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Summary record of the 2286th meeting

Topic:
<multiple topics>

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

were experts in public international law rather than in criminal law. There had been some disagreement among members of the Group about whether criminal jurisdiction over States should be introduced at a later stage. In particular, some believed that the idea of trying States would be revolutionary at the present stage in the development of international law, as well as being very vague. While some controversy remained as to the way in which the court would actually be established, he considered that it was too late to amend the report or to go into further detail on the subject.

40. Mr. THIAM (Special Rapporteur) said that there had never been any question, in his view, of vesting the international criminal court with jurisdiction to try States. Indeed, at the time when he had prepared his report on that aspect of the draft Code, many delegations in the Sixth Committee had entered reservations on that score. For the time being, it would be best to deal only with the court's jurisdiction to try individuals: any other course would simply open the door to endless debate in the Sixth Committee. He therefore agreed that the part of the Group's report dealing with that could be deleted.

41. Mr. KOROMA (Chairman of the Working Group) said he would plead for the report to be left as it stood, apart from any necessary editorial changes. Some of the proposals it contained did not reflect his own position, but, if the Commission started to tamper with the report, the debate might well be reopened. He agreed with the Chairman's remarks to some extent but not entirely: the Working Group had considered whether ICJ should try criminal cases involving States but had decided against that not only on grounds of competence but for a number of other reasons. As for the question of the stage at which the possibility of indicting States should be considered, one school of thought, to which he belonged, believed it was indeed conceivable that States could be indicted at some appropriate point. In a spirit of compromise, however, he and those who shared his views were prepared to leave the matter open.

42. Mr. AL-KHASAWNEH said he was only partly convinced by the Chairman's explanation, for he did not think that the Commission was in a position to comment on the competence of the members of the ICJ in matters of criminal law.

43. The stage at which States could be brought before an international criminal court appeared to be a question of constructive ambiguity and he would not destroy that ambiguity. However, he still entertained very serious doubts about the fifth basic proposition in part A of the report, but, not wishing to reopen the debate on the matter, would be content if his views were reflected in the summary record.

44. Mr. CRAWFORD said that ICJ was structured to hear cases, as a full court, between States; a major amendment to its Statute would be required to empower it to hear criminal trials. Mr. Al-Khasawneh had none the less touched upon a very important point, for there was a marked tendency towards the fragmentation of the international jurisdictional system. That point could perhaps be considered, however, in relation to any appeal structure. The general idea was that the Working Group's recommendations represented a modest first step and that the Commission could, if need be, consider further possibilities in due course.

The meeting rose at 11.40 a.m.

2286th MEETING

Thursday, 16 July 1992, at 10.05 a.m.

Chairman: Mr. Christian TOMUSCHAT

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

Draft Code of Crimes against the Peace and Security of Mankind[1] (*continued*) (A/CN.4/442,[2] A/CN.4/L.469, sect. C, A/CN.4/L.471, A/CN.4/L.475 and Rev.1)

[Agenda item 3]

REPORT OF THE WORKING GROUP ON THE QUESTION OF AN INTERNATIONAL CRIMINAL JURISDICTION (*continued*)

1. Mr. KABATSI said that he supported the adoption of the Working Group's report as a whole. It had been prepared by no less than 16 very eminent members of the Commission and reflected clearly the differences of view and positions in the Working Group and was therefore a very useful compromise. He was, however, prepared to agree that the Commission should adopt only part A and that it should take note of part B, which would appear in an annex. The most important thing was that the Commission had taken a clear and definite decision that an international criminal court should be established. For his own part, he would have favoured a strong court with exclusive jurisdiction, at least over certain grave crimes such as aggression and genocide, rather than a mechanism on the pattern of an arbitral tribunal. For the time being, such a solution did not seem possible and was perhaps not even wise. Provided that a court was established, even a very modest one and even if it functioned only as and when required, more could be done later on.

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[1] For text of the draft articles provisionally adopted on first reading, see *Yearbook... 1991*, vol. II (Part Two), chap. IV.

[2] Reproduced in *Yearbook... 1992*, vol. II (Part One).

