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Summary record of the 2242nd meeting

Topic:
Other topics

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quested to submit their comments and observations to the Secretary-General by 1 January 1993.

It was so agreed.

147. The CHAIRMAN said that the Chairman of the Drafting Committee had indicated, on several occasions, during the presentation of his report, that the views of Governments would be particularly welcome on specific points that remained to be resolved. He suggested that the Special Rapporteur should, in cooperation with the Commission's Rapporteur, highlight those points in its report to the General Assembly, in accordance with the request contained in paragraph 5 (b) of General Assembly resolution 45/41 of 28 November 1990.

TRIBUTE TO THE SPECIAL RAPPORTEUR

148. The CHAIRMAN said that the Commission, its successive Drafting Committees and their Chairmen could be proud of having achieved one of the goals the Commission had set itself at the beginning of the current quinquennium. The Special Rapporteur had played an important role in the achievement of what at times had appeared to be an unattainable goal. He therefore proposed that the Commission should adopt a draft resolution that read:

“The International Law Commission,

“Having adopted provisionally the draft Code of Crimes against the Peace and Security of Mankind,

“Expresses to the Special Rapporteur, Mr. Doudou Thiam, its deep appreciation for the outstanding contribution he has made to the preparation of the draft by his untiring dedication and his professional abilities, which have enabled the Commission to bring to a successful conclusion its first reading of the draft Code of Crimes against the Peace and Security of Mankind.”

The draft resolution was adopted.

149. Mr. THIAM (Special Rapporteur) thanked members of the Commission for their support, encouragement and advice and in particular the members and Chairmen of the successive Drafting Committees. He also expressed appreciation for the valuable assistance he had always received from the secretariat.

The meeting rose at 1.25 p.m.

2242nd MEETING

Monday, 15 July 1991, at 10.50 a.m.

Chairman: Mr. Abdul G. KOROMA

Present: Prince Ajibola, Mr. Al-Qaysi, Mr. Arangio-Ruiz, Mr. Barboza, Mr. Barsegov, Mr. Beesley, Mr. Calero Rodrigues, Mr. Díaz González, Mr. Eiriks-

son, Mr. Graefrath, Mr. Jacovides, Mr. Mahiou, Mr. McCaffrey, Mr. Njenga, Mr. Ogiso, Mr. Pawlak, Mr. Pellet, Mr. Razafindralambo, Mr. Roucounas, Mr. Sepúlveda Gutiérrez, Mr. Shi, Mr. Solari Tudela, Mr. Thiam, Mr. Tomuschat.

Draft report of the Commission on the work of its forty-third session

1. The CHAIRMAN invited the Commission to consider its draft report, chapter by chapter, starting with chapter IV.

CHAPTER IV. *Draft Code of Crimes against the Peace and Security of Mankind* (A/CN.4/L.464 and Add.1-4)

B. Consideration of the topic at the present session (A/CN.4/L.464 and Add.1-3)

1. CONSIDERATION OF THE NINTH REPORT OF THE SPECIAL RAPPORTEUR (A/CN.4/L.464 and Add.1-3)

(a) *Penalties applicable to crimes against the peace and security of mankind* (A/CN.4/L.464/Add.1)

Paragraph 1

2. Mr. NJENGA suggested that the word “moreover” should be deleted from the second sentence.

It was so agreed.

Paragraph 1, as amended, was adopted.

Paragraphs 2 to 6

Paragraphs 2 to 6 were adopted.

Paragraph 7

3. Mr. RAZAFINDRALAMBO said that the words “draft provision prepared and then withdrawn” in the first sentence should be replaced by the words “draft provision subsequently withdrawn”. In the third sentence of the French text, the words *des biens* should be replaced by the words *de biens*, since paragraph 7 dealt with some rather than all property belonging to private individuals.

It was so agreed.

Paragraph 7, as amended, was adopted.

Paragraph 8

Paragraph 8 was adopted.

Paragraph 9

4. Mr. SHI said that he had a general comment to make on paragraphs 9 to 35 which reflected the debate on penalties that had taken place in plenary. The Commission had already adopted all the draft articles on first reading, including those on penalties. He therefore doubted whether opinions expressed during the general debate should be included in the draft report. In his view, para-

graphs 9 to 35 should be deleted. The Commission should retain what was now paragraph 36 and add the following sentence to it: "The Commission decided to refer the proposed article to the Drafting Committee."

