

Document:-
A/CN.4/SR.2293

Summary record of the 2293rd meeting

Topic:
Other topics

Extract from the Yearbook of the International Law Commission:-
1992, vol. I

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It was so agreed.

Paragraph 4, as amended, was adopted.

Paragraph 5

35. Mr. EIRIKSSON proposed that the footnote should be reworded to read: "In resolution 42/151 of 7 December 1987, the General Assembly agreed with the recommendation of the Commission and amended the title of the topic in English to read 'Draft Code of Crimes against the Peace and Security of Mankind'".

Paragraph 5, as amended, was adopted.

Paragraph 6

Paragraph 6 was adopted.

Paragraph 7

36. Mr. EIRIKSSON said that the last sentence of paragraph 7 followed the wording of General Assembly resolution 44/41. Thus, for accuracy's sake, the expression "international jurisdiction" should read "international criminal jurisdiction".

Paragraph 7, as amended, was adopted.

Paragraph 8

Paragraph 8 was adopted.

Section A, as amended, was adopted.

B. Consideration of the topic at the present session

37. The CHAIRMAN said that, in accordance with the decision taken earlier, the Commission should proceed to consider paragraphs 15 *et seq.* of the draft report.

38. Mr. PELLET said he did not think that the Commission could go on to consider paragraph 15 and the following paragraphs without having seen the text which would replace paragraphs 9 to 14. There had to be a reasonable balance, in terms of length, between that text and paragraph 15 and the following paragraphs. In that connection, while he agreed with Mr. Bennouna and Mr. Thiam that it was necessary to reflect the discussions which had taken place in plenary on the general approach to the proposed international criminal court, he considered that the more technical aspects developed by the members of the Commission should also be reflected. He himself, for instance, had stated that he objected to the Working Group's approach with regard to the applicable law and he would like his opinion to be reflected in the report. That was, moreover, a matter of principle: he was strongly opposed to any practice which consisted of not reflecting in the report discussions held in plenary on certain questions on the ground that those self-same questions had been considered by a working group. He therefore insisted that the new paragraphs which were to be submitted to the Commission should give a reasonably detailed picture of the discussion which had taken place in plenary.

39. Mr. JACOVIDES said that the report had been prepared on a solid foundation since the Commission's decision laid emphasis on the work of the Working Group and the results of that work with a view to facilitating the discussion in the Sixth Committee. None the less, while brevity was desirable, there should not be too great a disproportion between the paragraphs that would replace paragraphs 9 to 14 and paragraphs 15 to 32.

40. Mr. CALERO RODRIGUES, endorsing Mr. Pellet's remarks, said he doubted whether it would be possible to approve the paragraphs on compensation and the double-hearing principle—namely, paragraphs 15 *et seq.*—if the other points raised in the discussion held in plenary were dealt with in only a few paragraphs. Another solution would be to shorten paragraph 15 and the following paragraphs. In general, the premise on which the chapter under consideration had been drafted was doubtful; it seemed as though there had been a feeling that the discussion held in plenary on questions considered by the Working Group should not be reflected in the report.

41. Mr. CRAWFORD, agreeing with Mr. Pellet, Mr. Jacovides and Mr. Calero Rodrigues, said that the report on the discussion held in plenary on compensation and the double-hearing principle should be no longer than the report on the discussion that had taken place on the other questions. In that connection, he insisted that the main arguments adduced on the role of a possible international criminal court should be dealt with in one or two paragraphs.

42. Mr. AL-KHASAWNEH said that he supported Mr. Crawford's last remark.

43. The CHAIRMAN said it was his understanding that the Commission wished to suspend its consideration of chapter II of the draft report until the new paragraphs to replace paragraphs 9 to 14 had been made available.

It was so agreed.

The meeting rose at 1 p.m.

2293rd MEETING

Thursday, 23 July 1992, at 3.20 p.m.

