

Document:-
A/CN.4/SR.2661

Summary record of the 2661st meeting

Topic:
Adoption of the report

Extract from the Yearbook of the International Law Commission:-
2000, vol. I

*Downloaded from the web site of the International Law Commission
(<http://www.un.org/law/ilc/>)*

2661st MEETING

Wednesday, 16 August 2000, at 3.05 p.m.

Chairman: Mr. Chusei YAMADA

Present: Mr. Addo, Mr. Baena Soares, Mr. Brownlie, Mr. Candioti, Mr. Crawford, Mr. Dugard, Mr. Economides, Mr. Gaja, Mr. Galicki, Mr. Goco, Mr. Hafner, Mr. He, Mr. Kabatsi, Mr. Kamto, Mr. Kusuma-Atmadja, Mr. Lukashuk, Mr. Momtaz, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Rodríguez Cedeño, Mr. Rosenstock, Mr. Simma, Mr. Tomka.

—————

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

CHAPTER V. *Diplomatic protection* (concluded)* (A/CN.4/L.594)

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

Paragraphs 68 to 72 (*concluded*)*

1. The CHAIRMAN announced that the Rapporteur had held consultations with members who had expressed views on the paragraphs and had drafted a new version that was acceptable to all. In paragraph 70, the words “It was” should be replaced by the phrase “Those members who supported article 6”.

It was so agreed.

2. The CHAIRMAN said that, in paragraph 71, the first two sentences and the first part of the third, up to and including “starting point for the analysis”, should be replaced by the words: “Other members supported the rule of non-responsibility of States in respect of their own nationals and raised several arguments in favour of this rule. Particular emphasis was placed on”. The remainder of the third sentence would remain unchanged, and the last sentence would be replaced by: “It was not legitimate for a dual national to be protected against a State to which it owed loyalty and fidelity.”

3. Mr. ROSENSTOCK, supported by Mr. SIMMA, said that in the proposed new last sentence, the word “it”, referring to a dual national, was not grammatically correct and should be replaced by “he/she”.

It was so agreed.

4. The CHAIRMAN said that the opening phrase in paragraph 72, “However, as shown by the Special Rapporteur,” should be replaced by “These members acknowledged that”. The fifth sentence, the first word of the sixth sentence (“Furthermore,”) and the eighth sentence should be deleted.

It was so agreed.

Paragraphs 68 to 72, as amended, were adopted.

Paragraph 73 (*concluded*)*

5. The CHAIRMAN said that paragraph 73 should be deleted.

It was so agreed.

Paragraph 74 (*concluded*)*

Paragraph 74 was adopted.

Paragraph 74 bis

6. The CHAIRMAN read out a proposal for a new paragraph 74 bis: “Supporters of article 6 reiterated that article 6 reflected current thinking in international law and rejected the argument that dual nationals should be subjected to disadvantages in respect of diplomatic protection because of the advantages they might otherwise gain from their status as dual nationals.”

Paragraph 74 bis was adopted.

Paragraph 87 (*concluded*)*

7. The CHAIRMAN said that paragraph 87 should be replaced by: “Some members contended that diplomatic protection should not be exercised against the State of nationality of the refugee in respect of claims relating to matters arising prior to the granting of refugee status, but they accepted that there should be no hesitation with regard to claims against the State of nationality arising after the refugee had been granted such status.”

Paragraph 87, as amended, was adopted.

Paragraph 87 bis

8. The CHAIRMAN read out a proposal for a new paragraph 87 bis: “Members who were concerned about the burden that diplomatic protection for refugees might place on the host State suggested that UNHCR should provide ‘functional’ protection for refugees in the same way that international organizations provided functional protection to their staff members.”

Paragraph 87 bis was adopted.

Section B, as amended, was adopted.

Chapter V, as amended, was adopted.

* Resumed from the 2659th meeting.

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

B. Consideration of the topic at the present session (continued)

Paragraph 16 (A/CN.4/L.593/Add.2)

9. Mr. SIMMA suggested that in the second sentence the words “without having been directly injured” should be inserted between the words “international obligation” and “would make it possible”.

It was so agreed.

Paragraph 16, as amended, was adopted.

Paragraphs 17 and 18

Paragraphs 17 and 18 were adopted.

