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Summary record of the 57th meeting

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

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57th MEETING

Thursday, 29 June 1950, at 10 a.m.

CONTENTS

	Page
Preparation of a Draft Code of Offences against the Peace and Security of Mankind: Report by Mr. Spiropoulos (General Assembly resolution 177 (II) (Item 3 (b) of the agenda) (A/CN.4/25) (continued)	
Crime No. III (continued)	125
Crime No. IV	126

Chairman: Mr. Georges SCELLE.

Rapporteur: Mr. Ricardo J. ALFARO.

Present:

Members: Mr. Gilberto AMADO, Mr. James L. BRIERLY, Mr. Roberto CORDOVA, Mr. J. P. A. FRANÇOIS, Mr. Shuhsi HSU, Mr. Manley O. HUDSON, Mr. Faris el-KHOURY, Mr. A. E. F. SANDSTRÖM, Mr. Jean SPIROPOULOS, Mr. Jesús María YEPES.

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

Preparation of a Draft Code of Offences against the Peace and Security of Mankind: report by Mr. Spiropoulos (General Assembly resolution 177(II) (Item 3(b) of the agenda) (A/CN.24/25) (continued)

CRIME NO. III (continued)¹

1 - 5. The CHAIRMAN explained that the Commission would need to decide, as it had done in the case of Crimes Nos. I and II, whether it wished the act in question to be regarded as a crime under international law when committed by private individuals, or whether it wished to attribute criminal responsibility only to constitutionally responsible rules.

6. Mr. SPIROPOULOS said he would like to add a word of explanation. The fundamental principle behind his draft code was that of the responsibility of every individual. To examine that problem, it was necessary to forget previously acquired notions and the classical theory of the responsibility of the State. Close examination of the evolution of the problem since the war revealed that in the Charter and judgment of the Nürnberg Tribunal, in the charters of the local military tribunals and, above all, in the draft Convention on the Prevention and Punishment of the Crime of Genocide the responsibility of the individual, whether he was a public official or a private person, was the very basis of the whole system.

6 a. In none of the above texts was the word "State" to be found. The crime was defined without any indication of the author. In the Convention on Genocide, for instance, which was the first international criminal code, article I confirmed that genocide was a crime under international law, while article II defined genocide as any of the following acts: killing members of the group, etc. In no case was there any reference to the author of the crime.

¹ See A/CN.4/25, Appendix.

6 b. At the General Assembly, the French delegation had submitted a proposal stipulating that genocide could be committed only by the ruler of a State or with his consent.² In point of fact, what had occurred in Germany had only been possible because such was the will of the State. The General Assembly had refused to accept that point of view, and according to the Convention on Genocide, any person might be held criminally responsible.

6 c. The Commission would, of course, be within its rights in deciding that such a solution was not a good one, and it could even reject it; but recent developments in international law had evolved the principle that individuals, whether ordinary persons or public officials, might always be held responsible. He had had no alternative but to act in accordance with this evolution, otherwise the Commission might have reproached him with presenting the classical theory.

6 d. If each crime were examined, it would be seen that, when political crimes were involved, they were of necessity tolerated or committed by public officials. It had been maintained that civil war was not a crime, yet the latest practice of the United Nations was to regard it as such. The author of an international crime was not necessarily a ruffian, and a man responsible for fomenting a civil war in order to overthrow the government might well be a highly respectable member of society. If, for instance, it was admitted that any violation of the rules of war was a crime, then the confiscation, by a prison camp warder with a passion for stamp collecting, of letters addressed to prisoners in order to keep the stamps on those letters, was a war crime. By an international crime was meant a crime which municipal legislation did not punish, but which it was not desired to leave unpunished. National courts could not always be trusted to condemn the criminal, and accordingly the need was felt for an international tribunal and an international criminal law. The term "international crime" must be given its true significance and not another meaning. If the Commission decided to disavow the principles adopted by the United Nations, it was free to do so, just as it was free to endorse those principles.

7. The CHAIRMAN recalled that for the moment, the Commission's task was to define the crimes.

8. Mr. AMADO considered that no one could have submitted a better text than that of Mr. Spiropoulos. Although he himself was not satisfied with the definition of Crime No. III, he could not propose a better text. He would like his colleagues to submit definite proposals and, if none were forthcoming, would vote for the existing definition of the crime.