2. He did not think that the consideration of the report paragraph by paragraph would be particularly useful at the current stage, but, as he had not been a member of the Working Group, he wished to make two brief remarks. The first concerned the possibility of establishing the proposed trial mechanism within ICJ. Admittedly, that solution had drawbacks, but it also had significant advantages. The Court existed already, it had facilities and equipment and its judges were fully capable of dealing with crimes which were, after all, a matter of international law. The possibility could also be envisaged of two or three judges sitting in first instance, with the full Court acting as an appeal court. He still believed that that would be the best solution and he trusted that the Commission would revert to the matter in the future. His other point concerned the relationship between the proposed court and the Code of Crimes against the Peace and Security of Mankind. In his view, it would be difficult to envisage a State becoming a party to the statute of the Court, but rejecting the Code when the court was supposed to try precisely those crimes.

3. Mr. MIKULKA said that he fully endorsed the conclusions of the report, in the preparation of which he had participated. That report and the conclusions it contained were the result of a carefully considered compromise based on a detailed analysis and on the need for realism. It would not have been appropriate for the Working Group to usurp the function of the General Assembly and to comment on the political aspect of the problem, namely, on whether an international criminal court should be established. It had concentrated on the technical aspect, taking as the starting point the common denominator of all the views expressed in the Commission. It had identified the problems which had to be solved if the proposed court was to be established and had indicated possible solutions and even certain preferences. In so doing, it had been strengthened in the view that the best way to proceed was to do so in stages.

4. In the initial stage, the Working Group proposed to adopt an approach that was modest as compared to an idealistic vision of things but certainly not as compared to the current state of international law and its application. It had come to the conclusion that there was no insurmountable technical obstacle to the establishment of an international criminal court and that it was a matter of political will on the part of States. With the adoption of the recommendations set forth in part A of the report, amended if necessary in the light of the discussion in plenary, the Commission would be able to complete the analysis of the possibilities for establishing an international criminal court and to seek a new mandate from the General Assembly with a view to preparing a detailed draft statute. As to the *in extenso* report (part B), he had no doubt that the Commission would find a satisfactory way of submitting it to the General Assembly, possibly as an annex to its report.

5. Mr. Sreenivasa RAO said that he endorsed the conclusions set forth in part A of the report even though he, for his part, would have laid more emphasis on some aspects and displayed more caution with respect to others, particularly regarding the manner in which the conclusions were submitted and the way in which the recommendations to the General Assembly were presented. For instance, the fifth basic proposition in part A seemed very logical and acceptable, but whether or not it was compatible with the sixth proposition was, in his view, somewhat questionable. Under the system provided for in the fifth proposition, in which there would be no standing full-time body, the actual administration of justice would involve so many interlocking processes and stages at which the impartiality, independence and conformity of the proceedings would on each occasion have to be guaranteed, and a degree of consensus reached among the many parties which would inevitably be involved, that considerable problems would arise—problems that would be avoided if a permanent court was established.

6. There was, of course, the problem of cost, but the figure quoted by Mr. Crawford (2284th meeting) clearly showed that that problem was equally acute in the case of an ad hoc system. It would be pointless to try to disregard the cost factor while seeking a genuinely credible system of criminal justice that would enable acts for which States were already demanding that there should be an international court, to be tried. Given the current international climate, in which States were already prepared to refer certain cases to an international criminal court, if such a thing existed, the Working Group's proposal seemed unduly cautious, even in the context of the modest and gradual approach that found favour with the Working Group.

7. In submitting to the General Assembly the recommendations which appeared in part A of the report, the Commission was in effect saying to the General Assembly: "This is the scheme we have drawn up and we see no other possibilities; it is for you to tell us if we are wrong". In the first place, given the way it operated, the Sixth Committee would not have the time to dissect that scheme and, if need be, to suggest others, and, secondly, it seemed strange, to say the least, for the Commission to refer the burden of proof back to an organ that was seeking its advice. The General Assembly looked to the Commission to place before it the various possibilities for dealing with the matter so that it could make a choice in its capacity as a political body. Clearly, the Working Group had wanted to be firm and definite and had therefore perhaps succumbed to the temptation, which was inevitable in such a case, of disregarding other proposals that might be entirely reasonable and realistic. Admittedly, in the past the Commission had been taken to task for not defining its position and for being too flexible, but, in the present case, could it honestly be said that the construction in question was the only one possible? He very much doubted that it was.

8. Another point he wished to emphasize concerned the links between the court and the draft Code of Crimes against the Peace and Security of Mankind and between the proposed international criminal court and the United Nations system itself, particularly the Security Council, so far as all matters involving the peace and security of mankind and the definition and determination of aggression were concerned. The mechanism devised by the Commission should complement existing structures and should not result in conflicting jurisdictions. For instance, the international criminal court should be guided by the Security Council in the determination of aggres-

sion, while the Security Council could be guided by the court in the case of the prosecution of a particular person charged with an international crime, without either one necessarily encroaching on the jurisdiction of the other.

