

Document:-  
**A/CN.4/SR.2202**

**Summary record of the 2202nd meeting**

Topic:  
**Other topics**

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*Paragraph 54, as amended, was adopted.*

Paragraph 55

*Paragraph 55 was adopted.*

Paragraph 56

51. After an exchange of views between Mr. BARSEGOV, Mr. GRAEFRATH, Mr. PELLET and Mr. ARANGIO-RUIZ (Special Rapporteur), the CHAIRMAN said that, if there were no objections, he would take it that the Commission agreed to delete the words "of injury to an unlawful act" after the word "proximity" in the ninth sentence.

*It was so agreed.*

*Paragraph 56, as amended, was adopted.*

Paragraph 57

52. Mr. GRAEFRATH, referring to the expression "uninterrupted causal link", said he believed that the doubts expressed during the discussion related not to the concept itself, but to the fact that the Special Rapporteur seemed to connect it with the words "however long". For the sake of accuracy, the words "however long" should be added, without quotation marks, after the words "uninterrupted causal link" in the second sentence.

*It was so agreed.*

*Paragraph 57, as amended, was adopted.*

Paragraphs 58 to 61

*Paragraphs 58 to 61 were adopted.*

Paragraph 62

53. Mr. EIRIKSSON (Rapporteur) proposed the following changes. The words "as a cause of exoneration or", in the first sentence, should be deleted. In the second sentence, the word "partly" should be deleted. The words "at the Drafting Committee stage", in the third sentence, should be deleted, and the third and fourth sentences should be combined to read: "He was ready, in any case, to consider different language and was equally open . . .".

*It was so agreed.*

*Paragraph 62, as amended, was adopted.*

Paragraphs 63 to 71

*Paragraphs 63 to 71 were adopted.*

Paragraph 72

54. Mr. EIRIKSSON (Rapporteur) proposed that the second sentence be deleted.

*It was so agreed.*

*Paragraph 72, as amended, was adopted.*

*The meeting rose at 1.05 p.m.*

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## 2202nd MEETING

*Thursday, 19 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. Roucouнас, Mr. Solari Tudela, Mr. Thiam, Mr. Tomuschat.*

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

CHAPTER V. *State responsibility* (concluded) (A/CN.4/L.450)

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

Paragraph 73

1. Mr. MCCAFFREY said that it was not clear from the first sentence whether satisfaction had been granted once, several times or often.

2. Mr. ARANGIO-RUIZ (Special Rapporteur) suggested inserting the word "frequently" between the words "had" and "been granted".

*It was so agreed.*

*Paragraph 73, as amended, was adopted.*

Paragraph 74

3. The CHAIRMAN said that the following changes were proposed. In the second sentence, the words "as amply explained in the report" should be deleted, and the end of the sentence should be amended to read: ". . . formulated (usually against weaker States) were offensive to the honour, dignity and prestige of the allegedly lawbreaking State." In the fourth sentence, the words "clearly" and "by way of reparation for internationally wrongful acts" should be deleted.

*It was so agreed.*

*Paragraph 74, as amended, was adopted.*

Paragraph 75

4. Mr. ARANGIO-RUIZ (Special Rapporteur) said that the word "restitutive", in the first sentence, should be replaced by "retributive", a word with a negative connotation in English which was incorrectly translated in the French text by the word *rétributif*, which had a positive sense.

5. Mr. GRAEFRATH, referring to the last three sentences, asked whether reprisals were to be regarded as incompatible with sovereign equality.

6. Mr. ARANGIO-RUIZ (Special Rapporteur) said that, unlike sanctions, reprisals or retortion, which were actions taken by the injured State *vis-à-vis* the offending State and which obviously implied the infliction of a sanction, none of the forms of satisfaction resorted to in the case under consideration involved direct action by an injured State *vis-à-vis* an offending State in the sense of inflicting direct punishment; instead, it was a matter of self-inflicted punishment at the request of the injured State. Perhaps new wording should be found to express that idea.

7. Mr. GRAEFRATH said that he was making another point: he was asking what incompatibility had to do with sovereign equality.

8. Mr. ARANGIO-RUIZ (Special Rapporteur) said that it might be clearer if the phrase "without involving a violation of the sovereign equality of States" were inserted at the end of paragraph 75. The point was that all forms of satisfaction were even less in violation of the sovereign equality of States than were reprisals and retaliation, which were themselves regarded as normal occurrences in international relations.

