Document:-
A/CN.4/SR.2372

Summary record of the 2372nd meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
1994, vol. I

15. Mr. TOMUSCHAT said that the sentence "It is an obligation of conduct not an obligation of result" was acceptable only if it was understood in the ordinary meaning of that distinction, and not in the rather artificial meaning attached to it by the Commission in the draft articles on State responsibility.

Paragraph (4), as amended, was adopted.

Paragraphs (5) and (6)

Paragraphs (5) and (6) were adopted.

Paragraphs (7) and (8)

16. Mr. EIRIKSSON proposed that the words "of care" should be inserted after "standard" in the first sentence of paragraph (7) and that the first sentence of paragraph (8) should be replaced by "Obligations of conduct have also been formulated in various conventions".

17. After a discussion on the links between the concept of "due diligence" and the various instruments cited in paragraph (8), the CHAIRMAN suggested that consideration of paragraphs (7) and (8) should be deferred until the next meeting so that the members proposing various amendments in the course of the discussion could agree on a compromise text.

It was so agreed.

Paragraph (9)

Paragraph (9) was adopted.

Paragraph (10)

18. Mr. EIRIKSSON proposed that paragraphs (5) and (6) should be placed between paragraphs (9) and (10), so that the paragraphs limiting the concept of "due diligence" did not precede those defining the concept.

It was so agreed.

Paragraph (10) was adopted.

Paragraph (11)

Paragraph (11) was adopted.

Paragraph (12)

19. Mr. ROSENSTOCK (Special Rapporteur) proposed that the introductory sentence of paragraph (12) should be replaced by: "The process of reaching agreement on uses of watercourses has been dealt with by a commentator as follows:".

Paragraph (12), as amended, was adopted.

Paragraphs (13) to (22)

Paragraphs (13) to (22) were adopted.

20. The CHAIRMAN suggested that a paragraph (23) should be added to the commentary to article 7, reading:

"(23) Two members expressed reservations concerning article 7 and indicated that they preferred the text which had been adopted for that article on first reading".

21. Following a discussion as a result of which the words "Two members" were replaced by the words "Some members", the CHAIRMAN said that, if he heard no objection, he would take it that the Commission agreed to adopt the text he had suggested.

It was so agreed.

Paragraph (23), as amended, was adopted.

The meeting rose at 6 p.m.

2372nd MEETING

Wednesday, 20 July 1994, at 10.10 a.m.

Chairman: Mr. Vladlen VERESHCHETIN

Present: Mr. Al-Baharna, Mr. Al-Khasawneh, Mr. Arangio-Ruiz, Mr. Barboza, Mr. Bennouna, Mr. Bowett, Mr. Calero Rodrigues, Mr. Crawford, Mr. de Saram, Mr. Eiriksson, Mr. Elaraby, Mr. Fomba, Mr. Güney, Mr. He, Mr. Idris, Mr. Jacovides, Mr. Kabatsi, Mr. Kusuma-Atmadja, Mr. Mahiou, Mr. Mikulka, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Razafindralambo, Mr. Robinson, Mr. Rosenstock, Mr. Thiam, Mr. Tomuschat, Mr. Vargas Carreño, Mr. Yamada, Mr. Yankov.

The law of the non-navigational uses of international watercourses (*concluded*) (A/CN.4/457, sect. E, A/CN.4/462,[1] A/CN.4/L.492 and Corr.1 and 3 and Add.1, A/CN.4/L.493 and Add.1 and Add.1/Corr.1 and Add.2)

[Agenda item 5]

DRAFT ARTICLES AND COMMENTARIES THERETO ADOPTED BY THE COMMISSION ON SECOND READING[2] (*concluded*)

COMMENTARIES (*concluded*) (A/CN.4/L.493 and Add.1 and Add.1/Corr.1 and Add.2)

COMMENTARY TO ARTICLE 7 (*concluded*) (A/CN.4/L.493)

Paragraphs (7) and (8) (concluded)

1. The CHAIRMAN invited the Commission to resume its consideration of the commentary to article 7.

[1] Reproduced in *Yearbook ... 1994*, vol. II (Part One).

[2] For the texts of the draft articles provisionally adopted by the Commission on first reading at its forty-third session, see *Yearbook ... 1991*, vol. II (Part Two), pp. 66-70.

He understood that an agreement had been reached on paragraphs (7) and (8). In paragraph (7), the opening words "The obligation" should be replaced by "An obligation", and the words "has been formulated in" by "can be deduced from". In paragraph (8), the opening phrase should read: "An obligation of due diligence can also be deduced from various multilateral conventions. Article 194, paragraph 1, of the United Nations Convention on the Law of the Sea provides that . . .".

