Document:-
A/CN.4/SR.2321

Summary record of the 2321st meeting

Topic:
Other topics

Extract from the Yearbook of the International Law Commission:-
1993, vol. I

and progressive development of international law none the less called for pragmatism and the result achieved by the Commission was a first substantial step towards the establishment of a permanent international criminal court once the formula adopted for the moment proved its worth. Many issues remained pending, as evidenced by the number of passages of the text that were in square brackets. On those matters, his view was that the court should be an organ of the United Nations and a permanent institution, even though it would only sit when required to consider a case submitted to it. The President would also act on a permanent basis. The court's jurisdiction should not be unduly restricted, and it should include crimes under general international law. The Security Council should have the right to bring crimes before the court and the court should have appropriately circumscribed jurisdiction *in absentia*. The rights of appeal and review should be recognized.

The meeting rose at 1.10 p.m.

2321st MEETING

Monday, 19 July 1993, at 10.05 a.m.

Chairman: Mr. Julio BARBOZA
later: Mr. Vaclav MIKULKA

Present: Mr. Arangio-Ruiz, Mr. Bennouna, Mr. Bowett, Mr. Calero Rodrigues, Mr. Crawford, Mr. de Saram, Mr. Fomba, Mr. Idris, Mr. Jacovides, Mr. Kabatsi, Mr. Koroma, Mr. Kusuma-Atmadja, Mr. Mahiou, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Razafindralambo, Mr. Robinson, Mr. Rosenstock, Mr. Shi, Mr. Thiam, Mr. Tomuschat, Mr. Vereshchetin, Mr. Villagrán Kramer, Mr. Yankov.

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

CHAPTER IV. *State responsibility* (continued) (A/CN.4/L.484 and Corr.1 and Add.1-7)

C. Draft articles of part 2 of the draft on State responsibility (*continued*)

2. TEXTS OF DRAFT ARTICLE 1, PARAGRAPH 2, AND DRAFT ARTICLES 6, 6 *bis*, 7, 8, 10 AND 10 *bis* WITH COMMENTARIES THERETO, PROVISIONALLY ADOPTED BY THE COMMISSION AT ITS FORTY-FIFTH SESSION (*continued*) (A/CN.4/L.484/Add.2-7)

Commentary to article 6 bis (Reparation) (*concluded*) (A/CN.4/L.484/Add.3)

1. The CHAIRMAN recalled that, at the previous meeting, Mr. Tomuschat and Mr. Vereshchetin had raised the problem of differently injured States. In order to make their remarks applicable to all the articles on reparation, the Special Rapporteur had suggested the addition of a few words to what had originally appeared as paragraph (6 *ter*) of the commentary to article 6 *bis*, a paragraph which the Commission had decided to turn into a footnote. The footnote would read:

> "The possible implications for the provisions on reparation of the existence of a plurality of injured States, including the question of the so-called differently or indirectly injured States, will be considered at a later stage."

2. If he heard no objections, he would take it that the Commission agreed to adopt that footnote.

It was so agreed.

The commentary to article 6 bis, *as amended, was approved.*

Commentary to article 10 (Satisfaction) (*concluded*) (A/CN.4/L.484/Add.6)

Paragraphs (21) to (25)

3. The CHAIRMAN invited Mr. Yankov to introduce the text proposed by the small working group assigned the task of finding a generally acceptable solution for paragraphs (21) to (24).

4. Mr. YANKOV said that the working group proposed the following text, which would form paragraphs (20 *bis*) to (24) of the commentary to article 10:

