

Document:-
A/CN.4/SR.2147

Summary record of the 2147th meeting

Topic:
Other topics

Extract from the Yearbook of the International Law Commission:-
1989, vol. I

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

Paragraph 36, as amended, was adopted.

Paragraph 37

Paragraph 37 was adopted.

Paragraph 38

90. Mr. BENNOUNA (Rapporteur) suggested that paragraph 38 should be combined with paragraph 39.

91. Mr. TOMUSCHAT, supported by Mr CALERO RODRIGUES, said that paragraph 38 formed an introduction to paragraphs 39 to 41 and should remain separate.

Paragraph 38 was adopted.

Paragraphs 39 and 40

Paragraphs 39 and 40 were adopted.

Paragraph 41

92. Mr. THIAM (Special Rapporteur) said that the words "another crime, namely" should be inserted between the words "consequence of" and "the expulsion" in the second sentence.

Paragraph 41, as amended, was adopted.

Paragraphs 42 to 45

Paragraphs 42 to 45 were adopted.

Paragraph 46

93. Mr. TOMUSCHAT suggested that the quotation from a decision of the Supreme Court of the British Zone should be deleted, as it was redundant.

94. Mr. THIAM (Special Rapporteur) said that the quotation was an important element of jurisprudence and should not be deleted. If necessary, it could be incorporated in a footnote.

95. Mr. McCAFFREY said that he fully agreed with Mr. Tomuschat and would further point out that chapter III of the draft report contained a large number of passages reflecting the opinions of the Special Rapporteur, something that he himself had been criticized for including in chapter VII. Mr. Díaz González had pointed out (2141st meeting) that such practice created confusion in the Sixth Committee of the General Assembly: representatives were led to comment on the special rapporteur's opinions, rather than on the views of the Commission. He was now inclined to agree with that point of view, and would urge that, early during the Commission's next session, the secretariat, the Rapporteur and the special rapporteurs should meet with a view to deciding on a structure for the report in which each of the topics on the agenda was given equal treatment.

96. The CHAIRMAN pointed out that the Rapporteur had already made a similar suggestion, which would certainly be followed.

97. Mr. NJENGA said that paragraph 46 under consideration dealt with the destruction of property, which was a new area of concern for the Commission. The quotation it contained provided justification for the Commission's position and should not be deleted. If necessary, however, it could be incorporated in a footnote.

98. Mr. BARSEGOV said that, on the whole, he was in favour of reducing the length of the Commission's report, but paragraph 46 contained very important material. Destruction of property was often the starting-point for acts of genocide, as anyone familiar with the history of such acts knew.

99. The CHAIRMAN suggested that the quotation in paragraph 46 should be incorporated in a footnote.

It was so agreed.

Paragraph 46, as amended, was adopted.

Paragraphs 47 to 58

Paragraphs 47 to 58 were adopted.

The meeting rose at 7 p.m.

2147th MEETING

Friday, 21 July 1989, at 10 a.m.

Chairman: Mr. Bernhard GRAEFRATH

Present: Mr. Arangio-Ruiz, Mr. Barboza, Mr. Barsegov, Mr. Beesley, Mr. Bennouna, Mr. Calero Rodrigues, Mr. Díaz González, Mr. Eiriksson, Mr. Francis, Mr. Jacovides, Mr. Mahiou, Mr. McCaffrey, Mr. Njenga, Mr. Ogiso, Mr. Pawlak, Mr. Sreenivasa Rao, 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 forty-first session (continued)

CHAPTER III. Draft Code of Crimes against the Peace and Security of Mankind (continued) (A/CN.4/L.436 and Add.1-3)

B. Consideration of the topic at the present session (concluded) (A/CN.4/L.436 and Add.1-3)

Paragraphs 59 to 78 (A/CN.4/L.436/Add.2)

Heading preceding paragraph 59

1. Mr. BARSEGOV proposed that the words "for mankind" should be added after the words "of vital importance" in the heading.

It was so agreed.

2. Mr. McCAFFREY proposed that the words "and assets" should be added after the word "property".

It was so agreed.

