

Document:-  
**A/CN.4/SR.2297**

**Summary record of the 2297th meeting**

Topic:  
**Other topics**

Extract from the Yearbook of the International Law Commission:-  
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**2296th MEETING**

*Friday, 7 May 1993, at 10.15 a.m.*

*Chairman: Mr. Julio BARBOZA*

*Present: Mr. Arangio-Ruiz, Mr. Bowett, Mr. Calero Rodrigues, Mr. de Saram, Mr. Eiriksson, Mr. Fomba, Mr. Güney, Mr. Idris, Mr. Kabatsi, Mr. Koroma, Mr. Kusuma-Atmadja, 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. Villagrán Kramer, Mr. Yankov.*

**Organization of work of the session (continued)**

[Agenda item 1]

1. The CHAIRMAN, referring to the schedule of work for the session prepared by the Enlarged Bureau and distributed to the members of the Commission, said it was understood that time saved during the consideration of a topic in plenary would be allocated to the Drafting Committee, the Planning Group of the Enlarged Bureau or another body. It was also understood that the schedule was flexible, that it could be changed subject to the progress of work and that, as was customary, representatives of the legal bodies with which the Commission maintained a working relationship would make their statements at dates to be decided on. He also intended to hold consultations as soon as possible with the Chairmen of the Drafting Committee, the Planning Group and any other group which might be established or re-established at the current session in order to reach agreement on the allocation between those groups of the four weekly afternoon meetings reserved for them. He would report the results of those consultations to the Commission in good time. If he heard no objection, he would take it that the Commission adopted the proposed schedule.

*It was so decided.*

2. The CHAIRMAN invited the Chairman of the Drafting Committee to inform the Commission of the progress of its work.

3. Mr. MIKULKA (Chairman of the Drafting Committee) said that the Drafting Committee had held six meetings at which it had considered article 11 (Countermeasures by an injured State) of the draft articles on State responsibility.<sup>1</sup> It had thus been able to solve a number of outstanding problems. The Drafting Committee's task was particularly difficult, since that article dealt with one of the most sensitive aspects of the topic. The Drafting Committee was of the opinion that the text

<sup>1</sup> For the text of draft article 11 proposed by the Special Rapporteur, see *Yearbook . . . 1992*, vol. II (Part One), document A/CN.4/444 and Add.1-3; and *Ibid.*, vol. I, 2273rd meeting, para. 18.

it had prepared would serve as a good basis for discussion and that it should be able to be adopted rapidly.

4. The CHAIRMAN thanked the Drafting Committee and its Chairman for the efforts they were making to perform a particularly arduous task.

*The meeting rose at 10.25 a.m.*

**2297th MEETING**

*Friday, 14 May 1993, at 10.05 a.m.*

*Chairman: Mr. Julio BARBOZA*

*Present: Mr. Arangio-Ruiz, Mr. Bowett, Mr. Calero Rodrigues, Mr. Crawford, Mr. de Saram, Mr. Fomba, Mr. Güney, Mr. Idris, Mr. Kabatsi, Mr. Koroma, Mr. Kusuma-Atmadja, Mr. Mikulka, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Razafindralambo, Mr. Rosenstock, Mr. Shi, Mr. Szekely, Mr. Thiam, Mr. Tomuschat, Mr. Vereshchetin, Mr. Villagrán Kramer, Mr. Yankov.*

**Organization of work of the session (continued)**

[Agenda item 1]

1. The CHAIRMAN invited the Chairman of the Drafting Committee to report to the Commission on the progress of the Committee's work.

2. Mr. MIKULKA (Chairman of the Drafting Committee) said that the Drafting Committee had held 14 meetings at which it had considered articles 11 (Countermeasures by an injured State), 13 (Proportionality) and 14 (Prohibited countermeasures) of the draft articles on State responsibility. The Committee had reached an agreement on most of the text of those articles, which it had, however, not yet adopted, since some questions were still pending. It had also begun its consideration of article 12 (Conditions of resort to countermeasures).<sup>1</sup>

3. In view of the progress made, he thought that the Drafting Committee would be able to adopt draft articles 11 to 14 quite rapidly.

4. The CHAIRMAN thanked the Drafting Committee and its Chairman for their efforts to find generally acceptable solutions to difficult problems.

5. The Gilberto Amado Memorial Lecture would take place on Wednesday, 2 June, at 5.30 p.m. and would be

<sup>1</sup> For the text of draft articles 11 to 14, see *Yearbook . . . 1992*, vol. II (Part One), document A/CN.4/444 and Add.1-3; and *Ibid.*, vol. I, 2273rd and 2275th meetings, paras. 18 and 1, respectively.

given by Mr. Cafilisch, Legal Adviser of the Swiss Federal Department of Foreign Affairs, on the subject: "Peaceful settlement of international disputes: new trends".

