

Document:-
A/CN.4/SR.2429

Summary record of the 2429th meeting

Topic:
Other topics

Extract from the Yearbook of the International Law Commission:-
1996, vol. I

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2429th MEETING

Tuesday, 14 May 1996, at 10.10 a.m.

Chairman: Mr. Ahmed MAHIOU

Present: Mr. Calero Rodrigues, Mr. Crawford, Mr. de Saram, Mr. Eiriksson, Mr. Fomba, Mr. Güney, Mr. He, Mr. Idris, Mr. Kusuma-Atmadja, Mr. Lukashuk, Mr. Mikulka, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Rosenstock, Mr. Szekely, Mr. Thiam, Mr. Tomuschat, Mr. Yamada, Mr. Yankov.

Organization of work of the session (continued)

[Agenda item 1]

1. The CHAIRMAN said that, as agreed, the Commission was meeting in order to be informed of the progress of the work of the Drafting Committee. He invited the Chairman of the Drafting Committee, Mr. Calero Rodrigues, to give a brief report.

2. Mr. CALERO RODRIGUES (Chairman of the Drafting Committee) announced that Mr. Szekely and Mr. Yankov had joined the Drafting Committee. The number of members had increased, but was still below the customary number of 14.

3. The Drafting Committee had completed consideration of article 22 (War crimes) of the draft Code of Crimes against the Peace and Security of Mankind,¹ which divided war crimes into three categories: (a) acts committed against persons or property protected under international humanitarian law; (b) violations of the laws or customs of war; and (c) crimes that might be committed in armed conflicts not of an international character. As to crimes against humanity, the list of crimes in article 21² was nearly complete, and the Committee would next turn its attention to the *chapeau*. It would then briefly revert to article 15 (Aggression),³ for which the proposal by the Special Rapporteur was being considered by a small group. The Committee's intention was to draw a clear distinction between aggression as usually understood, that is to say, as an act of State, and aggression as an act by an individual that might be considered a crime against the peace and security of mankind.

4. The Committee's work on the draft Code was proceeding normally, and he expected it to be concluded by the end of the following week.

5. Mr. IDRIS suggested that Mr. Tomuschat should give a brief indication of the contents of his document on the issue of wilful and severe damage to the environment (ILC(XLVIII)/DC/CRD.3),⁴ in order to provide the Commission with something of substance. Similarly, the Chairman might indicate what subjects would be discussed at the plenary meeting on 21 May. For planning purposes, he would also like to know whether any dates had been set for the issue of reports still pending.

6. The CHAIRMAN, replying to Mr. Idris' first point, said that it might be preferable for Mr. Tomuschat's document to be considered first by the working group on the issue of wilful and severe damage to the environment (art. 26) for which it was intended, in accordance with the usual procedure. Concerning the second point, by 21 May the working group would have completed its discussion of Mr. Tomuschat's document, and the Commission would thus have a substantive matter for discussion. He invited the Secretary to the Commission to indicate the status of reports.

7. Mr. LEE (Secretary to the Commission) said that the second report of the Special Rapporteur, Mr. Mikulka, on State succession and its impact on the nationality of natural and legal persons (A/CN.4/474)⁵ would be available on 21 May, the eighth report of the Special Rapporteur, Mr. Arangio-Ruiz, on State responsibility (A/CN.4/476 and Add.1)⁶ on 28 May and the twelfth report of the Special Rapporteur, Mr. Barboza, on international liability for injurious consequences arising out of acts not prohibited by international law (A/CN.4/475 and Add.1)⁷ on 9 June. No date had yet been scheduled for the second report of the Special Rapporteur, Mr. Pellet, on reservations to treaties (A/CN.4/477 and Add.1 and A/CN.4/478).⁸

8. Mr. CRAWFORD, referring to a remark by Mr. Pellet (2427th meeting), asked whether, apart from article 26, there were any articles of the draft Code that had not been referred to the Drafting Committee.

9. The CHAIRMAN said that some articles had been referred to the Drafting Committee but, with the exception of article 26, the Drafting Committee was free to decide how it wished to proceed in connection with the other articles.

10. Mr. THIAM (Special Rapporteur on the topic of the draft Code of Crimes against the Peace and Security of Mankind) expressed concern at the suggestion regarding Mr. Tomuschat's document. The Commission did not have the time to enter into a debate on damage to the environment, an issue which it had already discussed when considering previous reports on the draft Code.

