

Document:-
A/CN.4/SR.2220

Summary record of the 2220th meeting

Topic:
Jurisdictional immunities of States and their property

Extract from the Yearbook of the International Law Commission:-
1991, vol. I

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(<http://www.un.org/law/ilc/index.htm>)*

Commentary to article 22 (Protection and preservation of ecosystems)
Paragraphs (1) and (2)

Paragraphs (1) and (2) were approved.

Paragraph (3)

54. Mr. McCAFFREY (Special Rapporteur) suggested that consideration of paragraph (3) be deferred until he was able to submit an amendment in response to an observation made to him by a member of the Commission.

It was so agreed.

Paragraph (4)

55. Mr. EIRIKSSON (Rapporteur) proposed that the words "of course", in the seventh sentence, be deleted.

Paragraph (4) was approved.

Paragraph (5)

56. Mr. BENNOUNA suggested that paragraphs (5) to (9), which only rehearsed State practice, should be deleted, especially as the sources cited there could be found in the relevant report of the Special Rapporteur.

57. Mr. MAHIOU, while recognizing the usefulness of the citations in question, doubted whether they should be retained.

58. Mr. McCAFFREY (Special Rapporteur) said that it was the Commission's tradition, going back to the early 1950s, to support its draft articles with authoritative sources; otherwise it would give the impression that it elaborated them starting from nothing. It was important that draft articles be firmly based on State practice. Moreover, he had only followed that practice in regard to article 22 and had drafted much less extensive commentaries to the other articles. He had also tried to condense, as much as possible, the citations reproduced in paragraphs (5) to (9), which in his report took up some 50 pages. In any case, it was a question of principle which involved the Commission's reputation.

59. The CHAIRMAN drew attention to article 20 of the Commission's statute, which provided that the commentaries to its articles must contain "adequate presentation of precedents and other relevant data, including treaties, judicial decisions and doctrine".

60. Mr. TOMUSCHAT said that he shared the views of the Special Rapporteur and the Chairman and believed that the commentaries to articles were not only useful, but indispensable for the agents of Governments and members of universities who had to consult them.

61. Mr. AL-QAYSI added that, if the citations in paragraphs (5) to (9) were deleted, the reader would have to await publication of the *Yearbook* containing the Special Rapporteur's report to find them again.

62. Mr. EIRIKSSON (Rapporteur) suggested that paragraphs (5) to (9) could be retained, but with some of the citations transferred to footnotes.

63. Mr. PAWLAK opposed the deletion of paragraphs (5) to (9), which would enable the Commission to convince the General Assembly that its work rested on solid foundations.

64. Mr. KOROMA said he, too, thought that the citations should be retained.

65. Mr. ROUCOUNAS observed that some reports were extremely rich, while others were rather meagre. Mr. McCaffrey's reports contained valuable elements, of which the Commission would be wrong to deprive itself, especially as, under Article 38 of the Statute of the ICJ, the Commission's work could serve as a subsidiary means for the determination of rules of law. The articles adopted by the Commission should therefore be accompanied by detailed commentaries.

66. Mr. JACOVIDES said that he was opposed to the deletion of paragraphs (5) to (9).

67. The CHAIRMAN said that, if there were no objections, he would take it that the Commission agreed to retain paragraphs (5) to (9) of the commentary to article 22.

It was so agreed.

The meeting rose at 1.15 p.m.

2200th MEETING

Wednesday, 18 July 1990, at 3.05 p.m.

Chairman: Mr. Jiuyong SHI

Present: Mr. Al-Qaysi, Mr. Arangio-Ruiz, Mr. Barboza, Mr. Barsegov, Mr. Beesley, Mr. Bennouna, Mr. Eiriksson, Mr. Francis, Mr. Graefrath, Mr. Jacovides, Mr. Koroma, Mr. Mahiou, Mr. McCaffrey, Mr. Njenga, Mr. Ogiso, Mr. Pawlak, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Razafindralambo, Mr. Roucounas, Mr. Solari Tudela, Mr. Thiam, Mr. Tomuschat.

