

Document:-  
**A/CN.4/SR.2203**

**Summary record of the 2203rd meeting**

Topic:  
**Other topics**

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**1990, vol. I**

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## 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*

*arising out of acts not prohibited by international law* (concluded)  
(A/CN.4/L.452)

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

Paragraph 38

1. Mr. TOMUSCHAT said that, in the third sentence, it would be preferable to replace the words "to comply with" by "to take".

*It was so agreed.*

*Paragraph 38, as amended, was adopted.*

Paragraph 39

2. Mr. BARBOZA (Special Rapporteur) said that the words "under another treaty, for example, or", in the second sentence, should be deleted.

3. Mr. PELLET said that the first sentence was rather weak and proposed that it also be stated that at least one member of the Commission had expressed reservations about the principle on which article 18 was based.

*It was so agreed.*

*Paragraph 39, as amended, was adopted.*

Paragraph 40

*Paragraph 40 was adopted.*

Paragraph 41

4. Mr. EIRIKSSON (Rapporteur) said that the word "regarded", in the third sentence, should be replaced by "considered" and the words "Very few", in the fifth sentence, by "A few".

5. After an exchange of views in which Mr. TOMUSCHAT, Mr. McCAFFREY and Mr. BARBOZA (Special Rapporteur) took part, the CHAIRMAN said that, if there were no objections, he would take it that the Commission agreed to replace the word "recommended", in the third sentence, by "indicated".

*It was so agreed.*

6. Mr. PAWLAK, supported by Mr. RAZAFINDRALAMBO, proposed that the words "should be forthcoming", in the fourth sentence, be replaced by "might be forthcoming".

*It was so agreed.*

*Paragraph 41, as amended, was adopted.*

Paragraphs 42 and 43

*Paragraphs 42 and 43 were adopted.*

Paragraph 44

7. After a brief exchange of views in which Mr. AL-QAYSI and Mr. EIRIKSSON (Rapporteur) took part, the CHAIRMAN said that, if there were no objections, he would take it that the Commission agreed to amend the first sentence to read: "The purpose of chapter IV, the Special Rapporteur explained, was to elaborate in specific articles the concept of liability, which as a principle was introduced in article 9 (Reparation)."

*It was so agreed.*

8. Mr. BARBOZA (Special Rapporteur) said that the word "include", in the sixth sentence, should be replaced by "contemplate".

*Paragraph 44, as amended, was adopted.*

Paragraph 45

9. Mr. PELLET said that paragraph 45, which was very long, dealt with two different ideas and it would have been better to explain them in two separate paragraphs. He also noted that the reservations which some members of the Commission had expressed about the existence in positive law of an obligation to pay compensation, the principle referred to in the first part of the paragraph, were not mentioned until paragraph 47.

10. He therefore proposed that, in the fifth sentence, the words "on the basis of which parties could negotiate" should be deleted and that the following new text should be added after it: "Some members also questioned the existence in present international law of an obligation to pay compensation in the absence of any breach of international law. Although accepting that such an obligation could be envisaged, they stressed that it would be a considerable innovation."

*It was so agreed.*

11. Mr. EIRIKSSON (Rapporteur) said that the words "and that approach was compatible", in the seventh sentence, should be replaced by "a proposition that was compatible".

*Paragraph 45, as amended, was adopted.*

Paragraph 46

*Paragraph 46 was adopted.*

Paragraphs 47 and 48

12. Mr. EIRIKSSON (Rapporteur) said that the words "Very few members", at the beginning of the penultimate sentence of paragraph 47, should be replaced by "A few members".

13. Mr. McCAFFREY said that it would be better to divide paragraph 47 into two paragraphs, the first containing the first four sentences, summarizing the statement by the Special Rapporteur, and the second summarizing the views of members of the Commission. He also suggested that paragraph 48, which was very short and also reflected the views of members, should be added to the second of those paragraphs.

14. Mr. PELLET said that, as a result of his amendment to paragraph 45, he would like to propose an amendment to the last part of paragraph 47. First, he suggested that the following two sentences be deleted: "Another member did not agree with the principle of full compensation. In his view, such a principle was not supported in State practice." Those two sentences would be replaced by the following text: "Another member of the Commission pointed out that, in practice, the kind of liability being dealt with in the present report was increasingly eclipsed by the implementation of rules normally applicable to responsibility for failure to comply with an obligation, and it might well be asked whether there was any real difference between the two régimes."

