Document:-
A/CN.4/SR.2423

Summary record of the 2423rd meeting

Topic:
Other topics

Extract from the Yearbook of the International Law Commission:-
1995, vol. I

remained. The Commission should not be compelled to examine in haste such an essential part of its work.

63. Mr. BENNOUNA said that, while he himself was prepared to consider the commentaries in English, other French-speaking colleagues might not wish to do so. It was not possible to conduct a meeting under such circumstances. He agreed fully with Mr. Pellet. The commentaries yet to be considered dealt with very delicate issues and could not be examined in haste. The Commission should instead inform the General Assembly that it would adopt the commentaries in question at the beginning of its next session.

64. Mr. ROSENSTOCK said that some of the responsibility for the lateness in distributing the commentaries lay with some members of the Commission. If the commentaries were not adopted at the present session, the Commission could not forward the articles it had adopted to the General Assembly and would, therefore, not be able to finish its work as planned.

65. Mr. BARBOZA said that he fully agreed with Mr. Rosenstock. He would point out that, although the articles on the topic for which he was the Special Rapporteur had been adopted only a few days ago, all the relevant commentaries had been available in English for the past two days.

66. Mr. TOMUSCHAT said that he was very concerned about the delay in receiving the commentaries, which would prevent the Commission from submitting any draft articles to the General Assembly. The commentaries to articles 11, 13 and 14 of part two of the draft on State responsibility could have been submitted for translation at the beginning of the session.

67. Mr. EIRIKSSON said that, while it was regrettable to have less time than usual to consider the commentaries, the work could still be done in the time remaining. Members must do their best to discharge the mandate assigned to them.

68. Mr. de SARAM said that he fully agreed with those who preferred not to adopt the commentaries hastily. That body of work was too important and represented the views of the Commission. He wished, therefore, to make a formal request that adoption of the commentaries should be placed on the Commission's agenda for the next session.

The meeting rose at 6.30 p.m.

2423rd MEETING

Thursday, 20 July 1995, at 3.20 p.m.

Chairman: Mr. Pemmaraju Sreenivasa RAO

Present: Mr. Al-Baharna, Mr. Al-Khasawneh, Mr. Arangio-Ruiz, Mr. Barboza, Mr. Bennouna, Mr. Bowett, Mr. de Saram, Mr. Eiriksson, Mr. Fomba, Mr. Güney, Mr. He, Mr. Idris, Mr. Jacovides, Mr. Kabatsi, Mr. Kusuma-Atmadja, Mr. Lukashuk, Mr. Mikulka, Mr. Pellet, Mr. Razafindralambo, Mr. Rosenstock, Mr. Thiam, Mr. Tomuschat, Mr. Villagrán Kramer, Mr. Yankov.

Draft report of the Commission on the work of its forty-seventh session (*continued*)

CHAPTER IV. *International liability for injurious consequences arising out of acts not prohibited by international law* (continued) (A/CN.4/L.511 and Add.1)

1. The CHAIRMAN said that, in connection with chapter IV, the members of the Commission were invited to consider section B.4, which related to the establishment of a working group on the identification of dangerous activities.

B. Consideration of the topic at the present session (*concluded*)*

ESTABLISHMENT OF A WORKING GROUP ON THE IDENTIFICATION OF DANGEROUS ACTIVITIES (A/CN.4/L.511/Add.1)

2. Mr. PELLET, referring to the establishment of the working group, said that, under its statute, the Commission, could, if necessary, call on experts. He wondered whether the dangerous activities which the proposed working group would identify were not precisely the type of activity on which it would be good to have the advice of technical experts.

3. Mr. BARBOZA (Special Rapporteur) said that Mr. Pellet's comment was entirely relevant. In drafting conventions on the environment, lawyers often worked in cooperation with technical experts. However, he pointed out that, in the last sentence of paragraph 4, it was stated that the list of activities would be prepared "through a method which the Commission could recommend at a later stage of work". That "method" might well include consultations with experts. He hoped that Mr. Pellet would find that explanation satisfactory.

