

Document:-
A/CN.4/SR.2034

Summary record of the 2034th meeting

Topic:
Other topics

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

*Downloaded from the web site of the International Law Commission
(<http://www.un.org/law/ilc/index.htm>)*

67. Mr. BEESLEY said that, in his view, the list of factors would be more complete and accurate if it contained the word "biological" at some point. He could, however, accept the article as drafted, since the list was only indicative and the Commission would presumably revert to it.

68. The CHAIRMAN said that, if there were no further comments, he would take it that the Commission agreed provisionally to adopt article 7 [8] as proposed by the Drafting Committee, with the amendment proposed by Mr. Al-Khasawneh (para. 64 above).

It was so agreed.

Article 7 [8] was adopted.

69. Mr. EIRIKSSON said that, had time allowed, he would have liked to introduce a number of amendments. For instance, he noted that the word "circumstances", in the introductory clause of paragraph 1, did not appear in the title of the article and he wondered whether it was really necessary. He would have preferred to delete the word "concerned", in paragraphs 1 (b) and 2. He did not like the use of both the singular and the plural in paragraph 1 (c) ("use or uses") or the use of the word "particular" in paragraph 1 (f). He would like to have an explanation of the expression "economy of use" in paragraph 1 (e) and, in that context, would have preferred to speak merely of "protection and development". In his view, the word "corresponding", in paragraph 1 (f), should be replaced by a term such as "comparable". He would also have liked to amend paragraph 2 to read:

"Watercourse States shall, at the request of any watercourse State, enter into consultations with respect to the application of article 6 or paragraph 1 of the present article."

70. Lastly, he thought it should be explained in a footnote that the numbers between square brackets were the original numbers of the articles, to avoid giving the impression that the Drafting Committee had been in doubt.

71. The CHAIRMAN thanked the Chairman of the Drafting Committee for his report and expressed appreciation for the patience and skill with which he had discharged his task.

The meeting rose at 6.05 p.m.

2034th MEETING

Tuesday, 14 July 1987, at 10.05 a.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. Mahiou, 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

1. The CHAIRMAN invited the Commission to consider its draft report, chapter by chapter, starting with chapter I.

CHAPTER I. Organization of the session (A/CN.4/L.413)

Paragraph 1

Paragraph 1 was adopted.

Paragraph 2

2. Mr. PAWLAK (Rapporteur) proposed that the words "and sets out the five articles on the topic, with commentaries thereto, provisionally adopted by the Commission at the present session" should be added at the end of the second sentence and that the words "and sets out the six articles on the topic, with commentaries thereto, provisionally adopted by the Commission at the present session" should be added at the end of the third sentence.

3. Mr. BARSEGOV said that the Commission had not yet seen the commentaries referred to in those amendments.

4. The CHAIRMAN said that the commentaries would appear in documents to be submitted to the Commission shortly and would form part of the relevant chapters of the draft report.

5. Mr. BARSEGOV said that he could not agree to the approval of commentaries he had not yet seen. Moreover, because of the lack of time, those commentaries were likely to be approved in great haste.

6. Mr. PAWLAK (Rapporteur) explained that the amendments he had proposed were intended to show that commentaries would be attached to the articles which the Commission had provisionally adopted on two of the topics on its agenda. The content of those commentaries would, of course, be considered by the Commission at a later stage.

7. Mr. MAHIOU, noting that past reports had contained wording such as that proposed by the Rapporteur only when a set of draft articles had been adopted on first reading, proposed that the amendments should be left in abeyance until the Commission had approved the commentaries to which they referred.

8. The CHAIRMAN suggested that the Commission should adopt paragraph 2 on the understanding that it would consider the amendments proposed by the Rapporteur when it approved the commentaries to which they referred.

Paragraph 2 was adopted on that understanding.

Paragraphs 3 to 8

Paragraphs 3 to 8 were adopted.

Paragraph 9

9. Mr. YANKOV said that he could agree to paragraph 9 if it was made clear that Governments should comment promptly on the two sets of draft articles provisionally adopted by the Commission at its previous session.

10. The CHAIRMAN said that that point would be covered in the chapter of the report dealing with agenda item 9 (Programme, procedures and working methods of the Commission, and its documentation).

