Document:-

A/CN.4/SR.2410

Summary record of the 2410th meeting

Topic:

Draft code of crimes against the peace and security of mankind (Part II)- including the draft statute for an international criminal court

Extract from the Yearbook of the International Law Commission:-

1995, vol. I

mittee would bear in mind and, at its discretion, deal with all or part of the elements of draft articles 17, 18, 20, 23 and 24 as adopted on first reading. In presenting the report of the Drafting Committee (A/CN.4/L.506 and Corr.1) to the Commission (2408th meeting), he had explained that, as a result of various factors, the Drafting Committee had been faced with a burdensome task which could not be completed at the present session. Even those articles which the Committee had adopted and for which it was presenting a text to the plenary might have to be reviewed once the second reading of part two had been completed. Having said that, he wished to reiterate his understanding that the referral to the Drafting Committee of articles 15, 19, 21 and 22 did not in itself rule out the possibility of the Committee's considering, when formulating those four draft articles, any of the other articles he had listed. Reference had been made to the words "at its discretion", which appeared in the report of the Drafting Committee. It had always been a fact that the Drafting Committee was a responsible body which, while remaining a subsidiary body of the Commission, was required to act in full independence when considering the draft articles before it. Accordingly, the Committee would take into consideration the discussion which had taken place at the present session, the discussion within the Drafting Committee itself and the discussion that would take place in the Sixth Committee at the next session of the General Assembly. Nothing would be lost or neglected, but consideration would have to be given to the issue of whether, in view of present-day realities, all the remaining articles deserved to be included as separate articles in the draft Code or whether some of them, such as the article on apartheid, could perhaps be included under crimes against humanity or some other heading. He hoped that his explanation would clarify the matter sufficiently to obviate further debate on that point, and he appealed to members of the Commission not to single out that point when commenting on the Drafting Committee's proposals. The Committee still had a great deal of work before it, and the time to finalize that work would come at the next session.

The meeting rose at 4.20 p.m.

2410th MEETING

Tuesday, 4 July 1995, at 10.15 a.m.

Chairman: Mr. Pemmaraju Sreenivasa RAO

Present: Mr. Al-Khasawneh, Mr. Arangio-Ruiz, Mr. Barboza, Mr. Bennouna, Mr. Bowett, Mr. de Saram, Mr. Eiriksson, Mr. Elaraby, Mr. Fomba, Mr. Güney, Mr. He, Mr. Idris, Mr. Kabatsi, Mr. Kusuma-Atmadja, Mr. Lukashuk, Mr. Mahiou, Mr. Mikulka, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Razafindralambo, Mr. Rosenstock, Mr. Thiam, Mr. Tomuschat, Mr. Villagrán Kramer, Mr. Yamada, Mr. Yankov.

Draft Code of Crimes against the Peace and Security of Mankind (*concluded*) (A/CN.4/464 and Add.1, sect. B, A/CN.4/466,[1] A/CN.4/L.505, A/CN.4/L.506 and Corr.1, A/CN.4/L.509)

[Agenda item 4]

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE ON SECOND READING[2] (*concluded*)

1. Mr. YAMADA said he wished to make several preliminary comments which he hoped the Drafting Committee would take into account when it resumed its consideration of the draft articles at the next session. He suggested that article 6 should begin with the words "The State party" rather than simply "The State". In article 6 *bis*, paragraphs 2 and 3 ended with a clause which made extradition subject to "the conditions provided in the law of the requested State", but, in his view, the wording of article 8 of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, was better because it made extradition subject to "the procedural provisions and the other conditions of the law of the requested State" and the present case involved procedural rules on extradition. With regard to article 8, the expression "In the determination of any charge against him", as contained in paragraph 1 (*a*) and in article 14 of the International Covenant on Civil and Political Rights and in article 41, paragraph 1, of the draft statute for an international criminal court,[3] also applied to paragraphs 1 (*b*) and 1 (*g*) and therefore belonged in the introductory part of that paragraph. In article 9, the idea covered in paragraph 3 (*a*) could be expressed in a less complicated way. Paragraph 3 (*b*), which was taken word for word from the statute of the International Tribunal for the Former Yugoslavia,[4] referred to three cases, the first two of which were grammatically related to the same subject and the third of which had a different subject. The comma following the word "independent" should therefore be replaced by the word "or".