5. Mr. THIAM (Special Rapporteur) said that, during the general debate, members had been divided as to whether the draft Code should contain a single penalty or a penalty for each crime. The Commission wished to hear the comments of Governments on that matter before taking a final decision. The entire debate should be reflected in the report so that States could choose from the full range of possible solutions. Paragraphs 9 to 35 should therefore be included in the draft report.

6. Mr. MAHIOU said that he understood Mr. Shi's desire to eliminate non-essential paragraphs from the report. The Commission could in fact have tried to summarize its view on penalties more succinctly. At the same time, the extensive coverage of penalties in the draft report reflected both the length of the debate in plenary and the differences of opinion which had arisen. In the final analysis, the Commission would look to States for guidance on the issues dealt with in paragraphs 9 to 35. It was therefore important that States should be fully aware of those issues. As it was too late for any further revision of chapter IV, section B, of the draft report, he was in favour of retaining paragraphs 9 to 35 as they stood.

7. Mr. PAWLAK (Chairman of the Drafting Committee) said that, in formulating the draft articles, the Drafting Committee had not tried to reconcile the differences of opinion in respect of penalties. It had chosen instead to highlight the issue by including the words "be sentenced [to . . .]" in the introductory paragraph of each article dealing with crimes. That indicated that there had been a difference of opinion and drew the attention of the General Assembly to the fact that the views of States on that matter were of particular interest. For those reasons, he was in favour of including paragraphs 9 to 35 in the draft report.

8. Mr. JACOVIDES said he was now convinced that it would be useful for the General Assembly to have full knowledge of the differences of opinion in respect of penalties. Therefore, if Mr. Shi did not insist, paragraphs 9 to 35 should be retained as they stood.

9. Mr. SHI said that, in view of the comments made, he would not insist on the deletion of paragraphs 9 to 35.

10. The CHAIRMAN, speaking as a member of the Commission, said that, while he shared the concerns expressed by Mr. Shi, he felt that the Commission could not start revising an entire section of the draft report at the current stage. Mr. Shi's comments were also relevant to the question of the preparation and presentation of the Commission's report. The Commission should therefore give some consideration, early in the next quinquennium, to the way in which its report was prepared.

11. Mr. CALERO RODRIGUES said he shared the Chairman's view that during its next mandate the Commission should consider the issue of the preparation of its report. The current format could certainly be im-

proved. For example, he agreed that the debate on penalties in plenary had to be reflected in the draft report. However, paragraphs 9 to 35 simply gave examples of the various views that had been expressed. No attempt had been made to summarize the main trends that had emerged during the debate.

12. Mr. BARSEGOV said that he personally would find it difficult to describe the Commission's overall decision on the inclusion of penalties in the draft Code. Because a number of divergent opinions had been expressed on that matter, the Sixth Committee should have full knowledge of the possible alternatives. He therefore thought that the text under consideration should be adopted as it stood.

Paragraph 9 was adopted.

Paragraph 10

Paragraph 10 was adopted.

Paragraph 11

13. Mr. THIAM (Special Rapporteur) said that one member of the Commission had just requested that the following sentence should be added at the end of paragraph 11: "However, one member was of the opinion that it would be best not to set a minimum for the applicable penalties in the draft Code so that, at the time of sentencing, the court would be in a better position to take account of the particular circumstances of each case."

14. The CHAIRMAN said that, if he heard no objection, he would take it that the Commission wished to add the sentence proposed by the Special Rapporteur to paragraph 11.

It was so agreed.

15. Mr. MAHIOU pointed out to the Special Rapporteur that, in the French text, the phrases following the words *en deux tendances* could be drafted in a more elegant manner.

Paragraph 11, as amended, was adopted.

Paragraphs 12 to 16

Paragraphs 12 to 16 were adopted.

