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Summary record of the 30th meeting

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a text would signify that the Commission wished to subject individuals to an abstract rule.

66. Mr. SPIROPOULOS agreed with Mr. Koretsky. The idea reformulated by Sir Benegal Rau was not clearly expressed in the Charter of the Nürnberg tribunal and was not a principle of international law.

67. Mr. BRIERLY thought that the text proposed by Sir Benegal Rau would express the idea contained in paragraph 2 of the text adopted by the Commission more clearly. He would vote in favour of its adoption.

The text proposed by Sir Benegal Rau was not adopted, 4 votes being cast in favour and 4 against.

68. The CHAIRMAN proposed to refer the texts of the provisionally adopted paragraphs to the Sub-Committee.

It was so decided.

69. Mr. SPIROPOULOS said that while he had voted against Professor Scelle's proposal, he thought that most of the ideas expressed in it should be summarized in the introduction.

Preparation of a Draft Code of Offences against the Peace and Security of Mankind

70. Mr. KORETSKY proposed that the consideration of that question should be postponed to the Commission's next session and that, in the meantime, the Secretariat should prepare the working documents.

71. Mr. SPIROPOULOS thought it would be better to devote one meeting of the Commission at the most to a general discussion of that topic and then to appoint a Rapporteur to draft the working documents which would be submitted to the Commission at its next session.

72. Mr. CORDOVA and Mr. AMADO supported Mr. Spiropoulos' suggestion.

Mr. Spiropoulos' proposal was adopted by 10 votes to 1.

The meeting rose at 1 p.m.

30th MEETING

Tuesday, 31 May 1949, at 3 p.m.

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Chairman: Mr. Manley O. HUDSON.

Rapporteur: Mr. Gilberto AMADO.

Present:

Members: Mr. Ricardo J. ALFARO, Mr. James L. BRIERLY, Mr. Roberto CORDOVA, Mr. J. P. A. FRANÇOIS, Mr. Shuhsi HSU, Mr. Vladimir M. KORETSKY, Sir Benegal N. RAU, Mr. A. E. F. SANDSTRÖM, Mr. Georges SCELLE, Mr. Jean SPIROPOULOS, Mr. Jesús María YEPES.

Secretariat: Mr. KERNO, Assistant Secretary-General in charge of the Legal Department; Mr. LIANG, Director of the Division for the development and codification of International Law, Secretary to the Commission.

Draft Declaration on the Rights and Duties of States (*resumed and concluded*)

PROPOSED NEW ARTICLE FOR INSERTION IN THE DRAFT DECLARATION

1. The CHAIRMAN announced that Mr. Hsu had that day submitted to the Commission the text of a new article to be inserted in the draft Declaration on Rights and Duties of States. The Commission had already completed its discussion of the draft declaration and had adopted a text for submission to the General Assembly. He considered, therefore, that Mr. Hsu's text had been submitted too late for discussion, and felt that members of the Commission would agree with that ruling.

2. Mr. HSU appealed against the ruling of the Chairman, and said that the Commission should not for purely procedural reasons refuse to take up any question which in its opinion was essential for the Declaration on Rights and Duties of States.

3. Mr. KORETSKY agreed with the Chairman's ruling, but not with the reason given for that decision, namely that Mr. Hsu had submitted his proposal too late. He felt that that proposal was linked with the problem of the codification of the laws of war which the Commission had decided not to study, and was therefore out of order.

4. Mr. YEPES, although not opposed to the ruling of the chair, considered that the decision made was too severe.

5. Mr. CORDOVA could not support Mr. Hsu's proposal, but felt that he should be given an opportunity to defend his text.

6. The CHAIRMAN, referring to rule 102 of the rules of procedure of the General Assembly,

put to the vote Mr. Hsu's appeal against the ruling of the chair.

The Chairman's ruling was overruled by 5 votes to 3.

