

Document:-  
**A/CN.4/SR.2473**

**Summary record of the 2473rd meeting**

Topic:  
**Other topics**

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## 2473rd MEETING

Friday, 26 July 1996, at 10.10 a.m.

Chairman: Mr. Ahmed MAHIOU

*Present:* Mr. Al-Baharna, Mr. Barboza, Mr. Bennouna, Mr. Calero Rodrigues, Mr. de Saram, Mr. Fomba, Mr. Güney, Mr. Kabatsi, Mr. Kusuma-Atmadja, Mr. Lukashuk, Mr. Mikulka, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Razafindralambo, Mr. Robinson, Mr. Rosenstock, Mr. Szekely, Mr. Thiam, Mr. Tomuschat, Mr. Vargas Carreño, Mr. Villagrán Kramer, Mr. Yankov.

### Draft report of the Commission on the work of its forty-eighth session (concluded)

1. The CHAIRMAN invited the Commission to continue its consideration of its draft report on the work of its forty-eighth session, starting with chapter II.

**CHAPTER II. *Draft Code of Crimes against the Peace and Security of Mankind* (concluded) (A/CN.4/L.527 and Add.1 and Add.1/Corr.1, Add.2-5, Add.6/Rev.1, Add.7-9, Add.10 and Corr.1 and Add.11)**

#### A. Introduction (A/CN.4/L.527 and Add.1 and Add.1/Corr.1)

Paragraphs 1 to 15

*Paragraphs 1 to 15 were adopted.*

Paragraph 16

2. The CHAIRMAN said that the figure “[19]” should be amended to read “[20]”.

*Paragraph 16, as amended, was adopted.*

Paragraph 17

3. Mr. PELLET proposed that the word “agreement” in the second line should be replaced by the word “consensus”.

*It was so agreed.*

*Paragraph 17, as amended, was adopted.*

*Section A, as amended, was adopted.*

4. The CHAIRMAN suggested that the Commission should transmit the draft Code to the Preparatory Committee on the Establishment of an International Criminal Court, which was scheduled to meet in August 1996.

*It was so decided.*

#### C. Tribute to the Special Rapporteur, Mr. Doudou Thiam

5. The CHAIRMAN, recalling that the Commission had already adopted section C in the context of agenda item 3 (2454th meeting), invited the Commission to adopt it formally.

*Section C was adopted.*

*Chapter II, as amended, was adopted.*

6. The CHAIRMAN invited the Commission to continue its consideration of chapter III of the draft report.

**CHAPTER III. *State responsibility* (concluded)\* (A/CN.4/L.528 and Corr.1, and Add.1-3 and Add.3/Corr.1)**

#### A. Introduction (A/CN.4/L.528 and Corr.1)

Paragraphs 1 to 10

*Paragraphs 1 to 10 were adopted.*

*Section A was adopted.*

#### B. Consideration of the topic at the present session (A/CN.4/L.528/Add.1)

Paragraphs 1 to 4

*Paragraphs 1 to 4 were adopted.*

*Section B was adopted.*

#### C. Tribute to the Special Rapporteurs

Paragraph 5

*Paragraph 5 was adopted.*

*Section C was adopted.*

7. The CHAIRMAN, recalling that the Commission had already adopted section D of chapter III in the context of agenda item 2 (2471st meeting), invited the Commission to adopt the chapter, as a whole.

*Chapter III, as amended, was adopted.*

**CHAPTER IV. *State succession and its impact on the nationality of natural and legal persons* (A/CN.4/L.525 and Add.1)**

#### A. Introduction (A/CN.4/L.525)

Paragraphs 1 and 2

*Paragraphs 1 and 2 were adopted.*

*Section A was adopted.*

#### B. Consideration of the topic at the present session

##### 1. CONSIDERATION OF THE SECOND REPORT OF THE SPECIAL RAPPORTEUR

Paragraphs 3 to 8

*Paragraphs 3 to 8 were adopted.*

\* Resumed from the 2471st meeting.

Paragraph 9

8. Mr. YANKOV proposed that the words “for the time being” should be added between the words “aside” and “and” in the second sentence.

9. Mr. MIKULKA (Special Rapporteur) said that, at the preceding session, he had been strongly in favour of setting the issue of the nationality of legal persons aside not only for the time being, but for good. In the meantime, however, he had changed his mind and now took the view that it might be possible to consider the issue at a later stage. Since the sentence in question was intended to reflect the views he had expressed at the preceding session, he suggested that it should be amended to read: “. . . his preference, at that point, for putting that issue aside and for focusing . . .”.