15. Mr. BENNOUNA said that, although he shared Mr. Pellet's view, he would prefer to retain the two sentences whose deletion Mr. Pellet had proposed, because they reflected his own attitude towards article 21.

16. Mr. PELLET said that the two sentences in question were not compatible with the sentence he had proposed adding to paragraph 47.

17. Mr. AL-QAYSI suggested that, in the sentence proposed by Mr. Pellet, the words “in the present report” should be replaced by “in the present topic”.

18. The CHAIRMAN said that, if there were no objections, he would take it that the Commission agreed to adopt paragraphs 47 and 48 with the amendments proposed by Mr. McCaffrey and with the addition of the sentence proposed by Mr. Pellet, as modified by Mr. Al-Qaysi.

*It was so agreed.*

*Paragraphs 47 and 48, as amended, were adopted.*

Paragraph 49

*Paragraph 49 was adopted.*

Paragraph 50

19. Mr. EIRIKSSON (Rapporteur) said that the words “Very few” in the first sentence, should be replaced by “A few”.

*Paragraph 50, as amended, was adopted.*

Paragraphs 51 to 53

*Paragraphs 51 to 53 were adopted.*

Paragraph 54

20. Mr. PAWLAK proposed that, in the second sentence, the words “or of its people who suffered harm”, or at least the words “who suffered harm” should be deleted.

21. Mr. BARBOZA (Special Rapporteur) said that, instead of deleting that phrase, which reflected his own view, it would be better to replace it by the words “or of the party who suffered harm”.

22. Mr. PELLET said that the deletion of the words “who suffered harm” would meet Mr. Pawlak’s concern without adversely affecting the sentence.

23. The CHAIRMAN said that, if there were no objections, he would take it that the Commission agreed to replace the words “or of its people”, in the second sentence, by “or of the party”.

*It was so agreed.*

*Paragraph 54, as amended, was adopted.*

Paragraph 55

24. Mr. MAHIU said that the third sentence was ambiguous. He proposed that it be replaced by the following text: “It was also asked whether *force majeure* belonged in that article.” He further proposed that the following sentence be added to reflect his point of view: “One member also stated that the wording of subparagraphs (a) and (b) of paragraph 1 of article 26 had to be harmonized, because full exemption of the State concerned from liability was justified not only by the fact that the harm was directly due to the events referred to in subparagraph (a), but also and in particular by the fact that the harm was wholly caused by those events.”

25. Mr. BARBOZA (Special Rapporteur) said he agreed that it was important to reflect that idea in paragraph 55.

26. Mr. EIRIKSSON (Rapporteur), noting that the new text proposed by Mr. Mahiou would require some changes in paragraph 55, proposed that the first sentence be deleted and that the second sentence be replaced by the following text: “On article 26, comments were made to the effect that it should also include terrorism as grounds for exoneration”. The two sentences proposed by Mr. Mahiou would come next, followed by the sentence beginning with the words “Article 27 was found rather vague . . .”.

27. Mr. PELLET said that the first sentence proposed by Mr. Mahiou departed substantially from the third sentence which was now contained in paragraph 55 and which should not be amended, in his view.

28. Mr. MAHIU said that he had tried to take account of all the views expressed, and that explained why the first sentence he was proposing was less precise than the original text.

29. The CHAIRMAN said that, if there were no objections, he would take it that the Commission agreed to adopt paragraph 55 with the addition of the second sentence proposed by Mr. Mahiou, which began with the words “One member also stated . . .”, and with the Rapporteur’s amendments. The third sentence of the original text would remain unchanged.

*It was so agreed.*

*Paragraph 55, as amended, was adopted.*

Paragraph 56

30. Mr. KOROMA said that the Commission would have to revise the wording of article 28, paragraph 1 of which could be deleted, since it did not impose any obligation.

*Paragraph 56 was adopted.*

Paragraph 57

*Paragraph 57 was adopted.*

Paragraph 58

31. Mr. KOROMA proposed that the expression “subject-matter jurisdiction”, in the second sentence, be replaced by the standard Latin term and that the word “monetary”, in the third sentence, be replaced by “pecuniary”.

*It was so agreed.*

*Paragraph 58, as amended, was adopted.*

Paragraphs 59 to 61

*Paragraphs 59 to 61 were adopted.*

Paragraph 62

32. The CHAIRMAN, replying to a comment by Mr. KOROMA, proposed that, in the last sentence, the words “the topic of” should be inserted between the words “wrongful acts in” and “State responsibility”.