*The meeting rose at 10.20 a.m.*

## 2298th MEETING

*Monday, 17 May 1993, at 10.05 a.m.*

*Chairman:* Mr. Julio BARBOZA

*Present:* Mr. Al-Khasawneh, Mr. Bennouna, Mr. Bowett, Mr. Calero Rodrigues, Mr. Crawford, Mr. de Saram, Mr. Eiriksson, Mr. Fomba, Mr. Güney, Mr. Idris, Mr. Kabatsi, Mr. Koroma, Mr. Kusuma-Atmadja, Mr. Mahiou, Mr. Mikulka, Mr. Pambou-Tchivounda, Mr. Sreenivasa Rao, Mr. Razafindralambo, Mr. Rosenstock, Mr. Shi, Mr. Thiam, Mr. Tomuschat, Mr. Vereshchetin, Mr. Villagrán Kramer, Mr. Yankov.

### Statement by the Deputy Legal Counsel

1. Mr. ZACKLIN (Deputy Legal Counsel) said that he was addressing the Commission on behalf of the Legal Counsel, who was unfortunately detained in New York on business in connection with the establishment of an international tribunal for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991<sup>1</sup> (hereinafter referred to as the international tribunal). Mr. Fleischhauer, the Legal Counsel, greatly regretted not being able to attend the Commission's deliberations on the highly important topic under consideration and hoped to reschedule his programme in such a way as to be present at the Commission's meetings later in the session.

**Draft Code of Crimes against the Peace and Security of Mankind<sup>2</sup> (A/CN.4/446, sect. B, A/CN.4/448 and Add.1,<sup>3</sup> A/CN.4/449,<sup>4</sup> A/CN.4/452 and Add.1-3,<sup>5</sup> A/CN.4/L.488 and Add.1-4, A/CN.4/L.490 and Add.1)**

[Agenda item 3]

#### ELEVENTH REPORT OF THE SPECIAL RAPPORTEUR

2. The CHAIRMAN reminded members that the General Assembly, in its resolution 47/33, had taken note

<sup>1</sup> See Security Council resolution 808 (1993) of 22 February 1993.

<sup>2</sup> For the text of the draft articles provisionally adopted on first reading, see *Yearbook . . . 1991*, vol. II (Part Two), pp. 94 *et seq.*

<sup>3</sup> Reproduced in *Yearbook . . . 1993*, vol. II (Part One).

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

with appreciation of chapter II of the report of the Commission,<sup>6</sup> entitled "Draft Code of Crimes against the Peace and Security of Mankind", which was devoted to the question of the possible establishment of an international criminal jurisdiction; had invited States to submit to the Secretary-General, if possible before the forty-fifth session of the Commission, written comments on the report of the Working Group on the question of an international criminal jurisdiction; and had requested the Commission to continue its work on the question by undertaking the project for the elaboration of a draft statute for an international criminal court as a matter of priority as from its next session, beginning with an examination of the issues identified in the report of the Working Group and in the debate in the Sixth Committee with a view to drafting a statute on the basis of the report of the Working Group, taking into account the views expressed during the debate in the Sixth Committee as well as any written comments received from States, and to submit a progress report to the General Assembly at its forty-eighth session.

3. In that connection, he drew attention to the eleventh report of the Special Rapporteur for the topic (A/CN.4/449), which contained the draft statute of an international criminal court, and to the written comments received from Member States submitted further to General Assembly resolution 47/33 (A/CN.4/452 and Add.1-3). Relevant material was also to be found in the comments and observations of Governments on the draft Code of Crimes against the Peace and Security of Mankind adopted on first reading by the Commission at its forty-third session (A/CN.4/448 and Add.1). In addition members might wish to refer to the documents distributed further to Security Council resolution 808 (1993) and, in particular, to the report of the Secretary-General.<sup>7</sup>

4. Mr. THIAM (Special Rapporteur) introducing his eleventh report, said that certain corrections were required. In the first place, the text of article 8 should be amended to read:

"Although the jurisdiction of the court is permanent, not all of its organs shall function on a full-time basis; the court shall be convened only to consider a case submitted to it."

Secondly, in alternative B of article 9 the word [*Seuls*], in the French text, should be amended to read [*Seul*]. In article 13, the words [*le ou*], in the French text of paragraph 1, should be added before [*les*] and, in the first paragraph of the commentary to that article, the words *et le*, should be added before the words *ou les* in the third line. Again in the French text, the words *une cour inter-Etat*, in the second paragraph, should be amended to read *une cour entre Etats*. The title of article 27 should be amended to read "Unacceptability of proceedings by default" and the body of the text should be amended to read "(No defendant may be tried by default)".

5. He had already submitted at least three reports on specific aspects of the question of an international criminal court, but they had been of an exploratory nature and had been designed to keep interest in the matter alive.

<sup>6</sup> Reproduced in *Yearbook . . . 1992*, vol. II (Part Two).

<sup>7</sup> Document S/25704 and Corr.1 and Add.1.