The heading preceding paragraph 59, as amended, was adopted.

Paragraphs 59 to 71

Paragraphs 59 to 71 were adopted.

Paragraph 72

3. Mr. McCAFFREY proposed that the second sentence should be amended to read: "It was also important to avoid the possibility of over-politicization of the code in national courts."

4. Mr. BARSEGOV proposed the following wording: "... the possibility of over-politicization of the code's application ...".

Mr. McCaffrey's amendment, as modified by Mr. Barsegov, was adopted.

Paragraph 72, as amended, was adopted.

Paragraph 73

Paragraph 73 was adopted.

Paragraph 74

Paragraph 74 was adopted with some drafting changes.

Paragraphs 75 and 76

Paragraphs 75 and 76 were adopted.

Paragraph 77

5. Mr. CALERO RODRIGUES said that there should be a new heading to introduce paragraphs 77 and 78, which were unrelated to the preceding paragraphs.

6. The CHAIRMAN said that that drafting point would be taken into account by the secretariat.

Paragraph 77 was adopted with some drafting changes in the Russian text.

Paragraph 78

Paragraph 78 was adopted.

Paragraphs 79 and 80 (A/CN.4/L.436/Add.3)

7. Mr. CALERO RODRIGUES said that, although he had no objection to paragraphs 79 and 80, he did not think that their inclusion was necessary, since draft article 16 was still being considered by the Drafting Committee.

8. Mr. McCAFFREY said that he agreed with Mr. Calero Rodrigues.

9. Mr. BARSEGOV said that, in his view, the attention of the General Assembly should be drawn to the problems to which draft article 16 gave rise.

10. Mr. SEPÚLVEDA GUTIÉRREZ said that he, too, thought that the General Assembly should be informed of the problems raised by draft article 16, because its views would be helpful to the Commission in its future work.

11. Mr. ROUCOUNAS said that he shared the views of Mr. Calero Rodrigues. The Drafting Committee had, of course, considered draft article 16, but contrary to what was stated in paragraph 80 it had not "arrived at" a text.

12. Mr. McCAFFREY said that, if the text of draft article 16 were retained in the Commission's report, the Commission would be inviting the General Assembly to state its views on that text, even though opinions in the Commission were still very much divided. That would be a regrettable mistake. The text had to be examined again at the next session, not only in the Drafting Committee, but also in plenary.

13. Mr. PAWLAK said that he did not see any harm in submitting to the General Assembly for its information a text which appeared only in a footnote. In order to meet Mr. McCaffrey's concerns, he proposed that the report should explain that the Commission would revert to the text in question in plenary at its next session.

14. The CHAIRMAN suggested that, as a compromise, the words "The text arrived at by the Drafting Committee after discussion over several meetings", at the beginning of paragraph 80, should be replaced by "The text discussed by the Drafting Committee at several meetings".

15. Mr. JACOVIDES said that he agreed with the comments made by Mr. Roucounas and Mr. McCaffrey.

16. Mr. BENNOUNA (Rapporteur) said that there was no need to inform the General Assembly of the Drafting Committee's work and paragraph 79 alone would suffice. He proposed that a footnote should simply be added to indicate where the text of draft article 16 could be found.

17. Mr. BEESLEY said that he agreed with the comments made by Mr. Roucounas, Mr. McCaffrey and the Rapporteur. To reproduce the text of draft article 16 in the Commission's report would give it authority it did not have, since it had not been considered by the Commission and had also been categorically rejected by one of its members. The text therefore did not really exist. It would be an unfortunate precedent to retain it in the report.

18. Mr. TOMUSCHAT suggested that the text originally proposed by the Special Rapporteur should be reproduced in a footnote to paragraph 79.

19. Mr. YANKOV supported that proposal.

20. The CHAIRMAN proposed that paragraph 79 should be left as it stood, with the addition, at the end, of the words "but could not agree on a text". A footnote would be added containing the text originally proposed by the Special Rapporteur which corresponded to draft article 16, introduced by the words "The text originally proposed by the Special Rapporteur read as follows". The footnote would also indicate at which meeting the Chairman of the Drafting Committee had reported to the Commission on the Drafting Committee's work on that article.