11. Mr. ARANGIO-RUIZ noted that the second sentence of paragraph 9 stated that he had been “appointed during the session” as Special Rapporteur for the topic of State responsibility. Actually, his appointment had taken place so late in the session that he had not had time to produce a reasonable document for the attention of his colleagues.

12. Mr. CALERO RODRIGUES proposed that the words “during the session” should be replaced by “on 17 June 1987”.

It was so agreed.

Paragraph 9, as amended, was adopted.

Chapter I of the draft report, as amended, was adopted.

CHAPTER II. Draft Code of Offences against the Peace and Security of Mankind (A/CN.4/L.414 and Add.1)

A. Introduction (A/CN.4/L.414)

Paragraphs 1 to 8

Paragraphs 1 to 8 were adopted.

Paragraph 9

13. The CHAIRMAN, speaking as a member of the Commission, said that he had some reservations with regard to the second sentence of paragraph 9, since he did not believe that the “general trend” to which it referred had really existed. He recalled that he had reserved his position with regard to a similar sentence in earlier reports.

14. Mr. THIAM (Special Rapporteur) noted that, in the Commission’s report on its thirty-seventh session,¹ a similar sentence had been adopted without reservation.

15. The CHAIRMAN, speaking as a member of the Commission, said that he merely wished to have his reservation placed on record in the summary record of the current meeting. No mention of it would be made in the Commission’s report.

16. Mr. BARSEGOV said that he, too, had reservations about the second sentence of paragraph 9, which should also refer to the use of nuclear weapons and to terrorism, including State terrorism.

17. Mr. REUTER noted that the reference to certain offences had been qualified so as to make it clear that there had been doubts about the existence of a general trend in favour of their inclusion in the draft code.

18. Mr. DÍAZ GONZÁLEZ said that paragraph 9 was part of the account of the Commission’s earlier consideration of the topic. The “general trend” referred to in the second sentence had been a very real one and he himself had agreed with it.

19. Mr. MAHIU pointed out that the second sentence of paragraph 74 of the Commission’s report on its thirty-eighth session² was identical to the second sentence of paragraph 9 now under consideration.

20. Mr. ARANGIO-RUIZ drew attention to paragraph 101 of the Commission’s report on its thirty-eighth session,³ which read: “Some members of the Commission indicated that the draft code should expressly and specifically condemn as a crime against humanity any acts committed, with or without support from abroad, in order to subject a people to a régime not in keeping with the right of peoples to self-determination and to deprive such people of human rights and fundamental freedoms.” Although he had first put that idea forward at the Commission’s thirty-seventh session, in 1985,⁴ and had been supported by various other members, no reference to it had been included in paragraph 9 of chapter II of the draft report under discussion.

21. Following a brief exchange of views in which Mr. BENNOUNA, Mr. THIAM (Special Rapporteur) and Prince AJIBOLA took part, the CHAIRMAN suggested that the Commission should adopt paragraph 9 on the understanding that the comments and reservations made by members would be reflected in the summary record of the meeting.

Paragraph 9 was adopted on that understanding.

Paragraphs 10 to 15

Paragraphs 10 to 15 were adopted.

Section A was adopted.

B. Consideration of the topic at the present session (A/CN.4/L.414 and Add.1)

Paragraphs 16 to 51 (A/CN.4/L.414)

Paragraph 16

22. The CHAIRMAN, speaking as a member of the Commission, suggested that the words “are contained in”, in the third sentence, should be replaced by “comprise”.

It was so agreed.

Paragraph 16, as amended, was adopted.

Paragraphs 17 and 18

Paragraphs 17 and 18 were adopted.

Paragraph 19

23. Mr. BARSEGOV said that the first sentence of the paragraph gave the impression that there had been general agreement on the establishment of an inter-

² *Yearbook . . . 1986*, vol. II (Part Two), p. 41.

³ *Ibid.*, p. 46.

⁴ See *Yearbook . . . 1985*, vol. I, p. 66, 1887th meeting, paras. 35-37.

¹ *Yearbook . . . 1985*, vol. II (Part Two), p. 11, para. 31.

national criminal jurisdiction and that there had been disagreement only as to method. Doubts had, however, also been expressed as to the feasibility of creating such a court; that point should perhaps be clarified.