Paragraph 19

10. Mr. PELLET said that the last words in inverted commas, “to which it is a party,” in the second sentence, seemed misplaced and inaccurate.

11. Mr. SIMMA, supported by Mr. CRAWFORD (Special Rapporteur), proposed that those words should be deleted.

It was so agreed.

Paragraph 19, as amended, was adopted.

Paragraph 20

12. Mr. SIMMA proposed that in the second sentence the words “without being directly injured” should be inserted between “legal interest” and “to enable”.

It was so agreed.

13. Mr. ECONOMIDES drew attention to an editing correction required in the French version.

Paragraph 20, as amended, was adopted.

Paragraph 21

14. Mr. PELLET said that the second sentence expressed what seemed to him to be an incomprehensible notion. He proposed that the word “since” should be deleted and the word “mean” should be replaced by the phrase “lead to the result”.

15. Mr. ROSENSTOCK said that if the amendment was adopted, a semi-colon must be inserted in the English version after the word “damage”.

It was so agreed.

16. Mr. KAMTO proposed that also in the second sentence the word “wrongdoing” should be replaced by

“responsible”, to ensure concordance with the rest of the text.

It was so agreed.

Paragraph 21, as amended, was adopted.

Paragraph 22

17. Mr. SIMMA proposed that the words “it was”, in the first sentence, should be replaced by “some members”.

It was so agreed.

Paragraph 22, as amended, was adopted.

Paragraph 23

Paragraph 23 was adopted.

Paragraph 24

18. Mr. SIMMA said that the second sentence expressed a concept that was incomprehensible to him. He would like some clarification.

19. Mr. CRAWFORD (Special Rapporteur) said he favoured deletion of that sentence.

20. Mr. HAFNER said the sentence reflected comments he had made that were indeed incomprehensible when read in isolation from the part of the Special Rapporteur’s report to which they referred. He had no objection to the proposed deletion.

Paragraph 24, as amended, was adopted.

Paragraphs 25 and 26

Paragraphs 25 and 26 were adopted.

Paragraph 27

21. Mr. ROSENSTOCK drew attention to the second sentence, “States that were not directly affected, although they could not invoke responsibility, could call for cessation of a breach by another State.” To call for cessation was, in fact, to invoke responsibility: the sentence made no sense. He proposed that the word “responsibility” should be replaced by “reparation”.

22. Mr. SIMMA endorsed that proposal and suggested concomitant replacement of the word “invoke” by the word “claim”.

23. Mr. LUKASHUK said that Mr. Rosenstock had raised a very important point, but if the word “responsibility” was removed, the sentence no longer had any meaning or foundation in law. He would prefer the sentence to read: “States that were not directly affected could invoke responsibility to achieve the cessation of a breach by another State.”

24. After a brief discussion in which Mr. CRAWFORD (Special Rapporteur), Mr. PELLET and Mr. SIMMA

took part, Mr. ROSENSTOCK, supported by Mr. CRAWFORD (Special Rapporteur), said that the degree to which responsibility could be invoked was not a function of the demands that could be made. In human rights matters, for example, full responsibility could be invoked and the party would have the right to cessation, but not to reparation.

25. Mr. SIMMA said that paragraph 27 should be viewed in the light of the relevant draft article, under which States were entitled to do much more than merely call for cessation.

26. Mr. ECONOMIDES said that the existing text should be respected as much as possible and that changes should be kept to a minimum. He therefore suggested that the second sentence should be amended to read: "Such States, although not directly affected, could at least call for cessation of a breach by another State."

It was so agreed.

Paragraph 27, as amended, was adopted.

Paragraph 28

27. Mr. SIMMA said that the first sentence was clumsily worded. He suggested the formulation: "... important to distinguish between the existence of an obligation and its beneficiary".

28. Mr. CRAWFORD (Special Rapporteur) said he welcomed the "distinguish between" formulation. At the end of the sentence, however, he preferred the phrase "the beneficiary of the obligation". In view of that change, it would make sense to delete the next word, "Therefore", and to divide the next sentence, which was too long, into two. The comma after the word "benefit" should be replaced by a semi-colon and the next phrase should read: "this was particularly important in the context of human rights obligations infringed by a State with regard to its own nationals ...".

29. Mr. GOCO stressed the importance of retaining the phrase: "The right to invoke ... should be given to all the States that had a legal interest," in the second sentence.