7. Mr. HSU then submitted the text of the proposed new article he wanted to see inserted in the draft Declaration on Rights and Duties of States. It read:

"Every State has the duty, in the event of resort to self-defence or the carrying out of an enforcement action on behalf of the United Nations, to follow the dictates of humanity in treating enemy individuals and to refrain from attacks directed at enemy civilian population."

8. Mr. Hsu said that his text embodied an accepted principle of international law, and in view of what was taking place in the world that principle should be reaffirmed. In the article submitted to the Commission, general principles only were laid down and no question was raised of distinction between combatants and non-combatants or between the zone of military operations and open country, nor had any attempt been made to outlaw any method or weapon of warfare.

9. Although certain members of the Commission felt that all cases of the violation of the laws of war were covered by the Nürnberg principles, he considered that there were many cases of violation which were not covered by those principles. In that connexion, he mentioned submarine warfare and the aerial bombardment of civilians. Recent wars had shown that the laws of war had not been observed.

10. Quoting from the book which he had written—"A New Digest of Japanese War Conduct"—Mr. Hsu pointed out that the Japanese shot down fleeing refugees, killed prisoners of war, plundered and burned enemy cities, especially the wealthier sections, and generally indulged in looting, rape and murder. When they occupied a country, they tried to make the inhabitants forswear allegiance to their own country. They did not hesitate to use poison gas or to devastate the countryside; they carried out aerial bombardment of non-combatants, and sunk fishing vessels and passenger-carrying trading junks.

11. Similar happenings had taken place in Europe and should not be allowed to continue. It was therefore incumbent upon jurists to study international law and, although many attempts had been made and no results had been achieved, to draw up laws of war. Some Governments had attempted to carry out that work but had failed. He pointed out, however, that if the Commission agreed with his proposal and submitted a text to the General Assembly, the matter would be brought before fifty-nine States.

12. Mr. SCILLE considered that Mr. Hsu's proposal was interesting but incomplete. The principles he had enunciated should apply also

in the case of revolts. Even though an insurrection might be illegal, any necessary international police action taken in connexion with that insurrection should follow the dictates of humanity. He suggested, therefore, that the words "or in case of insurrection" should be added to the article proposed by Mr. Hsu. Such an article would improve the draft Declaration on Rights and Duties of States, and he therefore supported Mr. Hsu's proposal.

13. Mr. SANDSTROM agreed with Mr. Hsu's proposal, but felt that the text of the article he had suggested could not be considered until it had been redrafted. It was the duty of all States, whether carrying on a defensive war or not, to follow the dictates of humanity.

14. Mr. CORDOVA considered that the Commission had done more than Mr. Hsu now suggested that it should do, when it had formulated the principles of international law recognized in the Charter of the Nürnberg Tribunal. In his opinion that text was out of place in the draft Declaration on Rights and Duties of States.

15. Mr. FRANÇOIS could not support Mr. Hsu's proposal, as he felt that if the Commission decided to study the laws of war—and the discussion of the Nürnberg principles had shown that to be desirable and even necessary—it should do so completely and systematically. The proposal referred to only one aspect of the laws of war, the complex problem of the treatment of non-combatants. In his text, Mr. Hsu referred to the "dictates of humanity", but should not States also follow the dictates of law? He considered, therefore, that the text of the proposed article should be redrafted to make it acceptable.

16. Mr. ALFARO supported Mr. Hsu's proposal in principle, but felt that the wording at the end of the suggested new article beginning with "to follow the dictates of humanity etc." was dangerous. Modern warfare was total warfare, and any military operations might affect the civilian population of a country. He would support the article provided it was more generally worded, and stated clearly that it was the duty of every State, in carrying out military operations, to conform to practices which would tend to diminish the horrors of war.

17. Sir Benegal RAU supported Mr. Hsu's proposal as far as it went, but considered that the proposed article should not be inserted in the draft Declaration on Rights and Duties of States. The Commission had already formulated the principles of international law recognized in the Charter of the Nürnberg Tribunal and in doing so had outlawed aggressive warfare. The whole field of what remained of the laws of war would be covered when the Commission came to deal with that matter.

