

Document:-  
**A/CN.4/SR.75**

**Summary record of the 75th meeting**

Topic:  
**Other topics**

Extract from the Yearbook of the International Law Commission:-  
**1950 , vol. I**

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*Section V: "Specific ways and means suggested by the Commission"*

63. Mr. KERNO (Assistant Secretary-General) wondered whether there was any point in mentioning in paragraph 1 of the section (paragraph 90 of the "Report") that the Commission attached special importance to the continuance of the multilingual system of the United Nations Treaty Series. He recalled the budgetary objections apt to be raised in regard to United Nations publications. It would be well to delete the word "multilingual" and to give an account of the system followed at present.

64. Another point should be made clear: The same paragraph stated that the Commission expressed the *voeu* "that the texts of international instruments registered or filed and recorded with the Secretariat, should be published with greater promptness". At the outset, there had been a delay of over a year between the date of issue of the texts and the date of their reproduction by the Secretariat. The delay had already been reduced; but it would be helpful if still greater promptness could be achieved. He therefore proposed that the words "as promptly as possible" should be substituted for "with greater promptness". Incidentally, General Assembly resolution 364 (IV) had made a similar recommendation.

65. Mr. HUDSON accepted Mr. Keruo's two suggestions, and went on to urge the Commission to read paragraph 2 (a) of the section (paragraph 91 (a) of the "Report") very carefully, as it contained a novel suggestion. It would be most useful if a publication in the form of a juridical yearbook as described in the paragraph in question could be prepared and published in the not too distant future. The same applied to paragraph 2 (b). A legislative series of the type mentioned would likewise be a most valuable publication.

66. Mr. LIANG (Secretary to the Commission) explained that the Secretariat was at present engaged on compiling works of that kind; publication had been authorized by the General Assembly. It was, for example, already collecting for publication legislative texts referring to the high seas; and some of them would be published.

67. Mr. HUDSON was most anxious that such compilations should be published.

68. Mr. KERNO (Assistant Secretary-General), referring to paragraph 2 (f), said that the Secretariat had in hand the publication of occasional index volumes of the United Nations Treaty Series.

69. Mr. LIANG (Secretary to the Commission) pointed out that the English text of paragraph 2 (g) should read, not "United Nations Organization", but merely "United Nations", the Organization's official title.

70. Mr. ALFARO said the official title was indeed "United Nations", though it was neither logical nor grammatical; but the Commission should keep to official titles and designations.

71. Mr. HUDSON said he would have preferred in English "Organization of the United Nations".

72. Mr. ALFARO accepted the suggestion provided that "organization" were written with a small letter.

73. Mr. KERNO (Assistant Secretary-General) said that the United States delegation had proposed at San Francisco that the term "United Nations" be adopted in memory of President Roosevelt who had introduced it and always used it.

*The meeting rose at 12.55 p.m.*

## 75th MEETING

*Monday, 24 July 1950, at 3.30 p.m.*

### CONTENTS

	Page
Commission's draft report covering the work of its second session ( <i>continued</i> ) . . . . .	277
Part V: Preparation of a draft code of offences against the peace and security of mankind . . . . .	277

*Chairman:* Mr. Georges SCALLE.

*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. Ivan KERNO (Assistant Secretary-General in charge of the Legal Department); Mr. Yuen-li LIANG (Director of the Division for the Development and Codification of International Law, and Secretary to the Commission).

### Commission's draft report covering the work of its second session (*continued*)

#### PART V: PREPARATION OF A DRAFT CODE OF OFFENCES (A/CN.4/R.7/ADD.2)<sup>1</sup> AGAINST THE PEACE AND SECURITY OF MANKIND

1. The CHAIRMAN reminded the Commission that it had received a request from the United Nations Educational, Scientific and Cultural Organization to include the destruction of monuments and works of art in its list of international crimes, but that it had not yet replied to that request. In order not to appear to neglect relations with other bodies, it would be desirable for the Commission to inform UNESCO that the Commission would reply to its request next year when it

<sup>1</sup> Mimeographed document only. Parts of that document that differ from the "Report" are reproduced in footnotes to the summary records. For other parts, see the "Report" in vol. II of the present publication.

resumed study of the draft code of offences against the peace and security of mankind.

