

Document:-  
**A/CN.4/SR.2249**

**Summary record of the 2249th meeting**

Topic:  
**Other topics**

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

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of the draft Code were well under way. The best solution might therefore be to complete those documents as quickly as possible and make them available before the next session of the General Assembly.

39. Mr. McCaffrey (Special Rapporteur) said that he would not press his point. So far as the length of the report was concerned, however, it should be remembered that the Commission was faced with a very unusual situation in that it had completed three topics at the current session, but, to invoke that as a ground for not including the commentaries in the report was, in his view, quite unjustified. It was not just a matter of sifting through past commentaries. His main point was simply that, if an effort was to be made to assemble all the draft articles and commentaries in a single document, for submission to representatives in the Sixth Committee, the content of that document might just as well be incorporated in the report and eventually appear in the *Yearbook of the International Law Commission* so that a comprehensive set of commentaries was available.

40. Mr. AL-KHASAWNEH asked whether the commentaries to all the articles could be enclosed with the letter to be addressed to Governments in January 1992. A paragraph could perhaps also be included in the report to explain that that course had been adopted in order to save time. It would, of course, also save money.

41. Prince AJIBOLA said that he supported Mr. Shi's proposal on account of its realistic approach.

42. The CHAIRMAN said that it would have been of great assistance, particularly to researchers, to set forth in one document all the commentaries to the draft articles on international watercourses and on the draft Code of Crimes against the Peace and Security of Mankind. That might, however, have had a negative effect, causing the Sixth Committee to focus on the size, rather than the content, of the report. In the circumstances, he suggested that the Special Rapporteur should be requested to update the commentaries to the articles on the law of the non-navigational uses of international watercourses so that they could be made available to representatives to the Sixth Committee of the General Assembly.

*It was so agreed.*

*The meeting rose at 9 p.m.*

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## 2249th MEETING

*Thursday, 18 July 1991, at 10.10 a.m.*

*Chairman: Mr. Abdul G. KOROMA*

*Present: Prince Ajibola, Mr. Al-Baharna, Mr. Al-Khasawneh, Mr. Arangio-Ruiz, Mr. Barboza, Mr. Barsegov, Mr. Beesley, Mr. Bennouna, Mr. Calero Rodrigues,*

*Mr. Díaz González, Mr. Eiriksson, Mr. Graefrath, Mr. Jacovides, Mr. Mahiou, Mr. McCaffrey, Mr. Njenga, Mr. Ogiso, Mr. Pawlak, Mr. Pellet, Mr. Razafindralambo, Mr. Roucounas, Mr. Sepúlveda Gutiérrez, Mr. Shi, Mr. Solari Tudela, Mr. Thiam, Mr. Tomuschat.*

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

1. The CHAIRMAN invited the Commission to consider chapter VII of its draft report, paragraph by paragraph.

#### CHAPTER VII. *State responsibility* (A/CN.4/L.467)

##### A. Introduction

Paragraphs 1 to 6

*Paragraphs 1 to 6 were adopted.*

*Section A was adopted.*

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

Paragraphs 7 and 8

*Paragraphs 7 and 8 were adopted.*

Paragraph 9

2. Mr. ARANGIO-RUIZ (Special Rapporteur), responding to a query by Prince AJIBOLA, said that the word "notably" helped to indicate that the third report dealt in principle only with delicts, although the existence of other internationally wrongful acts had not been forgotten.

*Paragraph 9 was adopted.*

Paragraphs 10 to 17

*Paragraphs 10 to 17 were adopted.*

Paragraph 18

*Paragraph 18 was adopted with a minor drafting change.*

Paragraph 19

3. Mr. JACOVIDES said that "imperative rules", in the second sentence, should be replaced by "peremptory norms".

*It was so agreed.*

*Paragraph 19, as amended, was adopted.*

Paragraphs 20 and 21

*Paragraphs 20 and 21 were adopted.*

*Section B, as amended, was adopted.*

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

Paragraph 22

4. Mr. CALERO RODRIGUES said he wondered whether it was necessary to reproduce the text of the draft articles of part 2 provisionally adopted so far by the Commission. The articles had no direct bearing on the points raised in the report.