18. Mr. YEPES supported Mr. Hsu's proposed new article with the amendment suggested by

Mr. Scelle, but agreed with Mr. Alfaro that the article should be redrafted. He pointed out that Dr. Jessup, in his book "The Modern Law of Nations", had stated that through the abusive use of the right of veto a state of war might arise between certain countries, and had suggested that rules should be laid down to deal with such a situation. He had also suggested that certain principles of neutrality should be reconsidered to see whether they were still applicable.

19. The CHAIRMAN presumed that rules dealing with the situation mentioned by Dr. Jessup would no doubt be laid down in due course, but did not feel that the International Law Commission should deal with that question. The organs of the United Nations deciding on enforcement action would consider itself competent to make such rules.

20. Replying to Mr. SPIROPOULOS, Mr. SANDSTRÖM said that a draft Convention in connexion with the treatment of non-combatants had been submitted to the Diplomatic Conference for the Establishment of International Conventions for the Protection of War Victims, which was in session in Geneva.

21. The CHAIRMAN put to the vote Mr. Hsu's proposal that a new article, worded as Mr. Hsu had suggested, should be inserted in the draft Declaration on the Rights and Duties of States.

The proposal was rejected by 5 votes to 4.

Preparation of a Draft Code of Offences against the Peace and Security of Mankind (A/CN.4/5) (concluded)

22. The CHAIRMAN said that the Secretariat had not submitted to the Commission any documents relating to the preparation of a draft code of offences against the peace and security of mankind. He pointed out that the United States member of the Nürnberg Tribunal had recommended in his report to the President of the United States of America on 9 November 1946 that "the United Nations as a whole should reaffirm the principles of the Nürnberg Charter in the context of a general codification of offences against the peace and security of mankind", (A/CN.4/5, p. 11), and that under General Assembly resolution 177 (II) the Commission had been directed to prepare a draft code of offences against the peace and security of mankind, indicating clearly the place to be accorded to the principles of international law recognized in the Charter of the Nürnberg Tribunal.

23. Mr. SPIROPOULOS said the Commission would first have to decide whether the matter to be discussed was a question of codification or of the progressive development of international law, or whether it could be considered as a specific mandate of the Commission as had been decided with respect to the draft Declaration on Rights

and Duties of States. In the latter case, the Commission would be completely free to discuss the matter as it wished, but if it decided that it was a question of codification or of progressive development of international law, then the provisions of article 16, or article 19 and the following articles, of the Statute of the International Law Commission would have to be strictly followed. In his opinion, the preparation of a draft code of offences against the peace and security of mankind was clearly a question of the progressive development of international law.

24. The CHAIRMAN said that the formulation of a draft code of offences against the peace and security of mankind was definitely a matter coming under the progressive development of international law, and therefore the procedure laid down in article 16 of the Commission's Statute should be followed.

25. Mr. KORETSKY felt that, in any case, the Commission should follow the provisions laid down in article 16 of its Statute and protested once again against the attitude that if the Commission considered a matter to be referred to it as a specific question, it did not need to apply the provisions of its Statute.

26. Mr. YEPES considered that the provisions of article 16 of the Statute of the Commission did not apply to the question under discussion. The Commission had been instructed by the General Assembly to examine and formulate principles recognized in the Nürnberg Charter, and to prepare a draft code of offences against the peace and security of mankind. That was definitely not a matter of codification or of the progressive development of international law. It was a separate question altogether.

27. Mr. SPIROPOULOS said that the questions covered by items 3 (a) and (b) of the agenda were separate matters, and the formulation of the principles recognized in the Charter of the Nürnberg Tribunal and in the judgment of the Tribunal did not come under the codification or under the progressive development of international law, but should be treated as a special question. As he had already said, however, item 3 (b) came under the progressive development of international law.