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

CHAPTER IV. *The law of the non-navigational uses of international watercourses* (*continued*) (A/CN.4/L.449 and Add.1 and 2)

C. *Draft articles on the law of the non-navigational uses of international watercourses* (*continued*) (A/CN.4/L.449/Add.1 and 2)

SUBSECTION 2 (Texts of draft articles 22 to 27, with commentaries thereto, provisionally adopted by the Commission at its forty-second session (*continued*)) (A/CN.4/L.449/Add.1 and 2)

Commentary to article 22 (Protection and preservation of ecosystems) (*continued*)

Paragraph (3) (*concluded*)

1. Mr. McCAFFREY (Special Rapporteur) recalled that a point made by a member of the Commission concerning paragraph (3) had been left in abeyance. To meet that point, he suggested that the words "the threat of harm", in the third sentence, be amended to read: "a significant threat of harm".

It was so agreed.

Paragraph (3), as amended, was approved.

Paragraphs (5) to (7)

Paragraphs (5) to (7) were approved.

Paragraph (8)

2. Mr. EIRIKSSON (Rapporteur) suggested that the passage dealing with the Act of Asunción should be compressed so as to eliminate some repetition.

3. Mr. McCAFFREY (Special Rapporteur) proposed that paragraph (8) be approved on the understanding that he would make the necessary changes in wording, in agreement with the Rapporteur, without altering the substance.

Paragraph (8) was approved on that understanding.

Paragraph (9)

4. Mr. EIRIKSSON (Rapporteur) suggested that some of the references in paragraph (9) could be conveniently moved to the footnotes.

5. The CHAIRMAN said that it could be left to the Secretariat to make such changes, if appropriate.

Paragraph (9) was approved.

The commentary to article 22, as amended, was approved.

Commentary to article 23 (Prevention, reduction and control of pollution)

Paragraphs (1) to (6)

Paragraphs (1) to (6) were approved.

Paragraph (7)

6. Mr. BARSEGOV criticized the third sentence, which suggested approval for stringent measures and disapproval for less stringent measures, thus adopting a purely quantitative test. The proper test was that of adequacy—whether the measures adopted corresponded to the requirements. One State might adopt very stringent measures which were not in keeping with the real needs, while less stringent measures adopted by another State might be appropriate.

7. Mr. McCAFFREY (Special Rapporteur) pointed out that the sentence in question, which began with the words "For example", was not intended to make a categorical statement or to express any value judgment. It simply offered a hypothetical example to show that one State's efforts based on stringent standards could be frustrated by the fact that another watercourse State adopted lower standards.

8. Mr. BEESLEY proposed that the difficulty be overcome by inserting the words "if they prove inadequate" before the words "may frustrate".

It was so agreed.

9. Mr. Sreenivasa RAO said that the statement in the penultimate sentence that the entire process of harmonization "will necessarily involve consensus among watercourse States" did not adequately reflect the process of harmonization.

10. Mr. McCAFFREY (Special Rapporteur) proposed that that point be met by amending the words "necessarily involve consensus" to read: "necessarily depend on consensus".

It was so agreed.

Paragraph (7), as amended, was approved.

Paragraph (8)

11. Mr. TOMUSCHAT drew attention to the reference in footnote 61 to the Council of Europe's draft European convention for the protection of international watercourses against pollution. Actually, the Council of Europe had made two attempts to draft such a convention, the first in 1965 and the second in 1974. The reference in the footnote was to the 1974 draft, which had still not been adopted. In fact, since no action had been taken on it for 15 years, it might well be considered as rejected, and such a document could not be used as a source in support of article 23. He suggested that the reference to that draft convention be deleted.

12. Mr. BENNOUNA, referring to the concluding words of the third sentence of paragraph (8), "has been followed in a number of recent agreements", pointed out that footnote 61 listed a number of different texts including documents formulated by the Institute of International Law and the International Law Association. He would suggest that the words "recent agreements" be replaced by "agreements and international documents". The adjective "recent" was not really appropriate, since some of the documents mentioned dated back to 1972 and 1974.