21. Mr. RAZAFINDRALAMBO said that, for the sake of clarity, the words "deriving from a treaty and concerning disarmament, arms control and arms prohibition" should be added at the end of the original paragraph 79.

22. Mr. OGISO supported the proposal made by the Chairman.

23. Mr. REUTER said that he also supported the Chairman's proposal. It was, moreover, quite normal—and a common practice in the Commission—to draw the General Assembly's attention to such a sensitive issue, on which it might offer some guidance.

24. Mr. BEESLEY said that he had some reservations about reproducing the text of draft article 16 in the Commission's report but would not oppose doing so.

25. Mr. CALERO RODRIGUES said it should be explained in the report that the Drafting Committee had not had time to complete its consideration of draft article 16. He repeated that he had doubts about the advisability of including paragraphs 79 and 80 in the Commission's report to the General Assembly, either by way of information or for comments.

26. Mr. DÍAZ GONZÁLEZ said that he shared Mr. Calero Rodrigues's view and also believed that the Commission did not have to keep the General Assembly informed of the Drafting Committee's work.

27. Mr. EIRIKSSON said that he endorsed the comments made by Mr. Calero Rodrigues and Mr. Díaz González.

28. Mr. THIAM (Special Rapporteur) said that he supported the proposal made by the Chairman, but suggested that the word "yet" should be inserted between the words "not" and "agree" in the proposed addition to paragraph 79.

29. Mr. BEESLEY said that he supported the Chairman's proposal, as modified by the Special Rapporteur.

30. The CHAIRMAN said that, if there were no objections, he would take it that the Commission agreed to adopt paragraph 79 with the amendments proposed by him (para. 20 above), as modified by the Special Rapporteur, and to delete paragraph 80.

It was so agreed.

Paragraph 79, as amended, was 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.436/Add.3)

SUBSECTION 1 (Texts of the draft articles provisionally adopted so far by the Commission)

Section C.1 was adopted.

SUBSECTION 2 (Texts of draft articles 13, 14 and 15, with commentaries thereto, provisionally adopted by the Commission at its forty-first session)

31. Mr. McCAFFREY said that, in general, he had serious reservations about the commentaries to articles 13, 14 and 15. They were unbalanced and did not properly explain the articles. They also raised questions which the Commission had not discussed and were based on sources that were controversial and perhaps even irrelevant. He also regretted that the commentaries gave the impression of lacking in seriousness and was afraid that, as a result, the General Assembly might not realize how important the topic was.

32. In addition, the commentaries had been distributed only the previous day and members of the Commission had not had enough time to give them as much consideration as they deserved in view of their importance.

33. Mr. BEESLEY said that he did not mean to criticize the Special Rapporteur's work, but thought that the commentaries under consideration should be discussed paragraph by paragraph, like all other commentaries to articles. If the Commission did not do so because of the lack of time or for other reasons, he would have to formulate serious reservations concerning those texts.

34. Mr. THIAM (Special Rapporteur) said that the commentaries faithfully reflected the views which had been expressed in the Commission and he was prepared to reply to any criticism, provided that it was specific enough. The reason for the late distribution was that he had had very little time to prepare the commentaries after the Drafting Committee had completed its work. Some time had also been necessary for translation and reproduction after he had submitted the texts to the secretariat and before they had been distributed to the members of the Commission.

35. Mr. BARSEGOV, supported by Mr. TOMUSCHAT, said that the commentaries to articles were usually very important and the members of the Commission had to have enough time to consider them. That was, moreover, true of all the topics with which the Commission was dealing.

36. Mr. McCAFFREY said that it had not been his intention to blame the Special Rapporteur for the late distribution of the commentaries. He would simply like the Commission to organize its work in such a way that the text of commentaries would be distributed in time to be considered.

