

Document:-
A/CN.4/SR.266

Summary record of the 266th meeting

Topic:
Draft code of offences against the peace and security of mankind (Part I)

Extract from the Yearbook of the International Law Commission:-
1954 , vol. I

*Downloaded from the web site of the International Law Commission
(<http://www.un.org/law/ilc/index.htm>)*

65. Mr. ZOUREK pointed out that, in practice, the deletion of that paragraph would not prevent the rule it embodied from operating by virtue of the most favoured nation clause.

66. Mr. CORDOVA said that the most favoured nation clause was an exceptional one and only appeared in certain treaties. The Commission's duty was to lay down a general rule.

67. Mr. SCALLE pointed out that in practice the most favoured nation clause had never prevented a State from adopting discriminatory measures. If, however, the Special Rapporteur thought that in order to allow for the cases referred to by Mr. Salamanca, it was necessary to delete paragraph 2 completely, he would agree to that course.

68. The CHAIRMAN put to the vote Mr. Zourek's proposal that the first phrase of article 21, paragraph 2, should be retained.

The proposal was rejected by 8 votes to 1, with 5 abstentions.

69. The CHAIRMAN put to the vote article 21 as a whole, which, after the Special Rapporteur had withdrawn paragraph 2, consisted only of paragraph 1.

Article 21, as amended, was adopted by 10 votes to 1, with 3 abstentions.

The meeting rose at 12.55 p.m.

266th MEETING

Monday, 12 July 1954, at 9.45 a.m.

CONTENTS

	<i>Page</i>
Draft Code of Offences against the Peace and Security of Mankind (item 4 of the agenda) (A/1858, A/2162) and Add.1 and 2, A/CN.4/85)	123
Title	123
Article 1	124
Article 2 (1)	125
Article 2 (2)	127
Article 2: proposed new clause	127
Article 2 (3)	127
Article 2 (4)	127

Chairman: Mr. A. E. F. SANDSTRÖM

Rapporteur: Mr. J. P. A. FRANÇOIS

Present:

Members: Mr. G. AMADO, Mr. R. CORDOVA, Mr. D. L. EDMONDS, Faris Bey el-KHOURI, Mr. F. GARCÍA-AMADOR, Mr. S. HSU, Mr. R. PAL, Mr. C. SALAMANCA, Mr. G. SCALLE, Mr. J. SPIROPOULOS, Mr. J. ZOUREK.

Secretariat: Mr. Yuen-li LIANG (Director of the Division for the Development and Codification of International Law, and Secretary to the Commission).

Draft Code of Offences against the Peace and Security of Mankind (item 4 of the agenda) (A/1858, A/2162 and Add. 1 and 2, A/CN.4/85)

1. The CHAIRMAN invited the Commission to consider the draft Code of Offences against the Peace and Security of Mankind, adopted by the Commission at its third session (1951),¹ in the light of the comments of governments² and the proposals for modifications submitted by the Special Rapporteur in his third report.³

2. Mr. SPIROPOULOS, Special Rapporteur, said that he had on the whole retained the draft adopted by the Commission at its third session and had only departed from it where the few comments from governments gave good reason for doing so. Most of those comments referred to the definition of aggression; only six concerned the articles of the draft Code.

Title

3. Dr. Manuel Duran of Bolivia had suggested the inclusion in the title of the word "integrity". He (Mr. Spiropoulos) personally considered, for reasons given by the Netherlands Government and because the title as submitted had been adopted by the General Assembly itself, that no change was necessary.

4. Mr. CORDOVA regretted that the comments of the Belgian Government had arrived too late to be considered in detail. They mentioned an alternative title which included the notion of "war crimes". Such an addition was logical and he proposed that the title of the draft Code as submitted should be replaced by the title proposed by the Belgian Government: "Code of offences against peace and humanity, and war crimes".

5. The CHAIRMAN put to the vote Mr. Córdova's proposal that the title should be amended on the lines suggested by the Belgian Government.

The proposal was rejected by 6 votes to 3, with 2 abstentions.

¹ See chapter IV of the Commission's report on its third session, *Official Records of the General Assembly, Sixth Session, Supplement No. 9* (A/1858). The draft Code is also reproduced in *Yearbook of the International Law Commission, 1951*, vol. II, p. 134.