> "(20 *bis*) The Commission, while agreeing on the content and formulation of the provisions of article 10, did not find it necessary to pronounce itself on the question of whether an afflictive nature should be attributed to satisfaction as a form of reparation, a question on which doctrinal opinions were divided.
>
> "(21) It was argued that the afflictive nature of satisfaction was not compatible either with the composition or with the structure of a 'society of States' on the grounds that:
>
> (*a*) Punishment or penalty does not 'become' persons other than human beings, and notably not sovereign States; and
>
> (*b*) The imposition of punishment or penalty within a legal system presupposes the existence of institutions impersonating, as in national societies, the whole community, no such institutions being available or likely to come into being soon—if ever—in the 'society of States'.
>
> "(22) On the other hand, it was maintained that the very absence, in the 'society of States', of institutions capable of performing such 'authoritative' functions as the prosecution, trial and punishment of criminal offences committed by States makes even more necessary the resort to remedies susceptible of reducing, albeit in a very small measure, the gap represented by the absence of such institutions. The afflictive nature of satisfaction, according to this view, was not in contrast with the sovereign equality of the States involved. It was also considered that satisfaction is a matter of atonement.[41] To confine the consequences of any international delict (whatever its gravity) to restitution in kind and compensation would mean to overlook the necessity of providing some specific remedy—having a preventive as well as an afflictive function—for the moral, political and juridi-

cal wrong suffered by the offended State or States in addition to, or instead of, any amount of material damage.

"(23) The Commission finds it all the more important to recognize the positive functions of satisfaction in the relations among States, as it is precisely by resorting to one or more of the various forms of satisfaction that the consequences of the offending State's wrongful conduct can be adapted to the gravity of the wrongful act. This conclusion is of considerable importance as a matter of both codification and progressive development in this field.

"(24) On the other hand, the Commission finds it important to draw lessons from the diplomatic practice of satisfaction, which shows that abuses on the part of injured or allegedly injured States are not rare. Powerful States have often managed to impose on weaker offenders excuses or humiliating forms of satisfaction incompatible with the dignity of the wrongdoing State and with the principle of equality. The need to prevent abuse has been stressed by a number of authors.[42] It underlies paragraph 3 of article 10, which, by making it clear that demands that would impair the dignity of the wrongdoing State are unacceptable, provides an indispensable indication of the limits within which a claim to satisfaction in one or more of its possible forms should be met by such a State."

The footnote relating to paragraph (22) would read:

"[41] In the words of Morelli:

Satisfaction is in some ways analogous to a penalty, which also fulfils a function of atonement. Again, satisfaction, like a penalty, is afflictive in character in that it pursues an aim in such a way that the subject responsible undergoes harm. The difference is that, while a penalty is harm inflicted by another subject, in satisfaction the harm consists of a particular kind of conduct by the subject who is responsible—conduct which constitutes, as in other forms of reparation, the content of the subject's obligation.

Op. cit. (see footnote 4 above), p. 358."

Footnote 42 would remain unchanged.

5. The working group had made an effort to preserve the integrity of the text, while at the same time reflecting in a balanced manner the different views expressed on the subject of the afflictive nature of satisfaction.

6. Paragraph (20 *bis*) of the proposed text was new. It emphasized the division of doctrinal opinions on the issue of the afflictive nature of satisfaction. Paragraph (21) set forth the trend of opinion which considered that the afflictive nature of satisfaction was not compatible with the composition or with the structure of the society of States. Paragraph (22) indicated the views of those who believed that satisfaction could have an afflictive character. Lastly, paragraphs (23) and (24) set out the Commission's views. The text of paragraph (24) was that of original paragraph (25).

7. Mr. ARANGIO-RUIZ (Special Rapporteur) said that the proposed formulation was an improvement over the earlier text. He still had objections, however, to the proposed paragraphs, especially, but not exclusively, to paragraph (20 *bis*), but would not stand in the way of the adoption of the paragraphs.

8. Mr. YANKOV, thanking the Special Rapporteur for his cooperation, said that the proposed formula would not satisfy everyone on all points, but it reflected the general view of the Commission.

9. Mr. VERESHCHETIN said that, since two trends of doctrinal opinion were reflected in paragraphs (21) and (22), it would be appropriate to reword the opening sentence of each of those paragraphs so as to indicate clearly that they did reflect two trends.

