Document:-
A/CN.4/SR.2275

Summary record of the 2275th meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
1992, vol. I

17. Mr. Sreenivasa RAO said that the topic under discussion required more careful thought and he reserved the right to come back at greater length to its various aspects. At present, however, he wanted to comment on the question of countermeasures, which was of particular importance in the context of the codification of the law of international responsibility.

18. Inequality between States was an undeniable fact. There was thus a great temptation for the minority of the richer and more powerful States to behave as though they had always been besieged by the vast majority of weaker States and to try to make their special interest prevail over the definition of norms and rules whose true purpose was to safeguard the general interest.

19. A look at the way in which countermeasures had been applied over hundreds, even thousands, of years, would reveal that they had often been a reflection of the law of the stronger party, which had imposed them on the weaker party without bothering to obtain its consent or voluntary participation in the process. In those circumstances, could such a practice—no matter how ancient it might be—be regarded as an acceptable basis for the codification and development of international law?

20. That basic issue had already been referred to in clear and courageous terms by Mr. Shi, who considered that the practice of countermeasures was still highly debatable and could certainly not be regarded as the basis of universally recognized rules of international law. Without perhaps being quite as categorical, he too wondered what might be the logical consequences of an attempt to codify the law on that basis.

21. Mr. Pellet had said that, if countermeasures could not be abolished, their use should be limited and regulated, but such "regulation" should also take proper account of the interests and viewpoints of all the States concerned, failing which the outcome would be yet more injustice. Mr. Bowett had said that a State which took countermeasures should, at the same time, make an offer of amicable settlement to the other party which, if accepted, would inevitably lead to the suspension of the countermeasures. That was an excellent idea in so far as the imposition of countermeasures did not place the party taking them in a position of strength in the negotiations, thereby enabling it to impose its law on the other party even if the "unlawful" nature of the facts or acts which had caused it to violate an obligation was not proved conclusively. Care must be taken not to transpose into the field of law the power relationships that could exist at the political level. Only if the more powerful States showed moderation and accepted certain sacrifices would it be possible to build up a system of rules of law that would provide everybody with equitable protection.

22. Mr. ARANGIO-RUIZ (Special Rapporteur), replying to points raised, said that the Sixth Committee and many members of the Commission had stressed the need to make progress on the topic of State responsibility if it was hoped to achieve some results before the end of the current quinquennium.

23. In his view, the remarks and suggestions put forward so far by his colleagues on his third and fourth reports represented, on the whole, a step in the right direction. The debate which had developed so far on draft articles 11 and 12 would certainly be helpful for the elaboration of an adequate legal regime of countermeasures. He looked forward to the further contributions members would make on those two draft articles and on draft articles 13, 14 and 5 *bis*, as well as on the problem he proposed to raise with regard to article 4 of part 2 as adopted on first reading. He hoped that the debate would concentrate on the merits of the best possible regulation of countermeasures, leaving aside, at least for the time being, the doubts raised as to the appropriateness of the Commission's effort to draft such a regulation. Whether one liked it or not, the structure of the inter-State system remained essentially inorganic. Consequently, as he had pointed out in a previous reply to Mr. Shi, reprisals were bound to remain for some time the most common and important means by which international law could be implemented whenever an international obligation was violated.

24. He was not sure that he had understood the point made by Mr. Pellet when he had expressed regret that he (the Special Rapporteur) had not developed his ideas further in the fourth report. In any event, his own view was that it was for the Commission as a whole now to explore the matter further.

25. Finally, he wished to state that while preparing his presentation on the draft articles proposed in document A/CN.4/444/Add.1, he had had second thoughts with regard to the wording of article 14 as it appeared in that document. He would therefore perhaps have to submit a third addendum, consisting of one page only, to document A/CN.4/444, in the interest of serving the Commission properly.

The meeting rose at 11.20 a.m.

2275th MEETING

Thursday, 18 June 1992, at 10.05 a.m.