² See *Official Records of the General Assembly, Seventh Session, Annexes, Agenda item 54*, document A/2162 and Add.1. Document A/2162/Add.2, containing comments by the Government of Belgium, is in mimeographed form only. The comments of the governments (except those of Belgium which arrived too late to be included) are summarized in the Special Rapporteur's third report (see footnote 3).

³ A/CN.4/85 in *Yearbook of the International Law Commission, 1954*, vol. II.

*Article 1*⁴

6. Mr. CORDOVA pointed out that whereas the English version of the Special Rapporteur's redraft of article 1 contained a specific reference to punishment, the French text⁵ contained no such reference. He thought the meaning of the French text of the last phrase of the redraft was not sufficiently clear, while the corresponding English phrase should be made more emphatic.

7. Mr. ZOUREK said that an article should be included making it mandatory for governments to punish the crimes defined in the Code. Otherwise the Code would serve no useful purpose. He pointed out that under the draft article, as submitted, States would not be under a duty to punish offences against the peace and security of mankind.

8. Mr. SPIROPOULOS, Special Rapporteur, replied that such an obligation might be contained either in the statute of the international tribunal which would eventually be set up, or in the final clauses of the draft Code. In his opinion the draft Code should not be presented in the form of an international convention, because if so presented it would encounter considerable opposition in the General Assembly.

9. Mr. ZOUREK recalled that the Commission had already in the report covering its third session⁶ (A/1858) established a certain relationship between an international criminal court and the draft Code of Offences, which in his opinion, was absolutely unjustified. War crimes had long been punished by national courts and he did not see why the present draft Code could not be applied without an international court.

10. Mr. SPIROPOULOS, Special Rapporteur, said that if no tribunal were set up it would make the punishment of offenders virtually impossible. He agreed that the words "shall be liable to punishment" in his draft article 1 might be replaced by the words: "shall be punished".

11. Mr. HSU supported the draft article submitted by the Special Rapporteur as it did not depart to any great extent from the text originally adopted by the Commission. The General Assembly was not likely to accept the draft Code submitted to it by the Commission, but

as the latter would be wholly responsible for the final text, it should exercise particular care in its drafting.

12. Mr. CORDOVA said it was important to specify whether offenders would be punished under national law or by an international tribunal. With regard to the drafting of article 1 of the draft Code he preferred the text adopted by the Commission at its third session subject to the words "shall be punishable" being replaced by the words "shall be punished".

13. Mr. GARCÍA-AMADOR said that the Commission was dealing only with the question of the criminal liability involved in offences against the peace and security of mankind, and the draft Code as submitted gave the impression that after the offender's punishment no other form of liability remained. In fact, however, the offender might also be civilly liable, for example, for reparations. Such a contingency was not covered in the draft. Accordingly, the Commission should explain that its draft covered only criminal liability and should also explain why the draft did not mention civil liability.

14. Mr. SPIROPOULOS, Special Rapporteur, agreed with Mr. García-Amador. He personally preferred the words "shall be liable to punishment" to stand as it was dangerous to be more precise. If States did not wish to punish an offender they could not be compelled to do so.

15. Mr. SALAMANCA said three variants of the final phrase of article 1 had been proposed: "shall be punishable" as adopted at the third session; "shall be liable to punishment" as proposed by the Special Rapporteur in his third report; and "shall be punished" as proposed by Mr. Córdova, a formula which would remove the ambiguity criticized by the United Kingdom Government in its comments. He preferred the third variant: "shall be punished".

16. Mr. AMADO said that the substance of the article was more important than the form in which it was expressed. It was significant that for the first time a body of jurists had stated that individuals could be held criminally liable for international crimes committed by them in the performance of their functions.

17. Mr. SCHELLE agreed that the formula should be a precise one such as "shall be punished". It would, however, not have very much meaning if the Commission did not specifically state how and by whom offenders should be punished. He therefore proposed the addition, at the end of the draft article, of the words: "by each State until such time as an international criminal court is set up".

18. Mr. ZOUREK agreed that the words "shall be punished" should replace the words "shall be liable to punishment". However, he opposed any tendency to make the formulation of the Code of offences contingent on the establishment of an international criminal court.

⁴ The Commission's 1951 draft of article 1 read as follows: "Offences against the peace and security of mankind, as defined in this Code, are crimes under international law, for which the responsible individuals shall be punishable."

