

Document:-
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Summary record of the 2431st meeting

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

Extract from the Yearbook of the International Law Commission:-
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(<http://www.un.org/law/ilc/index.htm>)*

a tiny majority and, therefore, have only very limited authority. Accordingly, the most reasonable solution seemed to be to send to the Drafting Committee only the proposal concerning article 22.

57. Mr. EIRIKSSON said that the working group's proposals constituted a whole. However, the independent provision (art. 26) gave rise to very strong objections, but the referral only of the text to be included in article 22 was also encountering some opposition. Nevertheless, there was nothing to prevent both the text for inclusion in article 22 and the one for article 21 being sent to the Drafting Committee.

58. Mr. TOMUSCHAT said that decisions to send texts to the Drafting Committee were traditionally taken by consensus, but there was no obligation to do so. The question of crimes against the environment was not a new one, for such crimes had already been included in the draft Code adopted in 1991.¹⁰ The Commission might in fact give itself an extra week before reaching a decision, but the working group's proposals would then have to be referred to the Drafting Committee.

59. Mr. CALERO RODRIGUES (Chairman of the Drafting Committee) said that he concluded from the discussion that the inclusion of crimes against the environment in the category of war crimes was quite acceptable. It would in reality merely make explicit what was already implicit. Assimilation to a war crime would even render superfluous the condition that the health or survival of the population was affected, although the expansion of the scope of that provision proposed by Mr. Bowett was also acceptable. But inclusion in the category of crimes against humanity remained more problematical, and the formula of a separate article (art. 26) seemed to be excluded.

60. The Commission had an irritating tendency to automatically send to the Drafting Committee the texts proposed by special rapporteurs or working groups, at the risk of transferring to the Committee, which was not necessarily representative, discussions which should properly be conducted by the Commission in plenary. Perhaps it would in fact be wiser to take an extra week, which would have the additional advantage of not disturbing the three weeks of intensive work planned for the Drafting Committee.

61. Mr. SZEKELY said that the issues raised by the working group's proposals were very important and that the Commission should not therefore take a decision, come what may, when members still had much to say on the subject.

62. The CHAIRMAN suggested that the Commission should leave aside draft article 26 and take a decision at the following meeting on referral to the Drafting Committee of the text to be included in article 22 and then on referral of the text to be included in article 21, in that order.

The meeting rose at 1.10 p.m.

2431st MEETING

Tuesday, 21 May 1996, at 10.10 a.m.

Chairman: Mr. Ahmed MAHIOU

Present: Mr. Bowett, Mr. Calero Rodrigues, Mr. Crawford, Mr. de Saram, Mr. Elaraby, Mr. Fomba, Mr. Güney, Mr. He, Mr. Idris, Mr. Kusuma-Atmadja, Mr. Lukashuk, Mr. Mikulka, Mr. Pellet, Mr. Rosenstock, Mr. Szekely, Mr. Thiam, Mr. Tomuschat, Mr. Villagrán Kramer, Mr. Yamada, Mr. Yankov.

Draft Code of Crimes against the Peace and Security of Mankind¹ (continued) (A/CN.4/472, sect. A, A/CN.4/L.522 and Corr.1, A/CN.4/L.532 and Corr.1 and 3, ILC (XLVIII)/DC/CRD.3²)

[Agenda item 3]

1. The CHAIRMAN said that the Commission should take a decision on the question of wilful and severe damage to the environment. On the basis of the proposals of the working group on the issue of wilful and severe damage to the environment,³ he suggested that the members should consider whether to refer the issue to the Drafting Committee in the context of article 22 (War crimes), or in the context of article 21 (Crimes against humanity). He said that if he heard no objection, he would take it that the Commission agreed to consider each option separately.

It was so agreed.

2. The CHAIRMAN invited members to decide by a vote whether to refer the issue of wilful and severe damage to the environment to the Drafting Committee in the context of article 22.

3. Mr. LUKASHUK said that he had given much thought to the matter and, the more he had thought, the darker his thoughts had become. Indeed, nature itself seemed to have been pouring tears over defenceless Geneva. Protection of the environment had come to the forefront of the tasks facing homo sapiens in recent years, and the Commission was therefore bound to face up to the challenge. It was unlikely that anyone could explain to ordinary mortals why misuse of the Red Cross flag was considered to be a serious crime while damage to the environment was not so high up the list—jurists had their own logic.

