

Document:-
A/CN.4/SR.2289

Summary record of the 2289th meeting

Topic:
<multiple topics>

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

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95. Mr. SHI said it would be very dangerous to submit to the General Assembly the text of the draft articles in any form. If the representatives in the Sixth Committee began to comment on them, it would tie the hands of the Commission. Members should at all times retain their freedom of thought.

96. Mr. KOROMA and Mr. MAHIU said they supported the suggestion for the setting up of a small working group.

97. Mr. CRAWFORD said that he fully shared Mr. Mikulka's view. If Mr. Mikulka's proposal was not accepted, he could agree to a small working group being set up.

98. Mr. EIRIKSSON said he had been convinced by Mr. Shi's argument. In a spirit of compromise, however, he would agree to Mr. Mikulka's solution.

99. Mr. PAMBOU-TCHIVOUNDA said that there was no reason to fear the General Assembly's judgement unduly. The Commission's reports varied from one year to the next and were not always very long. That was no reflection on the seriousness of its work. While it was necessary to avoid inserting the actual text of the draft articles in the Commission's report, a summary of the statement by the Chairman of the Drafting Committee could none the less be included.

100. The CHAIRMAN said that, if he heard no objection, he would take it that the Commission agreed to set up a small working group, consisting of interested members, to examine the question of the place to be given in the Commission's report to draft articles 6 to 10 *bis* on State responsibility and to the statement by the Chairman of the Drafting Committee.

It was so agreed.

The meeting rose at 1.15 p.m.

2289th MEETING

Monday, 20 July 1992, at 4.10 p.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. Jacovides, Mr. Koroma, Mr. Mahiou, Mr. Mikulka, Mr. Pambou-Tchivounda, Mr. Razafindralambo, Mr. Rosenstock, Mr. Shi, Mr. Szekely, Mr. Thiam, Mr. Vereshchetin, Mr. Villagran Kramer.

State responsibility (concluded) (A/CN.4/440 and Add.1¹, 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]

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE
(concluded)

1. The CHAIRMAN said that the informal working group set up at the previous meeting had arrived at a compromise formula that in place of paragraphs 15 and 16 of chapter III of the Commission's draft report, concerning State responsibility (A/CN.4/L.478), a new subsection would be inserted before subsection 2 to be entitled "The draft articles contained in the preliminary and second reports of the Special Rapporteur", followed by paragraphs 15 and 16, revised to read:

"15. At its 2288th meeting, the Commission heard the presentation by the Chairman of the Drafting Committee of a report of the Committee (A/CN.4/L.472) concerning its work on the draft articles on State responsibility which were contained in the preliminary and second reports of the Special Rapporteur and which had been referred to it at the forty-first and forty-second sessions of the Commission. The Drafting Committee devoted 25 meetings to the consideration of those draft articles and succeeded in completing its work on them. It adopted on first reading a new paragraph 2 to be included in article 1, as well as articles 6 (Cessation), 6 *bis* (Reparation), 7 (Restitution in kind), 8 (Compensation), 10 (Satisfaction) and 10 *bis* (Assurances and guarantees of non-repetition).

"16. In line with its policy of not adopting articles not accompanied by commentaries, the Commission agreed to defer action on the proposed draft articles to its next session. At that time it will have before it the material required to enable it to take a decision on the proposed draft articles."

2. It was understood that the part of the summary record of the 2288th meeting containing both the draft articles adopted by the Drafting Committee and the introductory statement by the Chairman of the Drafting Committee would be attached to the statement which he, as Chairman of the Commission, would deliver to the Sixth Committee in presenting the Commission's report.

3. Mr. de SARAM asked whether the draft articles on State responsibility were being described as provisionally adopted.

4. The CHAIRMAN replied that, since the Commission had not adopted the articles, they would certainly not be described as provisionally adopted.

