

Document:-  
**A/CN.4/SR.2664**

**Summary record of the 2664th meeting**

Topic:  
**<multiple topics>**

Extract from the Yearbook of the International Law Commission:-  
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85. Mr. CRAWFORD (Special Rapporteur) proposed that the last sentence should be deleted.

*Paragraph 51, as amended, was adopted.*

Paragraphs 52 to 54

*Paragraphs 52 to 54 were adopted.*

Paragraph 55

86. Mr. PELLET asked what was meant by “commensurability”.

87. Mr. ROSENSTOCK said that the paragraph could be redrafted so as better to reflect the underlying idea that countermeasures must be both proportional to and commensurate with the situation created by the initial wrongful act.

*Paragraph 55, as amended, was adopted.*

Paragraph 56

*Paragraph 56 was adopted.*

*The meeting rose at 6.05 p.m.*

## 2664th MEETING

*Friday, 18 August 2000, at 10 a.m.*

*Chairman: Mr. Chusei YAMADA*

*Present: Mr. Addo, Mr. Baena Soares, Mr. Brownlie, Mr. Candiotti, Mr. Crawford, Mr. Dugard, Mr. Economides, Mr. Gaja, Mr. Galicki, Mr. Goco, Mr. Hafner, Mr. Kamto, Mr. Kateka, Mr. Kusuma-Atmadja, Mr. Lukashuk, Mr. Momtaz, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Rodríguez Cedeño, Mr. Rosenstock, Mr. Simma, Mr. Tomka.*

### **Draft report of the Commission on the work of its fifty-second session (concluded)**

**CHAPTER IV. State responsibility (concluded) (A/CN.4/L.593 and Corr.1 and Add.1–6)**

#### **B. Consideration of the topic at the present session (concluded)**

1. The CHAIRMAN invited members to resume consideration of chapter IV, section B.

Paragraphs 1 to 6 (A/CN.4/L.593/Add.6)

*Paragraphs 1 to 6 were adopted.*

Paragraph 7

2. Mr. BROWNLIE said that the word “Yet”, at the beginning of the paragraph, should be deleted.

*Paragraph 7, as amended, was adopted.*

Paragraph 8

3. Mr. PELLET, supported by Mr. CRAWFORD (Special Rapporteur), said that the words *il fallait* in the first sentence, should be replaced by *il faudrait*.

*Paragraph 8, as amended, was adopted.*

Paragraph 9

*Paragraph 9 was adopted.*

Paragraph 10

4. Mr. PELLET said that the expression “collective countermeasures” was misleading and, in order to avoid any recurrence of controversy, it should be briefly defined in paragraph 10. He therefore proposed that the word “collective”, in the third sentence, should be placed between quotation marks and the end of the sentence should be recast to read: “in that they could be taken by any of the States involved in some collective interest, and had a direct analogy to collective self-defence”.

*Paragraph 10, as amended, was adopted.*

Paragraphs 11 and 12

*Paragraphs 11 and 12 were adopted.*

Paragraph 13

5. Mr. ECONOMIDES said that, in his opinion, the expression “acting in a fiduciary capacity”, in the second sentence, was not clear. It should be replaced by “acting on behalf of the latter” or a similar expression.

6. Mr. CRAWFORD (Special Rapporteur) said that, like Mr. Economides, he thought the expression “in a fiduciary capacity” was not clear, but proposed that it should be replaced by a broader expression, namely “or the international community as a whole”.

*Paragraph 13, as amended, was adopted.*

Paragraphs 14 to 20

*Paragraphs 14 to 20 were adopted.*

Paragraph 21

7. Mr. BROWNLIE said that the word “as” should be inserted after “magnitude”, in the last sentence, in the English version.

*Paragraph 21, as amended, was adopted.*

Paragraph 22

8. Mr. BROWNLIE said that the word “well-foundedness”, in the penultimate sentence, should be replaced by “lawfulness”.

9. Mr. PELLET said that in the fourth sentence the word “retortions” was not felicitous, as the measures involved were lawful. He proposed that it should be replaced by the word “measures”.

10. Mr. RODRÍGUEZ CEDEÑO (Rapporteur), speaking as a member of the Commission, said that the opinion he had expressed during the debate was not properly reflected in paragraph 22 and he would like a new sentence to be inserted after the fourth sentence. It would read: “This view did not reflect a universal opinion among States, or the decisions of, for example, the Commission on Human Rights.”

*Paragraph 22, as amended, was adopted.*

Paragraph 23

*Paragraph 23 was adopted.*

Paragraph 24

11. Mr. PELLET said that the fourth and fifth sentences were obscure and proposed that they should read: “Furthermore, the term ‘collective countermeasures’ was considered a misnomer, since it implied a link to bilateral countermeasures. Instead, the action envisaged was a reaction to a violation of collective obligations, and could be undertaken by a single State or a group of States.”