Paragraph 17

16. Mr. MAHIOU said that, in the fourth sentence, it would be best to omit the specific historical reference to dictators. There had been dictators before the 1930s and, unfortunately, there had been dictators after that period. He therefore suggested that the words "of the type common in the 1930s" should be deleted.

It was so agreed.

Paragraph 17, as amended, was adopted.

Paragraphs 18 to 27

Paragraphs 18 to 27 were adopted.

Paragraph 28

17. Mr. JACOVIDES proposed that the word "should" should be replaced by the word "could" in the fourth sentence.

18. Mr. NJENGA proposed that a new sentence should be inserted between the third and fourth sentences, to read: "One member suggested that such property, if not returned to the rightful owners, in the event that they could not be traced, should be turned over to the State as property *bona vacantia* to be allocated to such charities as the State may determine."

19. The CHAIRMAN said that he had no objection to the insertion of that sentence. However, he was not sure whether the term *bona vacantia* was appropriate.

20. Mr. PAWLAK said that, in the second sentence, the words "or by injured States" should be added after the words "of the crimes in question".

21. Mr. BARSEGOU said that, in his view, the expression "stolen goods", which appeared in the first sentence, was not altogether appropriate, since what was at issue was not just theft by stealth, but theft involving an element of force which could even result in injury or death. In the French version, the word *pillés* would be preferable to the word *volés*.

22. Mr. THIAM (Special Rapporteur) said that the expression "stolen goods" had been borrowed from conventions drawn up after the Second World War and it referred to property appropriated in an unlawful or unjust manner. Possibly, therefore, the word "stolen" could be replaced by the words "unlawfully appropriated" or some similar term. The matter called for reflection, however.

23. Mr. RAZAFINDRALAMBO said that, in his view, the expression "stolen goods" was perfectly satisfactory, for theft did not exclude violence. The expression *biens pillés* would not be appropriate, as it presupposed a degree of disorder and participation on a wide scale by a number of persons. The persons who perpetrated the crime under consideration were indeed thieves inasmuch as they were leaders of countries who had appropriated property belonging to others.

24. Mr. NJENGA said that, in English, the correct word which would most closely reflect what was at issue was "pillaged".

25. Mr. ARANGIO-RUIZ said that the Italian term *appropriazione indebita* would cover the case, but he did not think that there was any equivalent in English or French. Perhaps, however, some expression could be found that was a little stronger than "stolen".

26. Mr. MAHIOU said that, in his view, the expression "stolen goods" was appropriate because internal law provided for several categories of theft, including armed robbery, which could result in death. What characterized the property in question was the fact that it was stolen and it did not matter whether that property was stolen in a gentle or in a violent manner. The use of force simply meant that the guilty person would receive a harsher sentence. The main point therefore was to qualify the prop-

erty in law as stolen property and, on that basis, to decide on the consequences so far as the status of the property was concerned.

27. On reflection, however, the word *spoliés* might meet Mr. Barsegov's point.

28. Mr. THIAM (Special Rapporteur) said that he could agree to Mr. Mahiou's suggestion provided that the sentence was rephrased, in the interests of correct syntax, to refer to property of which the victims had been robbed.

29. Mr. CALERO RODRIGUES pointed out that paragraph 24 referred to stolen property and paragraph 26 to misappropriated property which "appeared to include 'stolen property'". The use of the expression "stolen property" in paragraph 28 therefore seemed to follow on from previous paragraphs.

30. The CHAIRMAN suggested that the question of a suitable form of wording to replace the expression "stolen goods" should be considered further by interested members in the light of the comments made.

It was so agreed.

Paragraph 28 was adopted on that understanding.

Paragraph 29

Paragraph 29 was adopted.

Paragraphs 30 to 36

31. Mr. RAZAFINDRALAMBO, noting that paragraphs 30 to 35 referred to the Special Rapporteur's conclusions, proposed that, for the sake of clarity, a new subheading entitled "Conclusions of the Special Rapporteur" should be introduced at the beginning of those paragraphs.

32. Mr. THIAM (Special Rapporteur) said he did not think that it was absolutely necessary to have a subtitle for the conclusions of the Special Rapporteur. He would, however, have no objection if that were the wish of the Commission.