9. Mr. GRAEFRATH withdrew his remark and suggested leaving paragraph 75 as it stood.

*Paragraph 75 was adopted.*

Paragraph 76

10. Further to a comment by Mr. GRAEFRATH, Mr. ARANGIO-RUIZ (Special Rapporteur) proposed that paragraph 76 should begin with the words "As to the choice of the form of satisfaction . . .".

*It was so agreed.*

*Paragraph 76, as amended, was adopted.*

Paragraph 77

11. Mr. GRAEFRATH wondered whether the phrase "the form of reparation in question" could be replaced by the word "satisfaction".

12. Mr. ARANGIO-RUIZ (Special Rapporteur) said that he would prefer to leave the phrase as it stood in order to remind the reader that, in a broad sense, satisfaction was only one form of reparation. As he had pointed out in his preliminary report, reparation could take the form of restitution, pecuniary compensation or satisfaction.

13. Mr. GRAEFRATH said that he was satisfied with that explanation.

*Paragraph 77 was adopted.*

Paragraphs 78 to 81

*Paragraphs 78 to 81 were adopted.*

Paragraph 82

14. Mr. PELLET said that the word *rétributive*, used in the second sentence of the French text and also in later paragraphs, must be changed, because it was too positive.

15. Mr. ARANGIO-RUIZ (Special Rapporteur) pointed out that the original language of chapter V of the draft report was English, and it would therefore be necessary to find a more appropriate French equivalent of the word "retributive". The word *afflictif* in the French text was also incorrectly used.

16. Mr. MAHIOU said that he agreed with the Special Rapporteur. It would be preferable to replace the word *rétributive* by *punitive* in the French text.

17. Mr. ARANGIO-RUIZ (Special Rapporteur) said that, in order to be perfectly clear, the reference to a "retributive function" in paragraph 82 and in preceding paragraphs could be changed to "retributive and punitive function".

18. Mr. MAHIOU suggested placing the word *rétributive* in square brackets in the French text to indicate that it had caused a problem.

19. Mr. RAZAFINDRALAMBO said that he was opposed to the use of the term *afflictif*, because it had special connotations much stronger than the term *punitif*.

20. The CHAIRMAN suggested that the French-speaking members of the Commission should consult on the matter and inform the Secretariat of their conclusions regarding the best translation.

*Paragraph 82 was adopted on that understanding.*

Paragraph 83

21. Mr. PAWLAK said that the reference to the draft Code of Crimes against the Peace and Security of Mankind in the seventh sentence should be deleted, because the draft code had not yet been completed.

22. Mr. ARANGIO-RUIZ (Special Rapporteur) said that he did not see why it was necessary to await the completion of the draft code before stating that it dealt with certain crimes that might be attributable to heads of State or Government. He did not understand why it was necessary to avoid the term "punitive" or why it should be considered offensive to sovereign States at a time when the Commission was codifying crimes by States, in article 19 of part I of the draft articles on State responsibility, and crimes by heads of State or Government. He was not maintaining that the draft code had been adopted.

*Paragraph 83 was adopted.*

Paragraph 84

23. Mr. PELLET said that the third sentence was somewhat ambiguous, for it stated that there was always a legal injury when a rule of international law was breached "and hence satisfaction would have to be granted for every single breach". He suggested that those words be replaced by the phrase "and it would result from that theory that satisfaction would have to be granted for every single breach".

*It was so agreed.*

*Paragraph 84, as amended, was adopted.*

Paragraph 85

*Paragraph 85 was adopted with a minor drafting change.*

Paragraph 86

*Paragraph 86 was adopted.*

Paragraph 87

24. Mr. PELLET, supported by Mr. BARSEGOV, proposed that the words "were two different types of remedy", in the last sentence, be replaced by "constituted two different consequences of failure to comply with an international obligation".

