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Summary record of the 2461st meeting

Topic:
<multiple topics>

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

57. Mr. PAMBOU-TCHIVOUNDA said that he had no doubt about the need for the Standing Consultative Group referred to in paragraphs 43 to 47, but he would like to know what its status, powers and working methods would be. In his view, the Commission would have to be much more specific and define how the work of the Group would fit in with that of the Codification Division and how it would cooperate with members of the Commission other than the Special Rapporteur when the Commission was not in session. In paragraph 47, he did not think that there was any need for the words "without regard to the distinction between codification and progressive development".

58. Mr. ROSENSTOCK (Chairman of the Planning Group) said that the distinction between the codification and progressive development of international law was embodied in the statute of the Commission, but, with the completion of the traditional topics and historical change, it was becoming a handicap that would have to be removed from the statute if it was amended one day. The wording criticized by Mr. Pambou-Tchivounda referred to that possibility.

59. Mr. PELLET said that he agreed with Mr. Rosenstock's reply and pointed out that the wording in question corresponded to what was stated in paragraph 43. He had never been in favour of the idea of a standing consultative group because it seemed too rigid. Now it was to be a statutory requirement. Some topics of study did not, moreover, lend themselves to such a system. Having expressed those reservations, he could go along with the consensus on that part of the report.

60. Mr. CRAWFORD said that the proposed text placed enough emphasis on the flexibility that should be guaranteed for the mechanism of the Standing Consultative Group. Paragraph 46 was devoted entirely to that point. The objective at present was simply to state the principle of the existence of that new body, with its functions and working methods to be discussed later.

61. The CHAIRMAN said that the written text of the amendments proposed orally and other changes to the document under consideration would be made available later.

The meeting rose at 1.10 p.m.

2461st MEETING

Tuesday, 16 July 1996, at 3.40 p.m.

Chairman: Mr. Ahmed MAHIOU

Present: Mr. Al-Baharna, Mr. Barboza, Mr. Bennouna, 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. Pellet, Mr. Rosenstock, Mr. Vargas Carreño, Mr. Villagrán Kramer, Mr. Yankov.

Programme, procedures and working methods of the Commission, and its documentation (*continued*) (A/CN.4/472/Add.1, sect. F)

[Agenda item 7]

REPORT OF THE PLANNING GROUP (*concluded*)

1. The CHAIRMAN invited the Commission to continue its consideration of the report of the Planning Group (ILC(XLVIII)/PG/WG/1/Rev.1).[1]

PART II (Detailed analysis) (*concluded*)

SECTION IV (The role of the Special Rapporteur) (*concluded*)

2. Mr. CALERO RODRIGUES said that paragraph 51, on the important question of commentaries to draft articles, contained an excellent and innovative idea, namely that once the Drafting Committee had approved a particular article, the commentary to that article should be circulated either to members of the Drafting Committee or to the members of the consultative group for the topic. Thus, before going to the plenary, the commentaries prepared by the special rapporteur and the secretariat would have been reviewed by other members of the Commission.

3. The last sentence of paragraph 51 stated that "Draft articles should not be finally adopted without the Commission having approved the commentaries before it." In his view, such a procedure led to an impasse: the Commission could not approve the commentaries unless it had already adopted the corresponding articles. The sentence should be amended to read: "As the statute makes clear, draft articles should not be considered finally adopted without the Commission having approved the commentaries before it."

4. Mr. LUKASHUK said that it might be useful in some cases to appoint not only a special rapporteur but also one or two co-rapporteurs, duly representative of other legal systems, who could collaborate between sessions.

5. The CHAIRMAN said it might not be appropriate at that stage to introduce matters which had not been previously debated by the Planning Group or the corresponding working group. Those questions should be postponed until the next session.

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[1] See 2459th meeting, footnote 8.

6. Mr. IDRIS said that he could accept the amendment to paragraph 51 proposed by Mr. Calero Rodrigues.

7. Mr. ROSENSTOCK (Chairman of the Planning Group) said that he too endorsed the proposal by Mr. Calero Rodrigues. The suggestion by Mr. Lukashuk was in fact already reflected in Section IV, in particular in paragraphs 43 and 44 which made reference to the fact that other bodies sometimes set up small consultative groups to assist the special rapporteur between sessions.

Section IV, as amended, was adopted.