*It was so agreed.*

*Paragraph 62, as amended, was adopted.*

Paragraphs 63 to 65

*Paragraphs 63 to 65 were adopted.*

## Paragraph 66

33. Mr. BEESLEY said that paragraph 66 did not reflect the point of view he had expressed during the discussion and that, in general, it was too slanted towards the Special Rapporteur's opinion. The Special Rapporteur should work together with the Rapporteur to analyse what had actually been said on the question and to report it faithfully. As it now stood, the text gave the impression that members of the Commission had not even bothered to study the question of the "global commons". That was not only untrue, but also gave the wrong idea of the Commission.

34. Mr. TOMUSCHAT said that the end of the chapter was the weakest part of the report.

35. Mr. KOROMA said that he agreed with Mr. Tomuschat. He thought that paragraph 66 did not do justice to the depth of the Special Rapporteur's thinking or to the Commission's discussion, which had been more thorough than the text implied.

36. Mr. PELLET recalled that the statements on the question of areas beyond national jurisdictions had been very brief, and that probably explained why the paragraph relating to them left something to be desired.

37. Mr. BARBOZA (Special Rapporteur) said that the views expressed by members of the Commission on the question of the "global commons" had been more philosophical than legal. That was why the report referred to them only very briefly.

38. The CHAIRMAN suggested that Mr. Beesley should give the Rapporteur a short text which would be added to paragraph 66 to reflect the view he had expressed during the discussion.

39. Mr. TOMUSCHAT said that the words "Only a very few members made brief general comments", at the beginning of paragraph 66, were very negative.

40. After an exchange of views in which Mr. KOROMA, Mr. BARSEGOV and Mr. BARBOZA (Special Rapporteur) took part, the CHAIRMAN suggested that the first sentence should be amended to read: "Several members of the Commission made brief preliminary comments on the question of the 'global commons'."

41. Mr. BENNOUNA criticized the beginning of the last sentence: "It was felt that . . .". In his opinion, it should read: "Several members of the Commission took the view that . . .".

42. Mr. MAHIOU and Mr. PELLET proposed that the last sentence should begin with the words "In the general view of those who spoke . . .".

43. Mr. EIRIKSSON (Rapporteur) pointed out that paragraph 8 of chapter VII stated: "The Commission therefore decided to come back to the issues raised in the sixth report at its next session."

44. The CHAIRMAN suggested that the last sentence of paragraph 66 should read: "The Commission decided to continue at its next session with a thorough consideration of the question of harm to the global commons."

45. Mr. BARSEGOV, supported by Mr. PELLET, proposed that the words "One member felt", at the beginning of the penultimate sentence, be replaced by "Some members felt".

46. Mr. PELLET proposed that the following sentence then be added after the penultimate sentence: "One of those members thought that the question could be dealt with in a separate draft."

47. The CHAIRMAN proposed that the Commission should adopt paragraph 66, on the understanding that the Rapporteur would revise it with the assistance of the Special Rapporteur in the light of the texts that would be submitted to him, taking into account the proposals made and the views expressed during the discussion.

*Paragraph 66 was adopted on that understanding.*

## Paragraph 67

48. Mr. TOMUSCHAT said that he was not sure whether it was appropriate to seek the views of the Sixth Committee of the General Assembly on the question set out in subparagraph (b), which was purely a matter of legal technique.

49. Mr. BENNOUNA said that the question set out in subparagraph (c) was not clear enough. The question should be turned around, in order to ask whether it was private individuals who should bear liability for transboundary harm, rather than the State of origin.

50. Mr. PAWLAK said that he, too, was in favour of deleting subparagraph (b). In subparagraph (c), it was the word "whether" that was open to criticism. As he saw it, there was no doubt that liability existed: the only question was "to what extent", it should be borne by the State of origin.

51. Mr. BARSEGOV said that, if subparagraph (b) were retained, it would have to be worded more clearly. Subparagraph (c) would become meaningless if it were turned around as Mr. Bennouna had suggested.

52. Mr. ARANGIO-RUIZ said he agreed with Mr. Tomuschat that subparagraph (b) should be deleted. The idea of seeking the views of the General Assembly was a good one, but the Commission should not ask the Sixth Committee the same questions as the Sixth Committee had asked it. The General Assembly could not be approached in technical terms, but only on matters of legislative policy. The Commission's own discussions had shown that the question at issue was a legal one.

53. Mr. BARBOZA (Special Rapporteur) said that the question set out in subparagraph (b) was not only a legal one. It concerned article 18 (Failure to comply with the foregoing obligations), and, if it was not settled, it could be assumed that a potentially affected State might make representations to the State of origin and even take countermeasures.