9. There were also questions such as the relationship between the court and national systems and mechanisms, universal jurisdiction for some crimes of an international character, and the problem of the applicable law. All those issues should be discussed in greater depth by the Commission when it pursued its work on the subject in the future, for it had to be recognized that, notwithstanding the excellence of the Working Group's report, the ideas set forth in it were not as definitive as might have been desirable. That construction was certainly not the only one that could have been arrived at. In particular, even though the recommendations, and especially the basic propositions, reflected very sound work, they were not entirely above criticism. The Commission could therefore hardly submit that report to the General Assembly as the final conclusion of its work on the subject. It should not be categorical. It should display humility, flexibility and an open mind and should be ready to agree to take a second look at its work if the General Assembly so requested. The report was, after all, no more than a set of proposals and the General Assembly would be the sole judge of what action should be taken on it.

10. He thanked the members of the Working Group again for their valuable contributions and in particular the Chairman of the Working Group, the Special Rapporteur, and Mr. Crawford.

11. Mr. IDRIS said that, as a member of the Working Group and co-author of the report, he had not felt it necessary to speak on the question until now. His silence was not, however, to be interpreted negatively, for the report had his full support, as to both form and substance. He understood entirely the points raised by Mr. Shi (2284th meeting) and the analyses made by Mr. Thiam (2285th meeting). He also appreciated the highly judicious remarks made by certain other speakers and, in particular, by Mr. de Saram (2285th meeting). It was clear that the Working Group's report was the result of a global compromise, but that in no way affected the quality of its work, of which the Working Group could be proud.

12. As to the action to be taken on the report, in his view, it would not be sensible at the current stage to enter into detail with the risk of divesting the report of its substance. The least the Commission could do was, first, to adopt part A and incorporate it into its report, and, secondly, to take note of part B and annex it to its report.

13. If part A was not adopted, the whole idea of the court would be called into question and the General Assembly might be reluctant to commit itself further in that connection.

14. He expressed gratitude to all members of the Working Group for their praiseworthy endeavour and thanked in particular the Chairman of the Working Group, Mr. Crawford, Mr. Rosenstock, Mr. de Saram, Mr. Vereshchetin and the Special Rapporteur for their valuable contributions.

15. Mr. SZEKELY said that the quality of the report before the Commission was evidence of the value of the working group method. In the event, that method had enabled the Commission to respond effectively to the request addressed to it by the General Assembly in resolution 46/54.

16. There was no denying that the report represented a compromise effort, but, as Mr. Mikulka had pointed out, the capacity for conciliation displayed by members of the Working Group was a sign of intellectual maturity and they could be proud of placing before the General Assembly an excellent piece of work, which gave a very full account of the problems involved and the possible solutions and showed that there was no insurmountable obstacle to the establishment of an international criminal court.

17. For his own part, he would perhaps have opted for stronger wording in the case of some of the recommendations. In particular, with a view to expediting matters, he would have liked the words "In the first phase of its operations", which appeared at the beginning of the second of the propositions, also to have been added at the beginning of the fourth and fifth propositions, on compulsory jurisdiction and the standing nature of the proposed international criminal court respectively.

18. That would have made it possible to be more ambitious in the future without in any way disturbing the balance of the recommendations.

19. Another point of greater concern to him related to the jurisdiction referred to in the third proposition. The wording used called to mind the need to enhance the worldwide acceptance of international treaties and that indeed should be one of the Commission's main concerns. If the treaties which defined international crimes were not universally applicable, the result might be legal inequality at the international level, in that nationals of States not bound by such treaties would not come within the jurisdiction of the court in the same way as nationals of States parties. That problem should receive due attention in the coming years.

20. Also with regard to the third proposition the wording of the final sentence was not very felicitous, in his view, as it might discourage States from acceding to the Code. He would have preferred some wording which included the word "independently", so that the Spanish text, for instance, would read: *Los Estados deben poder adquirir la condición de parte en el estatuto independientemente de la acción que toman respecto al código.*

21. Notwithstanding those few remarks, he considered that the Commission should adopt the report as a whole and should transmit it to the General Assembly.

