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**Summary record of the 2149th meeting**

Topic:  
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# INTERNATIONAL LAW COMMISSION

## SUMMARY RECORDS OF THE FORTY-SECOND SESSION

*Held at Geneva from 1 May to 20 July 1990*

### 2149th MEETING

*Tuesday, 1 May 1990, at 3.10 p.m.*

*Outgoing Chairman:* Mr. Bernhard GRAEFRATH

*Chairman:* Mr. Jiuyong SHI

*Present:* Mr. Al-Baharna, Mr. Arangio-Ruiz, Mr. Barsegov, Mr. Beesley, Mr. Bennouna, Mr. Boutros-Ghali, Mr. Calero Rodrigues, Mr. Díaz González, Mr. Eiriksson, Mr. Illueca, Mr. Jacovides, Mr. Koroma, Mr. Mahiou, Mr. McCaffrey, Mr. Ogiso, Mr. Pawlak, Mr. Razafindralambo, Mr. Roucounas, Mr. Sepúlveda Gutiérrez, Mr. Solari Tudela, Mr. Thiam, Mr. Tomuschat.

#### Opening of the session

1. The OUTGOING CHAIRMAN declared open the forty-second session of the International Law Commission and welcomed the members of the Commission and its secretariat.

#### Tribute to the memory of Mr. Paul Reuter

2. The OUTGOING CHAIRMAN said that it was his painful duty to inform members of the Commission of the death of Mr. Paul Reuter two days earlier. Members knew that Mr. Reuter's contribution to international law had been outstanding, but it was undoubtedly for the role he had played in the Commission since 1964 that he had been most admired. He understood that Mrs. Reuter would be in Geneva during the second half of June and therefore suggested that the Commission should devote one of its meetings at that time to honouring the memory of Mr. Reuter. Quite apart from his immense talents as a lawyer, members of the Commission would always remember Mr. Reuter's qualities of heart and mind, his intelligence, knowledge, wisdom, sense of humour, elegance and courtesy.

*At the invitation of the Outgoing Chairman, the Commission observed one minute's silence in tribute to the memory of Mr. Paul Reuter.*

#### Statement by the outgoing Chairman

3. The OUTGOING CHAIRMAN said that he had attended the forty-fourth session of the General

Assembly and introduced to the Sixth Committee the Commission's report on its forty-first session (A/44/10).<sup>1</sup> The text of his statement,<sup>2</sup> as well as the summary records of the meetings which the Sixth Committee had devoted to the report and the topical summary of the debate prepared by the Secretariat (A/CN.4/L.443), were available to members of the Commission. The report, and in particular the draft articles contained therein, had given rise to a wealth of constructive ideas and suggestions. The discussion had reflected a pluralistic approach to many important issues raised in the report, and it was therefore essential for the Commission to take those different views into account in arriving at balanced texts that would enable the various positions to be reconciled and agreement between interested States to be reached.

4. During the debate in the Sixth Committee, the importance of close interaction between the Commission and the General Assembly had consistently been stressed and new ways and means of strengthening that co-operation had been envisaged.

5. He would confine himself to drawing attention to some points of a general character that might influence the direction of the Commission's work.

6. Although the Commission's report had on the whole been favourably received, a number of delegations had criticized its length and structure. It should, in his view, be possible in future to submit a more concise report to the General Assembly, concentrating mainly on the Commission's decisions and commentaries and not including summaries of special rapporteurs' reports. That would enable the Commission to structure its report in such a way that there was more uniformity between the different chapters. That was certainly a question that should be taken up without delay by the Rapporteur and the Planning Group.

7. Many delegations had expressed regret that the Commission's report was not sufficiently explicit with regard to the main points or questions which the Commission would like the Sixth Committee to deal with. Knowing that the Sixth Committee had already raised the issue several times, he had endeavoured to underline those questions in introducing the report. Obviously, however, that could be no substitute for a decision

<sup>1</sup> See *Yearbook . . . 1989*, vol. II (Part Two).

<sup>2</sup> See *Official Records of the General Assembly, Forty-fourth Session, Sixth Committee*, 24th meeting, paras. 1-102.

by the Commission to list the questions that needed a response by States, because the success of its work depended to a large extent on a political decision by them to point the Commission in the direction it should follow with regard to a particular draft. Accordingly, in paragraph 4 (c) of its resolution 44/35 of 4 December 1989 on the report of the Commission, the General Assembly had requested it to indicate in its annual report, for each topic, those specific issues on which expressions of views by Governments would be of particular interest for the continuation of its work.