4. Mr. de SARAM said that he supported Mr. Pellet's comments. Expert advice might well become necessary at some point or another. However, he was satisfied with the explanations given by the Special Rapporteur.

5. Mr. BOWETT said that he was sceptical about that approach. It was extremely difficult to prepare a list of dangerous activities because the dangers of an activity depended on all kinds of factors, such as duration, intensity, and the like, which had to be taken into account.

6. Mr. de SARAM said that Mr. Bowett had raised an important point. However, his own concerns were slightly different. Account must be taken of the fact that, whatever the results of the Commission's work, its conclusions would be taken very seriously by Governments. It was, however, difficult to ask Governments to comply

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* Resumed from the 2419th meeting.

with obligations of prevention or to take precautions without giving them specific reference points.

7. Mr. BARBOZA (Special Rapporteur) said that now was not the time to reopen the substantive debate on that question. All those points had been carefully considered by the Working Group and the Commission. The preparation of a list of activities was one of the possibilities considered. The Commission would decide later what action should be taken on that proposal.

8. The CHAIRMAN, summing up the exchange of views, said that, although no one denied the usefulness of expert services, the point raised by Mr. Pellet was not likely, at the current stage, to require a change in the text of the draft report. If he heard no objection, he would take it that section B.4 was adopted.

9. Mr. ARANGIO-RUIZ and Mr. EIRIKSSON said that they supported the Chairman's conclusion.

Section B.4 was adopted.

Section B, as a whole, as amended, was adopted.

CHAPTER III. *State responsibility* (continued)**

C. Text of articles 13 and 14 of part two and of articles 1 to 7 of part three and the annex thereto, with commentaries, provisionally adopted by the Commission at its forty-seventh session

Draft commentaries to articles 13 and 14 of part two (A/CN.4/L.521)

10. The CHAIRMAN invited the Commission to consider the draft commentaries to articles 13 and 14.

11. Mr. IDRIS said that he wished to make some general comments on the adoption of those commentaries. There was no denying the importance of the consideration and adoption by the Commission of commentaries to draft articles. When draft articles had been adopted and the relevant commentaries had been submitted to the Commission, the question was whether the Commission could commit itself to them by consensus or, if necessary, by a vote. Once draft articles and their commentaries had been adopted, even on first reading, they bore the Commission's imprimatur. They thus achieved singular importance in the international community; they might guide international courts and might be cited in support of positions taken by States involved in disputes.

12. The Commission therefore had to ensure that every member had adequate time to read the commentaries carefully, go over them with other members and be thoroughly prepared to discuss them in plenary. It must not be forgotten that the Commission was accountable to the General Assembly, which expected it to carry out its work properly.

13. He therefore said he considered that he was not yet ready to discuss the draft commentaries to articles 13 and 14 now before the Commission. The fact remained that the draft articles and commentaries on State responsibility still had the highest priority and that the Commission could and must submit all draft articles and commentaries thereto adopted as parts two and three, as well as the draft articles of part one, to the General Assembly and, through it, to Governments in 1996. Together with the draft statute for an international criminal court, those articles would be the main results that the Commission would have to show for its work during the current quinquennium.

14. However, in order to prevent the Commission from finding itself in a situation in future in which it would have to work in a rush, he suggested that the consideration of the draft articles and commentaries should be included in the agenda for the next session before the consideration of the report of the Planning Group.

15. Mr. BENNOUNA, speaking on a point of order, said that Mr. Idris had made a general statement, but the question now was whether the Commission should consider the commentaries to articles 13 and 14 at the current stage.

16. Mr. de SARAM said that the problem raised by Mr. Idris was very important because the Commission was not working as it should. He suggested that, if the Commission had some time left over at the last meeting, it should discuss ways of improving its methods of work.

