Document:-

A/CN.4/SR.2196

Summary record of the 2196th 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:-

1990, vol. I

said that, if priority had ever been assigned to navigation in State practice, as a general rule that was no longer the case today. He proposed that he and the Rapporteur should try to recast the paragraph in a form satisfactory to the Commission and submit a text in due course.

57. Mr. KOROMA suggested that the Rapporteur and the Special Rapporteur could consider wording such as: "There was general support for the article, which was said to reflect in a balanced way the fact that any priority which was once assigned to navigation was no longer considered automatic among modern uses."

58. Mr. CALERO RODRIGUES said that it might be stated in paragraph 18 that, if there had ever been a rule of international law giving priority to navigation, it no longer existed today, or could no longer be accepted as a rule of general international law.

59. Mr. MAHIOU said that it should be left to the Rapporteur and the Special Rapporteur to find a satisfactory form of words. The solution might perhaps be to replace the words "no longer" by "not always".

60. Mr. BARSEGOV said that the revised text should indicate, in substance, that there was no rule of general international law giving priority to navigation, or to any other particular use.

61. Mr. RAZAFINDRALAMBO said that the revised text should specify that the article in question was article 24.

62. The CHAIRMAN said that, if there were no objections, he would take it that the Commission wished the Rapporteur and the Special Rapporteur to review paragraph 18 in the light of the comments made and to submit a revised text in due course.

It was so agreed.

The meeting rose at 1.05 p.m.

2196th MEETING

Monday, 16 July 1990, at 3.05 p.m.

Chairman: Mr. Jiuyong SHI

Present: Prince Ajibola, Mr. Al-Qaysi, Mr. Arangio-Ruiz, Mr. Barboza, Mr. Barsegov, Mr. Beesley, Mr. Bennouna, Mr. Calero Rodrigues, Mr. Díaz González, Mr. Eiriksson, Mr. Francis, Mr. Graefrath, Mr. Jacovides, Mr. Koroma, Mr. Mahiou, Mr. McCaffrey, Mr. Njenga, Mr. Ogiso, Mr. Pawlak, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Razafindralambo, Mr. Roucounas, Mr. Sepúlveda Gutiérrez, Mr. Solari Tudela, Mr. Thiam, Mr. Tomuschat.

Draft Code of Crimes against the Peace and Security of Mankind[1] (*continued*)* (A/CN.4/429 and Add.1-4,[2] A/CN.4/430 and Add.1,[3] A/CN.4/L.443, sect. B, A/CN.4/L.454 and Corr.1, A/CN.4/L.455)

[Agenda item 5]

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

CHAPTER III (The Commission's discussion of the question at the present session) (*concluded*)

1. The CHAIRMAN pointed out that one question still pending in regard to the report of the Working Group was the possible addition of a reference to international criminal trial mechanisms other than an international court. A small working group had been formed to study that question, and he invited the Rapporteur to report on the results of its work.

Paragraph 23 (concluded)**

2. Mr. EIRIKSSON (Rapporteur) said that paragraph 23, adopted at the 2189th meeting, had been redrafted to give a better idea of what followed. The new text read:

> "Paragraphs 24 to 29 below contain a general discussion of the advantages and disadvantages, for the trial of crimes against the peace and security of mankind, of the possible establishment of an international criminal court as compared, in particular, to the system of universal jurisdiction based on prosecution before national tribunals. Paragraphs 31 to 58 contain an overview of possible options and the main trend evidenced in the Commission with regard to some very specific and significant areas related to the creation of an international criminal court. Paragraphs 59 to 61 deal with other possible international mechanisms for the trial of crimes against the peace and security of mankind."

3. It was also proposed that the title of section 6 of chapter III, "Other jurisdictional mechanisms", should be amended to read: "Other possible international trial mechanisms".

4. Mr. TOMUSCHAT said that the word "very" before the words "specific and significant areas", in the second sentence of the proposed new text of paragraph 23, was unnecessary.

5. Mr. BEESLEY asked whether the references to "crimes against the peace and security of mankind" covered crimes against humanity.

6. Mr. BENNOUNA said that he preferred the existing title of section 6. The words "other jurisdictional mechanisms" had been deliberately chosen to include

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* Resumed from the 2194th meeting.

** Resumed from the 2189th meeting.

[1] 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.

[2] Reproduced in *Yearbook ... 1990*, vol. II (Part One).

[3] *Ibid.*

other international courts, such as the International Court of Justice, referred to in paragraph 60, and national courts with judges from other legal systems (para. 61). If the new text of paragraph 23 were adopted, its last sentence should refer to "other jurisdictional or trial mechanisms", to reflect the subject-matter of paragraphs 59 to 61.

7. Mr. EIRIKSSON (Rapporteur) explained that the working group had had in mind both an international criminal court and other mechanisms. A national court with judges from other legal systems would, it was thought, be an international mechanism. It had been decided to use the same wording as in General Assembly resolution 44/39, to show that the various options had been fully considered. What was actually in contemplation was a mixed international trial mechanism.

8. Mr. KOROMA suggested amending the second sentence of the new text to begin: "Paragraphs 31 to 58 contain an overview of the possible options and main trends . . .".

It was so agreed.

9. Mr. THIAM (Chairman-Rapporteur of the Working Group), replying to Mr. Beesley's question, said that the court was expected to try crimes against the peace and security of mankind, and not only crimes against humanity.

10. The CHAIRMAN said that, if there were no objections, he would take it that the Commission agreed to adopt the new text of paragraph 23 proposed by the Rapporteur, as amended by Mr. Koroma, and to amend the title of section 6 of chapter III as further proposed by the Rapporteur.

It was so agreed.

Paragraph 23, as amended, was adopted.

Paragraph 25 (concluded)*

11. Mr. ROUCOUNAS said that, in the last sentence of paragraph 25, adopted at the 2189th meeting, the word "objective" should be deleted, since it implied a value judgment concerning the decisions of national courts.

12. Mr. THIAM (Chairman-Rapporteur of the Working Group) said that he could accept the proposed amendment.

13. Mr. BARSEGOV observed that the application of the law in some national courts might not be objective, for instance where the State was itself a party to an international crime. An international court, however, would have jurisdiction in respect of all States, having different legal systems. It would be best to delete the word "objective", but the court's special status should be clear.

