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Summary record of the 2432nd meeting

Topic:
Other topics

Extract from the Yearbook of the International Law Commission:-
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(<http://www.un.org/law/ilc/index.htm>)*

4. The CHAIRMAN said that Mr. Lukashuk's remarks were interesting, but the Commission was in the process of taking a decision. Perhaps Mr. Lukashuk might explain his vote following the vote.

5. Mr. LUKASHUK said that his first point had been precisely that crimes against the environment should be included among war crimes. He would take up his second point following the vote.

6. Mr. THIAM (Special Rapporteur) reminded members that crimes against the environment had been under discussion for years. There was no point in reopening a general debate.

The suggestion by the Chairman to refer the issue of wilful and severe damage to the environment to the Drafting Committee in the context of war crimes was adopted by 12 votes to 1, with 4 abstentions.

7. Mr. SZEKELY said that the working group's draft had contained three proposals, the third being an alternative formulation whereby wilful and severe damage to the environment would be dealt with in a separate article, namely article 26. Members should be afforded the opportunity to vote on all three proposals.

8. The CHAIRMAN said that his suggestion had clearly referred only to the first formulation of the working group's second proposal. In other words, the issue would be covered by crimes against humanity, in article 21.

9. Mr. SZEKELY said that, as members had spent the weekend reflecting on the working group's proposals, they should be allowed to take a decision on the proposals as a whole.

10. Mr. PELLET said that the consensus at the previous meeting had been to disregard the working group's alternative formulation. It was extraordinary that the question was being raised when a vote had already been taken. Had he known that was to happen, he would have voted against the proposal.

11. Mr. THIAM (Special Rapporteur) said that he was opposed to crimes against the environment being treated in a separate article.

12. Mr. ROSENSTOCK said that the Chairman's suggestion had clearly referred to article 22 and article 21, and not article 26. Procedurally speaking, a decision had been taken. Mr. Pellet's abstention and his own, which must be considered as a *beau geste* to limit division in the Commission, had been predicated on that situation. For the situation to be altered, the Chairman's ruling must be challenged and overturned, failing which the Commission was committed to its decision.

13. Mr. VILLAGRÁN KRAMER said that he had understood the Chairman's suggestion as referring to both formulations of the working group's second proposal. He would like the record to show that he did not believe a procedural issue should prevent the Drafting Committee from examining the options that were in the best interests of mankind.

14. The CHAIRMAN said that he believed the suggestion had been quite clear—there had been no mention of article 26. He invited the members to vote on whether to refer the issue of wilful and severe damage to the environment to the Drafting Committee in the context of article 21.

There were 9 votes in favour, 9 against and 2 abstentions.

The suggestion by the Chairman to refer the issue of wilful and severe damage to the environment to the Drafting Committee in the context of crimes against humanity was not adopted.

The meeting rose at 10.45 a.m.

2432nd MEETING

Friday, 24 May 1996, at 10.55 a.m.

Chairman: Mr. Ahmed MAHIOU

Present: Mr. Arangio-Ruiz, 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. Sreenivasa Rao, Mr. Rosenstock, Mr. Thiam, Mr. Tomuschat, Mr. Villagrán Kramer, Mr. Yamada, Mr. Yankov.

Organization of work of the session (continued)*

[Agenda item 1]

1. The CHAIRMAN, welcomed Mr. Corell, Under-Secretary-General, the Legal Counsel, representative of the Secretary-General, who would address the Planning Group, which was to meet immediately after the plenary meeting. He said that the Enlarged Bureau had met earlier to draw up a programme of work for the three-week period from 28 May to 14 June 1996. He then read out the Enlarged Bureau's proposals which had also been determined by technical constraints and, in particular, by the fact that the Drafting Committee's report on the draft Code of Crimes against the Peace and Security of Mankind would not be available in all the official languages before 6 June. If there was no objection, he would take it

* Resumed from the 2430th meeting.

that the Commission agreed to approve the Enlarged Bureau's proposed programme of work.

It was so agreed.

The meeting rose at 11.15 a.m.

2433rd MEETING

Tuesday, 28 May 1996, at 10.15 a.m.

