

Document:-  
**A/CN.4/SR.2098**

**Summary record of the 2098th meeting**

Topic:  
**Draft code of crimes against the peace and security of mankind (Part II)- including the  
draft statute for an international criminal court**

Extract from the Yearbook of the International Law Commission:-  
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necessarily arguing that minor violations should be included in the code, but he did think that the Commission, and the Drafting Committee in particular, should avoid undermining the effect, if not the existence, of the rules of the law of war, which were part of general international law, especially if the word "war" was taken to apply to all kinds of hostilities.

54. The CHAIRMAN said that, although he understood Mr. Arangio-Ruiz's concern, no one had proposed any change in the usual meaning of the term "war crime" or in the régime applicable to war crimes. The Commission was dealing only with "war crimes" within the meaning of the draft code.

55. Mr. KOROMA said that he agreed with Mr. Arangio-Ruiz. It was, of course, understood that the draft code would generally cover only the most serious acts. In the case of war crimes in particular, however, a régime applicable to them existed and there was no need to know whether a violation of the laws of war was serious to determine whether or not it constituted a war crime. The element of gravity could, if necessary, come into play at the stage of characterization, but certainly not in the definition. Moreover, the inclusion of the concept of gravity in the definition would mean introducing some degree of subjectivity in the application of the code by making the prosecutor—the belligerent State, in the present case—the judge. Although the prosecutor would institute proceedings for a violation of the laws of war, the judge would determine how serious the violation had been.

56. He supported Mr. Barsegov's analysis of the expression "crime against humanity", which was to be understood in the sense of "a crime against the human race", a crime against values that were shared by all of mankind.

57. Lastly, he agreed with the proposal originally made by Mr. Roucouas (2096th meeting) that the definition of war crimes in draft article 13 should be supplemented by an indicative list.

58. Mr. CALERO RODRIGUES drew Mr. Koroma's attention to a case in which a violation of no particular seriousness might be considered a war crime within the meaning of the draft code. Articles 26 and 27 of Additional Protocol I to the 1949 Geneva Conventions contained a definition of the circumstances in which medical aircraft operated and, according to article 28, paragraph 4: "While carrying out the flights referred to in articles 26 and 27, medical aircraft shall not, except by prior agreement with the adverse Party, be used to search for the wounded, sick and shipwrecked." If the commander of a medical aircraft were to ignore those rules and decide to go in search of the wounded, sick or shipwrecked, would it be said that he had committed a war crime?

59. Mr. ARANGIO-RUIZ said that his concern was not whether the case cited by Mr. Calero Rodrigues should or should not be covered by the draft code—although he was inclined to say that it should—but that, if minor violations were excluded from the code, the Commission might be concealing the fact that such violations were none the less infringements of the laws of war and that they were as such covered by existing international law. It would be for the Drafting Committee to deal with that problem and remove any ambiguity.

*The meeting rose at 1 p.m.*

## 2098th MEETING

*Tuesday, 9 May 1989, at 10 a.m.*

*Chairman: Mr. Bernhard GRAEFRATH*

*Present: Mr. Barboza, Mr. Barsegov, Mr. Beesley, Mr. Calero Rodrigues, Mr. Díaz González, Mr. Francis, Mr. Hayes, Mr. Koroma, Mr. Mahiou, Mr. Ogiso, Mr. Pawlak, Mr. Razafindralambo, Mr. Reuter, Mr. Roucouas, Mr. Sepúlveda Gutiérrez, Mr. Shi, Mr. Solari Tudela, Mr. Thiam, Mr. Tomuschat, Mr. Yankov.*

**Draft Code of Crimes against the Peace and Security of Mankind<sup>1</sup> (continued) (A/CN.4/411,<sup>2</sup> A/CN.4/419,<sup>3</sup> A/CN.4/L.431, sect. D, ILC(XLI)/Conf.Room Doc.3)**  
[Agenda item 5]

### SEVENTH REPORT OF THE SPECIAL RAPporteur (continued)

ARTICLE 13 (War crimes) *and*

ARTICLE 14 (Crimes against humanity)<sup>4</sup> (continued)

1. Mr. REUTER, commenting on draft article 13, said he preferred the second alternative and thought that the necessary gravity of the acts to be classified as war crimes must be stated in very clear terms, indeed more clearly perhaps than in either of the alternatives proposed by the Special Rapporteur. He was, however, absolutely opposed to the idea of including in the draft code a list of acts constituting war crimes.