14. Mr. THIAM (Chairman-Rapporteur of the Working Group) suggested that Mr. Barsegov's point could be met by substituting the word "impartial" for "objective".

15. Mr. BEESLEY said he thought that the word "objective" should be deleted, but that it did not necessarily imply a value judgment concerning national courts.

16. Mr. ROUCOUNAS withdrew his proposal.

17. Mr. BENNOUNA said that the Commission was rehearsing the same arguments as 30 years before: the question of an international criminal court had, indeed, arisen as early as 1945. Inevitably, the idea of such a court touched upon national sovereignty, and might offend national sensibilities. The word "objective" could perhaps be misinterpreted, but he agreed with Mr. Barsegov that some reference to objectivity was necessary, since States or their leaders might be implicated in the commission of a crime. He suggested that the last sentence of paragraph 25 be amended to read: "A recognized advantage of an international court is the uniform application of the law with the best guarantees of objectivity to try these kinds of crimes."

18. Mr. BARSEGOV suggested using the words "additional or better guarantees of objectivity".

19. Mr. PAWLAK said that he preferred the Working Group's formulation: the reference to uniformity was essential. The word "best" in Mr. Bennouna's proposal should be deleted: guarantees could not be qualified.

20. Mr. THIAM (Chairman-Rapporteur of the Working Group), referring to the French text of Mr. Bennouna's proposal, pointed out that there was a slight, but significant, difference in meaning between the words *juger* and *juger de* as applied to crimes. He preferred the former.

21. Mr. TOMUSCHAT said that the guarantees referred to should be defined as the "best possible".

22. The CHAIRMAN said that, if there were no objections, he would take it that the Commission agreed to amend the last sentence of paragraph 25 as proposed by Mr. Bennouna and Mr. Tomuschat, using the word *juger* rather than the words *juger de* in the French text.

It was so agreed.

Paragraph 25, as amended, was adopted.

Paragraph 54 (concluded)*

23. Mr. EIRIKSSON (Rapporteur) said that the Working Group proposed that subparagraph (*b*) of paragraph 54, adopted at the 2194th meeting (para. 111), should be further amended to read: "(*b*) if the acts were tried as ordinary crimes although they corresponded to one of the crimes falling under the jurisdiction of the court [see, for example, paragraph 3 of article 7 of the draft code]".

24. The new wording was based on Mr. Bennouna's view that the question of ordinary crimes had a bearing not only on the code, but also on the jurisdiction of the court. Since that jurisdiction might extend to crimes other than those covered by the code, the structure of the court should be independent of the code.

* Resumed from the 2189th meeting.

* Resumed from the 2194th meeting, para. 111.

25. Mr. CALERO RODRIGUES suggested that the words in square brackets were unnecessary.

26. Mr. EIRIKSSON (Rapporteur) said that, in the original text, those words had appeared in parentheses. They should be retained, because paragraph 3 of article 7 of the draft code was the basis for subparagraph (*b*).

27. Mr. KOROMA said that he was not satisfied with the new wording, which implied that a judgment by a national court could be subject to appeal or review. That was not the same as saying that an international court would have jurisdiction in respect of acts corresponding to crimes under the code.

28. Mr. BARSEGOV said that he preferred the original text. The new wording tended to alter the meaning of the reference to paragraph 3 of article 7, which was about the erroneous characterization of a crime.

29. Mr. BENNOUNA withdrew his proposed amendment.

30. Mr. KOROMA suggested that the subparagraph would serve its purpose if amended to read: "(*b*) if the acts were tried as ordinary crimes although they were deemed to be crimes falling under the jurisdiction of the court". That text would provide a basis for review.

31. Mr. BENNOUNA said that the discussion turned on a question of substance. The danger was that subparagraph (*b*) would contradict what preceded it. Because of the link envisaged between the international court and the code, the impression was being given that only crimes covered by the code fell within the jurisdiction of the court. It had been pointed out, however, that the court could exist independently of the code and could try international crimes not covered by the code. The Working Group's proposal attempted to reflect that position. Mr. Koroma had raised a point of terminology which could be resolved provided there was no dissent on the substantive issue.

32. Mr. BEESLEY said that the problem turned on the characterization of the crime. He agreed, however, that the international court was not tied to the code. The issue seemed to be one of drafting.

33. Mr. CALERO RODRIGUES suggested that, in order to avoid describing the crimes as "corresponding" to the code, the phrase "although they are characterized as crimes falling under the code" should be used.

34. Mr. THIAM (Chairman-Rapporteur of the Working Group) said that he preferred the text proposed by the Working Group, which ensured that the code would not be referred to in an inappropriate context.

35. Mr. MAHIOU said that he agreed.

36. Mr. BARSEGOV said that the wording proposed by Mr. Calero Rodrigues was closer to the meaning of paragraph 3 of article 7 of the draft code, with its reference to the incorrect characterization of a crime. However, he would not object to the Working Group's proposal.

37. Mr. BEESLEY proposed the following text: "(*b*) if the acts were tried as ordinary crimes although they are also characterized as one or more of the crimes falling under the jurisdiction of the court". He agreed that the term "corresponded" was too vague.

38. Mr. CALERO RODRIGUES supported Mr. Beesley's proposal, but suggested that the words "one or more of the" could be omitted.

39. Mr. BARSEGOV said that the word "also" should also be omitted, since the characterization of crimes must be either correct or incorrect.

40. Mr. CALERO RODRIGUES said that he agreed.

41. Mr. KOROMA suggested that, for clarity's sake, the word "they" should be replaced by the words "such acts".

42. The CHAIRMAN said that, if there were no objections, he would take it that the Commission agreed to adopt the following text for subparagraph (*b*) of paragraph 54: "(*b*) if the acts were tried as ordinary crimes although they are characterized as crimes falling under the jurisdiction of the court . . .".

It was so agreed.

Chapter III, as amended, was adopted.

The report of the Working Group as a whole, as amended, was adopted.

Draft articles proposed by the Drafting Committee

Articles 16, 18 and X

43. The CHAIRMAN invited the Chairman of the Drafting Committee to introduce draft articles 16, 18 and X as adopted by the Committee, and the text of draft article 17 discussed by the Committee (A/CN.4/L.455).