*Paragraph 1 (Paragraph 146 of the "Report")*

2. Mr. BRIERLY said that in English the city was called "Nuremberg", and not "Nürnberg".

3. Mr. LIANG (Secretary to the Commission) said that General Assembly resolution 177 (II) had employed the German form.

*Paragraph 2 (Paragraph 149 of the "Report")<sup>2</sup>*

4. Mr. AMADO pointed out that the expression "conflicts de lois" was used in French only in connexion with private international law. The same was true of the English expression, "conflicts of laws". He noted that the English text of paragraph 2 spoke of "conflicts of legislations".

5. The CHAIRMAN suggested that the expression "conflits de législations" should be used in the French text.

6. Mr. YEPES drew attention to the fact that the text made it clear that the conflicts of laws in question were in connexion with international criminal matters.

7. Mr. AMADO maintained that the sense of the expression in technical legal language was the one he had just indicated. It gave the impression that private international law was being referred to.

8. Mr. SANDSTRÖM considered that the question had nothing to do with offences against the peace and security of mankind, and that it was accordingly unnecessary to refer to it.

9. Mr. CORDOVA thought that there was no need for the Commission to examine cases in which municipal law was applicable.

10. Mr. SPIROPOULOS recalled that in paragraph 36 of his report (A/CN.4/25),<sup>3</sup> he had stated: "From the same declarations, discussions, etc., follows *negatively* that the draft code to be elaborated by the International Law Commission cannot have as its purpose questions concerning conflicts of legislation and jurisdiction in international criminal matters."

11. Mr. AMADO considered that the words "political nature" in the second sentence of the paragraph should be changed.

<sup>2</sup> Paragraph 2 read as follows:

2. The Commission first considered the meaning of the phrase "offences against the peace and security of mankind", contained in resolution 177 (II). The view of the Commission was that the main characteristic of these offences lies in their political nature. They are offences which are likely to endanger the maintenance of international peace and security. The Commission was therefore of the opinion that the draft code should not deal with questions concerning conflicts of legislation and jurisdiction in international criminal matters. Nor should such topics as piracy (*delicta juris gentium*), suppression of traffic in dangerous drugs or of traffic in women and children, suppression of slavery, of counterfeiting currency, protection of submarine cables, etc., be considered as falling within the scope of the draft code.

<sup>3</sup> Para. 5, p. 16 of the mimeographed French text.

12. Mr. BRIERLY noted that the second sentence of the paragraph said that "the main characteristic of these offences lies in their political nature".<sup>4</sup> That was not, however, their distinctive characteristic. A murder, for instance, could be a political crime. The main characteristic of such offences was that they might endanger the peace and security of mankind. He would like to have the second sentence deleted.

13. The CHAIRMAN observed that the third sentence repeated the second one. He proposed the following wording: "The Commission's view was that the main characteristic of these offences is that they are likely to endanger the maintenance of international peace and security." The essential character of such offences should perhaps be sought in their aims and effects.

14. Mr. AMADO read the third sentence of the paragraph: "They are offences which are likely to endanger the maintenance of international peace and security" and asked whether it would not be more correct to say: "They are offences which endanger . . ."

15. Mr. ALFARO proposed saying: "which actually endanger . . ."

16. Mr. AMADO remarked that it was for the judges to decide whether offences against peace and security were involved.

17. Mr. LIANG (Secretary to the Commission) reminded the Commission that the phrase: "which is likely to endanger the maintenance of international peace and security" was to be found in Article 33 of the Charter, but was not used there to define a crime. If it was desired to describe such acts as crimes a more energetic term should be employed. He would suggest saying "which endanger".

18. Mr. HUDSON remarked that Mr. Briery proposed saying: "They are offences such as to endanger . . ."

19. Mr. ALFARO then read the text resulting from the different amendments: "The main characteristic of these offences is that they are such as to endanger the maintenance of international peace and security."

20. The CHAIRMAN considered that the French text: "La Commission estime que le caractère essential de ces crimes est qu'ils sont de nature, etc. . . ." was a satisfactory one.

21. Mr. KERNO (Assistant Secretary-General) suggested that it was in Article 99 of the Charter rather than in Article 33 that a suitable formula should be sought. Article 99 ran: "a matter which in his opinion may threaten the maintenance of international peace and security".