¹⁰ See 2427th meeting, footnote 8.

¹ For the text of the draft articles provisionally adopted on first reading, see *Yearbook . . . 1991*, vol. II (Part Two), pp. 94 et seq.

² Reproduced in *Yearbook . . . 1996*, vol. II (Part One).

³ See 2430th meeting, paragraph 3.

4. The CHAIRMAN said that Mr. Lukashuk's remarks were interesting, but the Commission was in the process of taking a decision. Perhaps Mr. Lukashuk might explain his vote following the vote.

5. Mr. LUKASHUK said that his first point had been precisely that crimes against the environment should be included among war crimes. He would take up his second point following the vote.

6. Mr. THIAM (Special Rapporteur) reminded members that crimes against the environment had been under discussion for years. There was no point in reopening a general debate.

The suggestion by the Chairman to refer the issue of wilful and severe damage to the environment to the Drafting Committee in the context of war crimes was adopted by 12 votes to 1, with 4 abstentions.

7. Mr. SZEKELY said that the working group's draft had contained three proposals, the third being an alternative formulation whereby wilful and severe damage to the environment would be dealt with in a separate article, namely article 26. Members should be afforded the opportunity to vote on all three proposals.

8. The CHAIRMAN said that his suggestion had clearly referred only to the first formulation of the working group's second proposal. In other words, the issue would be covered by crimes against humanity, in article 21.

9. Mr. SZEKELY said that, as members had spent the weekend reflecting on the working group's proposals, they should be allowed to take a decision on the proposals as a whole.

10. Mr. PELLET said that the consensus at the previous meeting had been to disregard the working group's alternative formulation. It was extraordinary that the question was being raised when a vote had already been taken. Had he known that was to happen, he would have voted against the proposal.

11. Mr. THIAM (Special Rapporteur) said that he was opposed to crimes against the environment being treated in a separate article.

12. Mr. ROSENSTOCK said that the Chairman's suggestion had clearly referred to article 22 and article 21, and not article 26. Procedurally speaking, a decision had been taken. Mr. Pellet's abstention and his own, which must be considered as a *beau geste* to limit division in the Commission, had been predicated on that situation. For the situation to be altered, the Chairman's ruling must be challenged and overturned, failing which the Commission was committed to its decision.

13. Mr. VILLAGRÁN KRAMER said that he had understood the Chairman's suggestion as referring to both formulations of the working group's second proposal. He would like the record to show that he did not believe a procedural issue should prevent the Drafting Committee from examining the options that were in the best interests of mankind.

14. The CHAIRMAN said that he believed the suggestion had been quite clear—there had been no mention of article 26. He invited the members to vote on whether to refer the issue of wilful and severe damage to the environment to the Drafting Committee in the context of article 21.

There were 9 votes in favour, 9 against and 2 abstentions.

The suggestion by the Chairman to refer the issue of wilful and severe damage to the environment to the Drafting Committee in the context of crimes against humanity was not adopted.

The meeting rose at 10.45 a.m.

2432nd MEETING

Friday, 24 May 1996, at 10.55 a.m.

Chairman: Mr. Ahmed MAHIOU

Present: Mr. Arangio-Ruiz, Mr. Bowett, Mr. Calero Rodrigues, Mr. Crawford, Mr. de Saram, Mr. Eiriksson, Mr. Elaraby, Mr. Fomba, Mr. Güney, Mr. He, Mr. Idris, Mr. Kusuma-Atmadja, Mr. Lukashuk, Mr. Mikulka, Mr. Sreenivasa Rao, Mr. Rosenstock, Mr. Thiam, Mr. Tomuschat, Mr. Villagrán Kramer, Mr. Yamada, Mr. Yankov.

Organization of work of the session (continued)*

[Agenda item 1]

1. The CHAIRMAN, welcomed Mr. Corell, Under-Secretary-General, the Legal Counsel, representative of the Secretary-General, who would address the Planning Group, which was to meet immediately after the plenary meeting. He said that the Enlarged Bureau had met earlier to draw up a programme of work for the three-week period from 28 May to 14 June 1996. He then read out the Enlarged Bureau's proposals which had also been determined by technical constraints and, in particular, by the fact that the Drafting Committee's report on the draft Code of Crimes against the Peace and Security of Mankind would not be available in all the official languages before 6 June. If there was no objection, he would take it

* Resumed from the 2430th meeting.