Commentary to article 13 (Threat of aggression)

Paragraph (1)

37. Mr. TOMUSCHAT said that, in criminal law, it was not possible, as stated in the first sentence of the commentary, "to formulate an entirely general definition that would leave it to the judge to determine . . .", because that would mean leaving matters entirely in the hands of the judge. He therefore proposed that those words should be amended to read: "to formulate a general definition that would leave the judge some discretionary power".

38. Mr. ARANGIO-RUIZ said that he did not like the words "discretionary power", which would have the opposite result of what Mr. Tomuschat wanted, namely to limit the judge's freedom. He did, however, agree that the word "entirely" before the word "general" should be deleted.

39. After an exchange of views, the CHAIRMAN said that, if there were no objections, he would take it that the Commission agreed to delete the word "entirely", as well as the words "that would leave it to the judge to determine in each particular case whether the acts invoked constituted a threat or not", in the first sentence of paragraph (1), in accordance with Mr. Tomuschat's suggestion.

It was so agreed.

40. Mr. BARBOZA said that the words "very precise directives", also in the first sentence, were inappropriate and should be replaced by the word "examples". He also proposed that the words "in advance" and "itself" should be deleted.

41. Mr. ARANGIO-RUIZ said he agreed that the words "in advance" and "itself" should be deleted, but did not think that the word "examples" was an improvement. He therefore proposed that the words "precise criteria" should be used.

42. The CHAIRMAN said that, if there were no objections, he would take it that the Commission agreed to delete the words "in advance", in the first sentence of paragraph (1), and to replace the words "very precise directives" by "precise criteria".

It was so agreed.

43. Mr. McCAFFREY said that it should also be explained in paragraph (1) of the commentary, or even at the end of paragraph 79 in section B, why the Commission had decided, in article 13, not to follow the approach taken in the case of article 12 (Aggression), paragraph 1 of which was an introductory provision relating to the attribution of the offence to an individual.

44. The CHAIRMAN said that the Commission could explain that point in its next report.

Paragraph (1), as amended, was approved.

Paragraph (2)

Paragraph (2) was approved.

Paragraph (3)

45. Mr. McCAFFREY said that the word "differences", in the first sentence, should be replaced by "disputes".

46. Mr. CALERO RODRIGUES said that, in his view, the word "differences" should be deleted and only the words "situations" and "isolated acts" should be retained.

Mr. McCaffrey's amendment was adopted.

47. Mr. TOMUSCHAT said that the words "expresses an intention, sometimes even blackmail, tending to make a State believe", in the sixth sentence, were inappropriate and should be replaced by "denotes acts undertaken with a view to making a State believe".

It was so agreed.

48. In the last sentence, the word "consist" should be replaced by "be" and the word "in", which appeared twice, should be deleted.

49. Mr. McCAFFREY said he did not recall that the Commission had decided that measures of a political, administrative or economic nature could constitute a threat of aggression. He therefore proposed that the last sentence should be deleted.

50. Mr. THIAM (Special Rapporteur) said that, although he would not oppose the deletion of the last sentence, he thought that the measures in question were necessarily of a political, administrative or economic nature.

51. Mr. EIRIKSSON said that he, too, was in favour of the deletion of the last sentence, if only because the penultimate sentence was clear enough to explain that the enumeration was indicative.

52. Mr. NJENGA said that he agreed with the Special Rapporteur's view, but did not think that it had to be stated in the commentary. The deletion of the last sentence of paragraph (3) would solve the problem.

It was so agreed.

Paragraph (3), as amended, was approved.

Paragraph (4)

53. Mr. YANKOV, supported by Mr. ARANGIO-RUIZ, said that the words "an impartial third organ", in the first sentence, were inappropriate because they might also refer to a mediator, for example. He therefore proposed that the end of that sentence should be amended to read: "... objective elements verifiable impartially".

54. Mr. McCAFFREY proposed that the words "to believe in the imminence of the aggression", in the fourth sentence, should be replaced by "to believe that aggression was imminent" and that the words "fugitive or", in the fifth sentence, should be deleted;

It was so agreed.