30. Mr. Sreenivasa RAO sought clarification as to whether the "certain obligation" constituted an additional requirement on States or whether it simply emphasized an existing *erga omnes* obligation.

31. Mr. CRAWFORD (Special Rapporteur) said that the latter interpretation was the correct one.

Paragraph 28, as amended, was adopted.

Paragraphs 29 and 30

Paragraphs 29 and 30 were adopted.

Paragraph 31

32. Mr. CRAWFORD (Special Rapporteur) said that in the second sentence, in the phrase "to State responsibility

as between States", the word "State" should be deleted as being superfluous.

33. Mr. HAFNER drew attention to the typographical error, "savings clause", in the last sentence.

Paragraph 31, as amended, was adopted.

Paragraphs 32 and 33

Paragraphs 32 and 33 were adopted.

Paragraph 34

34. Mr. PELLET said that in the first sentence of the French version the word *et* should be replaced by *mais*, to reflect the fact that there had been little support for article 40 as adopted on first reading.

35. Mr. SIMMA said that, according to his recollection, no one had supported article 40. Even the use of the word "few" confused the issue.

36. Mr. CRAWFORD (Special Rapporteur) said that part of the problem lay in the translation. The French version used the word *quelques* for the English word "few". The alternative "... several supporters but" would be acceptable; or, still better, "had little support and".

37. Mr. PELLET suggested that the whole sentence should be replaced by the simple statement that "The Special Rapporteur noted that the deficiencies of article 40 as adopted on first reading had been generally recognized."

It was so agreed.

38. Mr. ROSENSTOCK said that it was unclear what the word "likewise" in the second sentence referred to. It should be deleted.

It was so agreed.

Paragraph 34, as amended, was adopted.

Paragraph 35

39. Mr. SIMMA requested clarification of the second half of the third sentence.

40. Mr. CRAWFORD (Special Rapporteur) said that the phrase in question, which was the relic of an earlier text, was indeed confusing. There was no need to go into the distinction between suspension and termination. He therefore suggested that the whole phrase "against a background ... not with individual States" should be deleted.

41. Mr. HAFNER, speaking with reference to the first part of the same sentence, questioned the correctness of stating that the Commission had distinguished between bilateral and multilateral obligations, rather than treaties, since it had done so in the context of the law of treaties.

42. Mr. CRAWFORD (Special Rapporteur) said that the thought had been excessively compressed. The word "obligations" should be replaced by the word "treaties". A new sentence should then be added, to read: "An analogy

could be drawn for obligations in the field of State responsibility.”

43. After a brief discussion in which Mr. CRAWFORD (Special Rapporteur), Mr. GOCO and Mr. KUSUMA-ATMADJA took part, the CHAIRMAN suggested a formulation to replace the whole of the third sentence: “The Commission, in the context of the law of treaties, had distinguished between bilateral and multilateral treaties and had emphasized that the State specially affected by a breach of a multilateral treaty should be able to invoke that breach. An analogy could be drawn for obligations in the field of State responsibility.”

Paragraph 35, as amended, was adopted.

Paragraph 36

44. Mr. MOMTAZ drew attention to two typographical errors which made nonsense of the French version. The first sentence should read ... *introduire dûment dans le projet d'articles la distinction*

45. Mr. CRAWFORD (Special Rapporteur) said that, in addition, the word *introduire* should be replaced by the French equivalent of the word “incorporate”. Some would say that the distinctions in question already existed, so they could not be “introduced”.

46. Mr. LUKASHUK said that it made no sense to speak of distinctions between obligations and breaches: the two were completely separate issues and in any case did not directly relate to State responsibility.

47. Mr. CRAWFORD (Special Rapporteur) said that the comparators in the sentence were implicit: the distinctions were between obligations to the international community as a whole and other obligations, and between serious breaches and other breaches. He suggested that the phrase “incorporate proper distinctions between” should be replaced by the phrase “deal adequately with”.

48. Mr. ROSENSTOCK said that the word “adequately” misrepresented the tenor of the sentence, which was merely to recognize that some members favoured a particular approach, not to endorse that approach.

49. Mr. CRAWFORD (Special Rapporteur) suggested, as an alternative, the word “address” instead of the phrase “incorporate proper distinctions between”.