28. Mr. SANDSTRÖM, supported by Mr. ALFARO and Mr. AMADO, agreed with Mr. Spiropoulos' statement.

29. Mr. CORDOVA felt that the procedure laid down in article 16 of the Statute should be followed. The Commission had been instructed to prepare a draft code of offences against the peace and security of mankind indicating the place to be accorded to the principles of international law recognized in the Charter of the Nürnberg Tribunal and in the judgment of the Tribunal. He agreed, therefore, with Mr. Spiropoulos that it was a question of the progressive development of international law, and questionnaires should be circu-

lated to Governments inviting them to supply data and information relevant to the matter.

30. Mr. KORETSKY noted some confusion with regard to the exact nature of the Commission's task. In reply to Mr. Spiropoulos and other members of the Commission who liked to classify questions according to categories, Mr. Koretsky recalled the view which had been expressed at the beginning of the Commission's session that codification included elements of progressive development of international law, and vice versa. Indeed, both questions were closely linked together and could not be separated and any matter which pertained neither to the progressive development of international law nor to its codification, was clearly outside the Commission's terms of reference.

31. Mr. Spiropoulos' statement that the codification of the Nürnberg principles might be regarded as a specific question was utterly unacceptable. Such an attitude would destroy the Statute of the Commission. Codification of international law and its progressive development proceeded simultaneously. The principles recognized at Nürnberg had definitely become international law; thus a *lex specialis* had become *lex generalis* and fell within the Commission's field of work.

32. The question had been raised whether the preparation of a draft code of offences against the peace and security of mankind came under the Statute of the Commission. Two questions arose in that connexion: was the Commission endeavouring to codify offences against international law, or did it merely want to assist States in the adoption of national laws to punish such crimes? The fight against crimes fell within the domestic jurisdiction of States; consequently standardization of punishment of offences against peace and security would not come either under the progressive development of international law, or under its codification, but would constitute a retrogressive step inasmuch as the Commission would be interfering in matters falling within the domestic jurisdiction of States.

33. The fight against crime and the establishment of a code of penal law was the basic function of each Government, and interference in such matters by an international organ would constitute a violation of the sovereign rights of States. Consequently Mr. Koretsky felt that the time had not yet come for the Commission to deal with the draft code of offences against peace and security of mankind, a matter which was outside its competence.

34. The CHAIRMAN agreed with some of Mr. Koretsky's remarks. He had hoped, however, that the discussion might bring out some ideas as to what acts might be included in the code of offences against peace and security of mankind. The Commission should keep in mind that its

function was not a political one, but that it was dealing with a topic requiring an extension of the law. So far, except for the Nürnberg principles, there were few established offences against peace and security. While not certain how far the International Law Commission could go in the matter, he hoped that the discussion would go beyond procedural matters and elicit some ideas as to what the code might contain.

36. Mr. SPIROPOULOS felt that after the discussion of substance had been completed, the Commission should revert to the procedural question with a view to deciding, in accordance with article 16 of the Statute, what the Rapporteur, if appointed, should be asked to do. Mr. Spiropoulos said that the Commission must find out what was, or ought to be, considered a crime against peace and security. There might perhaps be other offences against the peace and security of mankind in addition to those established in the Nürnberg Charter. He quoted extensively, in that connexion, from Professor Vespasian V. Pella's "Plan for a World Criminal Code . . ." (Chapter I, pp. 69 to 71) listing a number of acts which could be considered crimes of war. The list included such crimes as "supporting, on his own territory, of armed gangs having invaded another State's territory or refusing, in spite of the invaded State's claim, to take all measures in his power, on his own territory, to deprive the said gangs of all aid and support", which were not included in the Nürnberg principles, and might be incorporated in the code of offences against peace and security. The code should further mention "use of methods of extermination, enslavement or persecution of certain civilian populations, whether in peace or war, and consisting in actions directed against life, bodily integrity, health or liberty, on racial, political or religious grounds". Then genocide.