13. Mr. SOLARI TUDELA opposed the deletion of the reference to the Council of Europe's draft European convention. He could not accept the idea that a draft convention should be regarded as rejected because it had been under consideration for a long time.

14. Mr. Sreenivasa RAO said that the term "agreements" should be used only for agreements between States.

15. Mr. NJENGA supported the inclusion of the reference to the Council of Europe's draft European convention. That reference was helpful as indicating one of several items which formed part of the work done on the subject. He suggested that footnote 61 be left unchanged and that the concluding words of the third sentence, "recent agreements", be replaced by "agreements and other instruments".

16. Mr. BARSEGOV said that an issue of principle was involved. It was essential for the Commission to be strict with regard to sources. A draft which was merely a second attempt to formulate a text for a convention could not be cited as a source in the same way as a convention signed by States. He would prefer the reference to the draft European convention to be dropped; otherwise, it should be explained that it had not been adopted.

17. Mr. McCAFFREY (Special Rapporteur) proposed that the concluding words of the third sentence of paragraph (8) be amended to read: "international agreements and other instruments".

18. He further proposed that footnote 61 be divided into three paragraphs. The first would consist of the first two references ending with the words "note 59". That paragraph would contain the references to two international treaties in force: the 1976 Agreement for

the Protection of the Rhine against Chemical Pollution and the 1978 Agreement between Canada and the United States of America on Great Lakes water quality.

19. The second paragraph would start with the words "See also", followed by the passage beginning with the reference to the Council of Europe's draft European convention and ending with the reference to ILA's 1982 Montreal Rules. That paragraph would contain the references to the material of learned societies concerned with international law, in addition to the Council of Europe's draft convention. The words "See also" which appeared after "para. 376" at the end of the first reference could perhaps be dropped.

20. The third paragraph, starting with the words "The same approach", would consist of the remainder of the present text, containing the references to instruments dealing with marine pollution.

The Special Rapporteur's amendments were adopted.

Paragraph (8), as amended, was approved.

Paragraph (9)

21. Mr. BENNOUNA proposed that, in the first sentence, the word "further" be replaced by the words "in detail".

22. Mr. PAWLAK proposed that the first sentence be deleted, and that to accommodate Mr. Bennouna's point the word "further" or the word "additional" be inserted before the word "survey" at the beginning of the second sentence. He further proposed that the words "supporting article 23" be added after the words "State practice" in the second sentence.

23. Mr. McCAFFREY (Special Rapporteur) said that he had no difficulty with the spirit of those amendments, but would suggest that the word to be added before the word "survey" should be "detailed".

Mr. Pawlak's amendments were adopted with the modification proposed by the Special Rapporteur.

24. Mr. Sreenivasa RAO said that he was not happy with the reference in the last sentence to the "minimum" necessary for the protection of watercourse States against pollution. In his view, it would be counter-productive to try to determine the minimum or maximum in that context. He therefore proposed that the sentence be deleted.

25. Mr. PAWLAK proposed that Mr. Sreenivasa Rao's point be met by deleting the words "the minimum".

It was so agreed.

26. Mr. EIRIKSSON (Rapporteur) suggested that, as a consequence of the deletion of the first sentence of paragraph (9) of the commentary to article 23, the third sentence of paragraph (9) of the commentary to article 22 should be amended to read: "A number of these authorities may be mentioned for the purpose of illustration."

It was so agreed.

27. Mr. BENNOUNA noted that the sentence to which footnote 65 related read: "The work of international organizations and groups of experts in this field

has been particularly rich." But that footnote did not refer to the work of international organizations, unless the Institute of International Law and the International Law Association could be classified as such.

