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Summary record of the 2205th meeting.

Topic:
Other topics

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INTERNATIONAL LAW COMMISSION

SUMMARY RECORDS OF THE FORTY-THIRD SESSION

Held at Geneva from 29 April to 19 July 1991

2205th MEETING

Monday, 29 April 1991, at 3.25 p.m.

Outgoing Chairman: Mr. Jiuyong SHI

Chairman: Mr. Abdul G. KOROMA

Present: Prince Ajibola, Mr. Al-Baharna, Mr. Bar-segov, Mr. Beesley, Mr. Calero Rodrigues, Mr. Graefrath, Mr. Hayes, Mr. Illueca, Mr. Jacovides, Mr. Mahiou, Mr. Njenga, Mr. Ogiso, Mr. Pawlak, Mr. Pellet, 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-third session of the International Law Commission and welcomed the members of the Commission.

Statement by the outgoing Chairman

2. The OUTGOING CHAIRMAN said that he had represented the Commission at the forty-fifth session of the General Assembly and introduced to the Sixth Committee the Commission's report on the work of its forty-second session.¹ In his statement on that occasion,² he had indicated the specific issues on which the Commission particularly sought the views of Governments and

¹ Reproduced in *Yearbook ... 1990*, vol. II (Part Two), document A/45/10.

² *Official Records of the General Assembly, Forty-fifth Session, Sixth Committee, 23rd meeting, paras. 3 et seq.*

had briefly explained the draft articles provisionally adopted.

3. The General Assembly had much appreciated the work accomplished during the Commission's forty-second session, in particular on the question of a possible international criminal jurisdiction and on the Commission's long-term programme of work.¹ The many comments, ideas and suggestions voiced by delegations, which were reflected in the summary records of the Sixth Committee and in the topical summary prepared by the secretariat (A/CN.4/L.456), would certainly help the Commission to find workable solutions to the complex issues confronting it, solutions which could reconcile the conflicting positions and interests of States. However, the Sixth Committee had displayed some unease about the pace of the Commission's work on two topics: State responsibility and international liability. Some delegations would like to have a "state of the topic" report on each of those questions, a suggestion he had promised to convey to the special rapporteurs concerned.

4. With regard to the working methods of the Commission and the relationship between its legal work and the political decisions taken by Governments and the General Assembly, some delegations had stressed the importance of a close and proper interrelationship between the Commission and its parent body. The ideas and proposals put forward in that connection were of course related to the sometimes blunt criticisms made by delegations about the length of and delay in issuing the Commission's report, the topics selected, and the efficiency and productivity of its work, and they should be viewed against the background of the discussions of the report in the Sixth Committee. From certain of those criticisms, he had concluded that the Planning Group and the Commission itself must allocate sufficient time for thorough consideration and an overall assessment of the programme, procedures and working methods of the Commission, taking into account the views expressed by delegations.

5. At the forty-second session, some members of the Commission, because of various other commitments,

had agreed only reluctantly that the Commission's annual sessions should begin as early as the end of April. He had drawn the attention of the Sixth Committee to that kind of difficulty and had also raised the matter with the Director of the Conference Services Division in Geneva, who had advised that the Commission might not enjoy an adequate level of conference servicing if the crucial last week of its work coincided with the last week of the session of the Economic and Social Council. Furthermore, the calendar of meetings in Geneva was extremely heavy during the summer months and left the Division little room for flexibility, particularly in view of the drastic cuts in resources since 1990. It thus seemed that the postponement of the start of the Commission's sessions until May would run into practical difficulties, but that should not prevent it from seeking a solution acceptable to all its members.

6. He then reviewed the resolutions adopted by the General Assembly which concerned the work of the Commission. In resolution 45/41 of 28 November 1990, the Assembly had once again invited the Commission to request its special rapporteurs to attend the discussion of the topics for which they were responsible, but it also requested the Commission to report to it on the results of the arrangement allowing for two weeks of concentrated work in the Drafting Committee at the beginning of the forty-third session. However, as the Sixth Committee had itself acknowledged, such an arrangement was an internal matter for the Commission. He therefore thought that, in order to avoid any misunderstanding, matters of that kind should in future not appear in the report submitted to the General Assembly.