12. Mr. KAMTO, referring to the beginning of the third sentence, proposed that it should say that the principle of *non bis in idem* “could be applied by analogy”, instead of “should apply”.

13. Mr. CRAWFORD (Special Rapporteur) said that he endorsed those two proposals.

*Paragraph 24, as amended, was adopted.*

Paragraph 25

*Paragraph 25 was adopted.*

Paragraph 26

14. Mr. RODRÍGUEZ CEDEÑO (Rapporteur), said that, generally speaking, the paragraph was far too long. The second part, setting out the Special Rapporteur’s opinion, ought to appear in the passage on the Special Rapporteur’s presentation of the articles in question.

15. Mr. CRAWFORD (Special Rapporteur) said that the opinion set out in that part of the paragraph had been expressed in the course of the discussion. Accordingly, it had its place in paragraph 26. However, since the paragraph

was indeed too long, he proposed that it should be split in two, about halfway through, at the sentence starting: “By contrast the Special Rapporteur pointed out that Article 50 . . .”, which formed a kind of natural break.

16. Mr. ECONOMIDES said the antepenultimate sentence was obscure, in terms of both content and placing. In his opinion, it should be deleted.

17. Mr. PELLET said that it would be enough to place the sentence in question between the eighth and ninth sentences.

18. Mr. CRAWFORD (Special Rapporteur) said he endorsed that proposal.

*Paragraph 26, as amended, was adopted.*

Paragraph 27

19. Mr. MOMTAZ said that he would like the secretariat to check the date and exact title of the *South West Africa* cases, mentioned in the first sentence.

20. Mr. DUGARD referring to a comment by Mr. KAMTO, who wondered about the use of the word “philosophy” in the first line, said it was indeed the term he had used in the course of the discussion, and he proposed that it should be retained.

21. Mr. CRAWFORD (Special Rapporteur) said he endorsed that proposal.

*Paragraph 27, was adopted subject to the check by the secretariat.*

Paragraphs 28 and 29

*Paragraphs 28 and 29 were adopted.*

Paragraph 30

22. Mr. PELLET proposed that the second sentence should be made clearer by splitting it in two, to read: “While the commission of a crime could not in itself be a basis for the autonomous competence of international courts, it opened the way for an *actio popularis*. Furthermore, it was possible to foresee a form of dispute settlement on the analogy of article 66 of the 1969 Vienna Convention.”

*Paragraph 30, as amended, was adopted.*

Paragraphs 31 to 36

*Paragraphs 31 to 36 were adopted.*

Paragraph 37

23. Mr. PELLET said that the second sentence should be made clearer by adding the words “with regard to States” at the end of the sentence.

*Paragraph 37, as amended, was adopted.*

Paragraph 38

24. Mr. GAJA said that the first sentence was inadequate. It should be replaced by a broader formulation reading: "It was further suggested that provision be made in article 51 to the effect that individuals involved in the commission of a serious breach by a State would not be entitled to rely, in criminal or civil proceedings in another State, on the fact that they had acted as State organs."

25. Mr. CRAWFORD (Special Rapporteur) said he endorsed that proposal.

*Paragraph 38, as amended, was adopted.*

Paragraph 39

26. Mr. ECONOMIDES said he failed to understand what was meant by the expression "and their breach therefore significant", in the penultimate sentence, and it should read "their breach concerned all States".

*Paragraph 39, as amended, was adopted.*

Paragraphs 40 to 52

*Paragraphs 40 to 52 were adopted.*

Paragraph 53

27. Mr. ECONOMIDES noted that, contrary to the practice followed so far, the text of the article in question did not appear as a note, something that would facilitate consultation.

28. The CHAIRMAN asked the secretariat to fill in that gap.

*Paragraph 53 was adopted on that understanding.*

Paragraphs 54 to 60

*Paragraphs 54 to 60 were adopted.*

29. The CHAIRMAN invited members to decide on the paragraphs in chapter IV, section B, that had been left in abeyance.

Paragraph 21 (concluded) (A/CN.4/L.593/Add.5)

30. Further to a proposal by Mr. KAMTO, Mr. CRAWFORD (Special Rapporteur) suggested that the English version of the proposal should read: "It was suggested that account should be taken of situations where there was no dispute settlement procedure between the States concerned."

31. The CHAIRMAN said that, if he heard no objection, he would take it that the Commission wished to adopt paragraph 21, as amended.

*It was so agreed.*

*Paragraph 21, as amended, was adopted.*

Paragraph 20 (concluded) (A/CN.4/L.593/Corr.1)

32. The CHAIRMAN said that paragraph 20 should read:

"At its 2662nd meeting, on 17 August, the Commission took note of the report of the Drafting Committee (A/CN.4/L.600) on the entire set of draft articles provisionally adopted by the Drafting Committee on second reading, and which are reproduced in the annex to this chapter."