28. Mr. McCAFFREY (Special Rapporteur) said that, in the terminology used by the United Nations—which he had followed—those two bodies were classified as international non-governmental organizations. Perhaps the reference to international organizations in the sentence in question could be replaced by a reference to international non-governmental organizations, although the latter expression was somewhat unwieldy.

29. Mr. TOMUSCHAT said that the organizations in question could perhaps be referred to as private international bodies or by some other suitable term showing that they were institutions that promoted international law.

30. Mr. BENNOUNA, supported by Mr. RAZAFINDRALAMBO, proposed the expression *organismes scientifiques internationaux*.

31. Mr. McCAFFREY (Special Rapporteur) pointed out that there was no suitable equivalent for that expression in English.

32. Following a brief exchange of views in which Mr. BEESLEY, Mr. KOROMA, Mr. NJENGA, Mr. PAWLAK and Mr. SOLARI TUDELA took part, the CHAIRMAN pointed out that the 1963 report by the Secretary-General on "Legal problems relating to the utilization and use of international rivers"¹ contained a part IV entitled "General Survey of studies made or being made by non-governmental organizations concerned with international law", in which the Institute of International Law and the International Law Association were listed. He therefore suggested that, in the fourth sentence of paragraph (9), those two organizations should be referred to as "international non-governmental organizations concerned with international law", rather than as "international organizations".

It was so agreed.

Paragraph (9), as amended, was approved.

The commentary to article 23, as amended, was approved.

CHAPTER VIII. Other decisions and conclusions of the Commission (A/CN.4/L.453)

33. Mr. EIRIKSSON (Rapporteur) explained that the Planning Group had decided to include, after paragraph 14, a short new paragraph on the proposals for the organization of the Commission's work of the Working Group on the long-term programme of work. The new paragraph, which was not yet ready, would mention the possibility of the Commission holding split sessions and meeting at regular intervals away from Geneva.

34. Mr. PELLET observed that the Working Group had also discussed whether the Commission should hold shorter sessions at different times.

¹ Yearbook ... 1974, vol. II (Part Two), p. 33, document A/5409.

35. The CHAIRMAN said that, since the Planning Group had not discussed the possibility of reducing the length of the session, that possibility could not be mentioned in the Commission's report. In view of the financial difficulties of the Organization he urged members to be cautious. If the Commission's report to the General Assembly mentioned the possibility of shorter sessions, it might become impossible to revert to their former length.

36. Mr. AL-QAYSI said that the question of shorter sessions had indeed been mentioned in the Planning Group, in the context of the Commission's procedures and working methods.

37. The CHAIRMAN proposed that the Commission examine chapter VIII paragraph by paragraph.

It was so agreed.

A. Programme, procedures and working methods of the Commission, and its documentation

Paragraph 1

Paragraph 1 was adopted.

Paragraph 2

38. Mr. PAWLAK proposed that the beginning of paragraph 2 be amended to read: "The Commission decided. . .".

It was so agreed.

Paragraph 2, as amended, was adopted.

Paragraphs 3 to 6

Paragraph 3 to 6 were adopted.

Paragraph 7

39. Mr. TOMUSCHAT drew attention to the statement in the first sentence that the Commission intended to complete the second reading of the draft articles on jurisdictional immunities of States and their property "at the current session". According to paragraph 732 of its report on its previous session,² the Commission's intention had been to complete the second reading "during the . . . term of office" of its current members, i.e. by 1991. That report went on to state (para. 733)³ that the Commission intended "to make every effort" to complete the second reading in 1990, not that it undertook to do so.

40. Mr. PAWLAK proposed amending the last sentence of paragraph 7 to begin: "The Commission plans to finalize the remaining 12 draft articles at its next session. . .".

41. Mr. EIRIKSSON (Rapporteur) said that, for the sake of consistency with the previous year's report, the Commission should refer to its intention of trying to complete the second reading at the current session.

42. The CHAIRMAN said that the Commission's intention had been to complete the second reading of the draft articles by the end of the five-year term of office of its current members. The first sentence of paragraph 7 should therefore end: ". . . during the term of office of its current members".