17. Mr. ARANGIO-RUIZ (Special Rapporteur) said that, even if the comments by Mr. Idris had been of a general nature, they related to his own work in particular. He regretted that the consideration of the draft articles and commentaries he proposed was constantly deferred and had been for several sessions. It was therefore essential for the commentaries to draft articles 13 and 14 to be considered without further delay. He recalled that the Commission was supposed to have completed the consideration on first reading of parts two and three of the draft articles on State responsibility at its forty-eighth session in 1996 and that it had no time to lose.

18. Mr. ROSENSTOCK said that he basically agreed with Mr. Idris, but, since the long awaited commentaries to articles 13 and 14 had now been submitted to the Commission, it would be better for it to get down to work and consider them. It was regrettable that it could not do the same for articles 11 and 12.

19. Mr. ARANGIO-RUIZ (Special Rapporteur) said that the commentary to article 11, as just referred to by Mr. Rosenstock, had nearly been ready at the last session. He also noted that the consideration of articles 11 and 12 had been deferred for reasons beyond his control.

20. Mr. PELLET said that, for the sake of scientific rigour, he would like each quotation to be reproduced in the original language, followed by a translation in square brackets, as done in all academic work.

Commentary to article 13

Paragraph (1)

Paragraph (1) was adopted.

** Resumed from the 2421st meeting.

Paragraph (2)

21. Mr. de SARAM said that he would like clarification from the Special Rapporteur on the last sentence, which read: "The principle of proportionality provides an effective guarantee inasmuch as disproportionate countermeasures could give rise to responsibility on the part of the State using such measures". His own view was that, rather than providing an "effective guarantee", the principle of proportionality helped only to make the possibilities of countermeasures somewhat less likely.

22. Mr. ARANGIO-RUIZ (Special Rapporteur), referring to Mr. de Saram's request, said that the principle in question might be described as a "normative guarantee". The principle of proportionality was a criterion by which to assess the degree of justification of a measure or a countermeasure and the word "effective" was intended to indicate that, in view of the nature and gravity of the wrongful act, that was the most direct way of making that assessment. Obviously, if the word "effective" related not only to the formulation, but also to the implementation of the principle, reference should then be made to the Commission's efforts in connection with the settlement of disputes. The criterion would be in the hands of States until a third party had become involved and had decided on the degree of proportionality of a countermeasure.

23. Mr. AL-KHASAWNEH said that there was, of course, another point of view, namely, that the principle of proportionality gave the impression of being an effective guarantee, whereas, in fact, it was very difficult to determine.

Paragraph (2) was adopted.

Paragraph (3)

Paragraph (3) was adopted.

Paragraphs (4) and (5)

24. Mr. PELLET, noting that the so-called *Air Services* award referred to in paragraph (4) related to the case concerning the *Air Service Agreement between the United States of America and France*,[1] said that that should be mentioned at least once in the text. He also drew attention to a problem of consistency and logic between the last sentence of paragraph (4), which suggested that leeway was open to criticism, and the first sentence of paragraph (5), which stated that the Commission had opted for a flexible interpretation of the principle of proportionality.

25. Mr. ARANGIO-RUIZ (Special Rapporteur) said that, in the first line of paragraph (5), what was meant was a "flexible formulation" rather than a "flexible interpretation".

26. Mr. EIRIKSSON, referring to paragraph (4), said that the use of terms such as "manifestly" to modify the term "disproportionate" might have the effect of introducing an element of uncertainty and subjectivity and that should be made clear in that paragraph.

27. Mr. PELLET said that he agreed with that point of view and proposed that the word "excessive" should be added before the words "uncertainty and subjectivity" in the penultimate sentence. He would nevertheless like the Special Rapporteur to provide some clarification of the discrepancy between the end of paragraph (4) and the beginning of paragraph (5).

28. Mr. ROSENSTOCK said that the amendments proposed for paragraph (4) solved the problem of logic which had been raised and that he was not prepared to accept amendments to paragraph (5) which would upset the balance of the text.