37. The code might also list acts of "non-punishment of crimes prepared on the territory of a State, and directed against the independence and territorial integrity of another State". He pointed out, in that connexion, that Article 1, paragraph 4 of the United Nations Charter contained a provision concerning the territorial integrity of States and that violation of that provision might also be considered a crime against peace. Paragraph 4 of Professor Pella's list, which read "The fact of a State allowing, helping or supporting on its territory individuals or organizations which prepare crimes against another State, i.e.: (a) criminal attempts against the life or liberty of either foreign chiefs of State or members of the Government, of official or political assemblies, or judicial authorities of a foreign State; (b) criminal attempts against public buildings, railways, ships, aircraft and other means of communication with an international character or belonging to a foreign State; (c) association for the accomplishment of any of the foregoing

offences referred to the security of mankind and might consequently be included in the code of offences. The crime of counterfeiting of coins and bills, and any other disloyal action committed or tolerated by one State, to undermine other States by weakening their credit could also be considered for inclusion in the code”.

38. Not all the acts enumerated in Professor Pella's book need be included in the code, while other crimes, which were not listed, should be included; in any case, however, Professor Pella's list would form a good working basis in view of the fact that it contained acts which could be considered crimes against peace and security of mankind.

39. Mr. AMADO stated that in order to draft a code of offences against the peace and security of mankind, the Commission must first determine what crimes fell into that category. The problem of offences against the peace and security of mankind overlapped with a number of other international offences and crimes, such as piracy and white slave traffic which came within the field of international repression and the crimes included in the Nürnberg Charter and judgment.

40. Consequently a plan of work would be necessary to clarify all those questions. The Commission should collect the necessary material for drafting a code of offences against peace and security of mankind. Mr. Spiropoulos had suggested Professor Pella's book as a working basis. There were also other sources which might be used.

41. Mr. Amado therefore suggested that in accordance with article 16 of the Statute, the Commission should appoint a Rapporteur who, with the aid of all the documentation which the Secretariat could furnish, would prepare a working paper. Thereupon a plan of work could be made.

42. Mr. BRIERLY agreed with Mr. Amado's remarks. The Commission would be unable to undertake any serious work until it had a working paper before it. He therefore agreed that a Rapporteur should be appointed to formulate a plan of work, in the light of Mr. Spiropoulos' suggestions, for the Commission's following session.

43. Mr. SANDSTROM agreed with Mr. Brierly that the Rapporteur should consider what crimes could be considered offences under international law. The question had already been examined by noted criminologists and groups of experts. Moreover, violations of certain provisions of the draft Declaration on the Rights and Duties of States might also be considered offences against the peace and security of mankind, and there were other judgments, in addition to that of the Nürnberg trial, which could be relevant to the question.

44. Mr. YEPES agreed with Mr. Spiropoulos' enumeration of acts which might be included in the draft code of offences against the peace and security of mankind. He referred, in that con-

nexion, to the definition of aggression as formulated by Colombia at the Pan-American Conference of 1936 in Buenos Aires. He drew attention to the fact that the principle of international law whereby no State could tolerate on its territory plots against another State, had also been considered at the International Conference on the Prevention and Repression of Terrorism held in Geneva in 1937 and which had drafted a Convention on the subject.

45. Mr. SPIROPOULOS proposed that, in accordance with article 16 (c) of the Statute, the Commission should send out, not a questionnaire, but a simple question asking the views of Governments as to what acts should be included in the draft code of offences against the peace and security of mankind. With reference to article 16 (e), he suggested that at the same time the Commission might consult scientific institutions and individual experts, asking them to prepare a working document on the matter.

46. Furthermore, a Rapporteur should be appointed at the present session to prepare for the Commission's next session, a report based on the replies which might have been received from the Governments as well as the views submitted by experts.

47. Mr. BRIERLY supported the proposal, although he pointed out that the question could not be sent out to Governments until a plan of work had been formulated, unless it was worded very simply and generally.

48. Mr. KORETSKY thought that the first question to be sent to Governments should be phrased in the following terms: "Shall the code include any offences, and if so, of what nature?" He explained that Governments must first consider whether a code was necessary as that question had already raised much controversy in the General Assembly. The Commission should also ask the Governments whether their national legislation included any legal offences of that nature; Poland, for example, and the USSR had already adopted certain laws in that respect.

