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New York

SUMMARY RECORD OF THE 18th MEETING

Chairman:	Mr. LEHMANN	(Denmark)
later:	Mr. CAMACHO (Vice-Chairman)	(Ecuador)
later:	Mr. LEHMANN (Chairman)	(Denmark)

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The meeting was called to order at 10.25 a.m.

AGENDA ITEM 141: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-SEVENTH SESSION (continued) (A/50/10 and A/50/402)

1. Mr. MÜLLER (Germany) said that a compilation of all the draft articles on State responsibility, supplemented by brief notes indicating major problems and controversies, would greatly facilitate analysis of the issues.

2. Any codification of the rules of State responsibility would have to strike a balance between two objectives: on the one hand the ideal of having all disputes relating to alleged wrongful acts settled by orderly and cooperative procedures and, on the other hand, the necessity of defining the preconditions and modalities of legitimate self-help.

3. Turning to the question of the special consequences of so-called international crimes, he said that the extension of "injured State" status to all States as conceived in draft article 19 of part one as well as the consequent extension to all States of the right to take legitimate countermeasures under draft article 11, paragraph 3 of part two would be viable only if the future convention made such a reaction subject to measures of control as proposed in draft articles 15 to 20 of part two.

4. His Government was concerned about the mechanism introduced in draft article 19 of part two. The functions envisaged for the General Assembly, the Security Council and the International Court of Justice in that article would seem to contradict basic provisions of the Charter. The problem lay with the concept of "international crimes" as a distinct category of wrongful acts in the context of State responsibility. His Government shared many of the concerns expressed in that regard and considered that the response to international crimes should be found not in the context of State responsibility but rather in the prosecution of criminals by a permanent international criminal court and action by the United Nations under its Charter. The concept of international crimes had not been translated into a workable set of rules for implementation which would meet the criterion of balance he had referred to earlier.

5. With regard to the settlement of disputes, the first question that arose was that of coordinating the means for dispute settlement and for self-help. He proposed a provision stipulating that before taking countermeasures States must make a serious effort to reach a negotiated solution in the sense of draft article 1 of part three. It was nevertheless probable that in practice negotiations and measures of self-help would be undertaken simultaneously.

6. A second question related to the general role of the mechanism for dispute settlement envisaged in the draft. That specific mechanism should be clearly subordinated to existing mechanisms, which should be used first.

7. The last question referred to the role assigned to the International Court of Justice in draft article 7 of part three. The intention of that article would be clearer if its wording included language from the 1958 Model Rules on

Arbitral Procedure spelling out the grounds on which the validity of an award could be challenged.

8. Mr. Camacho (Ecuador), Vice-Chairman, took the Chair.

9. Mr. PASTOR RIDRUEJO (Spain), referring to the controversy aroused by the treatment of international crimes as a concept distinct from that of simple international delicts, said that the sociology of international relations made it possible to speak of two major categories of violations of international law. The mere infringement of unimportant rules provoked a response only from the injured State. On the other hand, serious and flagrant violations of important rules aroused concern in the entire international community. International law must be consistent with the distinction made by the international community and attribute to international crime special consequences such as the actio popularis and the other consequences referred to in the Special Rapporteur's special report.

10. The key question was who would determine that such a crime had been committed. He wondered whether the formula proposed by the Special Rapporteur would function effectively without prior reform of the Charter. Moreover, no matter how desirable general acceptance of the formula might be, his delegation did not consider it likely, as it involved three of the main organs of the United Nations and might give rise to conflicts between them. Moreover, it provided for compulsory jurisdiction in a series of matters on which, given their strong political content, States had shown themselves reluctant to accept jurisdiction.

11. Turning to the articles on the settlement of disputes, he pointed out that article 3 provided for compulsory recourse to conciliation, which was acceptable to his delegation. With respect to article 5, it would not have mattered to his delegation if compulsory competence had been attributed to the International Court of Justice rather than to an arbitral tribunal. On the other hand, his delegation was concerned that the drafting of article 7 gave the Court nullifying authority. Simply referring to the "validity of an arbitral award" without specifying the grounds on which it could be challenged would make it difficult for the losing State in the arbitration not to resort to the Court. His delegation therefore supported the proposal made in the Commission to include in the article the grounds for nullity referred to in the Model Rules on Arbitral Procedure.