*It was so agreed.*

*Paragraph 9, as amended, was adopted.*

Paragraph 10

*Paragraph 10 was adopted.*

Paragraph 11

10. Mr. BENNOUNA proposed that the first sentence should be amended to read: “As to the outcome of the work, the Special Rapporteur indicated that it might take the form of a declaration by the General Assembly consisting of articles accompanied by commentaries”.

*It was so agreed.*

11. Mr. MIKULKA (Special Rapporteur), replying to a question by Mr. Bennouna, confirmed that the second sentence correctly reflected his views.

*Paragraph 11, as amended, was adopted.*

*Section B.1, as amended, was adopted.*

2. CONSIDERATION OF THE TOPIC BY THE WORKING GROUP  
(A/CN.4/L.525/Add.1)

Paragraphs 1 to 8

*Paragraphs 1 to 8 were adopted.*

Paragraph 9

12. Mr. PAMBOU-TCHIVOUNDA suggested that the word “principle” in paragraph 9 (d) should be replaced by the word “obligation”, the subsequent wording being amended accordingly.

*It was so agreed.*

*Paragraph 9, as amended, was adopted.*

Paragraph 10

*Paragraph 10 was adopted.*

*Section B.2, as amended, was adopted.*

3. ACTION BY THE COMMISSION

Paragraph 11

13. Mr. BENNOUNA pointed out that paragraph 11 (b) would have to be redrafted to bring it into line with the new wording of paragraph 9 of section B.1.

*It was so agreed.*

14. Mr. CALERO RODRIGUES suggested that in paragraph 11 (d) after the word “submit”, the words “to it” should be deleted.

*It was so agreed.*

*Paragraph 11, as amended, was adopted.*

*Section B.3, as amended, was adopted.*

15. Mr. YANKOV, noting that the Commission was about to complete its consideration of chapter IV of the draft report, said that he had been unable to attend the meeting at which the topic of State succession and its impact on the nationality of natural and legal persons had been discussed and wished to take the last opportunity available to him to express the view that the method of work followed in connection with that topic should be considered a model of the way in which the Commission should structure its conclusions and recommendations in future and convey very precise questions, a statement of intentions and even a timetable to the General Assembly.

16. Mr. PAMBOU-TCHIVOUNDA said he trusted that the secretariat had taken note of Mr. Razafindralambo’s comment on the recommendation of the Working Group referred to in the first sentence of paragraph 11.

17. In paragraph 11 (d) of the French text, the words *la marche à suivre* were not very fortuitous; some other wording should perhaps be found.

18. The CHAIRMAN suggested that it should be left to the Special Rapporteur to find a more elegant turn of phrase.

*It was so agreed.*

*Section B, as a whole, as amended, was adopted.*

*Chapter IV, as amended, was adopted.*

CHAPTER VI. *Reservations to treaties* (A/CN.4/L.530)

A. Introduction

Paragraphs 1 to 6

19. Mr. PELLET (Special Rapporteur) said he was a little irritated to note that, once a certain form of wording had been adopted for the report, it remained for ever. In particular, the use of the imperfect tense in the French version of the report of the Commission was absurd and the excuse that it had always been used was exasperating.

*Paragraphs 1 to 6 were adopted.*

*Section A was adopted.*

**B. Consideration of the topic at the present session**

Paragraphs 7 to 14

*Paragraphs 7 to 14 were adopted.*

Paragraph 15

*Paragraph 15 was adopted, with an editorial correction.*

Paragraphs 16 and 17

*Paragraphs 16 and 17 were adopted.*

Paragraphs 18 and 19

*Paragraphs 18 and 19 were adopted, with some editorial corrections.*

Paragraphs 20 to 33

*Paragraphs 20 to 33 were adopted.*

Paragraph 34

20. Mr. ROSENSTOCK proposed that a footnote should be added setting forth the text of the draft resolution to which the paragraph made reference.

*It was so agreed.*

21. Mr. BENNOUNA asked whether it was in fact correct to refer to a draft resolution of the Commission on reservations to multilateral normative treaties.

22. Mr. PELLET (Special Rapporteur), referring to Mr. Bennouna's point suggested that after the word "resolution", the words "he had proposed to" should replace the word "of".

*It was so agreed.*

*Paragraph 34, as amended, was adopted.*

Paragraph 35

23. Mr. de SARAM said he wondered whether it might not be preferable for the first sentence of the paragraph to come immediately after paragraph 36: that would round the matter off. He had not made any statement at the time, as he had thought there was not going to be a discussion on it.