5. Mr. VERESHCHETIN said that he accepted the proposals of the informal working group, with one ex-

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

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

ception. He would have no objection to attaching the statement by the Chairman of the Drafting Committee or the draft articles on State responsibility, but he could not agree to attaching the record of the largely procedural discussion at the previous meeting and bringing it to the attention of the General Assembly.

6. The CHAIRMAN said that not all, but only the relevant part, of the summary record of the previous meeting would be attached to his introductory statement to the Sixth Committee. The part in question would cover only the draft articles completed by the Drafting Committee and the statement made at the 2288th meeting by the Chairman of the Drafting Committee. The remainder of the summary record was not relevant for the General Assembly.

7. Mr. VILLAGRAN KRAMER said that the solution worked out by the informal working group was fairly satisfactory, although it did not meet all his expectations. Admittedly, some common ground had to be found. If he had understood matters correctly, the Chairman's introductory statement to the Sixth Committee would be circulated with two attachments: the statement made by the Chairman of the Drafting Committee at the 2288th meeting and the text of the draft articles on State responsibility.

8. The CHAIRMAN said that Mr. Villagran Kramer's understanding was correct.

9. Mr. ROSENSTOCK said he objected to attaching even a part of a summary record to the Chairman's introductory statement to the Sixth Committee. It was undesirable to establish a hierarchy among summary records, thereby seeming to suggest that the Commission attached more importance to one summary record than to another, or to one part of a summary record rather than to the rest. He hoped that everyone would be satisfied with the detailed account to be given by the Chairman to the Sixth Committee without the need to provide the summary record, even in part.

10. The CHAIRMAN pointed out that attaching part of the relevant summary record constituted part of the compromise reached by the informal working group.

11. Mr. MAHIOU said he agreed with Mr. Rosenstock that it was undesirable to attach the summary record. He had no objection, however, to attaching the statement by the Chairman of the Drafting Committee.

12. Mr. GÜNEY said he strongly supported the remarks by Mr. Rosenstock and Mr. Mahiou. It was most undesirable to create a precedent by providing a summary record, as suggested.

13. Mr. BENNOUNA observed that the objections concerned the form, not the substance, of the attachments. There was agreement about attaching the statement of the Chairman of the Drafting Committee and the draft articles, but several members objected to them being presented as part of a summary record. The two attachments could be included but without mentioning the fact that they were taken from a summary record.

14. Mr. SHI said that the statement of the Chairman of the Drafting Committee and the draft articles should not be circulated at the time of the Chairman's introductory statement to the Sixth Committee. Otherwise, members of the Sixth Committee would be inclined to comment on the draft articles. They should be circulated later on, when the Sixth Committee took up the topic of State responsibility; at that time, there would be less chance of any comments being made on the articles.

15. Mr. VERESHCHETIN said that he could accept as a compromise the formula proposed, but felt that the decision was not a very good one. It could have the opposite result to the one desired. Presenting the draft articles and the statement of the Chairman of the Drafting Committee in the form of attachments would draw the attention of the Sixth Committee to the attachments, all the more since they would be the only documents annexed in that way.

16. Mr. CALERO RODRIGUES said that the draft articles and the statement by the Chairman of the Drafting Committee would be circulated purely for the information of the General Assembly and should not be understood as a request for comments. He preferred making use of the relevant part of the summary record. Such a presentation would have the advantage of not placing too much importance on the document distributed. It was also more practical and more economical to circulate an extract from the summary record, which was an existing document.

17. The CHAIRMAN pointed out that the summary record existed in all official languages. Would his introductory statement to the Sixth Committee also be circulated in all official languages?

18. Mr. KOTLIAR (Secretary to the Commission) said that the introductory statement of the Commission's Chairman was usually made available to members of the Sixth Committee in the original language only, English in the present instance. The annex would also be in English. The secretariat could try to obtain translations, but that would be a departure from the usual practice.

19. Mr. GÜNEY pointed out that the summary record had only limited distribution and was intended for participants only. It would be creating an undesirable precedent to give it any wider circulation.