49. The CHAIRMAN observed that the Commission could not question the need for a code of offences which it had been instructed to prepare by the General Assembly.

50. In reply to a question by Mr. Koretsky, he explained that the Commission had as yet taken no action with regard to the place of the Nürnberg principles in the code referred to in the resolution of the General Assembly (177 (II)).

51. In view of the fact, however, that the General Assembly resolution established a close connexion between the Nürnberg principles and the question of the preparation of a draft code of offences against the peace and security of mankind, the Commission should not separate them in its instructions to the Rapporteur.

52. Mr. KORETSKY felt that in no circumstances should the two tasks be confused. In instructing the Commission to prepare a draft code, the General Assembly had merely wished the latter to consider what place should be accorded therein to the principles of international law recognized in the Charter of the Nürnberg Tribunal and in the Tribunal's judgment.

53. The question of the formulation of the Nürnberg principles would not present much difficulty, but the preparation of the draft code was a controversial matter which might delay the work considerably. He therefore proposed that different procedure should be followed in respect of each of the two questions which should be considered separately and on which the Rapporteur should present separate reports.

54. The CHAIRMAN agreed that the Rapporteur should be asked to prepare two separate reports on paragraphs (a) and (b) of the General Assembly resolution 177 (II), as well a plan of work with regard to paragraph (b) for consideration at the Commission's next session. He put that proposal to the vote.

The proposal was adopted by 11 votes.

55. The CHAIRMAN then turned to the question whether the Commission should consult the views of Governments on the acts to be included in the code and ask them what offences against the peace and security of mankind were defined in their national legislation.

56. Mr. BRIERLY and Mr. AMADO supported that proposal.

57. Mr. ALFARO suggested that Governments should be asked which crimes besides those listed in the Charter of the Nürnberg Tribunal should be included in the code of offences.

58. Mr. KORETSKY felt that the question should be so formulated as to permit Governments, which felt that the code of offences should include only the principles of the Charter of the Nürnberg Tribunal and in the Tribunal's judgment, to express their views.

59. He also stated that while in favour of asking the Rapporteur to prepare a report in respect of the question in paragraph (a) of the General Assembly resolution 177 (II), he was against the preparation of a draft code of offences against the peace and security of mankind and therefore also against a questionnaire on that item.

60. The CHAIRMAN thought that the question, as formulated, would permit Governments to state their views on the matter, even if that should be negative.

61. Mr. KORETSKY pointed out that the General Assembly's instructions had not been to prepare a code including offences against the peace and security of mankind other than those listed in the Charter of the Nürnberg Tribunal. Consequently the question to be sent out to

Governments should not deal with other principles besides those mentioned. He therefore proposed that Governments should not be asked which offences should be included in the code and what relevant provisions had been adopted in their national legislations.

62. The CHAIRMAN put to the vote Mr. Alfaro's proposal that the words " apart from the principles of international law recognized in the Charter of the Nürnberg Tribunal and in the judgment of the Tribunal " should be inserted in the question to be sent out to Governments.

Mr. Alfaro's proposal was adopted by 6 votes to 1.

63. The CHAIRMAN then put to the vote the proposal to ask Governments what offences apart from the principles of international law recognized in the Charter of the Nürnberg Tribunal and in the judgment of the Tribunal should be included in the code of offences against the peace and security of mankind, and whether such offences were included in their national legislations.

The proposal was adopted by 10 votes to none.

Desirability and Possibility of Establishing an International Judicial Organ for the Trial of Persons Charged with Genocide or other Crimes over which Jurisdiction will be Conferred upon that Organ by International Conventions (A/CN.4/7)

64. The CHAIRMAN read out General Assembly resolution 260 B (III) asking the International Law Commission to study the desirability and possibility of establishing an international judicial organ for the trial of persons charged with genocide or other crimes over which jurisdiction would be conferred upon that organ by international conventions. He thought that unless there was serious difference of opinion on the matter, the Commission might prepare a report on that question at its current session. The Commission had not been asked to present a plan for the establishment of an international judicial organ although its attention had been drawn to the possibility of establishing a Criminal Chamber of the International Court of Justice.