2. If he heard no objection, he would take it that the Commission agreed to adopt paragraphs (7) and (8), with the editing changes suggested by the secretariat.

Paragraphs (7) and (8), as amended, were adopted.

Paragraph (2) (concluded)

3. The CHAIRMAN reminded members that paragraph (2) of the commentary had been left pending.

4. Mr. ROSENSTOCK (Special Rapporteur) said that, after consultations with Mr. Eiriksson, Mr. Mahiou, Mr. Barboza and the Chairman of the Drafting Committee, he had elaborated the following text to replace the existing paragraph (2):

"(2) The approach of the Commission was based on three conclusions: (*a*) that article 5 alone did not provide sufficient guidance for States in cases where harm was a factor; (*b*) that States must exercise due diligence to utilize a watercourse in such a way as not to cause significant harm,[67 *bis*] and (*c*) that the fact that an activity involved significant harm did not of itself constitute a basis for barring an activity.

"67 *bis* The Chairman of the Drafting Committee explained the approach as follows in his report to the plenary: . . .".

5. Mr. BENNOUNA said the proposed text represented some progress, but there was no need for the footnote citing the explanation given by the Chairman of the Drafting Committee. Furthermore, he was not at all sure that conclusion (*c*), beginning with the words "that the fact that . . .", reflected the meaning of article 7. The basic principle underlying the article was that everything possible must be done to avoid causing harm, and that if harm resulted, it did so in spite of the precautions taken. Consequently, he was opposed to the Special Rapporteur's interpretation of the article in the last part of his proposed text. The phrase in question should be deleted.

6. Mr. ROSENSTOCK (Special Rapporteur) said that the last phrase was essential to a proper understanding of the text and of the rest of the commentary.

7. Mr. GÜNEY said that the question had been discussed at length in the Drafting Committee, and that the statement made by the Chairman of the Drafting Committee had constituted an integral part of the agreement reached. He thus agreed with the Special Rapporteur that the footnote was necessary, and that it constituted the minimum the Commission could accept, given the nature and complexity of the question and the agreement reached in the Committee.

8. Mr. MAHIOU said an effort had clearly been made to find a solution satisfactory to all, but such efforts were not always successful. He had reservations about the wisdom of departing from established practice by citing the Chairman of the Drafting Committee's explanation in the Commission's commentaries. If that explanation was to be cited as a footnote, the footnote should also state that some members had serious reservations or objections concerning both the substance of paragraph (2) and the form in which it was drafted.

9. The CHAIRMAN, speaking as a member of the Commission, said he was at a loss to understand the opposition voiced by some members to any reference being made, even in a footnote, to the view of the Chairman of the Drafting Committee. That reference was to the report on the work of the Drafting Committee, not to the personal opinions of its Chairman. Why should a reference to his explanation be prohibited, even in a footnote, if it reflected the view of the Drafting Committee? If the explanation did not properly reflect the Committee's view, the report should have been referred back to the Committee by the Commission as unacceptable.

10. Mr. ELARABY said that he saw some inconsistency between the question of ad hoc adjustments designed to eliminate or mitigate harm, referred to in paragraph 2 (*b*) of article 7, and the reference, at the end of the Special Rapporteur's proposal, to barring an activity. The word "eliminate" implied that the activity could be stopped, whereas the Special Rapporteur's proposed text concluded that the fact that an activity involved significant harm did not of itself constitute a basis for barring an activity.

11. Mr. YANKOV said that, in view of the undoubted pertinence of the report of the Drafting Committee, a reference in a footnote to the summary record of the meeting at which the Chairman of the Drafting Committee had made his statement might be a compromise solution acceptable to all members.

12. Mr. BOWETT (Chairman of the Drafting Committee) said that Mr. Güney was quite right. The problem of the relationship between articles 5 and 7 had perhaps been the most difficult problem facing the Drafting Committee. The Committee had considered it essential to provide a careful explanation of the reasons for the solution it had adopted. Those who now sought to amend the commentary were in effect suppressing those reasons. The form in which those reasons were presented was in a sense irrelevant: what was important was that the reader should have access to them.