Article 16 (International terrorism)

44. Mr. MAHIOU (Chairman of the Drafting Committee) introduced the text proposed by the Drafting Committee for article 16, which read:

Article 16. International terrorism

1. The undertaking, organizing, assisting, financing or encouraging or tolerating by the agents or representatives of a State of acts against another State directed at persons or property and of such a nature as to create a state of terror in the minds of public figures, groups of persons or the general public.

2. The participation by individuals other than agents or representatives of a State in the commission of any of the acts referred to in paragraph 1.

45. He recalled that, in his sixth report, submitted in 1988, the Special Rapporteur had proposed two alternatives for a definition of the crime of intervention.[4] The first had served as a basis for what had become article 14 (Intervention); [5] the second had contained a definition of terrorist acts and a list of activities constituting terrorist acts. In elaborating article 16, the Drafting Committee had drawn on those texts, as well as on article 2, paragraph (6), of the 1954 draft code.

[4] For the text (art. 11, para. 3) submitted by the Special Rapporteur and a summary of the Commission's discussion on it at its fortieth session, see *Yearbook . . . 1988*, vol. II (Part Two), pp. 59 *et seq.*, footnote 276 and paras. 231-255.

[5] *Yearbook . . . 1989*, vol. II (Part Two), p. 69.

46. Article 16 covered terrorist acts in which States were directly or indirectly involved, but not terrorist activities directed against a State by persons having no connection with the State authorities, or terrorist activities taking place entirely within one State and having no international aspect. Article 16 was not redundant, since article 14 mentioned terrorist activities only in passing, as a means that might be used to commit the crime of intervention defined in that article. Article 16 focused primarily on terrorist acts viewed independently of any links they might have with intervention, and highlighted the main characteristic of such acts, namely the state of terror they created in society. The Drafting Committee had concluded that terrorist acts in which States were involved and which were directed against other States had consequences so serious that they must be treated as crimes under the code.

47. Paragraph 1 of article 16 related to agents or representatives of a State, and paragraph 2 to individuals having no official connection with a State, but who were commissioned by agents or representatives of the State to commit acts of terrorism.

48. For paragraph 1, the Drafting Committee had drawn on article 2, paragraph (6), of the 1954 draft code, but the text under consideration was more explicit. The verbs "organizing", "assisting" and "financing" identified forms of involvement in terrorist activities that had not been expressly mentioned in the 1954 draft.

49. The words "or tolerating" had been the subject of a long discussion in the Drafting Committee. Several members had pointed out that the concept of tolerance lent itself to unduly broad interpretations, which might, for example, include the failure by agents of a State to take action in regard to terrorist activities of which they were unaware. But the Drafting Committee had eventually decided in favour of including "tolerating", a concept that appeared to be particularly pertinent in the context of terrorism, where the participation of State authorities probably consisted more often in looking the other way than in active intervention. The commentary would specify that the concept of tolerance implied knowledge of the criminal activities in question.

50. The scope of the text *ratione personae* was defined by the reference to "agents or representatives of a State"—wording that the Drafting Committee had adopted to replace the concept of "authorities of a State" used in the 1954 draft. Thus article 16 dealt with the question of attributing the crime to individuals. The Committee was aware that, on that particular point, the articles so far adopted in chapter II of the draft (Acts constituting crimes against the peace and security of mankind) were not completely consistent. Whereas articles 13, 14 and 15 made no mention of attribution, article 12 did, and draft article 16 referred to the "agents or representatives of a State". As had been pointed out at the previous session, problems relating to the attribution of crimes would be dealt with later in the framework of a general provision. In article 16 it was hardly possible to avoid a reference to the "agents or representatives of a State", because paragraph 2 extended the scope of the article *ratione personae* beyond such agents or representatives. The question would be reconsidered later to ensure the internal consistency of chapter II.

51. The Drafting Committee had added a reference to property, several members of the Commission having pointed out that terrorism could be directed against nuclear power plants, irrigation networks, reservoirs of drinking-water, weapons stores or any other vital location in the State.

52. The Drafting Committee had replaced the words "calculated to" by "of such a nature as to", so as to bring the English text into line with the French: that phrase constituted a key element of the text.

53. As in articles 13, 14 and 15, the wording of article 16 presupposed the inclusion at the beginning of part 1 of chapter II of a phrase introducing the list of crimes; that explained the incomplete nature of paragraph 1 as it stood.

54. Paragraph 2 took into account the fact that the agents or representatives of a State might use the services of individuals to commit the acts referred to in paragraph 1. But the text was provisional in its principle and in its wording. There was no unanimity of views on the need to include such a provision in article 16. Some members considered that the persons in question might be covered by the provision on complicity, whereas others wondered whether the real perpetrator of an act of terrorism—for example, someone who placed explosives in a nuclear power plant—should not be considered the main author of the crime rather than a mere accomplice. In view of that difference of opinion, the Drafting Committee had decided to indicate in a footnote to paragraph 2 that the paragraph would be reviewed when the provision on complicity had been completed. Hence it had not dwelt on drafting problems.

55. He reminded the Commission that article 16 would contain a paragraph 3 listing terrorist acts. As the list could only be illustrative, the Drafting Committee had preferred to confine itself, for the time being, to the definition in paragraph 1.

56. Mr. BENNOUNA suggested that it might be necessary to insert the words "of another State" after the words "public figures" in paragraph 1, since it might not be clear that that was the meaning implied. He was also dissatisfied with the word "tolerating"—an ambiguous term not commonly used in legal instruments.

57. Mr. JACOVIDES suggested that perhaps a comma was missing in paragraph 1 after the word "financing".

58. Mr. MAHIOU (Chairman of the Drafting Committee) agreed and said that the phrase should read: "financing, encouraging or tolerating". The word "or" after "financing" should be deleted.

It was so agreed.

59. He did not think it was necessary to add the words "of another State", as Mr. Bennouna had suggested. The expression "acts against another State"

made it clear that the rest of paragraph 1 referred to other States.

60. Mr. McCAFFREY said he was not sure that the uninformed reader would know that the provision on complicity referred to in the footnote to paragraph 2 had not yet been adopted. He therefore suggested adding the words "to be considered at the next session" or similar wording.