29. Mr. TOMUSCHAT said he agreed that there was some inconsistency between paragraphs (4) and (5).

30. Mr. BENNOUNA said he did not think that the entire text should be amended. Only the first sentence of paragraph (5) should either be deleted or reworded.

31. Mr. ARANGIO-RUIZ (Special Rapporteur) said that, in order to understand the first sentence of paragraph (5) and perhaps also his proposal that the word "interpretation" should be replaced by the word "formulation", account had to be taken of the second sentence of that paragraph. What he had meant to say was that the Commission had adopted a flexible formulation of proportionality that could be adapted to the many different cases that might arise.

32. Mr. EIRIKSSON said that he could propose wording for the first sentence of paragraph (5), but the deletion of that sentence would be much better.

33. Mr. BOWETT proposed that the first sentence of paragraph (5) should be moved to the end of the paragraph.

34. Mr. PELLET said that the introductory sentence of paragraph (5) was necessary. He proposed that it should be amended to read: "The Commission opted for a stricter formulation of the principle of proportionality, while keeping its flexibility."

35. Mr. BENNOUNA proposed the following wording: "The Commission preferred another formulation of the principle of proportionality." He might be able to agree that the words "in order to keep it as flexible as possible" should be added at the end of that sentence.

36. Mr. BARBOZA suggested that the Special Rapporteur should hold informal consultations with a small group of members to work out the text of paragraphs (4) and (5).

37. Mr. ARANGIO-RUIZ (Special Rapporteur) said that, following informal consultations, the following amendments should be made to paragraphs (4) and (5): in the fourth sentence of paragraph (4), the word "excessive" should be added before the words "uncertainty and subjectivity"; and the first sentence of paragraph (5) should be amended to read "Notwithstanding the need for legal certainty, the Commission has opted for a flexible concept of the principle of proportionality".

[1] See 2392nd meeting, footnote 10.

38. The CHAIRMAN said that, if he heard no objection, he would take it that the Commission adopted paragraphs (4) and (5), with the amendments indicated by the Special Rapporteur.

Paragraphs (4) and (5), as amended, were adopted.

Paragraphs (6) and (7)

Paragraphs (6) and (7) were adopted.

Paragraph (8)

39. Mr. BENNOUNA proposed that the words "the human rights of its nationals" should be replaced by the words "its international obligations in respect of human rights" in order to show that reference was not being made to human rights within the meaning of internal law.

40. Mr. de SARAM said that paragraph (8) was worded in such a way that it suggested that it had been drafted only from the human rights point of view. It should refer to the international obligations of the State.

41. Mr. TOMUSCHAT said he supported Mr. Bennouna's proposal that it should be explained that reference was not being made to human rights as provided for in national constitutions. Unlike Mr. de Saram, however, he did not think that article 13 focused on human rights; it simply referred to a particular situation in which there was no bilateral relationship in the traditional sense, but which was nevertheless taken into account because of the way it related to the effects on the injured State.

42. Mr. ROSENSTOCK pointed out that the text simply ruled out the possibility of saying that there had been no material damage to the injured State as a means of prohibiting the adoption of countermeasures. The purpose was not at all to give other States any right to intervene in the human rights situation of the nationals of the State concerned.

43. Mr. PELLET said that reference should first be made to the general idea that the existence of material damage was not a prerequisite and then the example could be given either of human rights or, more generally, of the rights guaranteed by international law to the nationals of the State concerned.

44. Mr. ARANGIO-RUIZ (Special Rapporteur) said that the deletion of the reference to "its nationals" would defeat the purpose of the entire paragraph because the problem to which it related was precisely that of the absence of effects on other States. On the other hand, the comment by Mr. Bennouna and Mr. Tomuschat deserved attention and the words "its international obligations relating to" should be inserted after the word "violating".

