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Summary record of the 2433rd meeting

Topic:
Cooperation with other bodies

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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.

chances of eventual failure or entry into force were about equal.

6. The Committee of Experts on Family Law would be holding a colloquium on European law in Malta in 1997 on legal problems relating to parentage. Following a decision of the Committee of Ministers in December 1994, a group of specialists on incapacitated and other vulnerable adults had been created to deal with the protection of such adults against human rights abuses.

7. In January 1996, the Committee of Ministers had authorized the Multidisciplinary Group on Corruption to elaborate a draft convention and also a framework convention on corruption. The framework convention set out the major principles in the fight against corruption and covered bribery of foreign officials, tax deductibility of bribes paid abroad, international cooperation and measures to be taken at the national and international levels. The two draft conventions could be viewed either as alternatives or as complementary to one another. The Multidisciplinary Group was also considering a European code of conduct for civil servants, which would be voluntary rather than binding.

8. The Committee of Legal Advisers on Public International Law (CAHDI) of the Council of Europe held two annual meetings and was regularly attended by Mr. Eiriksson, a member of the Commission. It had discussed the draft statute for an international criminal court, particularly the definition of the core crimes: genocide, serious violations of the laws and customs applicable in armed conflict and crimes against humanity, and the possibility of including the crime of aggression. The question of the complementarity of national courts and an international criminal court and of the latter court's potential jurisdiction, along with the role of the Security Council, would be considered further. The CAHDI hoped that the final text of the draft statute would be adopted at a diplomatic conference as soon as possible.

9. The CAHDI welcomed the Commission's work on reservations to treaties, in particular human rights treaties. It had invited all its delegations to consider the topic, including reservations to the human rights instruments of the Council of Europe, and planned to hold discussions on the matter at its meeting in September 1996.

10. The CHAIRMAN thanked the Observer for CDCJ and said that the work of CDCJ was of great interest to the Commission. International law must take account of regional developments, which might be more advanced than those at the broader international level. Indeed, the Council of Europe seemed to be ahead of the Commission with regard to issues of nationality, the environment and corruption.

STATEMENT BY THE OBSERVER FOR THE ASIAN-AFRICAN
LEGAL CONSULTATIVE COMMITTEE

11. The CHAIRMAN invited Mr. Tang Chengyuan, Secretary-General of the Asian-African Legal Consultative Committee, to address the Commission.

12. Mr. TANG Chengyuan (Observer for the Asian-African Legal Consultative Committee) said that the

Committee had been pleased to welcome Mr. Idris to its thirty-fifth session in Manila in March 1996 and it looked forward to the Chairman's presence at its meeting of the Legal Advisers of member States of the Asian-African Legal Consultative Committee (AALCC) during the next session of the General Assembly.

13. The items on the Commission's agenda were of particular interest to the Governments of Africa and Asia. At its thirty-third session in 1994, AALCC had welcomed the Commission's decision to take up reservations to treaties and State succession and its impact on the nationality of natural and legal persons. The international climate for consideration of those topics was propitious.

14. It was to be hoped that the draft Code of Crimes against the Peace and Security of Mankind and the first reading of the draft articles on State responsibility would be completed at the current session and that the Commission would include in its agenda the topic of diplomatic protection and initiate a feasibility study on the law of the environment, as proposed by the Commission at its previous session. An item on the report on the work of the International Law Commission at its forty-eighth session would be considered at the thirty-sixth session of AALCC in 1997.

15. Substantive items under consideration by the Committee included one on the Decade of International Law, which had been on its agenda since it had been proclaimed by the United Nations General Assembly.² The same item also formed part of the Committee secretariat's current programme of work. He would forward to the United Nations Legal Counsel as soon as possible a summary of the activities undertaken by the Committee with a view to achieving the objectives laid down for the current phase of the Decade.

16. At its thirty-fifth session, the Committee had considered developments relating to the law of the sea, and in particular the work of the Assembly of the International Sea-Bed Authority (ISBA), the meeting of States parties to the United Nations Convention on the Law of the Sea, the United Nations Conference on Straddling Fish Stocks³ and Highly Migratory Fish Stocks and the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.⁴ It had also taken note with satisfaction of the entry into force in November 1994 of the United Nations Convention on the Law of the Sea, the establishment of ISBA, and the decision on the establishment of the International Tribunal for the Law of the Sea. A mark of the significance the Committee attached to the law of the sea was that it urged full participation by member States in ISBA in order to safeguard the legitimate interests of the developing countries and to ensure the development of the principle of the common heritage of mankind. The Committee had reminded member States of the need to adopt a common policy for

² General Assembly resolution 44/23.

³ A/CONF.164/38.