7. In its resolution 45/43, of the same date, the Assembly had expressed its satisfaction at the useful informal consultations held at its forty-fifth session on the draft articles on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier and the subsequent procedure aimed at facilitating the reaching of a generally acceptable decision in that respect. The consultations, which had focused mainly on articles 17, 18 and 28, would be resumed at the Assembly's forty-sixth session.

8. The third resolution which concerned the Commission's work was resolution 45/40, also adopted on 28 November 1990, on the United Nations Decade of International Law, which contained the programme for the activities that would begin during the first term (1990-1992) of the Decade. He trusted that the Planning Group, the Working Group on the long-term programme of work and the Commission itself would make their contributions to the Decade.

9. As part of its traditional policy of cooperation with other intergovernmental legal bodies, the Commission had been represented by Mr. Calero Rodrigues at the session of the Inter-American Juridical Committee, held in Rio de Janeiro in August 1990, and by Mr. Pellet at the session of the European Committee on Legal Cooperation held in Strasbourg in December 1990. He himself had attended the thirtieth session of the Asian-African Legal Consultative Committee held from 22 to 27 April 1991 in Cairo, where the discussions had produced many interesting ideas, one of which, on the topic

of the jurisdictional immunities of States and their property, merited detailed consideration by the Commission. That concerned a point emphasized by one delegation to the effect that, as the State and the State enterprise were separate entities, the freezing of the assets of one of them should not mean the freezing of the assets of the other. He had also taken part in a symposium in Geneva from 28 February to 2 March 1991 on the topic of the international law of arms control and disarmament.³

10. Prince AJIBOLA paid a tribute to the outgoing Chairman for the excellent work which he had done during his term of office and for the high standard of his statements in the various forums where he had represented the Commission.

Election of officers

11. The OUTGOING CHAIRMAN noted that negotiations were still in progress concerning the nomination of the Chairman of the forty-third session and proposed that the meeting should be suspended to allow for further consultations. For the present session, the Chairman should in principle come from the African Group and the First Vice-Chairman from the Group of Western European and Other States, with the other regional groups sharing the posts of Second Vice-Chairman, Chairman of the Drafting Committee and Rapporteur.

The meeting was suspended at 3.50 p.m. and resumed at 5 p.m.

Mr. Koroma was elected Chairman by acclamation.

Mr. Koroma took the Chair.

Mr. Sepúlveda Gutiérrez was elected Second Vice-Chairman by acclamation.

Mr. Pawlak was elected Chairman of the Drafting Committee by acclamation.

Mr. Al-Baharna was elected Rapporteur by acclamation.

12. The CHAIRMAN thanked the members of the Commission for the honour they had bestowed on him and announced that the Group of Western European and Other States would nominate its candidate for the post of First Vice-Chairman at a later stage.

Adoption of the agenda (A/CN.4/434)

13. The CHAIRMAN invited the Commission to adopt the preliminary agenda (A/CN.4/434).

The agenda (A/CN.4/434) was adopted.

³The report is to be found in *The international law of arms control and disarmament. Proceedings of a Symposium, Geneva, 28 February - 2 March 1991* (J. Dahliz and D. Dicke, eds.), United Nations publication (Sales No. GV.E.91.0.14).

Organization of work of the session

[Agenda item 1]

14. Mr. NJENGA, referring to paragraph 11 of General Assembly resolution 45/41 in which the Assembly

... takes note of the intention of the International Law Commission, expressed in paragraph 548 of its report, to allow for two weeks of concentrated work in the Drafting Committee at the beginning of the forty-third session of the Commission and requests the Commission to report to it on the results of that arrangement,

said that it would be useful for the Commission to discuss in a plenary meeting the manner in which the Drafting Committee should proceed.

