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Summary record of the 270th meeting

Topic:
Other topics

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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.

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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

view of the Commission if he said that all members would be happy if Mr. Lauterpacht continued as Special Rapporteur on the law of treaties.

9. Mr. LAUTERPACHT said that the item relating to the codification of the topic of diplomatic intercourse and immunities should be placed on the provisional agenda. He proposed that Mr. Zourek should be appointed special rapporteur.

10. Mr. SPIROPOULOS supported Mr. Lauterpacht's proposal.

11. Mr. SCELLE also supported Mr. Lauterpacht's proposal.

12. Mr. ZOUREK thanked Mr. Lauterpacht. He was ready, in principle, to accept the offer, though he would like a few days to think the matter over.

13. Mr. SCELLE, referring to the proposed item relating to state responsibility, said the topic was too vast for a single rapporteur.

14. Mr. LAUTERPACHT disagreed with Mr. Scelle, but thought it unnecessary to include that topic in the Commission's work programme at the present stage.

15. The CHAIRMAN pointed out that the relevant General Assembly resolution 799 (VIII) did not actually direct the Commission to study the question forthwith. He put to the vote the question whether a special rapporteur on the subject of the codification of the principles of international law governing state responsibility should be appointed at the present session.

By 7 votes to 3, with 4 abstentions, it was decided that no special rapporteur on the particular topic should be appointed at the present session.

Interpretation from and into Spanish

16. Mr. CORDOVA submitted the following draft resolution:

"The International Law Commission,

"Taking into consideration that the Spanish language, according to resolution 247 (III) adopted by the General Assembly on 7 December 1948 has become a working language of the United Nations, and

"Taking also into consideration that three of the members of the International Law Commission are nationals of Spanish-speaking countries,

"Resolves to request the Secretary-General of the United Nations to make the necessary arrangements to ensure that, beginning with the forthcoming session of 1955, there will be also simultaneous interpretation from and into Spanish."

17. Mr. SPIROPOULOS pointed out that all the Spanish-American members of the Commission spoke either English or French. The addition of a further language would complicate the Commission's work and cause further expenditure. He hoped Mr. Córdova would be able to withdraw his draft resolution.

18. Mr. LIANG, Secretary to the Commission, remarked that, to adopt the draft resolution, it would be necessary to modify the first paragraph as Spanish was only a working language in the General Assembly and not in all the organs of the United Nations.

19. Mr. CORDOVA said that he and his Spanish-speaking colleagues frequently found great difficulty in expressing themselves in a language which was not their own. Furthermore, there were in Latin-America many eminent jurists who knew neither English nor French. That fact should not be allowed to prejudice their appointment to the Commission, nor should the fact that the Spanish-speaking members of the Commission had hitherto spoken English be considered as a precedent.

20. Mr. FRANÇOIS felt that simultaneous interpretation was very unsuited for the discussion of legal matters, so much so that the International Court of Justice at The Hague had refused to adopt it. It would make for greater clarity if the Spanish speaking members who spoke English or French continued, if possible, to use those languages.

21. Mr. LAUTERPACHT said that the Latin American members of the Commission were entitled to make a request of that nature and that he would vote for it if they insisted on it. He doubted whether in the present Commission the proposed innovation was, in fact, necessary. The members in question expressed themselves very well in English or French. Interpretation would have the effect of impairing the informal atmosphere which helped so much to smooth the work of the Commission. However, the members from Latin America should remain judges of the necessity of the proposed innovation.

22. Mr. GARCÍA-AMADOR said it was difficult for him to convey his thoughts fully in a foreign language. He felt that the provision of interpretation into Spanish was essential. If Mr. Córdova withdrew his proposal, he would formally take it up.

23. Mr. SALAMANCA said that if a resolution were not actually necessary, because the right to use the Spanish existed independently of any resolution, then the report should mention the matter.

24. After a further of views, the CHAIRMAN put Mr. Córdova's draft resolution to the vote.

The draft resolution was adopted by 10 votes to 3, with 1 abstention.

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 (10) (resumed from the 269th meeting) ²

25. The CHAIRMAN said that four alternative proposals had been made:

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

² *Vide supra*, 269th meeting, paras. 17-43.