*It was so agreed.*

*Paragraph 87, as amended, was adopted.*

Paragraph 88

*Paragraph 88 was adopted.*

Paragraph 89

25. Mr. GRAEFRATH proposed that the last two sentences should form a separate paragraph.

*It was so agreed.*

*Paragraph 89, as amended, was adopted.*

Paragraph 90

*Paragraph 90 was adopted.*

Paragraph 91

*Paragraph 91 was adopted with a minor drafting change.*

Paragraphs 92 to 95

*Paragraphs 92 to 95 were adopted.*

Paragraph 96

26. Mr. PELLET said, by way of a general remark, that the Special Rapporteur gave fair coverage to his own position, but did not always reflect very fully the views of other members. More balanced reporting was essential on such a fundamental topic as State responsibility. The last sentence of paragraph 96 stated that a few members had expressed the hope that the issue of fault "would not be considered even on second reading of part 1 of the topic". One or two members might possibly have expressed such a hope, but the sentence did not reflect his own views.

27. Mr. ARANGIO-RUIZ (Special Rapporteur) explained that he had worked in co-operation with the Rapporteur in the task of summing up his own views and in doing justice to those of his colleagues. In no case had they unduly summarized the position of any member.

28. As to the last sentence of paragraph 96, he would point out that it reflected the views of several members, including, as he recalled, Mr. Barboza, Mr. Calero Rodrigues, Mr. Bennouna, Mr. Mahiou and Mr. Razafindralambo. He would, of course, be glad to incorporate an additional sentence to express Mr. Pellet's opinion.

29. Mr. MAHIOU said that the sentence in question was somewhat categorical in tone; the views expressed on the issue of fault had been less radical and it was therefore appropriate to qualify in some way the statement made in that sentence.

30. Mr. ARANGIO-RUIZ (Special Rapporteur) said that he, too, had some reservations, since he was convinced that the issue of fault had not been treated adequately in part 1 of the draft articles. One possible solution might be to delete the last sentence.

31. Mr. PELLET said that the sentence in question should be retained, but a new one should be added, for he was sure that some members had expressed doubts as to the advisability of dealing with the issue of fault for the time being. He proposed a sentence along the following lines: "In any event, as far as part 2 of the draft is concerned, some members doubted the advisability of dealing with the issue of fault, at least until the Commission considers the consequences of international crimes."

32. Mr. ARANGIO-RUIZ (Special Rapporteur) said that he could agree to the proposed sentence as an

expression of Mr. Pellet's views. He did not recall that other members had expressed the same opinion.

33. Mr. BARBOZA said that the last sentence of paragraph 96 accurately expressed his own views. He had, of course, no objection to the inclusion of a sentence to convey the views of Mr. Pellet.

34. Mr. PELLET agreed to amend the sentence he had proposed so as to replace the reference to "some members" by a reference to "one member".

35. Mr. ARANGIO-RUIZ (Special Rapporteur) expressed his concern at the fact that even one member should entertain doubts about whether a State which had committed a crime was to be regarded as being at fault or not.

36. Mr. BARSEGOV said that he shared the Special Rapporteur's opinion on the issue of fault. A different view was expressed in the last sentence of paragraph 96. Mr. Pellet's proposal embodied yet a third view, namely that the issue of fault should only be considered when the Commission came to examine the consequences of international crimes. With the insertion of that additional sentence, all three positions would be recorded in the report.

37. Mr. GRAEFRATH said that he, for one, was opposed to attributing criminal intent, fraud (*dolus*) or even negligence to a State.

38. The CHAIRMAN said that, if there were no objections, he would take it that the Commission agreed to add, at the end of paragraph 96, a new sentence along the lines proposed by Mr. Pellet.

*It was so agreed.*

*Paragraph 96, as amended, was adopted.*

*Section B, as amended, was adopted.*

**C. Texts of the draft articles of part 2 provisionally adopted so far by the Commission**

Paragraph 97

*Paragraph 97 was adopted.*

*Section C was adopted.*

*Chapter V of the draft report, as amended, was adopted.*

**CHAPTER I. Organization of the session (concluded)\* (A/CN.4/L.446)**

39. Mr. EIRIKSSON (Rapporteur) recalled that the Commission had adopted chapter I of the draft report at the 2199th meeting. Following consultations, it was now proposed that the words "the very many complex", in the last sentence of paragraph 17, be replaced by the word "some". The sentence would then read: "At the conclusion of its discussion, the Commission decided to revert at its next session to some policy and technical issues raised in the sixth report."

*It was so agreed.*

**CHAPTER II. Draft Code of Crimes against the Peace and Security of Mankind (continued)\* (A/CN.4/L.447 and Add.1 and 2 and Add.2/Corr.1 and Add.3)**

\* Resumed from the 2199th meeting.