2. It had been suggested that a third paragraph should be added to article 1 stipulating that States parties must adopt legislation making crimes against the peace and security of mankind punishable under national law, but article 5 *bis* seemed to serve the same purpose by requiring each State party to establish its jurisdiction over such crimes. Depending on their constitutional requirements, States parties could therefore amend their criminal law or apply the provisions of the Code directly. In general, the Drafting Committee had made great progress in preparing the draft Code, but some basic provisions had still not been formulated and the harmonization of the various systems of criminal justice in the world would not be easy. It was to be hoped that, at its next session, the Commission would set aside enough meetings of the

---

[1] Reproduced in *Yearbook... 1995*, vol. II (Part One).

[2] For the text of the draft articles provisionally adopted by the Commission on first reading, see *Yearbook... 1991*, vol. II (Part Two), pp. 94-97.

[3] *Yearbook... 1994*, vol. II (Part Two), para. 91. See 2379th meeting, footnote 10.

[4] Ibid., footnote 5.

Drafting Committee during the first half of the session and enough plenary meetings during the second half.

3. Mr. MAHIOU, speaking on a point of order, asked why the Commission had departed from its usual practice, which was that, when the Chairman of the Drafting Committee had introduced the report on the Committee's work and submitted the draft articles it had adopted, action was taken on the draft articles, but the debate on them was not reopened. The Drafting Committee did, of course, wish to have observations and comments on some articles to which it would come back at the next session, but there were other articles, particularly those of part one, which could be submitted to the Sixth Committee. His concern was to avoid a situation in which the Commission simply decided to take note of the progress made on all topics and thus give the impression of having held an "empty" session.

4. The CHAIRMAN said that, in his introduction, the Chairman of the Drafting Committee had indicated (2408th meeting) that, after examining various issues, the Committee had reached a number of preliminary decisions and had requested that, instead of immediately adopting the proposed draft articles, the Commission should simply take note of them so that they could be reviewed later. Before taking a decision on that recommendation, the members of the Commission might offer some ideas to be taken into consideration by the Committee at the next session, without necessarily reopening the debate. In any event, the Drafting Committee had not tried to distinguish from among all the draft articles proposed those for which the Commission could do more than "take note" because the Committee wished to review the entire set of articles.

5. Mr. YANKOV (Chairman of the Drafting Committee) said that the draft articles of part one had indeed been adopted by the Drafting Committee, with the usual observations and reservations. With regard to part two, it would obviously be premature to adopt one or two articles which would have to be reviewed once all the articles of that part had been drafted. The Commission had also been criticized at times by the Sixth Committee for having submitted piecemeal drafts. In addition, parts one and two were interrelated and some provisions of part two might have effects on part one. Since it would be unfortunate if the time and effort the Drafting Committee had spent on producing concrete results on the topic were not brought to the attention of the Sixth Committee, the best way should be found of indicating clearly in the Commission's report to the General Assembly that, with regard to certain draft articles, there had been general agreement, but that the Drafting Committee was nevertheless unanimous in considering that the entire set of articles should be reviewed. The Commission could, for instance, include the draft articles of part one in its report, either in a footnote or in another form, while stating clearly that, with regard to part two, it was doing so because it first wanted to have an overall idea as part of an integrated approach. In the Drafting Committee, the Special Rapporteur had seemed to agree that the proposed draft was provisional.

6. Mr. THIAM (Special Rapporteur) recalled that he had already told the Chairman of the Drafting Committee that he was surprised to see the draft articles presented as if none of them had been adopted by the Drafting Committee, which was not the case, as shown by the very title of the report of the Drafting Committee (A/CN.4/L.506 and Corr. 1). In his view, the Commission must say clearly to the General Assembly that specific draft articles had been adopted by the Drafting Committee, but others had to be re-examined, especially because, if the Drafting Committee had to review the entire set of draft articles at the next session, it might not have time to do anything else.