- (A) That paragraph 10 as adopted at the third session should be retained;
- (B) Mr. Hsu's amendments to the effect that after the words: "private individuals", the words "acting under the instigation or toleration of the authorities" should be inserted, and that the final phrase: "when such acts..." should be deleted;
- (C) Mr. Zourek's proposal that the words: "or by private individuals" should be deleted and that the final phrase: "when such acts..." be replaced by the words: "when such acts are committed in connexion with the crime of aggression or with war crimes."
- (D) His own proposal that the paragraph should be drafted on the following lines:

"Inhuman acts such as those envisaged in paragraph 9 committed, in other circumstances than there contemplated, by a State or by individuals against any civilian population, on account of their membership of a national, ethnic, racial, religious, social or political group."

26. Mr. LAUTERPACHT, while agreeing with the general purport of the Chairman's draft, said its wording was not sufficiently clear, particularly its reference to "other circumstances than there contemplated."

27. Mr. GARCÍA-AMADOR said that the proposal made by the Chairman restricted the application of paragraph 10 to cases where the victims were members of a particular group. That was the same concept already embodied in paragraph 9 which had been taken from the Convention on the Prevention and Punishment of the Crime of Genocide. The only difference consisted in the addition of "social or political" groups to the groups enumerated in paragraph 9. The purpose of paragraph 10 should be, however, to cover a wider field than the Genocide Convention and it was therefore necessary to adopt a paragraph 10 which protected populations or persons whether or not they could not be described as members of one of these groups.

28. Mr. ZOUREK said that paragraph 10 was both broader in scope and narrower in intention than paragraph 9. It was broader because whereas paragraph 9 related only to national, ethnic, racial or religious groups, paragraph 10 was meant to punish offences against individuals regardless of the group to which they belonged, as, for example, the assassination of an opposition leader. It was narrower because it dealt only with inhuman acts—murder, extermination, enslavement, deportation or persecution—in so far as they were committed in connexion with crimes against the peace (aggression) or with war crimes.

29. Mr. PAL preferred Mr. Hsu's proposed amendments. The other proposals would imply that the murder of an individual by another out of religious fanaticism would have to be considered as an international crime. That could certainly not be the intention of the Commission.

30. Mr. LAUTERPACHT agreed with Mr. Pal. He would suggest the following wording for paragraph 10:

"Any other inhuman acts committed by a State or by individuals acting under the instigation or toleration of the authorities of a State, against any civilian population on account of their membership of a national, ethnic, racial, religious, social or political group."

31. Mr. SPIROPOULOS, Special Rapporteur, said that paragraph 10 was intended to make provision for an offence distinct from genocide. He would suggest, as an improvement to the draft proposed by the Chairman, that the initial words should be "any inhuman act not covered by paragraph 9".

32. Mr. AMADO said that the only satisfactory text was that adopted at the third session. The paragraph should cover the case of persons who invited the populace to commit atrocities in time of war or threat of war, or when the authorities were powerless. Such persons could not be said to have acted at the instigation or with the toleration of the authorities. Yet the draft Code should cover such crimes, in so far as they were committed in connexion with aggression or another international offence. It was that connexion which transformed an ordinary crime into an international crime.

33. Mr. SCELLE said that he preferred Mr. Hsu's draft because it restricted the provisions of paragraph 10 to persons who acted "under the instigation or toleration of the authorities".

34. In view of the opinions expressed in the discussion the CHAIRMAN withdrew his own draft. He put to the vote Mr. Hsu's amendments to the effect that in paragraph 10, after the words "private individuals" the words: "acting under the instigation or toleration of the authorities" should be inserted, and that the final phrase commencing with the words: "when such acts..." should be deleted.

The amendments were adopted by 10 votes to 3, with 1 abstention.

35. Mr. LAUTERPACHT proposed that the word "social" should be added after the word "political".

The proposal was adopted by 8 votes to 1, with 4 abstentions.

36. The CHAIRMAN said that as Mr. Hsu's amendments were furthest removed from the original text, the other proposals did not have to be put to the vote. The adoption of Mr. Hsu's and Mr. Lauterpacht's amendments constituted approval of the paragraph as reading:

"(10) 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, social, racial, religious, or cultural grounds."

The meeting rose at 1 p.m.