11. The CHAIRMAN said it was his understanding that Mr. Idris had not asked for a general debate. In any event, it would be preferable for the report of the working group on the issue of wilful and severe damage to

¹ See 2427th meeting, footnote 8 and 2428th meeting, footnote 2.

² Ibid.

³ Ibid.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

⁸ Ibid.

the environment to be considered by the Commission in plenary on 21 May.

12. Mr. PELLET pointed out that, pursuant to the decision taken by the Commission at the previous session, four articles had been referred to the Drafting Committee.⁹ It was understood that in its formulations, the Committee might use elements from outside those four articles, but under no circumstances should it take up separately any of the other articles of the draft Code. It should not, for example, create a fifth article, something that would be contrary to what the Commission had clearly decided.

The meeting rose at 10.30 a.m.

⁹ See 2427th meeting, footnote 9.

2430th MEETING

Friday, 17 May 1996, at 10.10 a.m.

Chairman: Mr. Ahmed MAHIOU

Present: Mr. Bennouna, Mr. Bowett, Mr. Calero Rodrigues, Mr. Crawford, Mr. de Saram, Mr. Eiriksson, Mr. Elaraby, Mr. Fomba, Mr. Güney, Mr. He, Mr. Idris, Mr. Kusuma-Atmadja, Mr. Lukashuk, Mr. Mikulka, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Rosenstock, Mr. Szekely, Mr. Thiam, Mr. Tomuschat, Mr. Villagrán Kramer, Mr. Yamada, Mr. Yankov.

Organization of work of the session (continued)

[Agenda item 1]

1. Mr. CALERO RODRIGUES (Chairman of the Drafting Committee), reporting on the progress of work in the Drafting Committee, said that it was keeping to its schedule. It had practically completed consideration of the outstanding articles in part two of the draft Code of Crimes against the Peace and Security of Mankind, namely, article 21 on crimes against humanity¹ and article 22 on war crimes,² and had reconsidered article 15 on the crime of aggression.³ In that part, it had only to complete the *chapeau* or introductory clause to the articles

¹ See 2428th meeting, footnote 4.

² Ibid., footnote 2.

³ Ibid., footnote 3.

which should, in so far as possible, be the same for all articles. It still had to consider articles 3, 7 and 14 of chapter II (General principles) of part one, which the Commission had left aside pending a definition of crimes.

2. The Drafting Committee should complete its work on the draft Code the following week and might possibly hold one or two additional meetings to refine the text to be adopted on second reading.

Draft Code of Crimes against the Peace and Security of Mankind⁴ (A/CN.4/472, sect. A, A/CN.4/L.522 and Corr.1, A/CN.4/L.532 and Corr.1 and 3, ILC (XLVIII)/DC/CRD.3⁵)

[Agenda item 3]

3. The CHAIRMAN invited Mr. Tomuschat to introduce the draft proposals, reproduced below, which had been agreed upon by the working group on the issue of wilful and severe damage to the environment⁶ on the basis of his document (ILC(XLVIII)/DC/CRD.3):

“Article 22. War crimes

“2 (a) (iii) (bis). Employing methods or means of warfare which are intended or may be expected to cause such widespread, long-term and severe damage to the natural environment that the health or survival of a population will be gravely prejudiced;

“Article 21. Crimes against humanity

“2 (h) (bis). Wilfully causing such widespread, long-term and severe damage to the natural environment that the health or survival of a population will be gravely prejudiced;

or

“Article 26. Wilful and severe damage to the environment

“An individual who wilfully causes such widespread, long-term and severe damage to the natural environment that the health or survival of a population will be gravely prejudiced, shall, on conviction thereof, be sentenced to . . .”

4. Mr. TOMUSCHAT said that the working group had concluded that crimes against the environment should be incorporated into the draft Code either as a war crime and a crime against humanity or as an autonomous offence, the choice in that regard being left to the Commission.

5. The working group had to a large extent taken as its basis article 55, paragraph 1, of Additional Protocol I to the Geneva Conventions of 12 August 1949. But, having

⁴ For the text of the draft articles provisionally adopted on first reading, see *Yearbook . . . 1991*, vol. II (Part Two), pp. 94 et seq.

⁵ Reproduced in *Yearbook . . . 1996*, vol. II (Part One).

⁶ See 2427th meeting, footnote 1.