

Document:-  
**A/CN.4/SR.1989**

**Summary record of the 1989th meeting**

Topic:  
**Other topics**

Extract from the Yearbook of the International Law Commission:-  
**1986, vol. I**

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(<http://www.un.org/law/ilc/index.htm>)*

Paragraph (5)

43. Mr. CALERO RODRIGUES proposed that the words "(signatory States not yet having ratified and States having consented to be bound by the treaty when the latter has not yet entered into force)", at the end of the third sentence, should be deleted. If the future convention was to be open to all States, it would be necessary for all States, not just the two categories referred to in the phrase in brackets, to be notified.

44. Mr. YANKOV (Special Rapporteur) said that there could be States other than those in the two categories in question, but since the words in brackets might be somewhat misleading, he could agree to their deletion.

45. Sir Ian SINCLAIR said that he fully supported the proposal made by Mr. Calero Rodrigues. The question of the States that would be entitled to become parties to the future convention would be decided by a conference of plenipotentiaries. The practice nowadays was to entitle all States to become parties to a convention of that kind. The formula "States entitled to become Parties to the present articles" should therefore not be limited in any way.

46. The CHAIRMAN said that, if there were no objections, he would take it that the Commission agreed to approve paragraph (5) with the amendment proposed by Mr. Calero Rodrigues and some minor drafting changes.

*It was so agreed.*

*Paragraph (5), as amended, was approved.*

Paragraphs (6) to (8)

*Paragraphs (6) to (8) were approved with minor drafting changes.*

*The commentary to article 33, as amended, was approved.*

*Section D.2, as amended, was adopted.*

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

*The meeting rose at 4.40 p.m.*

## 1989th MEETING

*Friday, 11 July 1986, at 10 a.m.*

*Chairman: Mr. Doudou THIAM*

*Present: Chief Akinjide, Mr. Arangio-Ruiz, Mr. Balanda, Mr. Barboza, Mr. Calero Rodrigues, Mr. Díaz González, Mr. El Rasheed Mohamed Ahmed, Mr. Flitan, Mr. Francis, Mr. Illueca, Mr. Jacovides, Mr. Koroma, Mr. Laclea Muñoz, Mr. Mahiou, Mr. Malek, Mr. McCaffrey, Mr. Njenga, Mr. Ogiso,*

*Mr. Razafindralambo, Mr. Reuter, Mr. Riphagen, Mr. Roukounas, Sir Ian Sinclair, Mr. Tomuschat, Mr. Ushakov, Mr. Yankov.*

### Draft report of the Commission on the work of its thirty-eighth session (concluded)

**CHAPTER V. Draft Code of Offences against the Peace and Security of Mankind (concluded)\* (A/CN.4/L.406 and Add.1)**

**B. Consideration of the topic at the present session (concluded) (A/CN.4/L.406 and Add.1)**

Paragraph 65 (concluded) (A/CN.4/L.406/Add.1)

1. Sir Ian SINCLAIR recalled that, at the 1987th meeting, Mr. Francis had raised a number of questions regarding the relationship between paragraphs 65 and 80 of chapter V of the Commission's draft report. Following informal consultations between the Special Rapporteur, Mr. Francis and himself, it had been agreed that the following footnote to paragraph 65 would adequately reflect all the points of view expressed:

"Although the question of exculpatory pleas and extenuating circumstances, which is inextricably linked to the determination and extent of responsibility and at the same time to exceptions to criminal responsibility, was referred to under this heading by the Special Rapporteur in his fourth report (A/CN.4/398, paras. 177-184), it was not discussed in detail in the Commission. The observations made by members of the Commission on this question are summarized in paragraph 115 of the present report. The Special Rapporteur and the Commission will revert to the question of exculpatory pleas and extenuating circumstances at a later stage in their work on this topic."

2. The CHAIRMAN said that, if there were no objections, he would take it that the Commission agreed to adopt the text proposed by Sir Ian Sinclair.

*It was so agreed.*

*Paragraph 65, as amended, was adopted.*

*Section B, as amended, was adopted.*

*Chapter V of the draft report, as amended, was adopted.*

*The draft report of the Commission on the work of its thirty-eighth session as a whole, as amended, was adopted.*

### Closure of the session

3. The CHAIRMAN thanked the members of the Commission for their co-operation, which had made it possible to achieve effective results. The end of the current session also corresponded, in some measure, to the completion of the mandate of the present members, since new elections would be held before the thirty-ninth

\* Resumed from the 1987th meeting.

session. He paid tribute, on behalf of the Commission as a whole, to those members who had announced their intention not to seek a new mandate for the contribution they had made, and in particular to Mr. Ushakov, who was the second most senior member and who had left a special mark on the Commission with his knowledge, personality and the strength of his convictions. He also expressed appreciation to the members of

the Bureau, who had made his own task much easier, and to the secretariat.

4. After an exchange of congratulations and thanks, he declared the thirty-eighth session of the International Law Commission closed.

*The meeting rose at 10.50 a.m.*