50. Mr. SIMMA asked what the word “it” in the phrase “if it existed” at the end of the third sentence referred to.

51. Mr. CRAWFORD (Special Rapporteur) agreed that the sentence was confusing. He suggested that it should be replaced by the following: “But, in terms of the right to invoke responsibility, it was not necessary to refer to grave breaches of obligations owed to the international community as a whole. Once it was established ...”. The more inclusive category did away with the need for the more limited one.

It was so agreed.

Paragraph 36, as amended, was adopted.

Paragraph 37

52. Mr. GALICKI proposed that, in the interests of clarity, the pronoun “He”, at the start of the last sentence, should be replaced by the words “The Special Rapporteur”.

Paragraph 37, as amended, was adopted.

Paragraph 1 (A/CN.4/L.593/Add.3)

Paragraph 1 was adopted.

Paragraph 2

53. Mr. TOMKA proposed amending the words “compensate for the injury”, in the third sentence, to read “make good the injury”.

54. Responding to a question by Mr. HAFNER, Mr. CRAWFORD (Special Rapporteur) proposed ending the third sentence with the word “injury”, deleting the word “since”, and starting a new sentence with the word “Otherwise”.

Paragraph 2, as amended, was adopted.

Paragraph 3

Paragraph 3 was adopted.

Paragraph 4

Paragraph 4 was adopted with an editing change to the French version.

Paragraphs 5 to 7

Paragraphs 5 to 7 were adopted.

Paragraph 8

55. Mr. PELLET asked what was meant by the term “‘expressive’ damages”, in the first sentence.

56. Mr. CRAWFORD (Special Rapporteur) said that the expression, which was one used by the Chairman of the Drafting Committee on first reading, referred to exemplary as distinct from punitive damages, a distinction that was not recognized in some legal systems. He had placed it in inverted commas in order to make the point, while avoiding the term “exemplary”, that in the context of satisfaction reference was being made to the expression of an injury, rather than to the quantification of a loss.

57. Mr. Sreenivasa RAO said that, if retained, such new and abstruse terminology called for explanation in a footnote.

58. Mr. CRAWFORD (Special Rapporteur) proposed the formulation “exemplary or ‘expressive’”.

59. Mr. LUKASHUK asked what was meant by the expression “normal breaches”. A term such as “common breaches” seemed preferable.

60. Mr. MOMTAZ said that in his view the term *expressifs* was meaningless in French.

61. Mr. GOCO said that in some legal systems “exemplary” could mean “punitive”, in the sense of “making an example” of the party against whom the damages were awarded.

62. Mr. HE pointed out that placing the word in inverted commas served as a reminder that a source was being quoted.

63. Mr. SIMMA suggested specifying that it was the previous Special Rapporteur who was being quoted. In any case, the Special Rapporteur should have the last word regarding the choice of terminology.

64. Mr. CRAWFORD (Special Rapporteur) reiterated his preference for the formulation “exemplary or ‘expressive’”. As to Mr. Goco’s point, it was clear from the latter part of the paragraph that the damages referred to were not punitive. As for Mr. Lukashuk’s very valid point, it would be better to replace the term “normal breaches” by the term “ordinary breaches (not involving gross infringement)”.

65. Mr. PELLET said that the term *violations courantes* was acceptable in French. As for Mr. Simma’s second point, if the Special Rapporteur used words whose meaning was incomprehensible to everyone else, it was incumbent on him to explain the sense in which they were used.

66. Use of the formulation “exemplary or ‘expressive’” would give rise to a problem in the sentence that followed, for the implication would be that the “exemplary” damages referred to therein were distinct from “expressive” damages. A new formulation was needed, such as: “The notion of ‘exemplary’ damages awarded, where appropriate, would nevertheless exclude punitive damages ...”.

67. Mr. CRAWFORD (Special Rapporteur) said that, in view of members’ misgivings, it would be best to omit the term “expressive” and to speak simply of “the award of exemplary damages in general”.

68. Mr. SIMMA said that the word “ordinary” had a neutral connotation that rendered it unsuitable to qualify the noun “breaches”. He therefore proposed the compromise formulation “in respect of breaches not involving gross infringement”.

69. Mr. CRAWFORD (Special Rapporteur) proposed amending the second sentence by replacing the words “exemplary damages, where appropriate” with “substantial damages, where appropriate”, meaning that the award of exemplary damages could lead to the award of a substantial sum of money, while excluding punitive damages.