12. Lastly, with respect to chapter V of the report, he noted with satisfaction that the Commission had provisionally adopted articles A, B, C and D, which were important because they dealt with the general principles of transboundary harm. He welcomed the provisional adoption of articles 1 to 20, relating to activities having a risk of causing transboundary harm. However, he pointed out that the definition of transboundary harm omitted harm caused in spaces not subject to the sovereignty, jurisdiction or control of a State, such as the high seas, the international seabed, outer space, celestial bodies and Antarctica. His delegation wondered why such harm had been excluded.

13. Ms. WONG (New Zealand) said that although the topics of State responsibility and international liability had some similar strands, it would be a mistake to confuse them. The liability topic referred to a situation where a particular activity, although not illegal, gave rise to harmful consequences and thus entailed obligations relating to compensation or restitution as well as obligations to give prior notification of the proposed activity and to undertake an assessment of its environmental impact. Given the importance of the topic, she regretted that a complete text was not yet available but welcomed the work done by the Commission on notification and prevention.

14. Her Government believed that the obligation to make a prior assessment of the activity was already embodied both in international treaties such as the Convention for the Protection of the Natural Resources and Environment of the South-Pacific region and in international customary law. The purpose of the environmental impact assessment was to determine in advance whether an activity entailed an unacceptable degree of risk to the environment and to balance the desired benefits of the activity against the risks it involved.

15. International law contained measures relating to the duty to prevent harm to the environment. The question remained as to what the international legal consequences would be if a State persisted with an activity that entailed risk. The desire to define environmental crime was understandable, but that approach risked creating further confusion if the Commission also attempted to deal with the problem by means of prior notification or restricting it to activities which involved a risk. That would not help to protect the environment and risked limiting the issue to a determination of what constituted an environmental crime. While her delegation supported the Commission's work on the issue of prevention, it believed that if it did not go beyond the question of notification and risk and the four principles adopted in 1995, the Commission might do better to focus its efforts on a topic specifically related to environmental harm. She therefore welcomed the proposal to undertake a feasibility study aimed at beginning work on a topic concerning the law of the environment.

16. In conclusion, it was not acceptable that States should proceed with potentially harmful activities without providing assurances to other States that the risks of such harm had been ascertained and appropriate measures taken to avert them. If the activities did produce harmful consequences for other States, there must be a legal consequence, which would be liability; in other words, the polluter must pay.

17. Mr. VILLAGRAN KRAMER (Guatemala) said that, before progressing further on the topic of the Code of Crimes, the Sixth Committee should clarify whether or not the regime of the international responsibility of States arising from delicts should be the same as that applicable to international crimes.

18. For Spanish-speaking jurists, the terms "delito" and "crimen" were synonymous, and in the judicial field a distinction was made between liability arising from delicts or crimes and that emanating from quasi-delicts or from breach of contract. Nevertheless, it must be recognized that the concept of jus cogens and the decision of the International Court of Justice in the Barcelona Traction case had established a new dichotomy leading to different regimes of

liability and consequently to an increased level of responsibility when crimes imputable to the State were involved.

19. He understood that reservations had been expressed to the idea that the existence of international crimes could lead to the concept of State crime and thus to punishment of a State. In practice, however, that had never happened, although there could be individual responsibility in the case of international crimes which would be imputed to the individuals who decided that the acts constituting such crimes should be carried out.

20. In any case, his delegation sought clarification as to whether the crimes encompassed by the Code were the same ones the Commission considered to be crimes when discussing State responsibility or whether they were different, so that the only ones giving rise to aggravated international responsibility would be those in article 19 of part one of the draft articles. The Commission might also explore the possibility, when discussing aggravated international responsibility, of considering the crimes contained in the Code as international crimes, while others would only entail the international responsibility attributable to delicts.