24. The CHAIRMAN pointed out that the various views expressed by members during the discussion of the matter were reflected in paragraphs 21 to 26. Mr. Barsegov's point could perhaps be taken up when the Commission came to those paragraphs.

25. Speaking as a member of the Commission, he noted that paragraph 19 referred directly to draft article 4 without any explanation as to why draft articles 1 to 3 had not been discussed. Perhaps a sentence should be added, either at the beginning of paragraph 19 or in a footnote to the paragraph, to the effect that articles 1 to 3 had already been adopted and were discussed later in chapter II.

26. Mr. ERIKSSON said that, since the same point applied to draft articles 5 and 6, a separate paragraph could perhaps be included at the outset to indicate that the articles in question would be dealt with at a later stage.

27. Mr. GRAEFRATH said that the title of section B (Consideration of the topic at the present session) suggested that the whole of the topic would be dealt with, when that was not in fact the case. He did not think that the point could be covered by a footnote or a short sentence.

28. Mr. ARANGIO-RUIZ said he agreed with Mr. Graefrath that there was a lacuna in the text.

29. Mr. YANKOV said that the report followed the normal format of the Commission's reports. To meet the concern of certain members, a few paragraphs on the substance of articles 1 to 3 could, of course, be added, but in his view the Commission should abide by the established pattern for its reports and not try to introduce any innovation, which might make the reading of the report more difficult.

30. Prince AJIBOLA said that it would be more logical to follow the pattern of the discussion, starting at the beginning, with articles 1 to 3, and going on until the end.

31. Mr. THIAM (Special Rapporteur) pointed out, for the benefit of new members, that the different views expressed during the discussion were reflected in the commentaries to the articles. That had always been the method followed by the Commission; if it were changed, it would upset everything. Furthermore, the format of the draft report had been adopted by agreement with the Secretariat and in order to avoid repetition.

32. Prince AJIBOLA said that, while he appreciated that the Commission had a tradition in such matters, he continued to think that, logically, the draft report should follow the order of the articles with which it dealt.

33. Mr. MAHIOU suggested that it should be left to the Special Rapporteur to decide how best to solve the problem.

34. Mr. BARSEGOV said that, having listened to members' explanations, he no longer had any objection to paragraph 19. He did, however, think that, to save time and avoid undue repetition, the commentaries should be available to members when they discussed and adopted draft articles.

35. Mr. PAWLAK (Rapporteur), associating himself with the remarks made by the Special Rapporteur and Mr. Barsegov, said that he was quite prepared to include an appropriate reference to articles 1 to 3 and articles 5 and 6 in order to satisfy certain members. As to the possibility of producing commentaries at an earlier stage, the respective special rapporteurs could perhaps be asked to prepare them as soon as possible.

36. Mr. THIAM (Special Rapporteur) said that the commentaries could not be prepared until the debates on the relevant articles had been concluded. If the Commission wanted to have the commentaries earlier, it should adopt the draft articles sooner.

37. Mr. BARSEGOV said that the question should perhaps be taken up by the Planning Group at the Commission's next session.

38. Mr. TOMUSCHAT said that it might be difficult for the reader to understand why the debate on draft articles 4 and 7 to 11 alone was covered. He therefore proposed that a new paragraph should be added reading: "Articles . . . were adopted by the Commission at its present session. The views expressed by members on those articles are reflected in the relevant commentaries, which appear in section . . . below."

39. Mr. REUTER said that he agreed with Mr. Tomuschat, but did not think that a separate paragraph was necessary. He proposed instead that a sentence should be added at the end of paragraph 18, reading: "Draft articles 4 and 7 to 11, which were not adopted, were the subject of considerable discussion."

40. The CHAIRMAN suggested that the Special Rapporteur should be requested to work out a suitable form of wording, together with Mr. Tomuschat and Mr. Reuter, so as to take account of their two proposals.

It was so agreed.

Paragraph 19 was adopted on that understanding.

Paragraph 20

41. Mr. TOMUSCHAT said he did not think that the second sentence of the paragraph was correct, since he believed that the 1977 Additional Protocols to the 1949 Geneva Conventions also contained specific provisions on jurisdiction. He therefore proposed that the words "the only conventions" should be replaced by "the most prominent conventions" or some similar wording.