70. Mr. ROSENSTOCK said that the picture should be completed by adding the words “, often described as ‘satisfaction’”.

71. Mr. PELLET said that a better formulation would be: “often described as one possible form of satisfaction”. The word “substantial” needed to be further qualified by the

addition of the words “that is, more than nominal”, though the resulting sentence was certainly unwieldy.

72. Mr. BROWNLIE said he was opposed to Mr. Rosenstock’s proposal, which was a distortion of the Special Rapporteur’s thinking. Moreover, the inclusion of so many disparate elements in one sentence resulted in a witches’ brew that was well-nigh incomprehensible even to members of the Commission.

73. Mr. CRAWFORD (Special Rapporteur) said he had no strong feelings about Mr. Rosenstock’s proposal, and that he could accept Mr. Pellet’s proposal to add the words “that is, more than nominal”. However, if either new element was included, and still more if both were included, a new sentence would clearly be required, beginning: “This would exclude punitive damages ...”.

74. Mr. RODRÍGUEZ CEDEÑO (Rapporteur) said that the original text of paragraph 8 had now been so heavily amended that the Special Rapporteur should prepare and circulate a new text, so as to avoid any possibility of confusion.

75. Mr. CRAWFORD (Special Rapporteur) said he would prepare a new version of paragraph 8 for consideration at the next meeting.

76. The CHAIRMAN said he would take it that the Commission wished to defer consideration of paragraph 8.

It was so agreed.

Paragraphs 9 to 12

Paragraphs 9 to 12 were adopted.

Paragraph 13

Paragraph 13 was adopted with an editing change to the French version.

Paragraph 14

Paragraph 14 was adopted.

Paragraph 15

Paragraph 15 was adopted with a minor editing change.

Paragraph 16

Paragraph 16 was adopted with a minor editing change to the French version.

Paragraph 17

77. In response to a point raised by Mr. SIMMA, Mr. CRAWFORD (Special Rapporteur) proposed amending the words “such as the international community as a whole, and even non-entities”, in the penultimate

sentence, to read “or towards the international community as a whole”.

Paragraph 17, as amended, was adopted.

Paragraph 18

Paragraph 18 was adopted.

Paragraph 19

78. In response to a point raised by Mr. SIMMA, Mr. CRAWFORD (Special Rapporteur) proposed replacing the words “a simple rule”, in the last sentence, by “an ordinary rule”.

79. Mr. ROSENSTOCK proposed replacing the words “It was noted”, at the beginning of the paragraph, by “Some members noted”, and inserting the words “, according to this view,” after “The concept of crimes”, in the third sentence.

80. Mr. TOMKA queried the expression “delicts of consequences”, in the second sentence.

81. Mr. CRAWFORD (Special Rapporteur) explained that, during the first reading, a number of members had expressed the view that Part Two should have been organized differently, with delictual consequences confined to one section, and a separate section on the consequences of international crimes as defined in article 19. Mr. Tomka’s point could be resolved by placing commas after “inclusion” and “delicts”, so that the phrase read “which had resulted in the inclusion, in the part referring to delicts, of consequences ...”.

Paragraph 19, as amended, was adopted.

Paragraphs 20 to 23

Paragraphs 20 to 23 were adopted.

Paragraph 24

82. Mr. CRAWFORD (Special Rapporteur) said that in the fifth sentence the words “for reparation” should be deleted.

Paragraph 24, as amended, was adopted.

Paragraphs 25 and 26

Paragraphs 25 and 26 were adopted.

Paragraph 27

83. Mr. ROSENSTOCK said that the word “unlawfulness”, in the fourth sentence, should be changed to “wrongfulness”. The formulation “it was doubted”, in the fifth sentence, was infelicitous. “Doubt was expressed” would be more elegant.

Paragraph 27, as amended, was adopted.

Paragraph 28

Paragraph 28 was adopted.

Paragraph 29

84. Mr. PELLET drew attention to the fact that “international society”, in the last sentence, should be changed to “international community”.

85. Mr. SIMMA expressed the view that “crime”, in the same sentence, needed to be qualified.

86. Mr. CRAWFORD (Special Rapporteur) suggested the phrase “‘crime’ in the sense of article 19”.

Paragraph 29, as amended, was adopted.