21. After considering aggression as an international crime, he concluded that both the aggravation of a State's international responsibility and the application of measures or sanctions by the United Nations would be determined by the gravity of the acts or omissions that were considered international crimes.

22. The Commission's position implied that, in the case of delicts, only injured States could react, whereas in the case of international crimes, the range of affected States was broader, since the international community as a whole was injured.

23. Regarding countermeasures, he said that in article 12, which had been adopted by the Drafting Committee, and to which the Special Rapporteur had objected, it was implicit that the injured State must not be both judge and party, and must allow the dispute to be settled peacefully; that was the reason for insisting on the use of binding dispute settlement mechanisms. A significant advance, which deserved support, was the provision of article 5 whereby the State against which countermeasures had been adopted was entitled unilaterally to submit the dispute to an arbitral tribunal.

24. Regarding the legal regime of reprisals, he pointed out that the difference between delicts and crimes made it advisable to remove some of the restrictions on the exercise of the right to reprisals and, in the case of crimes, selectively to relax the prohibitions established for delicts.

25. The provisions regarding the settlement of disputes arising from delicts would enable disputes resulting from an arbitral award to be resolved more easily. As for the procedures proposed for dealing with international crimes, they constituted a first approximation. The important thing was that the discretional power to punish other States could not be left in the hand of States which considered themselves affected. The basis of the legal regime of international responsibility arising from international crimes was rooted in the

assurance that the international community, organized within the framework of the United Nations, was the entity competent to authorize the application of countermeasures and impose collective sanctions. Regional organizations could play a major role in that respect, although the applicable rules had to be clearly defined.

26. The Charter of the United Nations provided States with various ways of seeking relief and asking for sanctions, and empowered the Organization's organs to act at times of crisis or when tensions had lessened. In practice, both the Security Council and the General Assembly had extensive possibilities for taking action, and the only organ whose competence was restricted was the International Court of Justice. Thus, it could be concluded that the procedure for dealing with international crime would be to turn, on the one hand, to the Council and Assembly and, on the other hand, to the International Court of Justice, which would necessitate a revision of the latter's Statute.

27. Lastly, he reaffirmed his conviction that, in the case of international crimes, the right of States to react unilaterally must be restricted.

28. Mr. BIGGAR (Ireland) said that the fruits of the Commission's work currently constituted the greater part of codified international law, and similar sentiments could be expressed to its contribution to the progressive development of international law. He was therefore reluctant to criticize the work of the Commission on the topic of international liability for injurious consequences arising out of acts not prohibited by international law. He was, however, forced to point out that the Commission's work had lost some of its direction.

29. In law, as in life, the number of possible variants was almost infinite. Yet, any convention in that area must be situated within the following parameters. If an individual, company or State was carrying out a potentially dangerous activity, an accident occurred and, through nobody's fault, the property of an innocent bystander was damaged, the one person who clearly should not bear responsibility or suffer financial loss was the innocent bystander. That premise was the justification for the elaboration of any convention on the subject, which should be based on the principle sic utere tuo ut alienam non laedas. However, there was no reference to that principle anywhere in the Commission's report. As to who should bear responsibility, the answer, for practical reasons, pointed in the direction of the entity that was carrying out the activity. However, it had been agreed that the accident was nobody's fault, and it therefore followed that that entity could not be held responsible in any sense that implied culpability. For empirical reasons, therefore, the State in which the entity was located was the legal person which should take responsibility for the damage.

30. In that regard, he read out paragraphs 370 and 376 of the Commission's report and suggested that the time had come to limit the scope of the project. It was not a matter of compiling lists of dangerous substances, and even less of tackling the enormous problem of defining the environment. In other words, his delegation firmly believed that the draft convention was not concerned with the protection of the environment, which should be addressed by other instruments.

The Commission had made no attempt to define the meaning and scope of human life or the ever-changing concept of property.

31. The first priority should be the establishment of a legal mechanism which would prevent an innocent third party from having to bear a loss: a mechanism concerned not with the adjudication of fault liability but with the equitable distribution of financial loss. That objective must lie at the core of any examination of the subject. The Commission's task should therefore be to consider in depth what the real purpose of the draft convention was.