Paragraph (8), as amended by the Special Rapporteur, was adopted.

Paragraph (9)

45. Mr. PELLET proposed that a footnote should indicate that the Commission had agreed that the definition of "injured State" would be reconsidered.

46. Mr. AL-KHASAWNEH asked whether there had been an official decision that article 5 should be reconsidered. Since the Commission was free to reconsider any article on second reading, a footnote was not necessary in the present case.

47. Mr. TOMUSCHAT said that an important provision on proportionality was missing, namely, that on cases where different injured States took countermeasures. It had to be explained how the principle of proportionality was to be understood in such cases.

48. Mr. ARANGIO-RUIZ (Special Rapporteur) said that the concepts of an injured State, more than one injured State and differently injured States undeniably gave rise to difficult problems which obviously made it an obligation for the Commission to reconsider article 5.

49. Mr. ROSENSTOCK proposed that, in the last sentence, the words "would be more limited" should be replaced by the words "could be more limited".

50. Mr. de SARAM proposed that in the first sentence the words "in particular" should be replaced by the words "for example".

Paragraph (9), as amended by Mr. Rosenstock and Mr. de Saram, was adopted.

Paragraph (10)

51. Mr. IDRIS proposed that the second sentence should be deleted because it made the first and third sentences difficult to understand.

52. Mr. BOWETT, supported by Mr. BENNOUNA, proposed that the words "such as the payment of compensation" should be added at the end of the second sentence.

53. Mr. ARANGIO-RUIZ (Special Rapporteur) said he did not see how the second sentence could create a problem. Its meaning was very clear, that is to say what determined lawfulness was not what determined proportionality. The "particular aim" in question could be cessation, acceptance of a settlement procedure, compensation, and so on, the latter not being given any preference over the others. However, if the Commission wanted that sentence to be deleted, he would not object.

54. Mr. TOMUSCHAT proposed that, in the third sentence, the words "could be of relevance" should be replaced by the words "is of relevance".

Paragraph (10), as amended by Mr. Idris and Mr. Tomuschat, was adopted.

The commentary to article 13, as amended, was adopted.

Commentary to article 14

Paragraph (1)

Paragraph (1) was adopted.

Paragraph (2)

55. Mr. LUKASHUK said that the Covenant of the League of Nations and the Kellogg-Briand Pact had nothing to do with armed reprisals. The former restricted the use of force and the latter prohibited resort to war as a political instrument. Paragraph (2) was thus not truly in keeping with the Special Rapporteur's main idea and could not be endorsed as a commentary by the Commission.

56. Mr. ARANGIO-RUIZ (Special Rapporteur) said he had considered it necessary to explain that the principle of the prohibition of the threat or use of force, as stated in Article 2, paragraph 4, of the Charter of the United Nations, had not suddenly appeared in 1945, but had been the result of a lengthy and laborious process that had begun following the First World War.

57. Mr. LUKASHUK, supported by Mr. BENNOUNA, said that he understood the Special Rapporteur's intention, but noted that paragraph (2) referred not to the general principle of the prohibition of the use of force, but to the prohibition of armed reprisals that is something quite different.

58. Mr. ROSENSTOCK said that he fully agreed with Mr. Lukashuk. Apart from the first sentence, nothing in paragraph (2) or the relevant footnotes related directly to the question under consideration and might therefore easily be deleted. To indicate that the principle of the prohibition of the use of force was the result of a lengthy historical process, it would be enough to add a sentence such as that to be found at the beginning of paragraph (3), which clearly established the legal basis for that prohibition.

59. Mr. EIRIKSSON said that all the explanations given were far too long, if not unnecessary. With regard to the text of the first sentence of paragraph (2), he thought that the words "as prohibited by the Charter of the United Nations" should be added after the words "use of force" in order to make the meaning clear.