Chairman: Mr. Christian TOMUSCHAT

Present: Mr. Al-Khasawneh, Mr. Arangio-Ruiz, Mr. Bennouna, Mr. Bowett, Mr. Calero Rodrigues, Mr. Crawford, Mr. de Saram, Mr. Eiriksson, Mr. Fomba, Mr. Güney, Mr. Koroma, Mr. Mahiou, Mr. Mikulka, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Razafindralambo, Mr. Rosenstock, Mr. Shi, Mr. Szekely, Mr. Thiam, Mr. Vereshchetin, Mr. Villagran Kramer, Mr. Yamada.

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

CHAPTER III. *State responsibility (concluded)* (A/CN.4/L.478 and Corr.1 and Add.1-3)

B. *Consideration of the topic at the present session (concluded)* (A/CN.4/L.478 and Corr.1)

3. THE THIRD AND FOURTH REPORTS OF THE SPECIAL RAPPORTEUR (*concluded*) (A/CN.4/L.478 and Corr.1 and Add.1-3)

(c) *The question of countermeasures in the context of articles 2, 4 and 5 of part 2 adopted on first reading at previous sessions of the Commission (concluded)* (A/CN.4/L.478/Add.3)

(ii) *The relationship between the draft articles and the Charter of the United Nations (concluded)**

Paragraph 160 bis [162 bis]

1. The CHAIRMAN said that, at the 2291st meeting, Mr. Mahiou and Mr. Bennouna had requested the inclusion of an additional paragraph, paragraph 160 *bis* to establish a balance between the differing views in the Commission. The additional paragraph would read:

“160 *bis*. Many members of the Commission concurred with the Special Rapporteur’s position that the power of decision of the Security Council was strictly confined to measures aimed at re-establishing international peace and security under Chapter VII of the Charter and that the Council was not empowered to impose on States settlements or settlement procedures in relation to disputes or situations which are to be dealt with under Chapter VI, by way of recommendation.”

2. Mr. ROSENSTOCK said there was an implication, in the proposed text, that the view recorded was the dominant view in the Commission. That was not the case. He proposed, accordingly, that the words “Many members” should be replaced by “Some members”.

3. Mr. PELLET said that paragraph 160 *bis* would not serve as an alternative to the view expressed in paragraph 161; there appeared to be a discrepancy between the two. Moreover, some members had since abandoned the view reflected in the new paragraph.

4. Mr. BENNOUNA said he disagreed. The view expressed in the new text was that of the great majority of members, whereas the view in paragraph 161 had been expressed by only two or three members.

5. Mr. AL-KHASAWNEH said he disagreed with Mr. Rosenstock. A reference to “Many members” did not imply the majority of the Commission.

6. Mr. GÜNEY suggested, as an alternative, “A certain number of members”.

7. Mr. PELLET said that the new text would be best placed in paragraph 159, so long as it was made clear that other members had disagreed with the view expressed.

8. Mr. ARANGIO-RUIZ (Special Rapporteur) said that paragraphs 159 and 160 both reflected his own views. Hence the opposing view would not fit well into either paragraph; the new text should follow paragraph 161.

9. Mr. EIRIKSSON said that Mr. Pellet’s position reflected the amendment already made to paragraph 161.

10. Mr. ROSENSTOCK said that because of the extreme gravity of the issue, which implied an attack on the action of the Security Council the previous year, the Commission must not indicate that the view in the new text was widely held among members unless that was demonstrably the case. The exponents of that view were too few in number to justify the statement now proposed.

11. Mr. CALERO RODRIGUES proposed that the words “Several members” should be used to replace “Many members”.

It was so agreed.

12. Mr. de SARAM pointed out that there was a difference between non-binding recommendations of the Security Council, and binding decisions. The new text should therefore speak of “the power of binding decision of the Security Council”.

13. Mr. ARANGIO-RUIZ (Special Rapporteur) urged the Commission to be cautious. The new text went somewhat beyond the view he had expressed, as formulated in paragraph 159. He, certainly, was not attacking any specific actions of the Security Council; rather, he was warning the Commission that article 4 of part 2, if adopted, would raise certain difficulties, both in relation to the Security Council and in relation to the doctrinal view previously mentioned. The statement that the power of decision of the Security Council “was strictly confined to measures aimed at re-establishing international peace and security” was a more emphatic statement than he had intended. However, he could accept the new text with the amendment proposed by Mr. Calero Rodrigues.