32. Mr. LEANZA (Italy), referring to the draft articles on State responsibility, said that the basic distinction between international delicts and international crimes was that whereas a delict was simply an ordinary illegal act, a crime consisted in the violation of obligations considered fundamental by the international community. The Commission had reflected that aspect of the development of modern international law.

33. His delegation did not share the criticism directed at the idea of international crime on the basis of the maxim societas delinquere non potest, according to which States were exempt from criminal responsibility and could not be punished. Closely linked to that criticism were others based on the fact that the international system lacked a body with the right of public prosecution or one having criminal jurisdiction. Those objections, however, were not unanswerable.

34. On the other hand, the fact that the Commission was also working on the draft Code of Crimes against the Peace and Security of Mankind did not mean that at the international level criminal responsibility was merely individual, since that very text stipulated that the prosecution of an individual did not relieve a State of responsibility.

35. As to the criticisms of an institutional nature, there was no denying that the international community did not constitute an organic structure and that therefore not only lawmaking but verification and coercion were functions directly exercised by States. In the case of the consequences of international State crimes, however, the Commission had chosen to weaken the normal mechanism of the inorganic structure of the international community, in the form of collective self-help.

36. In any case, the distinction between international delicts and international crimes made sense only if committing an international crime had specific consequences which were naturally related to the extreme gravity of the wrongful act. Following that line of thought the Special Rapporteur traced a logical distinction between substantive consequences and instrumental consequences and, within each of those categories, characterized some as special consequences and others as supplementary consequences.

37. His delegation was in agreement with the procedure proposed by the Special Rapporteur, according to which the General Assembly or the Security Council would carry out a political assessment of the situation, after which the International Court of Justice would decide whether or not an international crime had been committed. It would be a unique procedure in that it would make

full use of the opportunities afforded by the United Nations, respect the powers of the participating bodies and make possible a rapid response to an international crime.

38. With regard to international liability for injurious consequences arising out of acts not prohibited by international law, his delegation supported a system of subsidiary liability of States for that portion of the damage not borne by whoever carried out the dangerous activity in question. It also supported the idea that such State liability should not be limited to cases in which the State had failed to show "due diligence" in preventing the damage, since that was essential for differentiating responsibility for lawful acts from responsibility for wrongful acts.

39. Bearing in mind that many national legal systems recognized the concept of environmental damage and that various international conventions protected the environment, his delegation considered it sensible to have included in the draft articles a clear and comprehensive definition of "harm". In that connection it believed that the draft should include a full definition of harm to the environment, taking account of the aesthetic and cultural value of natural resources and goods damaged as a result of a given dangerous activity.

40. The Special Rapporteur's report said nothing about the hypothetical case of transboundary harm caused in a place not under the sovereignty of any State, for example on the seabed, in Antarctica or in outer space. Since there were no international bodies administering such areas, the injured party should be held to be the international community and entitlement to sue for reparation should be vested in an international body or a State representing it. He agreed with the Special Rapporteur that the only appropriate means of compensation for environmental damage was restitutio naturalis, except where that was impossible, in which case monetary compensation would have to be provided.

41. Lastly, he agreed with the thrust of the four new articles provisionally adopted by the Commission, since they were in line with international practice with regard to the obligations of States towards activities undertaken in their territory, particularly draft articles A, B and D.

42. Mr. Lehmann (Denmark) resumed the Chair.

43. Mr. YAMADA (Japan) welcomed the Commission's progress in preparing the draft articles on State responsibility, but noted that several articles remained to be adopted and that the piecemeal submission of draft articles was not conducive to the work of the Sixth Committee. The draft articles presented a rather unrealistic system of responsibility based on the concept of civil responsibility and that of criminal responsibility. The international community did not in fact have a mechanism to determine whether an international crime had been committed or, if so, to enforce the responsibility of the offending State. All indications were that States were not ready for such a regime. In such circumstances the system could hardly work in practice.