7. The CHAIRMAN said that it might be better if the members who wished to speak on the draft articles as such did so before the Commission resumed the discussion that had begun a bit too soon, on the decision to be taken on the report of the Drafting Committee.

8. Mr. BOWETT said that a code of crimes should define as clearly as possible what it was talking about, at least in the commentary. For example, article 6 spoke of "an individual alleged to have committed a crime", but it was inconceivable that any presumption would entail the obligation referred to in the article. Accordingly, it should be specified that presumptions should be sufficiently well founded. Article 15 also referred to "an individual who, as leader or organizer, commits an act of aggression" and added, in its paragraph 2, that aggression was "the use of armed force by a State". Paragraph 2 therefore seemed to refer to military leaders. Yet article 13 spoke of "head of State or Government", which was a political function. The question was therefore whether the draft referred to the military or to politicians or to both at once, the latter being what it should refer to. Lastly, the actual definition of aggression (art. 15, para. 2) was simple enough but not sufficient, and there was a risk that, because of the words "in any other manner inconsistent with the Charter of the United Nations", it would give rise to countless controversies, if only with regard to the use of force for a humanitarian intervention or in order to ensure the implementation of a decision of ICJ or an arbitral award.

9. Mr. ROSENSTOCK said that paragraph 2 of the corrigendum to the report of the Drafting Committee should be deleted because it gave the impression that the Drafting Committee had considered articles 16, 17 and 18, something it had not done for the reasons given in footnotes 8 and 9 of the same document.

10. Mr. PELLET said that, while he had doubts about the usefulness of lengthy definitions in part two of the draft Code, he was convinced that definitions should be a basic element of part one, from which the whole interest of the Code was derived. He was therefore disappointed by some of the proposed provisions and, in particular, by article 1. The lack of a definition of a crime against the peace and security of mankind was surprising. What was the point of the Commission's work if not to guide States and the international community on how they should deal with such crimes? In order to do that, however, it had to give them an idea of the basic characteristics of that type of crime.

11. The definitions given in part two were of little interest and would serve no useful purpose because, in any event, international courts had their own statutes which

defined the crimes they are called on to punish. On the other hand, it would be extremely useful for courts and States to be able to refer to a general definition of crimes against the peace and security of mankind in taking the decisions incumbent on them. He therefore protested against the Drafting Committee's decision not to include a definition of such crimes in part one of the draft. In order to fill that gap, it might be stated somewhere in the draft that a crime against mankind was a particularly odious crime which affected all of mankind, shook the very foundations of the international community and had as its main characteristic the fact that it led to the transparency of the State or the legal person on whose behalf it had been committed, since the responsibility of individuals could be directly engaged.

12. The fact that the Drafting Committee's text defined the crimes only by reference to part two had the serious disadvantage that only the crimes listed in part two would be considered to constitute crimes against the peace and security of mankind. That gave too much importance to part two, whose role could be illustrative only, inasmuch as there would never be a consensus on an exhaustive list that was satisfactory to everyone. He therefore regretted having to disagree with the Chairman of the Drafting Committee, who had expected that article 1 would be the one the Commission would certainly be able to adopt. He totally failed to share that view and considered that the Committee should give the matter more thought. One solution might be to insert an article 1 *bis* that would propose a decent definition of crimes against the peace and security of mankind.

13. With regard to article 15, he shared Mr. Bowett's view that there was some inconsistency between paragraphs 1 and 2 in so far as the former referred to an individual who committed an aggression and the latter spoke of aggression committed by a State. He was, moreover, totally opposed to paragraph 2 because aggression was not the use of armed force by a State, but a particular form of the use of armed force which needed to be defined. As it now stood, the paragraph was dangerous because it extended the concept of aggression *ad infinitum* and that was entirely unacceptable. He was therefore convinced that the Drafting Committee was on the wrong track, as was the Commission in wanting to define aggression as part of the present exercise.