61. Mr. PELLET said he was concerned that the inclusion of such concepts as intervention, terrorism and mercenarism would weaken the code. He pointed out that, in its judgment in the *Nicaragua* case,[6] the ICJ had considered that the United States of America had organized, assisted, financed, encouraged or tolerated acts that could be likened to terrorist acts against another State. If the code were taken literally, it would mean that public figures of the United States had violated that instrument. That was probably not the Commission's intention.

62. He shared Mr. Bennouna's dissatisfaction with the word "tolerating".

63. He did not understand the effect of paragraph 2. If officials of a transnational corporation or of a national liberation movement were responsible for an international terrorist act, had they violated the code only if they were accomplices in acts committed by agents or representatives of a State?

64. Mr. TOMUSCHAT raised the same point as the previous speaker in regard to the inconsistency between article 16 and article X. Paragraph 1 of article X spoke of "other individuals". Clearly, if a national liberation movement committed a terrorist act, that was just as abhorrent as when such acts were committed by the agents or representatives of a State and should have the same consequences; hence such a possibility should also come within the scope of article 16. He doubted whether that was covered in paragraph 2 of article 16, because that paragraph did not refer to private groups or individuals initiating terrorist acts themselves.

65. Mr. NJENGA said that he agreed with Mr. Pellet and Mr. Tomuschat. International terrorism could be committed not only by States, but also by individuals, groups of individuals, liberation movements, etc.

66. Mr. MAHIOU (Chairman of the Drafting Committee) said that the topic under discussion covered only crimes against peace and security. A terrorist act, though barbaric, was not necessarily a threat to peace; it was so only when committed by agents or representatives of a State. The question of terrorism by individuals could be taken up in other provisions.

67. Mr. KOROMA said that he, too, had reservations about the word "tolerating", but on balance he thought that it should be retained, since the crimes in question could occur as a result of omission.

68. He was somewhat unhappy about the tautological definition of terrorism as creating a "state of terror" and suggested the words "state of fear". He wondered, however, whether it could be assumed that the intention was to create a state of fear and how it would be possible to prove it.

69. Lastly, he asked whether the bombing of military barracks would be an example of terrorism carried out against "groups of persons".

70. Mr. RAZAFINDRALAMBO suggested that, if the Commission decided that questions remained in regard to the word "tolerating", that word could be placed in square brackets.

71. For the sake of symmetry, he suggested that, in the French text of paragraph 2, commas should be inserted after the words *fait* and *État*, so as to bring it into line with paragraph 1.

It was so agreed.

72. Mr. THIAM (Special Rapporteur) said that he approved of the text of article 16. With regard to the word "tolerating", he pointed out that the 1954 draft code had used the term "toleration" (art. 2, para. (6)). The crime of omission was recognized in law. "Tolerating" meant that a State knowingly allowed terrorist activities to take place in its territory. Perhaps that should be stated clearly in the text.

73. Mr. CALERO RODRIGUES also supported the text of article 16, but shared some of the doubts expressed by other members. Many questions remained to be settled. Drawing a distinction between crimes against peace and crimes against humanity had posed problems for the Drafting Committee. It was difficult to imagine how an individual could commit a crime against peace, and it had therefore been assumed that two States must be involved.

74. Mr. NJENGA said that the peace and security of mankind could very well be endangered by groups of individuals, not only by States. Article 16 omitted cases of international terrorism not committed by States. He could support the idea of such cases being dealt with in other articles, but if article 16 was to cover international terrorism, perhaps it should refer to "international State terrorism" or "State terrorism", to show that other forms of terrorism were not covered.

75. Mr. MAHIOU (Chairman of the Drafting Committee) said that there must be some provision in the code concerning States that tolerated such serious acts as international terrorism. With regard to Mr. Koroma's remark, the problem of intention arose in other areas of law as well: a judge often had to decide whether there had been premeditation in the commission of a crime.

76. Mr. Sreenivasa RAO said that, as he saw it, article 16 was very clear. It identified the category of acts constituting international terrorism, and that was important both for the development of international law and for the prevention of acts of terrorism after the code was adopted.

77. Some doubts had been expressed about the reference in paragraph 1 to the "tolerating" of certain acts against another State. He felt strongly that tolerance had a place in article 16, for tolerance of certain acts was an important feature of international

[6] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits*, Judgment of 27 June 1986, *I.C.J. Reports 1986*, p. 14.

terrorism and should not be underestimated or discounted. It was significant that the issue of tolerance had come very much to the fore in the discussions that had led to the adoption of the 1989 International Convention against the Recruitment, Use, Financing and Training of Mercenaries. A State whose territory was being used for the training and organization of bands of mercenaries might claim that the persons concerned were not committing any crime in its territory and were simply exercising their right to personal freedom.

78. He welcomed the suggestion that the words "state of terror" be replaced by "state of fear". The suggestion was a good one, not only because it avoided using the term "terror" to define "terrorism", but also because the expression "state of fear" was used in many international documents which attempted to define "terrorism".

79. Mr. BENNOUNA said that he had not been fully convinced by the explanations given by the Chairman of the Drafting Committee. The principle stated in article 16 was based on the distinction between crimes against peace and crimes against humanity, the former being crimes committed in inter-State relations. But he had serious doubts about such a distinction. A multinational company, or even a lobby, could destabilize a country, thereby committing a crime against international peace and security. The distinction was therefore unsatisfactory and, if article 16 were to be placed before the General Assembly, difficulties were bound to arise.

80. There were two possible ways of solving that problem. One was to insert the words "or by private individuals" in paragraph 1, after the words "agents or representatives of a State"; the other was to extend the scope of paragraph 1 to both commission and participation.

81. He proposed that the footnote to paragraph 2 be amended to read: "Paragraph 2 will be reviewed in the light of the provision on complicity and of the final adoption of the provisions relating to crimes against humanity." Article 16 as it stood was incomplete. If it was desired to establish a connection between that article and the Commission's later action on crimes against humanity, it should be made clear that the Commission would revert to the matter in the future. That was the purpose of his proposed amendment.

82. In conclusion, he stressed that the distinction between crimes against peace and crimes against humanity was artificial. He would have occasion to revert to that point in connection with article X on illicit traffic in narcotic drugs.

83. Mr. MAHIOU (Chairman of the Drafting Committee) said that the fact that certain acts were not characterized by the code as crimes against the peace and security of mankind did not prevent them from being punished as crimes, either under the terms of international conventions or under national law. It was undesirable to broaden unduly the concept of international terrorism. An unduly broad definition might cover an act of terrorism committed by only two persons, and the result would be to devalue the very concept of international terrorism. Several members of the Commission had found article 16 much too broad as it was, and had urged a more restrictive approach.