20. Mr. MAHIOU said that he could accept, although somewhat reluctantly, the idea of the two attachments being presented without any indication that they were taken from the summary record.

21. Mr. VILLAGRAN KRAMER said that the draft articles completed by the Drafting Committee were of the utmost importance to jurists in third world countries. They afforded an indication of what was being done on the topic of State responsibility in the Commission. The draft articles in question were the first product reflecting a possible understanding with the countries of the industrialized world and were therefore something of great value. They would not create any major difficulties for the representatives in the Sixth Committee; problems

would arise at a later stage, when draft articles on countermeasures came before the Committee.

22. Mr. KOROMA said that the report to the Sixth Committee was the report of the Chairman of the Commission, not of the Chairman of the Drafting Committee. It was the Chairman of the Commission who would be giving a detailed account of the Commission's work, in the course of which he would refer to the work of the Drafting Committee.

23. The CHAIRMAN said that he would indeed give a full report to the Sixth Committee on the work of the Commission. Nevertheless, it was part of the compromise reached by the informal working group that the draft articles on State responsibility and the statement by the Chairman of the Drafting Committee should be made available to members of the Sixth Committee.

24. Mr. GÜNEY said that it was essential to say what happened in the Commission itself, not in informal groups. He once again urged the Commission not to create undesirable precedents.

25. Mr. EIRIKSSON said he supported the compromise formula reached by the informal working group.

26. Mr. CALERO RODRIGUES noted that there was no disagreement as to the substance of the two attachments. Some members objected only to their presentation in the form of extracts from the relevant summary record.

27. The CHAIRMAN said that he would suspend the meeting to allow for further informal consultations.

The meeting was suspended at 4.40 p.m. and resumed at 4.55 p.m.

28. The CHAIRMAN announced that, as a result of the informal consultations, a compromise was now proposed. He, as Chairman of the Commission, would make an introductory statement to the Sixth Committee describing the work of the Commission on State responsibility. The description would consist essentially of the revised texts of paragraphs 15 and 16 of document A/CN.4/L.478 that he had read out at the beginning of the meeting. He would inform representatives that the relevant part of the summary record of the 2288th meeting was available in the meeting room. In that way, any representatives interested in the draft articles on State responsibility could obtain them and report to their Governments. Circulation of the articles would not be meant as an encouragement to discuss them at length, since they had not yet been approved by the Commission.

29. Mr. KOROMA said that he could accept that solution as a compromise, but wanted it placed on record that it did not create a precedent.

30. The CHAIRMAN assured Mr. Koroma that the case was an exceptional one, because of the particular interest of some members in the articles on State responsibility. If he heard no objection, he would take it the Commission agreed to adopt the proposed compromise.

It was so agreed.

**Programme, procedures and working methods
of the Commission, and its documentation
(A/CN.4/L.469, sect. G)**

[Agenda item 7]

REPORT OF THE PLANNING GROUP

31. The CHAIRMAN said the Enlarged Bureau's intention was that the report of the Planning Group on the programme, procedures and working methods of the Commission (A/CN.4/L.473/Rev.1) should for the most part be incorporated in the last chapter of the Commission's report to the General Assembly. For that purpose, it would require some editing changes, in particular the replacement of the words "the Planning Group" by "the Commission". However, several points remained to be clarified. First, the Enlarged Bureau was of the opinion that neither paragraph 16 nor the schedule of work annexed to the report of the Planning Group should be reproduced in the Commission's report. In view of the tentative nature of the arrangements described in the schedule, which might have to be altered in the light of subsequent events, it would be undesirable to adopt a rigid timetable.

32. Mr. EIRIKSSON observed that, in the previous quinquennium, the Commission had found it very useful to have a timetable for its work. He was not sure, however, whether such a timetable had ever been included in the Commission's report.