14. Mr. de SARAM noted that some of the articles in part one of the draft Code corresponded to articles in the draft statute for an international criminal court. He therefore hoped that the Drafting Committee had carefully considered whether the provisions it was submitting to the Commission for adoption differed from those it had adopted in connection with the draft statute; if so, the reasons should be indicated in the commentary.

15. The discussion of article 15 on aggression had made it clear that, in its work on the draft Code, the Commission would have to deal with questions on which consensus was impossible. It would therefore be wiser to ensure that the present draft Code was regarded as a first stage, for example by saying so in the preamble, and also to have a review clause which would make it possible to amend the Code or include new crimes. In that case, it might be possible to envisage an additional protocol which would be adopted when agreement had been reached on new crimes. He was not sure that the Commission would succeed in completing its work on the draft Code if it kept reopening the discussion on vast subjects such as aggression. It would be a pity if aggression did not appear in the draft, but the Commission could no more than indicate those forms of aggression which everyone agreed should appear in the Code, it being understood that the list would not be exhaustive.

16. The CHAIRMAN noted that, as Mr. Mahiou had pointed out, the members of the Commission had in fact reopened the debate on the draft articles. It was true that draft article 15 and those following it had given rise to more comments on substance than the articles in part one of the draft. The question raised by Mr. Bowett and Mr. Pellet in connection with article 15 showed that part two of the draft raised important problems which were not simply technical. Yet the Commission could not, in a few minutes, redo the work on which the Drafting Committee had spent weeks. Mr. Mahiou's proposal that part of the draft articles should be referred to the General Assembly in order to show that concrete progress had been made in the work on the draft Code therefore remained valid. The Drafting Committee could still review the whole matter at the Commission's next session on the basis of the comments made and then rapidly adopt the draft articles in question.

17. Mr. THIAM (Special Rapporteur) said he agreed that the Commission must decide on Mr. Mahiou's proposal. It would have ample time later to return to the definition of the various offences to be included in the draft Code. For the time being, the question was whether the Commission had or had not been asked to consider a text already adopted by the Drafting Committee.

18. Mr. BENNOUNA, referring to the question of aggression, said that he shared Mr. Pellet's opinion on the substance, but that in any case the problem was how to settle the question of the definition of aggression that had been coming up for over 10 years without being answered. Perhaps the Commission should simply decide not to define aggression and leave it at that. In the absence of a definition, answers were usually found in case law and practice. That was precisely the case of *jus cogens*, which had never been defined. But there was no reason not to give full explanations in the commentary or to cite those aspects of practice that might later serve as a guide to the courts, whether national or international. That was certainly an admission of helplessness, but, in his view, it was time for the Drafting Committee to put an end to that exercise.

19. On the whole, he agreed with Mr. Mahiou. The examination of the draft articles proposed by the Drafting Committee was an intermediate exercise between the general debate and the final adoption of the articles. It was clear that the general debate should not be reopened and that consideration would again need to be given to certain points that gave rise to problems, such as the one raised by Mr. Pellet and Mr. Bowett with regard to article 15. He wondered whether the Commission should not draw up a general definition of crime and, instead of constantly repeating the phrase that began with the words "An individual who ...", find a wording that

covered all crimes and highlighted the connection existing between the individual and the State, that is to say between the individual and the crime, and show that some of the crimes targeted by the Commission could be committed only by States, such as aggression, but that some degree of responsibility could be borne by individuals. That was essentially a drafting question and the Drafting Committee would thus need to find the appropriate wording, but it was pointless to devote too much attention to the problem of aggression, which could never be solved.

20. The CHAIRMAN said he agreed that the Commission should focus on Mr. Mahiou's proposal. Two questions arose, the first relating to the status of part one compared to part two of the draft and the second to the status of the draft articles of part two, which must be examined in the light of the decision that would be taken on the other articles. The most logical solution, the one recommended by the Drafting Committee itself, would be for the Commission to take note of the progress made without adopting the proposed draft articles, even those that appeared in part one because they still posed a number of technical problems, although that did not mean that the draft articles would not be referred to the General Assembly. That would be a way to settle both questions. The other solution was the one proposed by Mr. Mahiou and the Commission would therefore have to choose.

