Document:-
A/CN.4/SR.269

Summary record of the 269th 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**

meant obtaining an advantage by means of pressure was a punishable offence.

60. Mr. SALAMANCA said that the proposal was not concerned with peaceful intervention. It referred, for example, to the use of the financial resources of the government of one State for the purpose of overthrowing the government of another State.

61. Mr. ZOUREK said that under Article 2, paragraph 4, of the United Nations Charter, all Members of the United Nations were under a duty to refrain from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations. That was a very wide provision indeed, and the paragraphs of article 2 of the draft Code as adopted by the Commission did not cover every case in which the use of force was illegal. The United Nations Charter declared illegal the use of force in general, including not only military but also economic measures. He supported Mr. García-Amador's proposal, because it was in line with his own view that any use of force in violation of the Charter should be declared an international offence.

62. Mr. HSU said he would approve of Mr. García-Amador's proposal if it could be redrafted in less sweeping terms. The declaration that all forms of political or economic intervention were a crime needed some qualification.

63. Mr. GARCÍA-AMADOR, with reference to the Special Rapporteur's criticism, said he had little to add to his remarks at the 266th meeting. The paragraph he had drafted was directly based on articles 15 and 16 of the charter of the Organization of American States signed at Bogotá in 1948.

64. The CHAIRMAN put to the vote Mr. García-Amador's proposal for an additional paragraph to article 2, reading: "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 advantages of any kind."

The proposal was adopted by 6 votes to 4, with 2 abstentions.

The meeting rose at 1.20 p.m.

269th MEETING

Friday, 16 July 1954, at 9.30 a.m.

CONTENTS

Chairman: Mr. A. E. F. SANDSTRÖM

Rapporteur: Mr. J. P. A. FRANÇOIS

Present:

Members: Mr. G. AMADO, Mr. R. CÓRDOVA, Mr. D. L. EDMONDS, Faris Bey el-KHOURI, Mr. F. GARCÍA-AMADOR, Mr. S. HSU, Mr. H. LAUTERPACHT, Mr. R. PAL, Mr. C. SALAMANCA, Mr. G. SCELLE, Mr. J. SPIROPOULOS, Mr. 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: proposed additional paragraph

1. Mr. HSU proposed that the following new paragraph should be added to article 2:

"The organization, or the encouragement or toleration of such organization, by the authorities of a State, of subversive activities in another State, or the support by the authorities of a State of organized subversive activities in another State." [2]

2. He attached particular importance to the reference to subversive activities. Whereas acts of terrorism, for example, might be committed by an individual against another individual, subversive activities imperilled the existence of the State against which they were directed and engaged the responsibility of the States by which they were organized, encouraged or tolerated; therefore such activities were more directly relevant to the subject under discussion. Subversive activities were particularly dangerous to countries with a régime of political freedom, in other words the great majority of the Members of the United Nations, including most of the great Powers. It was not without reason that the Government of the United States had enacted legislation to prevent and punish subversive activities. No clause in the paragraphs of article 2 already adopted covered such activities; they constituted a new factor in modern politics against which States needed protection. If the Commission wished international law to be truly effective, it should include such criminal activities in the enumeration contained in article 2.

3. Mr. FRANÇOIS thought the proposal was too sweeping. The expression "subversive activities" in

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

[2] Cf. *supra*, 267th meeting, paras. 4-29.

the broader sense, might include ordinary propaganda against an established government; democratic countries would decline to ban, in their territory, such propaganda against a foreign government. The clause proposed was in effect a denial of freedom of thought and expression.

4. Mr. GARCÍA-AMADOR said that without the words "or the toleration of such organization", Mr. Hsu's amendment would satisfy a real need. The offence so defined was comparable to cases of non-military aggression, where a State organized or encouraged subversive activities in another State as acts preparatory to an aggression. A number of inter-American resolutions and declarations had been adopted to cover such cases, some of them before the war to counteract the Nazi activities, and the others after the war to counteract the activities of international communism. The subject had been scientifically studied by the Montevideo Committee on Political Defence and by the Legal Department of the Pan-American Union.[3] In short, under the inter-American security system, the organization and encouragement of subversive acitivites were considered acts of political aggression, and therefore assimilated to international crimes.