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

Paragraphs 25, 46 and 62 (concluded) (A/CN.4/L.447)

40. Mr. EIRIKSSON (Rapporteur) proposed changes to three paragraphs adopted by the Commission at the 2199th meeting.

41. With regard to paragraph 25, Mr. Tomuschat (2199th meeting, para. 34) had questioned whether the statement in the last sentence concerning the legislation of the Federal Republic of Germany was correct. Following consultations, he proposed that the reference in that sentence to the German Democratic Republic and the Federal Republic of Germany be deleted.

42. With regard to paragraph 46, he recalled that the Commission had discussed the use of the word "unthinkingly" (*ibid.*, para. 43). Further to consultations with the member who had used that word, he proposed that the words "intentionally, knowingly or unthinkingly", in the first and second sentences, be deleted.

43. With regard to paragraph 62, it had been decided that the Commission's earlier decision (*ibid.*, para. 48) to delete the reference to the "State" aspect of the illicit traffic in narcotic drugs had been a mistake. He therefore proposed, following consultations with the member concerned, that the words "had both an internal and an international State aspect", in the second sentence, be replaced by "had a State aspect, either on an internal or an international plane". In the fifth sentence, the words "that internal or international State element was superfluous" should be replaced by "the State element was superfluous".

*The Rapporteur's amendments were adopted.*

*Section B, as amended, was adopted.*

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

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

Paragraph (8) (concluded)

44. Mr. EIRIKSSON (Rapporteur) recalled that it had been agreed that he should make certain changes to paragraph (8), approved at the 2200th meeting, in consultation with the Special Rapporteur. Accordingly, he proposed that the second and third sentences, and the beginning of the fourth sentence, be amended to read:

"The Act of Asunción, adopted by the Ministers of Foreign Affairs of the River Plate Basin States at their Fourth Meeting, in 1971, refers to the 'grave health problems arising from ecological relationships in the geographic area of the River Plate basin, which have an unfavourable impact on the social and economic development of the region', and notes that 'this health syndrome is related to the quality and quantity of the water resources'. The Act also mentions 'the need to control...'"

*It was so agreed.*

*Commentary to article 27 (Emergency situations) (concluded)*

Paragraph (7) (concluded)

45. Mr. EIRIKSSON (Rapporteur) proposed that the second sentence of paragraph (7), approved at the previous meeting, be replaced by the following text:

"For example, the establishment of effective warning systems may necessitate the involvement of other, non-watercourse States, as well as international organizations with competence in that particular field. In addition, the co-ordination of response efforts might be most effectively handled by a competent international organization set up by the States concerned."

*It was so agreed.*

*Section C.2, as amended, was adopted.*

*Chapter IV of the draft report, as amended, was adopted.*

**CHAPTER VIII. Other decisions and conclusions of the Commission (concluded) (A/CN.4/L.453)****A. Programme, procedures and working methods of the Commission, and its documentation (concluded)\***

Paragraph 7 (concluded)

46. Mr. EIRIKSSON (Rapporteur) drew attention to the following revised text of paragraph 7, which had been drafted in consultation with four members of the Commission:

"Under that programme of work, the Commission intended to complete, during the term of office if its current members, the second reading of the draft articles on jurisdictional immunities of States and their property. At its forty-first session, in 1989, the Commission expressed the intention to make every effort to complete the second reading at the current session. The Drafting Committee at the current session reviewed and provisionally adopted 16 of the draft articles provisionally adopted by the Commission on first reading. The Commission expects to submit to the General Assembly at its forty-sixth session the entire set of draft articles, thereby attaining its goal of concluding the second reading of the draft before the end of the term of office of its current members."

47. Mr. PAWLAK proposed that, in the third sentence of that text, the words "on second reading" should be inserted between "adopted" and "16".

*It was so agreed.*

48. The CHAIRMAN said that, if there were no objections, he would take it that the Commission agreed to adopt the revised text proposed for paragraph 7, as amended.

*It was so agreed.*

*Paragraph 7, as amended, was adopted.*

\* Resumed from the 2200th meeting.

\* Resumed from the 2200th meeting.