10. Mr. YANKOV said that the opening words "It was argued . . ." in paragraph (21), and "On the other hand, it was maintained . . .", in paragraph (22), were intended to indicate that some members favoured the first doctrinal trend and some the second. Those introductory formulas were used in order to avoid speaking of "some members" or "a number of members". The purpose of paragraphs (21) and (22) was not to describe two sets of doctrinal opinions but rather to indicate the views expressed by the members of the Commission with regard to certain doctrines.

11. Mr. KOROMA pointed out that the afflictive nature of satisfaction was incompatible with the principle of the sovereign equality of States. That fact should be reflected more clearly in paragraph (21).

12. Mr. YANKOV drew attention to the words "society of States" and the reference to "sovereign States" in paragraph (21).

13. Mr. CALERO RODRIGUES proposed that, in order to meet the point raised by Mr. Koroma, the beginning of paragraph (21) should be altered to read: "It was argued that the afflictive nature of satisfaction was incompatible with the sovereign equality of States. It was not compatible either with . . ."

14. Mr. KOROMA said he agreed to that formula.

15. Mr. ROSENSTOCK said that he supported the proposal by Mr. Calero Rodrigues.

16. The CHAIRMAN said that, if he heard no objections, he would take it that the Commission agreed to adopt paragraphs (20 *bis*) to (24) as introduced by Mr. Yankov, as amended by Mr. Calero Rodrigues.

Paragraphs (20 bis*) to (24) (former paragraphs (21) to (25)), as amended, were approved.*

The commentary to article 10, as amended, was approved.

Commentary to article 10 bis (Assurances and guarantees of non-repetition) (A/CN.4/L.484/Add.7)

Paragraphs (1) to (3)

Paragraphs (1) to (3) were approved.

Paragraphs (4) and (5)

17. Mr. YANKOV said that the reason for using the words "where appropriate", in article 10 *bis*, was a matter of some importance. The question of the inclusion of those words had been the subject of much discussion, but no explanation was given in the commentary. Actually, the purpose of those words was to introduce an el-

ement of flexibility and leave it to the judge or third-party adjudicator to determine whether it was justifiable to allow for assurances or guarantees of non-repetition. Grounds for granting such a remedy would be sought in the fact that there existed a real risk of repetition or that the claimant State had already suffered substantial injury.

18. Clarification of that point was important for the interpretation of article 10 *bis* and some elaboration of paragraph (5) of the commentary might be useful.

19. Mr. ARANGIO-RUIZ (Special Rapporteur) said that some explanation was provided in paragraph (5), although the words "where appropriate" were clear enough. He would point out, however, that it was not only the judge or third-party adjudicator who was concerned by the words "where appropriate". It was also any conciliator or even a political body and, indeed, the States concerned themselves, that should realize what was appropriate and what was not. In any case, it was not essential to add anything on the subject, bearing in mind in particular the remarks already made with regard to the length of the commentaries.

20. Mr. VERESHCHETIN proposed that the examples contained in the first footnote to paragraph (4), should be deleted. They were taken from a distant past and illustrated an unsatisfactory phase of international law. He was thinking in particular of the reference to the capitulations and to the 1901 case of the Ottoman post offices.

21. Mr. ARANGIO-RUIZ (Special Rapporteur) said it was true that some of the cases mentioned in that footnote were of historical interest, but they could still provide useful illustrations.

22. Mr. RAZAFINDRALAMBO said he strongly supported the retention of the examples in that footnote. The suggestion that cases of historical interest should not be cited would mean ignoring all examples taken from the colonial era.

23. Mr. VERESHCHETIN said it was unfortunate that Mr. Güney was absent, since he could have expressed an opinion as to the advisability of citing cases which concerned the Ottoman Empire. The Special Rapporteur was known for his opposition to colonialism and his respect for national sovereignty and could no doubt provide more recent examples as suitable illustrations of the question of assurances and guarantees of non-repetition.

24. Mr. SHI urged that at least some of the examples contained in that footnote should be deleted.

25. Mr. BOWETT pointed out that the examples were cases which had really happened. He saw no sense in trying to rewrite history. In order to meet Mr. Vereshchetin's objection, he suggested that a sentence should be inserted at the end of the footnote, reading: "These examples would not necessarily represent what would be 'appropriate' by today's standards (see para. (5) below).".