5. Mr. ARANGIO-RUIZ (Special Rapporteur) agreed that it was unnecessary to reproduce the draft articles in question, since they could readily be consulted in the Commission's documentation. The whole of paragraph 22, in other words, section C, could be deleted.

6. The CHAIRMAN pointed out that it was the Commission's practice to reproduce in its report the text of articles it had already adopted.

7. Mr. CALERO RODRIGUES said it had been argued on previous occasions that the Commission should not submit information to the General Assembly about reports it had not yet discussed, nor should the General Assembly discuss the content of a report before the Commission had had an opportunity to consider it. He suggested that, by way of explanation, a sentence reading: "Since the report has not yet been considered by the Commission, the following paragraphs are only for information purposes" should be inserted at the end of paragraph 8.

8. Mr. ARANGIO-RUIZ (Special Rapporteur) said he was willing to accept those suggestions.

9. Mr. RAZAFINDRALAMBO said that to include in section C the text of the draft articles previously adopted might give the mistaken impression that they had been adopted at the current session. However, the usual practice of reproducing articles previously adopted was a sound one, enabling the reader to review them in the light of the Commission's current work on the topic. He suggested that the draft articles should be placed instead in section B, in a footnote, with an appropriate reference in the text.

10. Prince AJIBOLA supported that proposal.

11. Mr. CALERO RODRIGUES emphasized that the draft articles in question bore no relationship whatever to the present report on State responsibility or to the work done at the present session. It was useful to reproduce the text of articles only when there were new articles to compare them with. At most, there should be a reference to the text of the draft articles, perhaps in a footnote to paragraph 5.

12. Mr. BARSEGOV said it was useful to have a complete picture of the state of work on a topic. He would prefer the text of the draft articles to be reproduced in an appropriate place in the report, with a clear indication of their status.

13. Mr. ARANGIO-RUIZ (Special Rapporteur) said that the best solution would be to omit them altogether, referring in a footnote to paragraph 5 to the document in

which they had first appeared. As an alternative, the text of the articles could be reproduced in a footnote.

14. The CHAIRMAN suggested that, as a compromise, the text of the draft articles should be placed in a footnote to paragraph 5. Section C would therefore be deleted.

*It was so agreed.*

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

**CHAPTER V. International liability for injurious consequences arising out of acts not prohibited by international law (A/CN.4/L.465)**

15. The CHAIRMAN invited the Commission to consider chapter V of its draft report, paragraph by paragraph.

**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**

Paragraph 5

*Paragraph 5 was adopted.*

Paragraph 6

16. The CHAIRMAN said that the word "however" at the beginning of the second sentence should be replaced by "moreover".

17. Mr. PAWLAK, commenting on the statement that "the Drafting Committee had not found the time to consider any of the draft articles referred to it by the Commission since 1988", pointed out that the Drafting Committee had not neglected its duty; it had merely acted in accordance with the priorities established by the Commission itself. Hence the statement was not factually correct.

18. Mr. BARBOZA (Special Rapporteur) said that he agreed. As explained in the same sentence, the fact that the articles had not been considered was "due to other priorities". He suggested that the phrase "had not found the time to consider" should be replaced by "had not considered".

19. Mr. BEESLEY and Mr. CALERO RODRIGUES expressed support for that proposal.

*Paragraph 6, as amended, was adopted.*

Paragraphs 7 to 9

*Paragraphs 7 to 9 were adopted.*

Paragraph 10

20. Mr. PAWLAK said that paragraph 10 merely repeated the point made in paragraph 6. Moreover, it over-

stated the situation; the Drafting Committee, as a subsidiary body of the Commission, had to follow the Commission's instructions.

21. Mr. BEESLEY said that paragraph 10 mirrored the concern of several members that the Special Rapporteur had been deprived of the benefit of the Drafting Committee's views on the draft articles referred to it since 1988. Perhaps the paragraph should be toned down, to remove any pejorative connotation; alternatively, it could be incorporated in paragraph 6.

22. Mr. CALERO RODRIGUES pointed out that paragraph 10 reflected the views expressed by members of the Commission, and could not readily be incorporated in paragraph 6, which reflected the views of the Special Rapporteur.