22. Mr. BENNOUNA said that, unlike Mr. Sreenivasa Rao, he considered that, in adopting the report of the Working Group and transmitting it to the General Assembly, the Commission was certainly not trying to impose its view on the General Assembly and was not being "categorical". The mandate entrusted to the Commission by the General Assembly in resolution 46/54 was very clear. The General Assembly had invited the Commission

... to consider further and analyse the issues raised in its [1990] report ... concerning the question of an international criminal jurisdiction, including proposals for the establishment of an international criminal court or other international criminal trial mechanism in order to enable the General Assembly to provide guidance on the matter.

It was on the basis of the options the Commission had placed before it in 1990 that the General Assembly had requested the Commission to tell it how it envisaged a future international criminal court. The report of the Working Group described the Commission's basic approach in that connection, which the General Assembly would be free to accept or reject. If the General Assembly considered that a particular point was unacceptable, the Commission could review that point and, if necessary, make another proposal. It should not be forgotten, however, that the Commission's work consisted mainly of formulating draft articles and it should not be indecisive in its recommendations to the General Assembly. It should be all the more clear, since one of the main problems with the establishment of an international criminal court was how to reconcile such a court with the sovereignty of States. The proposals before the Commission afforded the best way, in his view, of reconciling the punishment of international crimes and sovereignty and, to that extent, the report had his complete support.

23. Mr. KOROMA (Chairman of the Working Group), thanking the members of the Commission for their very constructive remarks, said that the views of Mr. Sreenivasa Rao and Mr. Razafindralambo (2284th meeting) in particular would be taken into consideration if the Commission's mandate on the topic was renewed by the General Assembly.

24. As to the substance of the report under consideration, he would have preferred the proposed international criminal court to have wider jurisdiction, but it had been necessary to accept the lowest common denominator.

25. The drafting changes suggested by Mr. Shi (2284th meeting) and the amendments proposed by Mr. Vereshchetin (2284th meeting) to the English text could be taken into consideration if the Working Group could be given a quarter of an hour or so to look at them, after which the procedure proposed by one member of the Bureau concerning the action to be taken on the report could be followed, namely, the Commission would first accept as a basis for its future work the basic propositions enumerated in part A of the Working Group's report and the broad approach which it had indicated and, secondly, it would request the General Assembly to authorize the Commission to prepare a draft statute for an international criminal court and, unless the General Assembly decided otherwise, the work would be conducted along the lines suggested by the Working Group.

26. Mr. CRAWFORD said he too considered that, if the Working Group agreed to make certain minor amendments to its report to satisfy legitimate concerns which had been expressed, that would then enable the Commission to accept the Bureau's proposal, which would in fact involve its endorsing the report. The problem, however, was that, on the one hand, if the Commission was asked to endorse the propositions in part A, as currently expressed, even in a general way, a number of members would have difficulties. On the other hand, it would be difficult to take account of all the concerns expressed, and particularly those of Mr. Pellet (2284th meeting) and Mr. Bennouna, without disturbing the balance of the report. In his view, therefore, it would be a good idea to suspend the plenary meeting to enable the Working Group to amend part A of the report to reflect the comments made, so that the Commission could then follow the procedure proposed by the Chairman of the Working Group.

27. The CHAIRMAN suggested that the meeting should be adjourned to allow the members of the Working Group and other interested members of the Commission to hold informal consultations.

It was so agreed.

The meeting was adjourned at 11.15 a.m. and resumed at 12.25 p.m.

Cooperation with other bodies (*concluded*)*

[Agenda item 8]

Statement by the Observer for the Inter-American Juridical Committee

28. The CHAIRMAN said that Mr. Villagran Kramer, a member of the Commission, would make a statement as the Observer for the Inter-American Juridical Committee.

29. Mr. VILLAGRAN KRAMER (Observer for the Inter-American Juridical Committee) said that the States of the American continent were all members of OAS, which had its own legal machinery, and formed part of the so-called inter-American legal system. The Committee he represented belonged both to OAS and to that inter-American system. As such, it had a threefold function: to prepare draft conventions and international treaties which the States applying the inter-American system and the members of OAS could study and, if necessary, approve (that involved a great deal of work for the Committee, which had prepared a large number of private international law and public international law treaties); to prepare on request special studies for the information of the Permanent Council or the Secretary-General of OAS and Governments; to give advisory opinions—somewhat as ICJ did for the United Nations—which did not have binding force, but which clarified certain points of law.