26. Mr. MIKULKA said that, while he was not opposed to Mr. Bowett's proposal, he found it regrettable that the rule governing assurances and guarantees of non-repetition had to be based on such old cases as those cited in the footnote. If it really was not possible to find one single up-to-date example of an assurance of non-repetition, the continued validity of the rule should perhaps be called into question.

27. Mr. ROSENSTOCK said he sympathized with that view, but did not think the intention was to exclude all the examples. He therefore suggested that the word "all" should be added before the word "necessarily" in Mr. Bowett's proposed additional wording.

28. Mr. ARANGIO-RUIZ (Special Rapporteur), noting that Mr. Vereshchetin had suggested that the Commission might wish to have Mr. Güney's views on the reference to the 1901 case of the Ottoman post offices, said that, for his own part, he saw no point in inviting members' views on incidents in the past history of their respective countries.

29. As to the point raised by Mr. Mikulka, unfortunately he was not able at that point to produce modern examples of guarantees of non-repetition, but would remind the Commission that it was not only codifying but also progressively developing international law. Guarantees of non-repetition were important within the framework of the draft on State responsibility and he would therefore suggest that the Commission should move ahead without looking back unduly into history.

30. Mr. VERESHCHETIN said that it would be best, where possible, to do without the references to old cases. Since some members felt that those references were essential, however, he was prepared to agree to Mr. Bowett's proposed additional wording, as amended by Mr. Rosenstock, and, if that was acceptable to the Commission, would withdraw his objection.

31. He had in fact submitted his proposal on that and other questions to the Special Rapporteur in writing some 10 days earlier. What was of particular concern to him was that at a number of points in the commentary, particularly in the footnotes, examples taken from the distant past—including the slavery period in the United States, were cited in support of modern rules of international law. Such examples had no place in the commentaries, particularly since, as the Special Rapporteur had pointed out, the commentaries were long enough already.

32. Mr. KOROMA said that, as the Special Rapporteur himself recognized, it would be difficult to find an example to back up the proposition set forth in paragraph (4). Possibly, therefore, the footnote could be deleted. He did not think that would harm the text.

33. Mr. SHI said that the examples given in the first footnote to paragraph (4) of the commentary to article 10 *bis* would certainly be attacked by a number of delegations in the Sixth Committee.

34. The CHAIRMAN, observing that all the comments made by members would be reflected in the summary records, said that, if he heard no objections, he would take it that the Commission agreed to adopt paragraphs (4) and (5), together with the first footnote to paragraph (4), as amended by the proposals of Mr. Bowett and Mr. Rosenstock.

The commentary to article 10 bis, *as amended, was approved.*

Commentary to article 7 (Restitution in kind) (A/CN.4/L.484/Add.4)

Paragraphs (1) to (17)

Paragraphs (1) to (17) were approved.

The commentary to article 7 was approved.

Mr. Mikulka took the Chair.

Commentary to article 6 (Cessation of wrongful conduct) (*concluded*) (A/CN.4/L.484/Add.2)

Paragraph (10)

35. The CHAIRMAN invited the Commission to consider a text proposed by Mr. Tomuschat for insertion at the end of paragraph (10), to read:

"A more recent example is that of the *Vermeire* case, in which the European Court of Human Rights stated that by virtue of its former *Marckx* judgment, Belgium had been under an obligation to repeal the laws discriminating against children born out of wedlock."

36. The CHAIRMAN said that, if he heard no objections, he would take it that the Commission agreed to adopt paragraph (10) as amended by Mr. Tomuschat.

Paragraph (10), as amended, was approved.

Paragraph (10 *bis*)

37. The CHAIRMAN invited the Commission to consider a new paragraph, paragraph (10 *bis*), proposed by Mr. Tomuschat, to read:

"(10 *bis*) An illustration of the duty of cessation is also provided by the procedure under article 169 of the Treaty establishing the European Economic Community. Under this procedure, the Court of Justice of the Community can make findings that a State has breached its obligations under the Treaty. In most cases, the Court has to pronounce itself on national legislation allegedly contrary to a rule of Community law. If a finding of inconsistency is made by the Court, this implies the duty for the defendant State to repeal the legislative act concerned."