5. Mr. CÓRDOVA thought that Mr. François' fears were perhaps not justified. It was permissible in a democratic State to carry on propaganda against the established government but not to attempt to overthrow it by illegal means; those were two quite distinct forms of opposition which could hardly be confused. If the expression "subversive activities" was taken to refer to the second form of opposition, Mr. Hsu's amendment was acceptable; a government which attempted by violence to overthrow the government of a foreign State would be endangering the peace between the two countries concerned.

6. Mr. LAUTERPACHT said, with reference to Mr. Hsu's proposal, that the international community was no longer a society for the mutual protection of established governments. A revolution might be a crime against the State, but it was no longer a crime against the international community. So long as international society did not effectively guarantee the rights of man against arbitrariness and oppression by governments, it could not oblige States to treat subversive activities, when they did not amount to hostile expeditions, as a crime. He was in agreement with article 2 (4) relating to incursions by armed bands, but it would be most regrettable if the Commission adopted a provision which might lead to the restriction of the freedom of speech and political opinion. States should not allow their territory to be used as a base for armed raids, but propaganda in favour of a political theory was a very different matter. If Mr. Hsu's amendment was intended also to cover that form of opposition, he hoped that the Commission would not adopt it.

7. Mr. SPIROPOULOS, Special Rapporteur, agreed with Mr. Lauterpacht. There was a great difference between the organization of armed bands and subversive activities. Any attempt to ban the latter would run counter to the recent evolution of the guiding principles of the international community which governed the very life of modern States. It was essential that the draft Code should not be unacceptable to the States.

8. The CHAIRMAN gave an example from his own experience. About twenty years earlier, the Swedish Government had asked him to conduct an inquiry into subversive activities in Sweden and to propose measures to curb them. By the time that inquiry was completed, it had become clear that legislation to curb such activities would inevitably infringe fundamental democratic liberties, and that the only result of repressive measures would have been to drive these activities underground. It might be objected that Sweden was a special case, but he did not think so. Any provision against subversive activities merely demonstrated the impotence of a State to deal with the problem they created. The organization of armed bands and the fomenting of civil strife which were the subject matter of paragraphs 4 and 5 of article 2, were really international crimes; but the term "subversive activities" was so vague that it did not warrant a special paragraph in article 2.

9. Mr. HSU pointed out that the case mentioned by the Chairman referred to internal opposition; the conclusions drawn from the Chairman's experience did not therefore necessarily apply to the case of subversive activities directed against a foreign State.

10. Mr. Lauterpacht's remarks on the evolution of the international community were certainly pertinent. In the present state of international relations, however, no peace was possible if States were not protected against subversive activities organized by foreign governments.

11. In answer to Mr. Spiropoulos, he pointed out that the Commission, which was composed of experts, was under a duty to draft as complete a code as possible, irrespective of the draft's chances of being accepted by the States.

12. Mr. CÓRDOVA agreed with the Chairman. Paragraphs 4 and 5 of article 2 already dealt with attempts to overthrow a foreign Government by violence; the subversive activities referred to in Mr. Hsu's proposal could therefore only consist of propaganda. Respect for freedom of speech demanded that any form of propaganda in favour of political opinions should be permitted. He would therefore not vote in favour of Mr. Hsu's amendment.

13. Mr. HSU agreed that if the scope of paragraph 5 were construed broadly, it might also apply to subversive activities. It was, however, preferable to insert a special paragraph in article 2 to cover cases in which a government endeavoured to overthrow the government of a

[3] See its *Report on Strengthening of Internal Security* (1953).

foreign State, not so much with the object—as in the past—of conquering the country, as of integrating it into a new political system.

14. THE CHAIRMAN put to the vote Mr. Hsu's proposal for adding a new paragraph in the terms set forth earlier in the meeting.

The proposal was rejected by 7 votes to 2, with 4 abstentions.

15. Mr. GARCÍA-AMADOR said he had voted in favour of Mr. Hsu's proposal for the reasons he had given in the course of the discussion.

16. Faris Bey-el KHOURI said he had voted against the amendment because he considered that the term "civil strife" comprised subversive activities. Mr. Hsu's proposal should, of course, be mentioned in the Commission's report on its current session.