33. Mr. CALERO RODRIGUES said that, in his view, Mr. Razafindralambo had made a most useful suggestion.

34. Mr. PAWLAK said he too agreed that it would be useful to introduce a subheading on the conclusions of the Special Rapporteur.

35. The CHAIRMAN said that the secretariat wished to know whether members considered that there should be a separate subheading on the conclusions of the Special Rapporteur for each topic dealt with in the Commission's report.

36. Mr. THIAM (Special Rapporteur) said that that would certainly be an innovation, for there had been nothing of the kind in previous reports. Again, however, he would have no objection if that were the wish of the Commission.

37. Mr. RAZAFINDRALAMBO said he did not think that it was necessary to include a separate subheading in all the chapters of the report.

38. The CHAIRMAN, noting that Mr. Razafindralambo's proposal would make the text more readable without creating a precedent, said that, if he heard no objection, he would take it that the Commission wished to add a new subheading reading "Conclusions by the Special Rapporteur" before paragraph 30.

It was so agreed.

The new subheading was adopted.

Paragraphs 30 to 36 were adopted.

Section B I(a), as amended, was adopted.

(b) *The jurisdiction of an international criminal court (A/CN.4/L.464/Add.2)*

Paragraphs 1 to 4

Paragraphs 1 to 4 were adopted.

Paragraph 5

39. Mr. THIAM (Special Rapporteur), referring to the French text, proposed that the word *s'embarquer*, in the third sentence, should be replaced by the word *s'engager*.

It was so agreed.

Paragraph 5, as amended, was adopted.

Paragraph 6

40. Mr. PAWLAK said that the words "a minimum of", in the second sentence, would, in his view, detract from the standing of the court and other institutions of a similar type. He therefore proposed that they should be deleted.

41. Mr. BARSEGOV supported that proposal.

42. The CHAIRMAN said that, on the advice of the secretariat, he would suggest that the words "provide a minimum" should be replaced by the words "guarantee the requirement".

It was so agreed.

Paragraph 6, as amended, was adopted.

Paragraph 7

43. Mr. RAZAFINDRALAMBO proposed the addition, at the end of the paragraph, of the following sentence: "One member recommended that an international criminal court should be set up on a provisional basis to fill the existing gap caused by the lack of an international criminal jurisdiction."

It was so agreed.

Paragraph 7, as amended, was adopted.

Paragraphs 8 and 9

Paragraphs 8 and 9 were adopted.

Paragraph 10

44. Mr. NJENGA said that he had some difficulty in understanding the thrust of the fourth sentence. He therefore proposed that the dashes should be replaced by commas and that the words between the dashes should be amended to read "particularly if it meant confining such jurisdiction to an international court on a case-by-case basis as and when they wished".

45. Prince AJIBOLA proposed that the words "including the gravest", in the same sentence, should be replaced by the words "however grave".

It was so agreed.

46. Mr. CALERO RODRIGUES said that, if the words "was not certain" were deleted, the whole meaning of the sentence would be altered.

47. Mr. McCAFFREY said that he did not understand whether the words "... the argument ... was not certain" were intended to mean that the argument was not persuasive.

48. The CHAIRMAN suggested that the sentence should be redrafted in the light of the comments made.

It was so agreed.

49. Mr. PAWLAK said that, if the first sentence had reflected the views of one member rather than "other members", he could have accepted it. As it was, the words "or even between national courts themselves", which appeared at the end of that sentence, would preclude the exercise of international jurisdiction by national courts. He therefore proposed that the sentence should end with the words "between the court and national courts".

It was so agreed.

50. Mr. PAWLAK said that the last three sentences of paragraph 10 should be deleted. If they were left in the text, they would create considerable perplexity among legal advisers of Ministries of Foreign Affairs. For example, the statement in the antepenultimate sentence of paragraph 10 that "it should be realized that the principle of sovereignty was no longer what it used to be" was much too sweeping and inaccurate in any case.

51. Mr. CALERO RODRIGUES pointed out that those three sentences reflected the views of some members only; the first one actually began with the words "In the opinion of those members". He did not agree with that way of summarizing the views of individual members or groups of members, but, since the Commission had decided to adopt that system, it should be followed consistently. There should be no question of censoring some members' views simply because other members did not endorse them.