21. Mr. EIRIKSSON said that the draft articles were obviously not ready to be referred to the General Assembly because the commentaries to the articles of part one could not be drafted as long as the Commission did not have a clear idea of what those articles would finally look like. Moreover, the articles of part two contained major gaps which had an effect on the other articles. He was thinking in particular of article 3, which should serve as a basis for considering the articles of part two. The proposal that exclusive international jurisdiction should be established in the case of specific crimes, such as aggression, would also have consequences for all the draft articles. He therefore thought that part two was likewise not ready to be submitted to the Commission and certainly not to be referred to the General Assembly. The most logical approach would be for the Commission to take note of the work completed by the Drafting Committee without adopting the proposed draft articles.

22. Mr. VILLAGRÁN KRAMER noted that the Drafting Committee had submitted to the Commission only those draft articles on which progress had been made, that is to say articles that would constitute the general part of the Code and two of the articles which would be included in part two on crimes and which related to aggression and genocide. Because of the lack of time, the Drafting Committee had not taken a decision on the actual structure of those articles, and that meant that, even in the case of aggression and genocide, the Drafting Committee had not fully completed its work. It might be said that, with regard to part one, the general part of the Code, it had reached a number of conclusions, whereas, in part two, it had only begun to consider the topic.

23. The question that arose now was whether the Commission should take note of the result of the Drafting Committee's work, thereby showing that it had been informed of it, or whether it should approve the draft articles in principle, provided that the work continued and was completed at the next session. In his view, the Commission should not confine itself to taking note of the Drafting Committee's report. As it had done in the case of the draft statute for an international criminal court, it should adopt the proposed draft articles in principle, clearly indicating in its report to the General Assembly that it would not do so definitively until the work on the draft Code had been fully completed.

24. Concerning the crimes themselves, it was clear that new articles might be proposed not only on aggression and genocide, but also on other crimes which were contained in the draft adopted on first reading or which were mentioned in the Special Rapporteur's report. Many opinions and reservations had been expressed during the general debate and the Commission had to remain open to any new ideas that might be formulated between now and the next session.

25. The CHAIRMAN said that Mr. Villagrán Kramer had departed somewhat from the main question, which was whether and to what extent the draft articles of part one might be referred to the General Assembly.

26. Mr. ROSENSTOCK said that, when the Drafting Committee's report had been submitted to the Commission, it had been quite clear that the Drafting Committee did not consider any of the proposed draft articles to be definitive. Three draft articles of part one (draft articles 1, 6 and 11) contained footnotes, which showed their provisional nature. It would serve no purpose to refer unfinished and incomplete texts to the Sixth Committee without some explanation or a summary of the debates to which they had given rise in the Commission. He therefore proposed that the Commission should confine itself at the current stage to taking note of the draft articles submitted to it while recognizing that it must submit a more complete report to the General Assembly at its fifty-first session in 1996.

27. Mr. MAHIOU said he thought that the Drafting Committee was perhaps being too modest in submitting the proposed texts as provisional. Leaving aside article 1, which could be controversial, it seemed to him that the draft articles of part one were sufficiently complete to be able to be referred to the Sixth Committee, even if they were still perfectible and were not accompanied by commentaries.

28. The CHAIRMAN wondered whether the Commission could refer draft articles not accompanied by commentaries to the General Assembly.

29. Mr. THIAM (Special Rapporteur) said that, although there were precedents for doing so, it had been agreed that he would not submit commentaries at the current session. However, Mr. Mahiou's point was well taken; he did not see why it was necessary to pass over in silence the fact that most of the articles of part one had been adopted by the Drafting Committee and submitted to the Commission.

30. Mr. KUSUMA-ATMADJA said that, in the absence of commentaries, the General Assembly might have difficulty understanding the draft articles.

31. Mr. EIRIKSSON, speaking on a point of order, said that the Commission could not refer draft articles to the Sixth Committee without commentaries. The articles must be adopted with the relevant commentaries.