Paragraph 15 (*concluded*)

49. Mr. EIRIKSSON (Rapporteur) recalled that the Commission had discussed the possible inclusion in footnote 2 of a reference to all of the articles of parts 2 and 3 of the draft articles on State responsibility pending before the Drafting Committee. Mr. Graefrath, who had made the proposal concerned, agreed that such a reference was unnecessary. Accordingly, footnote 2 would remain unchanged.

*Paragraph 15 was adopted.*

New paragraph 14 *bis*

50. Mr. EIRIKSSON (Rapporteur) recalled that the Commission had discussed the inclusion of a new paragraph dealing with certain questions, including the possibility of holding split sessions (see 2200th meeting, para. 33). The proposed paragraph 14 *bis*, which would appear under the new heading "Methods of work", would read:

"The Commission continued to discuss various proposals for the most efficient organization of its annual sessions, including splitting the session into two sessions (to be convened alternately in New York and Geneva, for example) and holding special sessions outside its regular annual sessions (for instance for specific tasks such as meetings of the Drafting Committee). Further consideration of the suggestions for the next term of office of members would have to take into account the most efficient way to deal with the items on the Commission's agenda, as well as financial considerations."

51. Mr. JACOVIDES proposed that the word "sessions", before the words "(to be convened" in the first sentence, should be deleted. He welcomed the ideas put forward in the new paragraph, which should be included in the report to pave the way for a fuller discussion in the Sixth Committee of the General Assembly.

52. Mr. AL-QAYSI said that he had no objection to the first sentence, but the second seemed to confuse the issues. The question of splitting sessions could not be seen in the context simply of financial considerations and of workload. Matters relating to the Commission's methods of work could not be decided by reference to two factors alone.

53. Mr. NJENGA said that it was unfair to introduce such a controversial issue at the end of the session, when many members of the Commission had already left Geneva. In saying that splitting the Commission's sessions would cause difficulties for members, he was speaking not for himself alone but also on behalf of some of his absent colleagues. He would therefore propose that, in order to show that the new paragraph did not reflect unanimous agreement, it should be amended by inserting the following sentence after the first sentence: "Some members referred to the difficulties that might arise in splitting the annual session and to the added financial implications."

54. Mr. EIRIKSSON (Rapporteur) pointed out that it had been agreed in the Planning Group to include such a paragraph in the Commission's report. Furthermore, he believed he had produced a balanced text. To meet Mr. Njenga's point, however, he thought that the

words "proposals by some members on" could be added after the word "including", in the first sentence.

55. Mr. ARANGIO-RUIZ said that he sympathized with Mr. Njenga's position, since split sessions would create considerable difficulty for him too; but Mr. Njenga's point was met by the Rapporteur's suggested addition, and particularly by the word "some", which automatically implied that other members did not like the idea. With regard to Mr. Jacovides's proposal, he considered that the words "into two sessions" should be replaced by "into two parts", which would obviate the need for different officers of the Bureau and different sets of conclusions.

56. Mr. AL-QAYSI said that the whole purpose of the new paragraph was to reflect a discussion that had actually taken place: as a matter of principle, the Sixth Committee could not be prevented from knowing the type of discussion in which the Commission and its Planning Group had become involved with regard to methods of work. In any event, the word "including" in the first sentence, made it clear that no unanimous decision was involved.

57. Mr. PELLET, agreeing with Mr. Arangio-Ruiz's proposal to replace the words "into two sessions" by "into two parts", further proposed that the words "organization of its annual sessions", in the first sentence, be replaced by "organization of its work". The text of the paragraph was balanced, and the Rapporteur's proposal was a reasonable one. If, however, Mr. Njenga wished to state the reasons why he opposed the idea of split sessions, then he (Mr. Pellet) would have to state the reasons why he supported it, and the discussion would be never-ending.

58. Mr. PAWLAK, agreeing with Mr. Pellet, said that he favoured split sessions. He proposed that, in the first sentence of the new paragraph, the words "by some members" should be added after "various proposals" and the words "devoted to fewer topics" after the words "into two parts" proposed by Mr. Arangio-Ruiz; and that, in the second sentence, the words "these suggestions" should be replaced by "these questions" and the words "and flexible" added after the word "efficient".

59. Mr. NJENGA said that he saw no reason for changing a system that had worked well for more than 40 years. The proposed paragraph was not balanced, in his view, and it gave the erroneous impression that there was a general trend in the Commission in favour of splitting the sessions. No such case had been made out. All he wanted was a short sentence, couched in neutral terms, that would accurately reflect the position of those members who opposed the idea.