The Special Rapporteur, in A/CN.4/85, proposed the following text:

"The offences against the peace and security of mankind defined in this Code are crimes under international law, for which the responsible individuals shall be liable to punishment."

⁵ See document A/CN.4/85 in *Yearbook of the International Law Commission, 1954*, vol. II.

⁶ Cf. para. 58 (d) of the report. See reference in footnote 1, above.

19. Mr. CORDOVA agreed with Mr. Scelle that it was important to specify the organ which would be responsible for the punishment of offences, but thought that it would be very dangerous to entrust that function to individual governments. That would result in the national courts becoming one-party tribunals as had been the case at the Nürnberg trials. It was most important that courts should not be composed in such a way as to enable them, in the case of war, for example, to deal with the crimes committed by one party while ignoring those committed by the other. He proposed that the words "by an international court" should be added at the end of article 1.

20. Mr. HSU said that the article as redrafted by the Special Rapporteur in his third report was an improvement on the article originally adopted by the Commission. In reply to Mr. Córdova he said that if Mr. Scelle's proposal were adopted, the States would only be responsible for the punishment of offenders until an international court was set up.

21. Mr. SCELLE said that it was not unimportant or irrelevant to refer to the responsibility of States as such, since it was conceivable, for example, that state authorities might be called upon to punish members of a former government of the same State. Governments should be under a duty to punish offences against the peace and security of mankind committed in their territory.

22. Mr. SALAMANCA said that if the Commission adopted Mr. Scelle's proposal it would have to make provision for an international organ competent to punish international crimes. At present the situation was most unsatisfactory as the Code which the Commission was drafting dealt, as far as he could see, with crimes as yet undefined which would be punished by a court which would probably not be set up for a very long time. If the Commission agreed that the establishment of an international tribunal was a very remote possibility, he would be in favour of Mr. Scelle's proposal.

23. Faris Bey el-KHOURI pointed out that the Commission was drafting a penal code and not a code of procedure. The implementation of the Code was a matter of procedure and the Commission should restrict itself to the task of defining crimes against the peace and security of mankind. He recalled that another organ was at present studying the question of the establishment of an international criminal court. If the Commission thought it necessary, a provisional article might be added providing for the implementation of the Code until an international tribunal was set up.

24. He proposed that the words "shall be liable to punishment" should be replaced by "should be punished".

25. The CHAIRMAN put Faris Bey el-Khourî's proposal to the vote.

The proposal was not adopted, 5 votes being cast in favour, 5 against, with 3 abstentions.

26. Mr. SCELLE and Mr. ZOUREK explained that they had voted against the proposal because the word "should" was not mandatory.

27. The CHAIRMAN put to the vote the proposal that the words "shall be liable to punishment" should be replaced by the words "shall be punished".

The proposal was adopted by 11 votes to none, with 2 abstentions.

28. The CHAIRMAN put to the vote Mr. Scelle's proposal that the phrase "by each State until such time as an international criminal court is set up" should be added at the end of article 1.

The proposal was rejected by 6 votes to 2, with 5 abstentions.

29. The CHAIRMAN put to the vote Mr. Córdova's proposal that the words "by an international court" should be added to article 1.

The proposal was adopted by 6 votes to 3, with 4 abstentions.

30. Mr. AMADO said that the adoption of that proposal would necessitate the creation of an international police force to arrest offenders.

31. Mr. ZOUREK said he had voted against Mr. Córdova's proposal because the application of the clause as modified would imply that international crimes could only be prosecuted and punished by an international criminal court, a situation he was not prepared to consider. Moreover, if that were to be the case, the Code would probably be unacceptable to States.

32. The CHAIRMAN put to the vote article 1, as a whole, as amended: "The offences against the peace and security of mankind defined in this Code are crimes under international law, for which the responsible individuals shall be punished by an international court."

Article 1 as amended was adopted by 7 votes 1, with 4 abstentions.⁷

Article 2 (1)⁸

33. Mr. SPIROPOULOS, Special Rapporteur, said that he was proposing the shorter wording "Any act

⁷ See however above, 267th meeting, paras. 64 *et seq.*

⁸ The Commission's 1951 draft of article 2(1) read as follows:

"The following acts are offences against the peace and security of mankind:

"(1) Any act of aggression, including the employment by the authorities of a State of armed force against another State for any purpose other than national or collective self-defence or in pursuance of a decision or recommendation by a competent organ of the United Nations."