14. Mr. PELLET proposed that subparagraph (b) of paragraph 161 should be amended to read “it was recognized that the Security Council had the primary responsibility for maintaining international peace and security, and that in the context of its powers, it could impose a peaceful settlement of disputes”.

15. Mr. BENNOUNA said he strongly disagreed with the implication that the Security Council could decide what was lawful, and was not bound by international law. Indeed, if the Security Council were to determine the law, there would be no role for the Commission. The text as proposed faithfully reflected the position of a number of members.

16. Mr. MIKULKA said he wondered whether it was really necessary to refer to “binding” decisions of the Security Council, as proposed by Mr. de Saram. That would confine the reference to the powers of the Security Council under Chapter VII of the Charter of the United Nations, and appeared to be contrary to Article 25.

* Resumed from the 2291st meeting.

17. Mr. BENNOUNA proposed that the new text should be amended to begin: "Several members of the Commission concurred with the position expressed by the Special Rapporteur that the power of decision of the Security Council was confined . . .".

18. Mr. PELLET pointed out that he had never said that the Security Council was free to do anything it wanted. Certainly, it was subject to international law, but that did not mean that it had no competence to settle disputes.

19. Mr. ARANGIO-RUIZ (Special Rapporteur) said he shared the view that the Security Council could prevent a State from settling its disputes by resort to force, and that it had powers under Chapter VII to prevent any act which was not peaceful. But it was one thing to compel States not to resort to force to settle disputes and quite another to say that the Security Council had the power to take a decision constituting a binding settlement of a dispute. To include the statement suggested by Mr. Pellet would raise considerable difficulty. Anyway, the debate had arisen in the context of article 4, and therefore belonged in the context of countermeasures. Article 4 carried implications for both the substantive and the instrumental implications of an internationally wrongful act; and that made the article objectionable.

20. The CHAIRMAN reminded the Commission that it had already adopted an amendment to the first sentence of paragraph 161, reading: "Several members disagreed with the comments of the Special Rapporteur on the ground that they were inconsistent with the responsibilities of the Security Council, the object of Chapters VI and VII and contemporary practice".

21. Mr. PELLET said that that text, as proposed by Mr. Rosenstock, reflected both his own views and those of Mr. Bowett. Accordingly, he was willing to withdraw his own proposed amendment.

22. Mr. AL-KHASAWNEH said that there was still a difficulty about numbers; how many members were "several"? He proposed that "several" should be replaced by "some".

23. Mr. CALERO RODRIGUES suggested that, since fewer members shared the view of Mr. Rosenstock than shared the opposite view, the word "some" should be used for his amendment, and "several" for the new one.

24. Mr. VERESHCHETIN pointed out that the Commission had already adopted the text containing Mr. Rosenstock's amendment, and could not now amend it. The important subject of the competence of the Security Council was not before the Commission, which should not be seeking to take decisions of principle on the matter. If the Commission wished to pursue the issue, it should do so properly at the next session. Certainly, it should not enter into arguments as to whether "several" or "some" members held a particular view.

25. Mr. ARANGIO-RUIZ (Special Rapporteur) said that, in raising the difficulties associated with article 4, in the light of the examples mentioned in paragraph 160, he had intended to elicit comments on the issue. As pointed out by Mr. Al-Khasawneh, several members

held one view of the matter, and some members held another.

26. The CHAIRMAN suggested that the new text should be inserted as paragraph 162 *bis*, with the amendments proposed by Mr. Bennouna.

It was so agreed.

Paragraph 162 bis, as amended, was adopted.

Section B.3, as amended, was adopted.

Chapter III of the draft report, as a whole, as amended, was adopted.

CHAPTER I. Organization of the session (A/CN.4/L.474 and Add.1)

27. The CHAIRMAN invited the Commission to consider chapter I of the draft report (A/CN.4/L.474 and Add.1) paragraph by paragraph.

Paragraph 1

Paragraph 1 was adopted.

A. Membership

Paragraph 2

Paragraph 2 was adopted.

Section A was adopted.