⁴ A/CONF.164/37.

the interim period before commercial exploitation of deep sea-bed minerals became feasible. The Committee secretariat would continue to cooperate with international organizations competent in ocean and marine affairs and would endeavour to assist member States in their representation at ISBA.

17. AALCC had been one of the first regional organizations to examine the question of the status and treatment of refugees. In that connection, it had decided to organize, in Bangkok towards the end of 1996 and with the financial and technical assistance of the United Nations High Commissioner for Refugees, a seminar on the status and treatment of refugees to commemorate the thirtieth anniversary of the Principles concerning treatment of refugees, adopted at the Committee's eighth session, held in Bangkok in 1966. The model legislation on the status and treatment of refugees and the question of the establishment of safety zones for displaced persons in their country of origin remained on the secretariat's programme of work.

18. In January 1996 the AALCC secretariat had organized a seminar on the work and role of ICJ, in cooperation with the Indian Society of International Law and the International Jurists Organization, Asia. The Seminar had been inaugurated by the Chief Justice of India, Mr. Ahmadi, and had been attended by participants from 22 member States of AALCC and representatives from 9 non-member States. The twin objectives of the Seminar had been to commemorate the fiftieth anniversary of ICJ and to promote the United Nations Decade of International Law. Mr. Weeramantry, a judge of ICJ had delivered the keynote address.

19. Also at its thirty-fifth session, the Committee had organized a special meeting on the establishment of an international criminal court, which had provided a forum for an informal exchange of views on the articles of the draft statute for an international criminal court as adopted by the Commission⁵ and on the work of the Ad Hoc Committee on the Establishment of an International Criminal Court.⁶ The proceedings of the special meeting had been transmitted to the Chairman of the Preparatory Committee on the Establishment of an International Criminal Court in March 1996.

20. Work was in progress on a wide variety of other subjects, including the deportation of Palestinians as a violation of international law and in particular of the Geneva Conventions of 12 August 1949; the legal protection of migrant workers; the United Nations Conference on Environment and Development and its follow-up;⁷ the extradition of fugitive offenders; the debt burden of developing countries; and international trade law matters. At its thirty-fifth session, AALCC had been requested to consider a secretariat study on WTO as a framework agreement and code of conduct for world trade. All those items would also be considered at its thirty-sixth session, to be held in Tehran in 1997.

21. Over the years AALCC had become a major forum for international cooperation, and its programme had been attuned to the needs of its expanding membership. At the thirty-fifth session it had approved a proposal to commemorate the fortieth anniversary of its Constitution in November 1996 by organizing a seminar that would be relevant to the objectives of the United Nations Decade of International Law. In that connection, the secretariat proposed to issue a special publication and he would request scholars, officials from member States of AALCC and international organizations to contribute articles on international law. He trusted that his appeal for such articles would be heard.

22. On behalf of AALCC, he extended an invitation to the Chairman of the Commission to attend the Committee's next session, in Tehran in 1997.

23. The CHAIRMAN, thanking the observer for the European Committee on Legal Cooperation and the observer for Asian-African Legal Consultative Committee for their statements, said he could assure them that the Commission was making good progress towards completing its work on a number of topics with which it had been dealing for some time. It was apparent from both statements that a considerable amount of material awaited codification and it should provide the Commission and the Planning Group with food for thought.

24. Mr. VILLAGRÁN KRAMER said that he had been struck by the extent to which the work done by the European Committee on Legal Cooperation, on the one hand, and the Commission, on the other, coincided. Accordingly, there should be a much speedier feedback of information about the remarkable work being done at the Council of Europe, particularly on nationality and on reservations to treaties, and in general greater interaction between regional legal committees and the Commission when they covered the same subjects.

25. He had also been struck by the expanding membership of the Council of Europe and by the fact that an extraordinary number of countries had accepted the rules laid down when the Council of Europe had been established. It was indicative of a very high degree of commitment, of a radical change of structure at the international level, and of the wish of European countries to reinforce the primacy of the rule of law. The rest of the world should be aware of the great strides being made by Europe, particularly in the legal field.

26. It was particularly gratifying to see that the concept of nationality was undergoing a fundamental change in the European scheme of things. For Europeans, nationality was not a strait-jacket, whereas in Latin America nationality was attributed *ipso jure*, on the basis of *jus soli* and *jus sanguinis*, and that was an end to it. Latin America allowed only for dual nationality, while Europe was contemplating the new concept of multiple nationality. Reality showed that, in the modern world, there was indeed room for such a concept and he would be grateful if the observer for the European Committee on Legal Cooperation could provide him with a draft of what had already been achieved in that area so that he could transmit it to the Inter-America Juridical Committee for examination.

27. While reservations to treaties still caused considerable concern in Europe, the matter had long since been

⁵ See *Yearbook . . . 1994*, vol. II (Part Two), p. 26, para. 91.