The Special Rapporteur, in A/CN.4/85, proposed the following text:

"The following acts are offences against the peace and security of mankind:

"(1) Any act of aggression."

of aggression" for the first offence on the list, in deference to the criticisms of the United Kingdom Government. The article, as adopted by the Commission at its third session, employed such a term as "self-defence" which itself required definition.

34. Mr. CORDOVA said that the same problem existed in municipal criminal law. In self-defence force was justified, but no general definition of self defence could be given: it was the courts which, in each special case, decided whether the plea of self-defence was admissible or not. There was, therefore, no valid reason for omitting the reference to self-defence from article 2(1).

35. Mr. HSU said he agreed with the Special Rapporteur's simplified version. The General Assembly was dealing with the problem of defining aggression: a mere reference to aggression in general was therefore sufficient in article 2(1).

36. Mr. SPIROPOULOS, Special Rapporteur, said that the question of defining aggression came within the competence of the Special Committee appointed under General Assembly resolution 688(VII). That Committee had not yet been able to frame a definition of aggression; the General Assembly and the Special Committee would continue to deal with the matter, and when a definition was eventually worked out, it would apply to the offence referred to in article 2(1). It was unthinkable that self-defence or enforcement measures under the Charter could be described as aggression. He therefore maintained his modified draft.

37. Mr. SCELLE said that the original draft was better than the shorter amended text. Self-defence ceased as soon as the danger had been countered; any further action amounted to aggression. It was necessary to make that clear and also to make provision for enforcement action under the Charter of the United Nations. Accordingly, he proposed that article 2(1) as drafted by the Commission at its third session should be adopted.

38. Mr. AMADO approved of the shorter draft. In municipal penal codes the definition of murder and the provisions regarding self-defence were usually contained in different articles.

39. Mr. ZOUREK said that to make the draft complete it would be necessary to include a definition of aggression. The question of whether it was possible or desirable to elaborate such a definition was no longer relevant, since it had been settled by the General Assembly which in its resolution 599(VI) had stated that such a definition was possible and desirable. Unfortunately, there were two reasons why the Commission would not be able at its present session to deal with the definition of aggression. Firstly, the General Assembly had set up a Special Committee to study the question and would itself be dealing with it at its forthcoming ninth session. Secondly, the Commission did not have the necessary time at its disposal during the current session. The best course for the Com-

mission would therefore be to indicate that the term "aggression" would be construed in accordance with the definition to be adopted by the General Assembly. Mr. Zourek recalled that the General Assembly had before it a draft resolution submitted by the Union of Soviet Socialist Republics and reproduced in the annex to the Report of the Special Committee on the Question of Defining Aggression.⁹ The said definition was very comprehensive in that it covered not only armed aggression but also economic, indirect and ideological forms of aggression as well.

40. He could not agree to the shorter draft of article 2(1); among other things, the term "aggression" used without any further qualification was ambiguous. In some countries the term "aggression" in criminal law meant a personal physical attack. It would be necessary to say "war of aggression" so as to avoid any possible confusion.

41. Even the full original draft of the Special Rapporteur was incomplete.¹⁰ It covered aggression and the preparation of aggression but did not cover the final planning of aggression as distinct from a commencement of execution of such a plan. In that respect the draft was narrower than the Nürnberg Charter and the Nürnberg Judgment.

42. Mr. SPIROPOULOS, Special Rapporteur, said that it went without saying that any further definition of aggression that might be adopted in future by the international community would naturally apply to the article under discussion.

43. The CHAIRMAN put to the vote Mr. Scelle's proposal that the longer form of article 2(1) as drafted by the Commission at its third session should be adopted.

The proposal was adopted by 6 votes to 1, with 4 abstentions.

44. The CHAIRMAN put to the vote article 2(1) as a whole, reading as follows, document A/1858:

"The following acts are offences against the peace and security of mankind: (1) Any act of aggression, including the employment by the authorities of a State of armed force against another State for any purpose other than national or collective self-defence or in pursuance of a decision or recommendation by a competent organ of the United Nations."

Article 2(1) was adopted by 9 votes to 2, with 2 abstentions.