43. Mr. AL-QAYSI said that the first sentence of paragraph 7 merely reflected the statement in paragraph 733 of the previous year's report; there was no reason to alter it because the Commission had completed the second reading of only 16 of the draft articles during its current session. That would be inadvisable.

44. Mr. GRAEFRATH said he agreed with Mr. Tomuschat that the Commission's intention had been to complete the second reading of the draft articles during the term of office of its current members. He supported the amendments to the first and last sentences proposed by the Chairman and Mr. Pawlak.

45. Mr. TOMUSCHAT emphasized that the Commission had not fallen behind, since it was still adhering to its basic programme of work as described in paragraphs 732 and 733 of the previous year's report.

46. The CHAIRMAN suggested that paragraph 7 be redrafted by the Rapporteur and the members of the Commission concerned with the wording and that the Commission revert to it in due course.

It was so agreed.

Paragraph 8

47. Mr. PAWLAK said that it was out of the question for the Commission to complete by 1991 the first reading of the draft articles on both of the topics mentioned. It should state that it would do so "in 1991" or "at its forty-third session".

48. Mr. RAZAFINDRALAMBO said that paragraph 8 should begin with the words: "The Commission also expressed the intention . . .", the beginning of the sentence being deleted.

49. Mr. EIRIKSSON (Rapporteur) said that he could accept both of those amendments.

The amendments by Mr. Pawlak and Mr. Razafindralambo were adopted.

Paragraph 8, as amended, was adopted.

Paragraph 9

50. Mr. PAWLAK proposed the deletion of the last part of the first sentence, from the words "subject of course to the possibility . . .". The word "substantial", in the second sentence, should also be deleted.

51. Mr. PELLET said that, in the first sentence of the French text, the phrase *qui seront composées des chapitres* was incorrect and should be replaced by *qui constitueront les chapitres*.

The amendments by Mr. Pawlak and Mr. Pellet were adopted.

Paragraph 9, as amended, was adopted.

Paragraph 10

52. The CHAIRMAN suggested replacing the words "by 1991" by "at its forty-third session".

It was so agreed.

Paragraph 10, as amended, was adopted.

Paragraph 11

Paragraph 11 was adopted.

² Yearbook . . . 1989, vol. II (Part Two), p. 137.

³ Ibid.

Paragraph 12

53. Mr. TOMUSCHAT, referring to paragraph 5 of footnote 1, suggested that the words “legal aspects of disarmament” be replaced by the word “disarmament”, and that the quotation marks be deleted.

54. Mr. EIRIKSSON (Rapporteur) explained that the reference, at the end of paragraph 6 of footnote 1, to a paper “incorporated in the present report” meant the report of the Working Group on the question of the establishment of an international criminal jurisdiction, which was to appear in chapter II of the Commission’s report.

55. Mr. PELLET, referring to paragraph 8 of footnote 1, pointed out that the Commission was not a main organ, but a subsidiary organ, of the General Assembly.

56. Mr. GRAEFRATH said it had been suggested in the Planning Group that it would be better not to refer to the Commission’s role in fulfilling the objectives of the Decade of International Law.

57. Mr. EIRIKSSON (Rapporteur) explained that the purpose of including, in footnote 1, various proposals by the Working Group on the Commission’s long-term programme of work had been to enable the Commission to decide whether to include those proposals in its report.

58. Mr. TOMUSCHAT suggested that only the first sentence of paragraph 8 of footnote 1 be retained. The Commission should not give the impression of having no initiative.

59. Mr. BEESLEY asked whether it had been decided to include the entire report of the Working Group on the long-term programme of work in the Commission’s report.

60. Mr. NJENGA said he thought that footnote 1 should not be amended. The Working Group’s report had been submitted to the Planning Group, and the Commission should not foreclose the Planning Group’s decisions.

61. Mr. MAHIU said that it had been decided to include the progress report of the Working Group as a footnote to the Commission’s report.

