

Document:-  
**A/CN.4/SR.2035**

**Summary record of the 2035th meeting**

Topic:  
**Other topics**

Extract from the Yearbook of the International Law Commission:-  
**1987, vol. I**

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74. Mr. THIAM (Special Rapporteur) said that account would be taken of those comments in the final version of the report.

*Paragraph 41 was adopted on that understanding.*

Paragraphs 42 and 43

*Paragraphs 42 and 43 were adopted.*

Paragraph 44

75. Mr. EIRIKSSON said he did not think that the paragraph needed to include the third sentence, which made him think of the regrettable practice of conscripting children.

76. Mr. KOROMA said that the point made by Mr. Eiriksson had been raised during the Commission's discussion of draft article 9, when he himself had said (2000th meeting) that it was open to question whether minority could be invoked as an exception to the principle of criminal responsibility. That aspect of the discussion should be reflected in the report.

77. Mr. TOMUSCHAT said that the sentence in question was very obscure. It should either be deleted or be drafted more clearly.

78. The CHAIRMAN, speaking as a member of the Commission, said that he agreed with Mr. Tomuschat.

79. Mr. CALERO RODRIGUES said that, in French, at any rate, the sentence was perfectly clear.

80. Mr. THIAM (Special Rapporteur) said that paragraph 44 merely reflected the comments he had made during the Commission's discussion of draft article 9. On the basis of the position he had taken at that time, he thought that the third sentence should be retained. He was, however, prepared to try to find a more suitable form of wording.

*Paragraph 44 was adopted on that understanding.*

Paragraphs 45 and 46

*Paragraphs 45 and 46 were adopted.*

Paragraph 47

81. Mr. BARSEGOV said that he would like paragraph 47 to reflect the views he had expressed in plenary (1999th meeting), when he had stated, for example, that in order to understand the concept of "complicity" account had to be taken of the Nürnberg Principles,<sup>5</sup> and in particular Principle VII, referring to "complicity in the commission of a crime against peace, a war crime or a crime against humanity".

82. Mr. THIAM (Special Rapporteur) said that account would be taken of that comment in the final version of the report.

*Paragraph 47 was adopted on that understanding.*

Paragraphs 48 to 51

*Paragraphs 48 to 51 were adopted.*

*The meeting rose at 1 p.m.*

## 2035th MEETING

*Tuesday, 14 July 1987, at 3 p.m.*

*Chairman:* Mr. Stephen C. McCaffrey.

*Present:* Prince Ajibola, Mr. Al-Baharna, Mr. Al-Khasawneh, Mr. Arangio-Ruiz, Mr. Barboza, Mr. Barsegov, Mr. Beesley, Mr. Bennouna, Mr. Calero Rodrigues, Mr. Díaz González, Mr. Eiriksson, Mr. Francis, Mr. Graefrath, Mr. Hayes, Mr. Koroma, Mr. Ogiso, Mr. Pawlak, Mr. Sreenivasa Rao, Mr. Razafindralambo, Mr. Reuter, Mr. Roucounas, Mr. Sepúlveda Gutiérrez, Mr. Shi, Mr. Solari Tudela, Mr. Thiam, Mr. Tomuschat, Mr. Yankov.

### **Draft report of the Commission on the work of its thirty-ninth session (continued)**

#### **CHAPTER III. The law of the non-navigational uses of international watercourses (A/CN.4/L.415 and Add.1-3)**

##### **A. Introduction (A/CN.4/L.415)**

Paragraphs 1 to 5

*Paragraphs 1 to 5 were adopted.*

Paragraph 6

1. Mr. EIRIKSSON proposed that the beginning of the first sentence of the English text should be amended to read: "Following the resignation from the Commission . . .".

2. After a brief discussion in which the CHAIRMAN, Mr. KOROMA and Mr. DÍAZ GONZÁLEZ took part, the CHAIRMAN said he would take it that the Commission agreed to that amendment.

*It was so agreed.*

*Paragraph 6, as amended, was adopted.*

Paragraphs 7 to 12

*Paragraphs 7 to 12 were adopted.*

Paragraph 13

3. Mr. BARSEGOV said that he wondered what meaning was to be attached to the second sentence of the paragraph, which appeared to state that the Commission had rejected the concept of a "shared natural resource" but none the less considered that "effect could be given to the legal principles underlying the concept".