60. The CHAIRMAN said that the text would be amended accordingly.

61. Mr. ARANGIO-RUIZ (Special Rapporteur) said that he was surprised at the objections to paragraph (2) and the relevant footnotes. Quite frequently, States pleaded self-defence to justify resort to armed reprisals, thus getting round the prohibition of the use of force. It was, moreover, on the basis of that prohibition that armed reprisals were condemned in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations.[2] He continued to believe that, in the context of countermeasures, it was useful to describe the development of the principle of the prohibition and he would therefore like paragraph (2) to be kept as it stood.

62. Mr. TOMUSCHAT said that interpretation of the development of international law in the 1920s might be too optimistic because, at the time, it had been the use of excessive force, not the use of force itself, that had been regarded as unacceptable. Armed reprisals had therefore been considered admissible. The Commission must be wary of too subjective an interpretation of the development of the rules of international law in order not to lay itself open to criticism. Paragraph (2) should therefore be shortened.

63. Mr. PELLET, supported by Mr. IDRIS, said that the prohibition of the threat or use of force was a well-established principle of the Charter of the United Nations and it was therefore not necessary to describe the background to it. A matter of greater concern was the lack of explanations in paragraph (2) of the reasons why that prohibition, which was a rule of international law, was so important that it could not be contravened even by way of a countermeasure. In other words, the proposed commentary to subparagraph (*a*) simply described the principle of the prohibition of the use of force, but said nothing about the relationship between that prohibition and countermeasures.

64. Mr. AL-KHASAWNEH said that he did not agree with the preceding speakers. In his view, it was helpful to describe the historical context of the principle of the prohibition of the use of force, as the Special Rapporteur had done, and to do so briefly, contrary to what had been said. It was all the more helpful to retain the text of paragraph (2) because the Special Rapporteur described the difference between reprisals and countermeasures, on the one hand, and self-defence, on the other, and, for that purpose, needed historical reference points. Moreover, whether his interpretation of history was pessimistic or optimistic, as had been said, would have no effect on the prohibition of the use of force, which was now a well-established principle. He therefore saw no reason to delete the text of paragraph (2).

65. Mr. BENNOUNA said that some of the comments made and objections raised were well founded, although exceptions to the principle of the prohibition of the use of force were extremely limited by the Charter of the United Nations and that meant that armed countermeasures were prohibited as well. It was also true that, prior to 1945, that is to say before the adoption of the Charter, those principles had not been as strict. That was probably the idea that the Special Rapporteur had wanted to express and he might amend paragraph (2) on the basis of the comments that had been made.

66. Mr. ARANGIO-RUIZ (Special Rapporteur) said that all the speakers who had objected to paragraph (2) as it now stood had made only general comments. He would like them to be more specific. He personally was of the opinion that, despite some ambiguities, the Covenant of the League of Nations and the Kellogg-Briand Pact had already provided for a restriction on the use of force. That interpretation had been confirmed by practice during the period between the two World Wars. At the end of the Second World War, that trend had led to the

[2] General Assembly resolution 2625 (XXV), annex.

prohibition of force and the outlawing of armed reprisals, but the latter had often been confused with self-defence, as indicated in paragraphs (4) and (5) and in the relevant footnotes. He was nevertheless prepared to take account of all the specific proposals that might be submitted to him in writing in order to draft a text that would be more acceptable.

67. The CHAIRMAN said that, before a decision was taken on paragraph (2), the members of the Commission should consider the other paragraphs relating to article 14, subparagraph (*a*). He therefore invited them to comment on paragraphs (3) to (6).

Paragraphs (3) to (6)

68. Mr. LUKASHUK said he took the last sentence of paragraph (3) to mean that, although aggression was prohibited for one reason or another, the same could only be true of armed reprisals. However, reprisals could be legitimate and justified by various circumstances, whereas aggression was a crime that could not be justified in any way. He therefore wished to have some clarifications about the real meaning of the last sentence.