Article 2 (10)

(resumed from the 268th meeting) [4]

17. The CHAIRMAN said that at its 267th meeting [5] the Commission had decided to delete the last phrase from paragraph 10 ("when such acts are committed in execution of or in connexion with other offences defined in this article."). It had become apparent, however, that in its amended form the paragraph might be construed as applying to all ordinary crimes, a result which was clearly inconsistent with the purpose of the Code. A sub-committee had been appointed to re-draft paragraph 10 so as to restrict its scope solely to crimes which violated international law. The sub-committee had received a proposal from Mr. Hsu that paragraph 10 should be drafted to read:

"Inhuman acts by the authorities of a State, or by private individuals acting under the instigation or toleration of the authorities, against any civilian population, such as murder, or extermination, or enslavement, or deportation, or persecutions on political, racial, religious or cultural grounds."

18. The sub-committee had agreed that the enumeration in Mr. Hsu's draft was insufficient. Moreover, the sub-committee had agreed that even if the deleted phrase were restored in paragraph 10, the international character of the offences concerned would still not be clearly defined; it was apparent that the offences listed in paragraph 9 could be committed only in the course of a war, while the offences listed in paragraph 10 as adopted by the Commission could be committed at any time. The sub-committee had reached the conclusion that it would be somewhat illogical to have two distinct paragraphs to define offences which were, in fact, similar in character, one of the paragraphs being merely broader in scope. It would be better to delete paragraph 10 and to retain only paragraph 9 which had been taken from the Convention on the Prevention and Punishment of the Crime of Genocide.

19. Mr. HSU disagreed. His proposal was simply that the words: "acting under the instigation or toleration of the authorities" should be inserted in paragraph 10. Those words were sufficient to avoid any confusion between ordinary crimes and crimes violating international law. The Code should punish all inhuman acts, even those which did not constitute the crime of genocide properly so called. The Commission had refused to include in the Code provisions relating to "fifth column" and subversive activities; those two types of activities might, however, be thought as implicitly provided for in the other paragraphs of article 2. But to delete paragraph 10 would be tantamount to tolerating inhuman acts.

20. Mr. AMADO said the Commission was still, quite improperly, confusing crimes in international law and ordinary crimes. The only solution was to restore the phrase which had been deleted at the end of paragraph 10.

21. Mr. LAUTERPACHT supported Mr. Hsu's proposal. Paragraph 9 applied only to crimes committed with the intention of destroying groups of individuals. But it was also possible to subject a group of persons to a reign of terror, to humiliate it, to stifle its growth; and paragraph 9 contained no reference to such acts. Moreover, paragraph 9 did not refer to political groups or to social groups, and those groups could also be the subject of inhuman treatment and attempts at extermination. He drew attention to the United Kingdom Government's comments on paragraph 10, which stressed the importance of that paragraph as adopted at the third session, while expressing certain reservations concerning those passages which seemed to render crimes against humanity subject to the exclusive jurisdiction of States. He considered that paragraph 9 was not sufficient and that it was necessary to retain a paragraph 10, which should be drafted along the lines proposed by Mr. Hsu.

22. Mr. GARCÍA-AMADOR also supported Mr. Hsu's proposal. If the Commission really intended to afford individuals full protection against any violation of their rights, it was essential to maintain paragraph 10 without the limiting clause embodied in the last phrase of the 1951 text. It was true that the paragraph would then be different from the corresponding clause in the Nürnberg Charter, but the latter had been drafted for a specific purpose, whereas the Commission should draft rules of general application.

23. Mr. SPIROPOULOS, Special Rapporteur, noted that opinions were still divided regarding paragraph 10. The real issue was how to protect civilian population by provisions consistent with the Universal Declaration of Human Rights. Perhaps the Commission should postpone its decision until its next session.

24. Mr. CÓRDOVA agreed that paragraph 9 was insufficient and had to be supplemented. The limiting

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[4] *Vide supra*, 268th meeting, paras. 1-12.

[5] *Vide supra*, 267th meeting, para. 59.

clause proposed by Mr. Hsu ("acting under the instigation or toleration of the authorities"), however, seemed insufficient for the purpose of distinguishing between a crime in violation of international law and an ordinary crime. Inhuman acts were committed in connexion with all revolutions and it was difficult to determine which of those acts came within the internal jurisdiction of States and which constituted offences against the peace and security of mankind.