13. Mr. MAHIOU said that the Drafting Committee was an organ of the Commission. Once the Commission had endorsed the position of the Drafting Committee, it became the Commission's own position, and there was thus no need to cite either the Drafting Committee or its Chairman. He could recall no instance of the Commission citing the opinions of its organs in its commentaries. If the footnote was retained, he would wish to express objections both to its form and to its substance. Had he been present at the meeting at which the Chairman of the Drafting Committee had presented his explanation (2353rd meeting), he would have raised objections, particularly with regard to the drafting of the first paragraph of the explanation. To say that it was acceptable for an equitable and reasonable activity to cause significant harm was a highly debatable substantive issue.

14. Mr. GÜNEY endorsed the remarks made by the Chairman when speaking in his capacity as a member. To begin with, the explanations advanced by the Chairman of the Drafting Committee had not been personal opinions, but the general view of the Committee. Secondly, the Committee's report had been adopted by the Commission without objections. If the problem was a formal one, some other way could be found of endorsing the explanation of reasons given by the Chairman of the Drafting Committee. That explanation had been an integral part of the negotiations on the subject. Consequently, he, for one, would not be satisfied with the solution suggested by Mr. Yankov.

15. Mr. EIRIKSSON, referring to the issues raised by Mr. Bennouna and Mr. Elaraby, said that the first part of the Special Rapporteur's proposal established a link with article 5; the second part introduced an obligation set forth in paragraph 1 of article 7; while the third part of the proposal set forth the issue to be dealt with in paragraph 2 of article 7, namely, a situation where, despite the exercise of due diligence, significant harm was caused. The real purpose of the third part of the Special Rapporteur's proposal was to introduce the discussion of paragraph 2 of article 7, just as the second part of his proposal introduced the discussion on paragraph 1 of that article.

16. Mr. BENNOUNA said that, since the Chairman claimed to be at a loss to understand the problem, he would endeavour to assist him in understanding it, in the hope that, having understood, he would then perform his duties as Chairman. Mr. Mahiou and he had pointed out that it was not the practice of the Commission to cite the Drafting Committee. If that practice was to be adopted, why should it not be followed in the case of every article? Apparently, the reason was that the explanation given by the Chairman of the Drafting Committee was indissolubly linked with the article itself. Such a procedure was not acceptable: the meaning of the article should be contained in the text of the article itself. Not all members of the Commission were members of the Drafting Committee. Furthermore, members of the Committee were frequently not present at its deliberations, and the Committee sometimes constituted a minority of the Commission. The question should therefore be debated in the Commission itself, not in the Committee. Nor did he agree with Mr. Güney. If there had been a compromise in the Committee, there must also be a compromise in the Commission. He could not accept the commentary in that form, and was prepared to insist on a vote. The interpretation contained in the Special Rapporteur's proposal, namely, that an activity that caused harm was entirely authorized, and that nothing in a draft United Nations convention should prevent an activity that caused harm to another State was totally aberrant for a jurist.

17. Mr. ROSENSTOCK (Special Rapporteur), speaking on a point of order, said that article 7 had been adopted and that its substance was thus not open for discussion.

18. Mr. BENNOUNA said that he was discussing not the substance of article 7, but the Special Rapporteur's commentary, which totally distorted article 7. He wanted the Commission to take a decision on the last part of the Special Rapporteur's proposal, to which he objected. He also shared Mr. Mahiou's view that it was formally unacceptable to cite the opinion of the Drafting Committee *in extenso* as a footnote.

19. Mr. BARBOZA said that when his opinion concerning the Special Rapporteur's proposed text had been sought, no mention had been made of a footnote. Consequently, he had not given his approval to such a footnote, and did not think that recourse to such a procedure was advisable. Nor was he in favour of creating a precedent by inserting a cross-reference. As he had explained (2371st meeting), the example cited was misleading. If the reader was referred to that example indirectly, the same objective was pursued as when the example was explicitly referred to in the text of the commentary. There was no need to challenge the opinions of the Drafting Committee in the debate; the point was simply that the Commission did not want those opinions to appear as its own opinions. The article had been adopted. There had been reservations concerning it. But it was an unacceptable exaggeration to say that, because some member had not challenged the opinion of the Drafting Committee in the debate, the Commission had therefore adopted the reasoning of the Drafting Committee with all its nuances.

20. Mr. CALERO RODRIGUES said that the statement of the Chairman of the Drafting Committee, currently set out in paragraph (2) of the commentary, should be deleted. The replacement text proposed by the Special Rapporteur was generally satisfactory, except for the last part, which did not accurately represent the Commission's position. He therefore proposed an amended version, reading:

> "The approach of the Commission was based on three conclusions: (*a*) that article 5 alone did not provide sufficient guidance for States in cases where harm was a factor; (*b*) that States must exercise due diligence to utilize a watercourse in such a way as not to cause significant harm; and (*c*) that in certain circumstances 'equitable and reasonable utilization' of an international watercourse may still involve some significant harm to another watercourse State."