60. The CHAIRMAN said that the matter was both delicate and complex. The Rapporteur had taken great pains to draft a suitable text. In his view, it was not biased, did not set out a firm conclusion and simply stated that some proposals had been made by members and would have to be discussed in the future. Mr. Pawlak had made some very reasonable proposals and the Commission might therefore wish to adopt the new paragraph 14 *bis* as amended by those proposals.

61. Mr. EIRIKSSON (Rapporteur) said that, while he agreed in general with the Chairman, he had one objection to Mr. Pawlak's proposals: he was unable to agree to the addition of the words "devoted to fewer topics", which were irrelevant. On the basis of the amendments suggested, he proposed that the new paragraph 14 *bis* should read as follows:

"The Commission continued to discuss various proposals for the most efficient organization of its work. These included proposals by some members to hold special sessions of the Commission outside its regular annual sessions (for instance for specific tasks such as meetings of the Drafting Committee) and to split the annual session into two parts (to be convened alternately in New York and Geneva, for example). Other members pointed to difficulties with respect to the various proposals made. Further consideration of these questions for the next term of office of members would have to take into account the most efficient and flexible way to deal with the items on the Commission's agenda, as well as financial considerations."

*It was so agreed.*

*New paragraph 14 bis, as amended, was adopted.*

*Section A, as amended, was adopted.*

*Chapter VIII of the draft report, as amended, was adopted.*

**CHAPTER VII. International liability for injurious consequences arising out of acts not prohibited by international law (A/CN.4/L.452)**

**A. Introduction**

Paragraphs 1 to 4

*Paragraphs 1 to 4 were adopted.*

*Section A was adopted.*

**B. Consideration of the topic at the present session**

Paragraphs 5 to 7

*Paragraphs 5 to 7 were adopted.*

Paragraph 8

62. Mr. EIRIKSSON (Rapporteur) said that the words "very many", in the first sentence, should be replaced by "some".

*Paragraph 8, as amended, was adopted.*

Paragraphs 9 and 10

*Paragraphs 9 and 10 were adopted.*

Paragraph 11

63. Mr. PELLET wondered if the phrase "A few members felt", in the first sentence, was correct. He thought that many members had expressed the point of view explained in paragraph 11.

64. Mr. BARBOZA (Special Rapporteur) said that the view in question had been expressed by not more than three members, including Mr. Beesley and Mr. Hayes.

*Paragraph 11 was adopted.*

Paragraph 12

65. Mr. BARSEGOV said it was unnecessary to mention that the same view had been expressed by members at previous sessions.

66. The CHAIRMAN agreed. The words "as they had already expressed at previous sessions", in the first sentence, should be deleted.

*It was so agreed.*

*Paragraph 12, as amended, was adopted.*

Paragraph 13

67. Mr. EIRIKSSON (Rapporteur) said that the words "Very few members" should be replaced by "A few members".

*Paragraph 13, as amended, was adopted.*

Paragraphs 14 to 18

*Paragraphs 14 to 18 were adopted.*

Paragraph 19

68. Mr. EIRIKSSON (Rapporteur) proposed that the first sentence be amended to begin: "In summarizing the debate, the Special Rapporteur noted that his intention in proposing a list of dangerous substances . . .". In the fourth sentence, the word "decide" should be replaced by "determine".

*It was so agreed.*

*Paragraph 19, as amended, was adopted.*

Paragraph 20

*Paragraph 20 was adopted.*

Paragraph 21

69. Mr. EIRIKSSON (Rapporteur) said that the word "very", in the first sentence, should be deleted.

70. Mr. McCAFFREY said that he was uncertain whether it was sufficiently clear, from the preceding paragraphs, that the reason why there had been few comments on article 1 was that it had already been amply commented on at previous sessions. If not, the first sentence could be amended to read: "There were few comments on article 1, in light of the fact that it had been discussed at previous sessions of the Commission." It was important to avoid giving the impression that the Commission was indifferent to article 1, which was a fundamental element of the draft.

71. Mr. BARBOZA (Special Rapporteur) pointed to the reference, at the end of paragraph 14, to articles 1 to 9, which were "now before the Drafting Committee". That made it sufficiently clear that the comments on article 1 had already been dealt with.

