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Summary record of the 2438th meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
1996, vol. I

98. The CHAIRMAN said that he would ask the Chairman of the Drafting Committee and the Special Rapporteur to prepare for the Commission's consideration a new wording for paragraph 4.

The meeting rose at 1.05 p.m.

2438th MEETING

Friday, 7 June 1996, at 10.05 a.m.

Chairman: Mr. Ahmed MAHIOU

Present: Mr. Arangio-Ruiz, Mr. Barboza, Mr. Bennouna, Mr. Bowett, Mr. Calero Rodrigues, Mr. Crawford, Mr. de Saram, Mr. Eiriksson, Mr. Fomba, Mr. Güney, Mr. He, Mr. Idris, Mr. Kabatsi, Mr. Lukashuk, Mr. Mikulka, Mr. Pambou-Tchivounda, Mr. Sreenivasa Rao, Mr. Razafindralambo, Mr. Rosenstock, Mr. Thiam, Mr. Tomuschat, Mr. Villagrán Kramer, Mr. Yamada, Mr. Yankov.

Draft Code of Crimes against the Peace and Security of Mankind[1] (*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.3[2])

[Agenda item 3]

CONSIDERATION OF THE DRAFT ARTICLES ON SECOND READING[3] (*continued*)

PART ONE (General provisions) (*continued*)

ARTICLE 2 (Individual responsibility and punishment) (*continued*)

1. The CHAIRMAN invited the members of the Commission to continue their consideration of article 2 (Individual responsibility and punishment) of part one of the draft Code of Crimes against the Peace and Security of Mankind and to take decisions on two draft amendments to paragraph 3 of that article. The first draft amendment, proposed by Mr. Pellet, would involve deleting the words "or conspiring to commit" in subparagraph (*e*).

Mr. Pellet's amendment was rejected by 8 votes to 4, with 4 abstentions.

2. The CHAIRMAN invited the members of the Commission to give their views on the second draft amendment, which had been proposed by Mr. Bowett and which consisted in adding, after subparagraph (*f*), a new subparagraph (*f*) *bis*, to read:

> "(*f*) *bis*. Deliberately attempts to conceal the commission of such a crime;".

3. Mr. EIRIKSSON said that it would be wiser to add that text to the end of subparagraph (*d*), which would then read:

> "(*d*) Knowingly aids, abets or otherwise assists, directly and substantially, in the commission of such a crime, including providing the means for its commission and deliberately attempting to conceal the commission of such a crime;".

4. Mr. BOWETT said that he had no objection to relocating the text in subparagraph (*d*), but, in that case, he would reword it to read:

> "(*d*) Knowingly aids, abets or otherwise assists, directly and substantially, in the commission of such a crime or its concealment, including providing the means for its commission or concealment;".

5. Mr. PAMBOU-TCHIVOUNDA said he wondered how it would be possible to establish materially an attempt to conceal a crime, particularly if that attempt was deliberate. He would welcome elucidation on that point before deciding on the proposed text.

6. Mr. THIAM (Special Rapporteur) said that he, too, had not clearly grasped Mr. Bowett's proposal and would welcome a fuller explanation.

7. Mr. BOWETT said that his proposal was not an attempt to introduce into the draft Code the general concept of an accessory after the fact. It was concerned with a specific crime, namely, the deliberate concealment, not of the perpetrator of a crime, but of evidence that a crime had been committed. Thus, the mass graves which had just been discovered in Bosnia and in which between 3,000 and 8,000 bodies were thought to be buried were an example of the deliberate concealment of evidence of a crime.

8. The CHAIRMAN asked whether that idea was not already covered by the expression "aids, abets or otherwise assists . . . in the commission of such a crime", used in subparagraph (*d*).