30. The Commission would no doubt be surprised to hear that the Inter-American Juridical Committee had only 11 members—11 jurists chosen by the General Assembly of OAS from the some 30 countries of which it was made up. They thus represented the main legal systems—the common law of the United States of America, Canada and the English-speaking countries of the West Indies, the Roman law of other countries, and a few other legal systems peculiar to the region. They had been studying more or less the same major areas since the Committee had been established at the beginning of

* Resumed from the 2281st meeting.

the twentieth century—public international law, private international law and conflicts of laws, as well as the legal aspects of some new problems, such as, at the present time, environmental law.

31. With regard to public international law, the Committee was dealing for the time being with three main questions. The first was mutual judicial assistance with a view to the prevention of drug trafficking, in which all the Governments in the region had a great interest. The second question, closely connected to the first, was the enforcement of sentences, which, in the case of the prevention of drug trafficking, had effects at civil law. Supposing, for instance, that a certain drug trafficker was sentenced to imprisonment and his property was confiscated, it still had to be decided what action to take with respect to such assets. That was a fairly straightforward matter in the case of a bank account, but what should be done, for example, with an aeroplane? The Committee was therefore trying to disentangle the problems of the consequences at civil law of criminal law decisions. The third question concerned the establishment of a regional criminal court. The Commission should be aware that the States on the American continent were ready to progress along that path. A conference had recently been held in Cuba under the auspices of the United Nations[3] and, on the basis of its records, the Committee had drawn up a draft statute for such a court. It was clear that its concerns were close to those of the Commission. When the Commission had approved the report of its Working Group on the subject, it might perhaps wish to authorize him to communicate the contents to the Inter-American Juridical Committee, which would certainly derive benefit from it.

32. The Committee's second main area of activity concerned private international law. That area was all the more fertile because it involved three major legal systems for the settlement of conflicts of law: the 1928 Bustamante Code,[4] which governed conflicts of laws in the commercial and procedural field, but was not applicable in all countries of the continent; the Montevideo Treaties system, which governed conflicts of laws in commercial and civil matters, but was of special interest to the countries in the southern part of South America; and the English system, as applied in the United States of America, Canada and the English-speaking countries of the West Indies. The Committee had long been responsible for seeking an alignment between those three major systems. It was trying to bring about a significant change in the traditional approach in the region according to which it was the State that determined the law applicable and in fact imposed on individuals the system of its choice. Its aim was thus to make way for the trend towards the strengthening of freedom of choice or, in other words, to transpose into the field of law the very principle of free competition. That was a new approach to international contracts which would mean that the area of public law would be restricted and, conversely, that of freedom of contract enlarged.

33. In the same area, the Committee was currently considering the question of joint ventures, a form of enterprise that was very common in the United States of America and Canada. As it was a legal arrangement which derived from United States case law, there was no general frame of reference within which its two alternatives—the corporation, which was the most frequent, and the contractual association—could be defined in formal terms. In that connection, the Committee was trying to develop a set of regulations in the context of the so-called Bush initiative for the establishment of a free-trade area between the United States of America, Canada and Latin America. The aim was to enable groupings of private interests to be formed through the formation of business or joint ventures in North America, Latin America or exclusively in Latin America. The European Economic Community countries had recognized the right of establishment for themselves, but the legal and administrative area of the Community was far more coherent than that of Latin America, where there was a much less formal structure and it was much more difficult to define the right of establishment.

34. Environmental law was an illustration of the third main area with which the Inter-American Juridical Committee was concerned, namely, that relating to new topics of law. The Committee had approved the Declaration on the American Environment[5] whereby States undertook to protect the natural environment of the continent. With a view to UNCED, they had endeavoured to determine whether it was possible to discern an environmental law for their continent. It was to the Juridical Committee that the task had fallen of studying whether the continent's special ecological characteristics—both favourable and unfavourable—made it possible to devise a completely innovative regime.

35. All of that work had to be considered from the standpoint of a regional approach which was somewhat different from what the Commission generally meant by that term. The American continent knew nothing of the concept of an autonomous regional entity, of a "self-contained" system. All legal thinking in the region was situated within the context of the United Nations, under the auspices of the Charter and the resolutions of the General Assembly, which could be invoked and also applied under the inter-American system. What was involved therefore was a somewhat special legal philosophy, which was governed entirely by the principles of the Charter of the United Nations.

36. The CHAIRMAN, speaking as a member from one of the Western European States, thanked the Observer for the Inter-American Juridical Committee for his very clear account of its work. It was obvious that the Committee was discharging a pilot function in many fields and the valuable contribution made by OAS to the development of the principle of non-intervention was a matter

[3] See *Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat* (United Nations publication, Sales No. E.91.IV.2).