45. Mr. ZOUREK said he had abstained in both votes because the wording of that clause implied that enforcement measures might be recommended by a United Nations organ other than the Security Council, which alone was competent to order such measures.

⁹ *Official Records of the General Assembly, Ninth Session, Supplement No. 11 (A/2638).*

¹⁰ See *Yearbook of the International Law Commission, 1951, vol. II, p. 58.*

*Article 2 (2)*¹¹

46. The CHAIRMAN put to the vote article 2 (2) as drafted at the third session, in 1951.

Article 2 (2) was adopted by 11 votes to none, with 1 abstention.

Article 2: proposed new clause

47. Mr. GARCÍA-AMADOR said he proposed an additional clause listing as an offence against the peace and security of mankind: "The intervention by the authorities of a State in the internal or external affairs of another State by means of coercive measures of an economic or political character in order to force its will and obtain from it advantage of any kind".

48. His proposal was based on the combined provisions of articles 15 and 16 of the Charter of the Organization of American States signed on 30 April 1948 at Bogotá,¹² which had been adopted and ratified by twenty-one American States. Article 15 denied to any State or group of States the right to intervene directly or indirectly in the internal or external affairs of another State, and article 16 stated that "No State may use or encourage the use of coercive measures of an economic or political character in order to force the sovereign will of another State and obtain from it advantages of any kind".

49. Since the American nations, representing one-third of the membership of the United Nations, had adopted articles 15 and 16 of the Charter of Bogotá, and in view also of the Belgian Government's reference in its comments to economic blockade, the Commission should include a provision relating to intervention. He proposed that the clause in question should be inserted immediately after article 2.

50. The CHAIRMAN said that the new clause proposed by Mr. García-Amador would be discussed immediately after article 2 (8).¹³ That would not, however, prejudice the final order in which the various offences would be listed by the Drafting Committee.

*Article 2 (3)*¹⁴

51. The CHAIRMAN put to the vote article 2 (3) as drafted at the third session in 1951.

¹¹ The Commission's 1951 draft of article 2 (2) read as follows:

"The following acts are offences against the peace and security of mankind:

...

"(2) Any threat by the authorities of a State to resort to an act of aggression against another State."

The Special Rapporteur did not propose any modification of that text.

¹² *United Nations Treaty Series*, vol. 19, p. 56.

¹³ *Vide infra*, 268th meeting, para. 57.

¹⁴ The Commission's 1951 draft of article 2 (3) read as follows:

Article 2 (3) was adopted by 9 votes to none, with 2 abstentions.

52. Mr. ZOUREK said he had abstained from voting because the draft provision did not refer to the planning of aggression.

*Article 2 (4)*¹⁵

53. Mr. SPIROPOULOS, Special Rapporteur, proposed article 2 (4) as redrafted in his third report in the light of the comments of the Governments of the United Kingdom and Yugoslavia. He also referred to the Belgian suggestion that the phrase "outside frontiers" condensed the expression "into the territory of a State from the territory of another State".

54. Mr. HSU proposed the following amendments to article 2 (4) as redrafted by the Special Rapporteur:

(i) The initial words "The toleration, encouragement or organization" should be replaced by "The organization, or the encouragement or toleration of such organization";

(ii) The words "the purpose of effecting" should be deleted;

(iii) A comma should be added between the word "State" and the word "or".

(iv) The final phrase "or the toleration of the use by such armed bands of the territory of that State as a base of operations or as a point of departure

"The following acts are offences against the peace and security of mankind:

...

"(3) The preparation by the authorities of a State for the employment of armed force against another State for any purpose other than national or collective self-defence or in pursuance of a decision or recommendation by a competent organ of the United Nations."

The Special Rapporteur proposed the following modification:

"The following acts are offences against the peace and security of mankind:

...

"(3) The preparation by the authorities of a State of aggression against another State."

¹⁵ The Commission's 1951 draft of article 2 (4) read as follows:

"The following acts are offences against the peace and security of mankind:

...

"(4) The incursion into the territory of a State from the territory of another State by armed bands acting for a political purpose."

The Special Rapporteur, in A/CN.4/85, proposed the following text:

"The following acts are offences against the peace and security of mankind:

...