52. Mr. RAZAFINDRALAMBO said that he fully shared Mr. Calero Rodrigues' opinion.

53. Mr. NJENGA said that he was not satisfied with the wording of the seventh sentence. The problem was

not one of censorship, particularly since the views of members were adequately reflected in the summary records. The best solution would probably be to replace the words “the principle of sovereignty was no longer what it used to be” by more suitable wording.

54. Mr. MAHIOU said that he agreed with that suggestion and proposed that those words should be amended to read: “the principle of sovereignty has evolved”.

55. Mr. BARSEGOV said that the members whose views were reflected in the sentence should be consulted on how it should be amended.

56. Mr. THIAM (Special Rapporteur) suggested that the sentence should be amended to read: “In the opinion of those members, the principle of sovereignty was not as absolute as it had been in the past.”

Paragraph 10, as amended, was adopted.

Paragraph 11

57. Mr. THIAM (Special Rapporteur), referring to the penultimate sentence of the English text, said that the words “in the case of the prosecution of war crimes and crimes against humanity” should be replaced by the words “for all crimes against the peace and security of mankind”.

Paragraph 11, as amended, was adopted.

Paragraph 12

58. Mr. THIAM (Special Rapporteur) said that, in the fifth sentence of the French text, the words *au sujet de savoir* should be amended to read: *sur le point de savoir*.

Paragraph 12, as amended, was adopted.

Paragraph 13

59. Mr. NJENGA suggested that the words “Regardless of the question . . .” at the beginning of the paragraph should be amended to read: “Besides the question . . .”.

It was so agreed.

Paragraph 13, as amended, was adopted.

Paragraph 14

Paragraph 14 was adopted.

Paragraphs 15 and 16

60. Mr. PAWLAK said it was not correct to say in paragraph 15 that “One member advocated a maximalist position . . .”. As he recalled it, more than one member had advocated such a position.

61. Mr. THIAM (Special Rapporteur) said that the attribution of the position in question to one member was based on information supplied by the secretariat.

62. Mr. CALERO RODRIGUES pointed out that the position referred to in paragraph 15 was only one of the “maximalist” positions stated during the discussion.

Paragraph 16 referred to another maximalist position, as well as to a minimalist position.

63. Mr. BARSEGOV, supported by Mr. BEESLEY and Mr. THIAM (Special Rapporteur), proposed that the words “maximalist” and “minimalist” should be deleted throughout paragraphs 15 and 16.

It was so agreed.

64. Mr. NJENGA proposed that, in the first sentence of paragraph 16, the words “should cover all of the crimes” should be amended to read “should cover only the crimes . . .”.

It was so agreed.

65. Mr. MAHIOU said that the second sentence required clarification.

66. The CHAIRMAN suggested that the exact wording of the amendment should be left to the Special Rapporteur.

Paragraphs 15 and 16, as amended, were adopted on that understanding.

Paragraph 17

Paragraph 17 was adopted.

Paragraph 18

67. Mr. PAWLAK said that, in the sixth sentence, the words “combining the principles of territoriality, active and passive personality and real protection, with priority on the principle of territoriality” were difficult to understand and should be made clearer.

68. Mr. THIAM (Special Rapporteur) said that that sentence referred to the fact that there were three principles for determining criminal jurisdiction: the principle of territoriality, the principle of active and passive personality and the principle which was known in French as *protection réelle* and under which jurisdiction was attributed to the State that had been the victim of the crime. Priority must, however, be given to the principle of territoriality.

69. Mr. NJENGA said that, in English, the term “real protection” did not mean anything.

70. Mr. TOMUSCHAT proposed that the word “real” should be deleted.

It was so agreed.

Paragraph 18, as amended, was adopted.

Paragraph 19

71. Mr. PAWLAK, referring to the fourth sentence, said that the parties to the Code did not have jurisdiction.

72. Mr. THIAM (Special Rapporteur) said that universal jurisdiction was not conferred on the court by virtue of the fact of dealing with a crime committed in the territory of a State party. The fourth sentence therefore seemed to be meaningless.