23. Mr. MAHIOU said he agreed with that comment. He was among those who had argued that the Special Rapporteur had lost the benefit of the Drafting Committee's views on the 10 articles, which would be particularly helpful in regard to the basic concepts of the topic.

24. Mr. BARBOZA (Special Rapporteur) said that it was not his intention to blame the Drafting Committee, which had worked hard during the session, but simply to reflect the opinions voiced by members. He suggested that the second sentence could be reworded to read: "Some members felt that future consideration by the Drafting Committee of the 10 articles referred to it by the Commission would provide a firm basis for further development of the topic."

25. Mr. BEESLEY said that paragraph 10 dealt with the past and the present, not with the future. He would prefer to leave the paragraph unaltered.

26. Mr. DÍAZ GONZÁLEZ said that the second sentence could be omitted. It was not the Drafting Committee, but the Commission itself, which laid down the basic principles and concepts of a topic.

27. Mr. PAWLAK proposed that the third sentence should begin "That the Drafting Committee", and the phrase "due to the existence of other priorities" should be deleted.

28. Mr. BEESLEY said he was anxious to avoid any implied criticism of the Drafting Committee. He suggested that "Commission" should be substituted for "Special Rapporteur" in the third sentence.

29. Mr. CALERO RODRIGUES said he was reluctant to tamper with statements which accurately reflected the views of members. Amendments should be made to the report only where the text was unclear, or failed to reflect what had actually been said.

30. Mr. MAHIOU suggested that the words "They pointed out that . . ." should be added at the beginning of the third sentence.

*It was so agreed.*

31. The CHAIRMAN, replying to Mr. Calero Rodrigues, said there could be no question of the Commission practising censorship. He proposed deletion of the

phrase "due to the existence of other priorities". The remainder of the paragraph would stand.

*It was so agreed.*

*Paragraph 10, as amended, was adopted.*

Paragraph 11

32. Mr. BARSEGOV said that he had noted the statement, in the fourth sentence, that "one member" had expressed the view that there were no precise or general rules at present concerning liability and reparation for transboundary harm in the circumstances indicated. He was not the member mentioned, but he did share that view, as did other members. The sentence should therefore begin with the words: "In that context, some members . . .".

*It was so agreed.*

*Paragraph 11, as amended, was adopted.*

Paragraph 12

33. Mr. ARANGIO-RUIZ said that the third sentence of the paragraph stood in need of correction, for it referred to the existence of "a wide variety of relevant precedents to be found in both conventional and customary law". From the legal and technical point of view, it was not appropriate to speak of "precedents" in customary law.

34. Mr. BEESLEY said that he was one of the members that had expressed the view reflected in the third sentence. Perhaps the problem could be solved by introducing a reference to "jurisprudence".

35. Mr. ARANGIO-RUIZ said that, unquestionably, in the matter of liability there were not only instruments but also some customary rules and principles. The subject had evolved considerably since 1959 when, like others, he used to express the view that fault was the only basis for the liability of the State for nuclear damage.

36. Mr. DÍAZ GONZÁLEZ said that, since the sentence in question expressed the view of only one member, it was necessary to obtain that member's views before altering the wording.

37. Mr. ARANGIO-RUIZ suggested that the sentence should be reworded so as to state that "there were a wide variety of relevant norms to be found not only in jurisprudence and conventional law, but also in customary law".

*It was so agreed.*

38. Mr. BENNOUNA, supported by Mr. BEESLEY, said that, since the word "precedents", the main source of difficulty in the third sentence, appeared in two other places as well, a number of changes should be made consequential to the replacement of the words "relevant precedents", in the third sentence, by "relevant norms". The words "useful precedents for the topic", in the fourth sentence, should be replaced by such wording as "relevant to the topic", and the phrase "on the basis of earlier precedents in both treaty and customary law", in

the last sentence, by wording along the lines of “on the basis of both treaty and customary law”.

*It was so agreed.*

*Paragraph 12, as amended, was adopted.*

Paragraph 13

*Paragraph 13 was adopted.*

Paragraph 14

39. Mr. BARSEGOV proposed that the words “The leitmotiv was”, at the beginning of the second sentence, should be deleted.