9. Mr. HSU was not sure he had understood Mr. Spiropoulos aright. If he had interpreted his meaning correctly, he saw no difference of opinion between the Rapporteur and the other members of the Commission. All of them admitted that an international crime was personal in the sense that its author should be punished, and that it could be committed independently of the government, though in the majority of cases it took

² See *Official Records of the General Assembly, third session, part I, 6th Committee, Annexes, document A/C.6/211, page 14.*

place at the order or with the complicity of the latter.

9 a. In the case of Crime No. II, they had reached the conclusion that the order of or toleration by the government was not necessary, the Commission thereby seeking to emphasize that the crime might be committed independently of the government. But there were other crimes which could not be committed without the consent of the government.

9 b. Crime No. III was a different case. Individuals could commit it at the order of their government or in connivance with it. Provision should accordingly be made for both cases. He felt that Crime No. III should be more strictly defined. The crimes covered by the Convention on Genocide were horrible crimes which should be punished in every case. On the other hand, it might happen that the crime defined here did not call for a punishment. They must not go too far.

9 c. The wording submitted by Mr. Hudson: "the encouragement or toleration by the officials of a State of the organization on the territory of that State of activities designed to foment civil war on the territory of another State" struck him as a good definition, and he would support it, but it did not allow for the case where the State itself directly organized the fomenting of civil war.

9 d. He accordingly proposed the following text: "The organization by a State of activities designed to provoke civil war in another State or the encouragement or toleration of such activities on its own territory."

9 e. The CHAIRMAN observed that the wording proposed by Mr. Hsu appeared to be outside the subject with which the Commission was dealing, since it referred only to a crime committed by the State.

10. Mr. HSU replied that Mr. Hudson's proposal stipulated that, in the event of fomentation of civil war in another State, the criminal responsibility of private individuals was involved only when those individuals acted in connivance with the government. There were, however, cases of individuals fomenting civil war in another State on the order of their government.

11. The CHAIRMAN pointed out that, according to Mr. Hsu's wording, an act committed by individuals acting independently of their government would not be a crime under international law.

11 a. He would like to ask the Commission whether it wished to include in the code the crime of fomenting civil war committed by private individuals, or whether it intended to limit it to crimes committed by the State. He would therefore put to the Commission the following question:

Does the Commission consider that the fomenting of civil war in another State is a crime under international law only when committed by governments? or does it consider that the crime of fomenting civil war in another State may also be committed by private individuals acting on their own account?

11 b. He would request the Commission to observe a certain discipline in its discussions, and to refrain from reverting to points which had already been settled or anticipating on discussions which would take place later

when other points came up for consideration. He saw no need for the Commission to discuss the question he had just raised, since all the members were fully aware of what was involved.

The Commission decided by 7 votes to 5 that the fomenting of civil war in another State by private individuals acting on their own account should not be considered a crime under international law under the terms of the draft code.

12. The CHAIRMAN noted that the Commission had decided that the fomenting of civil war could not be regarded as an international crime unless committed by constitutionally responsible rulers, and was not an international crime when committed by private individuals acting on their own account.

13. Mr. YEPES found the definition of Crime No. III as formulated insufficient and not clear enough, even with the changes that had been made. He therefore proposed the following wording:

"The actual fomenting of civil war in a State by the authorities of another State or by private individuals and the failure of the authorities of the latter State to repress and punish the said acts of encouraging civil war."

14. Mr. SPIROPOULOS asked if the Commission would not allow him to draft a text in the light of the opinions expressed during the discussion and of the decisions of principle taken by the Commission.

15. The CHAIRMAN thought that the Commission had sufficiently expatiated on the point, and that fresh points of view were hardly likely to emerge. The Commission should press on with its business. The least that the Commission could do was to draw up a list of crimes against the peace and security of mankind, but at the rate it was going, it would not even succeed in completing that task. He excused himself for having thus to call the Commission to order and request it to expedite its discussions.

16-19. He recalled that the Commission had just decided that it did not regard Crime No. III—i.e., the fomenting of civil war in another State—as a crime under international law when committed by a private individual. He asked the Commission to leave it to the Rapporteur to include in his report a wording which the Commission would have full opportunity of considering and discussing when that report was submitted for its approval.

CRIME NO. IV³

20. The CHAIRMAN called upon the Commission to consider Crime No. IV: "Organized terroristic activities carried out in another State".

21. Mr. SPIROPOULOS referred to the existence of a Convention for the Prevention and Punishment of Terrorism which had been drafted in 1937 but had not been ratified.⁴ There also existed a draft Statute for the

³ See A/CN.4/25, Appendix.