Chairman: Mr. Christian TOMUSCHAT

Present: Mr. Al-Khasawneh, Mr. Arangio-Ruiz, Mr. Barboza, Mr. Bowett, Mr. Calero Rodrigues, Mr. de Saram, Mr. Eiriksson, Mr. Fomba, Mr. Güney, Mr. Jacovides, Mr. Kabatsi, Mr. Koroma, Mr. Kusuma-Atmadja, Mr. Mahiou, Mr. Mikulka, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Razafindralambo, Mr. Rosenstock, Mr. Shi, Mr. Szekely, Mr. Thiam, Mr. Vereshchetin, Mr. Villagran Kramer, Mr. Yamada, Mr. Yankov.

State responsibility (*continued*) (A/CN.4/440 and Add.1,[1] A/CN.4/444 and Add.1-3,[2] A/CN.4/L.469, sect. F, A/CN.4/L.472, A/CN.4/L.478 and Corr.1 and Add.1-3, ILC(XLIV)/Conf.Room Doc.1 and 4)

[Agenda item 2]

THIRD AND FOURTH REPORTS OF THE SPECIAL RAPPORTEUR (*continued*)

ARTICLE 5 *bis* and

ARTICLES 11 TO 14[3] (*continued*)

1. The CHAIRMAN invited the Special Rapporteur to resume his introduction of the remaining part of the fourth report (A/CN.4/444/Add.1-3) and the proposed draft articles contained therein, reading:

Article 13. Proportionality

Any measure taken by an injured State under articles 11 and 12 shall not be out of proportion to the gravity of the internationally wrongful act and of the effects thereof.

Article 14. Prohibited countermeasures

1. An injured State shall not resort, by way of countermeasure, to:

(*a*) the threat or use of force [in contravention of Article 2, paragraph 4, of the Charter of the United Nations];

(*b*) any conduct which:

(i) is not in conformity with the rules of international law on the protection of fundamental human rights;

(ii) is of serious prejudice to the normal operation of bilateral or multilateral diplomacy;

(iii) is contrary to a peremptory norm of general international law;

(iv) consists of a breach of an obligation towards any State other than the State which has committed the internationally wrongful act.

2. The prohibition set forth in paragraph 1 (*a*) includes not only armed force but also any extreme measures of political or economic coercion jeopardizing the territorial integrity or political independence of the State against which they are taken.

Article 5 **bis.**

Whenever there is more than one injured State, each one of them is entitled to exercise its legal rights under the rules set forth in the following articles.

2. Mr. ARANGIO-RUIZ (Special Rapporteur) said that draft article 13 (Proportionality) was expressly formulated in negative rather than positive terms, asserting that countermeasures must not be out of proportion to the gravity and the effects of the internationally wrongful act or its consequences. The article did not specify the extent to which countermeasures might be disproportionate or the particular way in which they might prove to be disproportionate.

3. In his revised version of draft article 14 (Prohibited countermeasures), the main issues fell into five categories: (*a*) the prohibition of the threat or use of force; (*b*) respect for human rights; (*c*) diplomatic law; (*d*) *jus cogens* and *erga omnes* obligations; and (*e*) respect for the rights of third States. Some might claim that it was unnecessary to formulate separate express provisions on prohibited countermeasures as was done in article 14. Nevertheless, there were two sound reasons for doing so. First, the responsibility relationship between the injured State and the offending State was a particular type of relationship in respect of which it was better to stress the continued validity and effective operation of certain general restrictions on the freedom of States. Secondly, it was precisely in those cases where the law was insufficiently explicit and exhaustive that States attempted to escape their obligations.

4. Paragraph 1 (*a*) of article 14 prohibited any countermeasure which was in contravention of Article 2, paragraph 4, of the Charter of the United Nations, namely, the prohibition of the threat or use of armed force, a prohibition that should also encompass any extreme measures of political or economic coercion which jeopardized the territorial integrity or political independence of the State against which they were taken. That point was made in paragraph 2 of the article. He was aware that the interpretation of the word "force", as used in Article 2, paragraph 4, of the Charter, was the subject of controversy. However, after lengthy consideration he had concluded that for all practical and theoretical purposes, prohibition of the use of extreme forms of economic or political pressure formed an integral part of the definition of force under that Article. That view was supported by international practice resulting, in part, from the development of the principle of non-intervention. Even if that opinion of his failed to find support, prohibition of such measures under article 14 would still be appropriate for the purpose of progressive development of the law, in support of the interests of the weaker and smaller States. By specifying that it was only the extreme forms of economic or political coercion that were prohibited, article 14 would serve to eliminate any possible doubts about ordinary economic or political sanctions which were surely legitimate and must remain available to injured States.