55. In the last sentence, the words "serious guarantees" should be replaced by "reliable guarantees".

56. Mr. THIAM (Special Rapporteur) said that, in the French text, he would like the words *les garanties les plus sérieuses* to be retained.

57. Following a brief discussion in which Mr. BEESLEY, Mr. ARANGIO-RUIZ, Mr. BARBOZA and Mr. DÍAZ GONZÁLEZ took part, the CHAIRMAN suggested that, in the last sentence of paragraph (4), the word "serious" should be replaced by "adequate".

It was so agreed.

Paragraph (4), as amended, was approved.

Paragraph (5)

58. Mr. ROUCOUNAS proposed that the first sentence should be amended to read: "... the threat of aggression did not justify the threatened State in resorting to force in the exercise of the right of self-defence ...".

It was so agreed.

Paragraph (5), as amended, was approved.

Paragraph (6)

59. Mr. TOMUSCHAT said that the words "the competence of the judicial organ" should be replaced by "the competence of a court or tribunal called upon to adjudicate".

It was so agreed.

60. Mr. McCAFFREY said that paragraph (6) did not reflect the views expressed during the meeting, particularly by him. It simply referred to the commentary to article 12 contained in the Commission's previous report.

61. Mr. BEESLEY said that he, too, found paragraph (6) inadequate because it implied that the problems raised by the threat of aggression were similar to those raised by the crime of aggression, whereas what the Commission had discussed was the differences between those two types of problems.

62. Mr. BARSEGOV said he thought that paragraph (6) should refer more specifically to the role of the Security Council and should even state that courts would have to take account of any findings by the Security Council.

63. Mr. McCAFFREY proposed that a sentence along the lines of one contained in paragraph (3) of the commentary to article 12¹ should be added at the end of paragraph (6). It would read: "These members raised the question whether a tribunal would be free to consider allegations of the crime of aggression in the absence of any consideration or finding by the Security Council."

It was so agreed.

Paragraph (6), as amended, was approved.

Paragraph (7)

64. Mr. YANKOV proposed that, in order to bring the wording of the last sentence into line with that of the Charter of the United Nations, the word "characterizing" should be replaced by "determining".

65. Mr. McCAFFREY proposed that the words "A few members", in the first sentence, should be replaced by "Some members". He also proposed that the end of the last sentence should be amended to read: "... should play a part in determining whether the acts invoked constituted a threat of aggression".

It was so agreed.

66. Mr. OGISO proposed that the following new sentence should be added before the last sentence of paragraph (7): "Others expressed doubts whether objective decisions on the fact of a threat could be made under the circumstances in which the alleged threat had taken place, but the act of aggression had not taken place."

It was so agreed.

Paragraph (7), as amended, was approved.

Paragraph (8)

67. Mr. McCAFFREY, Mr. BARSEGOV and Mr. YANKOV said that paragraph (8) was unnecessary and should be deleted.

It was so agreed.

The commentary to article 13, as amended, was approved.

¹ Yearbook ... 1988, vol. II (Part Two), pp. 72-73.

Commentary to article 14 (Intervention)

Paragraph (1)

68. Mr. CALERO RODRIGUES said that, since paragraph (1) related to important substantive issues, it should be drafted as carefully as possible. He proposed that the last sentence should be amended in order not to give the impression that the enumeration which was its main component was a restrictive list.

69. Mr. THIAM (Special Rapporteur) and Mr. BENNOUNA (Rapporteur) endorsed those comments.

70. After an exchange of views in which Mr. RAZAFINDRALAMBO and Mr. CALERO RODRIGUES took part, the CHAIRMAN suggested that the last sentence of paragraph (1) should be amended to read: "The second element of the definition is an enumeration of activities constituting intervention: fomenting [armed] subversive or terrorist activities, or organizing, assisting or financing such activities, or supplying arms for the purpose of such activities."

It was so agreed.

Paragraph (1), as amended, was approved.

Paragraph (2)

71. Mr. EIRIKSSON proposed that the third to sixth sentences, from the words "For international life . . ." to the words ". . . situation in which that State is involved", should be deleted.