25. Mr. SCELLE said that a crime constituted an international offence if it was reproved by international public opinion. That was the only reliable test. As Mr. Lauterpacht had pointed out, paragraph 9 was not exhaustive for it made no reference to political, social and cultural groups. The Commission had wished to retain the wording of paragraph 9 which corresponded to a clause of the Convention on the Prevention and Punishment of the Crime of Genocide. He did not see why the Commission should regard the latter text as sacrosanct and add a new paragraph instead of supplementing paragraph 9 by inserting the essential provisions contained in paragraph 10.

26. Mr. HSU, replying to Mr. Córdova, said that criminal offences committed in connexion with revolutions were international crimes if committed by a government; if committed by private persons, they constituted ordinary crimes.

27. Mr. ZOUREK pointed out that the question of the punishment of violation of human rights was one which should rather be dealt with in the draft covenants of human rights which were under consideration. The difficulties encountered by the Commission in connexion with paragraph 10 were the result of the inclusion of the words: "or by private individuals". If the offences mentioned in that paragraph were committed by private individuals, with the complicity of the authorities of the State, they were ordinary crimes. Indeed, even if those words were deleted, private individuals who were accomplices to the offences concerned would still be punishable under article 2, paragraph 12 (iv). He formally proposed that the words "or by private individuals" should be deleted.

28. Mr. GARCÍA-AMADOR suggested, as a compromise, that the final phrase of paragraph 10, as from the words: "when such acts are committed...", should be replaced by: "when such acts endanger the maintenance of international peace and security".

29. Mr. SALAMANCA agreed with the motive underlying Mr. Hsu's proposal but feared that under the provision in question any inhuman act, or any act in violation of the Universal Declaration of Human Rights, would become an international crime. Mr. Lauterpacht's cogent arguments concerning paragraph 9 were equally applicable to paragraph 10. Mr. Hsu's proposal was not satisfactory as to form, and Mr. García-Amador's proposed wording did not make the position clear either; it would still be necessary to state on what basis, and by whom, offences would be defined as dangerous to international peace.

30. Mr. SCELLE opposed the deletion of the words: "or by private individuals" from paragraph 10. There was no reason for deleting those words from paragraph 10, while retaining them in paragraph 9. And if they were deleted also from paragraph 9, that would constitute a departure from the wording of the Genocide Convention. The inhuman acts referred to in paragraph 10 could only be committed by States acting through private individuals. Accordingly, the words "or by private individuals" should stand and paragraphs 9 and 10 should be amalgamated into a single paragraph.

31. Mr. HSU, replying to Mr. Salamanca, said that his proposed text would not transform every violation of human rights into an international crime, but only such inhuman acts as were committed by the authorities of a State or by private individuals against certain groups of a civilian population.

32. In reply to members who had adversely alluded to his earlier proposal, regarding subversive activities,[6] he said that the point involved there did not relate to the right to revolt or to freedom of thought. In fact, the provision only dealt with subversive action by the authorities of one State on the territory of another.

33. Faris Bey el-KHOURI said that the acts referred to in paragraph 10 were international offences, with the single exception of murder, the first offence on the list. The final provision of the 1951 text, "when such acts are committed in execution of or in connexion with other offences defined in this article", which had raised so many difficulties, was essential only because of the presence of the words "murder". It would therefore be preferable to delete that word as well as the final phrase. Mr. Hsu's proposal seemed to him acceptable. If that proposal were rejected, however, he would submit an amendment along the lines he had indicated.

34. Mr. ZOUREK did not agree with Mr. Scelle that, if the Commission deleted the words "or by private individuals" from paragraph 10, it should logically also delete them from paragraph 9. Paragraph 9 dealt with offences which, by their nature, could only be committed with the connivance of the State, whereas the same could not be said of the acts mentioned in paragraph 10. From a legal point of view, moreover, a murder was always a crime, whatever the motives. It would be difficult to admit that the nature of the act changed if the motive of the crime changed.

35. Mr. SCELLE said that intention was a material factor in crime.

36. Mr. ZOUREK replied that the test of intention was not sufficient for the purpose of distinguishing between an international crime and a crime against the ordinary national law.

