

Document:-  
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**Summary record of the 2294th meeting**

Topic:  
**Other topics**

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*Paragraph 25, as amended, was adopted.*

*The meeting rose at 6.15 p.m.*

## 2294th MEETING

*Friday, 24 July 1992, at 10 a.m.*

*Chairman: Mr. Christian TOMUSCHAT*

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

### **Draft report of the Commission on the work of its forty-fourth session (concluded)**

#### **CHAPTER I. Organization of the session (concluded) (A/CN.4/L.474 and Add.1)**

#### **H. Issues on which expressions of views by Governments would be of particular interest for the Commission for the continuation of its work (concluded)**

Paragraph 14

1. The CHAIRMAN introduced a revised version of the text proposed orally at the previous meeting for a new section H, which was to be added to the introduction to the report of the Commission, as paragraph 14, to read:

“14. With respect to the topic ‘Draft Code of Crimes against the Peace and Security of Mankind’, the Commission, as follows from its decision on the topic, requests a clear indication by Governments if it should now embark on the elaboration of a draft statute of an international criminal court and, in the affirmative, whether the Commission’s work on the matter should proceed on the basis indicated in that decision.”

2. Mr. CRAWFORD proposed that, in paragraph 14 constituting section H, the words “in the affirmative” should be replaced by the words “if so”.

*Paragraph 14, as amended, was adopted.*

*Section H, as amended, was adopted.*

*Chapter I, as a whole, as amended, was adopted.*

#### **CHAPTER V. Other decisions and conclusions of the Commission (concluded) (A/CN.4/L.477 and Corr.1)**

#### **D. Programme, procedures and working methods of the Commission, and its documentation (concluded)**

##### 3. DRAFTING COMMITTEE (concluded)

Paragraph 23 (concluded)

3. The CHAIRMAN recalled that paragraph 23 had been held in abeyance because there had been objections to the amendment Mr. Koroma had proposed to paragraph 23 (e). He therefore suggested that the Commission should adopt the original text.

*Paragraph 23 was adopted.*

##### 5. CONTRIBUTION OF THE COMMISSION TO THE DECADE OF INTERNATIONAL LAW

Paragraph 26

*Paragraph 26 was adopted.*

Paragraph 27

4. Mr. PELLET proposed that the third sentence should end with the words “. . . the contents of the suggested publication.” and that a new fourth sentence should read: “The informal group held a meeting on 22 July 1992”.

*Paragraph 27, as amended, was adopted.*

Paragraph 28

*Paragraph 28 was adopted.*

##### 6. POSSIBILITY OF DIVIDING THE COMMISSION’S ANNUAL SESSION INTO TWO PARTS

##### 7. DURATION OF THE NEXT SESSION

Paragraphs 29 and 30

*Paragraphs 29 and 30 were adopted.*

#### **E. Cooperation with other bodies**

Paragraphs 31 to 33

5. Mr. KOROMA proposed that, in future, the report of the Commission should reflect the main points of the statements by the representatives of other bodies instead of referring only to the relevant summary record.

*Paragraphs 31 to 33 were adopted.*

#### **F. Date and place of the forty-fifth session**

Paragraph 34

*Paragraph 34 was adopted.*

#### **G. Representation at the forty-seventh session of the General Assembly**

## Paragraph 35

6. Following an exchange of views in which Mr. CRAWFORD, Mr. EIRIKSSON, Mr. KOROMA and Mr. VERESHCHETIN took part, the CHAIRMAN proposed that the secretariat should be requested to add a footnote to paragraph 35 stating that the Commission had agreed that none of its Special Rapporteurs should take part in the debates in the Sixth Committee at the forthcoming session of the General Assembly but that it might be appropriate at a later stage in the quinquennium to send more than one Special Rapporteur.

*Paragraph 35, as amended, was adopted.*

## H. International Law Seminar

## Paragraphs 36 to 38

*Paragraphs 36 to 38 were adopted.*

## Paragraph 39

7. Mr. PELLET proposed that a sentence should be added to indicate that the Commission had found that experiment encouraging and would try to repeat it in future.

*Paragraph 39, as amended, was adopted.*

## Paragraphs 40 to 42

*Paragraphs 40 to 42 were adopted.*

## Paragraph 43

8. Mr. de SARAM proposed that a sentence should be added mentioning the young participant who had made an extremely brilliant statement during the closing ceremony of the International Law Seminar.

*Paragraph 43 was adopted on that understanding.*

## Paragraph 44

9. The CHAIRMAN urged all members of the Commission, particularly those from wealthy countries, to encourage their Governments to make voluntary contributions to help finance the International Law Seminar.