*It was so agreed.*

*Paragraph 14, as amended, was adopted.*

Paragraph 15

*Paragraph 15 was adopted.*

Paragraph 16

40. Mr. PAWLAK objected to the impersonal form of the opening words; he said the studies in question contained very important information and it would be appropriate to identify the source.

41. Mr. BARBOZA (Special Rapporteur) suggested that the words “Reference was made” should be replaced by: “One member referred”.

*Paragraph 16, as amended, was adopted.*

Paragraph 17

*Paragraph 17 was adopted.*

Paragraph 18

42. Mr. BARSEGOV said that the first sentence of the paragraph did not give a full account of the position regarding the approach of certain countries to the problems of ecology and pollution; it needed to be reworded.

43. Mr. BARBOZA (Special Rapporteur) explained that paragraph 18 reflected the views of only one member.

*Paragraph 18 was adopted.*

Paragraph 19

44. Mr. TOMUSCHAT suggested that the Special Rapporteur should reformulate the last sentence, which was difficult to understand.

45. Mr. BARBOZA (Special Rapporteur) said that the sentence was indeed cumbersome. He suggested that it should be left to him to redraft it, with the help of the secretariat.

*Paragraph 19 was adopted on that understanding.*

Paragraphs 19 bis and 19 ter

46. Mr. BARBOZA (Special Rapporteur) said members would have noted that, in each of the sections dealing with “specific issues”, the last paragraph set out conclusions. As he had not originally drafted such a paragraph for the “General issues” subsection he was proposing the inclusion of two new paragraphs, 19 bis and 19 ter, to read:

“19 bis. The Special Rapporteur concurred with the view expressed in the Commission to the effect that the Commission had reached a broad consensus on important areas of the topic on which he would comment later and which formed a suitable basis for further work on the topic. With regard to the Commission’s future work, he felt that there had been a consensus that the topic should be given high priority in the next quinquennium and that the Drafting Committee should begin at the next session with the examination of the first 10 articles referred to it in 1988.

“19 ter. The Special Rapporteur wholeheartedly agreed that the special situation of the developing countries should be borne in mind throughout the development of the topic. Finally, he concurred with the opinion expressed in the Commission that in the last 20 years during which environmental law had flourished many rules had been formulated more for specific activities but few rules had been developed in general terms. Similarly, little had been done in the area of liability, apart from the exhortation to States contained in Stockholm Principle 22. He felt strongly that certain general principles should be formulated, because no legal system could afford to leave a gap that would reveal a lack of solidarity as to cast doubts on the very existence of an international community.”

47. The wording of those paragraphs had been taken from the summary record of the Commission’s 2228th meeting, and his own statement summing up the discussion.

48. Mr. EIRIKSSON supported by Mr. BEESLEY, said that the last phrase of paragraph 19 bis, “the first 10 articles referred to it in 1988” should be corrected, since further articles were referred to the Drafting Committee in 1989.

49. Mr. BARBOZA (Special Rapporteur) suggested that the words in question should be simplified to read: “the articles referred to it”.

*Paragraph 19 bis, as amended, was adopted.*

50. Mr. EIRIKSSON proposed that the words “to develop rules” should be inserted in the third sentence of paragraph 19 ter, after “little had been done”. Moreover, the sentence should refer not only to Stockholm Principle 22 but also to Principle 21.

51. Mr. BEESLEY said that, as the Special Rapporteur and many members of the Commission had frequently cited Stockholm Principle 21, he agreed that a reference to that Principle would be appropriate.

52. The CHAIRMAN, speaking as a member of the Commission, said that, in view of the fact that liability

obligations had been established in a number of conventions, he had some doubts about the affirmation in the third sentence that "little had been done in the area of liability".

53. Mr. BARBOZA (Special Rapporteur) said that he endorsed the proposal by Mr. Eiriksson. Admittedly, there were many legal instruments which contained references to general principles on liability. However, there was no general instrument which expressly formulated those general principles.

54. Mr. PAWLAK said that the words "no legal system", in the last sentence, should be replaced by "the international legal system could not", so as to clarify the meaning of the sentence.