42. Mr. AL-BAHARNA proposed that the words "the only" should be deleted.

43. The CHAIRMAN suggested that the exact form of wording should be left to the Special Rapporteur to settle with Mr. Tomuschat.

It was so agreed.

Paragraph 20 was adopted on that understanding.

Paragraphs 21 and 22

Paragraphs 21 and 21 were adopted.

Paragraph 23

44. Mr. EIRIKSSON, referring to the second sentence, said that he was not very happy with the expression "aerial offences". Perhaps the Special Rapporteur could be asked to find some other expression, in consultation with the Secretariat.

45. Mr. GRAEFRATH, also referring to the second sentence, said it had been suggested not only that the Commission should adopt the compromise solution embodied in a number of recent conventions, but also that it should take account of the rules contained in the 1967 Declaration on Territorial Asylum. That point should be mentioned as well.

It was so agreed.

46. Mr. BARSEGOV asked what exactly was meant by the expression "aerial offences".

47. Mr. THIAM (Special Rapporteur) said that the expression referred to hijacking. He also did not like the expression, however, and would find another one to replace it.

48. Mr. AL-KHASAWNEH said that the expression "aerial offences" had originated with the Tokyo, Hague, and Montreal Conventions, commonly known as the "aerial offences conventions".

49. Mr. REUTER proposed that the expression "aerial offences" should be replaced by "certain offences relating to air travel".

It was so agreed.

Paragraph 23, as amended, was adopted.

Paragraph 24

Paragraph 24 was adopted.

Paragraph 25

50. Mr. YANKOV proposed that the following sentence should be added at the end of the paragraph: "It was also considered that an *ad hoc* international criminal court might be established on the basis of a special agreement."

51. Mr. BEESLEY suggested that a more appropriate place for that text would be the second sentence of the paragraph.

52. Mr. BARSEGOV proposed that the first sentence should be reworded to form two sentences. The comma after the words "international criminal court" should be replaced by a full stop and the words "which was, in their opinion" should be replaced by "In the view of some members".

53. Mr. BENNOUNA, supporting that proposal, said he trusted that the different views expressed during the discussion would be reflected in the paragraph.

54. Mr. THIAM (Special Rapporteur) said that there had been three main trends of opinion during the discussion: some members believed that an international criminal court was essential; others thought that such a

court was essential but not feasible; and still others were frankly sceptical about the idea. He therefore suggested that the first sentence of paragraph 25 should be replaced by the following text:

"With regard to the question of an international criminal court, there were several trends of opinion in the Commission. Some members were of the opinion that such a court was the only system that could guarantee full implementation of the code. Other members were in favour of such a court, but were sceptical about the possibility of establishing one at the current stage in international relations. Still others were opposed to the idea. It was also suggested that an *ad hoc* international criminal court might be established on the basis of a special agreement."

That text also took account of the proposal made by Mr. Yankov.

It was so agreed.

55. Mr. EIRIKSSON recalled that, at the 1996th meeting (para. 50), he had made a detailed proposal concerning the enforcement of the code and providing for optional international jurisdiction with residual national jurisdiction combined with an option of extradition.

56. Mr. BEESLEY suggested that the words "In that connection", at the beginning of the last sentence, should be deleted, since the proposal to which that sentence referred also related to the matter dealt with in the first sentence of the paragraph.

It was so agreed.

Paragraph 25, as amended, was adopted.

Paragraph 26

Paragraph 26 was adopted.

Paragraph 27

57. Mr. BENNOUNA said that the Drafting Committee's very fruitful discussion of the *non bis in idem* rule had focused on the question of means of avoiding abuses in the application of that rule and that it had been suggested that international machinery should be set up for that purpose. There should be some way of informing the General Assembly of the discussion of that question.

58. Mr. ARANGIO-RUIZ said that he had reservations with regard to the second sentence of paragraph 27, since an international criminal court would not be able to try the same crime twice and would have to apply the *non bis in idem* rule. Moreover, even if an international criminal court were established, the application of that rule would inevitably give rise to problems.

Paragraph 27 was adopted.