*Paragraph 44 was adopted.*

## Paragraphs 45 and 46

*Paragraphs 45 and 46 were adopted.*

*Chapter V, as a whole, as amended, was adopted.*

## CHAPTER II. Draft Code of Crimes against the Peace and Security of Mankind (concluded) (A/CN.4/L.475/Rev.1)

## B. Consideration of the topic at the present session (concluded) (A/CN.4/L.475/Rev.1)

10. The CHAIRMAN said that, pursuant to the decision taken at the 2292nd meeting, section B had been re-drafted and the text of the complete revised version of chapter II was to be found in document A/CN.4/475/

Rev.1. He invited the Commission to resume its consideration of that chapter, beginning with paragraph 9.

## Paragraph 9

*Paragraph 9 was adopted.*

## 1. CONSIDERATION OF THE SPECIAL RAPPORTEUR'S TENTH REPORT

## Paragraph 10

11. Mr. PELLET said that the word "desirability" in paragraph 10 had been rendered in French as *opportunité*. However, the Special Rapporteur had referred to the feasibility, not the desirability, of establishing the court.

12. Mr. THIAM (Special Rapporteur) said that his general idea had been that the Commission should decide not whether it was desirable, but whether it was technically feasible to establish an international criminal court.

13. Mr. CRAWFORD proposed that the word "desirability" should be replaced by the word "feasibility".

*It was so agreed.*

*Paragraph 10, as amended, was adopted.*

## Paragraphs 11 to 13

*Paragraphs 11 to 13 were adopted.*

## Paragraph 14

14. Mr. BENNOUNA proposed that a new sentence should be added after the third sentence, to read: "Some members stressed that, in certain cases, national courts both in the State where the accused was found and in the injured State could be suspected of being partial".

*It was so agreed.*

15. Mr. CRAWFORD proposed that, in the second sentence, the words "Most members", which were an exaggeration, should be replaced by the words "Many members".

*It was so agreed.*

*Paragraph 14, as amended, was adopted.*

## Paragraph 15

16. Mr. BENNOUNA said that the second sentence was of very great significance in the light of the discussion that had taken place in the Commission. For the sake of clarity, he proposed that it should be followed by a text reading: "In this connection, some members cautioned against the temptation of drawing too much on models from internal criminal codes".

*It was so agreed.*

17. Mr. PELLET proposed that, in the last sentence, the words "international law" should be replaced by the words "international institution" or "international mechanism". Otherwise, the sentence would not make sense.

*It was so agreed.*

*Paragraph 15, as amended, was adopted.*

## Paragraph 16

18. Mr. CRAWFORD proposed that the beginning of the first sentence should simply read: "Some members were sceptical".

*It was so agreed.*

19. Following a discussion in which Mr. PELLET, Mr. CRAWFORD, Mr. BENNOUNA, Mr. THIAM (Special Rapporteur), Mr. ARANGIO-RUIZ, Mr. SHI, Mr. CALERO RODRIGUES and Mr. ROSENSTOCK took part as to whether the third sentence accurately expressed the grounds for the scepticism described in the first sentence, Mr. CALERO RODRIGUES proposed that, in order to avoid any ambiguity, the words "Some of them expressed the view that" should be added at the beginning of the third sentence.

*It was so agreed.*

*Paragraph 16, as amended, was adopted.*

20. Mr. ARANGIO-RUIZ proposed that a new paragraph 16 *bis* should be added after paragraph 16, to read:

"16 *bis*. One member stressed that, whatever the difficulties in establishing an international criminal court and related institutions, those difficulties would not be any greater—and would probably be much less—than the difficulties in the way of the adoption by States of a Code of Crimes against the Peace and Security of Mankind and the implementation of such a Code by a plurality of institutions operating under more than 175 distinct sovereignties."

*Paragraph 16 bis was adopted.*

## Paragraph 17

21. Mr. KOROMA suggested that, in the first sentence, the word "or" should be replaced by the words "in the sense of a".

*Paragraph 17, as amended, was adopted.*

## Paragraph 18

22. Mr. AL-KHASAWNEH suggested that the words "inherent to" should be replaced by "inherent in" and that the word "criminal" should be inserted before the word "court".

23. Mr. CRAWFORD said that, since "permanence" applied not only to a criminal court, but also to a civil court, the words "concept of a criminal court" should be replaced by the words "concept of a court or at least a criminal court".