8. Several delegations had made proposals concerning the Commission's working methods, having regard to the central role it had to play in the increasingly rapid development of international law. The key to a productive relationship between the Sixth Committee and the Commission lay, as rightly suggested, in a proper understanding of each other's role in that process. The close interdependence between the working methods of the Sixth Committee and those of the Commission had also been stressed, despite the differences between them. Specific proposals and suggestions had been made in that regard, for example to split the Commission's session into two parts in order to facilitate drafting and the timely presentation of reports; to form two drafting committees or subgroups to deal with parallel topics; to streamline the Commission's report; and to improve co-operation with regional bodies.

9. It had also been suggested that long-term codification projects should be supplemented by short-term legal opinions on specific questions and that the possibility of involving the Commission in the United Nations Decade of International Law should be envisaged, a question that should be considered by the Planning Group.

10. Drawing attention to paragraph 4 (b) of General Assembly resolution 44/35, concerning the possible staggering of the consideration of some topics, he said that that was quite feasible, since the Commission might conclude the second reading of the draft articles on jurisdictional immunities of States and their property at the present session and concentrate on the draft Code of Crimes against the Peace and Security of Mankind and on the law of the non-navigational uses of international watercourses, thus accelerating its work. Moreover, the Commission should not hesitate to defer consideration of a report which introduced only a few draft articles until a more comprehensive set of articles had been submitted. That would enable it to take better account of the relationship between the various draft articles and of their place in the draft as a whole and would allow the Drafting Committee to bear in mind the debate in plenary. The Drafting Committee was placed in a difficult position when a long time elapsed between the debate in the Commission and the moment when the Committee took up draft articles on a particular topic. The Planning Group would no doubt give attention to all the suggestions and comments made with regard to the Commission's future work and working methods.

11. In paragraph 5 of resolution 44/35, the General Assembly gave a positive response to the Commission's

suggestion that special rapporteurs be invited to be present during the discussion of their topics in the General Assembly when circumstances so warrant.

12. The General Assembly had adopted a number of other resolutions which concerned the Commission. In its resolution 44/36 of 4 December 1989, the Assembly had expressed its appreciation to the Commission for its work on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier. Many delegations, however, wanted more time to study the draft articles on that topic. The Assembly had therefore decided to hold informal consultations on the matter at its forty-fifth session before deciding on the question of convening a diplomatic conference.

13. In its resolution 44/32, also of 4 December 1989, the General Assembly had stressed the importance and urgency of the draft Code of Crimes against the Peace and Security of Mankind. Two other resolutions of the Assembly of the same date could also have an influence on the Commission's work on the draft code, namely resolution 44/34 on the International Convention against the Recruitment, Use, Financing and Training of Mercenaries and resolution 44/39 entitled "International criminal responsibility of individuals and entities engaged in illicit trafficking in narcotic drugs across national frontiers and other transnational criminal activities: establishment of an international criminal court with jurisdiction over such crimes".

14. With regard to resolution 44/34, he drew the Commission's attention, and in particular that of the Drafting Committee, to paragraph 8 (b) of the report of the *Ad Hoc* Committee on the Drafting of an International Convention against the Recruitment, Use, Financing and Training of Mercenaries,<sup>3</sup> which stated that nothing in the convention was intended to prejudice in any way the place which the crime of mercenarism should occupy in the draft Code of Crimes against the Peace and Security of Mankind.

15. In resolution 44/39, the General Assembly had requested the Commission to consider the question of including in the draft code an article on drug trafficking, as the Commission itself had decided at its previous session. In his eighth report on the topic (A/CN.4/430 and Add.1), the Special Rapporteur had accordingly submitted at the present session draft provisions dealing with international drug trafficking as an international crime under the code. The Commission would therefore be in a position to examine the question at the present session. He then read out paragraph 1 of resolution 44/39, whereby the Commission had also been invited to give a legal opinion on the question of establishing an international criminal court or other international criminal trial mechanism with jurisdiction over crimes covered by the code. The General Assembly obviously expected the Commission to respond to both requests at the present session. The Assembly itself had scheduled consideration of the subject at its forty-fifth session. It was his understanding, however, that the Sixth Committee was not asking the Commis-

<sup>3</sup> A/C.6/44/L.9.

sion to prepare a statute for an international criminal court, nor had it conferred such a mandate on the Commission. It had, rather, requested the Commission to draw up a paper pointing to the different questions involved and to give a legal opinion on the matter to prepare the ground for a political decision by the Sixth Committee.