33. Mr. CALERO RODRIGUES (Chairman of the Planning Group) said the Planning Group intended that the schedule for the quinquennium should be for the internal use of the Commission, and should not be included in its report to the General Assembly. Indicative targets for the Commission's future work on certain topics were already set out in paragraph 15 of the Planning Group's report.

34. Mr. SZEKELY said that it would be better to retain paragraph 16, together with the schedule for the quinquennium. There was a clear advantage in knowing what the Commission's goals were and when it intended to reach them. Moreover, the schedule would help the Commission to keep to those goals. If paragraph 16 and the schedule had to be omitted, paragraph 15 should be redrafted to explain the Commission's timetable in greater detail.

35. Mr. VILLAGRAN KRAMER said that the schedule of work was merely a proposal, not a formal commitment. He agreed with Mr. Szekely that there were advantages in retaining it, while emphasizing its tentative character. It showed which topics the Commission regarded as most urgent. Moreover, for the countries of Central America, which maintained close mutual relations, it was useful to know the order in which the Commission intended to proceed with the topics on its agenda.

36. Mr. EIRIKSSON recalled that, in the first year of the previous quinquennium, the Commission had adopted a paragraph similar to paragraph 15 of the present report, together with a schedule of work for each year of the quinquennium.

37. Mr. SZEKELY emphasized the value of knowing the direction in which the Commission was heading, and what results were expected of it. Of course, the schedule was merely tentative, but he thought it was a very positive feature.
38. Mr. MAHIOU said he was unwilling to include in the report details about the Commission's internal functioning. It was better for such details to remain unofficial, especially since there was no guarantee that the Commission would achieve its targets according to a set timetable.
39. Mr. EIRIKSSON said it would be helpful to include part of paragraph 16 in the Commission's report, to show that the Planning Group had worked hard to draw up the Commission's future programme of work. Attention should be drawn to the tentative nature of the schedule, and the fact that it would change year by year. He suggested omitting the table which appeared in the Group's report and amending the last sentence of paragraph 16 accordingly.
40. Mr. JACOVIDES said that Mr. Eiriksson's proposal was a compromise solution and would respond to the wishes of certain members without tying the hands of the Commission.
41. Mr. SZEKELY said some matters were certainly the internal business of the Commission, but he failed to see the need for what might be termed "privacy" regarding the tentative schedule of work. Indeed, withholding such information from the General Assembly could imply that the Commission was really not committed to its mandate. In a spirit of accommodation, he would endorse Mr. Eiriksson's proposal to redraft paragraph 16. Furthermore, paragraph 15 should be expanded to include all the topics in the Commission's current programme of work.
42. Mr. ROSENSTOCK said that he had no objection to transparency, but the Commission should think twice about overturning a decision that had already been approved by two committees. In his view, paragraph 15 was adequate. Paragraph 16 and the schedule of work should remain the internal business of the Commission. However, he would not oppose a compromise solution.
43. Mr. CALERO RODRIGUES (Chairman of the Planning Group) said that he endorsed the proposal by Mr. Eiriksson. Furthermore, he did not see how paragraph 15 could be expanded.