9. Mr. VILLAGRÁN KRAMER said that a distinction must be made, as was the case in Spanish and Latin American criminal law, between the person who committed a crime, the person who aided the commission of that crime and the person who concealed that crime. It was the latter act that was the subject of Mr. Bowett's proposal and it had nothing to do with the act of protecting the perpetrator of a crime, which constituted an entirely different offence. It was generally easy to determine the perpetrator of the crime and his accomplice, in other words, the person who participated directly or indi-

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[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] For the text of draft articles 1 to 18 as adopted by the Drafting Committee on second reading, see 2437th meeting, para. 7.

rectly in the commission of the criminal offence. The task was much more difficult in the case of concealment of the crime because the culprit might be an authority. Even where an individual was the culprit, concealment could be interpreted in various ways. Those observations would perhaps enable the European and African members of the Commission to grasp the issue more clearly. It remained to settle the problem of terminology and to find the term in the other languages that corresponded to the Spanish word *encubrimiento*, which fully reflected the idea contained in the proposal.

10. Mr. YAMADA said that, unfortunately, the explanations provided by Mr. Bowett had not enabled him to understand the issue any more clearly. In criminal law, concealment meant any act aimed at concealing the perpetrator of a crime, providing the means of avoiding his apprehension or concealing or destroying the evidence of the crime he had committed. Article 2 tried to establish the general principle of individual criminal responsibility and, to the best of his knowledge, all criminal justice systems treated an offence of concealment as a less serious offence than the principal offence. He therefore doubted the advisability of including the crime of concealment among crimes against the peace and security of mankind. Furthermore, the acts committed in the former Yugoslavia of the kind referred to by Mr. Bowett, namely, the burial of victims' bodies in mass graves, had probably been committed not by third parties otherwise innocent of the crime concealed, but by the very persons who had committed the said crime and who were therefore punishable under the Code. Lastly, he was concerned that, if the text proposed by Mr. Bowett was included in article 2, the question of the accessory would then arise, and that would widen the scope of the Code.

11. Mr. KABATSI said that the problem posed by Mr. Bowett's proposal resulted chiefly from the fact that it referred to an "attempt" to conceal a crime and not to its actual concealment. It was obvious that, if a crime was concealed successfully, it would never be known that it had been committed—hence the need to speak of an "attempt". It was also true, as Mr. Yamada had pointed out, that the proposed text had connotations of the concept of an accessory after the fact. Nevertheless, having regard to the concerns expressed by Mr. Bowett in connection with the former Yugoslavia, he thought that that question should be covered in the Code and he would therefore have no difficulty in accepting the text of that proposal.

12. Mr. TOMUSCHAT said that he shared the views expressed by Mr. Yamada. Mr. Bowett's proposal consisted of an abstract text that was open to a number of interpretations. A crime might be concealed for many widely differing motives and it was not possible to focus exclusively on situations such as those to which Mr. Bowett had referred concerning Bosnia. As Mr. Yamada had said, the text was liable to widen the scope of the Code and the Commission would be ill-advised to accept it.

13. Mr. de SARAM said that it would be wrong to consider Mr. Bowett's proposal within the narrow confines of national criminal law or, in other words, to consider the idea expressed in it as covered by the concept of an accessory before and after the fact. The proposal went much further and deserved to be taken into account. The only question to be settled was where it ought to be placed in the draft Code. In view of the difficulties raised by the concept of attempt, the best solution would be to place it in article 17, which dealt with crimes against humanity.

14. Mr. FOMBA said that the law was not just an intellectual construct, but was supposed to govern real-life situations. He therefore wondered exactly what was meant by the concept of deliberate concealment of the commission of a crime: was it the crime of concealment of evidence or simply of withholding information relating to the commission of the crime?

15. As a contribution to the clarification of that point, he said that, in 1994, shortly before the end of the mandate of the Commission of Experts to investigate violations of international humanitarian law in Rwanda, which had been set up under Security Council resolution 935 (1994) of 8 November 1994, of which he had been a member, the United Nations High Commissioner for Refugees had reported information on allegations of massacres of Hutus by the regime in power. Unfortunately, it had not been possible for the Commission of Experts to establish the facts, mainly for lack of time. But a human rights monitoring team already present in Kigali which had tried to look into the matter, had met with a refusal on the part of the authorities and, in particular, had failed to obtain access to certain areas said at the time to be strategic from the military point of view. Yet there had been presumptions of the commission of massacres and the existence of mass graves in the areas in question. No proof could, however, be produced. He wondered whether that was the type of situation Mr. Bowett's proposal was meant to cover. Insofar as allegations of that kind were confirmed later, it could be deduced that concealment of evidence had taken place and that certain mass graves had been hidden. Mr. Bowett's comments (2437th meeting) had given him to understand, however, that the situation Mr. Bowett had in mind was in fact that of certain countries where crimes against the peace and security of mankind were supposed to be taking place, but about which a deliberate silence was being maintained for political reasons. That would be a case of the withholding of information.

