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Summary record of the 2434th meeting

Topic:
Other topics

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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.

5. He recalled that the Drafting Committee would have a different composition for the consideration of the draft articles on State responsibility.

The meeting rose at 10.45 a.m.

2435th MEETING

Tuesday, 4 June 1996, at 10.05 a.m.

Chairman: Mr. Ahmed MAHIOU

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

State succession and its impact on the nationality of natural and legal persons (A/CN.4/472/Add.1, sect. B, A/CN.4/474¹)

[Agenda item 6]

SECOND REPORT OF THE SPECIAL RAPPORTEUR

1. Mr. MIKULKA (Special Rapporteur), introducing his second report on State succession and its impact on the nationality of natural and legal persons (A/CN.4/474), said that the object of the report was to enable the Commission to complete the preliminary study of the topic and thus comply with the request contained in paragraph 6 of General Assembly resolution 49/51 and reiterated in paragraph 4 of Assembly resolution 50/45. The Commission had decided to reconvene the Working Group on State succession and its impact on the nationality of natural and legal persons at the current session² and, having already explored in some detail the question of the nationality of natural persons, the Working Group currently had before it the task of considering—still, of course, in a preliminary fashion—the nationality of legal persons, the choices open to the Commission when it came to embark on the substantive study of the topic, and a possible timetable. The second report was designed to facilitate that task.

2. He said that, in accordance with the intention he had expressed when summing up the debate at the previous session, the report contained three substantive sections, not counting the introduction. Chapter I, on the nationality of natural persons, attempted to summarize the results of work already done on that aspect of the topic, to classify the problems in broad categories and to suggest material for analysis at a later stage of the Commission's work. Since the chapter took up the recommendations made by the Working Group at the previous session,³ there was no reason for the Working Group to consider the subject-matter at the current one.

3. In his view, the Working Group should currently focus principally on the question of the nationality of legal persons, dealt with in chapter II of the second report. He hoped that, as at the previous session, the Working Group would discuss in an open atmosphere the advantages and drawbacks of considering that side to the topic and, as a result, be in a position to make concrete suggestions. He none the less wished to emphasize that it was not his intention to discourage immediate comments by members of the Commission on that part of the report; on the contrary, opinions expressed in plenary meetings would be of great value to the Working Group.

4. In response to criticisms on the first report,⁴ he had thought it useful to give a broad picture of State practice with regard to nationality in the context of State succession. Examples of such practice accounted for almost one half of the second report. In choosing them he had tried to maintain a certain balance between those of nineteenth century practice, of the period between the two world wars, of the decolonization period and of more recent years. He had also endeavoured to find examples of practice relating to different types of territorial changes and to all continents. The task had not been easy and he did not claim that the results were exhaustive; any further examples that shed light upon the problem would be most useful. While collecting instances of State practice, he had refrained from analysing them, believing that such an exercise would form part of the substantive study the Commission would undertake if invited to do so by the General Assembly.

5. The reactions in the Sixth Committee, where the Commission's progress on the topic at its previous session had been generally welcomed, were discussed in the relevant parts of the second report. In that connection, he wished to thank all Governments which had responded to the Secretary-General's invitation to submit documentation concerning State succession and its impact on the nationality of natural and legal persons, in accordance with the request contained in General Assembly resolution 50/45.

6. With regard to chapter I, he again stressed the importance he attached to the views expressed in the Sixth Committee on each of the specific issues discussed in section B. On the first of those issues—the obligation to negotiate in order to resolve by agreement problems of nationality resulting from State succession—delegations

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

² See *Yearbook* . . . 1995, vol. II (Part Two), para. 147.

³ *Ibid.*, annex.

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