24. Mr. TOMUSCHAT said that, although he agreed with the content of the statement in the third sentence of the paragraph, such fulsome praise was not in keeping with the Commission's usual style.

25. Mr. YANKOV said that it would be in the Special Rapporteur's own interest to avoid superlatives of that kind in the report. Any words of praise would in any event be duly reflected in the summary records. He therefore recommended that the third sentence of the paragraph should be replaced by an objective statement along the following lines: "However, several members congratulated the Special Rapporteur on the report he had prepared on a complex and sensitive issue".

26. Following an exchange of views in which Messrs. THIAM, KABATSI, PELLET (Special Rapporteur), BENNOUNA and ROSENSTOCK took part, the CHAIRMAN suggested that it should be left to the secretariat to find an appropriate form of wording.

*Paragraph 35 was adopted on that understanding.*

Paragraphs 36 and 37

*Paragraphs 36 and 37 were adopted.*

*Section B, as amended, was adopted.*

*Chapter VI, as amended, was adopted.*

27. Mr. SZEKELY proposed that the valuable report on the environment prepared by Mr. Tomuschat (ILC(XLVIII)/DC/CRD.3) should be incorporated in the *Yearbook of the International Law Commission*, so that it would form part of its work.

*It was so agreed.*

28. Mr. PELLET (Special Rapporteur) said he agreed entirely that substantial documents of that kind, including Mr. Rosenstock's proposal concerning crimes against United Nations and associated personnel (ILC(XLVIII)/CRD.2 and Corr.1), should be reproduced in the *Yearbook of the International Law Commission*.

**CHAPTER VII. Other decisions and conclusions of the Commission (A/CN.4/L.531 and Corr.1 and 2, Add.1/Rev.1, Add.5 and Add.6)**

**A. Programme, procedures and working methods of the Commission, and its documentation (A/CN.4/L.531 and Corr.1 and 2, Add.1/Rev.1 and Add.6)**

Paragraphs 1 and 2

*Paragraphs 1 and 2 were adopted.*

**1. PROCEDURES AND WORKING METHODS (A/CN.4/L.531 and Corr.1 and 2)**

Paragraphs 3 and 4

*Paragraphs 3 and 4 were adopted.*

Paragraphs 5 to 102

29. The CHAIRMAN noted that paragraphs 5 to 102 contained the report of the Planning Group (ILC(XLVIII)/PG/WG/1/Rev.1), which the Commission had already adopted (2459th to 2461st meetings).

30. Mr. ROSENSTOCK, replying to a question by Mr. de SARAM, said the part of the Planning Group's report described in the heading before paragraph 5 as an "Executive summary" was considered to contain the crux of the report. He suggested that the heading should be amended to read "Summary".

*It was so agreed.*

*Paragraphs 5 to 102 were adopted.*

*Section A.1, as amended, was adopted.*

## 2. LONG-TERM PROGRAMME OF WORK (A/CN.4/L.531/Add.6)

Paragraphs 1 to 4

*Paragraphs 1 to 4 were adopted.*

Paragraph 5

*Paragraph 5 was adopted with a drafting change in the Spanish version.*

*Section A.2, as amended, was adopted.*

## 3. DURATION OF THE NEXT SESSION (A/CN.4/L.531/Add.1/Rev.1)

*Section A.3 was adopted.*

*Section A, as a whole, as amended, was adopted.*

**B. Cooperation with other bodies**

Paragraphs 1 to 4

*Paragraphs 1 to 4 were adopted.*

*Section B was adopted.*

**C. Date and place of the forty-ninth session**

31. The CHAIRMAN announced that the proposed dates were 20 May to 25 July 1997.

32. Mr. LEE (Secretary to the Commission), replying to a question by Mr. PELLET, said that the decision to reduce the length of the Commission's session from 12 to 10 weeks meant that the session could either start later than usual or end earlier. Because there were many other meetings scheduled for May, the secretariat would prefer the first option, and that was why the proposed starting date was later than usual.

33. Mr. CALERO RODRIGUES pointed out that there would be less of a rush to finalize the Commission's documentation for submission to the General Assembly if the second option was adopted.

34. Mr. TOMUSCHAT, supported by Mr. BENNOUNA, said that the teaching period in most law schools ended in May, and that made the first option much more attractive for law professors who wished to attend the Commission's session.

35. Mr. CALERO RODRIGUES said that the personal convenience of members should not be a deciding factor. The main consideration was the expeditious submission of documents to the General Assembly.

36. Mr. AL-BAHARNA said that the argument for ending the session two weeks early seemed strong, since that would facilitate the preparation of documents for the General Assembly. The Commission had always begun its work in early May, but that had not ever seemed to prevent law professors from participating.