38. Mr. PELLET said that it would be odd to place Mr. Tomuschat's proposed amendment, which referred to a specific procedure in the law of the European Community, in the middle of a commentary on a general rule of international law, for that would imply that the Commission had taken a position on Community law. As a matter of principle, the Commission should not cite examples from Community law without any prior discussion.

39. Mr. ARANGIO-RUIZ (Special Rapporteur) said that Mr. Tomuschat's proposal was quite innocent. Such self-contained regimes as the law of the European Community had been discussed by the Commission before, without any implication that the Commission was taking a position on such regimes.

40. Mr. VILLAGRÁN KRAMER, supported by Mr. CALERO RODRIGUES, said that, as he recalled, when the Commission had discussed the matter at an earlier meeting, Mr. Tomuschat had argued that the *De Becker* case was too old to be cited and that the Commission should refer to more recent examples.

41. Mr. ARANGIO-RUIZ (Special Rapporteur) said that, since the proposal was that of Mr. Tomuschat, any amendment should be left to him. Perhaps the example could be qualified by inserting "*inter alia*". The amendment referred to a good example of the consequences of a wrongful act, an example which could be followed by States or international organizations with regard to the violation of international treaty obligations.

42. The CHAIRMAN said that, if he heard no objections, he would take it that the Commission agreed to the amendment proposed by the Special Rapporteur.

Paragraph (10 bis*) was approved.*

The commentary to article 6, as amended, was approved.

Commentary to article 8 (Compensation) (A/CN.4/L.484/Add.5)

Paragraphs (1) to (8)

Paragraphs (1) to (8) were approved.

Paragraphs (9) to (11)

43. Mr. VERESHCHETIN said that the issue of causality, which was dealt with in paragraphs (9) to (11), had not been discussed in sufficient detail in the Commission or the drafting group to justify the Special Rapporteur's rather categorical statement of the Commission's understanding of the problem. It was, of course, impossible to begin redrafting all the paragraphs at the present stage, and the Special Rapporteur had already softened his original wording by using the phrase "The Commission is thus inclined to think" instead of "The Commission thus concludes" in paragraph (11). The Commission should nevertheless return to the question on second reading, especially since the latter part of paragraph (13), beginning "In view of the diversity of possible situations . . ." seemed to contradict the more categorical statement in paragraph (11).

44. Mr. ARANGIO-RUIZ (Special Rapporteur) said that the section of paragraph (13) to which Mr. Vereshchetin had referred dealt with concurrence of causation by third parties and external factors, whereas paragraph (11) was concerned with the general definition of causality and the causal link. Paragraph (11) still seemed acceptable in its present wording, but it was important to mention that everything would depend on the circumstances of the particular case. The question could, of course, be reconsidered on second reading, but there was no real contradiction between paragraph (13) and paragraph (11).

45. Mr. VILLAGRÁN KRAMER said that he shared Mr. Vereshchetin's reservations on the question. The reports of the Special Rapporteur concerning the articles had provided the Commission and the drafting group with a remarkable account of doctrine and a thorough analysis of jurisprudence. However, the drafting group had not taken all that information into account in its work on article 8 and had also introduced other considerations. Of course, it was impossible for a collegiate body to take all views fully into consideration, but some members had been trying to establish what the applicable existing law was, in an attempt to codify *lex lata* on

a strictly juridical basis. The commentary did not properly reflect the views of those members.

46. In particular, the painful legal precedents of the mixed claims commissions of the late nineteenth and early twentieth centuries in Latin America should not be used as the basis for the construction of contemporary law. His comments should not be taken as a personal criticism of the Special Rapporteur, who had done excellent work. However, he would suggest actual amendments to the text on second reading.

47. The CHAIRMAN said that, if he heard no objections, he would take it that the Commission agreed to approve paragraph (9), subject to the comments made by Mr. Vereshchetin and Mr. Villagrán Kramer, and paragraphs (10) and (11).