SECTION V (The role and relationships of the plenary to the Drafting Committee and Working Groups)

8. Mr. YANKOV said that he had reservations about paragraph 69, which stated that there were two kinds of working groups, one kind which tried to resolve deadlocked issues and the other which was concerned with the handling of a topic as a whole. Such a characterization did not accurately reflect the work of the Commission. It would be a significant omission to leave out a third category of working group, namely groups which, before the appointment of a special rapporteur and formalization of the procedure for a particular topic, did essential preliminary work, for example feasibility studies, reviews of background information and surveys of State practice and jurisprudence. Such groups, sometimes called sub-committees rather than working groups, had been involved in the preparation of more than half of the topics that the Commission had dealt with over the years. A description of that third kind of working group should be added to paragraph 69. In general, he endorsed the Planning Group's suggestion that better use should be made of working groups and that their terms should be more flexible.

9. Mr. ROSENSTOCK (Chairman of the Planning Group) said that the type of working group mentioned by Mr. Yankov could be subsumed under the second category—groups which were concerned with the handling of a topic as a whole, as described in paragraph 69. The description of that category could be enlarged to include groups established at the commencement of consideration of a topic, to better reflect the reality of the Commission's working methods.

10. Mr. IDRIS said that the question was one of language rather than substance. As currently drafted, paragraph 69 might exclude the kind of working groups which had been set up in the past or might be established in the future. The first sentence of the paragraph should read: "Working groups may be established with various terms of reference". The two kinds of working groups currently mentioned in the paragraph could be cited as examples.

11. Mr. PELLET wondered whether, as stated in paragraph 71, a working group was always subordinate to the plenary. Might it not be subordinate to the Planning Group or the Drafting Committee?

12. The CHAIRMAN said that it might be useful to draw a distinction between "official" working groups established by the plenary and groups set up by other bodies of the Commission. In particular, the report should mention that the Planning Group also had recourse to the method of setting up working groups.

Section V, as amended, was adopted.

SECTION VI (Structure of Commission meetings)

13. Mr. VILLAGRÁN KRAMER said that he endorsed the idea of a shorter session for the Commission. While the report recommended that the first split session should be scheduled for 1998, it might be best to try the experiment in 1997, which would show good faith on the part of the Commission.

14. Mr. LUKASHUK said that under article 18 of its statute, the Commission "shall survey the whole field of international law with a view to selecting topics for codification". To his knowledge, such a survey had been carried out only once, by Mr. Lauterpacht. Reference to article 18, with particular emphasis on the need for a survey to form the basis for long-term planning, should be made in paragraph 73 of the report.

15. Mr. CRAWFORD said that the compromise view had been that a split session would not be desirable in 1997 for various reasons, including budgetary considerations, and the fact that planning for the first year of the quinquennium was generally more difficult than for subsequent years. He agreed with Mr. Lukashuk that an overall survey of international law was needed. In that connection, the Planning Group had mentioned the Lauterpacht study in paragraph 12 of the report. The Planning Group would also be submitting another report to the Commission which contained the beginnings of such a survey.

16. Mr. PELLET said that a group chaired by Mr. Bowett was currently working on an overall survey of codification. With regard to paragraph 77, it was his view that the suggested 10-week session for 1997 was still too long. The explanation provided in paragraph 84 about the need for a split session was not entirely satisfactory. In fact, the Commission's work occurred in two stages. In the first stage, the plenary considered the reports of the Special Rapporteurs and the Drafting Committee completed its work. The real justification for a split session was to leave time for Special Rapporteurs and the secretariat, on the basis of the work done in that first half, to prepare documentation for consideration in the second half, at which point the Commission took up—for example—revised reports of the Drafting Committee, the report of the Planning Group, draft commentaries and, of course, the draft report of the Commission to the General Assembly. Thus, while he was wholly in favour of split sessions, he thought the wording of paragraph 84 none the less left a great deal to be desired.

17. Mr. CRAWFORD pointed out that the case for split sessions was actually made, not in paragraph 84, but in paragraph 81, which gave a number of arguments in favour, including the opportunity for the Drafting Committee to complete work in the first half, with the necessary follow-up and preparation of commentaries to be done in the interval before the second half. Paragraph 84 could be improved by deleting, from the first sentence the phrase "for example, reports which depend heavily on comments by States or on the summary

record of the previous year may need to be scheduled for the second part of the session''. The paragraph would then concentrate on the planning of the split session, while the reasoning for the split would be entirely contained in paragraph 81.

18. Mr. PELLET said that that suggestion would not entirely dispel his concerns. He still maintained that reference should be made to a rational division of labour, such as the one he had just outlined, between the two halves of the session.