2. The Commission was dealing with very serious issues, which raised the question as to what its role was. Some of the draft articles were still unacceptable and could endanger the entire draft. The Commission's task was not merely to devise some functional mechanism for the prosecution of war crimes, such as an international criminal court. Nor was it to define the circumstances in which States were bound either to try or to extradite offenders. (In that connection, he would point out that the attitude of Governments towards the idea of an international criminal jurisdiction was perhaps more flexible than might appear.) For the majority of Governments, the Commission's task was a broader one, namely to give attention to the substantive rules relating to war crimes and to define new war crimes.

3. Did the Commission intend, in the draft code, to impose on States the obligation to accept Additional Protocols I and II to the 1949 Geneva Conventions? According to

<sup>1</sup> The draft code adopted by the Commission at its sixth session, in 1954 (*Yearbook* . . . 1954, vol. II, pp. 151-152, document A/2693, para. 54), is reproduced in *Yearbook* . . . 1985, vol. II (Part Two), p. 8, para. 18.

<sup>2</sup> Reproduced in *Yearbook* . . . 1988, vol. II (Part One).

<sup>3</sup> Reproduced in *Yearbook* . . . 1989, vol. II (Part One).

<sup>4</sup> For the texts, see 2096th meeting, para. 2.

recent information, 166 States had ratified the Conventions, but by no means all of them had ratified the Protocols. Some States had refused to do so, and had given their reasons to representatives of ICRC, reasons which had nothing to do with inertia or laziness. He could therefore not agree to the Commission adopting a text implying that one or other of the Protocols had created rules of customary law. The Commission could stipulate that any State which accepted the draft code would be committed to become a party to the Protocols; but States could not be bound without their consent. He for one firmly rejected any notion of basing the code on recent conventions or General Assembly decisions, on the pretext that they enunciated rules of customary international law. Another difficulty, in connection with the second alternative of draft article 13, was that States which were not parties to the two Protocols but which accepted the code would not have exactly the same obligations as States parties. Regrettably, the Commission had no power to remedy those drawbacks.

4. He wondered whether the gravity of war crimes should not be emphasized by a reference to all the relevant treaty rules in force and also to internal law: in every country there was a class of crimes designated as serious. Guidance would have to be given in that regard to courts that would be called upon to decide on requests for extradition: the situation might arise in which a State requested extradition of an offender for a crime that did not fall into the same category of crimes in the requested State.

5. His objection to including a list of acts constituting war crimes stemmed from the Commission's function, which was to act on behalf of Governments. It was not, like the Sixth Committee or the General Assembly, a political organ free to make declarations on the content of international crimes. Nor was it the Commission's task to respond to public opinion, but to undertake a substantive codification of war crimes and perhaps to define new ones.

6. With regard to draft article 14, he thought that crimes against humanity should not encompass the "forcible transfer of populations from their territory" (para. 4 (a)). In view of the appalling incidents of slaughter that took place in the world, States could not be prohibited from transferring populations, or agreeing to such transfers, in order to save them from certain death.

7. On the question of *apartheid*, it had already been pointed out that some States did not accept the existing convention; hence the Commission must set out the nature of the crime in detail in the draft code. The whole question of minority rights was, in fact, highly delicate: the Council of Europe had wisely avoided it, and the United Nations itself had not tackled it head-on. Once again, the inherent difficulty in the draft was that no adequate list of crimes could be devised. He would like the Commission not to be content with merely itemizing crimes, especially when it came to those that were more or less new, but ill-defined. It could not deal with all crimes, for a complete codification of crimes against humanity could easily take 25 or 30 years. But it could deal with some of them, particularly those on which feelings were strongest, such as *apartheid*; as for the rest, it could list in its report the questions on which it still had to work.

8. Another question that arose was that of the first use of nuclear weapons, which must be covered by the code; but what of chemical weapons and action contributing to acts

of mass destruction? It would be extremely difficult to attempt an exhaustive codification, but resorting to a simple formula was not the answer. The Commission should closely study criminal intent, a concept well known in all systems of penal law which might offer some solution to the problem of definition.

9. In summary, his objection to lists of crimes was essentially methodological: proper codification was necessary, but it would take too long. For the topic of succession of States, for instance, the Commission had begun work in 1963, but had not completed its draft until the process of decolonization was well advanced. In its report on draft articles 13 and 14, the Commission should explain the difficulties encountered and endeavour to find out what was wanted. He fully realized, moreover, that the Special Rapporteur was seeking the views of members on the subject, and he wished to pay tribute to his efforts to reconcile divergent opinions.