It was so agreed.

Paragraphs (9) to (11) were approved.

Paragraph (12)

48. Mr. BOWETT pointed out, with reference to the footnote to paragraph (12), that the only decision taken so far in the *Nauru* case concerned jurisdiction and applicability. He could not, therefore, understand the footnote.

49. Mr. PELLET said that he endorsed Mr. Bowett's comment. On a different point, the French version of the last sentence of paragraph (12) used the word *fautes* for "wrongdoing", whereas the term *fait internationalement illicite* (internationally wrongful act) would be more accurate. The French text needed to be tidied up in that respect in several places.

50. Mr. ARANGIO-RUIZ (Special Rapporteur) said that the footnote to paragraph (12) referred to the future decision which ICJ would probably take in the *Nauru* case. Perhaps the reference should be to the "pending decision".

51. The secretariat should not be instructed to replace *faute* by *fait internationalement illicite* everywhere in the French text, because in places he had used the term in a different sense.

52. The CHAIRMAN said that Mr. Pellet's objection to the word *fautes* had been restricted to its use in the third sentence of paragraph (12). His more general observation dealt with the need to standardize the French texts by replacing the words *acte internationalement illicite* by the words *fait internationalement illicite* throughout.

53. Mr. PELLET said that he had indeed been referring to paragraph (12) in suggesting that the word *fautes* should be deleted. Such a word was not appropriate in the case of *délits internationaux*, although it might be used in the case of *crimes*. He would also like to know whether "internationally wrongful act" was an accurate translation of *fait internationalement illicite*, since, in French, there was an important difference between *acte* and *fait*.

54. Mr. BOWETT suggested that the footnote to paragraph (12) should read "The pending ICJ decision in the *Nauru* case may provide useful analysis in this context".

55. The CHAIRMAN said that there were some reservations about the phrase "pending ICJ decision". Perhaps it would be better to speak of the "future decision of ICJ in the pending *Nauru* case".

56. Mr. ARANGIO-RUIZ (Special Rapporteur) suggested that the footnote to paragraph (12) should read "The *Nauru* case, which is pending before ICJ, might provide useful indications in this context". That would stress the fact that the Court might or might not decide on the merits of the case.

57. In reply to Mr. Pellet, he said that the word "act" in English had always been acceptable in the context of State responsibility. Furthermore, the word *faute*, which was certainly appropriate when referring to imputability for a particular act, should not be eliminated entirely but should be used properly.

58. Mr. CALERO RODRIGUES said that the footnote to paragraph (12) could be deleted in its entirety. Why should the Commission waste time drafting a footnote on a case which might or might not be relevant?

59. Mr. ARANGIO-RUIZ said that there was no reason not to mention a pending case that might turn out to be relevant. Furthermore, the Commission was often criticized for citing cases that were out of date. Such criticism certainly could not be levelled in respect of the *Nauru* case.

60. Mr. BOWETT said that he endorsed the proposed wording for the footnote to paragraph (12).

61. Mr. CALERO RODRIGUES said that, while he would join the consensus on the footnote, he would prefer to refer to a case that already existed rather than to a case that was pending.

Paragraph (12) and the footnote thereto, as amended, were approved.

Paragraphs (13) to (15)

Paragraphs (13) to (15) were approved.

Paragraphs (16) and (17)

62. Mr. VERESHCHETIN drew attention to the fourth and fifth sentences of paragraph (16), which read: "It is true that compensation does not ordinarily cover the moral (non-material) damage to the injured State . . . It is not true, however, that compensation does not cover moral damage to the persons of nationals or agents of the injured State". In his view, the word "agents" should be deleted because, in the cases referred to, they were acting in their personal capacity. If the word "agents" was retained, then it should be made clear that reference was being made to cases where such agents were acting in their private capacity. Without that clarification, damage to agents would be the same as damage to the injured State.

