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Summary record of the 2253rd meeting

Topic:
Other topics

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INTERNATIONAL LAW COMMISSION

SUMMARY RECORDS OF THE FORTY-FOURTH SESSION

Held at Geneva from 4 May to 24 July 1992

2253rd MEETING

Monday, 4 May 1992, at 3.10 p.m.

Acting Chairman: Mr. Husain AL-BAHARNA

Chairman: Mr. Christian TOMUSCHAT

Present: Mr. Al-Khasawneh, Mr. Arangio-Ruiz, Mr. Bennouna, Mr. Bowett, Mr. Calero Rodrigues, Mr. Crawford, Mr. de Saram, Mr. Fomba, Mr. Güney, Mr. Idris, Mr. Jacovides, Mr. Kabatsi, Mr. Kusuma-Atmadja, Mr. Mahiou, Mr. Mikulka, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Razafindralambo, Mr. Rosenstock, Mr. Shi, Mr. Szekely, Mr. Thiam, Mr. Vargas Carreño, Mr. Vereshchetin, Mr. Villagran Kramer, Mr. Yamada, Mr. Yankov.

Opening of the session

1. The ACTING CHAIRMAN declared open the forty-fourth session of the International Law Commission.

Statement by the Acting Chairman

2. The ACTING CHAIRMAN, speaking on behalf of the Bureau at the forty-third session, extended a warm welcome to the members of the Commission. He said that the expertise of the new members would undoubtedly contribute to the effectiveness of the Commission's work. He was sure that the spirit of collegiality and mutual esteem that was one of the distinctive features of the Commission would prevail in the five years ahead, as it always had in the past. Unfortunately, the outgoing Chairman had been prevented from attending the meeting, but would be present the next day, when the Commission would doubtless provide him with an opportunity to review the developments which had taken place in the Sixth Committee in connection with the Commission's report.

Statement by the Legal Counsel, Representative of the Secretary-General

3. Mr. FLEISCHHAUER (Legal Counsel, Representative of the Secretary-General), speaking on behalf of the

Secretary-General, welcomed the members of the Commission and reiterated his congratulations to all members on their election or re-election. He said that, while many changes had taken place in the United Nations during the past few years, and especially the past few months, the Organization's fundamental concerns remained the same. Among them was the progressive development and codification of international law, which it was incumbent upon the General Assembly to promote under Article 13, paragraph 1 (a), of the Charter of the United Nations. Indeed, progressive development and codification of international law were important both for the maintenance of international peace and security and for the building of international cooperation. The new Secretary-General was deeply committed to the promotion of international law and to the enhancement of the role of the Organization in international affairs. He wished the Commission complete success in accomplishing the tasks which lay ahead and expressed the hope that the new term of office of members would be as fruitful as the one recently concluded.

The meeting was suspended at 3.20 p.m. and resumed at 3.40 p.m.

Election of officers

Mr. Tomuschat was elected Chairman by acclamation.

Mr. Tomuschat took the Chair.

4. The CHAIRMAN expressed his thanks to members for the confidence they had shown in him and assured them that he would do everything in his power to make the session a success, although he could hardly hope to match what had been achieved under his predecessor at the previous session. In welcoming new members, he remarked that the Commission would shortly be called upon to determine new topics and, while continuing to apply the methods which had proved so effective in the past, might wish to strengthen its working capacity by adopting new procedures from time to time. A high degree of flexibility would, of course, be needed. In particular, when a topic could not be adequately addressed without some consideration of arguments of legal policy, the Commission should devise a mechanism for obtaining information which, although not of a strictly legal

nature, was none the less relevant to the issues under discussion. The Commission's record showed that it had always succeeded in overcoming difficulties and he hoped that, with the cooperation of all concerned, it would continue to achieve highly positive results.

Mr. Calero Rodrigues was elected First Vice-Chairman by acclamation.

Mr. Jacovides was elected Second Vice-Chairman by acclamation.

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

Mr. Razafindralambo was elected Rapporteur by acclamation.