62. Mr. PAWLAK said that the Working Group would prefer the text of footnote 1 to remain unaltered.

63. Mr. AL-QAYSI asked the Rapporteur to explain the meaning of the expression “a new generation of human rights”, in paragraph 5 of footnote 1.

64. Mr. BARSEGOV said that that expression referred to the established concept of the rights of peoples, or collective rights. The meaning of the expression had not been discussed.

65. Mr. KOROMA said that the reference should be to “the fourth generation of human rights”. There should be no suggestion of a new category of human rights.

66. Mr. TOMUSCHAT said that the expression should read: “the third generation of human rights”, meaning the right to disarmament, the right to peace, etc. It was, of course, debatable whether the Commission should concern itself with that subject at all.

67. Mr. PAWLAK explained that he had coined the phrase “a new generation of human rights”, meaning the right to development, to peace, etc., and the rights of minorities. He could accept, instead, the expression “the third generation of human rights”.

68. Mr. MAHIU said that he would prefer a standard formula such as *les nouveaux droits de l’homme* (“the new human rights”).

69. Mr. BARSEGOV said that he would prefer a reference to “collective rights”.

70. The CHAIRMAN proposed that the text of footnote 1 be left unaltered.

It was so agreed.

Paragraph 12 was adopted.

Paragraph 13

71. Mr. KOROMA proposed the addition of a new paragraph 13 *bis* to read as follows:

“One member proposed, for the consideration of the Commission at an appropriate stage, the topic ‘the international law of migration’”.

72. Mr. EIRIKSSON (Rapporteur) said that that suggestion should appear in the summary record of the meeting, but it would not be appropriate to include it in the Commission’s report.

73. Mr. BARBOZA said that Mr. Koroma’s proposal had not been taken up in the Commission and therefore could not be recorded in the report on the Commission’s work.

74. The CHAIRMAN suggested that Mr. Koroma introduce his proposal at the Commission’s next session.

75. Mr. AL-QAYSI said that, although he welcomed Mr. Koroma’s proposal, it could not be included in the report, because that would imply that the Commission had discussed the report of the Working Group on the long-term programme of work and taken decisions on it, whereas in paragraph 13 it was simply stated that the Commission had taken note of the report and that the Working Group would be given more time to formulate recommendations. He agreed with the Chairman that Mr. Koroma should put forward his proposal at the Commission’s forty-third session.

76. Mr. MAHIU said that he agreed with Mr. Barboza and Mr. Al-Qaysi. The subject proposed by Mr. Koroma was an important one, however, and the proposal should be included in the summary record so that the Working Group could examine it in 1991.

77. Mr. KOROMA said he regretted that the Working Group on the long-term programme of work had not been expeditious in reporting to the plenary Commission. He had waited all through the forty-first session, in 1989, and through most of the current session, but when the report had finally arrived he had not been present. He was simply proposing a topic that he thought could be considered; he would not object if his proposal did not appear in the report, but he hoped that the Working Group would consider it at its next meeting.

78. Mr. MAHIU pointed out that the report of the Working Group had been ready on time, but the Planning Group had had no opportunity to examine it, owing to the full schedule of plenary and Drafting Committee meetings. When it had finally been discussed, Mr. Koroma had not been present.

79. The CHAIRMAN said that Mr. Koroma's views would be duly reported in the summary record of the meeting.

Paragraph 13 was adopted.

Paragraph 14

Paragraph 14 was adopted.

Paragraph 15

80. Mr. GRAEFRATH, referring to footnote 2, said he had been under the impression that all of part 2 and part 3 of the draft articles on State responsibility were pending before the Drafting Committee.

81. Mr. EIRIKSSON (Rapporteur) said that footnote 2 could also refer to draft articles 1 to 5 and the annex of part 3 of the draft on State responsibility, which had been referred to the Drafting Committee during the term of the previous Special Rapporteur, in addition to draft articles 6 to 16 of part 2 and the new draft articles 6 to 10.