54. As to subparagraph (c), international practice was unanimous, except that liability was attributed to the operator, i.e. to the individual. Ever since work had begun on the draft articles, it had been assumed that the State was considered liable. The time had now come, however, to ask the General Assembly whether that was the kind of liability it wanted.

55. Mr. McCAFFREY said that, in general, special rapporteurs had to have enough freedom to formulate the questions they considered necessary, since they were in the best position to narrow them down.

56. With regard to subparagraph (c), he agreed that the word “whether” should be deleted from the present formulation, as suggested by Mr. Pawlak, because it implied that, for the time being, there was no liability, and that was obviously not true. He proposed that the beginning of subparagraph (c) be amended to read: “whether and to what extent the draft articles should provide for liability of the State of origin for transboundary harm . . .”.

57. Mr. BEESLEY said that he supported that amendment. The problem was not whether the State was liable, but to what extent. The conventions in force were designed to limit such liability and the protection of the environment was only a spin-off. The limitation of liability conveyed by the words “to what extent” was a thorny problem that had a bearing on questions such as absolute and strict liability.

58. Mr. PELLET said that it was quite legitimate to turn to political bodies for guidance. He was therefore in favour of retaining subparagraph (b). As to subparagraph (c), Mr. McCaffrey’s amendment would be a good solution. The inversion proposed by Mr. Bennouna, which would give pride of place to the individual rather than to the State, was interesting in an academic sense but was not justified in the present context because of the overall structure of the topic.

59. The CHAIRMAN said that, if there were no objections, he would take it that the Commission agreed to delete subparagraph (b) of paragraph 67 and to amend subparagraph (c) as proposed by Mr. McCaffrey (para. 56 above).

*It was so agreed.*

*Paragraph 67, as amended, was adopted.*

60. Mr. BENNOUNA said that he had reservations similar to those expressed by Mr. Arangio-Ruiz, since the question was one of principle. Purely legal questions should be settled in the Commission and not be referred to the General Assembly, which was a political body.

61. Mr. PELLET, recalling that the Chairman had indicated at the previous meeting that proposals might still be made on paragraphs already adopted, said that he would like additions to be made to two paragraphs in order better to reflect the discussion which had taken place in the Commission. At the end of paragraph 10, he proposed that the following sentence be added: “It was also suggested that the draft could be divided into two parts, the first part dealing with prevention and the second consisting of one or more model clauses on reparation.” At the end of paragraph 30, he proposed that the following sentence be added: “Several members also pointed out that, in general, the obligations of States under the provisions of chapter III were not very stringent and often less exacting than their obligations under positive law.”

62. The CHAIRMAN said that, if there were no objections, he would take it that the Commission agreed to adopt those two amendments.

*Mr. Pellet’s amendments were adopted.*

*Section B, as amended, was adopted.*

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

63. Mr. BEESLEY said that he had reservations about chapter VII as a whole, and particularly about the parts of the chapter which were supposed to reflect the discussion that had taken place in the Commission. There was no trace in the summary of the discussion of the points he had raised and the proposals he had made, with the support, in some cases, of other members of the Commission. He gave specific examples and pointed out that the only reason he had not requested any changes or additions during the consideration of chapter VII, so that it would reflect more closely his views and those of other speakers, was that the Commission did not have enough time for such a major redrafting exercise.

**CHAPTER VI. Relations between States and international organizations (second part of the topic) (concluded)\* (A/CN.4/L.451)**

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

Paragraph 11 (concluded)

64. Mr. EIRIKSSON (Rapporteur) submitted the following revised text for paragraph 11:

“There was general support in the Commission for the path charted for the topic by the Special Rapporteur in his fourth report. Some members pointed out that the Commission could now give the topic more attention, since it had completed or almost completed its consideration of other topics. Some members also emphasized the usefulness of the topic, which would put some order in the diversity and disparity of the law governing international organizations.”

65. Mr. BENNOUNA said that, contrary to what was stated in the first sentence of the new text, there had not been any general support and some members of the Commission, including himself, had even questioned whether the topic was worth studying and what the end result would be.

66. Mr. MAHIU said that, even though doubts had been expressed as to whether the topic should be studied, no one had denied the fact that, now that it was being studied, the approach adopted by the Special Rapporteur was the right one.

67. Mr. EIRIKSSON (Rapporteur) said that paragraph 11 should be read in the context of paragraphs 12 and 13, which reflected the objections that had been expressed. He proposed that the revised text of paragraph 11 be adopted, with the words “general support”, in the first sentence, replaced by “broad support”.