72. Mr. McCAFFREY supported that proposal. With regard to the first sentence, which referred to the judgment of the ICJ in the *Nicaragua* case, he pointed out that the Commission had been guided mainly by the 1970 Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.² He therefore proposed that that sentence should be amended to read: "In formulating the above-mentioned definition, the Commission was guided by the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations and, with regard to the first element of that definition, it took account of the recent jurisprudence of the ICJ." A footnote to the latter reference would give the full title of the case in question.

73. He also thought that paragraph (5) of the commentary should come before paragraph (2).

74. Mr. THIAM (Special Rapporteur) said that he wanted reference to be made to the *Nicaragua* case, which had been discussed at some length in his previous, sixth report (A/CN.4/411).

75. Mr. CALERO RODRIGUES said that, if the middle part of paragraph (2) were deleted, it would be necessary to amend what immediately followed, and in particular the words "on the other hand" in the seventh sentence. He agreed with Mr. McCaffrey that reference should be made to the 1970 Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States.

76. Mr. TOMUSCHAT said that he could agree to the deletion of the part of paragraph (2) referred to by Mr. Eiriksson. He could also agree that paragraph (5) should

come before paragraph (2), and he would like reference to be made to the 1970 Declaration.

77. Mr. NJENGA said that he, too, agreed with those three proposals.

78. The CHAIRMAN said that, if there no objections, he would take it that the Commission agreed to delete the third to sixth sentences of paragraph (2), to refer in the first sentence to the 1970 Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States as well as directly to the *Nicaragua* case, and to place paragraph (5) of the commentary before paragraph (2).

It was so agreed.

79. Mr. McCAFFREY proposed that the eighth and ninth sentences of the original paragraph (2) should be combined and amended along the following lines: "It is precisely in this sense that the ICJ said that a prohibited 'intervention' must be . . .".

It was so agreed.

80. Mr. CALERO RODRIGUES proposed that the word "Here", at the beginning of the second sentence, should be deleted.

It was so agreed.

81. Mr. TOMUSCHAT proposed that the end of the last sentence should be amended to read: ". . . the decisive criterion for wrongful intervention within the meaning of the present article".

Paragraph (2) (new paragraph (3)), as amended, was approved.

Paragraph (3) (new paragraph (4))

82. Mr. McCAFFREY said that he was somewhat reluctant to endorse paragraph (3) because the examples of intervention to which it referred had not been discussed in plenary.

83. Mr. CALERO RODRIGUES said that paragraph (3) reflected the discussion and that there was every justification for explaining the terms used in article 14.

84. Mr. THIAM (Special Rapporteur), supported by Mr. PAWLAK, said that the question had been discussed at length in the Drafting Committee and that he would like paragraph (3) to be retained.

Paragraph (3) (new paragraph (4)) was approved.

Paragraph (4) (new paragraph (5))

Paragraph (4) (new paragraph (5)) was approved.

Paragraph (5) (new paragraph (2))

85. Mr. CALERO RODRIGUES proposed that the word "may", in the second sentence, and the words "a particularly odious, serious and harmful form of assistance, namely", in the last sentence, should be deleted.

It was so agreed.

86. Mr. TOMUSCHAT proposed that, in the last sentence, the words "to draw attention to" should be replaced by "to focus on".

It was so agreed.

Paragraph (5) (new paragraph (2)), as amended, was approved.

² General Assembly resolution 2625 (XXV) of 24 October 1970, annex.

Paragraph (6)

87. Mr. TOMUSCHAT said that it would be necessary to review the tense of the verbs used in the third sentence. He also suggested that the phrase "although that word is used in the relevant text . . . referred to above", in the last sentence, should be deleted.

It was so agreed.

88. Mr. McCAFFREY said that, in view of the principle of the sovereign equality of States, the words "unequal States", at the end of the penultimate sentence, seemed rather inappropriate.

89. Mr. NJENGA suggested that those words be replaced by "States of unequal power".

It was so agreed.