19. Mr. CALERO RODRIGUES said a measure of flexibility should be allowed for the actual division of labour between the two halves, and allowance should be made for the possibility of changing it from one session to the next. Though the breakdown sketched out by Mr. Pellet would be appropriate in some years, it would not in others. The reasons advanced by Mr. Pellet could be usefully incorporated in paragraph 81, however, and paragraph 84 redrafted along the lines suggested by Mr. Crawford, with mention of the need for flexibility and the possibility of dividing the work differently between the two halves in different years.

20. Mr. YANKOV said his experience as a special rapporteur confirmed the need for flexibility and pragmatism in determining the course to be followed in each individual session. At times it might be useful to schedule the consideration of two reports in the first half, and two in the second half. The Commission's tasks differed at different points in each quinquennium, the first year being particularly arduous. There were also time constraints. The General Assembly completed its deliberations and adopted its resolutions in December of each year, and special rapporteurs often wished to reflect that material in their reports. In order for a document to be distributed in all working languages for the Commission's session the following year, however, it had to be submitted by February. That placed a great burden on the Commission's secretariat.

21. Mr. PELLET, referring to paragraph 87B, said he found it shocking that only a single law review—and an English-language one at that—was cited as covering the Commission's work. Surely other publications also performed that service and could be mentioned.

22. Mr. CRAWFORD said references to other law reviews could readily be incorporated in the report.

Section VI, as amended, was adopted.

SECTION VII (The Commission's relationship with other bodies (within and outside the United Nations))

23. Mr. LUKASHUK noted that the statements at the present session by the representatives of the Asian-African Legal Consultative Committee and the European Committee on Legal Cooperation had revealed considerable overlapping between the topics being worked on by those bodies and by the Commission. It was an encouraging phenomenon, a sign of the relevance of the Commission's work, but also one that bespoke the need for increased coordination of the efforts of bodies working in the field of international law. It might be useful for the Commission to allow other forums to complete their consideration of a given topic, and only then to address it itself, drawing on their work.

24. Mr. YANKOV said that the second subparagraph of paragraph 88 gave the impression that no work had been done to achieve coordination with other United Nations bodies. Reference should be made to instances of such coordination, for example, its work on the United Nations Convention on the Law of the Sea, when it had consulted FAO on fisheries and sedimentary resources; on the most-favoured-nation clause, when UNCITRAL had provided expert advice on arbitration and liability; and on the Convention on the Political Rights of Women, which the Economic and Social Council had adopted on the basis of a draft prepared by the Commission.

25. The Commission had also relied, and would increasingly rely on the advice of experts in technical fields. Advice of that kind had been invaluable in the work on the United Nations Convention on the Law of the Sea, and would be sorely needed if the Commission entered into the topic of environmental protection, for example. A reference could therefore be incorporated in the report to the Commission's involvement in work on new topics, for which technical expertise must be brought in through closer relations with specialized institutions.

26. Mr. VARGAS CARREÑO said that paragraph 89, describing cooperation with regional bodies for the codification and progressive development of international law, might usefully mention the work the Commission's secretariat could do in concert with the secretariats of such organizations. He would therefore suggest that the words ''exchanges of documentation'', at the end of paragraph 89, be replaced by ''exchanges between the Commission's secretariat and that of the regional bodies for the codification and development of international law, especially in documentation''.

Section VII, as amended, was adopted.

SECTION VIII (Possible revision of the statute)

27. Mr. PELLET said that the French version of paragraph 91 could be improved: *contient plus ou moins suffisamment de dispositions* was not an appropriate rendering of ''makes more or less adequate provision''.

28. Paragraph 94 raised issues that might merit consideration as part of a long-term process of revision of the statute. The fifth issue listed (whether topics involving codification and progressive development should be assimilated (including such matters as the use of a consultative group in all cases, etc.)) had already been mentioned in paragraph 93, however, and was superfluous. The second issue (whether a requirement for re-election should apply to members who are absent for an entire session without leave) was badly formulated in the French version, and in addition, seemed to be of minor importance.

29. The real problems lay with paragraph 95.[2] Did the Commission really wish to recommend to the General Assembly a revision of the statute? Certainly, such an exercise could be undertaken, but it seemed less important than work on more substantive—and potentially dangerous—matters. Paragraphs 91 to 93 aptly demonstrated that there was no real need for a revision of the statute, and that the modifications required in order for the Commission to function well in practice were possible even under the statute as it stood.