B. Officers

C. Drafting Committee

28. The CHAIRMAN said that, in order to correct an omission, the title "B. Officers" should be inserted immediately before paragraph 3.

It was so agreed.

Paragraphs 3 to 5

Paragraphs 3 to 5 were adopted.

Section B, as amended, and section C were adopted.

D. Working Group established pursuant to the request contained in General Assembly resolution 46/54

Paragraph 6

29. The CHAIRMAN said that the first sentence should read: "At its 2262nd meeting, on 19 May 1992, the Commission established a Working Group on the question of an international criminal jurisdiction pursuant to the invitation contained in General Assembly resolution 46/54 . . ."

30. Mr. CALERO RODRIGUES said that, in resolution 46/54, the General Assembly had not invited the Commission to set up a working group but had requested it to consider the issue of an international criminal jurisdiction, whereupon the Commission, on its own initiative, had set up the working group. He therefore pro-

posed that some such formulation as “which should be considered” should be inserted after the phrase “on the question of an international criminal jurisdiction”.

Paragraph 6, as amended, was adopted.

Paragraph 6 bis

31. The CHAIRMAN said that a new paragraph, numbered 6 bis, should be inserted between paragraphs 6 and 7 to read:

“6 bis. At its 2273rd meeting, on 16 June 1992, the Commission established a Working Group, open to any member who wished to participate, to consider some of the general issues relating to the scope, the approach to be taken, and the possible direction of the future work on the topic of international liability”.

32. Mr. PELLET pointed out that there appeared to be some duplication between paragraph 6 bis and paragraph 12.

33. Mr. RAZAFINDRALAMBO (Rapporteur) said that it would be appropriate for paragraph 12 to include a cross-reference to paragraph 6 bis.

34. The CHAIRMAN suggested that the title of section D should be amended to read: “Working Groups established by the Commission”.

It was so agreed.

35. Following an exchange of views in which Mr. EIRIKSSON and Mr. PELLET took part, the CHAIRMAN said that, if he heard no objection, he would take it that the Commission agreed to adopt paragraph 6 bis.

It was so agreed.

Paragraph 6 bis was adopted.

Section D, as amended, was adopted.

E. Secretariat

Paragraph 7

Paragraph 7 was adopted.

Section E was adopted.

F. Agenda

Paragraph 8

Paragraph 8 was adopted.

Paragraph 9

36. The CHAIRMAN suggested that the first sentence of paragraph 9 should be replaced by two sentences, to read:

“9. The Commission, in view of its practice of not holding a substantive debate on draft articles adopted on first reading until the comments and observations of Governments thereon are available, did not consider the item ‘The law of the non-

navigational uses of international watercourses’ nor draft articles under the item ‘Draft Code of Crimes against the Peace and Security of Mankind’ pending receipt of the comments and observations which Governments have been invited to submit by 1 January 1993 on the sets of draft articles provisionally adopted by the Commission at its forty-third session on the two topics in question. As regards the latter item, however, the Commission, in accordance with the invitation contained in paragraph 3 of General Assembly resolution 46/54, considered further and analysed the issues raised in its 1990 report concerning the question of an international criminal jurisdiction”.

A footnote would be attached giving the appropriate reference to the 1990 report.

37. Mr. RAZAFINDRALAMBO (Rapporteur) said that the main change was in the new second sentence, with its reference to paragraph 3 of General Assembly resolution 46/54, which had invited the Commission to consider further the question of an international criminal jurisdiction.

Paragraph 9, as amended, was adopted.

Section F, as amended, was adopted.

G. General description of the work of the Commission at its forty-fourth session (A/CN.4/L.474/Add.1)

Paragraph 10

Paragraph 10 was adopted with minor editorial changes.

Paragraph 11

38. Mr. PELLET pointed out that the wording of the second sentence of paragraph 11 did not do justice to the Special Rapporteur on State responsibility, Mr. Arangio-Ruiz, by stating that his third and fourth reports “were both devoted to the question of countermeasures”. In fact, they dealt with many other matters as well. He proposed the insertion of the word “mainly” after the word “devoted”.

Paragraph 11, as amended, was adopted.