65. Mr. KORETSKY thought that it would be premature to consider the question before having completed the formulation of the principles of international law recognized in the Charter of the Nürnberg Tribunal and in the judgment of the Tribunal.

66. Mr. AMADO believed that the question was of no particular urgency in view of the fact that the Convention on the Prevention and Punishment of the Crime of Genocide to which it related had not yet been ratified by any Government. Furthermore, the other crimes with which the judicial organ should deal had not yet been codified. In view of those circumstances

Mr. Amado suggested that the matter should be postponed until the next session.

67. Mr. BRIERLY supported the views put forward by Mr. Amado and Mr. Koretsky.

68. The CHAIRMAN thought that the consensus of opinion was that the matter should be postponed until the next session.

69. Mr. YEPES did not agree with the preceding speakers. While the matter was of no particular urgency, the Commission had been instructed by the General Assembly to consider the desirability of establishing an international judicial organ. The Commission should comply with that request without entering into details. He proposed that the question should be decided in principle at the current session.

70. Mr. SCELLE agreed with Mr. Yepes. He pointed out, in that connexion, that institutes of international law always studied such questions years in advance. Consequently, in view of the fact that the matter was difficult and its study would require much time, and in view of the fact that it had been referred to the Commission by the General Assembly, he felt that the Commission should follow the usual procedure by appointing a rapporteur to work out a plan of study of that question, and to prepare a questionnaire to be circulated to Governments.

71. Mr. SPIROPOULOS thought that both points of view were acceptable. While certain members were right in believing that the Commission could not take any final action as long as it did not know what crimes would be listed in the code of offences, it appeared from the first paragraph of the General Assembly resolution that the primary purpose of the establishment of an international judicial organ would be to try persons charged with crimes of genocide under the Convention which, it was true, had not yet been ratified. The trial of "other crimes" mentioned in the third paragraph of the resolution seemed to be of secondary importance. The Commission could instruct the rapporteur to study the matter, in co-operation with the Secretariat, and to present a working paper for its next session.

72. Mr. AMADO, recalling the discussion of the question in the Sixth Committee of the General Assembly, stated that while he fully respected the lofty motives of that proposal, the fact remained that the international judicial organ would only be able to judge crimes of genocide after the Convention had been ratified, and to judge other offences after they had been codified and after the appropriate conventions had been signed and ratified. Until then no action would be possible. He therefore maintained his proposal to postpone the item.

73. Mr. SCELLE took issue with Mr. Amado's view. The primordial issue was whether national justice could be counted upon to prosecute inter-

national crimes, or whether an international jurisdiction was necessary in that regard. He had definite views on that subject which he reserved until a later occasion. He had not opposed the Commission's decision to inquire of Governments whether any provision had been made in their national legislations in respect of offences against the peace and security of mankind, although in his view, violation of international law was a violation of the international public order and not of the national public order.

74. In the present case, however, the Commission was dealing with the question of crimes which might be committed by Governments and should therefore be tried by Governments. The General Assembly had stated its position on the matter in adopting resolution 260 B (III). It had wanted the international criminal jurisdiction to be already established when the crime which it would have to adjudicate, would be determined. It was not a question of principle, but a purely practical one. The Commission was a scientific body to which the time-consuming study of a scientific question had been referred. He therefore maintained his proposal.

75. Mr. SPIROPOULOS thought that it was a special question in no way related to the progressive development of international law or its codification, to which the provisions of article 16 of the Statute consequently did not apply. The rapporteur should be asked to deal with the question merely from a theoretical point of view.

76. Mr. ALFARO disagreed with the proposals to postpone the study of the matter. The Commission must deal in principle with the question which had been referred to it by General Assembly resolution 260 B (III).

77. In reply to the view that the Commission could not envisage the creation of an international judicial organ until the crimes with which the latter should deal had been defined and codified, he pointed out that the Convention had defined all aspects of genocide, while offences against the peace and security of mankind had already been established in the Charter of the Nürnberg Tribunal. He therefore supported Mr. Scelle's view that a rapporteur should be appointed to prepare a report on that question for the Commission's next session.