84. It was also essential that the code should not invade the area of national jurisdiction of States. When a crime was committed in the territory of a State, it was normally for that State to try the alleged offenders and, if they were found guilty, to sentence and punish them. No other State was entitled to interfere in that process and any action in that direction would constitute unwarranted intervention in the internal affairs of the State concerned.

85. Clearly, an international element had to be present for crimes against peace, but not for crimes against humanity. The essential criterion was the role played by the agents or representatives of another State. If acts of terrorism took place without the participation of such agents or representatives, they would constitute ordinary crimes with which the State concerned would have to deal. It was the element of extraneousness which brought terrorism under the provisions of article 16.

86. With regard to the footnote to paragraph 2 proposed by Mr. Bennouna, he saw no reason to refer to crimes against humanity. There was no automatic connection between international terrorism and such crimes. It was quite possible that no provision on terrorism would be included in the part of the draft code on crimes against humanity, although a provision on international terrorism was included in the part on crimes against peace. The footnote should simply state that paragraph 2 would be reviewed in the light of the provision on complicity to be considered shortly by the Commission.

87. He strongly urged the Commission not to broaden the definition of international terrorism, as that would reduce the effect of the whole code. It should be remembered that the draft code covered only the most serious crimes. He knew of no example in history of international terrorism being carried on without its being backed in one way or another by a State.

88. Mr. TOMUSCHAT said that he had not been convinced by the explanations given by the Chairman of the Drafting Committee. The title "International terrorism" did not correspond to the substance of article 16. There could be no doubt that international terrorism included more than just inter-State terrorism. There were other forms of international terrorism. There were even organizations which dominated certain territories without any State supporting them; they could act independently and had even made attacks. He found the terms of article 16 much too narrow.

89. Mr. AL-QAYSI said that treating international terrorism as a crime against peace meant subsuming it under another title.

90. Mr. PELLET said that, in addition to his general reservations on article 16, he was opposed to the suggestion that the word "terror" should be replaced by "fear", which would extend the scope of the article beyond all reason.

91. On the fundamental problem raised by article 16, he had not been convinced by the arguments of the

Chairman of the Drafting Committee. He saw a clear contradiction between the desire of some members to restrict the scope of the article and the desire of others to go beyond the concept of inter-State terrorism. One example outside the limits of that concept was that of the activities of a multinational company in a small State, which were claimed to constitute acts of terrorism and breaches of the peace. It could be argued, from an economic or sociological standpoint, that there was a foreign State behind the company in question, but such a proposition would be untenable from the legal standpoint.

92. Article 16 should be confined to acts which constituted actual threats to peace or breaches of the peace, and acts of aggression. Two solutions were possible. One was to frame paragraph 1 so as to require that the act in question could constitute a threat to peace or breach of the peace on the part of the agents or representatives of a State. With such a formulation the reference to tolerance would be more acceptable. The other solution—which he preferred—would be for the Commission to formulate, at its next session, a general article to be placed at the beginning of the articles dealing with crimes against peace, specifying that the offences in question constituted crimes against peace only if they were a threat to peace or a breach of the peace.

93. He could not support article 16 as proposed.

94. Mr. THIAM (Special Rapporteur) stressed that article 16 was not confined to the concept of inter-State terrorism. It also covered terrorism committed by private individuals. There was, of course, the question whether those individuals should be treated as principal perpetrators or as accomplices. Judgments could be cited in support of both views.

95. There had been much discussion in the Commission on the question whether the code should cover the crimes of individuals. The prevailing view had been that the code should cover crimes committed by persons vested with State powers. It was significant that, in the 1954 draft code, paragraph (6) of article 2 referred to the undertaking or encouragement "by the authorities of a State" of terrorist activities in another State. The 1954 draft dealt differently with crimes against humanity, in respect of which paragraph (10) of article 2 referred to acts "by the authorities of a State or by private individuals".

96. The division into three categories—war crimes, crimes against peace and crimes against humanity—went back to the Nürnberg Trial, but the Commission was not obliged to adhere to that division.

97. Mr. CALERO RODRIGUES said that on such a complex subject the Commission could only proceed by trial and error. It could not expect to prepare a complete and final text for article 16 at the present session. He therefore recommended that the article be accepted as a first effort, on the understanding that it would be improved later.

98. As to the scope of the definition of international terrorism, he agreed with those who had stressed that the code should not cover acts of a purely national nature. At the same time, it was not easy to determine what acts by individuals should be covered by the code. The task was a difficult one, but he felt sure that the Commission would be able to carry it out.

99. Mr. BEESLEY said that he shared the doubts which had been expressed about the use of the word "tolerating", but it would be difficult to find a better word. One possibility was to say "permitting". He thought that article 16 should also refer to "harbouring" terrorists.

100. He agreed with those who believed that the Commission had concentrated unduly on State terrorism. Article 16 should go beyond that concept.

101. Mr. PAWLAK said that he accepted the explanations given by the Chairman of the Drafting Committee and the Special Rapporteur. It should be remembered that article 16 was now being discussed on first reading; there would be an opportunity to improve it later.

102. He supported Mr. Bennouna's proposal for a footnote indicating the Commission's thinking on a difficult problem.

103. A satisfactory definition of international terrorism would not be easy to frame. As he saw it, article 16 was a step in the right direction; the Commission could expect to improve on it later.

104. Mr. NJENGA also supported the proposed footnote.

105. Mr. KOROMA stressed that the acts envisaged in article 16 must be acts committed against another State.

106. Mr. MAHIOU (Chairman of the Drafting Committee) suggested that the footnote to paragraph 2 proposed by Mr. Bennouna should be modified to read: "Paragraph 2 will be reviewed in the light of the provisions on complicity and on crimes against humanity which will be examined by the Commission at a later stage."

It was so agreed.

107. The CHAIRMAN said that, if there were no objections, he would take it that the Commission agreed provisionally to adopt article 16 with the amendments by the Chairman of the Drafting Committee to paragraph 1 (para. 58 above) and to the footnote to paragraph 2 (para. 106 above), and with Mr. Razafindralambo's amendment to the French text of paragraph 2 (para. 71 above).