*It was so agreed.*

*Paragraph 18, as amended, was adopted.*

## Paragraph 19

24. Mr. EIRIKSSON suggested that, for the sake of clarity, the three issues should be preceded by the letters (a), (b) and (c), respectively.

*Paragraph 19, as amended, was adopted.*

## Paragraphs 20 to 24

*Paragraphs 20 to 24 were adopted.*

## Paragraph 25

25. Mr. EIRIKSSON proposed that, in the first sentence, the words "including the Special Rapporteur in his tenth report" should be deleted and that the beginning of the second sentence should be amended to read: "This view had been expressed by the Special Rapporteur in his tenth report".

*It was so agreed.*

26. Mr. AL-KHASAWNEH said that, in the third sentence, the reference to "international protected persons" should read "internationally protected persons".

*Paragraph 25, as amended, was adopted.*

## Paragraphs 26 to 28

*Paragraphs 26 to 28 were adopted.*

## Paragraph 29

27. Mr. KOROMA proposed that, in the second sentence, the word "dubious" should be replaced by the word "doubtful".

28. Mr. CRAWFORD said that, better still, the second sentence would be clearer and less cumbersome if it was amended to read: "They had doubts as to the acceptability of the draft Code, as presently drafted, to many States . . .".

*Paragraph 29, as amended, was adopted.*

## Paragraph 30

29. Mr. CRAWFORD said that he had trouble with the wording of paragraph 30, which basically meant that the existence of a link between the court and the Code would not create any problem because the jurisdiction of the court would be flexible and States could accept it for some crimes and not for others.

30. In fact, however, that option would no longer exist if the Code had to be accepted when the statute of the court was accepted. He was therefore of the opinion that paragraph 30 should be deleted because it did not follow on logically from paragraph 29.

31. The CHAIRMAN said he found that the two paragraphs were closely linked.

32. Mr. CRAWFORD proposed that paragraph 30 should be replaced by a text to read: "Some other members, however, felt that this risk would be avoided if the court's jurisdiction in relation to the Code was limited only to some crimes defined in the Code" or by an even simpler text, to read: "Some other members, however, felt that this risk would be avoided if States could accept the court's jurisdiction with respect to some, but not all, the crimes defined in the Code".

33. Mr. ROSENSTOCK said that he could agree to either of the new texts proposed by Mr. Crawford, but the main question was whether the Code would be included

in the list of instruments to which the jurisdiction of the court would apply. In his opinion, that was not at all obvious, for the draft Code was still very controversial.

34. Mr. THIAM (Special Rapporteur) said that, as it stood, paragraph 30 reflected the opinion expressed by some members and he therefore did not see why it should be changed.

35. Mr. CRAWFORD said that he agreed with the Special Rapporteur that the report should basically reflect the views expressed in plenary, but he nevertheless insisted that paragraph 30 should be amended in accordance with his proposal because paragraph 29 dealt with the general question of the link between the court and the Code and the real question that arose was not whether the Code was a possible basis for jurisdiction, but whether it was a necessary basis for jurisdiction.

*It was agreed to replace the paragraph by the second of the versions proposed by Mr. Crawford.*

*Paragraph 30, as amended, was adopted.*

Paragraphs 31 and 32

*Paragraphs 31 and 32 were adopted.*

Paragraph 33

36. Following a discussion in which Mr. VERESHCHETIN, Mr. EIRIKSSON, Mr. BENNOUNA, Mr. CRAWFORD, Mr. THIAM (Special Rapporteur) and Mr. RAZAFINDRALAMBO took part on the extent to which opinions were divided on the question of the link between the statute of the court and a Code, Mr. CRAWFORD proposed that the words "some members" in the first sentence should be replaced by the words "many members".

*Paragraph 33, as amended, was adopted.*

Paragraph 34

*Paragraph 34 was adopted.*

Paragraph 35

37. Mr. EIRIKSSON proposed that the first part of the sentence should be replaced by the words: "Two other issues were raised in respect of the jurisdiction of the criminal court:".

*Paragraph 35, as amended, was adopted.*

Paragraphs 36 to 39

*Paragraphs 36 to 39 were adopted.*

Paragraph 40

38. Mr. EIRIKSSON proposed that the word "legitimation", the meaning of which was not clear, should be replaced by the words "the right".

*Paragraph 40, as amended, was adopted.*

Paragraphs 41 to 44

*Paragraphs 41 to 44 were adopted.*

Paragraph 45

39. Mr. KOROMA proposed that, the word "sole" in the second sentence should be replaced by the word "primary", which was the term used in the Charter of the United Nations.