44. Mr. KOROMA said that he wished to associate himself with the views of Mr. Calero Rodrigues and Mr. Rosenstock.
45. Mr. SZEKELY said that a formulation should be added to paragraph 15 to the effect that the Commission had in principle accepted the Planning Group's recommendations.
46. The CHAIRMAN said that, if he heard no objection, he would take it that the members agreed to redraft paragraph 16 along the lines suggested by Mr. Eiriksson and to exclude the tentative schedule of work from the Commission's report to the General Assembly.
47. The CHAIRMAN said that, after lengthy discussion, the Enlarged Bureau had concluded that paragraphs 20 to 23, contained in the section "Long-term programme of work", should not be included in the Commission's report, in order to avoid presenting the General Assembly with a list of topics which were still tentative.
48. Mr. JACOVIDES said that deleting paragraphs 20 to 23 would entail making corresponding amendments to other paragraphs in the Group's report. While the Commission might not wish to submit a list of specific topics at the present time, it certainly would not want to create the impression that it had not devoted much energy to its long-term programme of work. He proposed, therefore, that the list of topics should be included in a footnote to the Commission's report.
49. Mr. CALERO RODRIGUES, speaking as a member of the Commission, said he had initially agreed with Mr. Jacovides that it would be useful to present the list of tentative topics to the General Assembly. However, after further consideration, he thought it better to wait until the Commission had a more concrete idea of how it would deal with those topics. He proposed that the Commission should simply inform the General Assembly that it was examining the topics and that it would submit more complete material the following year. In short, while he did not object to the proposal by Mr. Jacovides, he would prefer to follow the recommendations of the Enlarged Bureau to exclude paragraphs 20 to 23 from the Commission's report.
50. Speaking as Chairman of the Planning Group, he announced, with regard to the explanatory summaries on the short list of topics shown in paragraph 21, that Mr. Bowett would be preparing a summary on ownership and protection of wrecks beyond the limits of national maritime jurisdiction; Mr. Yamada on rights and duties of States for the protection of the human environment; Mr. Tomuschat on the "global commons"; Mr. Pellet on the law and practice relating to reservations to treaties; Mr. Mikulka and Mr. Vereshchetin, working jointly on two topics, namely State succession in respect of membership of international organizations and State succession and its impact on the nationality of natural and legal persons; Mr. Bennouna on the legal conditions of capital investment and agreements pertaining thereto; and Mr. Jacovides on *jus cogens*. With regard to the list of reserve topics, Mr. Szekely would be preparing a summary on the law of (confined) international groundwaters; Mr. Rosenstock on legal mechanisms necessary for the registration of sales or other transfers of arms, weapons and military equipment between States; Mr. Sreenivasa Rao on extraterritorial application of national legislation; and Mr. Pambou-Tchivounda on the law concerning international migrations.
51. The CHAIRMAN said it was important for the Commission to inform the General Assembly that it had established a procedure for examining those topics.
52. Mr. MAHIOU said that, if there were no strong objections, the proposal by Mr. Jacovides to include the list of topics as a footnote to the Commission's report might be a good solution.