82. Mr. BARBOZA asked whether the Drafting Committee had before it draft articles 1 to 9 or 1 to 10 on international liability for injurious consequences arising out of acts not prohibited by international law.

83. The CHAIRMAN said he was under the impression that the first 10 articles on international liability had subsequently been revised and reduced to nine.

84. Mr. BARBOZA recalled that the Commission had referred the first 10 articles to the Drafting Committee in 1988, and the revised draft articles 1 to 9 in 1989.

85. The CHAIRMAN said that, if there were no objections, he would take it that the Commission agreed to revert to paragraph 15 after further consideration of footnote 2.

It was so agreed.

Paragraph 16

86. Mr. McCAFFREY suggested that the word "for" be inserted between the words "the goals it set" and "itself".

It was so agreed.

Paragraph 16, as amended, was adopted.

Paragraph 17

Paragraph 17 was adopted.

Paragraph 18

87. Mr. TOMUSCHAT said that the expression "with a view to", in the first sentence, was unclear and should be amended.

88. The CHAIRMAN suggested that it be left to the Rapporteur to adjust the text to take account of the point made by Mr. Tomuschat.

Paragraph 18 was adopted on that understanding.

Paragraphs 19 and 20

Paragraphs 19 and 20 were adopted.

B. Co-operation with other bodies

Paragraphs 21 to 23

Paragraphs 21 to 23 were adopted.

Section B was adopted.

C. Date and place of the forty-third session

Paragraph 24

89. Mr. PELLET, supported by Mr. GRAEFRATH, suggested that paragraph 24 should indicate that the decision on the dates of the next session had been taken after difficult discussions.

90. Mr. AL-QAYSI suggested that either an expression such as "after long discussion" should be added after the words "The Commission agreed", or the reservations made should be recorded.

91. Mr. MAHIU said that he shared the reservations made, but did not think that they should be recorded in paragraph 24.

92. Mr. NJENGA said that he would prefer the reservations to appear in the summary record of the meeting. No dates could possibly meet with the approval of all members of the Commission.

93. Mr. SOLARI TUDELA said that he, too, had reservations on the dates of the session, which had constantly been moved forward from year to year. If the reservations were not recorded, the Secretariat would be unable to take the necessary measures to arrange later dates.

94. Mr. BEESLEY said that paragraph 24 should reflect the divergence of views. He suggested the wording: "The Commission agreed, subject to some reservations, that its next session . . .".

95. Mr. EIRIKSSON (Rapporteur) said that, unfortunately, expressing reservations would not have the slightest effect.

96. The CHAIRMAN suggested that paragraph 24 be adopted as it stood, and that the reservations of members be recorded in the summary record.

97. Mr. PELLET said that he was not attempting to reopen the discussion on the dates of the next session, but the report should describe the work of the Commission and should therefore contain a reference to the reservations made. Otherwise, there would be no way of knowing that such a problem had arisen.

98. Mr. BARSEGOV said that he agreed with Mr. Pellet. It was important to make clear that, after a long discussion, a decision had been taken on the dates despite the reservations expressed by many members of the Commission.

99. Mr. BARBOZA suggested leaving paragraph 24 as it stood and inserting a footnote to explain that several members of the Commission had been opposed to the dates selected, which they regarded as being too early.

100. Mr. NJENGA supported that suggestion. If a footnote were inserted, however, it must be well-balanced; for whatever dates were chosen, they would always be inconvenient to some members.

101. The CHAIRMAN said that he saw no point in amending paragraph 24. If members agreed, he could mention their reservations in his statement to the Sixth Committee of the General Assembly at its forty-fifth session. Perhaps the Sixth Committee could then find a way of solving the problem.

102. Mr. PELLET opposed the Chairman's proposal. He was not against the dates because they were inconvenient; he was opposed in principle to the way in which they were fixed. He agreed with Mr. Barboza's suggestion that a footnote be added, but thought that explaining why the particular dates chosen were objectionable might complicate matters considerably.

