

Document:-  
**A/CN.4/SR.2037**

**Summary record of the 2037th meeting**

Topic:  
**Other topics**

Extract from the Yearbook of the International Law Commission:-  
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Adviser of the Ministry of Foreign Affairs of Brazil was Mr. Cançado Trindade.

*It was so agreed.*

*Paragraph 8, as amended, was adopted.*

Paragraph 9

55. Mr. CALERO RODRIGUES said that, like paragraph 8, paragraph 9 again spoke of the "generous" contribution by the Government of Brazil. It would be better to delete that word.

*It was so agreed.*

*Paragraph 9, as amended, was adopted.*

*Section I, as amended, was adopted.*

56. The CHAIRMAN said that the meeting would rise to enable the Planning Group to meet.

*The meeting rose at 4.30 p.m.*

## 2036th MEETING

*Wednesday, 15 July 1987, at 10 a.m.*

*Chairman: Mr. Stephen C. McCaffrey*

*Present: Prince Ajibola, Mr. Al-Baharna, Mr. Al-Khasawneh, Mr. Arangio-Ruiz, Mr. Barboza, Mr. Barsegov, Mr. Bennouna, Mr. Calero Rodrigues, Mr. Díaz González, Mr. Eiriksson, Mr. Francis, Mr. Graefrath, Mr. Hayes, Mr. Koroma, Mr. Mahiou, Mr. Ogiso, Mr. Pawlak, Mr. Razafindralambo, Mr. Reuter, Mr. Roucouas, Mr. Sepúlveda Gutiérrez, Mr. Shi, Mr. Solari Tudela, Mr. Thiam, Mr. Tomuschat.*

### **Draft report of the Commission on the work of its thirty-ninth session (continued)**

1. The CHAIRMAN announced that several chapters of the draft report had been issued. Some of the documents, however, such as those relating to the draft Code of Offences against the Peace and Security of Mankind and the law of the non-navigational uses of international watercourses, were available only in English, French and Spanish for the time being.

2. Mr. BARSEGOV said that he was prepared to examine the chapter of the draft report dealing with relations between States and international organizations (second part of the topic) even if it was not yet available in Russian.

3. Mr. SHI said that, in order not to delay the Commission's work, he could manage without the Chinese version.

4. Following a discussion concerning the order in which the various documents would be considered, and in which Prince AJIBOLA, Mr. BARBOZA, Mr.

PAWLAK and Mr. THIAM took part, it was agreed to allow the Planning Group time to complete its work.

5. The CHAIRMAN said that the meeting would rise to enable the Planning Group to meet.

*The meeting rose at 10.20 a.m.*

## 2037th MEETING

*Wednesday, 15 July 1987, at 3 p.m.*

*Chairman: Mr. Stephen C. McCaffrey*

*Present: Prince Ajibola, Mr. Al-Baharna, Mr. Al-Khasawneh, Mr. Arangio-Ruiz, Mr. Barboza, Mr. Barsegov, Mr. Beesley, Mr. Bennouna, Mr. Calero Rodrigues, Mr. Díaz González, Mr. Eiriksson, Mr. Graefrath, Mr. Mahiou, Mr. Pawlak, Mr. Sreenivasa Rao, Mr. Razafindralambo, Mr. Reuter, Mr. Sepúlveda Gutiérrez, Mr. Solari Tudela, Mr. Thiam, Mr. Tomuschat.*

### **Draft report of the Commission on the work of its thirty-ninth session (continued)**

#### **CHAPTER V. Relations between States and international organizations (second part of the topic) (A/CN.4/L.417)**

##### **A. Introduction (A/CN.4/L.417)**

Paragraphs 1 to 4

*Paragraphs 1 to 4 were adopted.*

Paragraph 5

1. The CHAIRMAN suggested that it should be made clear, as in paragraphs 4 and 7, that the Special Rapporteur referred to was the "former" Special Rapporteur.

*It was so agreed.*

*Paragraph 5, as amended, was adopted.*

Paragraphs 6 to 21

*Paragraphs 6 to 21 were adopted.*

*Section A, as amended, was adopted.*

##### **B. Consideration of the topic at the present session (A/CN.4/L.417)**

Paragraphs 22 and 23

*Paragraphs 22 and 23 were adopted.*

Paragraph 24

2. In response to a question by Mr. TOMUSCHAT, the CHAIRMAN said that paragraphs 24 and 25 were intended to reflect the views expressed during the discussion on the topic.