37. Mr. SCELLE said that according to his proposal paragraph 9 would read:

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[6] *Vide supra*, paras. 1-16.

"Acts by the authorities of a State or by private individuals committed with intent to destroy, in whole or in part, a national, ethnic, racial, religious, social, political, or cultural group as such, including:

(i) Killing members of the group;

(ii) Causing serious bodily or mental harm to members of the group;

(iii) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; enslavement, or deportation or persecutions;

(iv) Imposing measures intended to prevent births within the groups;

(v) Forcibly transferring children of the group to another group; and

(vi) Generally all inhuman acts against members of the civilian population belonging to the groups above referred to."

38. Mr. LAUTERPACHT, in answer to a question by Mr. Córdova, said that crimes in violation of international law could be distinguished from crimes in municipal law by means of the following test: all inhuman acts committed by the organs of the State, or other individuals employed by the State to commit those acts, were international offences if prescribed or authorized by the law of the State or if left unpunished by it. In those cases, the sanctity of human rights prevailed over the sovereignty of the State.

39. He could not agree to Mr. García-Amador's suggestion, for it begged the question. He would tentativily suggest the following draft:

"Inhuman acts, whether provided for in paragraph 9 or not, which are committed by the authorities of a State or by private individuals against groups of the civilian population, such as murder, or extermination, or enslavement, or deportation, or persecutions on political, racial, social, religious or cultural grounds."

40. By proclaiming that certain fundamental human rights transcended internal legislation, the Commission would be continuing the work commenced at Nürnberg and would be taking a great step forward in the progress of international law.

41. Mr. HSU suggested that a Drafting Committee, composed of the Chairman, Mr. Lauterpacht and Mr. Scelle, should be asked to redraft paragraphs 9 and 10.

42. Mr. SPIROPOULOS, Special Rapporteur, supported Mr. Hsu's suggestion. He recalled that when the Commission had commenced drafting the code of offences, it had considered it essential to include the relevant clause of the Convention on the Prevention and Punishment of the Crime of Genocide. The Commission had considered it preferable not to add to the list of groups mentioned in that convention two new ones —social and political groups—because of the difficulties to which those words had given rise during the debate in the General Assembly on the Genocide Convention. The Commission had also taken into consideration the Charter of the Nürnberg Tribunal; it had decided to go further than that Charter, which had only related to offences committed in connexion with an international war, and to war crimes proper. Mr. Hsu's present proposal went much further still; while not unacceptable in principle, it was far too revolutionary in the present state of international law.

43. The CHAIRMAN said that a Drafting Committee composed of Mr. Lauterpacht, Mr. Scelle and himself would redraft paragraphs 9 and 10 of article 2.

QUESTION OF RECOMMENDATIONS TO THE GENERAL ASSEMBLY REGARDING THE DRAFT CODE

44. The CHAIRMAN asked the members to consider what recommendations should be transmitted to the General Assembly with the draft Code of Offences.

45. Mr. SPIROPOULOS, Special Rapporteur, said that at its forthcoming session the General Assembly would consider two items which were related to the Code of Offences against the Peace and Security of Mankind, firstly, the question of defining aggression, and secondly, the question of the establishment of an international criminal court. On several occasions, the Commission had considered presenting its draft Code in the form of a convention. A simple resolution of the General Assembly would not of course be sufficient in law to establish the acts referred to in the Code as international crimes. Perhaps the General Assembly itself should decide the question of the presentation of the draft Code, in keeping with its decisions concerning the two closely connected items which it would consider at the same time.

46. Mr. LIANG, Secretary to the Commission, referred to the terms of reference laid down for the Commission by General Assembly resolution 177 (II) of 21 February 1947. The Commission had already performed the first part of its task by transmitting to the General Assembly a formulation of the Nürnberg principles. The Commission had not submitted that text in the form of a draft convention nor had the General Assembly contemplated embodying it in such an instrument. Clearly, if the Commission proceeded otherwise in the matter of the draft Code, it could not be criticized by the General Assembly. A convention was certainly a desirable but not the only possible form of presentation.

47. Mr. LAUTERPACHT was not sure that it was desirable to embody the solemn declaration of fundamental principles established by the Commission in a draft convention as such a course would expose the draft Code to all the vicissitudes to which draft conventions were subject.