Paragraph 30

Paragraph 30 was adopted.

Paragraph 31

87. Mr. SIMMA said that “legal nationalization” should be amended to “lawful nationalization” in the third sentence. He pointed out that the compensation referred to in the penultimate sentence was compensation in accordance with a primary rule of international law.

88. Mr. CRAWFORD (Special Rapporteur) proposed deleting the word “legal” in the third sentence and replacing “compensation” in the penultimate sentence by “payment for the property taken”.

Paragraph 31, as amended, was adopted.

Paragraph 32

89. Mr. SIMMA recommended adding the words “for instance” after “arose”, in the second sentence, because the situation described was not the only imaginable case of legal and material impossibility.

90. Mr. MOMTAZ said that, in the French version, the third sentence should read *Il existait des limites au changement de la situation juridique*.

91. Mr. CRAWFORD (Special Rapporteur) said that the corresponding phrase in English was also too compressed to convey a proper meaning. He proposed “There were limits to changes that could be made under some legal regimes. For example ...”.

92. Mr. HAFNER wondered whether it would not be better to insert “national” before “legal regimes”.

93. Mr. RODRÍGUEZ CEDENO (Rapporteur) said that, in his opinion, in the last sentence, the terms used in the various languages for “overturned” should be harmonized, as they were not exact equivalents.

94. Mr. KUSUMA-ATMADJA said that he preferred the original text, because otherwise the Commission would be approving a procedure enabling States to shirk their international obligations.

95. Mr. CRAWFORD (Special Rapporteur) pointed out that the Commission could not approve anything; it could merely express a view. The situation in question was one in which there had been a miscarriage of justice as a result of a final Supreme Court decision. The effects of the decision could be reversed by the offer of a pardon, but the Constitution could not be amended so as to say that the decision had never been taken. Of course, in international law, the position was clear. Situations of legal impossibility could arise.

Paragraph 32, as amended, was adopted.

Paragraph 33

Paragraph 33 was adopted.

Paragraph 34

96. Mr. ROSENSTOCK pointed out that the words “should not rely”, in the first sentence, should be changed to “could not rely”.

It was so agreed.

97. Mr. GALICKI, referring to the last sentence, said that the Special Rapporteur’s conclusion was based not on the text of article 41 of the European Convention on Human Rights, but on the practice of the European Court of Human Rights.

98. Mr. SIMMA endorsed the point made by Mr. Galicki and said that perhaps the last sentence could be deleted, because there was no need to refer to a regional development.

It was so agreed.

Paragraph 34, as amended, was adopted.

Paragraphs 35 to 38

Paragraphs 35 to 38 were adopted.

Paragraph 39

Paragraph 39 was adopted with minor editing changes.

Paragraph 40

99. Mr. PELLET drew attention to the fact that the Commission had never discussed “harm”. At most, it might have referred to injury or damage. The first sentence should therefore be amended accordingly.

100. Mr. BROWNLIE said that the word “such” should be inserted between “provision” and “as”, in the second sentence.

Paragraph 40, as amended, was adopted.

Paragraph 41

Paragraph 41 was adopted with minor editing changes.

Paragraphs 42 to 44

Paragraphs 42 to 44 were adopted.

Paragraph 45

101. Mr. SIMMA said that there had been a lengthy debate on compensation in the context of nationalization and expropriation but, at the end of the discussion, a number of members had forcefully expressed the view that compensation was unrelated to State responsibility. Perhaps it would be more discreet to delete the entire paragraph, because some members had obviously ventured into subject matter that was not pertinent to the topic.

102. Mr. BROWNLIE said that he would prefer to retain a full account of the Commission’s deliberations.

103. Mr. CRAWFORD (Special Rapporteur) said that he agreed with Mr. Brownlie.

Paragraph 45 was adopted.

Paragraphs 46 and 47

Paragraphs 46 and 47 were adopted.

Paragraph 48

Paragraph 48 was adopted with a minor editing change.

Paragraphs 49 and 50

Paragraphs 49 and 50 were adopted.

Paragraph 51

Paragraph 51 was adopted with minor editing changes to the Spanish version.

Paragraph 52

Paragraph 52 was adopted.

Paragraph 53

Paragraph 53 was adopted with minor editing changes to the French version.

Paragraph 54

Paragraph 54 was adopted with minor editing changes.