10. Mr. YANKOV said that he would confine his remarks to draft article 13 and that, on a number of points, his views differed from those so ably expounded by Mr. Reuter.

11. With regard to the scope and content of the expression "war crimes", two main trends had emerged in the course of the discussion: one favoured a general definition, and the other favoured a list of specific acts constituting war crimes. In that connection, it was worth noting an important development in treaty-making techniques. A few decades ago, it had been usual to include in international treaties an article entitled "Definitions", a provision nowadays replaced by one on "Use of terms". That change had been brought about by a realization of the perils involved in the process of definition.

12. Both the alternative texts proposed for article 13 contained a general definition of war crimes, which was something of a new approach, for the second alternative of the article as submitted by the Special Rapporteur in his fourth report in 1986 had contained an enumeration of acts constituting war crimes (see para. 15 below). The arguments now advanced by the Special Rapporteur in his seventh report were based on the belief that the law relating to war crimes was not static and had constantly to be adapted to the needs of a changing world, and that in many cases treaties did no more than express and define the principles of existing law (A/CN.4/419, para. 9); and on the fact that many distinguished authors had come to the conclusion that an exhaustive list of war crimes was impossible (*ibid.*, para. 10).

13. It was perhaps true that no list of war crimes could adequately reflect the dynamics of the applicable law, but the same could be said of crimes against peace and crimes against humanity. Yet article 12 (Aggression),<sup>5</sup> provisionally adopted by the Commission at the previous session, and draft article 14, on crimes against humanity, now proposed by the Special Rapporteur followed the method of enumerating the acts in question. In its work on elaborating a code of crimes against the peace and security of mankind, the Commission had often been urged to follow, as far as possible, the method of codification used in penal law, where determination of the individual violations of the law was of paramount importance. That enabled the competent court to establish the extent to which a particular course of

<sup>5</sup> *Yearbook* . . . 1988, vol. II (Part Two), pp. 71-72.

conduct was a punishable offence. The same general requirement should apply even more in the case of wrongful acts under international law. In his view, before a definite decision was reached on the scope of the provisions relating to war crimes, it was necessary to determine whether there were sufficient grounds for trying to draw up a list of acts constituting violations of the laws and customs of war or armed conflict and whether it was possible to combine the enumerative method with a general definition, in order to arrive at a comprehensive legal concept of war crimes.

14. The answer to the first question would require a comprehensive survey of State practice as evidenced by international treaties and case-law prior to and after the 1907 Hague Convention, the 1949 Geneva Conventions and the 1977 Additional Protocols thereto, and other relevant instruments. As was well known, article 6 (b) of the Charter of the Nürnberg Tribunal<sup>6</sup> listed a series of important elements of war crimes, namely violations of the laws or customs of war, including but not limited to murder, ill-treatment or deportation to slave labour or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity. The Principles of International Law recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal<sup>7</sup> had been reaffirmed by the Commission in 1950.

15. In the second alternative of draft article 13 as submitted in his fourth report in 1986,<sup>8</sup> the Special Rapporteur had adopted the enumerative method and proposed the following list of acts constituting war crimes:

...  
(i) serious attacks on persons and property, including intentional homicide, torture, inhuman treatment, including biological experiments, the intentional infliction of great suffering or of serious harm to physical integrity or health, and the destruction or appropriation of property not justified by military necessity and effected on a large scale in an unlawful or arbitrary manner;

(ii) the unlawful use of weapons, and particularly of weapons which by their nature strike indiscriminately at military and non-military targets, of weapons with uncontrollable effects and of weapons of mass destruction (in particular first use of nuclear weapons).

16. For his own part, he thought that the prohibition of weapons of mass destruction should be absolute and should not apply only to the first use of such weapons. The serious violations he had just cited could form the first part of the enumeration of war crimes. In order to ensure the comprehensive character of the expression "war crimes" for the purposes of the draft code, the list could then be followed by a general provision stating that the expression encompassed all other serious violations of the laws or customs of war, of the rules of international law applicable in armed conflict to which the parties to the conflict had subscribed, and of the generally recognized principles and rules of such law. That formulation would combine a specific indication of individual acts with a general concept of a war crime. It would bring closer together the tradi-

tional notion of war and the contemporary phenomenon of armed conflict, which could include national liberation struggles and civil war. In addition, the test of seriousness or gravity was an essential element of the concept of a war crime and the qualification "serious" should form part of any formulation adopted.