55. Mr. CALERO RODRIGUES said that he endorsed Mr. Pawlak's suggestion and proposed that the word "more" should be deleted from the second sentence. In addition, the words "to develop general rules" should be inserted in the third sentence, after "little had been done", in line with Mr. Eiriksson's proposal and in order to express more precisely the Special Rapporteur's view on the matter.

*It was so agreed.*

*Paragraph 19 ter, as amended, was adopted.*

Paragraph 20

*Paragraph 20 was adopted.*

Paragraphs 21 and 22

56. Mr. AL-KHASAWNEH said that the other language versions mentioned in the penultimate sentence of the paragraph should be specified.

57. Mr. BARSEGOV said that during the general debate, he had stated that changing the title of the topic also involved changing its content. He would like his view reflected in the report.

*It was so agreed.*

58. Mr. BENNOUNA said that during the general debate, he had drawn attention to the fact that the title of the topic was difficult to understand for anyone who was not an expert in the matter; it was also too long and inaccurate. He therefore proposed adding the following as paragraph 22 bis: "Some members considered that the present title of the topic was long, complex and incorrect and that it should be simplified by an appropriate description of the liability involved."

59. Mr. GRAEFRATH pointed out that the last sentence in paragraph 21 reflected to a great extent the content of the proposed paragraph 22 bis.

60. The CHAIRMAN said that proposed paragraph 22 bis added one new element, namely, the notion that the title was incorrect. He wondered if Mr. Bennouna would consider using a different word.

61. Mr. BENNOUNA said that he would agree to have his views reflected at the end of paragraph 21. He therefore proposed that, in the last sentence of that paragraph,

the word "complex" should be inserted after "cumbersome" and that the words "the Commission would eventually have to simplify the whole title" should be replaced by "it should be simplified by a proper description of the responsibility concerned", since it was not only the Commission that would be involved in modifying the title.

62. Mr. ARANGIO-RUIZ said that more than a few members of the Commission were dissatisfied with the title of the topic; the last sentence of paragraph 21 should be amended accordingly and should also mention that some members found the title technically incorrect.

63. Mr. MAHIOU suggested that the final drafting changes could be worked out between Mr. Bennouna, Mr. Arangio-Ruiz and the secretariat.

64. Mr. BEESLEY said that, in the discussions on the topic of international liability, he had maintained for many years that the title should speak of "activities" rather than "acts". However, he had finally come to the conclusion that it was the "act" of pollution which gave rise to the transboundary harm and he therefore preferred the term "act".

65. Mr. CALERO RODRIGUES said that if the last sentence of paragraph 21 was amended as proposed, it would no longer reflect the views of other members. He therefore suggested that it should remain in its present form and that another sentence should be added to include Mr. Bennouna's proposal and the views of those who endorsed it.

66. Mr. BARBOZA (Special Rapporteur) said that, during the discussion on the topic, the main issue had been whether the word "acts" should remain in the title. Only a few members had expressed other concerns with regard to the title. Members' views did have a rightful place in the report as long as those views had been expressed in the general debate.

*Paragraphs 21 and 22, as amended, were adopted.*

Paragraphs 23 to 25

*Paragraphs 23 to 25 were adopted.*

Paragraph 26

67. Mr. TOMUSCHAT proposed that the word "had" should be inserted after the words "for one reason or another", at the end of the first sentence.

*It was so agreed.*

*Paragraph 26, as amended, was adopted.*

Paragraph 27

68. Mr. CALERO RODRIGUES proposed that, in the second sentence, the second "of" should be replaced by "or".

*It was so agreed.*

*Paragraph 27, as amended, was adopted.*

Paragraphs 28 and 29

*Paragraphs 28 and 29 were adopted.*

## Paragraph 30

69. Mr. CALERO RODRIGUES said that the third sentence of the paragraph was confusing. First, he did not believe that *lex ferenda* could be “reflected” because the term referred to something that did not yet exist. Again, the third and fourth sentences seemed very similar. The legally binding draft articles referred to in the third sentence would be based on *lex ferenda*, namely, on new rules of international law. The following sentence, which spoke of creating rules and principles that would be new under present international law, also referred implicitly to *lex ferenda*. The two sentences needed improvement.