16. He agreed with Mr. Tomuschat that the question would certainly have deserved in-depth discussion in the Drafting Committee and in the Commission. The proposal was well intended, but, before taking a decision, the Commission would need to have a precise definition, backed by a broad consensus, of what exactly was meant.

17. Mr. BOWETT said that he withdrew his proposal.

ARTICLE 2 *bis* (Punishment)

18. The CHAIRMAN invited the Chairman of the Drafting Committee to introduce article 2 *bis* which read:

"*Article 2* bis. *Punishment*

"An individual who is responsible for a crime against the peace and security of mankind shall be lia-

ble to punishment. The punishment shall be commensurate with the character and gravity of the crime."

19. Mr. CALERO RODRIGUES (Chairman of the Drafting Committee) said that, on a proposal by Mr. Tomuschat (2437th meeting), the Drafting Committee had agreed that there should be a separate article on the question of punishment. It had come up against only one problem, that of the use of the word "character", but had been unable to find a more appropriate term. If article 2 *bis* were adopted, it would be necessary to delete paragraph 4 of article 2 and to change the title of the article to read "Individual responsibility".

20. The CHAIRMAN recalled that, at the preceding meeting, Mr. Pellet had proposed that the word *caractère* in the French text should be in the plural.

21. Mr. THIAM (Special Rapporteur) said that he accepted the Drafting Committee's proposal. He had no strong feelings about the use of the word *caractère* in the singular or the plural although he would tend to favour the singular. If the Commission decided to use the word in the plural, the reasons would have to be given in the commentary.

22. Mr. PAMBOU-TCHIVOUNDA said that he accepted the proposed text as to substance and, except for one detail, as to form. He suggested that the second sentence, at least in the French text, should be amended to read: *Ce châtiment est proportionnel au caractère et à la gravité dudit crime.* The present indicative should be used in the French version because an established principle was being stated. He would not insist on the use of the words *dudit crime* and could accept the wording suggested by the Drafting Committee.

23. Mr. RAZAFINDRALAMBO, recalling that he had been in favour of the idea of devoting a separate article to the question of punishment, said that he wished to make the following drafting comments: the words *qui est* in the first sentence were superfluous, at least in the French text; the word *caractère* should be kept in the singular; and it would be useful to keep the words *de ce crime*, which appeared in most of the articles proposed by the Drafting Committee.

24. Mr. ROSENSTOCK said that he had no objection to the deletion of the words "who is". The word "character" should be left in the singular, at least in the English text, as the plural would be incongruous and would, moreover, sound like the word "characteristics", which had a basically different meaning.

25. The CHAIRMAN said that there was no need for further discussion of the use of the word "character" in the singular, on which there seemed to be general agreement.

26. Mr. EIRIKSSON associated himself with the comments made by Mr. Rosenstock and the Chairman.

27. Mr. TOMUSCHAT said that the definite article at the beginning of the second sentence should be deleted.

28. Mr. BARBOZA said that he agreed with the principle of having a separate article on punishment, which should be entitled *Sanción* in the Spanish version. He was, however, puzzled by the statement that the punishment was commensurate with the "character" of the crime. The crimes covered by the Code were well known and it would be enough to say that their punishment should be commensurate with their gravity.

29. Mr. CRAWFORD said that the definite article at the beginning of the second sentence should be maintained because, otherwise, the provision would become generic. He was somewhat disturbed by the lack of any reference to the idea that trial must come before recognition of responsibility and punishment.