⁴ See *Historical Survey of the Question of International Criminal Jurisdiction*, United Nations publication, Sales No.: 1949.V.3, p. 88, footnote 2.

Creation of a Criminal Chamber of the International Court of Justice.⁵ In that draft, which had been prepared by Professor Pella, there were also provisions for the repression of terroristic activities. He had given much thought to the question whether he should base his draft on either of these texts and had finally decided to make it more general in character. His definition spoke of "organized terroristic activities", thereby implying that the terroristic activities of isolated individuals not belonging to any organization did not come under the heading of Crime No. IV. The term "organization" also covered political parties and terroristic activity could hence also be carried on by a party. He thought, however, that in order to be regarded as a crime under the terms of his draft code, such activity must be carried out by an organized group. Only under such circumstances could terroristic acts be considered as offences against the peace.

22. Mr. el-KHOURY considered Crimes Nos. III and IV very similar, and wondered whether they could not be amalgamated into a single crime—for instance, by altering very slightly the wording of Crime No. III, which could run as follows: "the fomenting of civil war in another State or organized terroristic activities carried on in another State". In both cases, the crimes could be considered as crimes under international law, provided they were international in their scope and consequences. When, however, it was merely a question of terroristic activities carried on in a single State and having only national implications, such activities would constitute a national crime and should, in his opinion, be judged by a national tribunal. It seemed to him impossible to make all organized terroristic activities international crimes to be judged by an international tribunal. The tribunal would then have to deal with thousands of cases of terroristic activities committed in a very large number of States by nationals of those States. The Commission would need to take account of that fact in any conclusions it arrived at.

23. Mr. AMADO agreed that there was a difference between national and international terroristic activities, but also thought that civil war and terroristic activities could not be covered by a single text embracing both crimes. He was accordingly in favour of keeping the two separate articles, the one relating to the fomenting of civil war and the other to terroristic activities. Did the Rapporteur consider that organized terroristic activities—i.e., terroristic activities taken in the collective sense—could be assimilated to terroristic acts properly so-called? The "act" was the technical term in criminal law, and there was a shade of meaning between "activity" and "act": activities could be preparatory measures, but acts were the accomplishment of a deed.

24. Mr. FRANÇOIS found the word "terroristic" extremely vague and could give it a precise meaning only by linking it up with the provisions of the 1937 Convention on the Prevention and Punishment of Terrorism, where a definition was given which struck him as pertinent. Unlike Mr. el-Khoury, he did not believe

that the two crimes Nos. III and IV could be amalgamated.

24 a. Quoting the second paragraph of the commentary added by Mr. Spiropoulos to the definition of Crime No. IV in his report (page 26), he said he did not understand how terroristic activities of single persons could be regarded as not affecting peace. He thought rather that even an isolated individual could constitute a threat to peace when he carried on terroristic activity. He accordingly proposed the deletion of the word "organized" from the definition of Crime No. IV.

25. Mr. HUDSON recognized that there was, in fact, a certain analogy between Crime No. III and Crime No. IV, since the question of the criminal responsibility of isolated individuals under international law arose in both cases. He thought that if the Commission wished to adopt the same point of view with regard to Crime No. IV as it had adopted with regard to Crime No. III, it would be sufficient to redraft the definition of Crime No. IV to bring them into line. He accordingly proposed the following wording:

"The encouragement or toleration by a State of the organization on its territory of activities directed against another State and calculated to create in the latter's territory a state of terror in the minds of particular persons, or a group of persons or the general public."

25 a. In drafting the text, by which he intended to exclude persons acting alone, he had reproduced the words of article 1, paragraph 2 of the Convention on Terrorism. The definitions in that convention seemed to him excellent.

26. Mr. YEPES confessed that he did not grasp the meaning of Crime No. IV as drafted by Mr. Spiropoulos. What was meant by "organized terroristic activities"? It would be necessary to give a definition of those terms and to indicate, in addition, by whom those activities were organized and where. The definition as it stood struck him as very confused.

27. Mr. CÓRDOVA enquired of Mr. Hudson whether the text he had just proposed would cover an isolated terroristic act such as the assassination of the Head of a State.

28. Mr. HUDSON replied that the text proposed was in conformity with the decision taken by the Commission with regard to Crime No. III.

29. The CHAIRMAN said that if this implied that the text excluded acts committed by individuals on the territory of a State other than their own, he would be unable to accept that limitation. The acts committed by assassins like those who had murdered the King of Yugoslavia in France should come under the code.