17. In conclusion, when it came to refer draft article 13 to the Drafting Committee, the Commission should express a preference for—or at least indicate the possibility of—a text containing a list of serious violations combined with a general definition to cover any other acts, the idea being to allow for possible solutions to the institutional problem of a court—whether a national court or an *ad hoc* or permanent international tribunal.

18. Mr. SEPÚLVEDA GUTIÉRREZ, referring to draft article 14, said that he favoured a list of crimes against humanity along the lines of that set out by the Special Rapporteur in his excellent seventh report (A/CN.4/419). He also considered it necessary to include somewhere in the draft a definition of the term "humanity", otherwise it would be difficult to understand clearly the concept of "crimes against humanity".

19. It was entirely appropriate to mention genocide, which was correctly defined in paragraph 1. Subparagraphs (i) to (v) set out in precise terms the various acts constituting that crime, which were in fact those to which world public opinion attached most importance.

20. Paragraph 2, on *apartheid*, should be retained, because it dealt with a phenomenon which was unfortunately on the increase. Hence it was essential to leave no loophole with regard to the definition and suppression of the crime of *apartheid*. Nevertheless, the words "as practised in southern Africa", placed between square brackets in the second alternative, could be deleted for obvious political reasons and also because that type of exemplification was not in conformity with good drafting technique.

21. Paragraph 3, concerning "slavery and all other forms of bondage, including forced labour", was not altogether satisfactory. The reference to "slavery" should, of course, be retained, but the formula "all other forms of bondage" was imprecise. In the first place, it appeared to belittle the seriousness of slavery, and secondly, such a form of words did not give any indication of the content of the concept of "forms of bondage". The concept of "forced labour" should be retained, subject, however, to a clear identification of the type of forced labour involved, namely a kind different from that covered by the relevant ILO Conventions.<sup>9</sup>

22. The words "from their territory", in paragraph 4 (a), should be retained, for they contained no ambiguity. While the wording of paragraph 5 was acceptable, the commentary should none the less explain what was meant by the concept of "inhuman acts". In view of its importance, paragraph 6 should be drafted with greater precision and it was necessary to establish some connection with the draft articles on international liability for injurious consequences arising out of acts not prohibited by international law.

23. Lastly, a paragraph should be added to article 14 to deal with damage to or appropriation of items forming part of the cultural heritage of mankind. UNESCO had done

<sup>6</sup> See 2096th meeting, footnote 7.

<sup>7</sup> *Ibid.*, footnote 14.

<sup>8</sup> *Ibid.*, footnote 4.

<sup>9</sup> *Ibid.*, footnote 24.

important work to protect that heritage, which included archaeological treasures and even entire villages and towns. The destruction of such property was a crime against the very history of humanity. Any grave, intentional attack against it for political, racial or religious motives should fall within the scope of crimes against humanity.

24. In his view, draft article 14 could be referred to the Drafting Committee.

25. Mr. SHI said that the Special Rapporteur's lucid and scholarly seventh report (A/CN.4/419) would serve as a useful complement to the relevant parts of his fourth report, submitted in 1986.<sup>10</sup>

26. Although the Commission had apparently initially been divided on the unity or otherwise of the concept of crimes against the peace and security of mankind, it had after lengthy debate decided to subdivide them into crimes against peace, war crimes and crimes against humanity, and that decision had been approved by the General Assembly. Such a subdivision found practical justification in the Charters of the Nürnberg and Tokyo Tribunals, and the Commission had itself adopted the same classification, as early as 1950, in Principle VI of the Nürnberg Principles.<sup>11</sup> He agreed with that classification, even though the three categories overlapped at times, particularly war crimes and crimes against humanity.

27. Generally speaking, crimes against humanity were committed on political, national, ethnic, racial, religious or other similar grounds. In that connection, he agreed with Henri Meyrowitz, as cited in the fourth report, that the term "humanity" carried the connotations of culture and human dignity, on which basis the Special Rapporteur had in that report conceived of a crime against humanity in the threefold sense of cruelty directed against human existence, the degradation of human dignity and the destruction of human culture.<sup>12</sup> Motivation, too, was important, for otherwise the word "humanity" might not suffice to distinguish the characteristics of a crime against humanity from those of a war crime, especially where a crime against humanity was committed in time of war. Because of that element of motivation, the massive or systematic nature of an act, though important, might not be the decisive criterion in deciding what constituted that category of crime as distinct from ordinary crimes.