5. He also wished to dispel the doubts of those few members who had questioned the usefulness of the part of the fourth report which dealt with the relationship between the prohibition of armed force by way of countermeasure (or reprisal), on the one hand, and those attenuations of the general prohibition of armed force which a part of the doctrine seemed to envisage in the light of a certain State practice, on the other. He referred to the alleged "evolutionary" interpretations of Article 2, paragraph 4, of the Charter of the United Nations discussed in the fourth report. The purpose of that discussion was to make clear that whatever might be the merits of such interpretations, they did not concern—or affect—in the least the prohibition of resort to force by way of countermeasure (reprisal). Of course, that did not need to be stated in the draft article which set forth the prohibition. It had to be stressed in the report, however, for two reasons. First, it was necessary to call the attention of the

[1] Reproduced in *Yearbook ... 1991*, vol. II (Part One).

[2] Reproduced in *Yearbook ... 1992*, vol. II (Part One).

[3] For texts of proposed draft articles 11 and 12, see 2273rd meeting, para. 18; for 5 *bis*, 13 and 14, see para. 1 below.

members of the Commission to the necessity of avoiding any possible misunderstanding as to the strictness of the prohibition of forcible countermeasures (reprisals). Secondly, the matter would have to be dealt with in the commentary to draft article 14 (*a*). Hence the necessity to ensure that the point was covered in the report. It would hardly have been appropriate, in his opinion, to confine himself, as one member seemed to suggest, to taking note of the fact that armed reprisals were prohibited according to the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations[4] or other non-binding—albeit authoritative—instruments of a similar kind.

6. Three sub-subparagraphs under paragraph 1 (*b*) of article 14 covered a number of issues. Paragraph 1 (*b*) (i) provided that an injured State should not resort, by way of countermeasures, to any conduct which was not in conformity with the rules of international law on the protection of fundamental human rights. In that connection, he wondered whether fundamental human rights included the right to own private property. How far should it be protected or left unprotected? Paragraph 1 (*b*) (ii) prohibited countermeasures which would seriously prejudice the normal operation of bilateral or multilateral diplomacy. Paragraph 1 (*b*) (iii) prohibited countermeasures which were contrary to a peremptory norm of general international law, in which connection he would point out that *jus cogens* and *erga omnes* obligations were not the same thing. An international obligation could well be *erga omnes* without being a matter of peremptory law.

7. Developments in so-called self-contained regimes were relevant both to the draft articles on countermeasures and to those on the substantive consequences of internationally wrongful acts, a connection that had been clearly understood by the Drafting Committee. There was really no such thing as a regime which was so completely self-contained that it did not leave open the possibility of a "fall-back", in other words, of invoking the rules of general international law, either with regard to the substantive consequences of internationally wrongful acts or with regard to countermeasures. Thus, no special provisions were needed to cover problems stemming from self-contained regimes: correct interpretation and application of the general rules governing any substantive consequence or unilateral measure should be sufficient to solve such problems.

8. Article 2 of part 2[5] was questionable in regard to both customary rules and special rules governing treaties. The aim pursued by States in embodying in a treaty special rules to govern the consequences of a breach was not to exclude, in the relations between them, the mutual guarantees deriving from the normal operation of the general rules on State responsibility. On the contrary, the aim was to strengthen the normal, inorganic and not always satisfactory guarantees of general law by making them more dependable: but to do so without relinquishing the possibility of "falling back" on less developed, "general" guarantees. A presumption of total abandonment of the "general" guarantees, as contained in article 2, seemed thus to be doubly objectionable: it defeated the purpose of the establishment of special regimes by States by attributing unintended derogative effects to such regimes and, by making the general rules "residual", it defeated the very purpose of the codification and progressive development of the law of State responsibility.