Paragraph 12

Paragraph 12 was adopted with minor editorial changes.

Paragraph 13

Paragraph 13 was adopted.

Section G, as amended, was adopted.

H. Issues on which expressions of views by Governments would be of particular interest for the Commission for the continuation of its work

39. The CHAIRMAN suggested that, in the light of the guidelines on the preparation of the report which the Commission had adopted earlier, a further section should be added after paragraph 13, to read:

“H. Issues on which expressions of views by Governments would be of particular interest for the Commission for the continuation of its work

“14. With respect to the topic ‘Draft Code of Crimes against the Peace and Security of Mankind’ the Commission, as follows from its decision on the topic, expects a clear indication by Governments, whether in the Sixth Committee or in written form, if it should now embark on the elaboration of a draft statute of an international criminal court and, in an affirmative case, whether the Commission’s work on the matter should proceed on the basis indicated in paragraph (a) of the said decision.”

40. Mr. ARANGIO-RUIZ said that he was strongly opposed to any questions being put to the General Assembly by the Commission. As far as the draft Code of Crimes against the Peace and Security of Mankind was concerned, the Commission had already received a specific mandate and should proceed to carry out that mandate. As for his own topic, State responsibility, it should be possible for the Sixth Committee to make known its views on countermeasures on the basis of the Commission’s report to the General Assembly, his reports on the topic, and any other relevant documentation. There was no one specific question that could usefully be put to the General Assembly at the present stage.

41. Mr. EIRIKSSON said that he favoured the inclusion in the Commission’s report of a section along the lines read out by the Chairman. In addition to a question concerning the draft Code of Crimes against the Peace and Security of Mankind, two other questions could perhaps be put to the General Assembly, the first being the issue of countermeasures, as it arose within the context of the topic of State responsibility, and the second, the question of risk within the context of the topic of international liability.

42. Mr. BENNOUNA said that there was general agreement in the Commission that a question concerning an international criminal jurisdiction should be put to the General Assembly. That question, however, should be dealt with separately. As to the topic of State responsibility, he agreed with Mr. Arangio-Ruiz that it would be premature to put a question to the General Assembly when there was still no clear idea of all the issues involved. He was also opposed to putting any question on the topic of international liability, which was a matter for the Commission, not the General Assembly.

43. Mr. VERESHCHETIN said that he agreed entirely with Mr. Bennouna.

44. Mr. SHI said that, as he had already had occasion to state during the general debate, countermeasures should, in his view, be eliminated altogether. In a spirit of compromise, however, he had not objected to referral of the draft articles on countermeasures to the Drafting Committee, but had reserved his position on the matter. Since the draft articles were now in the hands of the Drafting Committee, which meant that work on them was in fact continuing, it would be pointless to ask the

General Assembly whether or not there should be any articles on countermeasures.

45. Mr. PELLET proposed that the words “whether in the Sixth Committee or in written form”, should be deleted.

46. Mr. KOROMA, agreeing with Mr. Pellet, said that the wording of the proposed new section was not very felicitous and should be improved. In particular, the word “expects” was too peremptory and should be replaced by “requests”; also, the expression “in an affirmative case” should be replaced by “in the affirmative”.

47. Mr. CRAWFORD, also agreeing with Mr. Pellet, said that it would be helpful if an amended text of the proposed section could be submitted in writing for consideration by the Commission in the light of chapter II of the Commission’s report.

48. Mr. ROSENSTOCK said that some wording along the lines of the proposed section should be included in the Commission’s report to the General Assembly. He could agree to the drafting suggestions made by Mr. Koroma and was also prepared to consider an amended text in writing at the Commission’s next meeting.

49. Mr. CALERO RODRIGUES said that the real issue was not one of putting questions to the General Assembly: what the General Assembly wanted from the Commission was an indication of the issues on which the opinions expressed in the General Assembly would be useful for the continuation of the Commission’s work. In other words, the Commission was dealing not with the usual case in which it sought the General Assembly’s guidance on certain issues but with something more specific relating to the recommendations of a working group which had been approved by the Commission. He trusted that the section would be redrafted to reflect that different situation very clearly.