44. The question of "aggression", recognized as a State crime in the draft articles, was an example of the many problems that arose, beginning with the question of what punishment could be imposed on a State that had perpetrated an

offence. There was invariably a problem connected with national sovereignty and the territorial integrity of States. That dilemma originated in draft article 19 of part one, which dealt with the concept of State crime, on which many Governments had expressed reservations. He hoped that the Commission would approach the problem from a realistic perspective, taking into account the current state of organization of the international community and the positions of Governments.

45. His delegation welcomed draft article 13, on the principle of proportionality, and draft article 14, on prohibited countermeasures, since they sought to prevent the arbitrariness of unilateral countermeasures by the victim State. The wording of article 13 did not, however, resolve the problem of how the standards of judgment for proportionality should be considered. Article 14, after all, prohibited "extreme economic or political coercion designed to endanger the territorial integrity or political independence of the State which has committed an internationally wrongful act", while article 13 stated clearly that such measures would not be permitted. The article was redundant unless it could be seen as establishing a new interpretation of the controversial word "force" in, Article 2, paragraph 4, of the Charter of the United Nations.

46. He welcomed the fact that part three, on the settlement of disputes, covered not only the problem of countermeasures, but also the problem of the interpretation and application of the draft articles in parts one and two. He was glad that it provided a system based on negotiation, good offices and mediation, conciliation, arbitration and recourse to the International Court of Justice. Draft article 5, paragraph 2, however, stipulating the compulsory establishment of an arbitral tribunal for disputes relating to countermeasures, deserved greater attention for a number of reasons: to date, such tribunals had always developed on the basis of an agreement between the parties concerned; disputes about countermeasures could easily escalate into major diplomatic conflicts; it was not clear whether the latest proposal was or was not similar to the provision in article 66(a) of the Vienna Convention on the Law of Treaties; and such a method of settling disputes would be criticized as a violation of the freedom of choice in selecting means of settling disputes, which might make it difficult to achieve broad acceptance for part three. In any case, further consideration should be given to the relationship between the dispute settlement procedures described in the draft articles and the procedures set out in other international instruments.

47. Mr. PFIRTER (Observer for Switzerland), referring to the draft articles on State responsibility, said that article 13 codified the principle of proportionality of reprisals on the basis of the concept of proportionality by approximation recognized by contemporary judicial practice, including the International Court of Justice award in the Air Services Agreement case between the United States and France. It followed from the criteria established in that article for assessment of the proportionality of countermeasures, namely the gravity of the wrongful act and its effects on the injured State, that a wrongful act of a certain gravity did not necessarily inflict major damage, and vice versa. Switzerland supported that flexible and nuanced approach as well as the explanations given in paragraphs 8 and 9 of the commentary, which stated that the effects of the wrongful act on the injured State should not be

interpreted to rule out the taking of countermeasures in respect of the violation of obligations erga omnes.

48. Article 14 contained a list of prohibited countermeasures, including extreme coercion designed to endanger the territorial integrity or political independence of the State that had committed an internationally wrongful act, in other words measures of "intervention". The inclusion in the draft of the idea on which that restriction was based was no doubt justified, but its application could present considerable difficulties, particularly in determining the threshold beyond which an "intervention" was to be viewed as endangering a State's "political independence".

49. With regard to the settlement of disputes by peaceful means, the draft proposed two settlement procedures: one for situations in which countermeasures had been taken and the other for disputes concerning interpretation or application of the draft articles.

50. With regard to the first procedure, the existing version of article 5, paragraph 2, provided for compulsory arbitration for a dispute concerning responsibility where two conditions were met: that the State which committed the wrongful act had been the subject of countermeasures and that the same State had initiated the arbitral proceedings. He failed to understand why the provision gave preference to certain disputes and certain States instead of extending the compulsory arbitration to all disputes regarding the interpretation or application of the draft articles.