28. Neither of the alternatives proposed for draft article 13 contained a list of acts constituting war crimes. Opinions in the Commission were divided on the need for such a list, although both schools of thought recognized that an exhaustive list would be impossible. His own view, however, was that, for the sake of balance with the articles on the other two categories of crimes, an indicative list of war crimes should follow the general definition.

29. As far as terminology was concerned, he favoured the second alternative of article 13. War as a legal concept which created rights and obligations for the belligerent States under traditional international law was obsolete and, since war had been prohibited as an instrument of policy, it had become anomalous to have rules and customs of

war, with rights and duties for the perpetrators of wars of aggression. Also, the perpetrators of such wars often used terms such as "incident" or "conflict" to preclude condemnation and the application of the rules and customs of war to the victims. Hence the expression "rules of international law applicable in armed conflict", in the second alternative, was obviously preferable to the words "laws or customs of war", in the first. Furthermore, under the relevant legal instruments of the post-Second World War period, the concept of armed conflict now encompassed not only armed conflicts between sovereign States, but also conflicts in which peoples fought against colonial domination, alien occupation and racist régimes in the exercise of their right to self-determination, as well as armed conflicts in the nature of civil strife within a State. If the Commission retained the second alternative, however, it should consider whether the title of the article, "War crimes", was appropriate or whether it should not be replaced by a new title such as "Crimes against rules of international law applicable in armed conflict".

30. There remained the question whether, to constitute a war crime, an act must be a violation, or a "serious" violation, of the rules of international law applicable in armed conflict. Under ordinary criminal law, of course, the punishment for a particular crime could depend on the circumstances in which that crime was committed and on the degree of seriousness involved. Murder was a case in point, being divided under the criminal law of some countries into first and second degree murder and punishable accordingly. The fact that the Commission had decided that the code should cover only crimes of the most serious nature, however, led him to the unmistakable conclusion that only serious violations or grave breaches constituted war crimes. Indeed, that was borne out by article 85, paragraph 5, of Additional Protocol I<sup>13</sup> to the 1949 Geneva Conventions, which provided that "grave breaches of these instruments shall be regarded as war crimes".

31. Draft article 14 was generally acceptable. He endorsed the inclusion of genocide as a crime against humanity, as was fully justified because of its serious nature and the international community's unanimity in condemning it. It was right that the term "genocide" itself should have its proper place in paragraph 1, and he was not altogether sure why the term had not figured in article 2, paragraph (10), of the 1954 draft code.

32. The purpose of including *apartheid*, which was already recognized as a crime against humanity in many legal instruments, was to update the 1954 draft code. Of the two alternatives proposed for paragraph 2, he preferred the second, which reproduced the terms of article II of the International Convention on the Suppression and Punishment of the Crime of *Apartheid*. As a number of States were still not parties to that Convention, it might be more acceptable if no reference were made to it. The words "as practised in southern Africa", which appeared between square brackets, could be deleted, since the draft code was of general application and forms of *apartheid* other than those currently practised in South Africa might well emerge. However, he was by no means sanguine about any impending end to *apartheid* in South Africa. Indeed, the

<sup>10</sup> *Yearbook* . . . 1986, vol. II (Part One), p. 53, document A/CN.4/398.

<sup>11</sup> See 2096th meeting, footnote 14.

<sup>12</sup> See *Yearbook* . . . 1986, vol. II (Part One), p. 56, document A/CN.4/398, para. 12.

<sup>13</sup> See 2096th meeting, footnote 11.

international community should decide to take more effective joint measures to eradicate such practices there.

33. While he had no objection to the inclusion of slavery (para. 3) as a crime against humanity, it was important to clarify the relevant forms of slavery, in contradistinction to the form that was a crime under the ordinary law of many countries. He, too, agreed that "forced labour" was a very broad term and required clarification in that context.

34. Again, he had no objection to paragraph 4, except that, in his view, its three subparagraphs were couched in unduly general terms and required drafting improvements.

35. As to paragraph 5, "inhuman acts" should indeed comprise offences against the person and offences against property. The Special Rapporteur had been right to include destruction of property as a crime against humanity and had also properly emphasized the need to conserve property deemed to be part of the heritage of mankind. In that connection, it should be borne in mind that the cultural heritage of one people or nation itself formed an integral part of the cultural heritage of mankind as a whole. Accordingly, in addition to the general reference to property, paragraph 5 should also make a specific reference to property as a cultural heritage. Furthermore, as the Special Rapporteur had pointed out, were it not for the element of motivation, the acts referred to in that paragraph might be indistinguishable from ordinary crimes under national criminal codes.