The last phrase of the amendment was in fact the same as the first sentence of the statement by the Chairman of the Drafting Committee.

21. Mr. ELARABY said the "ad hoc adjustments" referred to in paragraph 2 (*b*) of article 7 were designed to attain three goals: elimination of harm, mitigation of harm and, where appropriate, compensation. The Special Rapporteur's proposed text indicated that the Commission had concluded that "the fact that an activity involved significant harm did not of itself constitute a basis for barring an activity"; that statement was not consistent with the meaning of paragraph 2 (*b*) and might be interpreted to mean that significant harm could not be invoked as a basis for eliminating a particular activity. For that reason, he preferred the version of paragraph (2) proposed by Mr. Calero Rodrigues.

22. Mr. AL-BAHARNA said that he endorsed the text proposed by Mr. Calero Rodrigues.

23. Mr. THIAM said he also endorsed the text proposed by Mr. Calero Rodrigues. The statement by the Chairman of the Drafting Committee was clearly a cause of discord and should be eliminated from the commentary. Placing it in a footnote would not solve the problem.

24. Mr. TOMUSCHAT said that the text proposed by the Special Rapporteur did not give due consideration to the need to balance the rights and interests involved. Accordingly, he would amend the text to read:

> "... (*c*) that the fact that equitable and reasonable utilization of a watercourse may still involve significant harm did not of itself constitute a basis for barring an activity. Generally, in such instances proportionality must apply. The principle of equitable and reasonable utilization cannot be totally set aside. It remains the guiding criterion in balancing the interests at stake."

25. Mr. ROSENSTOCK (Special Rapporteur) said that while he did not consider Mr. Tomuschat's proposal a necessary addition to his own, it was acceptable, with the exception of the word "proportionality", which was not the most appropriate choice.

26. It was very curious that some members were so strongly opposed to including the statement of the Chairman of the Drafting Committee, which represented an important part of the background to the issue under consideration. Using the first sentence of that statement alone and ignoring the rest of it only distorted the meaning.

27. Mr. CALERO RODRIGUES said he strongly disagreed with the Special Rapporteur. It had never been his intention to use the words of the Chairman of the Drafting Committee out of context.

28. Mr. ELARABY said that paragraph 2 (*b*) of article 7 referred to the elimination of harm, which did not necessarily mean that the activity in question would be barred—that was up to the court to decide. Therefore, an activity involving significant harm could constitute a basis for barring that activity.

29. Mr. EIRIKSSON said that Mr. Elaraby's objections might be met by amending the third conclusion mentioned in Mr. Tomuschat's proposal, which would then read:

> "... (*c*) that the fact that in certain circumstances equitable and reasonable utilization of a watercourse may involve some significant harm to another watercourse State did not of itself necessarily constitute a basis for barring an activity."

30. Mr. CALERO RODRIGUES said that he could accept Mr. Tomuschat's proposal as amended by Mr. Eiriksson. Nevertheless, the word "proportionality" was not as precise as might be desired.

31. Mr. AL-BAHARNA said that the Special Rapporteur's proposal could be altered to read:

> "... (*c*) that the fact that equitable and reasonable utilization of a watercourse may still involve much less significant harm than that otherwise would have been in barring an activity, did not in itself constitute a basis for barring such an activity".

32. Mr. ARANGIO-RUIZ said that he preferred Mr. Tomuschat's proposal as amended by Mr. Eiriksson, but the last two sentences could be merged to read: "In such instances the principle of equitable and reasonable utilization remains the guiding criterion in balancing the interests at stake."

33. Following a further discussion in which several members of the Commission took part, Mr. EIRIKSSON read out a suggested amalgamation of the proposals, reading:

> "(2) The approach of the Commission was based on three conclusions: (*a*) that article 5 alone did not provide sufficient guidance for States in cases where harm was a factor; (*b*) that States must exercise due diligence to utilize a watercourse in such a way as not to cause significant harm; and (*c*) that the fact that an activity involves significant harm did not of itself necessarily constitute a basis for barring it. In certain circumstances 'equitable and reasonable utilization' of an international watercourse may still involve significant harm to another watercourse State. Generally, in such instances the principle of equitable and reasonable utilization remains the guiding criterion in balancing the interests at stake."