9. Article 2, if retained, thus stood in need of revision. First, it should specify that the derogation from the general rules set forth in the draft articles derived from contractual instruments, and not from customary rules. Second, the article should indicate that, for a real derogation from the general rules to take effect, the parties to the instrument should not confine themselves to envisaging more or less exhaustively the consequences of the violation of the regime; they should expressly indicate that by entering into the treaty system, they were excluding the application of some or most of the general rules of international law on the consequences of internationally wrongful acts. Third, in the commentary to the article, it should be made clear that a derogation would not prevail in the case of a violation of the system that was of such gravity and magnitude as to justify—as a proportional measure against the law-breaking State—the suspension or termination of the treaty system as a whole.

10. Article 4 of part 2 called for more reflection, and it would be discussed in a further addendum to his fourth report. With regard to the opinions of Hans Kelsen on the relationship between the powers attributed to the Security Council under Chapters VI and VII of the Charter of the United Nations, it would take a great deal of evidence to convince him that those views of Kelsen's were incorrect or that, for the purposes of legal thinking, they should be set aside *ab initio*. An article by a German scholar, which had appeared in the *Festschrift* for Hermann Mosler,[6] had stated in effect that, since the binding resolutions of the Security Council did not refer to the substantive aspects of the dispute, the Court was, in that sense, not under an obligation to respect them, unless and in so far as the parties were bound by such resolutions. The implication was that the texts of resolutions adopted by the Security Council were not necessarily gospel, as far as international law was concerned.

11. As to the question of the so-called "indirectly" injured States, discussed in the report, such States generated a set of problems arising from two distinct possibilities. First, an internationally wrongful act might injure more than one State, possibly many or all States, especially where general or *erga plurimos* human rights violations were concerned. Second, the States affected might not be injured in the same way (qualitative differences) or in the same measure (quantitative differences).

[4] See 2265th meeting, footnote 5.

[5] For text, see *Yearbook . . . 1989*, vol. II (Part Two), pp. 81-82.

[6] Eckart Klein, "Paralleles Tätigwerden von Sicherheitsrat und Internationalem Gerichtshof bei friedensbedrohenden Streitigkeiten", *Völkerrecht als Rechtsordnung, Internationale Gerichtsbarkeit, Menschenrechte, Festschrift für Hermann Mosler*, R. Bernhardt and others, eds. (Berlin/Heidelberg/New York, Springer-Verlag, 1983), vol. 81, pp. 467 *et seq.*

The Drafting Committee would benefit from further observations on that question. The only purpose of the proposed new draft article 5 *bis* was to acknowledge expressly that all the injured States were directly—albeit differently—injured, so that each State derived its own substantive rights or *facultés* directly from the general rules in part 2. Admittedly, that gave rise to some problems, but those problems had nothing to do with the indirectness or directness of the injury. Any suggestions for more precise solutions in the relevant operative rules would be welcomed, and indeed were urgently needed by the Drafting Committee.

12. Mr. ROSENSTOCK said that, in his opening statement, the Special Rapporteur had said it was not essential to determine whether non-intervention was distinct from the provisions of Article 2, paragraph 4, of the Charter of the United Nations. However, paragraph 2 of article 14, as now formulated, appeared to prejudice the issue by encompassing the terms of that article of the Charter. Since the matter was so controversial, it was likely to produce interminable discussion and detract from the Commission's examination of acceptable provisions on countermeasures. That was a pity, because of the importance of arriving at a set of provisions on that subject. Another point concerned the existence or otherwise of non-treaty-based obligations *erga omnes* which were not part of *jus cogens*. Article 14 appeared to suggest that there were such obligations, but he would be grateful if the Special Rapporteur would give some specific examples.

13. Mr. ARANGIO-RUIZ (Special Rapporteur) said that he would reply to the second point raised by Mr. Rosenstock during his summing-up. As to the first question, he had to admit that the issue of non-intervention was frequently raised in one-sided terms. For historical reasons, connected with certain policies pursued by the major power in their hemisphere, Latin American States tended to believe that anyone who criticized the concept of intervention for its vagueness, as he did himself, had "sold out" to the United States of America. However, if the substance of intervention was defined—as he himself defined it—as inclusive of extreme forms of political or economic coercion, the other side was likely to be disappointed, and especially one member of the Commission. He believed, in any event, that certain extreme forms of economic and political coercion did fall within the Charter prohibition of force, regardless of whether they were labelled as non-permissible use of force or as non-permissible intervention. If, as some members seemed to believe, resort to those forms of coercion by way of reprisal was not prohibited *de lege lata*, it should, in his view, be prohibited by way of progressive development. It would, of course, be another matter in the case of those most serious internationally wrongful acts which were labelled as "crimes". Those were to be dealt with, whatever they were called, at a later stage.