103. Mr. AL-QAYSI said that he agreed with Mr. Pellet. It was not just a question of convenience; more fundamental questions were at issue. Every year, the Commission was simply assigned an available slot. The same applied to the number of meetings.

104. Mr. EIRIKSSON (Rapporteur) said that a footnote would have to be quite long to cover all the points of view expressed. It would therefore be more appropriate for the Chairman to raise the issue in his statement to the Sixth Committee.

105. The CHAIRMAN said that, if there were no objections, he would take it that the Commission agreed to adopt paragraph 24, on the understanding that the reservations expressed would be recorded in the summary record of the meeting and that he would raise the matter in his statement to the Sixth Committee of the General Assembly.

Paragraph 24 was adopted on that understanding.

Section C was adopted.

The meeting rose at 6.15 p.m.

2201st MEETING

Thursday, 19 July 1990, at 10.05 a.m.

Chairman: Mr. Jiuyong SHI

Present: Mr. Al-Qaysi, Mr. Arangio-Ruiz, Mr. Barboza, Mr. Barsegov, Mr. Beesley, Mr. Bennouna, Mr. Eiriksson, Mr. Francis, Mr. Graefrath, Mr. Jacovides, Mr. Koroma, Mr. Mahiou, Mr. McCaffrey, Mr. Njenga, Mr. Pawlak, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Razafindralambo, Mr. Roucouas, Mr. Solari Tudela, Mr. Thiam, Mr. Tomuschat.

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

CHAPTER VIII. *Other decisions and conclusions of the Commission* (continued) (A/CN.4/L.453)

D. Representation at the forty-fifth session of the General Assembly

Paragraph 25

Paragraph 25 was adopted.

Section D was adopted.

E. International Law Seminar

Paragraph 26

1. Mr. KOROMA, supported by Mr. JACOVIDES, Mr. TOMUSCHAT and Mr. BEESLEY, and by the CHAIRMAN speaking as a member of the Commission, said that the programme of the International Law Seminar should be drawn up in collaboration with the Commission's secretariat, so that the participants could derive maximum benefit from it. At its next session the Commission should consider the organization of the Seminar, with which it should be more closely associated. He also proposed that the words "young professors", in the second sentence, be replaced by "young academics".

2. Mr. EIRIKSSON (Rapporteur) said he understood that the Legal Counsel would consult members of the Commission by letter concerning the organization of the next Seminar.

3. Mr. PAWLAK said that he, too, was concerned about the organization of the Seminar and the subjects it covered. He thought that the Commission should be consulted in more detail on those two points and that the programme of the Seminar should reflect both the work of the Commission and current trends in international law.

4. Mr. RAZAFINDRALAMBO said that, when a member of the Commission was in Geneva at the time the committee selecting participants in the Seminar was sitting, he was invited to preside over that committee. That was how he had come to be its chairman in 1988. Thus there was already a link between the Commission and the Seminar.

Paragraph 26 was adopted.

Paragraphs 27 to 35

Paragraphs 27 to 35 were adopted.

Section E was adopted.

CHAPTER IV. *The law of the non-navigational uses of international watercourses* (continued) (A/CN.4/L.449 and Add.1 and 2)

C. *Draft articles on the law of the non-navigational uses of international watercourses* (continued) (A/CN.4/L.449/Add.1 and 2)

SUBSECTION 2 (Texts of draft articles 22 to 27, with commentaries thereto, provisionally adopted by the Commission at its forty-second session) (continued) (A/CN.4/L.449/Add.1 and 2)

Commentary to article 24 (Introduction of alien or new species)

Paragraphs (1) to (4)

Paragraphs (1) to (4) were approved.

The commentary to article 24 was approved.

Commentary to article 25 (Protection and preservation of the marine environment)

Paragraphs (1) to (4)

Paragraphs (1) to (4) were approved.

The commentary to article 25 was approved.

Commentary to article 26 (Prevention and mitigation of harmful conditions)