36. Lastly, he agreed that paragraph 6 should be brought more into line with paragraph 3 (d) of article 19 of part 1 of the draft articles on State responsibility.<sup>14</sup>

37. The CHAIRMAN proposed that the Commission should adjourn to allow the Drafting Committee to meet.

*It was so agreed.*

*The meeting rose at 11.30 a.m.*

<sup>14</sup> *Ibid.*, footnote 19.

## 2099th MEETING

*Wednesday, 10 May 1989, at 10 a.m.*

*Chairman: Mr. Bernhard GRAEFRATH*

*Present: Mr. Barboza, Mr. Barsegov, Mr. Calero Rodrigues, Mr. Díaz González, Mr. Francis, Mr. Hayes, Mr. Koroma, Mr. Mahiou, Mr. Ogiso, Mr. Pawlak, Mr. Razafindralambo, Mr. Reuter, Mr. Roucounas, Mr. Sepúlveda Gutiérrez, Mr. Shi, Mr. Solari Tudela, Mr. Thiam, Mr. Tomuschat, Mr. Yankov.*

## Draft Code of Crimes against the Peace and Security of Mankind<sup>1</sup> (*continued*) (A/CN.4/411,<sup>2</sup> A/CN.4/419,<sup>3</sup> A/CN.4/L.431, sect. D, ILC(XLI)/Conf.Room Doc.3)

[Agenda item 5]

### SEVENTH REPORT OF THE SPECIAL RAPPORTEUR (*continued*)

ARTICLE 13 (War crimes) *and*

ARTICLE 14 (Crimes against humanity)<sup>4</sup> (*continued*)

1. Mr. BARBOZA congratulated the Special Rapporteur on the quality of his seventh report (A/CN.4/419) and his introductory statement.

2. Referring to draft article 13, he pointed out that the second alternative of the corresponding article submitted by the Special Rapporteur in 1986<sup>5</sup> had contained the usual definition of war crimes accompanied by a list of acts constituting war crimes, namely: (a) all the offences mentioned in the 1949 Geneva Conventions<sup>6</sup> and in Additional Protocol I<sup>7</sup> thereto, in other words "grave breaches"; (b) other acts, in particular the use of certain weapons, which were not the aforementioned "grave breaches", but which nevertheless constituted war crimes. In addition to those two categories, there was a third category of war crimes, but they were not serious enough to be included in the draft code, as the Special Rapporteur pointed out (*ibid.*, para. 24).

3. Neither of the two alternatives proposed at the present session contained a list of war crimes and the Special Rapporteur explained why in his report (*ibid.*, para. 4); hence the Martens clause favoured by ICRC (*ibid.*, paras. 5-6), which had the advantage of adapting better to constantly changing realities (*ibid.*, para. 9). Several members of the Commission had, however, already expressed their preference for a list, mainly for the sake of the clarity and precision called for by a liberal conception of criminal law, especially the principle *nullum crimen sine lege, nulla poena sine lege*. It was central to those members' thinking that a code of crimes against the peace and security of mankind should deal only with grave breaches. The other members of the Commission had not rejected that argument, but were prepared to leave it to the judge to determine the seriousness of the act in question. In fact, the two groups of members did not attach the same meaning to the term "grave", and that misunderstanding would have to be resolved.

4. A distinction had to be made between grave breaches and serious violations. The former were serious because the act in itself was inherently so: for example, homicide was a more serious offence than embezzlement because it was a more serious matter to kill someone than to steal his

<sup>1</sup> The draft code adopted by the Commission at its sixth session, in 1954 (*Yearbook* . . . 1954, vol. II, pp. 151-152, document A/2693, para. 54), is reproduced in *Yearbook* . . . 1985, vol. II (Part Two), p. 8, para. 18.

<sup>2</sup> Reproduced in *Yearbook* . . . 1988, vol. II (Part One).

<sup>3</sup> Reproduced in *Yearbook* . . . 1989, vol. II (Part One).

<sup>4</sup> For the texts, see 2096th meeting, para. 2.

<sup>5</sup> See 2096th meeting, footnote 4.

<sup>6</sup> *Ibid.*, footnote 10.

<sup>7</sup> *Ibid.*, footnote 11.