32. The CHAIRMAN said that, in view of the apparent difficulty caused by the lack of commentaries to the draft articles, he would invite the members of the Commission, the Chairman of the Drafting Committee and Messrs. Mahiou and Rosenstock, in particular, to consider the way in which the result of the Commission's work on the topic at the current session could be presented to the General Assembly.

The meeting was suspended at 11.30 a.m. and resumed at 12.10 p.m.

33. The CHAIRMAN invited the Commission to adopt the draft decision which had been prepared following informal consultations and which read:

> "As some of the articles[5] are closely interrelated and might call for a review and should in any event be accompanied by commentaries, the Commission decides to defer the final adoption of the articles in question until after the completion of the remaining articles and to confine itself, at the present session, to taking note of the oral report of the Chairman of the Drafting Committee as reflected in the relevant summary record.
>
> "In introducing the report of the Commission before the Sixth Committee at the forthcoming session of the General Assembly, the Chairman will indicate that the relevant extract from the summary record of the 2408th meeting of the Commission containing the texts of the articles adopted by the Drafting Committee and the introductory statement of the Chairman of the Drafting Committee is at the disposal of delegations in the six official languages."

34. Mr. YANKOV (Chairman of the Drafting Committee) said that he wished to make two points further to the explanations given by the Chairman. First, the number and title of all the articles examined must of course figure in the body of the report. Secondly, rather than including the text of the articles in the report as footnotes, it had been agreed, as a compromise solution, to refer in the report to the summary record of his introductory statement, in plenary, of the Drafting Committee's report. That summary record should reflect the content of the latter report as faithfully as possible and should reproduce the texts of the draft articles.

35. Mr. KUSUMA-ATMADJA said that, while that was a very useful proposal, the Commission must be warned against two difficulties. In the first place, if the solution was adopted, it must not create a precedent. Secondly, since Governments might comment on it in any event to avoid any confusion, the Commission should specify the form in which such comments could be submitted and to whom.

36. The CHAIRMAN said that the question of a precedent had been briefly considered during the informal consultations. According to information provided by the secretariat, the report of the Commission had already, on two occasions, contained a formula of the kind proposed. As to comments, a footnote explaining that the Commission had not completed its work might help to keep them in check.

37. Mr. PELLET said that he had very definite reservations about the proposed formula, which raised numerous problems. In particular, no matter what one said, it would create a precedent. Also, if the Commission followed such a course, it might well ultimately submit to the Sixth Committee an "empty" report, thus giving the impression that it had done very little work at its forty-seventh session. As the Special Rapporteur had mentioned, however, the draft proposed by the Drafting Committee contained articles, such as article 9 on the *non bis in idem* principle, which might not be called in question and which the Commission could therefore adopt. The real problem was that there were no commentaries. It was not certain, however, that the Special Rapporteur was absolutely against the idea of drafting commentaries to a few articles.

38. Mr. BENNOUNA said he too considered that the proposal was open to criticism. In his view, the formula adopted should be purely descriptive. The Chairman should explain that the Drafting Committee and the Commission had planned the work over two sessions and that progress had been achieved, but that, as there was still some disagreement on particularly delicate problems, the Commission did not consider it advisable to submit draft articles at the current stage. Also, the Chairman, together with several members of the Commission, should analyse the substance of the report.

39. Mr. ARANGIO-RUIZ said that he agreed with much of what had been said by Mr. Pellet and Mr. Bennouna and with the solution they recommended. The best thing would be for the Commission to say what had happened and nothing more. The fact that it was not submitting draft articles to the General Assembly did not mean it had done nothing. The General Assembly could see, on reading the report, that a lot of work had been done on important topics. It would suffice to make it clear that draft articles would be submitted at the end of the forty-eighth session.

40. He wished to revert to three points. First, he had reservations about article 1 of the draft, which, in his view, should include a paragraph 3 under which the States parties to the convention would be required to incorporate the Code into their legal systems. Secondly, along with other members, he did not like the definition of aggression. Thirdly, he would like to know what the Commission was going to do about articles that had "disappeared", since he, as well as Mr. Mahiou, was attached to some of them.