70. Mr. PELLET said he agreed that the text was not clear. To resolve the difficulty, he proposed that the end of the third sentence should be amended to read “. . . so as to reflect *lex lata*”. The words “at least *lex ferenda* under present international law” would thus be deleted.

71. Mr. ARANGIO-RUIZ said that he endorsed the comments by Mr. Calero Rodrigues and Mr. Pellet. He would also insert the word “are” after “if the draft articles”, in the third sentence.

72. Mr. BEESLEY said that in earlier discussions, he had addressed the issue of “soft” and “hard” law. In that connection, he had rejected the notion of primary and secondary obligation as lacking merit and had also attempted to demonstrate how difficult it was to distinguish between so-called soft law and so-called hard law. He would like those views to be reflected in the Commission’s report, otherwise they should be reflected in the summary record.

73. Mr. GRAEFRATH proposed the following amendments to paragraph 30: the words “the code”, in the fourth sentence, should be replaced by “a code”; the words “so as to reflect if not *lex lata* at least *lex ferenda* under present international law”, in the third sentence, should be replaced by “so as to be acceptable to most States”; and the words “even create rules and principles”, in the fourth sentence, should be replaced by “go much further in creating rules and principles”.

74. Mr. ARANGIO-RUIZ said that the word “creating” was not appropriate in the context of recommendations. Mr. Graefrath’s proposed amendment could perhaps be adjusted to avoid any contradiction.

75. Mr. BARBOZA (Special Rapporteur) said that Mr. Graefrath’s proposed amendment was acceptable, though he would prefer to retain the reference to *lex lata* since the intent was that the final instrument should be drafted to reflect that law. Also, to meet Mr. Arangio-Ruiz’s point, he would suggest that the word “creating” should be replaced by “drafting”.

76. Mr. CALERO RODRIGUES said that the two ideas could perhaps be combined by replacing the words “so as to reflect if not *lex lata* at least *lex ferenda* under present international law” by “so as to reflect *lex lata* and to be acceptable to most States”.

77. Mr. AL-KHASAWNEH said that he found no reflection in the report of the reservations he had expressed about a framework convention approach nor of the questions he had put to the Special Rapporteur in that con-

nection. He could suggest a suitable form of wording in that respect, or alternatively, he would be satisfied with an assurance that his point would be covered.

78. The CHAIRMAN said that the third and fourth sentences of the paragraph as amended by Mr. Graefrath, and further amended by Mr. Barboza (Special Rapporteur) and Mr. Calero Rodrigues, would read: “If the draft articles are intended to be legally binding, at least the core part of that instrument would have to be drafted so as to reflect *lex lata* and to be acceptable to most States. If, on the contrary, it was to be recommendatory, or in the nature of a code of conduct, it was possible to go much further in drafting rules and principles which would be new under present international law.”

79. If he heard no objection, he would take it that the Commission agreed to adopt paragraph 30 with those changes, on the understanding that Mr. Beesley and Mr. Al-Khasawneh would provide the secretariat with a form of wording to cover the points they had raised.

*Paragraph 30, as amended, was adopted on that understanding.*

## Paragraphs 31 to 36

*Paragraphs 31 to 36 were adopted.*

## Paragraph 37

80. Mr. CALERO RODRIGUES said that the paragraph reflected in part the views he had expressed during the debate on the topic. He was certain, however, that he had not made the statement contained in the second sentence and therefore proposed that it should be deleted.

*It was so agreed.*

*Paragraph 37, as amended, was adopted.*

## Paragraph 38

81. Mr. BARSEGOV proposed that, to reflect his point of view on the role of harm, the following sentence should be added at the end of the paragraph: “While not denying the link between harm actually caused as a result of a lawful activity and the resultant liability, one member pointed out that if harm alone is taken as the ground for liability this may infringe upon the topic of responsibility for unlawful acts, since the harm may be the result of both lawful and unlawful conduct.”

*It was so agreed.*

*Paragraph 38, as amended, was adopted.*

## Paragraph 39

*Paragraph 39 was adopted.*

## Paragraph 40

82. Following a point raised by Mr. PAWLAK, Mr. BARBOZA (Special Rapporteur) suggested that the words “a recommendatory character” should be replaced by “an indicative character”.