It was so agreed.

53. The CHAIRMAN said members should bear in mind that the recommendation to delete the paragraph listing those topics had been discussed both by the Planning Group and the Enlarged Bureau.
54. Mr. KOROMA said that he joined with those who wished to include the list of topics in a footnote.
55. He would also point out that the fourth item on the list of reserve topics, namely the law concerning international migrations, did not reflect the proposal he had made earlier in the session. It had been his intention to include a topic entitled "international law on the movement of persons".
56. The CHAIRMAN said that the list of topics was not final and would be reconsidered in 1993. Since it would not be included in the Commission's current report, there was no need to amend it at the present time.
57. Mr. THIAM, drawing attention to the last topic on the short list, *jus cogens*, said he wished to caution the Commission against consideration of pure doctrine. While he had no reservations about the concept *per se*, he had strong doubts about the possibility of codifying *jus cogens*.
58. Mr. ROSENSTOCK said that, as he recalled, it had been agreed during a meeting of the Enlarged Bureau to amend the title of the fourth item on the list of reserve topics, in accordance with Mr. Koroma's intentions. Paragraph 24 recommended to the Commission some valuable and innovative procedures for approaching the list of topics and was much more important than the list of topics itself, which would have to be reduced considerably to be of any practical value. Until those procedures were fully operational, it would be unwise to present the list of topics to the General Assembly.
59. The CHAIRMAN, speaking as a member of the Commission, said he agreed that submitting the list of topics to the General Assembly would be premature. Once it had done some concrete work on those topics, the Commission would be in a better position to assess the advantages and disadvantages of the various approaches.
60. Mr. GÜNEY said he fully endorsed the views expressed by Mr. Thiam. The question of *jus cogens* had always been controversial. The content of that topic was not precise, and it was premature even to hold preliminary discussions on the issue with a view to eventual codification.
61. Mr. JACOVIDES recalled that, earlier in the session he had, at the request of the Chairman of the Working Group, produced a memorandum stating that a tentative decision had been made to include *jus cogens* on the short list of topics. Furthermore, paragraph 24 (d) of the report of the Planning Group showed that the explanatory summary had to indicate for each topic the advantages and disadvantages of preparing a report, a study or a draft convention. After the summary was presented, the Commission would be in a better position to decide whether to proceed with a particular topic and in what way. In his view, *jus cogens* was an important concept in public international law and its exact legal content was not established. The Commission was the body best suited to fill in that gap.
62. Mr. de SARAM said that it would be most unwise for the Commission to get into the habit of submitting to the General Assembly views on matters on which it had not reached a considered conclusion. He agreed entirely with Mr. Rosenstock about the importance of paragraph 24 of the Planning Group's report. The Commission should give weight to the views of its subsidiary bodies. For that reason, while he sympathized with the points made by Mr. Jacovides, he believed it would be premature to refer to the list set forth in paragraph 21 of the Planning Group's report either in the Commission's report or in a footnote.
63. Mr. ARANGIO-RUIZ said he agreed that the Commission should not be rushed by other bodies into hasty choices. It should first examine the papers and then select the subjects, indicating what should be the order of priority.
64. Mr. EIRIKSSON expressed support for that view.
65. Mr. VILLAGRAN KRAMER said he agreed with Mr. Jacovides that the point could perhaps best be illustrated, for the purpose of discussion at the General Assembly, by a footnote.
66. Mr. GÜNEY said that he strongly supported the views expressed by Mr. Rosenstock, Mr. de Saram, Mr. Arangio-Ruiz and Mr. Eiriksson.
67. Mr. VERESHCHETIN said that, for the reasons he had already stated in the Enlarged Bureau, he agreed that the list of topics set out in paragraph 21 should not be included in the Commission's report, since that would simply further complicate the task awaiting the Commission at its next session. At that session, there would be a new list of topics and the Commission would then be able to determine which of them should receive priority.
68. Mr. MAHIOU said that he would not insist on the inclusion of the list of topics set forth in paragraph 21.
69. The CHAIRMAN, noting that the majority of members favoured deletion of paragraphs 20 to 23 of the Planning Group's report, suggested that the Commission should adopt the Enlarged Bureau's recommendation to that effect.
- It was so agreed.*
70. The CHAIRMAN said that his third point concerned paragraph 28 of the Planning Group's report. With regard to the second sentence of that paragraph, the Enlarged Bureau had agreed to make the following recommendation concerning the arrangements for the Commission's forty-fifth session. First, on the opening day of the session in early May 1993, there would be a short plenary to open the session, elect the officers and appoint the members of the Drafting Committee. Second, after the formal opening of the session, there would be two weeks of concentrated work in the Drafting Committee, as appropriate. During that time, non-members of the Drafting Committee would have the right to attend the meetings of the Drafting Committee as observers.

71. Mr. GÜNEY said that he would like the Chairman to explain precisely what was meant by the reference to attendance of non-members at the Drafting Committee's meetings as observers. It had been clearly agreed at the beginning of the session that non-members could participate in the Drafting Committee, make proposals and even circulate them in writing. The only thing that non-members could not do was to participate in the decisions. Another point that should be covered, to avoid confusion, was that the Commission agreed in principle that the membership of the Drafting Committee should, if necessary, vary in the light of the topic considered. Provided that the Chairman clarified those two points, and that they were reflected in the summary record, he would have no objection to the Enlarged Bureau's recommendation.

72. The CHAIRMAN pointed out that the position of observers was in fact covered by paragraph 27 (5) of the Planning Group's report. The membership of the Drafting Committee would, of course, vary and the variations would be decided as and when the Committee took up a new topic. The question would not, however, arise during the first two weeks of the Commission's next session, since the only topic before the Drafting Committee would be State responsibility.