63. Mr. ARANGIO-RUIZ (Special Rapporteur) said that the meaning of those sentences was made clear by the phrase "moral damage to the persons of nationals or agents of the injured State", which distinguished it from damage to the injured State. Both the drafting group and the Commission had considered that distinction important. Perhaps paragraph (16) could be improved by inserting in the last sentence, after the words "moral dam-

age to the'', the words ''persons of the'', which would highlight the distinction drawn.

64. Mr. VERESHCHETIN said that he would not insist on the deletion of the word ''agent''. Nevertheless, in the Russian text, the phrase would have to be translated as ''moral damage to natural and juridical persons and agents of the State acting in their private capacity''.

65. The CHAIRMAN said he wondered whether Mr. Vereshchetin's reference to ''natural and juridical persons'' was an accurate reflection of the interpretation just given by the Special Rapporteur.

66. Mr. VERESHCHETIN said it was his understanding that the paragraph under consideration related only to natural persons. However, the Special Rapporteur had referred at other times to ''natural and juridical persons''. During the debate he himself had stressed the need for a more accurate use of the word ''national'', which pertained exclusively to natural persons in some cases and to both natural and juridical persons in others. The Special Rapporteur and other members had tried to convince him that the word ''national'' in English generally meant both natural and juridical persons.

67. The CHAIRMAN noted that the French text of paragraph (17) did not correspond to the English text.

68. Mr. PELLET said that, while he had no objections to the Special Rapporteur's proposals, he did not agree with his explanations. In his view, both paragraphs (16) and (17) dealt with agents as persons, rather than with agents acting in their personal capacity (*agents agissant à titre privé*) which was the meaning of the French text in paragraph (17).

69. Mr. ROSENSTOCK proposed that, at the first mention of the word ''agents'' in paragraph (16), a note should be added indicating that in both paragraphs (16) and (17) the word ''agents'' should be understood as ''agents in their personal capacity''.

70. Mr. ARANGIO-RUIZ said he had nowhere referred to ''agents acting in their personal capacity''; furthermore, he agreed with Mr. Pellet that the phrase *agents agissant à titre privé* in the French version of paragraph (17) was incorrect. The individuals in question were not acting at all: they had sustained injury to their person. In English, that was correctly expressed by the phrase ''the injury is sustained by . . . agents in their private capacity'', in the second sentence of paragraph (17).

71. The CHAIRMAN, speaking as a member of the Commission, suggested that a more simple formulation would be: ''human beings who have been victims of bodily harm''.

72. Mr. ARANGIO-RUIZ said that it was not necessarily a question of bodily harm. As to the word ''national'', he had used it in the text to mean both natural and juridical persons.

73. The CHAIRMAN said that discussion on paragraph (17) would be continued at the afternoon meeting.

CHAPTER VI. *Other decisions and recommendations of the Commission* (A/CN.4/L.486)

A. Programme, procedures and working methods of the Commission, and its documentation

Paragraphs 1 to 11

Paragraphs 1 to 11 were adopted.

Paragraph 12

Paragraph 12 was adopted with a minor drafting change in the French version.

Paragraphs 13 and 14

Paragraphs 13 and 14 were adopted.

Paragraph 15

74. Mr. CALERO RODRIGUES said that it should be made clear when exactly the topic of ''State succession and its impact on the nationality of natural and legal persons'' had been identified by the Commission.

75. The CHAIRMAN said that point would be handled by the secretariat.

Paragraph 15 was adopted.

Paragraph 16

Paragraph 16 was adopted.

Paragraph 17

76. Mr. CALERO RODRIGUES said that the word ''conquered'', in the second sentence, was not very felicitous, even in the context of the First World War.

77. Mr. PELLET proposed that the word ''conquered'' should be replaced by the word ''defeated''.

It was so agreed.

Paragraph 17, as amended, was adopted.

Paragraphs 18 to 22

Paragraphs 18 to 22 were adopted.

Paragraph 23

78. Mr. PAMBOU-TCHIVOUNDA said that the paragraph required closer examination. In particular, the first sentence should be drafted in more flexible terms to allow for future options with respect to the outcome of the Commission's work on the topic, in addition to a study or a draft declaration to be adopted by the General Assembly.