16. With regard to the various types of tasks which could be entrusted to the Commission, it had been said that, if the Commission were able to express a view speedily as to an appropriate legal framework for future action in a sphere of immediate concern to the international community, its value would be more clearly apparent. As an example, one delegation in the Sixth Committee had suggested that the Commission should be invited to set out in succinct form the matters that would need to be resolved if the proposal for an international court in the matter of drug trafficking were to be adopted. It was in that spirit that General Assembly resolution 44/39 had been adopted by consensus. He was convinced that the Enlarged Bureau would not fail to take up that important question. Perhaps it would be advisable to set up a small working group to prepare a paper on the subject. That group could take as a starting-point part III of the eighth report on the draft Code of Crimes against the Peace and Security of Mankind, which was in the nature of a "questionnaire-report" aimed at ascertaining the positions of members of the Commission in order to prepare a paper which could satisfy the demands of the General Assembly in its resolution 44/39.

17. Reverting to resolution 44/35, in paragraph 12 of which the General Assembly had reaffirmed its wish that the Commission enhance its co-operation with intergovernmental legal bodies whose work was of interest for the progressive development and codification of international law, he noted that he had attended the session of the Inter-American Juridical Committee held at Rio de Janeiro in August 1989 and that of the Asian-African Legal Consultative Committee held at Beijing in March 1990. Those experiences had been very rewarding. They had made him realize what a broad range of questions was being considered by those two bodies and how effective, but at the same time different, their working methods were. He had been especially interested to learn that the Inter-American Juridical Committee had just adopted a Declaration on the Environment. That Declaration was an all-encompassing text which dealt with the question of liability in all its aspects, including procedures for notification and dispute settlement. The Asian-African Legal Consultative Committee had welcomed the report of the Commission on its forty-first session. During the Committee's discussions, special attention had been paid to the draft Code of Crimes against the Peace and Security of Mankind, to the law of the non-navigational uses of international watercourses and to jurisdictional immunities of States and their property. The hope had also been expressed that the Commission's work on State responsibility would make speedy progress.

18. Being concerned to promote co-operation between the Commission and those two bodies—co-operation which, in his view, could be improved—he had taken steps to ensure that the relevant documents of the Inter-American Juridical Committee and of the Asian-African Legal Consultative Committee would immediately be made available to the special rapporteurs of the Commission. It was his understanding that Mr. Tomuschat, who had represented the Commission at the November 1989 session of the European Committee on Legal Co-operation, had done the same with regard to the documents of that body. It should also be possible to organize a regular exchange of reports between the Commission and intergovernmental legal bodies and to ensure that the drafts and resolutions of those bodies were systematically included, as had been done for the present session, in the list of materials relevant to the various topics on the Commission's agenda. In addition, it would be useful to furnish to the secretariats of those bodies a set of the provisional summary records of the Commission in order to speed up the exchange of detailed information. Obviously, since the summary records were provisional and were often subject to substantial corrections, they should be made available for information only. It would be helpful if the Planning Group could prepare a recommendation on that point.

19. In conclusion, he repeated that the Sixth Committee of the General Assembly had shown great appreciation for the Commission's work, as could be seen from resolution 44/35, in which the Assembly had responded to many questions raised by the Commission.

### Election of officers

*Mr. Shi was elected Chairman by acclamation.*

*Mr. Shi took the Chair.*

20. The CHAIRMAN thanked the Commission for choosing him to direct its discussions. He appreciated that expression of confidence and would do his best to be equal to the task entrusted to him. He was convinced that, with the assistance of his fellow officers, the Enlarged Bureau and all the members of the Commission, the work of the forty-second session would be crowned with success.

*The meeting was suspended at 3.45 p.m. and resumed at 4.25 p.m.*

*Mr. Barboza was elected First Vice-Chairman by acclamation.*

*Mr. Barsegov was elected Second Vice-Chairman by acclamation.*

*Mr. Mahiou was elected Chairman of the Drafting Committee by acclamation.*

*Mr. Eiriksson was elected Rapporteur by acclamation.*

*The meeting rose at 4.30 p.m.*