48. The CHAIRMAN pointed out that there was a considerable difference between the formulation of the Nürnberg principles and the draft Code. The Nürnberg

principles could only serve as the basis for a code, but the scope of the latter had to be much wider.

49. Mr. CÓRDOVA said that no real progress would have been accomplished so long as Governments did not bind themselves by a convention to respect the provisions of the Code. Governments should undertake to punish persons who committed the offences referred to in the Code, either through their national courts or by means of an international criminal tribunal. That was why a convention containing only the definition of the offences, but not making any provision for their punishment, would be insufficient. The draft Code was intimately linked to the legislative provisions relating to penalties. Accordingly, the Commission should simply transmit its draft to the General Assembly while drawing attention to the connexion between that draft and the proposed international criminal court.

50. The CHAIRMAN drew attention to paragraph 58 (*d*) of the Commission's report on its third session,[7] which might serve as a precedent.

51. Mr. SPIROPOULOS, Special Rapporteur, also thought that the Commission might reproduce, *mutatis mutandis,* the same passage in the report on the current session.

52. Mr. ZOUREK said that the draft Code should not be related directly to the establishment of an international criminal court. The Code could without difficulty be adopted and its provisions implemented without such a court, the establishment of which could run counter to the basic principles of contemporary international law. A large number of the acts enumerated in the draft were international crimes under existing law and States were already obliged to punish them. It would be preferable to adopt one of the solutions mentioned in article 23, paragraph 1, of the Commission's statute.[8]

53. Mr. LAUTERPACHT said that in any case the Commission could not recommend the General Assembly to take no action (article 23, paragraph 1 (*a*) of the Statute). On the other hand, it might leave the General Assembly free to choose between the three other solutions mentioned in article 23, paragraph 1. A recommendation by the General Assembly was not of course binding on States but it would nevertheless add considerable authority to the draft Code.

54. Mr. GARCIA-AMADOR pointed out that, under article 2 of the draft statute for an international criminal court[9] which was to be considered by the General Assembly, that court was to apply international law, including international criminal law, and in certain circumstances, municipal law. The question of the law to be applied by the court was also discussed at length in a comment to paragraph 38 of the same document. Consequently, the General Assembly itself should determine what was to be the function of the draft Code drawn up by the Commission.

55. Mr. CÓRDOVA agreed that it was for the General Assembly to decide in the final resort what further action it would take with regard to the document submitted to it by the Commission, but the latter should nevertheless point out in its report that it would be most regrettable if the General Assembly did no more than take note of the draft.

56. Mr. FRANÇOIS agreed with the Special Rapporteur that paragraph 58 (*d*) of the Commission's report on its third session[10] should be reproduced, *mutatis mutandis,* in the report on the current session.

57. Mr. ZOUREK thought that the Commission should recommend the General Assembly to adopt the report by a resolution. The draft Code was largely the codification of the Nürnberg principles and on occasion it did not even go nearly as far as those principles. A resolution adopted by the General Assembly, even if it could not lay down new rules, would nevertheless add authority to the principles on which the draft was based.

58. Mr. LIANG, Secretary to the Commission, recalled that, from the very beginning, the Commission had considered the preparation of the draft Code as a special task which was strictly speaking neither codification nor development of international law. The possible actions by the General Assembly mentioned in article 23 of the Commission's statute were hence not necessarily applicable to the draft Code. The case of the draft Code was comparable to that of the draft declaration of the rights and duties of States which the Commission had submitted to the General Assembly without recommendation for action.

59. Mr. SPIROPOULOS, Special Rapporteur, said the Commission was spending too much time on discussing what recommendations should be addressed to the General Assembly. Experience showed that the General Assembly rarely adopted the Commission's recommendations. The Commission should simply transmit its draft to the General Assembly and leave the latter free to determine what action to take.

60. Mr. PAL referred to General Assembly resolution 177 (II)[11] containing the terms of reference relating to the formulation of the Nürnberg principles and the

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[7] *Official Records of the General Assembly, Sixth Session, Supplement No. 9* (A/1858), p. 11. Also in *Yearbook of the International Law Commission, 1951,* vol. II, p. 134.