30. Mr. EIRIKSSON, referring to the last comment, said that the wording proposed by the Drafting Committee corresponded perfectly to the function of a code, which was to make rules. In the case in point, the Code provided that an individual responsible for a crime against the peace and security of mankind was liable to punishment. Determining responsibility was the function of the court.

31. Mr. THIAM (Special Rapporteur) suggested that, in order to take account of the comment made by Mr. Crawford, the beginning of the first sentence might be amended to read: "An individual recognized as being responsible for a crime".

32. Replying to Mr. Barboza's comments, he said that all crimes against the peace and security of mankind were of the same nature, but could have a different character depending on how they were committed. For example, the responsibility of an individual who was the direct perpetrator of a crime was different from that of an individual who had ordered the commission of a crime or had refrained from preventing the commission of a crime.

33. Mr. BARBOZA said that he did not think that the word "character" conveyed the very cogent idea which had just been expressed by the Special Rapporteur and which was subsumed in the concept of "gravity".

34. Mr. CALERO RODRIGUES (Chairman of the Drafting Committee) said that the word "character" should be understood to refer to the actual nature of the crime, the way in which it had been committed, and that a differentiation on that basis could affect the penalty imposed. He recalled that the problem of terminology had arisen in the Drafting Committee, which had chosen the word "character" for lack of a better one.

35. Mr. IDRIS said that it would not be wise to replace the words "The punishment" by the words "This punishment", as Mr. Pambou-Tchivounda had proposed, since the nature of the punishment could not be foreseen.

36. The CHAIRMAN said that, if he heard no objection, he would take it that the Commission wished to adopt article 2 *bis* proposed by the Drafting Committee, as orally amended in the French text.

Article 2 bis, *as amended in the French text, was adopted.*

37. The CHAIRMAN said that the articles adopted on first reading had contained an article 4 (Motives), which

the Drafting Committee had deleted at the forty-seventh session essentially because of the reservations expressed by Governments, the Committee having taken the view that the article blurred the distinction between "motive" and "intent".[4]

ARTICLE 3 (Responsibility of States)

38. Mr. CALERO RODRIGUES (Chairman of the Drafting Committee) said that article 3 had been adopted at the preceding session by the Drafting Committee, as article 5, and that its text was sufficiently explicit. The Drafting Committee recommended that the Commission should adopt article 3.

39. Mr. KABATSI said that he was in favour of the deletion of article 3 because he did not see the logic of a reference to the regime of State responsibility in an article relating to individual responsibility, but he would not insist on his proposal if the Commission preferred to retain the provision.

40. Mr. IDRIS said that, on the contrary, article 3 was of vital importance in the Code. In order to bring the text into line with that of article 2, paragraph 1, however, he proposed that the words "responsibility of individuals" should be replaced by the words "individual responsibility". He also noted that the words "The fact that" at the beginning of articles 3, 4 and 5 were not very appropriate in a text of a convention.

41. Mr. PAMBOU-TCHIVOUNDA said that the question whether article 3 belonged in the Code had been settled: it could play an important role during the determination by the judge of various levels of responsibility, especially with regard to certain crimes.

42. He proposed an amendment to the French text that would shorten and clarify it by the deletion of the words *toute question relative à* and the replacement of the words *en droit international* by the words *en vertu du droit international*. The English text did not read "any question relating to the responsibility", but "any question of the responsibility", that is to say responsibility as such. His proposal was thus in keeping with the spirit and letter of the English text.

43. Mr. THIAM (Special Rapporteur), referring to whether it was appropriate to retain article 3 in the Code, said that, when a crime was committed by an individual, two situations were possible: the individual acted either in a private capacity or as an agent of the State. In the latter case, the State might incur responsibility, not at the criminal level, but in respect of compensation. It might thus be prosecuted on the grounds of its international responsibility. That was what article 3 meant, and it thus served a definite purpose. As to the wording of the article, the sentence was in fact a bit long and convoluted and the formulation proposed by Mr. Pambou-Tchivounda was preferable, provided that it created no difficulties for the English text.