15. Following an exchange of views in which Prince AJIBOLA, Mr. PAWLAK (Chairman of the Drafting Committee) and Mr. NJENGA took part, Mr. CALERO RODRIGUES suggested that the meeting should be suspended to enable the Chairman of the Drafting Committee to consult the other members of the Commission as to how best the Drafting Committee should conduct its work.

The meeting was suspended at 5.20 p.m. and resumed at 6 p.m.

16. Mr. PAWLAK (Chairman of the Drafting Committee) announced that the following members of the Commission had agreed to participate in the Drafting Committee: Mr. Al-Baharna, Mr. Al-Khasawneh, Mr. Barsegov, Mr. Bennouna, Mr. Calero Rodrigues, Mr. Eiriksson, Mr. Hayes, Mr. Koroma, Mr. McCaffrey, Mr. Ogiso, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Razafindralambo, Mr. Sepúlveda Gutiérrez and Mr. Shi.

17. Recalling that the Commission had agreed at its forty-second session that, in order to meet the goals it had set for itself, it should allow for two weeks of concentrated work in the Drafting Committee at the beginning of the present session, he suggested that all the members of the Commission present in Geneva should take part in the meetings of the Drafting Committee during those two weeks.

It was so agreed.

18. The CHAIRMAN announced that, from Tuesday, 30 April to Friday, 3 May, the Drafting Committee would meet mornings and afternoons and that the Commission would hold a plenary meeting on Friday, 3 May, at 10 a.m. to hear a progress report on the drafting work.

19. Mr. THIAM asked for more details about the organization of the work of the Drafting Committee, he wished to know in particular which topics would be taken up at the morning meetings and which at the afternoon meetings.

20. The CHAIRMAN said that the Commission had decided at the previous session that the Drafting Committee would start by considering the draft articles on jurisdictional immunities and then move on to another topic when the work on that priority question was sufficiently advanced.

21. After an exchange of views in which Mr. THIAM, Mr. NJENGA and Mr. CALERO RODRIGUES took

part, Mr. PAWLAK, supported by Mr. MAHIU, suggested that, in order to make better use of the available time the Drafting Committee should concentrate during the first week on the draft articles on jurisdictional immunities, the second reading of which the Commission wished to complete at the present session, and, that, then, depending on the status of the work and the rate of progress, it should devote several meetings during the second week to the question of the draft Code of Crimes against the Peace and Security of Mankind or to the question of the law of the non-navigational uses of international watercourses, before reverting to the topic of jurisdictional immunities.

22. The CHAIRMAN said that, if there was no objection, he would take it that the Commission accepted Mr. Pawlak's suggestion.

It was so agreed.

The meeting rose at 6.15 p.m.

2206th MEETING

Friday, 3 May 1991, at 10 a.m.

Chairman: Mr. Abdul G. KOROMA

Present: Mr. Al-Baharna, Mr. Barsegov, Mr. Beesley, Mr. Calero Rodrigues, Mr. Eiriksson, Mr. Graefrath, Mr. Hayes, Mr. Illueca, Mr. Jacovides, Mr. Mahiou, Mr. Njenga, Mr. Ogiso, Mr. Pawlak, Mr. Pellet, Mr. Razafindralambo, Mr. Roucounas, Mr. Sepúlveda Gutiérrez, Mr. Shi, Mr. Solari Tudela, Mr. Thiam, Mr. Tomuschat.

Election of officers (*concluded*)

1. The CHAIRMAN recalled that the election of the First Vice-Chairman had been deferred from the previous meeting.

Mr. Beesley was elected First Vice-Chairman by acclamation.

The meeting was suspended at 10.05 a.m. and resumed at 10.30 a.m.

Progress report by the Chairman of the Drafting Committee

2. Mr. PAWLAK (Chairman of the Drafting Committee) said he was pleased to inform the Commission that the Drafting Committee, which was assigned a particu-