4. The CHAIRMAN pointed out that paragraph 13 was taken directly from the Commission's report on its thirty-eighth session.<sup>1</sup>

5. Mr. BARBOZA said that he was one of the members who, for the sake of consensus, had agreed at the thirty-eighth session that the expression "shared natural resource" should not be used in the draft articles, since it had appeared to pose difficulties for some

<sup>5</sup> See 1992nd meeting, footnote 12.

<sup>1</sup> Yearbook . . . 1986, vol. II (Part Two), p. 62, para. 237.

members. The Commission had not, therefore, rejected the concept: it had simply avoided using the expression, and paragraph 13 faithfully reflected that state of affairs.

6. Mr. KOROMA confirmed Mr. Barboza's recollection. The Commission had decided that it could use the principle underlying the "shared natural resource" concept without employing the expression itself.

7. Mr. BARSEGOV said that it was none the less difficult to endorse such an illogical sentence. If the "shared natural resource" concept had not been adopted by the Commission, how was it possible to give effect to the legal principles underlying it? In any event, the issue of "shared natural resources" had been discussed from a different standpoint at the present session and it would be only right to record the position adopted by various members in that regard.

8. The CHAIRMAN pointed out that paragraphs 11 to 16 related only to previous sessions. The opinions expressed at the present session would be mentioned in section B of chapter III.

9. Mr. DÍAZ GONZÁLEZ said that the ambiguity in the second sentence of paragraph 13 was yet another example of the anomalies produced by too much haste. At its thirty-eighth session, the Commission, so as to get out of an impasse for the time being, had decided to avoid using the expression "shared natural resource"—which called for further analysis—yet retain the underlying principle.

10. Mr. BARSEGOV said he supposed that some members of the Commission were opposed not only to the expression itself, but also to the concept involved. He asked for his reservations regarding paragraph 13 to be mentioned in the summary record of the meeting.

*Paragraph 13 was adopted.*

Paragraphs 14 to 16

*Paragraphs 14 to 16 were adopted.*

*Section A, as amended, was adopted.*

**CHAPTER IV. International liability for injurious consequences arising out of acts not prohibited by international law**  
(A/CN.4/L.416 and Add.1 and Add.1/Corr.1)

**A. Introduction** (A/CN.4/L.416)

Paragraph 1

11. Mr. BARSEGOV said that the title of agenda item 7 should be changed, for the subject-matter related to lawful acts, in other words acts authorized by international law, rather than acts that were not prohibited. The present title could convey the impression that the Commission was considering acts which were not yet prohibited—because of a gap in international law, for example.

12. The CHAIRMAN said that it was for the General Assembly to reformulate the topic it had assigned to the Commission. The discussion on that point was mentioned in section B of chapter IV.

13. Mr. KOROMA said that it was not within the Commission's power to alter the wording of the topics

on its agenda. Mr. Barsegov's reservations would be brought to the attention of the General Assembly inasmuch as they would be recorded in the report.

14. Mr. BARSEGOV said that for several years some members of the Commission had wanted to change the title. Apparently, session after session went by and nothing was done about it. The Commission would have to take a decision sooner or later.

15. Mr. BARBOZA (Special Rapporteur) confirmed that the Commission had often discussed the title of the topic. However, the matter had not been taken up at the present session precisely because it had been decided to allow time for further reflection. The Commission could consider the question again in plenary at its next session.

16. The CHAIRMAN pointed out that section A of chapter IV was simply a brief historical outline. The question raised by Mr. Barsegov could be discussed in the context of section B, entitled "Consideration of the topic at the present session".

*Paragraph 1 was adopted.*

Paragraphs 2 to 4

*Paragraphs 2 to 4 were adopted.*

17. Mr. CALERO RODRIGUES said that section A of chapter IV was remarkably brief, unlike the introductions to the other chapters. The reader could well wonder why there was such a difference. For reasons of logic and consistency, the Commission should adopt a single method and keep to it.

18. The CHAIRMAN said that that question could be considered by the Planning Group at the Commission's next session.

*Section A was adopted.*

**CHAPTER VI. Other decisions and conclusions of the Commission**  
(A/CN.4/L.418 and Add.1)

**H. International Law Seminar** (A/CN.4/L.418/Add.1)

Paragraph 1

19. Mr. RAZAFINDRALAMBO asked for the title "Ambassador" before his name in the last sentence to be amended to "Mr.".

20. Mr. REUTER said that the last sentence of the paragraph was obscure. It was difficult to determine whether the observer in question had participated in the Seminar as a member of the selection committee or as a student.

