membership of the Commission, might well be shortened. The Commission would therefore have to redouble its efforts and make the best possible use of the time available so as to move ahead, as was its

⁷ A/CONF.129/15.

⁸ See the Final Act of the Conference (A/CONF.129/14), annex.