73. Mr. AL-KHASAWNEH said that he did not like the approach set out in paragraph 27 (5) and considered that the paragraph should be deleted. Ultimately, the whole question was one of self-restraint. In particular, he saw no need to formulate any such rule in writing. It was not as though there was any need to guard against possible abuse, for the way in which the Drafting Committee had worked in the past had been satisfactory.

74. Mr. de SARAM said he agreed that the Commission's next session should start with a short meeting in plenary, and then move on to other things. There was, however, much that could be done in bodies other than the Drafting Committee—indeed, the very term "Drafting Committee" was something of a misnomer, since the Committee was in many respects more in the nature of a quasi-plenary. It would be better if the Enlarged Bureau's recommendation incorporated the notion that non-members of the Drafting Committee would in fact be able to work on other matters in other groups. Again, nothing should appear in the Commission's report that would in any way diminish the entitlement of those elected to the Commission by the General Assembly to participate fully in the work of the Commission and its subsidiary bodies. As all members were aware, there was a great deal of difference between being a participant and an observer. A bald statement that members who came to Geneva to participate in the work of the Commission and its subsidiary bodies could do so only as observers—and therefore in a restricted manner—for the first two weeks, touched upon the legitimate sensitivities of the members of the Commission.

75. The CHAIRMAN suggested, to meet the points raised, that the words "as observers" should be deleted from the Enlarged Bureau's recommendation.

76. Mr. ROSENSTOCK said that the recommendation with regard to the first two weeks of the Commission's

next session had been accepted in an open-ended working group, in which all members of the Commission had been free to participate, as part of a package which also incorporated paragraph 27. If the Commission persisted in reopening such matters, it would serve no useful purpose and would also be indicative of a marked lack of restraint. Furthermore, if the Commission started to tamper first with one paragraph and then with another, the whole package would simply fall apart. As to his own position, he had accepted what he regarded as a sharp deterioration in the terms of paragraph 28 on the understanding that everyone concerned would accept paragraphs 27 and 28 as a package. He was disinclined to accept the revised version of paragraph 28, as opposed to the version which appeared in the Planning Group's report, if that would open up a whole series of other questions. He would urge members to exercise restraint, as he was genuinely concerned that the progress achieved over the past 11 weeks through compromise would be undone in the last few days of the session.

77. Mr. CALERO RODRIGUES (Chairman of the Planning Group) said that he agreed with most of Mr. Rosenstock's observations and also supported the Chairman's suggestion that the words "as observers" should be deleted from the Enlarged Bureau's recommendation. He did not think that, at that late stage in the session, members of the Commission, including those who were members of the Planning Group, should try to obtain what they had been unable to obtain, as they had not been present, in the Planning Group.

78. Mr. AL-KHASAWNEH said that, for once, he found himself in total disagreement with Mr. Calero Rodrigues and Mr. Rosenstock. The fact that he was a member of the Planning Group did not preclude him from raising points that had been agreed in the Planning Group. It was one thing to make a mistake and another thing to persist in that mistake.

79. Mr. GÜNEY said that he agreed entirely with Mr. Al-Khasawneh.

80. Mr. SHI said that, as he had stated in the Enlarged Bureau, he would not object to the adoption of paragraph 28 of the Planning Group's report, particularly as amended, but would reserve his position as to the need to assign two weeks at the beginning of the Commission's next session to the work of the Drafting Committee.

81. Mr. VILLAGRAN KRAMER said that he was unhappy about the last paragraph of the report, which dealt with the possibility of splitting the Commission's sessions. He trusted that the matter would receive further consideration at the next session.

82. The CHAIRMAN said that, in the light of comments made, he would suggest that the Commission should adopt the Enlarged Bureau's recommendation with regard to paragraph 28 of the Planning Group's report.