21. Mr. HAYES said that he, too, would like the passage to be reworded.

22. Mr. BARSEGOV said that a correction was also required in the Russian text, which spoke of "three observers".

23. The CHAIRMAN said that the "one" observer had participated in the Seminar as a student and had not been on the selection committee.

24. Mr. KOROMA said that the expression “junior professors”, in the second sentence of the English text, was clumsy.

25. After a discussion in which Mr. ROUCOUNAS, Mr. AL-BAHARNA, Mr. YANKOV, Mr. BARSEGOV, Mr. RAZAFINDRALAMBO and Mr. DÍAZ GONZÁLEZ took part, it was agreed that the expression “junior professors” would be replaced by “young professors”, in line with the other language versions.

26. Mr. TOMUSCHAT said that he would like the expression “advanced students”, in the same sentence, to be replaced by “postgraduate students”.

27. Mr. RAZAFINDRALAMBO and Mr. ARANGIO-RUIZ said that they, too, were not happy with the term “advanced students”.

28. The CHAIRMAN said he would take it that the Commission agreed to replace the expression “junior professors” by “young professors” and the expression “advanced students” by “postgraduate students”. In addition, the end of the last sentence would be clarified so as to explain the status of the observer who had participated in the Seminar.

*It was so agreed.*

*Paragraph 1, as amended, was adopted.*

Paragraph 2

*Paragraph 2 was adopted.*

Paragraph 3

29. Mr. PAWLAK (Rapporteur) said that, in the second sentence, “Human Rights Commission” should read “Human Rights Committee”.

30. Mr. KOROMA said that the two parts of the first sentence should be inverted, for the participants in the Seminar had attended a talk on the Commission’s activities before attending the Commission’s working meetings.

31. Generally speaking, it would be advisable in the future for the subjects of the lectures organized in connection with the Seminar to coincide with the topics under consideration by the Commission. At the present session, participants had sometimes attended meetings at which the Commission’s work on a topic had already been quite advanced, and that had required a great deal of adaptation on their part.

32. The CHAIRMAN said that the lectures given by members of the Commission should be listed in chronological order rather than in the alphabetical order of the names of the lecturers.

33. As to Mr. Koroma’s point, “The law of the non-navigational uses of international watercourses” had been the subject of a lecture at the time the Commission had been engaged in considering that topic.

34. Mr. AL-BAHARNA asked why the members of the Commission who had given lectures were not listed with their title of “Professor”.

35. The CHAIRMAN, supported by Mr. GRAEF-RATH, said that it was customary in the United Nations not to use personal titles.

*Paragraph 3, as amended, was adopted.*

Paragraph 4

*Paragraph 4 was adopted.*

Paragraph 5

36. Prince AJIBOLA said that, in the second sentence, it would be better to state that the countries in question had “awarded fellowships to participants”, rather than “made fellowships available to participants”.

37. Mr. CALERO RODRIGUES said that, at previous sessions, the Commission had always mentioned in its report the Seminar’s financial difficulties. No reference was made to that matter in paragraph 5 and it might thus be inferred that the situation had finally improved.

38. The CHAIRMAN confirmed that, in its report on its thirty-eighth session,<sup>2</sup> the Commission had stressed the importance attached to the sessions of the Seminar and drawn the attention of the General Assembly “to the fact that, due to a shortage of funds, if adequate contributions are not forthcoming, the holding of the twenty-third session of the International Law Seminar in 1987 may be in doubt”. It had therefore appealed “to all States to contribute, in order that the Seminar may continue”.

39. Mr. FRANCIS said that it was apparent from a note addressed to the Government of his country in April 1986 by its Mission to the United Nations that the financial situation of the Seminar had in no way improved, for the note had mentioned the Seminar’s precarious finances. In 1983, when he had presented the Commission’s report to the General Assembly, he had, at the request of the Secretariat, issued a special appeal to Member States. It might well be worth while reiterating that appeal to the General Assembly.

40. Mr. YANKOV said he, too, considered that it would be appropriate to add a passage based on paragraph 273 of the Commission’s report on its thirty-eighth session. Nevertheless, it might be advisable to tone down the dramatic side of that paragraph, which had mentioned the possibility that the Seminar might not be held as a result of a shortage of funds. Only nine States had awarded fellowships and, therefore, the first thing to do would be to consult the officials responsible for organizing the Seminar.