Adoption of the agenda (A/CN.4/441)

The agenda (A/CN.4/441) was adopted.

5. The CHAIRMAN said that the order of consideration of the agenda items would be decided later, based upon the proposals of the Enlarged Bureau. The question of new topics would be considered under item 7 (Programme, procedures and working methods of the Commission, and its documentation).

The meeting was suspended at 4 p.m. and resumed at 4.50 p.m.

Organization of work of the session

[Agenda item 1]

6. The CHAIRMAN said that the Enlarged Bureau proposed that the Commission should take up the topic of the draft Code of Crimes against the Peace and Security of Mankind on the following day, 5 May, at which time the Special Rapporteur would introduce his tenth report. The discussion in plenary would continue until 13 May. The consideration of State responsibility would start on 14 May and would, in principle, end on 29 May, but could go on into June, if need be. The Drafting Committee would meet in the afternoons, starting on 6 May. Mr. Yankov, the Chairman of the Drafting Committee, would be holding consultations on the Committee's membership. Members of the Planning Group would hold their first meeting on 7 May under the chairmanship of Mr. Calero Rodrigues. The decision on the membership of the Planning Group would depend upon the membership of the Drafting Committee.

7. Mr. CALERO RODRIGUES (Chairman of the Planning Group) said the Planning Group was open-ended. Everyone was invited to attend and participate.

8. The CHAIRMAN suggested that the request contained in paragraph 6 of General Assembly resolution 46/54 of 9 December 1991, regarding the planning of the Commission's activities and its methods of work, should be considered under item 7.

9. Mr. ROSENSTOCK said he hoped that some of the mornings until 13 May could be assigned to the Planning Group. It was disappointing that consideration of State responsibility was not to begin until 14 May.

10. The CHAIRMAN said that the Commission was flexible in its approach. If there were no speakers on the list, one morning meeting could be devoted to the programme of the Planning Group.

11. Mr. ROSENSTOCK said that a concerted effort must be made to set aside time for the Planning Group; that should not be made contingent upon the absence of speakers on the list on a given morning.

12. Mr. CALERO RODRIGUES (Chairman of the Planning Group) said that the Planning Group might meet at least one afternoon a week. In addition, when time allotted to the plenary was not used, it could be devoted either to the Drafting Committee or the Planning Group, as necessary.

13. Mr. ARANGIO-RUIZ drew the attention of the members of the Commission to conference room document 1, which reproduced the draft articles on State responsibility. He said it was his assumption that the Drafting Committee would begin consideration of draft articles 6-10 of part 2. As Special Rapporteur, he had introduced his third report¹ at the previous session and was looking forward to the comments of members. It was to be hoped that the Drafting Committee would complete its drafting of the articles on the legal consequences of internationally wrongful acts, with the exception of crimes and of part 3 of the draft, which concerned implementation, and that the plenary would adopt them on first reading.

14. Mr. YANKOV (Chairman of the Drafting Committee) said that about 10 articles on the topic of international liability for injurious consequences arising out of acts not prohibited by international law had been referred to the Drafting Committee; presumably they would be included in the Committee's programme of work. It was to be hoped that the relevant articles on State responsibility could be completed at the present session and that a start could be made on some of the draft articles on international liability.

15. Mr. ARANGIO-RUIZ said it was important for one or more English speakers and one or more French speakers to be regular members of the Drafting Committee. The Committee was open-ended, but it should not be used by non-members to deliver speeches they had wanted to deliver in plenary, because that would interfere with the Committee's work.

16. The CHAIRMAN said he took it that the Commission agreed to the plan of work proposed by the Enlarged Bureau, bearing in mind Mr. Rosenstock's request that sufficient time should be allotted to the Planning Group.

It was so agreed.

The meeting rose at 5.15 p.m.

¹ See *Yearbook . . . 1991*, vol. II (Part One), document A/CN.4/440 and Add.1 for text and vol. I, 2238th meeting, paras. 2-24 for introduction.