40. Mr. ROSENSTOCK said that, as one of the members whose opinion, whether right or wrong, was expressed in the sentence in question, he could not agree that the word "sole" should be replaced by the word "primary". As a compromise, however, he could agree that the word "sole" should simply be deleted.

*It was so agreed.*

*Paragraph 45, as amended, was adopted.*

Paragraph 46

41. Mr. KOROMA said that ICRC had a special status and could not be compared to an ordinary non-governmental organization. In the first sentence, the words "and humanitarian" should therefore be added between the word "non-governmental" and the word "organizations".

*Paragraph 46, as amended, was adopted.*

Paragraph 47

42. Mr. EIRIKSSON, supported by Mr. KOROMA, said that the last sentence of paragraph 47 distorted the opinion it was supposed to reflect. It should therefore be amended to read: "For example, they were not sure that, even if ICRC would be interested in such access, its statute would allow it".

*Paragraph 47, as amended, was adopted.*

Paragraph 48

*Paragraph 48 was adopted.*

Paragraph 49

43. Mr. PELLET said that, in the third sentence, there was no need for the words "could lead", which should be deleted.

*Paragraph 49, as amended, was adopted.*

Paragraph 50

*Paragraph 50 was adopted.*

Paragraph 51

44. Mr. KOROMA said that the distinction in the last sentence between the system of a *denuncia* and that of a "complaint" was incorrect and he proposed that the sentence should be amended to read: "It was further noted by a member that a system known as a *denuncia*, which is distinct from a complaint, may also be envisaged".

*It was so agreed.*

45. Mr. PELLET proposed that the words "in the Commission" should be deleted from the first sentence because they were absolutely unnecessary.

46. Mr. EIRIKSSON proposed that, for the sake of clarity, in addition to the deletion proposed, the beginning of the first sentence should be further amended to read: "With respect to the question of jurisdiction *ratione personae*, it was noted that it was dealt with . . .".

*Paragraph 51, as amended, was adopted.*

Paragraphs 52 to 72

*Paragraphs 52 to 72 were adopted.*

Paragraph 73

47. Mr. CRAWFORD proposed the addition of a phrase at the end of the second sentence, to read: "and, in addition, in many cases, large numbers of victims could be involved".

*Paragraph 73, as amended, was adopted.*

Paragraph 74

*Paragraph 74 was adopted.*

Paragraph 75

48. The CHAIRMAN proposed that, in the penultimate sentence, the term "the complainant party" should be replaced by the words "the applicant party".

*It was so agreed.*

*Paragraph 75, as amended, was adopted.*

Paragraphs 76 to 78

*Paragraphs 76 to 78 were adopted.*

Paragraph 79

49. Mr. EIRIKSSON, supported by Mr. CRAWFORD, said that the term "double-hearing principle" in the first line was inappropriate, since the reader might equate it with the *non bis in idem* principle. It was therefore proposed that the sentence should be amended to include, after those words, an explanation in parentheses using the Special Rapporteur's words, which constituted the second part of the first sentence.

50. Mr. PELLET said that the words "double-hearing principle" should be translated into French as *double degré de juridiction*.

*Paragraph 79 was adopted without change.*

Paragraph 80

51. Mr. CRAWFORD proposed the addition of a new sentence at the end of the paragraph, to read: "It might

be possible to envisage a role for the International Court of Justice".

*Paragraph 80, as amended, was adopted.*

Paragraph 81

*Paragraph 81 was adopted.*

*Section B.1, as amended, was adopted.*

## 2. WORKING GROUP ON THE QUESTION OF AN INTERNATIONAL CRIMINAL JURISDICTION

Paragraphs 82 to 86

*Paragraphs 82 to 86 were adopted.*

Paragraph 87

52. Mr. EIRIKSSON said that there was no need for the parentheses around the word "sufficiently" in the last line.

*Paragraph 87, as amended, was adopted.*

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

## 3. DECISION OF THE COMMISSION

Paragraph 88

*Paragraph 88 was adopted.*

53. Mr. CRAWFORD said that, if the report of the Working Group was to be annexed to the report of the Commission, its paragraphs should be numbered consecutively to avoid any confusion.

*Section B.3 was adopted.*

*Chapter II, as a whole, as amended, was adopted.*

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

## Closure of the session

54. The CHAIRMAN, briefly reviewing the work the Commission had carried out at its forty-fourth session, said that he wished to thank the special rapporteurs and chairmen and members of the drafting and working groups for the excellent work they had done.

55. After the usual exchange of courtesies, he declared the forty-fourth session of the International Law Commission closed.

*The meeting rose at 1.10 p.m.*