44. The CHAIRMAN stressed the importance of leaving the English text as it stood.

45. Mr. VILLAGRÁN KRAMER said that article 3 must be retained in all its clarity because, by virtue of the mandate entrusted to it by the General Assembly, the Commission dealt with three areas of responsibility: individual responsibility for international crimes, State responsibility for international delicts or crimes and State liability for acts not prohibited by international law. The Commission could therefore not disregard the civil liability of States. However, the final wording proposed by the Special Rapporteur, in which the words *toute question relative à* were deleted, was perhaps best.

46. Mr. FOMBA said that, in substance, article 3 was a very important saving clause that, in fact, merely reproduced something that already existed, for example, in the Convention on the Prevention and Punishment of the Crime of Genocide.

47. Mr. BOWETT said that he wondered whether the statement in article 3 was true. For example, concerning aggression, in the framework of the consideration of the draft statute for an international criminal court, the Commission had taken the view that a prior finding that the State had committed aggression was necessary before an individual could be accused of aggression. Hence, how could individual responsibility be without prejudice to the responsibility of the State? The two went hand in hand.

48. Mr. LUKASHUK said that, in order to speed up the Commission's work, agreement had to be reached on the wording of the text in one working language without constantly going back over the translation. In that connection, he was surprised that, in the practice of the Commission, French was apparently more "equal" than the other languages. He recognized that it was appropriate to keep the tenor of article 3 in the text of the Code, but thought that it should be inserted in article 2, paragraph 1, and that the title could be deleted.

49. Mr. YANKOV said that the Commission should not amend the English text of article 3 so as not to give the impression that the question of the responsibility of individuals could be compared with that of the responsibility of States. Not only might the responsibility of the State as a whole be at issue, moreover, but also certain aspects, details or conditions.

50. Mr. GÜNEY said that he supported the wording proposed by Mr. Pambou-Tchivounda, which was a considerable improvement of the text from the point of view of both style and the terms used.

51. Mr. ROSENSTOCK said that he agreed with Mr. Kabatsi, but would not insist any more than he had that the article should be deleted. On the other hand, he took issue with Mr. Bowett. The fact that the determination of an aggression committed by a State was a pre-condition for considering the responsibility of individuals did not mean that there was anything in the law of the responsibility of individuals which itself affected the responsibility of States. The Commission could thus live with the English text of article 3, specifying that it covered wrongful acts committed by States.

52. Mr. TOMUSCHAT said that article 3 gave the wrong impression that there were two air-tight compart-

[4] See *Yearbook . . . 1995*, vol. I, 2408th meeting, para. 14.

ments, State responsibility, on the one hand, and individual responsibility, on the other. The comment by Mr. Bowett was correct and confirmed by a reading of article 15 (Crime of aggression). Attention might therefore be drawn in the commentary to the existence of links between State responsibility and individual responsibility. Secondly, he found the words "The fact that the present Code provides" somewhat cumbersome. Moreover, that was not a fact, but a legal proposition, and the text would be more elegant if the phrase were quite simply deleted.

53. Mr. Sreenivasa RAO said that, like Mr. Lukashuk, he was in favour of incorporating the tenor of article 3 in article 2, paragraph 1. But if the Commission insisted on retaining the article, he agreed with Mr. Idris and Mr. Tomuschat on the need to make the wording at the beginning of the sentence less cumbersome.

54. With regard to the comment by Mr. Bowett, he did not think that the text of the article prevented individual responsibility arising from a prior determination of State responsibility. What article 3 said was that individual responsibility established directly in the framework of the Code, apart from the case of aggression, was without prejudice to any question of the responsibility of States. That would be determined separately and would be decided separately from its consequences.

55. Mr. de SARAM said that he had no objection to article 3, but pointed out that its purpose was to recognize that there could be State responsibility for the commission of an internationally wrongful act under the applicable rules of international law.

56. Mr. ARANGIO-RUIZ said he agreed with Mr. Bowett that there was a contradiction between article 3 and the draft statute for an international criminal court. In his view, however, it was the statute that was wrong, not article 3.

57. The CHAIRMAN said that, if he heard no objection, he would take it that the Commission wished to adopt article 3 proposed by the Drafting Committee, it being understood that the Special Rapporteur, Mr. Güney and Mr. Pambou-Tchivounda would review the translation of the English text into French.