It was so agreed.

Article 16 was adopted.

ARTICLE 17 (Breach of a treaty designed to ensure international peace and security)

108. Mr. MAHIOU (Chairman of the Drafting Committee) said that the Drafting Committee intended to revert at a later stage to an article, provisionally numbered 17, which it had discussed at length, but on which it had been unable to reach agreement at the pre-

sent session.[7] Paragraph 4 in particular was at a less advanced stage than the first three paragraphs.

109. It would be recalled that, in his sixth report, submitted in 1988, the Special Rapporteur had proposed two revised texts defining breaches of the obligations of a State under a treaty designed to ensure international peace and security as crimes against peace.[8] The Special Rapporteur had taken the idea from the 1954 draft code, which contained a similar provision in article 2, paragraph (7).

110. In 1989, the Drafting Committee had discussed those texts at length but, due to lack of time, had not been able to complete its work. During the present session, the Committee had again discussed them at length, but despite all its efforts it had not been able to agree on a text. He was grateful to all the members of the Drafting Committee and to the other members of the Commission who had participated in its meetings for their co-operative attitude. Despite the serious reservations which many of them had expressed as soon as the Drafting Committee had begun consideration of draft article 17, all the members had participated in the work in a constructive spirit, helping to formulate the article and improve its wording and proposing safeguard clauses in order to obviate some of the problems of substance that arose.

111. The special efforts made by the Drafting Committee to render article 17 practicable could be explained by the conviction of members that, if a State violated the obligations incumbent on it under a treaty designed to ensure international peace and security, then peace and security would obviously suffer gravely. As a general rule, the purpose of treaties of that kind was to prohibit or restrict to the greatest possible extent the use of violence, and any breach of their provisions would indicate that violence was permissible or that it could be resorted to. It was therefore necessary to envisage some means of discouraging breaches of such treaties. The difficulty for many members of the Drafting Committee had been to decide whether the best way of achieving that object was to include the offence in question among crimes against peace. He would therefore explain briefly why many members had found it difficult to accept a provision of that kind, while others were in favour of article 17 and wanted it to be included in the draft code.

112. The problems which many members of the Drafting Committee saw in article 17 concerned both its approach to treaty relations and the effect which it could have in discouraging States from concluding treaties or becoming parties to the code. With regard to the first problem, they believed that the draft code treated crimes from a universal viewpoint, considering that a crime remained a crime irrespective of its perpetrator. That viewpoint was in conformity with the penal philosophy of internal law and with that of the code itself. Besides, treaty relations between States were governed by the principle of reciprocity, and the validity of the rules laid down was in many respects confined to the treaty partners—in the relations between a limited number of parties, bilateral or trilateral, for example, the narrowness of the field of application was still more evident. In addition, the law of treaties, as laid down by the 1969 Vienna Convention on the Law of Treaties and by customary international law, was designed to settle cases of various types of violation of such treaties.

113. It was all the more obvious that it would not be advisable to apply the code to treaty relations, because signatories of a treaty and other States would have to be treated differently. There would then be no equality of treatment between States, since an act of a State party to a treaty could be treated as a crime under the code, whereas the same act committed by a non-party State could not. That inequality of treatment was fundamentally incompatible with the universal viewpoint adopted for the code.

114. With regard to the long-term consequences of the inclusion of a provision such as article 17 in the code, many members had been worried by the fact that it would place States that were parties to the treaties in question at a disadvantage and might therefore discourage other States from concluding such treaties or acceding to them—which was obviously undesirable. And States which had already concluded such treaties, finding themselves at a disadvantage, might not be inclined to become parties to the code—which was not desirable either.

115. There were also technical problems concerning the definition of breaches of a treaty which constituted crimes against peace. Even if one spoke of a "serious breach" the matter was still not sufficiently clear. In the case of some disarmament treaties in force, for example, the parties had accused each other of breaches, one party considering a particular breach to be of a technical character, the other seeing more in it. But as a result of renegotiation or interpretation by the parties, breaches of that kind had not threatened international peace and security.

[7] The text, as it emerged from the discussion in the Drafting Committee, read as follows:

"*Article 17. Breach of a treaty designed to ensure international peace and security*

"1. A serious breach of an obligation of a State under a treaty designed to ensure international peace and security, in particular a treaty relating to:

"(*a*) disarmament, or the prohibition, restriction or limitation of armaments;

"(*b*) restrictions on military training or installations or any other restrictions of the same character;

"(*c*) the prohibition of emplacements or tests of weapons;

"(*d*) the military denuclearization of certain territories.

"2. For the purposes of paragraph 1, a breach shall be considered serious where it is of such a nature as to endanger international peace and security, in particular by giving a military advantage to the violator.

"3. A measure taken by a State to ensure its right of self-defence shall not be considered a serious breach of an obligation under a treaty for the purposes of paragraph 1.

"4. A breach of an obligation under a treaty referred to in paragraph 1 cannot be invoked under this Code by a State not bound by the treaty or to the advantage of a State not bound by it."

[8] For the texts (art. 11, paras. 4 and 5) submitted by the Special Rapporteur and a summary of the Commission's discussion on them at its fortieth session, see *Yearbook ... 1988*, vol. II (Part Two), pp. 62-63, footnote 289 and paras. 256-261.

116. Such were, basically, the reservations which many members had expressed concerning article 17.

117. For those members who, on the contrary, were in favour of the article and wished to retain it, the fact that it applied only to the signatories of the treaties in question raised no problem. In their view, the criterion for determining whether or not an act was a crime under the code was its consequences for international peace and security; and any breach of a treaty, even a bilateral treaty, which was liable to threaten international peace had to be regarded as a crime, since all other States and the world in general would suffer from its consequences. Those members, while not ignoring the consequences which the inclusion of article 17 in the code would have for the conclusion of the treaties it referred to, or the danger of discouraging States from acceding to the code, thought that the problem should not be exaggerated either. In their opinion, safeguard clauses would make it possible to correct any disadvantage for the States parties to those treaties as compared with third-party States.

118. Following the long discussion in the Drafting Committee, it had been decided to place the whole article between square brackets and to inform the Commission of the difficulties encountered.