69. Mr. BENNOUNA pointed out that the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations had been adopted not unanimously, but by consensus, and that the words "unanimously" in the third sentence of paragraph (3) should therefore be deleted.

70. Mr. TOMUSCHAT said that the Declaration had actually been adopted without a vote. He also thought that it would be difficult to base a prohibition on armed countermeasures on the prohibition of aggression and he therefore fully agreed with Mr. Lukashuk on that point.

71. Mr. BOWETT said that the problem was the result of the fact that paragraph (3) did not express the basic idea that the prohibition of the use of force provided for in Article 2, paragraph 4, of the Charter was a peremptory norm and that a State could therefore not adopt countermeasures which would lead to the violation of a peremptory norm. That was why armed reprisals were not admissible countermeasures. That general idea would have to be added in one of the paragraphs under consideration.

72. Mr. ARANGIO-RUIZ (Special Rapporteur), taking paragraph (3) sentence by sentence, said that the first sentence should be retained, subject to the replacement of the words "the express prohibition of the use of force" by the words "the express prohibition of force". The second sentence should also be kept as it stood. It could be immediately followed by a sentence expressing Mr. Bowett's idea. In the third sentence, the word "unanimously" could be deleted, as proposed. With regard to the fourth and fifth sentences, which referred to aggression, something that had given rise to objections on the part of some members, he pointed out that, in footnote 7, he quoted article 3 of the Definition of Aggression,[3] which defined a set of possible cases relating to the use of force that undoubtedly included armed reprisals and it was therefore not wrong to say that the prohibition of armed reprisals was implicitly confirmed by the Definition. However, the Commission was free, if it so wished, to delete the fifth sentence and footnote 7 relating to it.

73. As to paragraph (4), he proposed that the first sentence should be retained and that, in the second sentence, the phrase beginning with the words "such pleas of self-defence" and ending with the words "article 19 of the present draft)" should be deleted. He would also try to amend paragraph (2), to which there had been so many objections, but he did not think that he was expressing ideas in that paragraph which were not consistent with the trend towards the prohibition of the threat or use of force that had taken shape between the two wars.

74. Mr. ROSENSTOCK said that it would be better to delete the end of paragraph (4). The idea, also expressed in paragraph (6), that self-defence could only be a reaction to crimes was, in his view, completely wrong and unacceptable. The paragraphs under consideration were, in fact, all too long and it would be better to delete them and replace them by a single text that could be drafted along the lines of what Mr. Bowett had proposed, with a few appropriate footnotes. All the rest was unnecessary and misleading.

75. Mr. PELLET said that he partly agreed with Mr. Rosenstock and also shared Mr. Bowett's opinion. What the Special Rapporteur said was on the whole accurate, but the problem was whether it should be made into a commentary to article 14. Paragraphs (2) to (5) should be completely revised. Paragraph (6) could be retained if it was amended. Starting with the first sentence, emphasis should be placed on the restrictive nature of the cases in which resort to armed force was lawful under the Charter, as well as on the peremptory nature of the prohibition of the use of armed force in all the other cases not provided for by the Charter, and it should be indicated that the consequence of that dual nature was the prohibition of countermeasures. The Commission might also explain that such a prohibition was in keeping with the intentions of the framers of the Charter, as stated, moreover, in paragraph (3), and, if the Special Rapporteur considered it necessary, conclude with a sentence such as that at the end of paragraph (4). He would submit a written proposal to the Special Rapporteur.

The meeting rose at 6.15 p.m.

2424th MEETING

Friday, 21 July 1995, at 10.20 a.m.

Chairman: Mr. Pemmaraju Sreenivasa RAO

Present: Mr. Al-Baharna, Mr. Al-Khasawneh, Mr. Arangio-Ruiz, Mr. Barboza, Mr. de Saram, Mr. Eiriksson, Mr. Fomba, Mr. He, Mr. Idris, Mr. Kabatsi,

[3] Assembly resolution 3314 (XXIX), annex.