78. Mr. CORDOVA agreed with Mr. Scelle that a rapporteur should be appointed, but shared Mr. Spiropoulos' view that a questionnaire would be unnecessary.

79. The CHAIRMAN noted that the General Assembly had simply asked the Commission to study the question. No special report would be necessary, and the Commission could state the results of its study in its general report to the General Assembly.

80. Mr. SCELLE did not insist on the matter

of a questionnaire, but insisted that a rapporteur should be appointed.

81. Mr. SANDSTROM supported Mr. Scelle's proposal.

82. The CHAIRMAN drew the Commission's attention to the Secretary-General's Memorandum: a Historical Survey of the Question of International Criminal Jurisdiction (A/CN.4/7) which might later be useful in the consideration of that question. He put to the vote the question whether the Commission should decide on the matter at the present meeting.

The Commission decided by 10 votes in favour to take a decision on the matter at its present meeting.

83. The CHAIRMAN then put to the vote the proposal by Mr. Amado and Mr. Koretsky that the matter should be postponed until the following session.

The proposal was rejected by 9 votes to 4.

84. The CHAIRMAN called for a vote on Mr. Scelle's proposal that a rapporteur should be appointed to study the question and present a report thereon to the following session of the Commission.

The proposal was adopted by 8 votes to 4.

85. The CHAIRMAN declared the discussion on the matter closed.

The meeting rose at 6 p.m.

31st MEETING

Wednesday, 1 June 1949, at 3 p.m.

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Chairman: Mr. Manley O. HUDSON.

Rapporteur: Mr. Gilberto AMADO.

Present:

Members: Mr. Ricardo ALFARO, Mr. James L. BRIERLY, Mr. Roberto CORDOVA, Mr. J. P. A. FRANÇOIS, Mr. Shuhsi HSU, Mr. Vladimir M. KORETSKY, Sir Benegal N. RAU, Mr. A. E.

F. SANDSTRÖM, Mr. Georges SCELLE, Mr. Jean SPIROPOULOS, Mr. Jesús María YEPES.

Secretariat: Mr. KERNO, Assistant Secretary-General in charge of the Legal Department; Mr. LIANG, Director, Division for the Development and Codification of International Law, Secretary to the Commission.

Draft Report to the General Assembly on the Work of the First Session (Chapters I and II)

1. The CHAIRMAN requested the Commission to consider chapters I and II of the draft report to the General Assembly on the work of the first session.¹

GENERAL OBSERVATIONS

2. Mr. AMADO (Rapporteur) stated that he had attempted to prepare a sober, precise and clear text which would accurately reflect the discussions which had taken place in the Commission. He realized that some gaps would undoubtedly be found and that certain deletions might have to be made. The comments of the Commission would prove most helpful in that respect.

3. He wished to point out that he had given special attention to reporting the discussion on the Commission's competence as outlined in article 18, sub-paragraph 2, of the Statute. He hoped that the report would meet with the Commission's approval and that it would be considered as an objective presentation of the Commission's opinion.

CHAPTER I. INTRODUCTION

Paragraph 1: Establishment and membership of the Commission

4. Mr. ALFARO thought that the listing of countries, as it stood, might seem to indicate that the members were representatives of those countries. He therefore suggested that the names of the members should be followed by the word "of" and then the name of the corresponding country.

5. The CHAIRMAN pointed out that the word "nationality" could be inserted at the head of the column of countries and the adjective of nationality could then be listed in the column instead of the name of the country.

6. Mr. KORETSKY preferred the draft presented by the Rapporteur. He saw no reason not to indicate the fact that a member was a citizen of a particular country. In order to satisfy Mr.

¹ The text of the draft report has not been reproduced in the present publication. In order to follow the discussion of the draft report, see text of the Report. Parts of the draft report which differ from the Report have been included in footnotes to the summary records.