If he heard no objection, he would take it the Commission agreed to that proposal.

*It was so agreed.*

*Paragraph 20, as amended, was adopted.*

33. The CHAIRMAN further invited members to discuss what should be done, first, with the draft articles provisionally adopted by the Drafting Committee, and secondly, with the *in extenso* record of the report of the Chairman of the Drafting Committee.

34. Further to an exchange of views in which Mr. BROWNLIE, Mr. ECONOMIDES, Mr. GAJA, Mr. KUSUMA-ATMADJA, Mr. PELLET, Mr. ROSENSTOCK, Mr. SIMMA and Mr. MIKULKA (Secretary to the Commission) took part, the CHAIRMAN suggested that all of the draft articles should be annexed to chapter IV of the Commission's report, with a footnote indicating that the draft had been provisionally adopted by the Drafting Committee, and to request the Secretariat to transmit as soon as possible to Governments the *in extenso* record of the report of the Chairman of the Drafting Committee, along with the entire set of draft articles, with a covering note giving the status of the draft and inviting Governments to transmit their comments and observations on the draft by the end of January 2001. If he heard no objection, he would take it that the Commission agreed to that proposal.

*It was so agreed.*

*Chapter IV, as amended, was adopted.*

#### CHAPTER IX. *Other decisions and conclusions of the Commission* (A/CN.4/L.598 and Add.1)

##### A. **Programme, procedures and working methods of the Commission, and its documentation** (A/CN.4/L. 598)

Paragraphs 1 to 3

*Paragraphs 1 to 3 were adopted.*

Paragraph 4

35. The CHAIRMAN said that the paragraph should be supplemented to read: "At its 2664th meeting, on 18 August".

*Paragraph 4, as so supplemented, was adopted.*

Paragraph 5

*Paragraph 5 was adopted.*

Paragraph 6

36. Mr. PELLET said that it would be best to specify that each of the selected topics was assigned to a member “of the Commission”.

*Paragraph 6, as amended, was adopted.*

Paragraphs 7 to 9

*Paragraphs 7 to 9 were adopted.*

Paragraph 10

37. Mr. SIMMA said he would like the expression “was not similar to the”, in the first sentence, to be replaced by “was different from”.

*Paragraph 10, as amended, was adopted.*

Paragraphs 11 to 14

*Paragraphs 11 to 14 were adopted.*

**B. Date and place of the fifty-third session**

**C. Cooperation with other bodies**

Paragraphs 15 to 20

*Paragraphs 15 to 20 were adopted.*

*Sections B and C were adopted.*

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

Paragraph 21

*Paragraph 21 was adopted.*

Paragraph 22

38. The CHAIRMAN said the Bureau recommended that Mr. Sreenivasa Rao, Special Rapporteur on the topic of international liability for injurious consequences arising out of acts not prohibited by international law (prevention of transboundary damage from hazardous activities), should attend the work of the Sixth Committee. If he heard no objection, he would take it that the Commission agreed to that recommendation.

*It was so agreed.*

*Paragraph 22, as supplemented, was adopted.*

*Section D, as amended, was adopted.*

**E. International Law Seminar (A/CN.4/L.598/Add.1)**

**F. Gilberto Amado Memorial Lecture**

Paragraphs 1 to 15

*Paragraphs 1 to 15 were adopted.*

*Sections E and F were adopted.*

*Chapter IX, as amended, was adopted.*

**CHAPTER III. Specific issues on which comments would be of particular interest to the Commission (A/CN.4/L.592)**

Paragraph 1

*Paragraph 1 was adopted.*

Paragraph 2

39. The CHAIRMAN suggested that the first sentence should be deleted and that the paragraph should be recast as a single sentence, reading: “The Commission would appreciate receiving from Governments comments and observations on the entire text of the draft articles provisionally adopted by the Drafting Committee, in particular on any aspect which it may need to consider further with a view to its completion of the second reading at its fifty-third session, in 2001.” If he heard no objection, he would take it that the Commission wished to adopt that proposal.

*It was so agreed.*

*Paragraph 2, as amended, was adopted.*

Paragraphs 3 to 6

*Paragraphs 3 to 6 were adopted.*

*Chapter III, as amended, was adopted.*

**Chapter II. Summary of the work of the Commission at its fifty-second session (concluded)\* (A/CN.4/L.591)**

Paragraph 6 (concluded)\*

40. The CHAIRMAN said that, since the Planning Group’s report on the long-term programme of work had been presented, he would suggest that, if he heard no objection, the Commission should adopt paragraph 6 of chapter II, which had been left in abeyance.

*It was so agreed.*

*Paragraph 6 was adopted.*

*Chapter II, as amended, was adopted.*

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

**Closure of the session**

41. After the usual exchange of courtesies, the CHAIRMAN declared the fifty-second session of the International Law Commission closed.

*The meeting rose at noon.*

\* Resumed from the 2655th meeting.