30. Mr. HUDSON replied that such activity was perfectly well covered by his text. The assassination of King Alexander of Yugoslavia at Marseilles was perpetrated by the Ustashi and their terroristic activity, directed against the Head of their own State and culminating in an assassination committed on the territory

⁵ *Ibid.*, p. 75.

of another State, had been tolerated by a foreign government.

31. Mr. HSU noted that Mr. Hudson's text mentioned the fact of "encouragement or toleration", and enquired whether those terms also included organization.

32. Mr. HUDSON replied that the term "encouragement" included the idea of organizing.

33. Mr. BRIERLY drew attention to the fact that Mr. Hudson's definition referred to States, and enquired whether the latter would accept the substitution of the terms "government of a State" to avoid the confusion which had arisen on a number of previous occasions.

34. Mr. HUDSON agreed to this change in his text.

35. Mr. BRIERLY said that, in that case, he would support the text submitted by Mr. Hudson.

36. Mr. SPIROPOULOS felt he should point out that the text proposed by Mr. Hudson was contrary to the general plan of his report. Under the terms of his draft code, private persons who assassinated a king would be committing an international crime.

37. Mr. HUDSON remarked that the case was similar to that on which the Commission had taken a decision when considering Crime No. III.

38. The CHAIRMAN confessed that he did not understand the analogy which Mr. Hudson had just drawn with the decision taken by the Commission on Crime No. III. While accepting the latter decision, namely, to limit Crime No. III to the acts of constitutionally responsible rulers, he could not accept such a decision with regard to Crime No. IV. The act of the assassins of Marseilles was, he thought, by virtue of its international repercussions, a crime under international law, even if the assassins had not been acting in liaison with any government.

39. Mr. AMADO thought that, according to the wording of the text submitted by Mr. Hudson, crimes committed in the form of terroristic acts were international crimes if they were committed with the intention of endangering human life. That seemed to him a limitation of the scope of terroristic acts. He enquired what was the meaning of the expression "a state of terror in the minds of . . ."

40. Mr. HUDSON explained that, in his definition, he had reproduced the actual words of the Convention on Terrorism—namely, "acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons, or a group of persons or the general public". His text was only a suggestion for the benefit of the Rapporteur, who was free to use it or not.

41. Mr. FRANÇOIS shared the view expressed by the Chairman that the assassination of the Head of a State, even if committed by a private individual acting on his own account, was a crime under international law. The Convention on Terrorism also considered the assassination of Heads of States as a crime under international law. Mr. Hudson's text, in its existing form, accordingly represented a retrograde step.

42. Mr. HUDSON thought that Mr. François was

mistaken. He would like to remind the Commission that the Convention on Terrorism in no way stipulated that the assassination of Heads of States was an international crime. The Convention simply invited each of the High Contracting Parties to "make the following acts committed on his own territory criminal offences if they are directed against another High Contracting Party and if they constitute acts of terrorism within the meaning of article 1". In other words, the Convention on Terrorism invited the Contracting Parties to enact municipal legislation for the repression of such acts. It considered such acts therefore, from the point of view of a national crime and of municipal law, whereas the Commission was at that moment engaged in defining the crime under international law.

43. Mr. CORDOVA thought that terrorism was a crime in itself, and that certain acts of terrorism constituted crimes under international law, whereas others definitely came under the heading of crimes under municipal law. In his opinion, the assassination of King Alexander at Marseilles, which had as a matter of fact, been punished under French law, was a crime of a national character.

44. Mr. HUDSON read article 1 of the Convention on the Prevention and Punishment of Terrorism, which reaffirmed the principle of international law in virtue of which it was the duty of every State to refrain from any act designed to encourage terrorist activities directed against another State, and to prevent the acts in which such activities took shape. The other provisions of the Convention referred only to the duty of States to establish national legislation for the repression or punishment of terroristic activities. The draft code should stipulate that if the constitutionally responsible rulers of a State violated the obligation referred to in article 1 of the said Convention, they would be criminally responsible under international law.

45. The CHAIRMAN remarked that the Commission's task was to establish an international criminal code. The Convention on the Prevention and Punishment of Terrorism had not established such a code, and had confined itself to inviting States to introduce penal provisions in their national legislations. The Commission was not, however, bound by the provisions of that Convention. It was free to transpose a crime of a national character into the sphere of international law, and should indeed do so, in so far as terroristic acts disturbed international peace. He thought it would be very difficult for the Commission to deny that the terroristic activity of a band had the character of an international crime when it was liable to disturb international peace. He wondered whether the Commission was really of the opinion that a terroristic crime did not exist from the point of view of international law if such a crime were not prepared or committed in connivance with a government.