72. Mr. EIRIKSSON (Rapporteur) said that no substantive changes had been made to article 1.

73. Mr. McCAFFREY said that, in view of the Special Rapporteur's explanation, no further amendment was needed in the first sentence.

74. The CHAIRMAN said that, if there were no objections, he would take it that the Commission agreed to delete the word "very" in the first sentence of paragraph 21.

*It was so agreed.*

*Paragraph 21, as amended, was adopted.*

Paragraphs 22 to 28

*Paragraphs 22 to 28 were adopted.*

## Paragraph 29

75. Mr. EIRIKSSON (Rapporteur) proposed that the word "feasibility", in the third sentence, be replaced by "acceptability".

*It was so agreed.*

*Paragraph 29, as amended, was adopted.*

## Paragraphs 30 and 31

*Paragraphs 30 and 31 were adopted.*

## Paragraph 32

76. Mr. PELLET said that the wording of the third sentence was too weak and should be tightened.

77. Mr. BARBOZA (Special Rapporteur) said that the questions about the possible role of international organizations had already been dealt with in at least two reports.

78. Mr. PELLET proposed that the following sentence be inserted after the second sentence: "Some speakers wondered about the existence of such competent international organizations."

79. The CHAIRMAN suggested that, subject to the replacement of the word "speakers" by "members", that amendment should be adopted.

*It was so agreed.*

*Paragraph 32, as amended, was adopted.*

## Paragraph 33

80. Mr. BARBOZA (Special Rapporteur) pointed out that the last sentence should refer to article 1, not article 11.

81. Mr. PAWLAK asked who was the author of the statement, in the last sentence, that "the State of origin must reimburse the costs incurred by the affected State".

82. Mr. BARBOZA (Special Rapporteur) said that the statement referred to a provision of article 13 and could be attributed to himself as Special Rapporteur.

83. Mr. EIRIKSSON (Rapporteur) suggested amending the beginning of the first sentence to read: "The Special Rapporteur stated that article 13 was intended . . .", and the last sentence to read: "Under article 13, if the activity in question happened to be one of those covered by article 1, the State of origin must bear the costs incurred by the affected State."

84. Mr. PAWLAK suggested substituting the word "should" for "must" in the last sentence.

85. Mr. BARSEGOV queried the principle involved. Why should the State of origin have to bear costs incurred perhaps through a major accident? He urged the Special Rapporteur to rethink the point.

86. Mr. BARBOZA (Special Rapporteur) pointed out that the costs borne by the State of origin would be those incurred for the technical study, not those resulting from the accident itself. He had no intention of abandoning the principle enunciated in article 13.

87. The CHAIRMAN suggested that the two amendments proposed by the Rapporteur, with the modification proposed by Mr. Pawlak, be adopted.

*It was so agreed.*

*Paragraph 33, as amended, was adopted.*

## Paragraph 34

*Paragraph 34 was adopted.*

## Paragraph 35

88. Mr. AL-QAYSI, referring to the first sentence, "None of these articles was extensively discussed", asked which articles were meant.

89. Mr. BARBOZA (Special Rapporteur) explained that the articles in question were articles 13 to 16.

90. The CHAIRMAN suggested that the first sentence be amended to read: "Articles 13 to 16 were not extensively discussed."

*It was so agreed.*

*Paragraph 35, as amended, was adopted.*

## Paragraph 36

91. Mr. EIRIKSSON (Rapporteur) said that, in the fifth sentence, the word "real" should be replaced by "truly". In the eighth sentence, the word "permissible" should be replaced by "permissive".

*Paragraph 36, as amended, was adopted.*

## Paragraph 37

*Paragraph 37 was adopted.*

92. Mr. BARSEGOV, supported by Mr. PELLET and Mr. AL-QAYSI, objected that members had not had sufficient time to study document A/CN.4/L.452, which had been issued only that day, and was not yet available in all the working languages. It was unreasonable to expect the Commission to adopt any part of its draft report in such haste.

93. The CHAIRMAN said that members would have an opportunity to comment further, if they so wished, on the paragraphs of chapter VII which had been adopted at the meeting.

*The meeting rose at 6.10 p.m.*

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## 2203rd MEETING

*Friday, 20 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. Roucounas, Mr. Solari Tudela, Mr. Thiam, Mr. Tomuschat.*

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

CHAPTER VII. *International liability for injurious consequences*