41. Mr. BENNOUNA said that he endorsed the suggestion made by Mr. Calero Rodrigues. The lectures arranged by the Commission were of great interest for developing countries and, with the fellowships awarded by some States, nationals from those countries who would otherwise have been unable to do so had taken part in the Seminar. It should therefore be emphasized that the Seminar should continue, particularly since it was an excellent means of acquainting practitioners and

<sup>2</sup> *Ibid.*, p. 67, para. 273.

theoreticians of international law with the Commission's work. Moreover, the same appeal could be issued to international organizations, which could also make a useful contribution. Lastly, he wondered whether the phrase "none of the costs being borne by the United Nations", in the first sentence of paragraph 5, was true: the United Nations did, after all, provide premises for the Seminar.

42. Mr. REUTER said that, in his opinion, the whole of the first sentence should be reconsidered. It was not correct to say that the Seminar was "funded by voluntary contributions of Member States". The Seminar was a voluntary activity in which not only members of the Commission, but also officials of the United Nations took part. Only the participants had their costs defrayed. The Rapporteur of the Commission could, together, with the secretariat, certainly find a satisfactory formulation.

43. Mr. HAYES said that, since the fellowships awarded by States were not the only form of contribution to the Seminar, the beginning of the second sentence could be amended to read: "The Commission noted with particular appreciation . . .", thereby making it clear that the Commission had other reasons for expressing gratitude.

*It was so agreed.*

44. Mr. RAZAFINDRALAMBO said that he had chaired the committee to select the participants and would point out that voluntary contributions by States had made it possible to finance the travel and living expenses of the nationals of some developing countries. The funding by Member States ended there. As Mr. Reuter had pointed out, it was incorrect to say that "the Seminar is funded by voluntary contributions of Member States".

45. The CHAIRMAN said he was in a position to confirm that the voluntary contributions made by Member States were used entirely for the travel and living expenses of some participants.

46. Mr. AL-BAHARNA said that the best course would be to use the same formulation as that employed at the beginning of paragraph 272 of the Commission's report on its thirty-eighth session: "None of the costs of the Seminar were borne by the United Nations, which is not asked to contribute to the travel or living expenses of the participants."

47. The CHAIRMAN said that the Seminar did none the less entail indirect costs for the United Nations, which supplied not only meeting rooms, but also the services of members of the Commission, something which deserved to be noted.

48. Mr. YANKOV said that the agenda of the Sixth Committee of the General Assembly traditionally included an item entitled "United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law" (agenda item 128 of the fortieth session of the Assembly). In that connection, all States Members of the United Nations were requested to make voluntary contributions to the Programme.

49. With reference more particularly to the Seminar organized by the Commission, there were two major forms of contribution. First, there were contributions paid directly into the General Fund, which was administered by the Commission and enabled it to award fellowships to students from developing countries. Secondly, in the case of participants—approximately 10 per cent—who did not receive a fellowship, travel and living expenses were paid directly by their own Government. In addition, as pointed out by Mr. Reuter, there was the indirect contribution by the United Nations. Those three points should be made clear in paragraph 5.

50. Mr. FRANCIS pointed out that there were, in addition, indirect contributions by Member States. For example, when the Government of his country paid a contribution to UNITAR, it stipulated that a certain amount was to be set aside for fellowships for participants in the Seminar. That form of support, perhaps less visible than express contributions to the General Fund, should also be noted.

51. The CHAIRMAN said he would take it that the Commission agreed to assign the Rapporteur and the secretariat the task of reformulating the part of paragraph 5 relating to contributions by Member States and United Nations costs, so as to reflect the views expressed during the discussion.

*It was so agreed.*

*Paragraph 5, as amended, was adopted on that understanding.*

New paragraph 5 *bis*

52. The CHAIRMAN proposed the insertion, after paragraph 5, of a new paragraph 5 *bis* based on paragraph 273 of the Commission's report on its thirty-eighth session.

*It was so agreed.*

Paragraph 6

53. The CHAIRMAN said that it would be more correct to say "attesting to his or her participation" than "testifying participation".

*It was so agreed.*

*Paragraph 6, as amended, was adopted.*

*Section H, as amended, was adopted.*

#### I. Gilberto Amado Memorial Lecture (A/CN.4/L.418/Add.1)

Paragraph 7

*Paragraph 7 was adopted.*

Paragraph 8

54. Mr. CALERO RODRIGUES proposed that the third sentence should be amended to read: "The eighth Gilberto Amado Memorial Lecture was accordingly arranged and took place on 16 June 1987, followed by a Gilberto Amado Memorial dinner." Furthermore, the last sentence should be recast so as to indicate that there had been two lectures, and not one. Lastly, in the same sentence, the correct spelling of the name of the Legal

Adviser of the Ministry of Foreign Affairs of Brazil was Mr. Cançado Trindade.