34. Mr. ELARABY suggested that, in the third conclusion, the words "did not" should be replaced by "would not".

35. The CHAIRMAN said that, if he heard no objection, he would take it that the Commission agreed to adopt the amalgamated text as amended by Mr. Elaraby.

It was so agreed.

Paragraph (2), as amended, was adopted.

36. Mr. GÜNEY said that the text just adopted did not reflect either the content or the scope of article 7, paragraph 2, as adopted by the Drafting Committee and by the Commission in the light of the statement made by the Chairman of the Drafting Committee. That statement was an integral part of the agreement reached in the Drafting Committee and reflected the general view therein. It was on that understanding that he accepted the new text, but in the application of the future instrument, article 7 would certainly be interpreted in the light of the statement made by the Chairman of the Drafting Committee.

37. The CHAIRMAN said that by adopting the new text for paragraph (2), the Commission had not revised the report of the Drafting Committee, which would remain part of the Commission's records.

The commentary to article 7, as a whole, as amended, was adopted.

The commentaries to the articles on the law of the non-navigational uses of international watercourses, as a whole, as amended, were adopted.

Programme, procedures and working methods of the Commission, and its documentation (A/CN.4/457, sect. F, A/CN.4/L.502)

[Agenda item 7]

REPORT OF THE PLANNING GROUP

38. Mr. YAMADA (Chairman of the Planning Group) drew attention to the report of the Planning Group (A/CN.4/L.502) and said it should be noted that the two annexes to the report were for the Commission's internal use and would not be included in the report to the General Assembly.

39. The CHAIRMAN said that the purpose of the Commission's review of the report was to determine whether, subject to the required editing changes, it should be included in the last chapter of the Commission's report to the General Assembly.

Paragraphs 1 to 3

40. Mr. BOWETT said that the report appeared to contain little discussion of the Commission's methods of work in response to the request by the General Assembly cited in paragraph 1.

41. Mr. YAMADA (Chairman of the Planning Group) said that at the present session the Planning Group had considered only the methods of work relating to the drafting of commentaries. In previous years it had discussed the questions of the Drafting Committee and the method of preparing the Commission's annual report.

Paragraphs 1 to 3 were adopted.

Paragraphs 4 to 11

42. In response to a query by Mr. PELLET, the CHAIRMAN said it was correct to assume that the content of paragraph 8 and of the second sentence of paragraph 10 would not appear in the Commission's report to the General Assembly.

43. Mr. CALERO RODRIGUES, supported by Mr. YANKOV, said that the reference to the Commission's intention with respect to the two new topics referred to in the last sentence of paragraph 7 should be amplified somewhat. A statement should be added at the end of the paragraph to the effect, for instance, that special rapporteurs were to be appointed or that a working group was to be set up.

44. The CHAIRMAN suggested that the Commission should adopt paragraphs 4 to 11 on the understanding that the changes required to reflect Mr. Calero Rodrigues' point would be introduced into paragraph 7 when the Commission's report to the General Assembly was adopted.

It was so agreed.

Paragraphs 4 to 11 were adopted.

New paragraph 11 *bis*

45. Mr. YAMADA (Chairman of the Planning Group) said that the following sentence should be added, as paragraph 11 *bis*:

"11 *bis*. The Working Group chaired by Mr. Pellet will continue its work on the formulation of recommendations on other contributions by the Commission to the United Nations Decade of International Law to be submitted to the Commission at its next session."

Paragraph 11 bis *was adopted.*

46. In response to a point raised by Mr. GÜNEY, the CHAIRMAN said that, as stated in footnote 2 of the report of the Planning Group, annex II was intended for the internal use of the Commission only. The annex would not therefore be included in the Commission's report to the General Assembly.

47. Mr. PELLET said he would like to be quite sure that approval of annex II by the Planning Group would not involve any commitment on the part of contributors to the publication. In that connection, he understood that Mr. Jacovides wished to limit his study (A/CN.4/L.502, annex II, item 1) to the role of international law in diplomacy and that Mr. Vargas Carreño would like a question mark to be added after the title of his study (ibid., item 26).

48. Mr. KABATSI and Mr. BENNOUNA said that a question mark should also be added in the English version of the titles of their studies (ibid., items 8 and 9).

49. In response to a point raised by Mr. YANKOV, Mr. PELLET said that all contributors to the publication would have an opportunity to make any alterations they wished to the titles of the studies.