51. With regard to the other means of settlement of disputes between States, he noted that, despite the apparent limitation imposed by the wording "dispute regarding the interpretation or application of the present draft articles" used in article 1, the procedure would in practice be extended to all disputes between States parties where the international responsibility of either party was in dispute. Moreover, although the draft articles established a binding conciliation regime, there was no provision for compulsory arbitration, which was very unfortunate in view of the content of the disputes in question.

52. Reviewing part three of the draft, article by article, he said that no comment was necessary on article 1.

53. With regard to article 2, concerning good offices and mediation, he failed to understand why the possibility of tendering good offices or offering to mediate was limited to States parties in the future convention instead of being extended to all members of the international community.

54. With regard to article 3, concerning conciliation, his Government was in agreement provided that it was supplemented by a jurisdictional procedure that could be initiated unilaterally and whose results were binding. It also supported the idea of the parties being free to waive conciliation and proceed directly to the initiation of an arbitral proceeding. On the other hand, it considered that the period of three months fixed for negotiations should be extended to six.

55. With regard to article 4, concerning the task of the conciliation commission, he considered that the period of three months allowed for presentation of its report was unrealistic. It would be enough to have the conciliation commission establish its own procedure with which the parties would be obliged to cooperate.

56. Article 5, concerning arbitration, was the most controversial. In addition to his previous observation of a fundamental nature, he wished to make two procedural comments. First, paragraph 1 of article 5 should spell out the provision suggested in article 3, namely that the parties could, by common consent, proceed to arbitration without passing through conciliation. Second, there was no reason to impose on the parties a six-month settlement period after submission of the conciliation commission's report; it should be stipulated instead that the arbitral proceedings could only begin on expiry of the period in which the parties responded to the recommendations made in the report, a period to be fixed by the conciliation commission in accordance with article 4, paragraph 4.

57. With regard to article 6, concerning the terms of reference of the arbitral tribunal, he proposed that the period of six months should be calculated from the date of completion by the parties of the oral procedure rather than from the date of completion of their written and oral pleadings and submissions. He also proposed deleting paragraph 2, since the entitlement it conferred on the tribunal to determine the facts of the case derived from the entitlement to decide "with binding effect any issues of fact or law which may be in dispute" conferred in paragraph 1.

58. Article 7, concerning the validity of an arbitral award, contained a paradox inasmuch as the jurisdictional regime for which it provided would, in principle, be optional whereas the procedure for determining the validity of its practical findings would be binding. That pointed to the desirability of establishing a generalized binding arbitration procedure for the purpose. In addition, he wondered why the article failed to provide for interpretation and review of arbitral awards.

59. In conclusion, he said that his Government was in general agreement with articles 13 and 14 of part two of the draft but that the existing provisions of the instrument concerning the settlement of disputes fell far short of its expectations.

60. Mr. JALBANI (Pakistan), referring to the draft Code of Crimes against the Peace and Security of Mankind, said that experience had shown that terrorism occurred in various forms, the worst of which was perhaps "State terrorism"; he therefore suggested that the reference to "international terrorism" should be re-examined. He also felt that some of the crimes that had been eliminated deserved to be included in the Code, such as those relating to mercenaries and to colonial domination and other forms of alien domination.

61. He pointed out that members of the International Law Commission should guard against having the concepts being developed by them conflict with States' interests or impinge on the sovereignty of States, for that would be an obstacle to universal acceptance of the Code.

62. He felt that the question of reservations had been adequately dealt with in the Vienna Convention on the Law of Treaties, the Vienna Convention on Succession of States in respect of Treaties and the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations. He supported the views of the United States and the United Kingdom that treaties should not establish different regimes concerning reservations and, like them, rejected the view that reservations should not apply to human rights treaties.

63. Mr. WIRANA (Indonesia), referring to the draft Code of Crimes against the Peace and Security of Mankind, agreed that the Commission should coordinate its work in that area with that being done on the draft statute for an international criminal court. According to the principle nullum crimen, nulla poena sine lege, it was important that the Code should contain precise definitions of crimes. He believed that it should contain only those crimes that posed a serious and imminent threat to international peace and security and deemed it important that it should include apartheid, as institutionalized racial discrimination.