*It was so agreed.*

*Paragraph 8, as amended, was adopted.*

Paragraph 9

55. Mr. CALERO RODRIGUES said that, like paragraph 8, paragraph 9 again spoke of the "generous" contribution by the Government of Brazil. It would be better to delete that word.

*It was so agreed.*

*Paragraph 9, as amended, was adopted.*

*Section I, as amended, was adopted.*

56. The CHAIRMAN said that the meeting would rise to enable the Planning Group to meet.

*The meeting rose at 4.30 p.m.*

## 2036th MEETING

*Wednesday, 15 July 1987, at 10 a.m.*

*Chairman: Mr. Stephen C. McCaffrey*

*Present:* Prince Ajibola, Mr. Al-Baharna, Mr. Al-Khasawneh, Mr. Arangio-Ruiz, Mr. Barboza, Mr. Barsegov, Mr. Bennouna, Mr. Calero Rodrigues, Mr. Díaz González, Mr. Eiriksson, Mr. Francis, Mr. Graefrath, Mr. Hayes, Mr. Koroma, Mr. Mahiou, Mr. Ogiso, Mr. Pawlak, Mr. Razafindralambo, Mr. Reuter, Mr. Roucounas, Mr. Sepúlveda Gutiérrez, Mr. Shi, Mr. Solari Tudela, Mr. Thiam, Mr. Tomuschat.

### **Draft report of the Commission on the work of its thirty-ninth session (continued)**

1. The CHAIRMAN announced that several chapters of the draft report had been issued. Some of the documents, however, such as those relating to the draft Code of Offences against the Peace and Security of Mankind and the law of the non-navigational uses of international watercourses, were available only in English, French and Spanish for the time being.

2. Mr. BARSEGOV said that he was prepared to examine the chapter of the draft report dealing with relations between States and international organizations (second part of the topic) even if it was not yet available in Russian.

3. Mr. SHI said that, in order not to delay the Commission's work, he could manage without the Chinese version.

4. Following a discussion concerning the order in which the various documents would be considered, and in which Prince AJIBOLA, Mr. BARBOZA, Mr.

PAWLAK and Mr. THIAM took part, it was agreed to allow the Planning Group time to complete its work.

5. The CHAIRMAN said that the meeting would rise to enable the Planning Group to meet.

*The meeting rose at 10.20 a.m.*

## 2037th MEETING

*Wednesday, 15 July 1987, at 3 p.m.*

*Chairman: Mr. Stephen C. McCaffrey*

*Present:* Prince Ajibola, Mr. Al-Baharna, Mr. Al-Khasawneh, Mr. Arangio-Ruiz, Mr. Barboza, Mr. Barsegov, Mr. Beesley, Mr. Bennouna, Mr. Calero Rodrigues, Mr. Díaz González, Mr. Eiriksson, Mr. Graefrath, Mr. Mahiou, Mr. Pawlak, Mr. Sreenivasa Rao, Mr. Razafindralambo, Mr. Reuter, Mr. Sepúlveda Gutiérrez, Mr. Solari Tudela, Mr. Thiam, Mr. Tomuschat.

### **Draft report of the Commission on the work of its thirty-ninth session (continued)**

#### **CHAPTER V. Relations between States and international organizations (second part of the topic) (A/CN.4/L.417)**

##### **A. Introduction (A/CN.4/L.417)**

Paragraphs 1 to 4

*Paragraphs 1 to 4 were adopted.*

Paragraph 5

1. The CHAIRMAN suggested that it should be made clear, as in paragraphs 4 and 7, that the Special Rapporteur referred to was the "former" Special Rapporteur.

*It was so agreed.*

*Paragraph 5, as amended, was adopted.*

Paragraphs 6 to 21

*Paragraphs 6 to 21 were adopted.*

*Section A, as amended, was adopted.*

##### **B. Consideration of the topic at the present session (A/CN.4/L.417)**

Paragraphs 22 and 23

*Paragraphs 22 and 23 were adopted.*

Paragraph 24

2. In response to a question by Mr. TOMUSCHAT, the CHAIRMAN said that paragraphs 24 and 25 were intended to reflect the views expressed during the discussion on the topic.

*Paragraph 24 was adopted.*