Cooperation with other bodies

[Agenda item 8]

STATEMENT BY THE OBSERVER FOR THE ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE

14. The CHAIRMAN expressed a welcome to Mr. Njenga, who was attending the Commission's meeting in his capacity as Secretary-General of the Asian-African Legal Consultative Committee.

15. Mr. NJENGA (Observer for the Asian-African Legal Consultative Committee) said AALCC greatly valued its long-standing links with the Commission. As its Secretary-General, and a former member of the Commission, he was profoundly committed to consolidating the bonds between the two bodies, in the service of their mutual interests. Earlier in the year, the Commission's outgoing Chairman, Mr. Koroma, had attended the Committee's thirty-first session, at Islamabad. Those present had greatly appreciated the statement made by Mr. Koroma, in which he had mentioned the fruitful cooperation between the two bodies, emphasizing that the Committee's comments on topics on the Commission's agenda were always welcome.

16. It was universally acknowledged that the Commission dealt in meticulous detail with matters of vital importance to the international community. Three items on its agenda were of special interest to the Asian and African regions: the draft Code of Crimes against the Peace and Security of Mankind; international liability for injurious consequences arising out of acts not prohibited by international law; and the law of the non-navigational uses of international watercourses. The last of those topics was also on the work programme of the Committee, which welcomed, as a sound basis for the future convention, the draft articles adopted on first reading by the Commission.[7] With regard to the second of those topics, at its thirty-first session the Committee had reiterated that the environment was the common concern of all mankind. The Committee had asked him to request the Commission to take up, as a priority item, the subject of the "Legal aspects of the protection of the environment of areas not subject to national jurisdiction ('global commons')". The Special Rapporteur on international liability, Mr. Barboza, had taken up the issue of the "global commons", in his sixth report[8] and during the Commission's forty-third session several members had suggested that the question should be included in the long-term programme of work. It was an important matter, especially following the adoption of the Rio Declaration on Environment and Development[9] and the opening for signature of two framework conventions, on climate change and biological diversity, at UNCED. At the Conference, the Registrar of ICJ had made a statement on the role of the Court in that regard, a statement which he hoped the Commission would take into account when making its decision.

17. For the twenty-ninth session, the AALCC secretariat had prepared a paper on the Committee's role in

[7] At the forty-third session, see *Yearbook . . . 1991*, vol. II (Part Two), chap. III.

[8] *Yearbook . . . 1990*, vol. II (Part One), document A/CN.4/428 and Add.1, paras. 71-87.

[9] Document A/CONF.151/26, vol. I.

attaining the objectives of the United Nations Decade of International Law.[10] Subsequently, the Committee had commissioned an in-depth study on the same subject, setting out the Committee's view on all the objectives of the Decade, and had submitted it to the Legal Counsel of the United Nations. The secretariat had also forwarded to the Office of Legal Affairs a summary report on those activities of the Committee aimed at contributing to the achievement of the objectives set for the first two years of the Decade. The item would remain on the Committee's active agenda in years to come, with a view to its continuing to make a positive contribution to the tasks of the Decade.

18. The AALCC secretariat also intended to make an in-depth study on wider use of ICJ and the promotion of means and methods for the peaceful settlement of disputes between States, including resort to ICJ, as spelt out in General Assembly resolution 45/40, on the United Nations Decade of International Law. The Registrar of the Court had offered his full cooperation in that study, which would focus chiefly on the Court's enhanced role in matters relating to protection of the environment. In May 1991 the Secretary-General of the Permanent Court of Arbitration had convened at The Hague a working group of jurists, which had recommended that the Permanent Court of Arbitration should enter into cooperation agreements with other arbitration bodies, including the arbitration centres under the auspices of the Asian-African Legal Consultative Committee in Cairo, Kuala Lumpur and Lagos. The arbitration centres could offer their facilities to the Permanent Court of Arbitration if it was decided to hold proceedings outside The Hague. As a follow-up measure, the Committee's secretariat intended to approach the Secretary-General of the Permanent Court of Arbitration, as well as the Directors of the regional centres for arbitration, in order to initiate cooperation agreements along those lines.