Chairman: Mr. Ahmed MAHIOU

Present: Mr. Arangio-Ruiz, Mr. Bowett, Mr. Calero Rodrigues, Mr. Crawford, Mr. de Saram, Mr. Eiriksson, Mr. Fomba, Mr. Güney, Mr. He, Mr. Idris, Mr. Kabatsi, Mr. Kusuma-Atmadja, Mr. Lukashuk, Mr. Mikulka, Mr. Pambou-Tchivounda, Mr. Sreenivasa Rao, Mr. Rosenstock, Mr. Thiam, Mr. Tomuschat, Mr. Villagrán Kramer, Mr. Yamada, Mr. Yankov.

Cooperation with other bodies

[Agenda item 8]

STATEMENT BY THE OBSERVER FOR THE EUROPEAN COMMITTEE ON LEGAL COOPERATION

1. The CHAIRMAN invited Mr. Schade, observer for the European Committee on Legal Cooperation, to address the Commission.
2. Mr. SCHADE (Observer for the European Committee on Legal Cooperation) said that, with the recent addition of the Russian Federation, the former Yugoslav Republic of Macedonia and Ukraine, the Council of Europe currently had 38 member States. Croatia was expected to join in late 1996, Armenia, Belarus and Bosnia and Herzegovina had applied for full membership, and Armenia, Azerbaijan and Georgia had been invited to participate as observers in the work of the European Committee on Legal Cooperation (CDCJ) of the Council of Europe. The development and consolidation of democratic security in the countries of central and eastern Europe were the principal activities of the CDCJ Demo-Droit and Themis programmes.
3. The final text of the draft European convention on nationality should be adopted at the next meeting of the Committee of Experts on Nationality in July 1996 and by CDCJ in late 1996. The Committee of Ministers of the Council of Europe would probably open the conven-

tion for signature in the first half of 1997. The Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality was still in force, but numerous developments in western Europe had affected nationality, *inter alia*, labour migrations between States, the need for integration of permanent residents, the growing number of mixed marriages, freedom of movement between European Union member States, and nationality in the context of State succession. The new convention incorporated the existing principles and rules and dealt with all major aspects of nationality, including acquisition, loss, recovery, procedural rights, multiple nationality, military obligations for multiple nationals, nationality in the context of State succession and cooperation between States parties. It did not, however, cover conflicts of law, nor did it deal with matters of private law, because the rules were too complex and it was impossible to achieve consensus. The draft convention allowed for the fact that, while the countries of western and central Europe tended to tolerate multiple nationality, the citizenship legislation of eastern Europe did not. The convention neither prevented nor favoured multiple nationality, leaving the choice to States.

4. With regard to State succession and nationality, the draft covered all cases of legal State succession and State restoration. There had been considerable discussion of whether to include restored States, and a recent compromise had resulted in the decision that the convention should deal with all issues defined by international law but should leave it to public international law, and to bodies like the United Nations and the Commission, to cover the situations of specific countries, such as the Baltic States. The major purpose of the new convention was to avoid statelessness in cases of transfer of territory. Successor States were encouraged to settle nationality issues by agreement and were required to take account of the rule of law and of human rights in granting or retaining nationality and to bear in mind the wishes of the people concerned. Nationals of a predecessor State who had become non-nationals and permanent residents of the successor State would be given equal treatment with nationals in regard to social and economic rights, so that they could lead a normal life as they had done before the succession of States had occurred. The drafting group on the new convention had taken into account the first report on State succession and its impact on the nationality of natural and legal persons¹ of the Commission's Special Rapporteur, Mr. Mikulka, and looked forward to the continued work of the Commission in that area.

5. Since the forty-seventh session of the Commission in 1995, the CDCJ and the Committee of Ministers of the Council of Europe had adopted the European Convention on the exercise of children's rights, which had been opened for signature on 25 January 1996 and had been signed by seven countries to date. Although the Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment had been opened for signature in 1993, it had yet to enter into force and had been signed by only eight countries. The

¹ *Yearbook . . . 1995*, vol. II (Part One), document A/CN.4/467.