Paragraph 28

59. Mr. BARSEGOV said that the question of exceptions to the *non bis in idem* rule had been discussed at length in the Drafting Committee, whose members had, however, not been able to agree on appropriate wording for draft article 7. Although he was not sure whether the Commission's report could reflect the discussions held

in the Drafting Committee, he did think that it should take account of the view he had expressed in plenary (1993rd meeting), namely that the possibility of a second trial could not be precluded either in the case where new evidence of the guilt of the accused had been discovered or in the case where, for example, it became obvious following an initial trial that what had appeared to be a murder had been part of a policy of genocide.

60. Mr. THIAM (Special Rapporteur) said that it was difficult to take account in the report of discussions held in the Drafting Committee. He would, however, have no objection if Mr. Barsegov's view were reflected in the report.

61. Mr. OGISO said that he agreed with the Special Rapporteur, particularly since the discussion of draft article 7 had taken place in an informal group of the Drafting Committee.

62. Mr. ARANGIO-RUIZ said that, while he understood that the Drafting Committee's discussions could not be referred to in the Commission's report, he considered that paragraph 28 had to reflect the view that the problem of the *non bis in idem* rule would also arise in the case where an international criminal court was established. The Special Rapporteur might be requested to draft a suitable text with the Secretariat's assistance.

It was so agreed.

Paragraph 28 was adopted on that understanding.

Paragraph 29

63. Mr. CALERO RODRIGUES, referring to the sentence in brackets at the end of paragraph 29, said that the Drafting Committee's report did not exist in writing and could therefore not be referred to in the Commission's report.

64. Mr. THIAM (Special Rapporteur) suggested that that sentence should be deleted.

It was so agreed.

65. Mr. TOMUSCHAT said that it would be advisable to reconsider the translation of the French phrase *ne peut être invoquée* by the English phrase "cannot be pleaded in bar".

It was so agreed.

Paragraph 29, as amended, was adopted.

Paragraphs 30 and 31

Paragraphs 30 and 31 were adopted.

Paragraph 32

66. Mr. BARSEGOV said that, if the Commission decided, as some members had suggested, to delete paragraph 2 of draft article 8, containing the reference to the "general principles of law recognized by the community of nations", it would not be taking account of historical events. The Nazi trials, for example, had been based on general principles of law. At the time, the view had been that international rules making genocide a crime did indeed exist. It could therefore not be said that the wording in question was so "imprecise and ambiguous" that it should be deleted. Paragraph 32 should

reflect the opinion of the members of the Commission who wanted that wording to be retained, since it had a sound legal basis.

67. Mr. BENNOUNA, supporting the view expressed by Mr. Barsegov, said that the debate on draft article 8, paragraph 2, had been based on the productive analyses of the concept of international law made during the consideration of article 1.

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

Paragraph 32 was adopted on that understanding.

Paragraphs 33 to 36

Paragraphs 33 to 36 were adopted.

Paragraph 37

69. Following an exchange of views in which Mr. KOROMA, Mr. THIAM (Special Rapporteur) and Mr. ARANGIO-RUIZ took part, the CHAIRMAN suggested that the word "internationalists", in the fourth sentence, should be replaced by "jurists".

It was so agreed.

Paragraph 37, as amended, was adopted.

Paragraph 38

70. Mr. BARSEGOV said that he would like the very strong reservations he had expressed in plenary (1999th meeting) with regard to the exceptions provided for in draft article 9 (b) to be reflected in the report. He had, in particular, pointed out that there had never been any trial for war crimes or genocide in which attempts had not been made to invoke an exception to the principle of criminal responsibility.

71. Mr. THIAM (Special Rapporteur) said that he would certainly incorporate a text to be provided by Mr. Barsegov in the report.

Paragraph 38 was adopted on that understanding.

Paragraph 39

Paragraph 39 was adopted.

Paragraph 40

72. Mr. THIAM (Special Rapporteur) said that the words "at least", in the first sentence, should be deleted.

Paragraph 40, as amended, was adopted.

Paragraph 41

73. Mr. GRAEFRATH, supported by Mr. ROUCOUNAS, said that paragraph 41 reflected only the opinion of those members who had wanted the exception provided for in subparagraph (d) of draft article 9 to be deleted. He had been in favour of retaining that exception (1995th meeting) and was surprised that his opinion had not been taken into account in the draft report.

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,⁵ 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.¹

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

⁵ See 1992nd meeting, footnote 12.

¹ Yearbook . . . 1986, vol. II (Part Two), p. 62, para. 237.