[4] League of Nations, *Treaty Series*, vol. LXXXVI, p. 111.

[5] See Annual report of the Inter-American Juridical Committee to the General Assembly of the Organization of American States, OAS document CJI/RES.II-10/89.

of record. Yet it should be remembered that States were not isolated entities and that they were not only ready to condone intervention by the international community, but also sometimes expected it to act in the face of situations or events which were in principle a matter of national jurisdiction. That subject was more complex than might have been thought and one on which Mr. Villagran Kramer had just carried out a lengthy and profound study.

37. Mr. BARBOZA, speaking on behalf of members from the Latin American Group of States, said that the statement by the Observer for the Inter-American Juridical Committee once again provided him with an opportunity to welcome the fruitful collaboration established between that very long-standing body and the Commission. Mr. Villagran Kramer's statement had made it possible to form an idea of the extreme diversity of its concerns, some of which were directly linked to the topics the Commission itself was studying. He had in mind, for example, the work being done by the Committee in the field of public international law on the prevention of the international crime of drug trafficking.

38. Mr. RAZAFINDRALAMBO, speaking on behalf of members from the African Group of States, thanked Mr. Villagran Kramer for a clear and detailed account of the activities of the Inter-American Juridical Committee. Africa had always drawn great inspiration from the struggles and successes of the peoples of South America. He had no doubt that the relations between the Committee and the Commission were destined to develop further in the future.

39. Mr. JACOVIDES, speaking on behalf of members from the Asian Group of States, said that the Inter-American Juridical Committee had won the respect of international legal circles with the contribution it had made to international law. It had been seen how close its work was to the concerns of the Commission and not only with respect to the establishment of an international criminal court. He trusted that in that, as in many other areas, the two bodies would cultivate fruitful relations.

40. Mr. VERESHCHETIN, speaking on behalf of members from the Eastern European Group of States, said that the legal philosophy of Latin America had always had a profound influence on the philosophy and development of international law. The evolution in the activities of the Inter-American Juridical Committee was of great interest to the Commission, as also to the countries from which its members came. He had noted with interest, for example, that the Inter-American Juridical Committee had been working on the question of joint ventures between States. His own country would certainly like to be kept abreast of the progress of its work in that field.

The meeting rose at 1.15 p.m.

2287th MEETING

Friday, 17 July 1992, at 10.15 a.m.

Chairman: Mr. Andreas J. JACOVIDES

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

Draft Code of Crimes against the Peace and Security of Mankind[1] (*concluded*) (A/CN.4/442,[2] A/CN.4/L.469, sect. C, A/CN.4/L.471, A/CN.4/L.475 and Rev.1)

[Agenda item 3]

REPORT OF THE WORKING GROUP ON THE QUESTION OF AN INTERNATIONAL CRIMINAL JURISDICTION (*concluded*)

1. The CHAIRMAN drew attention to two papers[3] which had been prepared by the Working Group on the question of an international criminal jurisdiction to take account of some amendments to certain key paragraphs in the report of the Working Group (A/CN.4/L.471). The first, which contained a revised version of paragraph 4 of part A of document A/CN.4/L.471 setting out the basic propositions, read:

> "4. Since the Commission now seeks to go beyond the analysis and exploration of possible options and to adopt 'concrete recommendations', it was necessary for the Working Group to agree on the basic approach to be adopted in its report. The Working Group agreed on a number of basic propositions which form the basis of its report to the Commission. They are as follows:
>
> "(*a*) An international criminal court should be established by a statute in the form of a multilateral treaty agreed to by States parties;
>
> "(*b*) In the first phase of its operations, at least, a court should exercise jurisdiction only over private persons, as distinct from States;[1]

"[1] This is consistent with the approach taken by the Commission in relation to the draft Code of Crimes against the Peace and Security of Mankind: see *Yearbook... 1984*, vol. II (Part Two), para. 65. See also article 3 of the draft Code as provisionally adopted on first reading by the Commission in 1991, *Yearbook... 1991*, vol. II (Part Two), chap. IV.

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[1] For text of the draft articles provisionally adopted on first reading, see *Yearbook... 1991*, vol. II (Part Two), chap. IV.

[2] Reproduced in *Yearbook... 1992*, vol. II (Part One).

[3] These informal papers were not issued as official documents of the Commission.