Article 3 was adopted on that understanding.

State responsibility (*continued*)* (A/CN.4/472/Add.1, sect. C, A/CN.4/476 and Add.1,[5] A/CN.4/L.524 and Corr.2)

[Agenda item 2]

58. The CHAIRMAN reminded the members that Mr. Arangio-Ruiz had announced his intention of resigning his office as Special Rapporteur for the topic of State responsibility (2436th meeting). Mr. Arangio-Ruiz had made a significant contribution, in the form of draft articles, to the Commission's work on the topic, whose importance was equalled only by its difficulty in both intellectual and practical terms. As the Commission had been on the verge of completing the first reading of the draft articles, it would be desirable, at that crucial stage in its work, if it could continue to benefit from the Special Rapporteur's contribution.

59. Mr. ARANGIO-RUIZ said that he wished to explain more clearly why he had resigned his office as Special Rapporteur. Since his preliminary report on the topic in 1988,[6] he had been very circumspect so far as the concept of international crimes of States was concerned. Considering that that matter was *terra incognita* for him, he had decided to deal first with delicts or internationally wrongful acts in general and only thereafter with crimes. The Commission had accepted his choice, but some members had obviously been impatient to see the topic of crimes taken up and from time to time had asked him about the matter.

60. He had finally taken up the subject in 1993 in his fifth report,[7] but, in the interim, there had been a very important development, namely, the felicitous end of the cold war and the equally felicitous revitalization of United Nations action under Chapter VII of the Charter of the United Nations. There had also been two other developments, however, one within the Commission and the other in the world at large. So far as the latter development was concerned, he had noticed—and he had not been the only one to do so—that the United Nations had at times gone beyond certain limits and had occasionally encroached on the area of international relations that pertained to the law of State responsibility. That had increased his misgivings, preoccupation, diffidence and suspicion in respect of article 4 of part two as adopted on first reading.[8] At about the same time that he had really started to deal with crimes, a theory had been put forward in the Commission that since all the crimes to be considered could be covered by one or other of the hypotheses contemplated in Article 39 of the Charter, the Commission had little or nothing to say on the institutional aspects of the consequences of crimes. The Security Council would suffice. As to ICJ, it had been considered not popular enough and too slow—another fact of life for which there were allegedly no remedies.

61. Twice during the forty-seventh session—in informal meetings and then in two formal votes , by 18 votes to 6—the Commission had rejected the attempt of the members who opposed his draft articles 15 to 20 being referred to the Drafting Committee. Repeatedly, therefore, the possibility had then been preserved that, *inter alia*, a serious discussion be carried out, in the current Drafting Committee, on the comparative merits of his proposed draft article 20, on the one hand, and article 4 as adopted, which obviously implied, in his view, an improper subordination of the law of State responsibility to the law of collective security as interpreted by a political body. Considering, however, that the latter issue, in particular, had not been adequately debated, if at all, at the

* Resumed from the 2436th meeting.

[5] Reproduced in *Yearbook ... 1996*, vol. II (Part One).

[6] *Yearbook ... 1988*, vol. II (Part One), p. 6, document A/CN.4/416 and Add.1.

[7] *Yearbook ... 1993*, vol. II (Part One), document A/CN.4/453 and Add.1-3.

[8] Originally adopted as article 5, see *Yearbook ... 1983*, vol. II (Part Two), p. 43.

forty-seventh session, and that it was far from sure that a thorough discussion of such a serious matter would be carried out at the current session, he had decided in his eighth report (A/CN.4/476 and Add.1) to revert to the problem of the relationship between the law of State responsibility and the law of collective security. In introducing the report (2436th meeting), his main aim throughout his statement had been to stress the distinction between the two areas of international law, to compare article 4 as adopted and the proposed draft article 20 and to undertake a critical examination of article 4. Article 4 was also a source of concern to other lawyers, including Mr. Bowett, who had written an article[9] expressing doubts and mentioning that the Special Rapporteur had frequently suggested that article 4 should be reviewed. At the end of his statement—and in addition to the fact that many members had been absent and some of those who had been present had remained silent—there had been only one strong minority statement and a few, often very short, statements, which, with a few exceptions, had been very discouraging in terms of what he firmly believed the Commission should do in instructing the Drafting Committee regarding the consequences of crimes and notably draft articles 19 and 20, as referred to the Drafting Committee at the preceding session together with draft articles 15 to 18.