50. The CHAIRMAN suggested that proposed section H should be redrafted to take account of the comments made in the discussion and submitted to the Commission at its next meeting.

It was so agreed.

CHAPTER V. Other decisions and conclusions of the Commission (A/CN.4/L.477 and Corr.1)

A. The law of the non-navigational uses of international water-courses

B. Draft Code of Crimes against the Peace and Security of Mankind

Paragraphs 1 to 4

Paragraphs 1 to 4 were adopted.

Sections A and B were adopted.

**C. Relations between States and international organizations
(second part of the topic)**

Paragraph 5

51. Mr. CALERO RODRIGUES proposed that the words "subject to the approval of the General Assembly" should be replaced by "unless the General Assembly decides otherwise".

Paragraph 5, as amended, was adopted.

Section C, as amended, was adopted.

D. Programme, procedures and working methods of the Commission, and its documentation

Paragraphs 6 and 7

Paragraphs 6 and 7 were adopted.

Paragraphs 8 and 9

52. Mr. EIRIKSSON said that paragraphs 8 and 9 were unnecessary since the membership and nature of the Planning Group was dealt with elsewhere in the Commission's report. He therefore proposed that the two paragraphs should be deleted.

It was so agreed.

Paragraph 10

Paragraph 10 was adopted.

1. PLANNING OF ACTIVITIES

(a) The topic "Relations between States and international organizations (second part of the topic)"

Paragraphs 11 and 12

Paragraphs 11 and 12 were adopted.

Paragraph 13

53. Mr. EIRIKSSON said that, the word "Member", in the first sentence, should be deleted.

Paragraph 13, as amended, was adopted.

Paragraph 14

54. The CHAIRMAN pointed out that, to make the language of paragraph 14 consistent with that of paragraph 5, the phrase "subject to the approval of the General Assembly" in the last sentence, should be replaced by "unless the General Assembly decides otherwise".

55. Mr. EIRIKSSON proposed that the words "the Commission and the Drafting Committee will be fully occupied", in the first sentence, should be replaced by "the Commission, in plenary and in the Drafting Committee, will be fully occupied", to reflect the fact that the Drafting Committee was part of the Commission.

56. Mr. PELLET said he did not wish to be associated with that formulation because he did not believe that the Drafting Committee would be fully occupied.

Paragraph 14, as amended, was adopted.

(b) Planning of the activities for the quinquennium

Paragraph 15

57. Mr. BENNOUNA proposed that, in view of the amendment to paragraph 14, the first part of the first sentence of paragraph 15, ending with the words "(second part of the topic)", should be deleted, so that the paragraph would begin "The current programme of work".

58. The CHAIRMAN said that it would not be appropriate to make that deletion; however, the wording could be amended.

59. Mr. CRAWFORD proposed that the beginning of the paragraph should be amended to read: "Having regard to the conclusion in paragraph 14 above, and subject to any decision of the General Assembly to the contrary in relation to that matter, the current programme of work consists of the following topics".

60. Mr. EIRIKSSON said that the substance of the amendment proposed by Mr. Crawford should appear as a footnote to paragraph 15. He supported Mr. Bennouna's proposal to delete the first part of the first sentence.

Paragraph 15, as amended, was adopted.

Paragraphs 16 to 19

Paragraphs 16 to 19 were adopted.

Section D.1, as amended, was adopted.

2. LONG-TERM PROGRAMME OF WORK

Paragraph 20

Paragraph 20 was adopted.

Paragraph 21

61. The CHAIRMAN noted that paragraph 21 dealt, in general, with the procedure proposed by the Planning Group, on the recommendation of its Working Group established to consider a limited number of topics to be recommended to the General Assembly for inclusion in the Commission's programme of work. Under that procedure, a member of the Commission would prepare a short outline, or explanatory summary, for one of the topics included in a pre-selected list.

62. Mr. BENNOUNA drew attention to the penultimate sentence of the paragraph in which the Commission requested the secretariat, first, to circulate the outlines prepared by members of the Commission, and second, to circulate the revised outlines prior to the next session. That sentence did not specify who would be revising the outlines.