30. Mr. BENNOUNA said he fully agreed with Mr. Pellet and would even go so far as to suggest that the entire section should be deleted. The author of the report—he believed it was Mr. Crawford—had done an exemplary job but, perhaps carried away by inspiration, had gone a bit too far at the end. The general message conveyed in section VIII was the opposite of what was recommended in paragraph 95: that there was no need for revision of the statute. The matters set out in paragraph 94 had no bearing on the work of the Commission.

31. The CHAIRMAN pointed out that the report had been drafted by the Planning Group and submitted to the Enlarged Bureau. It did not exclusively reflect the views of a single member of the Commission.

32. Mr. CRAWFORD confirmed that the report was a collective endeavour and added that, in reality, he was opposed to three of the suggestions made in paragraph 94. He was none the less in favour of revision of the statute, if only to expunge anachronistic references, like the one to Franco's Spain, which he personally found repugnant. The real reason for the proposed revision was political: in the present circumstances, support in the General Assembly for a revision of the statute would amount to a renewal of the Commission's mandate. He would experience no difficulty if paragraphs 94 and 95 were deleted, but thought the ideas in paragraphs 91 to 93 deserved to be aired.

33. Mr. YANKOV said that previous speakers, particularly Mr. Crawford, had covered some of the points he wished to make. The Planning Group's proposal was perhaps unnecessarily detailed, but he agreed with the view expressed in paragraph 92 that some aspects of the statute warranted review as the Commission approached its fiftieth year. Article 26, paragraph 4, of the statute, which was mentioned in paragraph 92, was a good example in that regard. The recommendation that the "intergovernmental organizations whose task is the codification of international law could be broadened" to include others was worth making, but it should not be worded too rigidly and should not go into too much detail.

34. Mr. CALERO RODRIGUES said that he agreed with Mr. Yankov. The fiftieth anniversary of the Commission would be an appropriate time to revise the statute and particularly to raise the third item listed in paragraph 94, namely, whether the system of re-election of the entire membership every five years could be replaced by a staggering of elections. True, the possibility of the entire membership being replaced at one time was largely theoretical, but it would be preferable if the statute could be adapted to preclude it. He could not agree that a review of the statute would be entirely unnecessary.

35. The CHAIRMAN said that staggered elections could indeed be useful. The possibility of renewal of the entire Commission was not desirable from the point of view of continuity.

36. Mr. ROSENSTOCK (Chairman of the Planning Group) said that, as Chairman of the Planning Group, he tended to resent the suggestion that the proposal in section VIII of the report was the brainchild of any one person. The Commission had, at the previous meeting, adopted the Planning Group's conclusions and recommendations, including that relating to the consolidation and updating of the statute. Accordingly, in the absence of a formal motion for reconsideration of the decision taken (2460th meeting), the recommendation in paragraph 95 of the report did not require further approval by the Commission. However, in order to meet some of the objections raised, he would suggest that the words "thorough revision" could be replaced by the single word "review". As for the five examples set out in paragraph 94, they had received strong support in the Planning Group, but the paragraph did not form part of the Planning Group's formal recommendation and for that reason did require the Commission's approval.

37. Mr. PELLET said that, having formed part of the working group which had prepared the report, he could testify that section VIII was not the invention of any one of its members. In his earlier remarks, he had not meant to condemn the entire section out of hand. He agreed with Mr. Calero Rodrigues that certain key suggestions, such as that for a staggering of elections, deserved consideration, although he did not share Mr. Yankov's view that certain anachronisms in the statute would justify a review; after all, the Charter of the United Nations itself was not completely blameless in that respect. His objection to section VIII was, rather, a matter of presentation and drafting. The Planning Group's report as a whole was a good document and it seemed a pity that its concluding section should, by comparison, seem rather lame.

38. Mr. VARGAS CARREÑO suggested that only the first sentence of paragraph 94 should be maintained, possibly as part of what was now paragraph 95. The examples contained in paragraph 94 were unnecessary at the present stage and could well be omitted.

39. Mr. AL-BAHARNA supported Mr. Rosenstock's suggestion to delete the word "thorough" in paragraph 95 and added that the recommendation could be made still more flexible by inserting the word "may" before "give thought".