64. Regarding the character of aggression and the determination of its existence by the Security Council, it was important to differentiate between the functions of the Council and those of a judicial body in assessing the criminal responsibility of individuals; indeed, the Council had no jurisdiction over the accused. Provisions relative to penalties should be consistent with those of the draft statute for an international criminal court.

65. On the issue of State succession and its impact on the nationality of natural and legal persons, it would be useful if the Commission established guidelines on certain questions raised concerning the obligations of successor and predecessor States to resolve problems of nationality. State practice and national legislation in that field should be examined. In addition to the need, indicated by the report, to distinguish between the nationality of natural and that of legal persons, the concept of nationality should be defined according to whether the problem arose through international law or national law. In many instances, individuals were not subjects of international law, and internal law included different categories of nationality. He recalled that in the area of nationality, limitations on freedom had been clarified in the decision rendered by the International Court of Justice in the Nottebohm case.

66. On the subject of State responsibility, he was gratified that the Commission had resolved some key aspects, including the legal consequences of wrongful acts characterized as crimes and the settlement of disputes in that area. Nevertheless, article 19 raised problems, inasmuch as the General Assembly and the Security Council were political bodies and it would be inappropriate for them to exercise a de facto judicial function. Furthermore, those bodies were not authorized by the Charter to exercise jurisdiction over crimes. Such an approach was also inconsistent with Article 12 of the Charter and entailed the risk of conflict between the two organs. Also, the role assigned to the International Court of Justice raised the problem of its compulsory jurisdiction and the lack of independent fact-finding mechanisms. The possibility of other approaches, such as the creation of an ad hoc

jurisdictional body, resort to arbitration or the granting of jurisdiction to an international criminal court, merited further consideration.

67. He pointed out that the population of developing countries might be seriously affected by actions taken against their States, whence the need for further clarification of the phrase "vital needs of the population" appearing in draft article 16.

68. His delegation commended the Commission's work on international liability for injurious consequences arising out of acts not prohibited by international law as well as on law and practice relating to treaties. In that regard, it would be useful to examine State practice concerning the problems posed by reservations. Indonesia also supported mutually beneficial cooperation between the Commission and other bodies, particularly the Asian-African Legal Consultative Committee.

69. Mr. MAPANGO (Zaire) wished to make a few remarks concerning the draft Code of Crimes against the Peace and Security of Mankind, reserving the right to refer subsequently to its chapters IV and V.

70. Considering the principle nullum crimen sine lege, he could not accept the selective criterion adopted by the Special Rapporteur for the exclusion of certain crimes from the Code. Those crimes were as political and debatable as the other six maintained in the draft.

71. It had been asserted that some of the crimes excluded, such as intervention and colonial domination and other forms of alien domination were already covered by conventions or General Assembly declarations. But the legal instruments in force should serve as working documents to enable the Commission to continue its work of codification and progressive development of international law. It had also been said that odious crimes such as apartheid and colonial domination should not figure in the Code of Crimes because they had disappeared. Recent scientific progress, however, had led to the opposite conclusion, and it was known, for example, that the exploitation of new sources of wealth would be reserved for a few countries having the requisite financial and technical resources.

72. Also, the minimalist delegations had argued that a code containing more crimes than those that had been retained would become a dead letter and would never be applied. His delegation considered that a code comprising only a limited number of crimes might prefigure a world in which the rich would grow steadily richer and the poor, poorer.

73. Along the same lines, the minimalist tendency sought to eliminate the link that must exist between the Code of Crimes and the proposed international criminal court. The speaker drew that attempt to the attention of the countries of the third world, since there was still time to reject it. What was being attempted was to eliminate the criminal responsibility of the State and admit solely that of individuals.

74. His delegation aspired to a world governed by the force of law, not by the law of force. It therefore subscribed to the maximalist tendency, with an eye to a Code that would have not only a repressive value, but a dissuasive value. As for the form of the Code, his delegation favoured the convening, at the appropriate time, of a conference of plenipotentiaries with a view to the adoption of an international convention on the subject.

The meeting rose at 1.10 p.m.