63. Mr. CALERO RODRIGUES said that, as he understood it, on the basis of comments from other members, the member who had drafted the outline would make the appropriate revisions.

64. Mr. BOWETT said that the secretariat would in that case function as a "letter-box": first, it would circulate the outlines on the topics to the members of the

Working Group; next, it would circulate the comments of the members on the outlines.

65. Mr. BENNOUNA proposed that the word “revised” in the penultimate sentence, should be deleted and the words “as well as the comments received” should be inserted after the word “outlines”.

66. Mr. KOROMA said that the preparation of the outlines on selected topics represented a major assignment and might be a difficult task for some members.

67. Mr. SZEKELY, supported by Mr. BENNOUNA and Mr. BOWETT, said that, first, the outlines, once drafted, would be sent to the secretariat which would distribute them for comments; secondly, comments on the outlines would be submitted to the secretariat which would then distribute them to the authors of the outlines; thirdly, in the light of the comments, the outlines would be revised by the authors, if appropriate; and fourthly, the final outlines would be distributed to all members of the Working Group before June 1993.

68. Mr. CALERO RODRIGUES proposed that the penultimate sentence should be amended to read: “... to circulate the comments as well as any revised outlines to the members of the Working Group prior to the next session”.

69. Mr. BOWETT said he agreed with Mr. Calero Rodrigues, but suggested a slight amendment: “... to circulate the comments and thereafter the revised outlines”. The only question remaining was to whom the revised outlines should be distributed. The Commission had to decide whether those outlines should be distributed to all its members or whether circulation should be restricted to the members responsible for preparing the outlines.

70. Mr. GÜNEY said that it would be appropriate to distribute the revised outlines to all members of the Commission, so that they would have time to consider the contents before the next session.

71. Mr. PELLET said there was no reason to circulate either the comments or the revised outlines among all members of the Commission. The revised outlines should be considered by the Working Group and then be sent to the Planning Group. In another connection, he pointed out that, in the French version, the second sentence of paragraph 21 was ambiguous, for it implied that several members would be preparing an outline for each of the designated topics.

72. Mr. CRAWFORD said that, when the report of the Planning Group had been discussed in plenary, it had been agreed to amend paragraph 24 (d), yet the original wording of that paragraph had reappeared in paragraph 21 of the Commission’s draft report.

73. Ms. ARSANJANI (Secretariat) said that, for the purpose of clarification, she would recapitulate the proposed amendments to paragraph 21. In the second sentence, after the words “Under that procedure”, the words “various members of the Commission will prepare” would be replaced by “one of the members of the Commission will prepare”. The wording of subparagraph (d) would be deleted and replaced by the words:

“the advantages and disadvantages of preparing a report, a study or a draft convention, in case it is decided to continue consideration of the topic”. In the penultimate sentence, the words “the comments and” would be inserted after “(ii) to circulate”.

74. Mr. CALERO RODRIGUES said that, in the second sentence, the words “designated members will prepare” should be used instead of “various members of the Commission will prepare”.

75. Mr. PELLET, supported by Mr. GÜNEY, said that members other than those belonging to the Working Group had agreed to prepare the outlines. Thus, paragraph 21 should indicate that all the members involved in drafting the outlines should receive the information indicated.

76. Mr. KOROMA said that, in the third sentence, the words “or explanatory summary” should be inserted after “the outline”.

Paragraph 21, as amended, was adopted.

Paragraph 22

77. Mr. THIAM noted that the first sentence of the paragraph stated that the Commission gave “serious consideration” to the question of the long-term programme of work. He wondered if the word “serious” was appropriate, since there was never any instance in which the Commission did not give serious consideration to a matter.

78. The CHAIRMAN suggested that the word “serious” should be replaced by “careful”.

Paragraph 22, as amended, was adopted.

Section D.2, as amended, was adopted.

3. DRAFTING COMMITTEE

Paragraph 23

79. Mr. KOROMA proposed that in subparagraph (e) the words “may occasionally be authorized to speak” should be replaced by “may request to speak”.