19. The Committee also attached great importance to the law of the sea, and had made its own contribution to the work of the Third United Nations Conference on the Law of the Sea. At its thirty-first session, the Committee had considered a report on the work of the Preparatory Commission for the International Sea-Bed Authority and for the International Tribunal for the Law of the Sea. The AALCC secretariat had also urged member States which had not yet done so to ratify the 1982 United Nations Convention on the Law of the Sea. Ratification had now become even more urgent, since the Convention encompassed much of the work programme of Agenda 21 of UNCED. At the same session, the Committee had urged the International Law Commission to consider including in its programme of work an item entitled "Progressive development of the concept of preservation for peaceful purposes with regard to the high seas, the international sea-bed area and marine scientific research". He hoped the Commission would consider the possibility of including that item in its long-term programme of work.

20. A further area of the secretariat's work had been its active participation in the meetings of the UNCED Preparatory Committee, the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change, and the Intergovernmental Negotiating Committee for a Convention on Biological Diversity. AALCC had held a two-day special meeting at Islamabad on environment and development, resulting in a statement of general principles of international environmental law which had been circulated for UNCED (A/CONF.151/PC/WG.III/5). In March 1992, the Committee had signed a memorandum of understanding with UNEP, with a view to enhancing cooperation between the two bodies on environmental law. Pending the entry into force of the conventions on climate change and biodiversity, the Committee had arranged to hold two workshops with UNEP on national legislation in those fields.

21. The current work programme also included studies on the status and treatment of refugees; the deportation of Palestinians as a violation of international law, particularly the 1949 Geneva Conventions; the criteria for distinguishing between international terrorism and national liberation movements; the extradition of fugitive offenders; the debt burden of developing countries; the concept of a peace zone in international law; the Indian Ocean as a zone of peace; and the legal framework for industrial joint ventures and international trade law matters. Those items would be discussed at the thirty-second session, to be held at Kampala from 1 to 6 February 1993. In view of the importance to economic development of the harmonization of legal regimes on international trade, the Committee had established a data collection unit at its headquarters in New Delhi, to facilitate the sharing of relevant experience among its member States. When the unit had acquired sufficient expertise in collecting and analysing the data, the intention was to set up an autonomous centre for research and development of legal regimes applicable to economic activities in developing countries. Having acquired the necessary hardware, the unit was now preparing the software, and was approaching member States and the appropriate international organizations for assistance in furnishing data.

22. Lastly, on behalf of the Committee, he invited the Chairman of the Commission to attend the Committee's thirty-second session, at Kampala, where he was assured of a warm welcome.

23. The CHAIRMAN thanked Mr. Njenga for his instructive and lucid account of the work of AALCC. He said that the Commission would certainly give due attention to the Committee's proposals for the inclusion of new items on its agenda. Lastly, he wished to express his personal pleasure at Mr. Njenga's presence at the meeting.

24. Mr. BARBOZA, speaking on behalf of members from Latin American States, extended a warm welcome to Mr. Njenga, who, as a former member of the Commission, was in a position to make a particularly useful contribution to its work. On a more personal note, he recalled the interest he shared with Mr. Njenga in the environment, for they had worked together at many important international meetings on that subject. The members of the Commission followed very closely the activities of the Committee, considering in particular their

[10] See 2255th meeting, footnote 5.

common interest in strengthening the rule of law in international relations.

25. Mr. RAZAFINDRALAMBO, speaking on behalf of members from African States, thanked Mr. Njenga for an extremely clear and full account of the activities of the Committee, whose very broad-ranging programme of work covered subjects of the utmost importance to the international community, and especially the developing countries, which included many African States. Since Mr. Njenga had been elected Secretary-General of AALCC the cooperation between the Committee and the Commission had gone from strength to strength and it was gratifying that it had taken place under the leadership of an African jurist. Unquestionably, development of the Committee's activities would help to enhance cooperation with the Commission.