*Paragraph 24 was adopted.*

## Paragraph 25

3. Mr. MAHIU said that he was normally inclined to favour concise reports. Paragraph 25, however, was perhaps a little too short. Certain aspects of the discussion should have been reported more fully, since the Commission had spent a fairly long time on the topic. Nevertheless, he would not insist on the paragraph being reworded.

4. The CHAIRMAN, speaking as a member of the Commission and referring to the second sentence, said he did not think that the Commission had taken a formal decision regarding the methodology to be followed. He therefore suggested that the first part of the sentence should be replaced by the following wording: "Regarding the methodology to be followed, the Special Rapporteur would be free to follow a combination of the approaches . . ."

5. Mr. GRAEFRATH asked whether paragraph 25 summarized the entire discussion on the topic, or whether the intention was to amplify it.

6. Mr. DÍAZ GONZÁLEZ (Special Rapporteur) said that the amendment suggested by Mr. McCaffrey was acceptable. Paragraph 25 reflected the whole of the discussion and he did not think anything needed to be added regarding the adoption of the plan of work.

*Mr. McCaffrey's amendment was adopted.*

*Paragraph 25, as amended, was adopted.*

*Section B, as amended, was adopted.*

*Chapter V of the draft report, as amended, was adopted.*

7. Mr. RAZAFINDRALAMBO noted that, in the French text of certain parts of the draft report, the footnotes had been listed at the end of the document in question, which made it difficult to refer to them. Footnotes normally appeared at the bottom of the page to which they related, as was the case with other parts of the draft report. He therefore recommended that the format of the various chapters should be harmonized.

*The meeting rose at 3.25 p.m.*

## 2038th MEETING

*Thursday, 16 July 1987, at 10.05 a.m.*

*Chairman: Mr. Stephen C. McCaffrey*

*Present: Prince Ajibola, Mr. Al-Baharna, Mr. Arangio-Ruiz, Mr. Barboza, Mr. Barsegov, Mr. Beesley, Mr. Bennouna, Mr. Calero Rodrigues, Mr. Díaz González, Mr. Eiriksson, Mr. Francis, Mr. Graefrath, Mr. Hayes, Mr. Koroma, Mr. Mahiou, Mr. Ogiso, Mr. Pawlak, Mr. Razafindralambo, Mr. Reuter, Mr. Roucounas, Mr. Sepúlveda Gutiérrez, Mr. Shi, Mr. Solari Tudela, Mr. Thiam, Mr. Tomuschat, Mr. Yankov.*

### Draft report of the Commission on the work of its thirty-ninth session (*continued*)

#### CHAPTER II. *Draft Code of Offences against the Peace and Security of Mankind* (continued)\* (A/CN.4/L.414 and Add.1)

##### B. *Consideration of the topic at the present session* (concluded) (A/CN.4/L.414 and Add.1)

Paragraphs 52 to 55 (A/CN.4/L.414/Add.1)

*Paragraphs 52 to 55 were adopted.*

*Section B, as amended, was adopted.*

##### C. *Draft articles on the draft Code of Crimes against the Peace and Security of Mankind* (A/CN.4/L.414/Add.1)

Paragraph 56

*Paragraph 56 was adopted.*

*Commentary to article 1* (Definition)

Paragraph (1)

*Paragraph (1) was approved.*

Paragraph (2)

1. Mr. RAZAFINDRALAMBO proposed that the term "intention", in the fourth sentence, should be replaced by "motive".

2. Mr. BARSEGOV said that it seemed appropriate to retain the term "intention", for it was used specifically in the Convention on the Prevention and Punishment of the Crime of Genocide.

3. Mr. THIAM (Special Rapporteur) said that the amendment proposed by Mr. Razafindralambo was acceptable and could well be made.

*It was so agreed.*

4. The CHAIRMAN, speaking as a member of the Commission, proposed that, in the same sentence, "(genocide . . .)" should be replaced by "(for example, genocide)".

*It was so agreed.*

5. Mr. BARSEGOV criticized the use of the conjunction "or" in the same sentence to connect the three criteria mentioned with regard to the seriousness of the act, namely the nature of the act, the extent of its effects and the motive of the perpetrator. The conjunction "and" would be more appropriate.

6. Mr. THIAM (Special Rapporteur) suggested that the conjunction "or" should be retained, and that the words "or from several of these elements" should be added at the end of the sentence, so as to take account of Mr. Barsegov's point.

*It was so agreed.*

*Paragraph (2), as amended, was approved.*

Paragraph (3)

*Paragraph (3) was approved.*

Paragraph (4)

7. Mr. PAWLAK thanked the Special Rapporteur for his efforts to give an account of the various views expressed on the subject mentioned in paragraph (4). His

\* Resumed from the 2034th meeting.