73. Mr. CALERO RODRIGUES said that the problem was one of drafting. He suggested that the sentence should be amended to read: "The parties to the Code could not, therefore, claim to confer universal jurisdiction on the court."

It was so agreed.

Paragraph 19, as amended, was adopted.

Paragraph 20

Paragraph 20 was adopted.

Paragraph 21

74. Prince AJIBOLA said the first sentence placed too much emphasis on the disagreement in the Commission concerning the Special Rapporteur's overall approach. He proposed that the words "at all" should be deleted.

It was so agreed.

Paragraph 21, as amended, was adopted.

Paragraphs 22 and 23

Paragraphs 22 and 23 were adopted.

Paragraph 24

75. Mr. PELLET suggested that, in French, the beginning of the last sentence should be amended to read: "Le paragraphe pourrait aller à l'encontre de la jurisprudence de la Cour permanente de justice internationale dans l'affaire du Lotus . . .".

It was so agreed.

76. The CHAIRMAN said that the words "run counter to" and "counter to" in the last sentence should be replaced by the words "be contrary to" and "contrary to".

It was so agreed.

Paragraph 24, as amended, was adopted.

Paragraphs 25 and 26

77. Mr. NJENGA said the word "final" should be added before the words "decision of a national court" in the fourth sentence of paragraph 25.

78. Mr. CALERO RODRIGUES said that the statement in the second sentence of paragraph 25 that "the judgement submitted for review would have to be final" was open to question. Where a State did not object to the international court's review jurisdiction and its own appeals procedure was not invoked, the judgement would not necessarily be final; it might be a decision in first instance.

79. Mr. NJENGA said that a defendant must exhaust the appeal mechanisms in his own country, as was the case with European human rights jurisdiction. No appeal would be allowed to an international court from a decision of a court of first instance. Even without the word "final", the decision would necessarily be that of the court of final appeal.

80. Mr. CALERO RODRIGUES said that there were two possible interpretations of paragraph 25, which, moreover, represented the view of one member only.

81. The CHAIRMAN said that the text implied that only a final decision would be appealable. It should be left unaltered on that understanding.

82. Mr. MAHIOU, referring to paragraph 26, said that the second sentence required clarification. It seemed to mean that States which were reluctant to confer jurisdiction on the international criminal court would be even less willing to do so if judgements of their own courts were to be reviewed. The members of the Commission who had held that view apparently had in mind a direct channel of appeal to the international criminal court.

83. Prince AJIBOLA said that he objected to the fourth sentence of paragraph 25. In particular, the words "a State which had not felt able to decline jurisdiction" did not clearly bring out the intended meaning. He suggested that they should be replaced by the words "a State which was not disposed to grant jurisdiction".

84. Mr. BARSEGOV said that he agreed with Mr. Mahiou. Cases heard on review by an international court, acting as a court of second instance, could not be reviewed by a national court.

85. Mr. RAZAFINDRALAMBO said that the problem arose as a result of the interpretation of the second sentence of paragraph 26. Would States which objected to the international court having jurisdiction in first instance agree that it should have review jurisdiction for final decisions of their own courts? That idea was already expressed at the end of paragraph 25. To avoid ambiguity, he suggested that the second sentence of paragraph 26 should be deleted.

86. Mr. THIAM (Special Rapporteur) said that he agreed with Mr. Razafindralambo. States which were unwilling to confer jurisdiction on the international court would be equally unwilling to give it review jurisdiction. The text of paragraph 25 was badly drafted and he suggested that it should be left in abeyance until a new version had been prepared.

87. Mr. CALERO RODRIGUES said that the problem was to determine exactly what had been meant by the member of the Commission who had originally raised the point. That could be done by looking at the relevant summary record.

88. The CHAIRMAN, speaking as a member of the Commission, said that his concern was that legally flawed statements should not be incorporated in the Commission's report.

89. Mr. PELLET said that, as one of the members who had raised the point, he had meant that it might be less acceptable for the international court to be given review jurisdiction than jurisdiction in first instance. States were unlikely to welcome its being able to overturn judgements handed down by their own courts. Other members shared that view.

90. Mr. CALERO RODRIGUES, speaking on a point of order, said that the point made in paragraph 25 was the opinion of one member only.