26. Mr. Sreenivasa RAO, speaking on behalf of members from the Asian Group of States, said he had great pleasure in welcoming in Mr. Njenga, a leader among jurists from the developing world. His report on the Committee's work drew attention to important activities of great interest to the legal community in Asia and Africa, for which the Committee's annual session was an indispensable forum enabling it to project its common interest throughout the world and to participate effectively in the development and codification of international law by negotiating important regimes at conferences held under United Nations auspices. Hence, it was no surprise that the Committee should have made an outstanding contribution to the development of the law of treaties, the law of the sea and other areas of international law. Mr. Njenga's valuable experience as a former member of the Commission, as a negotiator in the international field and as a mentor and friend to lawyers in Asia and Africa in his capacity of Secretary-General of the Committee made for a new era in cooperation with the Commission. In conclusion, he could not fail to pay tribute to the enormous work on the development of international law being done by the Committee with limited facilities, financial constraints and the disadvantaged situation of its members.

27. Mr. EIRIKSSON, speaking on behalf of members from the Group of Western European and Other States, said that he associated himself with the welcome extended to Mr. Njenga and with the expressions of appreciation for his presentation. He himself had most pleasant memories of working with Mr. Njenga in the United Nations, particularly as a colleague on the Commission and also at the Third United Nations Conference on the Law of the Sea. In that regard, he noted with satisfaction the Committee's continued interest in the law of the sea. The Commission had every reason to be grateful to the Committee for its loyalty to the Commission's work. That loyalty had been shown once again by the concrete suggestions made for the Commission's future work, suggestions which would be taken very seriously.

28. Whenever possible, his colleagues of the legal departments of the Nordic States attended the Committee's meetings and invariably benefited from doing so.

29. Mr. VERESHCHETIN, speaking on behalf of members from Eastern European States, expressed warm appreciation to Mr. Njenga for his interesting presentation of the activities of AALCC. His valuable report was of great importance to the Commission, which did not operate in isolation for its work was of direct interest to experts in international law in the various parts of the world. His own country, the Russian Federation, was in both Europe and Asia, so that Russian international jurists like himself were particularly interested in the Committee. Yet another reason was the emergence of several new Asian States, formerly part of the Union of Soviet Socialist Republics. Those new countries would be very interested in the Committee's activities, because they did not as yet have many international lawyers; contact with the Committee would hence be of great value to them. It was his hope that the excellent cooperation between the Commission and the Committee would grow even stronger.

The meeting rose at 11.40 a.m.

2276th MEETING

Friday, 19 June 1992, at 10.05 a.m.

Chairman: Mr. Christian TOMUSCHAT

Present: Mr. Al-Khasawneh, Mr. Arangio-Ruiz, Mr. Barboza, Mr. Bennouna, Mr. Bowett, Mr. Calero Rodrigues, Mr. Crawford, Mr. de Saram, Mr. Eiriksson, Mr. Fomba, Mr. Güney, Mr. Idris, Mr. Jacovides, Mr. Kabatsi, Mr. Koroma, Mr. Kusuma-Atmadja, Mr. Mahiou, Mr. Mikulka, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Razafindralambo, Mr. Rosenstock, Mr. Shi, Mr. Szekely, Mr. Thiam, Mr. Vargas Carreño, Mr. Vereshchetin, Mr. Villagran Kramer, Mr. Yamada, Mr. Yankov.

State responsibility (*continued*) (A/CN.4/440 and Add.1,[1] A/CN.4/444 and Add.1-3,[2] A/CN.4/L.469, sect. F, A/CN.4/L.472, A/CN.4/L.478 and Corr.1 and Add.1-3, ILC(XLIV)/Conf.Room Doc.1 and 4)

[Agenda item 2]

THIRD AND FOURTH REPORTS OF THE SPECIAL RAPPORTEUR (*continued*)

ARTICLE 5 *bis and*

ARTICLES 11 TO 14[3] (*continued*)

1. Mr. PELLET said that he would comment on the whole of the fourth report (A/CN.4/444 and Add.1-3),

[1] Reproduced in *Yearbook ... 1991*, vol. II (Part One).

[2] Reproduced in *Yearbook ... 1992*, vol. II (Part One).

[3] For texts of proposed draft articles 11 and 12, see 2273rd meeting, para. 18; for 5 *bis*, 13 and 14, see 2275th meeting, para. 1.