40. Mr. CRAWFORD said that he favoured the suggestion made by Mr. Vargas Carreño. Some of the other matters listed in paragraph 94 were of a controversial

[2] The paragraph read:

"95. The Planning Group recommends that the Commission at its next session give thought to the possibility of recommending to the General Assembly a thorough revision of the statute to coincide with the fiftieth anniversary of the Commission in 1999."

nature and it would therefore be wise to dispense with the examples altogether, especially as the most important reason for seeking a review of the statute, namely, the renewal of the political mandate of the Commission, could not be mentioned. The best course would be to amalgamate paragraphs 94 and 95 and to omit the examples, thus leaving it for the next Commission to take up the matter in greater detail.

41. Mr. GÜNEY said he concurred with those remarks. The discussion had shown that most members were in favour of recommending a review of the statute, but that some had doubts as to the examples given in support of the recommendation. The solution suggested by Mr. Crawford could be satisfactory to all.

42. Mr. BENNOUNA said that, in the light of Mr. Crawford's and Mr. Rosenstock's remarks, he accepted that the recommendation for a revision of the statute was not the brainchild of any one person. However, he was still inclined to view the whole idea as a flight of the imagination. Merging paragraphs 94 and 95 along the lines suggested, possibly with a reformulation of paragraph 95 to indicate that the proposed revision would mainly consist in bringing the statute up to date, would make section VIII acceptable to him.

43. Mr. CALERO RODRIGUES said that he, too, would agree to an amalgamation of paragraphs 94 and 95, provided the reference to the replacement of the present system of re-election of the entire membership by a staggering of elections did not completely disappear.

44. Mr. HE said all members were agreed that the statute should be reviewed and that the most appropriate time for a review would be the year of the fiftieth anniversary of the Commission. The concrete proposals put forward in section VIII of the report reflected the views of all members of the Planning Group, and he was in favour of adopting them with some amendments as suggested in the course of the discussion.

45. Mr. MIKULKA said that he did not question the recommendation for a review of the statute and supported the idea that staggered elections deserved special attention. Nevertheless, for technical reasons, a system of rotation might well mean enlarging the size of the membership in order to avoid certain regions being disadvantaged. A larger membership was surely not desirable.

46. The CHAIRMAN suggested that the Commission should adopt section VIII on the understanding that paragraphs 94 and 95 would be redrafted in the light of the discussion.

It was so agreed.

Section VIII, as amended, was adopted on that understanding

Part II, as amended, was adopted.

47. After a short discussion in which Mr. PELLET and Mr. BENNOUNA took part, the CHAIRMAN suggested that adoption of the report of the Planning Group as a whole should be deferred until a later meeting.

*It was so agreed.**

Draft Code of Crimes against the Peace and Security of Mankind[3] (*concluded*)** (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[4])

[Agenda item 3]

48. The CHAIRMAN suggested that the Commission should embark on a preliminary exchange of ideas concerning the recommendation on the draft Code of Crimes against the Peace and Security of Mankind it wished to submit to the General Assembly. A formal decision would be taken after the Commission had adopted the commentaries to the articles.

49. Mr. BENNOUNA said that the question involved more than procedure. The provisions of the Code ranked virtually as peremptory norms of international law and considerable difficulty would be created if the Code was submitted to the treaty procedure. It would be preferable for the Commission to recommend to the General Assembly that the Code should be adopted, directly and by all States, on the basis of a consensus, possibly in a resolution of the General Assembly, as had been the case with the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations[5] and the Definition of Aggression.[6] Such a resolution would carry the stamp of universality.

50. Mr. de SARAM said he tended at that preliminary stage to take a somewhat different view. The articles of the Code had to a large extent been drafted in the light of existing conventions and were essentially such that they should be embodied in a treaty. Consequently, while a declaration by the General Assembly would have the advantage of simplicity, Governments should be allowed every opportunity to review the articles carefully, on the basis of specialist advice, in their own countries. Also, the Commission should not count on the possibility of any provisions included in a declaration of the General Assembly being deemed, after some time, to have become part of general international law.

51. Mr. ROSENSTOCK said that, while he shared many of Mr. de Saram's concerns, he was not altogether convinced that the treaty route was the only one. The Code would be before the Preparatory Committee on the international criminal court which was to meet in August

* The report of the Planning Group as a whole was adopted at the 2473rd meeting, under chapter VII of the report of the Commission on the work of its forty-eighth session.

** Resumed from the 2454th meeting.

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

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

[5] See 2458th meeting, footnote 7.

[6] See 2445th meeting, footnote 7.