⁶ See Report of the Ad Hoc Committee on the Establishment of an International Criminal Court (*Official Records of the General Assembly, Fiftieth Session, Supplement No. 22 (A/50/22)*).

⁷ Held at Rio de Janeiro, Brazil, from 3 to 14 June 1992.

settled in Latin America. Nonetheless, he trusted that developments in Europe would lead to a wider understanding of the European approach and to the ultimate conviction, among Latin Americans, that useful work was being done.

28. Equally gratifying was the work being carried out by AALCC. Not only did lawyers from ministries of foreign affairs but also ministers of justice participate in the Committee's meetings. When persons of that rank engaged in legal analysis it was bound to vest the particular problem with special relevance and to ensure that the legal aspects were taken into account in the decision-making process. In examining the draft statute for an international criminal court at such a level, AALCC demonstrated that it was not just a United Nations draft but one of vital importance to the world at large. The numerous items on the Committee's agenda were indicative of a firm resolve to solve the many acute problems of international law.

29. Mr. LUKASHUK said that there was unanimous support for the Commission's collaboration with the European Committee on Legal Cooperation and AALCC, which worked in many of the same areas. At the same time, it was important for the Commission and other legal bodies working on the codification of international law not to lose sight of one of the main problems, namely, customary international law and of the colossal changes that law had undergone in recent decades. Those changes had come about because the hopes once placed in multilateral conventions had not been realized and the functions of contemporary international law therefore now relied on custom. Moreover, the actual mechanism of forming custom had changed, with the centre of gravity moving away from practice to *opinio juris*. Norms of general international law, of a *jus cogens* nature, were created and adopted by the international community as a whole, which meant that the unanimous agreement of all States was not necessary and that a representative majority was enough. All of that was evidence that custom had become extremely important and that very significant changes had taken place in the way it was formed and applied. Now that cooperation had been organized between the Commission and the European, Asian and African regions, it should be possible to deal successfully with the codification of those norms involving the formation and implementation of custom.

The meeting rose at 11.25 a.m.

2434th MEETING

Friday, 31 May 1996, at 10.15 a.m.

Chairman: Mr. Robert ROSENSTOCK

Present: Mr. Arangio-Ruiz, Mr. Bennouna, Mr. Calero Rodrigues, Mr. de Saram, Mr. Eiriksson,

Mr. Fomba, Mr. Güney, Mr. He, Mr. Idris, Mr. Kabatsi, Mr. Lukashuk, Mr. Mikulka, Mr. Pambou-Tchivounda, Mr. Sreenivasa Rao, Mr. Thiam, Mr. Villagrán Kramer, Mr. Yamada, Mr. Yankov.

Organization of work of the session (continued)*

[Agenda item 1]

1. The CHAIRMAN, speaking as Chairman of the Planning Group, said that it had received an excellent report from the working group convened by Mr. Crawford. It had considered four of the topics dealt with in the report, so that the working group would be able to review the corresponding part of the text in the light of the comments made. It would be a good thing if the Planning Group could complete the first reading of the document rapidly in order to be able to report back to the Commission. That might involve a slight change in the proposed schedule of work for the next two weeks.

2. Mr. ARANGIO-RUIZ (Special Rapporteur on State responsibility) stressed that the proposed change in schedule should not entail a reduction in the number of Drafting Committee meetings to be spent on the topic of State responsibility. In that connection, he explained that part of the eighth report (A/CN.4/476 and Add.1)¹ dealt with international crimes of States or, in other words, with draft articles 15 to 20 of part two which were referred to the Drafting Committee at the preceding session.² Another part of the report dealt with relatively minor problems relating to draft articles which were "pending"—articles 11 and 12—and would contain some considerations on fault, satisfaction and the question of proportionality covered by draft article 13.³ Other draft articles, such as so-called article 5 *bis*,⁴ were pending in the Drafting Committee, but had not been discussed in the eighth report.

3. That meant that, even before the eighth report on State responsibility was introduced to the Commission, the Drafting Committee could begin its work on the topic by drawing up a schedule and possibly starting to consider article 5 *bis*, as well as articles 15 to 20 proposed in the seventh report.⁵

4. Mr. CALERO RODRIGUES (Chairman of the Drafting Committee), reporting on the progress of the Drafting Committee's work, said that the second-reading *toilettage* of the draft Code of Crimes against the Peace and Security of Mankind was practically finished.

* Resumed from the 2432nd meeting.

¹ Reproduced in *Yearbook . . . 1996*, vol. II (Part One).

² See *Yearbook . . . 1995*, vol. II (Part Two), paras. 236-237.

³ *Ibid.*, paras. 340-343.

⁴ *Ibid.*, para. 235.

⁵ See *Yearbook . . . 1995*, vol. II (Part One), document A/CN.4/469 and Add.1 and 2.