"(4) The intoleration, encouragement or organization by the authorities of a State of armed bands for the purpose of effecting incursions into the territory of another State or the toleration of the use by such armed bands of the territory of that State as a base of operations or as a point of departure for incursion into the territory of another State, as well as direct participation in such incursion."

for incursion into the territory of another State, as well as direct participation in such incursion" should be replaced by the words: "or the support by the authorities of a State of such armed bands after the incursions."

55. Apart from mere drafting changes, the amendments were concerned with providing for the case in which armed bands, although organized without the support of the authorities of a State, received help from within that State after their incursion into another State had begun, namely, at a time when they were no longer within the territory of the State from which they were receiving aid.

56. Mr. ZOUREK proposed that instead of article 2(4) as proposed by the Special Rapporteur, the Commission should adopt the following provision:

"Support of armed bands organized in the territory of a State, which invade the territory of another State, or the refusal of the former, on being requested by the invaded State, to take in its own territory any action within its power to deny such bands any aid or protection."

57. That wording was taken from the London Conventions of 1933¹⁶ on the definition of aggression; it had therefore the great merit of being drawn from international law in force. It was also reproduced in substance in the USSR draft resolution previously referred to.¹⁷

58. Mr. SPIROPOULOS, Special Rapporteur, said that Mr. Zourek's proposal put the emphasis on state action, whereas the aim of his redraft was to provide clearly both for individual and for state liability, in keeping with the comments of the Governments of the United Kingdom and Yugoslavia.

59. Mr. CORDOVA proposed that the words "within its territory or in any other territory" should be inserted after the words "of armed bands".

60. Mr. SPIROPOULOS, "Special Rapporteur", said that the Belgian suggestion to use the terms "outside frontiers" seemed to cover Mr. Córdova's proposal.

61. Mr. ZOUREK said that the clause as drafted at the third session referred to individual criminal liability for the actions of armed bands. He pointed out that the amended draft proposed by the Special Rapporteur began by a reference to "the toleration, encouragement or organization by the authorities of a State", thus placing the emphasis also on state action. The structure of the text had therefore been modified by the Special Rapporteur himself.

62. Mr. HSU stressed that his proposal would cover the case in which armed bands were organized even without the knowledge of the authorities of a State. Those authorities, once the incursion had begun and become

known to them, would be committing an offence by allowing such bands to be supported from the territory within their jurisdiction.

63. Mr. SCALLE pointed out that Mr. Zourek's draft provision did not cover the case in which armed bands were organized in the territory of a third State.

64. The CHAIRMAN put to the vote Mr. Hsu's first amendment to the effect that the words "toleration, encouragement or organization" as proposed by the Special Rapporteur should be replaced by: "organization, or the encouragement or toleration of such organization".

The amendment was adopted by 6 votes to 2, with 5 abstentions.

65. The CHAIRMAN put to the vote Mr. Hsu's second amendment, proposing the deletion of the words "the purpose of effecting" in the Special Rapporteur's redraft.

The amendment was adopted by 6 votes to none, with 7 abstentions.

66. The CHAIRMAN put to the vote Mr. Hsu's third amendment, proposing the addition of a comma between the word "State" and the word "or" in the text proposed by the Special Rapporteur.

The amendment was adopted by 4 votes to none, with 4 abstentions.

67. The CHAIRMAN put to the vote Mr. Hsu's fourth proposal for the deletion of the final phrase of article 2(4) as redrafted by the Special Rapporteur, from the words "or the toleration of the use" and for replacing them by: "or the support by the authorities of a State of such armed bands after the incursions".

The proposal was rejected by 3 votes to 2, with 7 abstentions.

68. The CHAIRMAN put to the vote Mr. Córdova's proposal that the words "within its territory or in any other territory" should be inserted after the words "of armed bands" in the Special Rapporteur's redraft.

The proposal was adopted by 7 votes to none, with 6 abstentions.

69. The CHAIRMAN said that after the various amendments were adopted article 2(4) now read:

"(4) The organization, or the encouragement or toleration of such organization, by the authorities of a State of armed bands within its territory or in any other territory for incursions into the territory of another State, or the toleration of the use by such armed bands of the territory of that State as a base of operations or as a point of departure for incursion into the territory of another State, as well as direct participation in such incursion."

70. Mr. Zourek's proposal for replacing the whole of article 2(4) by his alternative draft would be dealt with at the next meeting.