119. Mr. NJENGA said that there appeared to be no agreed text for article 17. Hence it would serve no useful purpose to forward to the General Assembly the text set out in document A/CN.4/L.455. The Commission should explain in its report to the General Assembly that no decision had been reached on the article, and the matter could then be decided later.

120. Mr. BENNOUNA said he agreed entirely that article 17 should not be forwarded to the General Assembly. He was very surprised to find that a document entitled "Titles and texts of articles adopted by the Drafting Committee" (A/CN.4/L.455) contained an article which had not in fact been adopted.

121. Mr. McCAFFREY said he, too, agreed that article 17 should not be referred to the General Assembly, since that would only cause more confusion as to the purpose of an article that had been the subject of considerable discord in the Drafting Committee and even, in his view, of general rejection. In any event, since the article had not been adopted by the Drafting Committee and recommended to the plenary Commission, he was not sure what the purpose of discussing it was.

122. The CHAIRMAN explained that, in view of its difficulties in completing work on article 17, the Drafting Committee had decided to refer the matter to the plenary Commission. It was for the Commission to decide whether or not to retain the article.

123. Mr. BEESLEY, associating himself with previous speakers, said that, in his view, article 17 should not be referred to the General Assembly. The Commission had had the benefit of a very objective account by the Chairman of the Drafting Committee of what had taken place in the Committee, which he would like to see in writing. The text of document A/CN.4/L.455 gave him less cause for satisfaction, particularly the reference in the footnote to article 17 to "The text, as it emerged from the discussion". He trusted that the Commission would reach a quick decision on whether or not to omit the article from its report to the General Assembly.

124. Mr. THIAM (Special Rapporteur) said that, contrary to what had been suggested, there had not been general rejection of article 17 in the Drafting Committee, although there had been disagreement on it. It was therefore for the plenary Commission to decide whether it wished the Drafting Committee to continue its work on the article or whether it wished to withdraw it. He favoured the latter course, since the Commission had discussed the text for two years without reaching agreement even on the principle, and the positions of members were still irreconcilable. The difficulties to which the Chairman of the Drafting Committee had referred were all points of substance, which that Committee could not decide. His personal view was that it would be wiser not to discuss the article any longer and to withdraw it from the Drafting Committee.

125. Mr. AL-QAYSI said that, in the light of the Special Rapporteur's remarks, the only solution would be to delete article 17 altogether.

126. Mr. KOROMA said that article 17 was admittedly a difficult provision, but it contained important elements. If the Commission rejected the article, it would not be doing itself justice. He therefore suggested that consideration of the matter be deferred, possibly for a further year, to see if a formulation could be found that would achieve the object of the article. In order not to waste any more time, however, he could agree to the postponement of further consideration of the matter.

127. Mr. Sreenivasa RAO agreed that the Commission should waste no more time on an article which was clearly not going to satisfy the majority of members. He therefore urged the Commission to adopt the Special Rapporteur's suggestion and delete article 17 entirely. The Drafting Committee could then move on to consider other articles of the draft code.

128. Mr. BARSEGOV said that any suggestion that article 17 as a whole had been rejected, either by the Drafting Committee or by the Commission itself, should be avoided, since it was not true. In fact there had been a time when the provisions in question had had the full support of the Commission, which was precisely why they had been referred to the Drafting Committee. What was more, the Drafting Committee's difficulties did not relate to the substance of the article, but were the normal kind that arose in such cases. Just when it had seemed that a possible solution was emerging, however, the climate of opinion had changed and many members now opposed the article.

129. He therefore wished it to be clearly reflected in the summary record of the meeting that, in his view, article 17 was an extremely important provision which concerned the fate of the world at a time when international relations were being restructured with a view to founding them not on force, but on the process of disarmament. Those who observed the work of the Com-

mission would no doubt find it difficult to understand why there had at first been virtually unanimous approval of the provisions in question, whereas there was now virtually unanimous rejection of article 17.

130. It had been said that, while the text of the article had not been adopted, the title had; in fact, however, the title still appeared in square brackets, which was the correct treatment as it would enable the Sixth Committee of the General Assembly to consider what issues were involved. If the article were deleted, it would not be known what had happened to such an important provision.

131. The issue was a political, not a legal, one. He would have no objection to ending the discussion on article 17, but would very much regret it if the Commission was unable to reach a decision on such an important provision.

132. Mr. PELLET said that the Special Rapporteur had made a reasonable and practical suggestion.

133. In response to Mr. Barsegov's remarks, he added that, of course, the violation of a treaty was always politically regrettable and legally blameworthy. Not every breach of an international obligation was a crime, however, still less a crime against peace. Hence he did not understand Mr. Barsegov's reasoning: he agreed with all his remarks but not the consequences that he inferred from them.

134. If the Commission maintained article 17 in the articles referred to the General Assembly—which he hoped it would not—he would suggest that the first sentence of the footnote to the article be reworded to read: "The Drafting Committee intends to revert to this article at a later stage if need be. It was unable to reach agreement on the content of the article or even on its principle at the present session."

135. Mr. ROUCOUNAS said that, from the very beginning of the consideration of article 17, he had been opposed to it. There had always been objections to the article because of problems of substance relating to the discrimination between parties and non-parties to disarmament treaties. He therefore agreed entirely with the proposal to delete the article, a solution which would better serve the cause of disarmament than seeking to criminalize a particular act and creating doubts about the universality of a crime covered by the code.

136. Mr. BARBOZA noted that the content of the footnote to article 17 differed entirely from what the Chairman of the Drafting Committee had said. According to him, the intention of the Drafting Committee had been to submit the text of article 17 for discussion with a view to bringing consideration of the article to an end. The gist of the footnote, however, was that the Drafting Committee intended to revert to the matter later. It was impossible to take a decision on such an important issue while that difference remained, and he was therefore not prepared to take part in a discussion on whether the article should be adopted. If the Drafting Committee had been unable to reach agreement it must say so, and refer the matter to the plenary Commission for a decision.

137. Mr. SOLARI TUDELA said that he had expressed certain doubts in the Drafting Committee concerning article 17, one of his difficulties being the universality of the crime contemplated. He had none the less supported the article and continued to do so, as he believed that a provision which condemned as a crime against peace breaches of treaties that were of great importance for the maintenance of peace could not be omitted from the code. That did not mean that the question of universality was not an important criterion: indeed, it was vital. A major effort to solve the problem had been made in the Drafting Committee but it had not been sufficient, and the Commission would now have to face up to that challenge.