Paragraph (6), as amended, was approved.

Paragraph (7)

90. Mr. McCAFFREY said he regretted that paragraph (7) did not explain the reason for the safeguard clause contained in paragraph 2 of article 14.

91. Mr. BARSEGOV said that, in his view, the explanations given in paragraph (7) were clear enough.

92. Mr. EIRIKSSON said he thought that, at the end of paragraph (7), a reference should be added to paragraph (4) of the commentary to article 15 (Colonial domination and other forms of alien domination) concerning the words "as enshrined in the Charter of the United Nations", which were also used in article 14.

It was so agreed.

Paragraph (7), as amended, was approved.

The commentary to article 14, as amended, was approved.

Commentary to article 15 (Colonial domination and other forms of alien domination)

Paragraph (1)

93. Mr. McCAFFREY recalled that, at the 2145th meeting (para. 55), a suggestion had been made to use the formula "Article . . . is modelled on" rather than the wording used at the beginning of paragraph (1), namely "Two . . . texts served as sources for . . .".

94. Mr. TOMUSCHAT said that reference should be made to the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, which the General Assembly had adopted by consensus.

95. Mr. BENNOUNA (Rapporteur) said he agreed with Mr. McCaffrey that a draft article adopted on first reading, namely article 19 of part 1 of the draft articles on State responsibility, could not be placed on the same footing as the Declaration on the Granting of Independence to Colonial Countries and Peoples.³ Article 19 could not serve as a "source" for article 15. Reference should also be made to General Assembly resolution 1541 (XV) of 15 December 1960 on the principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73 (e) of the Charter, as well as to the Declaration on Principles of International

Law concerning Friendly Relations and Co-operation among States. He therefore proposed the following amended text for paragraph (1):

"For article 15, the Commission drew inspiration from General Assembly resolutions 1514 (XV) of 14 December 1960 containing the Declaration on the Granting of Independence to Colonial Countries and Peoples, in particular paragraph 1 of that Declaration; 1541 (XV) of 15 December 1960 on the principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73 (e) of the Charter; and 2625 (XXV) of 24 October 1970, annexed to which is the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. The Commission also took into account its work on State responsibility, and in particular article 19, paragraph 3 (b), of part 1 of the draft articles on that topic."

96. Mr. THIAM (Special Rapporteur) said that he endorsed the amendment by the Rapporteur and would even suggest that the reference to article 19 could be deleted.

97. Mr. YANKOV said that he supported the text proposed by the Rapporteur, but thought that the reference to article 19 served a purpose because it explained the meaning of some of the terms used in article 15.

The Rapporteur's amendment was adopted.

Paragraph (1), as amended, was approved.

The meeting rose at 1.05 p.m.

2148th MEETING

Friday, 21 July 1989, at 3.05 p.m.

Chairman: Mr. Bernhard GRAEFRATH

Present: Mr. Arangio-Ruiz, Mr. Barboza, Mr. Barsegov, Mr. Beesley, Mr. Bennouna, Mr. Calero Rodrigues, Mr. Díaz González, Mr. Eiriksson, Mr. Francis, Mr. Jacovides, Mr. Mahiou, Mr. McCaffrey, Mr. Njenga, Mr. Ogiso, Mr. Pawlak, Mr. Sreenivasa Rao, Mr. Razafindralambo, Mr. Roucouas, Mr. Sepúlveda Gutiérrez, Mr. Shi, Mr. Solari Tudela, Mr. Thiam, Mr. Tomuschat, Mr. Yankov.

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

CHAPTER III. Draft Code of Crimes against the Peace and Security of Mankind (concluded) (A/CN.4/L.436 and Add.1-3)

C. Draft articles on the draft Code of Crimes against the Peace and Security of Mankind (concluded) (A/CN.4/L.436/Add.3)

SUBSECTION 2 (Texts of draft articles 13, 14 and 15, with commentaries thereto, provisionally adopted by the Commission at its forty-first session) (concluded)

³ General Assembly resolution 1514 (XV) of 14 December 1960.