[5] Articles 1, 5, 5 *bis*, 6, 6 *bis*, 8 to 13 of part one and articles 15 and 19 of part two.

41. Mr. BARBOZA said that he shared many of the views expressed by Mr. Pellet and Mr. Bennouna. The ideal thing, of course, would be to send to the General Assembly the draft articles that had not given rise to any objection, together with the relevant commentaries. The problem was therefore to decide whether or not it was too late for the Special Rapporteur to prepare such commentaries, if necessary, with the assistance of the secretariat.

42. The CHAIRMAN said that it was unrealistic to try to impose on the Special Rapporteur th e extraordinary burden of preparing commentaries when the Commission would not be in a position to adopt them in plenary. The idea of reporting fully to the General Assembly on what had taken place in the Commission was valid, but, in the case in point, it would be tantamount to reporting a lack of any agreement in plenary.

43. Mr. ROSENSTOCK said that he strongly supported the proposal, which was the only way of informing the General Assembly while avoiding either an endless row in the Commission or conveying a misleading impression. Also, he saw no reason for "cobbling together" in a rush commentaries on draft articles that might themselves appear to be incompatible with other draft articles on second reading. In that connection, a parallel could be drawn with the Commission's approach to the draft articles on the law of the non-navigational uses of international watercourses.

44. Mr. KUSUMA-ATMADJA said that he was reassured by the explanations the Chairman had given following the information provided by the secretariat. He therefore shared Mr. Rosenstock's opinion as to the usefulness of the proposed formula.

45. Mr. EIRIKSSON said that he too supported the proposal, which could be compared with the decision the Commission had taken at its forty-second session, in 1990, on the topic of the jurisdictional immunities of States and their property.[6]

46. Mr. TOMUSCHAT said that, while he supported the proposal, it was essential that commentaries to the draft articles should be placed before the Commission at the very beginning of the forty-eighth session so that it could examine them calmly.

47. Mr. RAZAFINDRALAMBO said that, since it was physically impossible to prepare commentaries to draft articles on which all members of the Commission were more or less in agreement, he was ready, albeit very reluctantly, to accept the proposed solution.

The decision was adopted.

The meeting rose at 1.05 p.m.

[6] *Yearbook . . . 1990*, vol. II (Part Two), para. 167.

2411th MEETING

Wednesday, 5 July 1995, at 10.10 a.m.

Chairman: Mr. Pemmaraju Sreenivasa RAO

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

Visit by a member of the International Court of Justice

1. The CHAIRMAN said he extended a warm welcome to Mr. Vereshchetin, a Judge of the International Court of Justice and a former member of the Commission, and thanked him for having taken time from his busy schedule at ICJ to spend time with the Commission. He wished in particular to place on record how greatly the Commission had valued his services as a member and as former Chairman of the Commission as well as his industry, scholarship and human qualities. He asked Mr. Vereshchetin to convey the best wishes of the Commission to two other former colleagues, Mr. Koroma and Mr. Shi, who had also made a significant contribution to the work of the Commission.

2. Mr. VERESHCHETIN, thanking the Chairman for his kind words, said that he would not fail to convey the good wishes of the Commission to Mr. Koroma and Mr. Shi. The close ties between the Court and the Commission were most gratifying and he trusted that they would continue. He wished the Commission every success in its future work which he followed with the greatest interest.

State succession and its impact on the nationality of natural and legal persons (*continued*)* (A/CN.4/464/Add.2, sect. F, A/CN.4/467,[1] A/CN.4/L.507, A/CN.4/L.514)

[Agenda item 7]

REPORT OF THE WORKING GROUP

3. Mr. MIKULKA (Chairman of the Working Group on State succession and its impact on the nationality of natural and legal persons), introducing the report of the Working Group (A/CN.4/L.507), said that he was particularly pleased to be doing so in the presence of

* Resumed from the 2391st meeting.

[1] Reproduced in *Yearbook . . . 1995*, vol. II (Part One).