[8] Article 23, paragraph 1, of the Commission's Statute (United Nations publication, Sales No. 1949.V.5) reads:

"1. The Commission may recommend to the General Assembly:

"(*a*) To take no action, the report having already been published;

"(*b*) To take note of or adopt the report by resolution;

"(*c*) To recommend the draft to Members with a view to the conclusion of a convention;

"(*d*) To convoke a conference to conclude a convention."

[9] *Vide supra,* 267th meeting, para. 73 and footnote.

[10] *Vide supra,* footnote 7.

[11] Quoted in paragraph 54 of the Commission's report on its third session; *vide supra,* footnote 7.

preparation of "a draft code of offences against the peace and security of mankind". The Commission should reproduce those terms in the title of its draft and transmit the latter to the General Assembly with a reference to that resolution.

61. Mr. LAUTERPACHT supported the Special Rapporteur's proposal.

62. Mr. ZOUREK, replying to the Secretary, said that the Commission's statute was applicable in all cases, even if the General Assembly itself asked the Commission for an advisory opinion. He saw no objection, however, to the Special Rapporteur's proposal.

63. The CHAIRMAN proposed that the Commission should adopt, in principle, the Special Rapporteur's proposal that the draft Code prepared by the Commission should be transmitted to the General Assembly without any specific recommendation concerning the form of the Code.

It was so agreed.

The meeting rose at 1.5 p.m.

270th MEETING

Saturday, 17 July 1954, at 9.30 a.m.

CONTENTS

Chairman: Mr. A. E. F. SANDSTRÖM

Rapporteur: Mr. J. P. A. FRANÇOIS

Present:

Members: Mr. G. AMADO, Mr. R. CÓRDOVA, Mr. D. L. EDMONDS, Faris Bey el-KHOURI, Mr. F. GARCÍA-AMADOR, Mr. S. HSU, Mr. H. LAUTERPACHT, 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).

Provisional agenda of seventh session

1. The CHAIRMAN invited the Commission to consider the provisional agenda of its seventh session. A number of items would be held over from the current session and it was important to know if any additional items should be taken up.

2. Mr. FRANÇOIS, Rapporteur, said that among the items held over were those relating to the régime of the territorial sea and the régime of the high seas. He suggested that governments should be requested to give their views on those subjects the study of which could then be finally completed in some four weeks at the seventh session.

3. Mr. LAUTERPACHT thought it was optimistic to hope that the items relating to the territorial sea and to the high seas would be disposed of in four weeks. At least one or two weeks should be set aside for the study of the law of treaties. If any additional items were to be placed on the agenda of the next session, he suggested that the Commission might, in accordance with the wishes of the General Assembly, place on its priority list the questions of codifying the topic of diplomatic intercourse and immunities and the codification of the principles of international law governing state responsibility.

4. Mr. SPIROPOULOS said that a number of new subjects should be added to the Commission's agenda so as not to leave it empty-handed in the case of the absence of one or more of its special rapporteurs. It was important that a report should not be studied by the Commission in the absence of the special rapporteur concerned.

5. Mr. LAUTERPACHT disagreed with Mr. Spiropoulos; a sufficiently detailed report could very well be discussed in the absence of the special rapporteur concerned; a report once submitted to the Commission became the property of the Commission. It was undesirable for a report to be too closely tied to the personality of its author.

6. Mr. FRANÇOIS said that a question could of course be dealt with in the absence of the special rapporteur, but on the whole it was undesirable to do so. If the special rapporteur on a particular topic withdrew from the Commission or was not re-elected, the Commission should decide on some means of ensuring continuity.

7. Mr. HSU suggested that if the special rapporteur on a particular subject was no longer able to participate in the Commission's work, he should notify the Chairman of his future departure and enable the latter to make tentative appointments to carry on the work. The newly appointed special rapporteur would communicate with his predecessor to ensure continuity in the presentation of the subject. He also wondered if at the present stage of the Commission's work a formal request should not be made to Mr. Lauterpacht to continue as Special Rapporteur on the law of treaties, and if possible to prepare a further report on that subject for the consideration of the Commission.

8. The CHAIRMAN agreed that Mr. Hsu's first suggestion was the only practical one. Replying to Mr. Hsu's second suggestion, he said that if the Commission assumed that Mr. Lauterpacht was remaining with the Commission, a formal request was perhaps out of place; however, he was sure that he reflected the