46. Mr. CORDOVA thought that an act of terrorism committed by individuals was a crime which should be prevented and punished by ordinary law. There might quite possibly be no intention whatever of disturbing international peace.

47. The CHAIRMAN thought that terrorism always constituted a threat to peace. One could take as an example the case of the head of a government who, in order to prevent war, took certain repressive measures against warmongering persons or groups and was then assassinated on the territory of his own country by terrorists of his own country against whom he had just taken repressive measures. Such an assassination might have terrible consequences and even give rise to war. An act of that nature was undoubtedly a crime coming within the sphere of international law, although committed entirely on the territory of a single State.

48. Mr. AMADO considered that, for a crime under international law to exist, an international element was essential. In the case of terroristic activity, the international element was, he thought, constituted by the fact that such activity was directed against another State. In his view, the assassination of Jaurès by a Frenchman could not possibly be classed as an international crime. The assassin had moreover been judged and condemned under French law. It was impossible to talk of an international crime if the terroristic activities were not organized in one country and directed against another.

49. The CHAIRMAN contested the need for an international element. He gathered that Mr. Amado supposed that terroristic activities came within the sphere of international law only when those activities were not carried on entirely in a single country. That was an external criterion. There was, however, also an internal criterion which was as follows: did social disturbance result from that terroristic activity? If such social disturbance was confined to a single country, clearly a domestic crime only was involved; but if the disturbance extended beyond the borders of the country in which the terroristic activity was carried out, then it was international law which applied. The problem could be summed up as follows: The criterion determining whether terroristic activity was of a national or international character was the extent of the consequences of the crime.

50. Mr. AMADO asked the Chairman whether he considered the assassination of Ghandi to be a national or an international crime. That assassination had revolted the whole of mankind, and in that sense had had international consequences. It was not certain, however, that the assassination had had the effect of creating disturbances outside India. If he judged according to his own feelings, then the assassination of Ghandi was an international crime; but if he viewed it from the point of view of the code that the Commission was at the moment considering, he could not regard that assassination as an international crime.

50 a. The situation with regard to the crime of genocide was quite different. That crime was aimed at the destruction of an entire group, and an international crime was involved even if the acts were committed on the territory of a single country.

51. The CHAIRMAN replied that there were cases in which terroristic crimes produced international disturbances and others in which they did not. Did Mr.

Amado wish to exclude all terroristic activities of an individual nature because some of those activities did not disturb international peace and order?

51 a. He felt he must again consult the Commission on the question whether it wished to exclude from the code, and consequently from the category of international crimes, terroristic acts of a purely personal nature, organized or committed without the intervention of the constitutionally responsible rulers.

The Commission decided, by 6 votes in favour, to exclude such acts.

52. The CHAIRMAN asked the Commission if it wished to include in the code acts of terrorism by individuals acting on their own account and having no connexion with the constitutionally responsible rulers.

The Commission decided, by 4 votes in favour, to include such crimes.

53. The CHAIRMAN regretted to state that, as a result of the decisions just taken, the draft code no longer corresponded to his idea of an international code.

54. Mr. el-KHOURY asked what judicial bodies would judge cases of terroristic activity.

55. The CHAIRMAN replied that the question was not under discussion by the Commission.

56. Mr. el-KHOURY added that, to his mind, an international crime should be judged by an international tribunal. He had frequently voted for the inclusion in the code of a crime which, in his opinion, was not an international one, with the idea that that crime would be punished by an international tribunal.

57. The CHAIRMAN again drew attention to the fact that the point was not at that moment under discussion. He thought that the Commission would rely on the Rapporteur to draft a text taking into account the opinions expressed and decisions taken during the discussion.

58. Mr. BRIERLY requested that the Rapporteur should take account in particular of Mr. Hudson's proposal.

59. Mr. ALFARO said he wished to explain the way in which he had voted. He had voted against the inclusion among international crimes, of individual terroristic acts organized or committed without the intervention of the constitutionally responsible rulers. Such an inclusion would have had the effect of bringing into the sphere of international law all acts committed as a result of internal conflicts in the various States. Owing to that inclusion, the assassination of the President of Bolivia, for example, would have had to be considered as an international crime.