79. The CHAIRMAN said that the Commission was engaged in the adoption of its report and so could not alter the substance of the paragraph.

80. Mr. RAZAFINDRALAMBO proposed that, to meet Mr. Pambou-Tchivounda's point, the words ''for example'' should be inserted before ''a study or a draft declaration''.

81. Mr. CALERO RODRIGUES said that the sense of that proposal was already covered by the word ''could'',

in the first sentence. As he recalled the second sentence had been included specifically to make the first sentence more flexible. In his view, therefore, paragraph 23 not only reflected what had already been approved but its substance should go some way to meeting Mr. Pambou-Tchivounda's point of view—which also happened to be his own.

82. Mr. KOROMA suggested that the paragraph should be amended to provide that a decision on the outcome of the study would be taken at a later stage. That would give everybody more time to reflect on the matter.

83. The CHAIRMAN suggested that, to enable the Commission to proceed with its work, it should agree to Mr. Razafindralambo's proposal.

It was so agreed.

Paragraph 23, as amended, was adopted.

Paragraphs 24 to 36

Paragraphs 24 to 36 were adopted.

Section A, as amended, was adopted.

B. Cooperation with other bodies

Paragraphs 37 to 39

Paragraphs 37 to 39 were adopted.

Section B was adopted.

C. Date and place of the forty-sixth session

Paragraph 40

Paragraph 40 was adopted.

Section C was adopted.

D. Representation at the forty-eighth session of the General Assembly

Paragraph 41

Paragraph 41 was adopted.

Section D was adopted.

E. International Law Seminar

Paragraphs 42 to 48

Paragraphs 42 to 48 were adopted.

Paragraph 49

84. Mr. PELLET said he much regretted that France was not among the donors listed in the second sentence. He would endeavour to remedy that situation.

Paragraph 49 was adopted.

Paragraph 50

Paragraph 50 was adopted.

Paragraph 51

85. Mr. PELLET said that the French authorities had rightly been very shocked that interpretation had not been systematically provided at the International Law Seminar. It was apparent from the list of participants that French-speaking candidates were gradually being discouraged by the complete domination of English in the Seminar. Obviously, if interpretation were to be eliminated, all French-speaking candidates would eventually be discouraged. That applied not only to France but also to many African countries.

Paragraph 51 was adopted.

Section E was adopted.

F. Gilberto Amado Memorial Lecture

Paragraphs 52 to 54

Paragraphs 52 to 54 were adopted.

Chapter VI, as a whole, as amended, was adopted.

The meeting rose at 1.15 p.m.

2322nd MEETING

Monday, 19 July 1993, at 3.10 p.m.

Chairman: Mr. Julio BARBOZA

Present: Mr. Al-Khasawneh, Mr. Arangio-Ruiz, Mr. Bennouna, Mr. Bowett, Mr. Calero Rodrigues, Mr. Crawford, Mr. de Saram, Mr. Fomba, Mr. Güney, Mr. Koroma, Mr. Kusuma-Atmadja, Mr. Mikulka, Mr. Mahiou, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Razafindralambo, Mr. Rosenstock, Mr. Shi, Mr. Thiam, Mr. Vereshchetin, Mr. Villagrán Kramer, Mr. Yankov.

The law of the non-navigational uses of international watercourses (*concluded*)* (A/CN.4/446, sect. E, A/CN.4/447 and Add.1-3,[1] A/CN.4/451,[2] A/CN.4/L.489)

[Agenda item 4]

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE ON SECOND READING[3]

1. The CHAIRMAN invited the Chairman of the Drafting Committee to introduce the report of the Drafting Committee (A/CN.4/L.489) containing the titles and texts of the draft articles adopted by the Committee on second reading.

---

* Resumed from the 2316th meeting.

[1] Reproduced in *Yearbook... 1993*, vol. II (Part One).

[2] Ibid.

[3] The draft articles provisionally adopted by the Commission on first reading are reproduced in *Yearbook... 1991*, vol. II (Part Two), pp. 66-70.