37. Mr. ROSENSTOCK said that a compromise solution might be to have the session start a week later and end a week earlier than usual.

38. Mr. PAMBOU-TCHIVOUNDA, Mr. MIKULKA and Mr. KABATSI endorsed that suggestion.

39. Mr. BENNOUNA said that the suggestion was a bad one. The most important concern was to enable the members of the Commission who held teaching positions to perform their functions properly.

40. The CHAIRMAN, speaking as a member of the Commission, said that he shared Mr. Bennouna's viewpoint.

41. He said that, if he heard no objection, he would take it that the Commission agreed that its forty-ninth session would begin and end one week earlier than usual and that the dates would be from 12 May 1997 to 18 July 1997.

*It was so agreed.*

*Section C, as amended, was adopted.*

42. Mr. LEE (Secretary to the Commission), replying to a question by Mr. PELLET, said the calendar of meetings for 1997 would reflect the decision just taken by the Commission. It would have to be approved by the General Assembly, which would be guided by the overriding consideration of the availability of conference servicing facilities. The General Assembly would also have to endorse the proposal that the Commission's session should be shortened from 12 to 10 weeks.

**D. Representation at the fifty-first session of the General Assembly**

*Section D was adopted.*

**E. Contribution to the United Nations Decade of International Law**

43. Mr. PELLET said that the deadline for submission of essays for the bilingual collection to be issued as a contribution to the United Nations Decade of International Law was fast approaching. Only about half the essays had been received so far. He urged all members of the Commission to submit their essays as soon as possible.

44. The CHAIRMAN also appealed to all members to contribute to the collection.

45. Mr. THIAM asked whether the number of essays available justified the publication of a collection.

46. Mr. PELLET said that a volume could certainly be produced, but it was unfortunate that it would cover only a limited number of topics and reflect a small sector of the viewpoints represented in the Commission.

*Section E was adopted.*

**F. International Law Seminar (A/CN.4/L.531/Add.5)**

Paragraphs 1 to 12

*Paragraphs 1 to 12 were adopted.*

*Section F was adopted.*

**G. Gilberto Amado Memorial Lecture**

Paragraphs 13 to 15

*Paragraphs 13 to 15 were adopted.*

*Section G was adopted.*

*Chapter VII, as amended, was adopted.*

47. The CHAIRMAN recalled that, in accordance with earlier decisions, there would be two annexes to the Commission's report (2465th and 2467th meetings), the first containing the report of the Working Group on international liability for injurious consequences arising out of acts not prohibited by international law (A/CN.4/L.533 and Add.1) and the second, the report of the Working Group on the long-term programme of work (A/CN.4/L.534).<sup>1</sup>

**CHAPTER I. Organization of the session (A/CN.4/L.526)**

- A. Membership**
- B. Officers and the Enlarged Bureau**
- C. Drafting Committee**
- D. Working groups**
- E. Secretariat**
- F. Agenda**
- G. Summary of the work of the Commission at its forty-eighth session**

Paragraphs 1 to 21

*Paragraphs 1 to 21 were adopted.*

*Sections A to G were adopted.*

*Chapter I was adopted.*

*The draft report of the Commission on the work of its forty-eighth session, as a whole, as amended, was adopted.*

<sup>1</sup> Initially adopted by the Commission at its 2467th meeting on the basis of document ILC(XLVIII)/WG/LTPW/2/Rev.1.

48. Mr. CALERO RODRIGUES said that it was the customary practice of the Commission to indicate in a separate section of the report the points on which the Commission would particularly like to hear the views of the Sixth Committee.

49. The CHAIRMAN said that, if he heard no objection, he would take it that the Commission agreed to entrust the Rapporteur and the secretariat with the task of incorporating that information in the report.

*It was so agreed.*

50. Mr. BENNOUNA asked whether the report included a recommendation that the Special Rapporteur for the draft Code of Crimes against the Peace and Security of Mankind should be present when the Code was considered by the Sixth Committee.

51. The CHAIRMAN said that it was customary for the Commission to recommend that, upon the completion of the second reading of a topic, the special rapporteur concerned should be present when the Sixth Committee considered the draft articles. If he heard no objection, he would take it that the Commission recommended that Mr. Thiam should be present during the Sixth Committee's consideration of the draft Code.

*It was so agreed.*

**Closure of the session**

52. After the usual exchange of courtesies, the CHAIRMAN declared the forty-eighth session of the International Law Commission closed.

*The meeting rose at noon.*