60. Mr. HUDSON said he would like to draw the Rapporteur's attention to article 3 of the Convention on the Prevention and Punishment of Terrorism, as that article seemed to him to be a very interesting one. After reading the article in question, he added that a case might arise, for instance, in which an activity was pursued on the territory of a State A with a view to the carrying on of terroristic activity against a State B, whereas the actual terrorist act might be committed on

the territory of a State C. He hoped that the Rapporteur would take account of the example he had just quoted, together with article 3 of the Convention on Terrorism, and the problem of jurisdictions arising out of it.

61. Mr. SPIROPOULOS begged the Commission not to expect the impossible of him. He was asked not only to take account of opinions expressed in the course of discussion and of the decisions taken by the Commission, but also to take into consideration the provisions of the Convention on Terrorism. It seemed to him that that Convention laid down certain rules which went less far than the principles or the ideas formulated by the Commission. He therefore requested the Commission to leave him free to draft his report bearing in mind solely the views and opinions which had emerged during the Commission's discussions.

The meeting rose at 1 p.m.

58th MEETING

Friday, 30 June 1950, at 10 a.m.

CONTENTS

	Page
Preparation of a Draft Code of Offences against the Peace and Security of Mankind: Report by Mr. Spiropoulos (General Assembly resolution 177 (II) (Item 3 (b) of the agenda) (A/CN.4/25) (continued)	
Crime No. V	130
Crime No. VI	132
Crime No. VII	136
Crime No. VIII	138

Chairman: Mr. Georges SCELLE.

Rapporteur: Mr. Ricardo J. ALFARO.

Present:

Members: Mr. Gilberto AMADO, Mr. James J. BRIERLY, Mr. J. P. A. FRANÇOIS, Mr. Shuhsi HSU, Mr. Manley O. HUDSON, Mr. Faris el-KHOURY, Mr. A. E. F. SANDSTRÖM, Mr. Jean SPIROPOULOS, Mr. Jesús María YEPES.

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

Preparation of a Draft Code of Offences against the Peace and Security of Mankind: report by Mr. Spiropoulos (General Assembly resolution 177(II) (Item 3(b) of the agenda) (A/CN.4/25) (continued)

1 - 3. Mr. SPIROPOULOS said that in his report he had confined himself to enumerating a certain number of crimes; there might, of course, be others. He had received from Mr. Pella a memorandum on the question before the Commission. In Part III of that memorandum (A/CN.4/39) was enumerated a list of crimes, which would enable them to decide whether further

crimes should be added to the list contained in the draft Code.

4. The CHAIRMAN approved of that suggestion, since it would enable the Commission to distinguish between crimes under international law and crimes under municipal law. He believed that all the members of the Commission had received a letter from the United Nations Educational, Scientific and Cultural Organization requesting that the destruction of works of art, historic monuments etc. should be included among international crimes. The Secretariat would draw up a list of all the possible crimes and the Commission would then take a decision.

5. Mr. HSU thought that subversive activities should be added to the list of crimes; they might be sub-divided into three categories:

1. The fact of a State carrying on subversive propaganda against another State or encouraging or tolerating such activities in its territory.
2. The fact of a State giving moral, political or economic support to subversive elements in another State or encouraging or tolerating such activities in its territory.
3. The fact of a State maintaining, in another State, agents instructed to overthrow the established order.

The meaning of the word "subversive" would, of course, have to be defined.

5 a. He had not accepted the proposal to add to the text submitted for Crime No. I the threat of the use of armed force; that was not because he was fundamentally opposed to the suggestion, but because of the manner in which it had been presented. He proposed the words: "The fact of a State applying measures of psychological or economic coercion in respect of another State."

5 b. The preparation of plans for a war of aggression was not mentioned in the report. Mr. Spiropoulos had told him that that was a kind of preparatory act, and that such acts came under Definition No. X. He considered that the preparation of plans was distinct from material preparation. It should therefore be given a separate place. For Crime No. V he proposed the words: "The fact of a State planning a war of aggression."

6. The CHAIRMAN observed that that proposal was in conformity with Mr. Spiropoulos' suggestion that a certain number of crimes not included in his report should be enumerated.

CRIME No. V¹

7. Mr. SPIROPOULOS pointed out that the manufacture of weapons was generally carried on by private enterprises and that the same problem again arose: should the directors of the factories concerned be held responsible, or State officials? The idea underlying the draft was that a crime was involved and that any person whatever, whether an official or not, might be responsible for it.

¹ See A/CN.4/25, Appendix.