*It was so agreed.*

*Paragraph 11, as amended, was adopted.*

Paragraph 14 (concluded)

68. Mr. EIRIKSSON (Rapporteur) submitted the following revised text for paragraph 14:

\* Resumed from the 2199th meeting.

"The Special Rapporteur, referring to views expressed by several members, recalled that the Commission's duty was to comply with the mandate assigned to it by the General Assembly and reaffirmed in annual Assembly resolutions on the report of the Commission. The meaning and orientation of the topic, as well as its content, had been defined by the Commission at its thirty-ninth session, in 1987, when it had approved the outline of the subject-matter which it had requested the Special Rapporteur to submit to it. The Special Rapporteur noted that many other topics on the Commission's agenda also encompassed aspects regulated by existing instruments. Referring to the Commission's role in the codification of international law, he stated that it would be useful to systematize and organize rules on the topic. Indeed, a close look at the international situation showed that there were many gaps to be filled and problems to be solved. For example, he noted, many problems had arisen in recent years between some organizations and host countries in connection with the rights and obligations of officials, experts and persons having official business with the organizations. The Special Rapporteur therefore emphasized the importance of considering the draft articles fully and referring them, following such consideration, to the Drafting Committee."

69. The CHAIRMAN said that, if there were no objections, he would take it that the Commission agreed to adopt the revised text of paragraph 14.

*It was so agreed.*

*Paragraph 14, as amended, was adopted.*

*Section B, as amended, was adopted.*

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

**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)

**D. Draft articles on the draft Code of Crimes against the Peace and Security of Mankind** (A/CN.4/L.447/Add.2 and Corr.1)

**SUBSECTION 1** (Texts of the draft articles provisionally adopted so far by the Commission)

*Section D.1 was adopted.*

**SUBSECTION 2** (Texts of draft articles 16, 18 and X, with commentaries thereto, provisionally adopted by the Commission at its forty-second session)

*Commentary to article 16* (International terrorism)

Paragraph (1)

*Paragraph (1) was approved.*

Paragraph (2)

70. Mr. TOMUSCHAT said that the second sentence was too general and therefore inaccurate. He proposed that the words "as defined in article 16" be added after the words "International terrorism".

*Paragraph (2) was approved.*

Paragraph (3)

*Paragraph (3) was approved.*

Paragraph (4)

71. Mr. EIRIKSSON (Rapporteur) submitted the following revised text for the first two subparagraphs of paragraph (4):

"Paragraph 2 concerns the participation of individuals in acts of terrorism by agents or representatives of the State. It does not cover acts of terrorism committed by individuals which have no link with international acts of terrorism as defined in paragraph 1.

"Notwithstanding the proportions which the phenomenon has assumed nowadays, particularly in the framework of certain entities (terrorist organizations or groups, which are usually motivated by the desire for gain), and the danger which it represents for States (certain organizations have financial or military means superior to those of certain States), it has not seemed possible to consider terrorism by individuals as belonging to the category of crimes against peace, to the extent that such activities are not attributable to a State. Certain members of the Commission, however, consider that terrorism by individuals should be covered."

72. Mr. KOROMA proposed that the bracketed phrase "certain organizations have financial or military means superior to those of certain States", in the second subparagraph of that text, be deleted. Care must be taken not to confer any kind of respectability on the organizations in question.

73. Mr. THIAM (Special Rapporteur) said that he did not object to the deletion of that phrase.

*Mr. Koroma's amendment was adopted.*

74. Mr. TOMUSCHAT, supported by Mr. MAHIU, said that he did not see why a sentence such as the last sentence of the second subparagraph should be included in the commentary to an article.

75. Mr. BENNOUNA said that it was in fact unusual to recall the position taken by members of the Commission in the commentary to an article. He proposed that the sentence in question be deleted.

76. Mr. THIAM (Special Rapporteur) said that he did not object to the deletion of that sentence.

*Mr. Bennouna's amendment was adopted.*

77. The CHAIRMAN suggested that the consideration of paragraph (4) be continued at the next meeting.

*It was so agreed.*

*The meeting rose at 1.05 p.m.*

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## 2204th MEETING

*Friday, 20 July 1990, at 3.10 p.m.*

*Chairman: Mr. Jiuyong SHI*

*Present: Mr. Al-Qaysi, Mr. Barboza, Mr. Barsegov, Mr. Beesley, Mr. Bennouna, Mr. Eiriksson, Mr. Fran-*