*Paragraph 40, as amended, was adopted.*

Paragraphs 41 to 58

*Paragraphs 41 to 58 were adopted.*

Paragraph 59

83. Mr. TOMUSCHAT proposed that, in the first sentence, the words "under their jurisdiction" should be added after the word "individuals" and that, in the second sentence, the words "or under their close control" should be added after "carried out by States".

84. Mr. MAHIOU, supporting that proposal, said that it would suffice to say "under their control" rather than "under their close control".

85. Mr. AL-KHASAWNEH said that, once again, the paragraph did not reflect the views he had expressed on the matter, when he had stressed that compensation did not have to be pecuniary. To save time, however, he would simply request the secretariat to ensure that his point was covered.

86. Mr. ARANGIO-RUIZ said that he too found no reflection of the remarks he had made during the discussion. In particular, he had pointed out, with reference to article 2050 of the Italian Civil Code, which was similar to many provisions contained in other legal systems, that in the case of dangerous activities a rule of international law should either be recognized as already existing or should be created. Again, nothing reflected his remarks at the 2227th meeting with respect to nuclear activities and the responsibility of States. It was not his intention at that stage to embark upon a drafting exercise but he would like his point to be recorded.

87. Mr. TOMUSCHAT said that, in his view, any member wishing to have a particular point reflected in the report should submit a drafting proposal.

88. Mr. BARBOZA (Special Rapporteur) said that he had not thus far opposed any request by a member for his views to be included in the report. That did not mean, however, that each and every opinion had to be reflected. There were certain criteria by which the Commission's Rapporteur had to abide. It was not his task to reflect all the opinions expressed, particularly since they were in any event to be found in the summary records.

89. The CHAIRMAN said that, at the beginning of the next quinquennium, the Commission should perhaps draw up guidelines for the preparation of its reports.

90. Mr. CALERO RODRIGUES, agreeing with the Chairman, said that it was not for the Commission to try and improve on what had been said by members but only to ensure that the report was clear. If a member had expressed a certain opinion it should be reflected as such, irrespective of whether or not other members considered that the opinion was correct.

91. He fully agreed with the Special Rapporteur that it would be impossible to set out all the views of all the members, for that would merely be to repeat the content of the summary records. If a member wanted his views to receive special mention, however, then he should make a request to that effect.

92. Mr. BARSEGOV said that the views reflected in paragraph 59 were his. In that connection, he noted that the second and third sentences referred respectively to "primary liability" and "strict liability". He had, however, spoken of "absolute liability", which was the term used in the Convention on International Liability for Damage Caused by Space Objects.

93. Mr. BEESLEY said that he would try to formulate a sentence to reflect a comment he had made repeatedly, namely, that the purpose of many of the conventions cited was to limit the liability of operators. The point was so fundamental that it was essential to convey it in the report.

94. The CHAIRMAN said that due note had been taken of Mr. Barsegov's comment and, if he heard no objection, he would take it that the Commission also agreed to adopt the proposal made by Mr. Tomuschat, as amended by Mr. Mahiou.

*Paragraph 59, as thus amended, was adopted.*

*The meeting rose at 1.15 p.m.*

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## 2250th MEETING

*Thursday, 18 July 1991, at 3 p.m.*

*Chairman:* Mr. Abdul G. KOROMA

*Present:* Prince Ajibola, Mr. Al-Baharna, Mr. Al-Khasawneh, Mr. Arangio-Ruiz, Mr. Barboza, Mr. Barsegov, Mr. Beesley, Mr. Bennouna, Mr. Calero Rodrigues, Mr. Díaz González, Mr. Eiriksson, Mr. Graefrath, Mr. Jacovides, Mr. Mahiou, Mr. McCaffrey, Mr. Njenga, Mr. Ogiso, Mr. Pawlak, Mr. Pellet, Mr. Razafindralambo, Mr. Roucouas, Mr. Sepúlveda Gutiérrez, Mr. Shi, Mr. Solari Tudela, Mr. Thiam, Mr. Tomuschat.

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

CHAPTER V. *International liability for injurious consequences arising out of acts not prohibited by international law (concluded)* (A/CN.4/L.465)

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

Paragraphs 60 to 72

*Paragraphs 60 to 72 were adopted.*