Paragraphs 12 to 16

50. Mr. PELLET, referring to the fifth sentence of paragraph 15, said that the phrase "providing a basis for the elaboration by States of legal codification instruments" was highly ambiguous and should perhaps be qualified by the addition of a reference to international law. He suggested that the Rapporteur should ensure that a clearer form of wording was incorporated in the report of the Commission to the General Assembly.

It was so agreed.

Paragraphs 12 to 16 were adopted on that understanding.

Paragraphs 17 and 18

51. The CHAIRMAN reminded members that it had been agreed, at the suggestion of Mr. Calero Rodrigues, to replace the title to paragraphs 17 and 18 by the words "Methods of work".

Paragraphs 17 and 18 were adopted.

Paragraph 19

52. In response to a query by Mr. KABATSI, the CHAIRMAN said he had been advised that the last sentence of the paragraph was useful for the purpose of the Commission's accountability to the United Nations administration.

53. In answer to Mr. PELLET, Mrs. DAUCHY (Secretary to the Commission) said that the forty-seventh session of the Commission would take place from 1 May to 21 July 1995.

54. Mr. PELLET said he found it quite extraordinary that the Commission should commence its session on Labour Day, a public holiday which was of a truly international character and free of any particular religious or national connotation.

55. Mrs. DAUCHY (Secretary to the Commission) said that there was, of course, nothing to prevent the Commission from starting its session on Tuesday, 2 May, but it would then lose one day of the session.

56. Mr. CALERO RODRIGUES said that he would be loath to lose even half a day of the Commission's session. Labour Day, moreover, was not celebrated at the United Nations Office at Geneva and, in the past, the Commission had always worked on that day.

57. The CHAIRMAN suggested that a decision on the matter should be taken when the Commission came to the relevant part of its report.

It was so agreed.

Paragraph 19 was adopted.

The report of the Planning Group as a whole, as amended, was adopted.

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

CHAPTER II. *Draft Code of Crimes against the Peace and Security of Mankind* (A/CN.4/L.496 and Add.1)

58. The CHAIRMAN said that Chapter II, section B, of the Commission's draft report was divided into two subsections: section B.1, dealing with the draft statute for an international criminal court, and section B.2 dealing with the draft Code of Crimes against the Peace and Security of Mankind. He invited members to consider first section B.2, and to proceed paragraph by paragraph.

59. Mr. THIAM (Special Rapporteur) expressed surprise at the order of presentation adopted for Chapter II of the report. A question of principle was, however, also involved. The draft Code of Crimes against the Peace and Security of Mankind, which contained the basic rules to be applied by the court, had in fact been considered long before the draft statute for an international criminal court had been taken up. He would not insist on the draft Code being considered before the draft statute if that would create problems, but that was how it should be done.

60. Mr. CALERO RODRIGUES asked which of the two had been discussed first in previous years—the court or the draft Code.

61. The CHAIRMAN said that the Special Rapporteur would be able to answer that question later.

B. Consideration of the topic at the present session (A/CN.4/L.496 and Add.1)

2. Draft Code of Crimes against the Peace and Security of Mankind (A/CN.4/L.496/Add.1)

Paragraphs 1 to 7

Paragraphs 1 to 7 were adopted.

Paragraph 8

62. Mr. THIAM (Special Rapporteur), referring to the French text, proposed that the word *inclus*, in the first sentence, should be replaced by the word *visés*.

It was so agreed.

Paragraph 8, as amended, was adopted.

Paragraph 9

Paragraph 9 was adopted.

Paragraph 10

63. Mr. PELLET said that the phrase "which might also have a legitimate interest in having the Special Rapporteur lengthen the list", in the third sentence, was utterly incomprehensible.

64. Mr. THIAM (Special Rapporteur), agreeing with Mr. Pellet, said that some form of wording should be found that properly reflected the intention; alternatively, the phrase should be deleted.

65. The CHAIRMAN said that no action would be taken on paragraph 10 until the matter had been clarified.

Paragraphs 11 to 15

Paragraphs 11 to 15 were adopted.[3]

Paragraph 16

66. Mr. PELLET said that the last sentence was not clear. If it meant what he thought it did, it was not necessarily true that the court's only function would be to apply existing conventions. Since a question of substance was involved, the sentence should be re-examined.

67. The CHAIRMAN suggested that the Commission should defer action on the paragraph until the Rapporteur had looked into the matter.

It was so agreed.

The meeting rose at 1.05 p.m.

* Resumed from the 2370th meeting.

[3] Subsequently, paragraph 13 was amended; see 2373rd meeting, para. 4.