1996. Until there was some indication as to the response and intentions of that group, the best course would perhaps be for the Commission to point out to the General Assembly that there were various possible routes, including a declaration, and mentioning very briefly some of the aspects that were clearly not *lex lata*, such as the provision on environmental damage.

52. Mr. CALERO RODRIGUES said that he agreed with much of what Mr. de Saram had said, and also with Mr. Rosenstock's suggestion. His firm belief, however, was that the articles should be incorporated in a treaty, since that was the only way of making sure they were mandatory for States. It would be entirely inappropriate to incorporate them in a declaration or resolution, which did not have the same binding effect. Moreover, if that were done, the provisions of the Code would in effect be left in limbo: the certainty afforded by a treaty was absolutely essential, particularly in the case of criminal law. True, the adoption of a treaty was a more complicated process and there was no knowing whether the States that accepted it would constitute a representative segment of the international community, but that was a risk the Commission would have to take.

53. Mr. YANKOV, endorsing Mr. Rosenstock's remarks, said that the consultations to be held in the Preparatory Committee on the international criminal court might prove helpful, for the court should not have to rely solely on customary rules of law and national legislation. He wondered, however, what the position would be if the Code was ratified by only a few States. In the circumstances, it would be better not to try to impose a solution a priori, though the report of the Commission to the General Assembly could state that various preferences had been expressed in the Commission, which, as a whole, took the view that at that stage the choice should be left to States.

54. Mr. LUKASHUK said the Commission should propose to the General Assembly that it first adopt a declaration and then, as a next step, should, if it so wished, prepare a convention, though that would be for the distant future, in his opinion.

55. Mr. MIKULKA said that it would be a mistake for the Commission to advocate only the treaty form. The Code represented the minimum on which the Commission had agreed and was more or less a codification of existing law on the matter. Consequently, even if its provisions were incorporated in a declaration, the Code would still be an authoritative statement of existing international law which could be applied by any international criminal court. That was the message the Commission's report to the General Assembly must convey. If States decided to adopt the Code in the form of a treaty, all the better, but, failure to do so must not be used as a pretext for denying the legal value of the Code.

56. It would also be possible to incorporate the Code's provisions in the statute of the international criminal court and he saw no contradiction in doing that and in also having a declaration. The main thing was to avoid any doubt about the value of the Code on the ground that it was not incorporated in a treaty.

57. Mr. HE said that he inclined to the opinions expressed by Mr. Rosenstock and Mr. Yankov, particularly in view of the close relation between the Code and the draft statute for an international criminal court. Since the final results of the consultations on the Code to be held in the Preparatory Committee on the international criminal court were still not known, the best course would be simply to refer the Code to the General Assembly for States to decide what form it should take.

58. The CHAIRMAN, speaking as a member of the Commission, said that there was, of course, a logical link between the statute of the international criminal court and the Code. As Mr. Mikulka had rightly noted, the Commission had codified the strict minimum, namely, those crimes that were fully recognized as such in international law, albeit with some nuances such as the environmental issue. Even without the Code, the international criminal court could always apply the penalties for the crimes involved although the best solution would perhaps be for the General Assembly to decide to include those crimes in the statute of the international criminal court.

59. The crimes codified by the Commission ranked, as Mr. Bennouna had pointed out, as peremptory norms of international law. For his own part, he was convinced that aggression and genocide, as well as other serious crimes against humanity and serious crimes involved in armed conflict, now formed part of the rules that were binding on all States. If the provisions of the Code were incorporated in a treaty, and if some States did not ratify that treaty, there would be a problem because of the resulting degree of ambiguity. That, however, would not exempt States from respecting the rules of international law prohibiting such crimes as set forth in the Code.

60. In the circumstances, he would suggest that the Commission should State a preference in one direction or another, but should leave it to the General Assembly or to States themselves to decide whether the Commission's preference met with their approval or whether they wished to follow some other course.

The meeting rose at 5.30 p.m.

2462nd MEETING

Wednesday, 17 July 1996, at 10.05 a.m.

Chairman: Mr. Ahmed MAHIOU

Present: Mr. Al-Baharna, Mr. Arangio-Ruiz, Mr. Barboza, Mr. Bennouna, Mr. Bowett, Mr. Calero Rodrigues, Mr. Crawford, Mr. de Saram, Mr. Eiriksson, Mr. Elaraby, Mr. Fomba, Mr. Güney, Mr. He, Mr. Kabatsi, Mr. Kusuma-Atmadja, Mr. Lukashuk,