71. Mr. AMADO said he had abstained in the preceding votes because, no doubt like other members,

¹⁶ *League of Nations Treaty Series*, vol. 147, p. 73; vol. 148, pp. 83 and 215.

¹⁷ *Vide supra*, para. 39.

he had not been quite certain of the implications of the series of amendments put to the vote.

The meeting rose at 1 p.m.

267th MEETING

Tuesday, 13 July, 1954, at 9.45 a.m.

CONTENTS

	Page
Draft Code of Offences against the Peace and Security of Mankind (item 4 of the agenda) (A/1858, A/2162 and Add. 1 and 2, A/CN.4/85) (continued)	
Article 2 (4) (continued)	129
Article 2 (5)	129
Article 2 (6)	130
Article 2 (7)	131
Article 2 (8)	131
Article 2 (9)	131
Article 2 (10)	131
Article 1 (resumed from the 266th meeting)	133

Chairman: Mr. A. E. F. SANDSTRÖM

Rapporteur: Mr. J. P. A. FRANÇOIS

Present:

Members: Mr. G. AMADO, Mr. R. CORDOVA, Mr. D. L. EDMONDS, Faris Bey el-KHOURI, Mr. F. GARCÍA-AMADOR, Mr. S. HSU, Mr. R. PAL, Mr. C. SALAMANCA, Mr. G. SCELLE, Mr. J. SPIROPOULOS, Mr. J. ZOUREK.

Secretariat: Mr. Yuen-li LIANG (Director of the Division for the Development and Codification of International Law, and Secretary to the Commission).

Draft Code of Offences against the Peace and Security of Mankind (item 4 of the agenda) (A/1858, A/2162 and Add. 1 and 2, A/CN.4/85) ¹ (continued)

Article 2 (4) (continued)

1. The CHAIRMAN recalled that the draft adopted by the Commission at its third session had been redrafted by the Special Rapporteur in the light of comments by Governments.² At its 266th meeting³ the Commission had further amended the text so that article 2 (4) now read:

“(4) The organization, or the encouragement or toleration of such organization, by the authorities of a State, of armed bands within its territory of another

State, or the toleration of the use by such armed bands of the territory of that State as a base of operations or as a point of departure for incursion into the territory of another State, as well as direct participation in such incursion.”

2. Mr. CORDOVA proposed that in the last phrase, after the words “direct participation in” the words “or support of” should be added.

Mr. Córdova's proposal was adopted by 9 votes to none, with 4 abstentions.

3. The CHAIRMAN put to the vote article 2 (4) as a whole as amended.

Article 2 (4) as amended was adopted by 8 votes to none, with 5 abstentions.

Article 2 (5)⁴

4. Mr. HSU proposed the insertion of the following additional paragraph immediately before paragraph 5.

“The organization, or the encouragement or toleration of such organization by the authorities of a State, of fifth columnists for activities in another State, or the support by the authorities of a State of organized groups serving for them as fifth columnists in another State.”

5. The CHAIRMAN pointed out that the Commission was discussing amendments proposed to its 1951 draft in the light of comments by governments. It might accordingly be questioned whether additional clauses which had not been proposed by any government should be considered.

6. Mr. FRANÇOIS agreed with the Chairman. The second reading of the draft did not mean that a minority was to be given an opportunity of reopening issues discussed and settled by the Commission at earlier sessions.

7. Mr. SPIROPOULOS, Special Rapporteur, pointed out that section XVII of his third report⁵ dealt with proposals by certain Governments for the insertion, in the draft Code, of offences other than those already defined in it. The Commission could deal with Mr. Hsu's proposal in the course of the discussion of section XVII.

8. Mr. HSU said that the Commission should not consider itself bound by the draft voted three years

⁴ The Commission's 1951 draft of article 2 (5) read:

“The following acts are offences against the peace and security of mankind:

...

“(5) The undertaking or encouragement by the authorities of a State of activities calculated to foment civil strife in another State, or the toleration by the authorities of a State of organized activities calculated to foment civil strife in another State.”

The Special Rapporteur did not propose any modification of that text.

⁵ A/CN.4/85, in *Yearbook of the International Law Commission, 1954*, vol. II.

¹ *Vide supra*, 266th meeting, para. 1 and footnotes.

² *Ibid.*, para. 53 and footnote 15.

³ *Ibid.*, paras. 64-69.