Paragraph 55

104. Mr. CRAWFORD (Special Rapporteur) said that in the last sentence “possible pending” should read “possible or pending”.

Paragraph 55, as amended, was adopted.

Paragraphs 56 to 69

Paragraphs 56 to 69 were adopted.

Paragraph 70

105. Mr. BROWNLIE asked whether there was not a word missing between “amounts of interest payable” and “loss of profits”, in the fourth sentence.

106. Mr. CRAWFORD (Special Rapporteur) proposed the wording “amounts of interest should not be payable in respect of the period for which loss of profits was awarded”.

107. Mr. ROSENSTOCK said that the phrase was correct insofar as interest on the fundamental investment was concerned. If, however, someone had been ordered to make a payment to cover loss of profits and did not make that payment, presumably interest would run throughout the period of default. Care with the formulation was therefore required.

108. Mr. CRAWFORD (Special Rapporteur) proposed that a full stop should be placed after “double recovery”. The next sentence would then begin “Moreover, it could not be assumed that the injured party”.

Paragraph 70, as amended, was adopted.

The meeting rose at 6 p.m.

2662nd MEETING

Thursday, 17 August 2000, at 10.10 a.m.

Chairman: Mr. Chusei YAMADA

Present: Mr. Addo, Mr. Baena Soares, Mr. Brownlie, Mr. Candioti, Mr. Crawford, Mr. Dugard, Mr. Economides, Mr. Gaja, Mr. Galicki, Mr. Goco, Mr. Hafner, Mr. He, Mr. Illueca, Mr. Kabatsi, Mr. Kamto, Mr. Kusuma-Atmadja, Mr. Lukashuk, Mr. Momtaz, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Rodríguez Cedeño, Mr. Rosenstock, Mr. Simma, Mr. Tomka.

State responsibility¹ (*concluded*)* (A/CN.4/504, sect. A, A/CN.4/507 and Add.1–4,² A/CN.4/L.600)

[Agenda item 3]

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE ON SECOND READING

1. The CHAIRMAN invited Mr. Gaja, Chairman of the Drafting Committee, to introduce the report of the Drafting Committee on State responsibility containing the draft articles adopted by the Drafting Committee on second reading (A/CN.4/L.600).

2. Mr. GAJA (Chairman of the Drafting Committee) said that, during the current session, the Drafting Committee had held 27 meetings, 24 of which had been devoted to the topic of State responsibility. It had completed the consideration of the articles which had been referred to it and was now in a position to submit a complete text. It was nevertheless of the opinion that the final adoption of the text should be postponed so that there might be an opportunity to review the articles at the beginning of the next session. In order to provide a complete picture, the report before the Commission incorporated the articles which the Drafting Committee had adopted at the fiftieth³ and fifty-first⁴ sessions of the Commission, with a few minor changes. All the articles had been renumbered followed by the numbers of the articles adopted on first reading in square brackets.

3. The Drafting Committee had taken care of some pending issues in the articles of Part One. First, it had changed the title, which had become “The internationally wrongful act of a State” and was more suited to the content of Part One than the old title, “Origin of international responsibility”. Secondly, it had deleted article 22 adopted on first reading in chapter III of Part One, which dealt with the exhaustion of local remedies, since that question was addressed in article 45 [22]. Thirdly, it had moved article A from chapter II of Part One to Part Four, considering that, in the new structure of the draft, that article was better placed in the part on general provisions. Fourthly, it had deleted article 34 bis in chapter V, which was a text proposed by the Special Rapporteur whose paragraph 1 required the State that was invoking a circumstance precluding wrongfulness to give notice as soon as possible to the other States concerned. Having considered the articles on countermeasures, it had come to the conclusion that article 34 bis was unnecessary and that it would be difficult to state a general rule on notice that would apply equally to all the circumstances precluding wrongfulness.

* Resumed from the 2653rd meeting.

¹ For the text of the draft articles provisionally adopted by the Commission on first reading, see *Yearbook . . . 1996*, vol. II (Part Two), p. 58, chap. III, sect. D.

² Reproduced in *Yearbook . . . 2000*, vol. II (Part One).

³ *Yearbook . . . 1998*, vol. I, 2562nd meeting, p. 288.

⁴ *Yearbook . . . 1999*, vol. I, 2605th meeting, p. 275.