138. Mr. GRAEFRATH said that he regretted the course the discussion had taken. There had been general agreement in the Drafting Committee on paragraphs 1 and 2 of article 17, but a problem had arisen with respect to paragraphs 3 and 4. There had been an impression that, under the terms of those paragraphs, States in breach of an obligation under one of the treaties in question would be punishable. He did not think that was so.

139. What was involved was a breach of a treaty of such a nature that it endangered international peace and security, and that was far too serious a matter to be dismissed lightly. If the Commission decided to take the major step of deleting article 17, it should be made clear in the commentary that a breach of the treaties in question would amount to "preparation of aggression" and perhaps also to "threat of aggression".

140. The text of article 17 set out in document A/CN.4/L.455 could not, of course, be submitted to the General Assembly together with articles that had been adopted. It could, however, be submitted together with the comments made by the Chairman of the Drafting Committee. The text on which the Drafting Committee could not agree should be reproduced in a footnote. There should also be an indication that consideration of the article had not been completed because of fundamental disagreement in the Commission, and the General Assembly should be informed of the problems involved with a view to obtaining its advice on how to proceed. He could not agree to the article simply being deleted on the ground that there were differing opinions as to whether it involved treaty law and whether there was reciprocity; that, to his mind, was not a convincing reason for deletion.

141. Mr. McCAFFREY said he agreed that the Commission should cease work on article 17, since it was clear, after two years' effort, that there was no change in members' conflicting positions. Contrary to what had been said, he did not believe that there had been agreement in the Drafting Committee on even one paragraph of the article. Indeed, some members, including himself, disagreed with the whole idea of having such an article. In his own case, it was because of the problems of reciprocity and universality: a crime under the code was universal by definition, yet a breach of a treaty of the type contemplated could not be universal, inasmuch as it would occur as between the parties to the treaty. Furthermore, the Commission would not, in fact, be deleting an article: it would be

deciding not to include an article on that particular subject and, in his view, should so report to the General Assembly. The text of article 17 set out in document A/CN.4/L.455 should not be included in the Commission's report to the General Assembly, since a number of members denied its very existence in the draft code.

142. Mr. JACOVIDES said that from the outset he had expressed reservations as to whether the Commission should deal with the idea embodied in article 17. His view was that, to be effective, the code must be as lean and defensible as possible and should not extend to the more controversial areas. Accordingly, he subscribed to the majority opinion in the Commission and did not favour referral of the matter to the General Assembly. Possibly, however, when the time came for the Commission to deal with aggression and the threat of aggression, an appropriate way could be found to accommodate the concerns expressed by certain members, including Mr. Graefrath.

143. Mr. PAWLAK said that he was in favour of article 17, though he was not very happy about its wording. If the crimes referred to in the article were not crimes against peace, then what were? It was not a question of punishing breaches of disarmament treaties, but serious breaches of treaties designed to ensure international peace and security. One only had to look back into history to see that the two world wars had started as a result of such breaches.

144. He therefore proposed, first, that the Commission's discussion should be fully reflected in the summary records and, secondly, that the Commission should seek the General Assembly's advice on how to proceed, explaining that difficulties had arisen because positions in the Commission differed. After all, there was no need to reject an important subject just because there was disagreement. There were many other subjects on which the Commission did not agree, but which it was still pursuing.

145. Mr. AL-QAYSI said it was abundantly clear from the discussion that a fundamental political issue was involved. It was therefore for the General Assembly to decide, on the basis of the summary records, whether it wished the Commission to revert to the matter. The Commission's prestige would only suffer if, notwithstanding the fundamental disagreement that would be apparent from the summary records, it told the General Assembly that it had decided to continue consideration of the matter. The only sensible decision would be to delete article 17 and set out the views of members in the summary records and in the report of the Commission. Then the General Assembly could, if it so wished, direct the Commission to reconsider the underlying principle of the article at its next session.

146. The CHAIRMAN asked whether members could agree not to refer draft article 17 to the General Assembly and to cease consideration of it.

147. Mr. KOROMA suggested that a decision on the article should be postponed. Otherwise, he would have to object to its deletion in the strongest terms.

148. Mr. BARSEGOV said that, if the decision suggested by the Chairman were adopted, he would like it to be recorded as having been taken by a majority.

149. The CHAIRMAN suggested that a meeting of the Bureau should be held forthwith to prepare a draft decision for consideration by the Commission at its next meeting.

It was so agreed.

The meeting rose at 6.20 p.m.

2197th MEETING

Tuesday, 17 July 1990, at 10.05 a.m.

Chairman: Mr. Jiuyong SHI

Present: Mr. Al-Qaysi, Mr. Arangio-Ruiz, Mr. Barboza, Mr. Barsegov, Mr. Beesley, Mr. Bennouna, Mr. Calero Rodrigues, Mr. Díaz González, Mr. Eiriksson, Mr. Francis, Mr. Graefrath, Mr. Illueca, Mr. Jacovides, Mr. Koroma, Mr. Mahiou, Mr. McCaffrey, Mr. Njenga, Mr. Ogiso, Mr. Pawlak, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Razafindralambo, Mr. Roucounas, Mr. Solari Tudela, Mr. Thiam, Mr. Tomuschat.

Draft Code of Crimes against the Peace and Security of Mankind[1] (*continued*) (A/CN.4/430 and Add.1,[2] A/CN.4/L.455)

[Agenda item 5]

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE (*continued*)

1. The CHAIRMAN announced that the Enlarged Bureau had held consultations on the way in which draft article 17 (Breach of a treaty designed to ensure international peace and security) should be dealt with in the Commission's report to the General Assembly, and the Rapporteur would announce the result of the consultations later (see para. 53 below).

ARTICLE 18 (Recruitment, use, financing and training of mercenaries)

2. Mr. MAHIOU (Chairman of the Drafting Committee) introduced the text proposed by the Drafting Committee for article 18, which read:

Article 18. Recruitment, use, financing and training of mercenaries

1. The recruitment, use, financing or training of mercenaries by agents or representatives of a State for activities directed against another State or for the purpose of opposing the legitimate exercise of

[1] 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.

[2] Reproduced in *Yearbook ... 1990*, vol. II (Part One).