62. What could a special rapporteur do in such a situation? Mr. Tomuschat had reminded the members that special rapporteurs were at the service of the Commission—quite so, but, in the present case, it was to serve the progressive development and codification of the law of State responsibility. It was not to help to dismantle at least one important part of that law, which was what the effect would be of retaining article 4 as drafted and of certain attempts to subject the institutional aspects of the consequences of crimes to the will of political bodies whose decisions were not susceptible of any review whatsoever by a judicial body.

63. His situation was in fact even worse at the current session compared with the preceding one, when there had been votes which had shown a clear majority and minority and he had been able to hope for better things the following year. At the current session, he was somewhat of a lame duck in that, for reasons of no interest to the Commission, he was not a candidate for a further term of office and would therefore be unable to exert any influence with regard to the second reading of the draft on State responsibility or make any contribution to that work. Nevertheless, considering the importance of the problems involved in the draft articles relating to State crimes, he would in principle have been ready to continue up to the end of the session. However, the scarcity of the Commission's debate which had followed his introduction of the eighth report had given him the clear impression either that it did not want to hold a proper debate on the subject or even that it—or at least some of its members—deemed any further discussion pointless in that they had already decided to settle the delicate issue in a manner he did not consider to be appropriate. In the circumstances he felt that he had no other choice but to resign his office as Special Rapporteur. The Commission would certainly be able to find a lawyer, or diplomat/lawyer, who would be more amenable than he to the necessities which were deemed, rightly or wrongly, to be predominant and who could better help the Drafting Committee to complete the first reading of the draft articles on State responsibility.

64. The CHAIRMAN said that he accepted that decision, although with regret. The reports of the Special Rapporteur, Mr. Arangio-Ruiz, had made an outstanding contribution to the study of a topic the difficulty of which was unquestionable. Unfortunately, as was the way with such reports, they tended to become the target of much criticism, which was sometimes constructive, but sometimes smacked of a demolition job.

65. Mr. VILLAGRÁN KRAMER said that, in his view, the Commission should react in a frank and logical manner to Mr. Arangio-Ruiz's decision. The successive Special Rapporteurs on the topic of State responsibility had made valuable contributions, but they had not all had the same temperament. Mr. Arangio-Ruiz's contribution was no exception to that rule, even if his views on *lex ferenda* in particular were not shared by everyone. Mr. Arangio-Ruiz was a man of conviction, determined, energetic and enthusiastic, but one who sometimes tended to the theatrical in the tradition of the great European university professors. It would be neither appropriate nor right to insist on his remaining in the office of Special Rapporteur, but he should be urged to continue to make his valuable contribution to the work of the Drafting Committee and the Commission.

66. The CHAIRMAN suggested that the discussion should be continued in an informal meeting of the plenary with a view to arriving at a decision on how to proceed.

It was so agreed.

The meeting rose at 12.35 p.m.

2439th MEETING

Tuesday, 11 June 1996, at 10.10 a.m.

Chairman: Mr. Robert Rosenstock

Present: Mr. Arangio-Ruiz, Mr. Barboza, Mr. Bennouna, Mr. Bowett, Mr. Calero Rodrigues, Mr. Crawford, Mr. de Saram, Mr. Eiriksson, Mr. Fomba, Mr. Güney, Mr. He, Mr. Kabatsi, Mr. Lukashuk, Mr. Mikulka, Mr. Pambou-Tchivounda, Mr. Pellet, Mr. Sreenivasa Rao, Mr. Robinson, Mr. Szekely, Mr. Thiam, Mr. Villagrán Kramer, Mr. Yamada, Mr. Yankov.

[9] See 2436th meeting, footnote 14.