It was so agreed.

83. The CHAIRMAN further suggested that the Commission should adopt the report of the Planning Group, as amended.

It was so agreed.

The meeting rose at 6.10 p.m.

2290th MEETING

Tuesday, 21 July 1992, at 10.10 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. Jacovides, Mr. Kabatsi, Mr. Koroma, Mr. Mahiou, Mr. Mikulka, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Razafindralambo, Mr. Rosenstock, Mr. Shi, Mr. Szekely, Mr. Thiam, Mr. Vereshchetin, Mr. Villagran Kramer, Mr. Yamada.

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

1. The CHAIRMAN invited the Commission to resume consideration of its draft report, paragraph by paragraph, starting with chapter III on State responsibility.

CHAPTER III. *State responsibility (A/CN.4/L.478 and Corr.1 and Add.1-3)*

2. Mr. RAZAFINDRALAMBO (Rapporteur), introducing chapter III of the draft report, explained that the corrigendum to document A/CN.4/L.478 reflected the decision taken at the 2289th meeting on the way in which the Commission should report to the General Assembly on the work done by the Drafting Committee on the topic of State responsibility. It also contained a new paragraph, to be inserted immediately before paragraph 16, giving a summary of the Special Rapporteur's introduction to his third report, as contained in chapter VII of the Commission's report on the work of its forty-third session.¹

A. *Introduction (A/CN.4/L.478)*

Paragraph 1

3. Mr. EIRIKSSON said that it was perhaps time to think about the question of the form of the Commission's reports and, for example, to summarize to a

greater extent the part which dealt with the discussions and which, in the present case, was too long.

4. He also noted that the Commission was not asking the General Assembly any questions, although it was due to complete its consideration of the topic of State responsibility by the end of the quinquennium. Since it had decided to discuss the question of the distinction to be made between delicts and crimes, it should perhaps ask for the General Assembly's opinion on that point without further delay.

5. He was puzzled by the reference in the last sentence of paragraph 1 to "a possible part 3, which the Commission might decide to include . . .". That seemed to imply that the Commission had not yet decided that there would be a part 3.

6. Mr. ARANGIO-RUIZ (Special Rapporteur) said he did not think that it would be wise for the Commission to ask the General Assembly about the distinction between crimes and delicts in too direct a way. That question raised the complex problem of the effects of crimes and delicts in international law.

7. With regard to the uncertainty about part 3 of the topic, paragraph 1 had been written from the 1975 point of view, but, since then, the Commission had taken a number of decisions showing that it definitely intended to start work on part 3.

8. In the course of a discussion in which Mr. MAHIOU, Mr. de SARAM, Mr. BOWETT, Mr. SHI and Mr. JACOVIDES took part, a number of ways were suggested of eliminating the hypothetical slant of the last phrase of paragraph 1, which gave the impression that the Commission had not yet decided to include a part 3, and of making it clear that the situation had changed since 1975.

9. Mr. CALERO RODRIGUES pointed out that, since paragraph 1 related to the situation as it had existed some 15 years previously, it was impossible to go back on it: at that time, part 3 of the topic had indeed been one "which the Commission might decide to include".

10. Mr. ROSENSTOCK, supported by Mr. MAHIOU, Mr. BOWETT and Mr. SHI, said he shared the Special Rapporteur's view that it was not yet time to ask the General Assembly about the distinction between delicts and crimes.

Paragraph 1 was adopted.

Paragraphs 2 and 3

Paragraphs 2 and 3 were adopted.

Paragraph 4

11. Mr. ARANGIO-RUIZ (Special Rapporteur) said that, in order to dispel any false impression given by paragraph 1, a sentence should be added after the first sentence, to read: "From that time on, the Commission assumed that a part 3 on implementation and the settlement of disputes would be included in the draft articles".

* Resumed from the 2287th meeting.

¹ Reproduced in *Yearbook* . . . 1991, vol. II (Part Two).