91. Mr. BARSEGOV said that, if members of the Commission were reluctant to admit to authorship of the statements they had made in meetings, it would be better to omit those statements. Otherwise, members might be tempted to change their minds.

92. Prince AJIBOLA said that he disagreed. The member in question was not present and might object to his statement being deleted. It would be best to check the summary record.

93. The CHAIRMAN said it was to be hoped that, in future, the Commission's report would be a synthesis of the discussion, not a record of individual statements.

94. Mr. THIAM (Special Rapporteur) said that he could draft a new version of paragraph 25, in co-operation with Mr. Pellet.

95. Mr. PELLET said that his views were reflected in paragraph 26. However, the second sentence of that paragraph duplicated the statements contained in paragraph 25.

96. Mr. MAHIOU said it was important to avoid ambiguity. It would be helpful if the Special Rapporteur could redraft the second sentence of paragraph 26 as well.

97. Mr. RAZAFINDRALAMBO said that the views reflected in paragraph 25 were his. He had meant that, where States rejected the jurisdiction of the international criminal court in first instance, they were unlikely to give it jurisdiction to review decisions of their own courts. Since the idea contained in paragraph 25 was repeated at the end of paragraph 26, the Special Rapporteur should be asked to redraft paragraph 26 as well.

98. Prince AJIBOLA said that, since the two paragraphs were connected, both should be redrafted.

99. Mr. PELLET proposed that the discussion on the two paragraphs should be suspended until the Special Rapporteur was ready to propose amended versions.

It was so agreed.

Paragraph 27

100. Mr. CALERO RODRIGUES said that, in order to bring the English text into line with the French text, the words "and unifying" should be added after the word "harmonizing" in the second sentence.

It was so agreed.

Paragraph 27, as amended, was adopted.

Paragraph 28

101. Mr. PAWLAK said that, for the sake of consistency in the last sentence, the reference to the United Nations General Assembly and Security Council should either be deleted or the words "main organs of" should be added before the words "other intergovernmental international organizations".

102. Mr. PELLET said that, since Article 96 of the Charter of the United Nations provided that advisory opinions could be requested by "other organs of the United Nations and specialized agencies", it would be more logical to refer to "certain organizations".

103. The CHAIRMAN said that the word "international" could then be deleted.

It was so agreed.

104. Mr. THIAM (Special Rapporteur) said that, in the French version of the last sentence, the words *droit pénal international* should be amended to read: *droit international pénal*.

Paragraph 28, as amended, was adopted.

Paragraph 29

Paragraph 29 was adopted.

The meeting rose at 1 p.m.

2243rd MEETING

Monday, 15 July 1991, at 3 p.m.

Chairman: Mr. Abdul G. KOROMA

Present: Prince Ajibola, Mr. Al-Baharna, Mr. Al-Khasawneh, Mr. Arangio-Ruiz, Mr. Barboza, Mr. Barsegov, Mr. Beesley, Mr. Calero Rodrigues, Mr. Díaz González, Mr. Eiriksson, Mr. Graefrath, Mr. Jacovides, Mr. Mahiou, Mr. McCaffrey, Mr. Njenga, Mr. Ogiso, Mr. Pawlak, Mr. Pellet, Mr. Razafindralambo, Mr. Roucounas, Mr. Sepúlveda Gutiérrez, Mr. Shi, Mr. Solari Tudela, Mr. Thiam, Mr. Tomuschat.

Draft report of the Commission on the work of its forty-third session (continued)

CHAPTER IV. Draft Code of Crimes against the Peace and Security of Mankind (continued) (A/CN.4/L.464 and Add.1-4)

B. Consideration of the topic at the present session (continued) (A/CN.4/L.464 and Add.1-3)

1. CONSIDERATION OF THE NINTH REPORT OF THE SPECIAL RAPPORTEUR (continued) (A/CN.4/L.464 and Add.1-3)

(b) The jurisdiction of an international criminal court (concluded) (A/CN.4/L.464/Add.2)

Paragraphs 25 and 26 (concluded)

1. Mr. THIAM (Special Rapporteur) said that, in consultation with Mr. Razafindralambo and Mr. Pellet,