80. Mr. CALERO RODRIGUES said he did not think the formulation proposed by Mr. Koroma was an improvement; however, if the majority wished to make the change, he would not object.

81. The CHAIRMAN said the matter would be taken up at the next meeting.

Paragraph 24

Paragraph 24 was adopted.

4. REPORT OF THE COMMISSION TO THE GENERAL ASSEMBLY

Paragraph 25

82. Mr. PELLET said that subparagraphs (c) and (e) were repetitive. He proposed that the last sentence of subparagraph (e) should be deleted.

Paragraph 25, as amended, was adopted.

The meeting rose at 6.15 p.m.

2294th MEETING

Friday, 24 July 1992, at 10 a.m.

Chairman: Mr. Christian TOMUSCHAT

Present: Mr. Arangio-Ruiz, Mr. Bennouna, Mr. Bowett, Mr. Calero Rodrigues, Mr. Crawford, Mr. de Saram, Mr. Eiriksson, Mr. Fomba, Mr. Güney, Mr. Idris, Mr. Jacovides, Mr. Kabatsi, Mr. Koroma, Mr. Mahiou, Mr. Mikulka, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Razafindralambo, Mr. Rosenstock, Mr. Shi, Mr. Szekely, Mr. Thiam, Mr. Vereshchetin, Mr. Villagran Kramer, Mr. Yamada.

Draft report of the Commission on the work of its forty-fourth session (*concluded*)

CHAPTER I. *Organization of the session* (*concluded*) (A/CN.4/L.474 and Add.1)

H. *Issues on which expressions of views by Governments would be of particular interest for the Commission for the continuation of its work* (*concluded*)

Paragraph 14

1. The CHAIRMAN introduced a revised version of the text proposed orally at the previous meeting for a new section H, which was to be added to the introduction to the report of the Commission, as paragraph 14, to read:

“14. With respect to the topic ‘Draft Code of Crimes Against the Peace and Security of Mankind’, the Commission, as follows from its decision on the topic, requests a clear indication by Governments if it should now embark on the elaboration of a draft statute of an international criminal court and, in the affirmative, whether the Commission’s work on the matter should proceed on the basis indicated in that decision.”

2. Mr. CRAWFORD proposed that, in paragraph 14 constituting section H, the words “in the affirmative” should be replaced by the words “if so”.

Paragraph 14, as amended, was adopted.

Section H, as amended, was adopted.

Chapter I, as a whole, as amended, was adopted.

CHAPTER V. *Other decisions and conclusions of the Commission* (*concluded*) (A/CN.4/L.477 and Corr.1)

D. *Programme, procedures and working methods of the Commission, and its documentation* (*concluded*)

3. DRAFTING COMMITTEE (*concluded*)

Paragraph 23 (*concluded*)

3. The CHAIRMAN recalled that paragraph 23 had been held in abeyance because there had been objections to the amendment Mr. Koroma had proposed to paragraph 23 (e). He therefore suggested that the Commission should adopt the original text.

Paragraph 23 was adopted.

5. CONTRIBUTION OF THE COMMISSION TO THE DECADE OF INTERNATIONAL LAW

Paragraph 26

Paragraph 26 was adopted.

Paragraph 27

4. Mr. PELLET proposed that the third sentence should end with the words “. . . the contents of the suggested publication.” and that a new fourth sentence should read: “The informal group held a meeting on 22 July 1992”.

Paragraph 27, as amended, was adopted.

Paragraph 28

Paragraph 28 was adopted.

6. POSSIBILITY OF DIVIDING THE COMMISSION’S ANNUAL SESSION INTO TWO PARTS

7. DURATION OF THE NEXT SESSION

Paragraphs 29 and 30

Paragraphs 29 and 30 were adopted.

E. *Cooperation with other bodies*

Paragraphs 31 to 33

5. Mr. KOROMA proposed that, in future, the report of the Commission should reflect the main points of the statements by the representatives of other bodies instead of referring only to the relevant summary record.

Paragraphs 31 to 33 were adopted.

F. *Date and place of the forty-fifth session*

Paragraph 34

Paragraph 34 was adopted.

G. *Representation at the forty-seventh session of the General Assembly*