22. Mr. SPIROPOULOS explained that, when drafting his report, he had sought to discover what distinguished such acts from other acts. If the report referred simply to offences of a political nature, it would cover acts, such as revolutionary ones, for instance, which were not offences under the Code. In order to be considered as an international crime, such offences must

<sup>4</sup> *Ibid.*

possess three characteristics. First, they must be committed or tolerated by the State; secondly, they must be of a political nature; and thirdly, they must be such as to endanger peace and security. The combination of all three elements was required. Such offences were always acts involving the international responsibility of the State.

23. Mr. CORDOVA thought that it was necessary to retain the idea of violation of international law. There might be many situations endangering peace which could be solved peacefully and which had nothing to do with criminal law. The act referred to should already constitute a breach of international law and not solely a threat to peace.

24. The CHAIRMAN said that if an act was contrary to the Code, it was certainly a violation of international law. The characteristics of an international crime must be indicated. There was no doubt that the latter was contrary to international law and, once the Code was drawn up, it would state that fact.

25. Mr. SPIROPOULOS said that the Code would state what was an offence and not what was contrary to international law. Reference had already been made to the political nature of the offence, but the international element must also be mentioned.

26. Mr. AMADO remarked that a code referred to acts. Yet, in the last sentence of paragraph 2, it was said: "nor should such topics as piracy etc. . . . be considered as falling within the scope of the draft Code". He would like to draw the Rapporteur's attention to that point. Approximations were dangerous.

27. Mr. ALFARO proposed saying: "The Commission first considered the meaning of the phrase 'offences against the peace and security of mankind', contained in resolution 177 (II). The Commission's view was that it could only be concerned with crimes which endanger the maintenance of international peace and security. It was therefore of the opinion . . ."

28. Mr. BRIERLY thought that the sole purpose of paragraph 2 was to explain why the Commission attached a restricted meaning to the expression "offence against the peace and security of mankind". The second of the two sentences did no more than repeat the first one.

29. Mr. HSU thought that by omitting the words "the meaning of" in the first line of paragraph 2 and simply saying: "The Commission first considered the phrase . . ." the problem could be solved.

30. Mr. SPIROPOULOS thought that an expression could not be defined by using the same terms as the expression itself. What should be said was that offences were involved if a State provoked or tolerated them and if they endangered the peace of the world.

31. Mr. CORDOVA suggested saying: "The Commission confined its study to offences which endanger peace and security." That would exclude piracy, which did not endanger international peace and security.

32. Mr. el-KHOURY asked why any definition should be given at all in the part of the report dealing with the progress of work on the draft Code. Why should the

Commission submit to the General Assembly something which it was not obliged to produce? The fifth part of the report answered no need. Its submission was purely optional on the part of the Commission. There was no reason for it to bind itself by giving definitions. He thought paragraph 8 (paragraph 157 of the "Report") alone would be quite enough.

33. Mr. SANDSTRÖM approved Mr. Córdova's idea, but thought the expression "in violation of international law" too vague. The criterion should be the fact that such offences endangered peace and at the same time constituted a violation of the rules which should govern relationships between States.

34. Mr. SPIROPOULOS recalled that he had said that it was not necessary to speak of a violation of international law, but that it was sufficient to emphasize the international nature of the offence.

35. The CHAIRMAN proposed combining the proposals of Mr. Sandström and Mr. Spiropoulos and saying: "The Commission adopted the definition of offences against the peace and security of mankind as being violations of international law likely to endanger the maintenance of international peace and security."

36. Mr. ALFARO said that the question was to discover the meaning of the phrase "offences against the peace and security of mankind", occurring in the Commission's terms of reference. The answer should be that the Commission would be concerned only with offences endangering peace and security and would not deal with other crimes.

37. Mr. CORDOVA said that the Commission could not assert that piracy did not endanger the security of mankind. In order to exclude such an offence from the draft Code, the latter would have to cover only crimes for political ends.

38. Mr. SPIROPOULOS also considered that the political nature of the offences in question was important. It was necessary to rule out piracy, the suppression of traffic in dangerous drugs, etc., but the actual words used did not constitute a definition.

39. The CHAIRMAN was of the opinion that the Commission should indicate what it had sought to do, which was to omit crimes which were not of a political nature.

40. Mr. BRIERLY proposed keeping the first sentence in the paragraph and then saying: "The Commission considered that this phrase should be limited to offences which contain a political element and which endanger or disturb the maintenance of international peace and security, and that the draft Code therefore should not deal with . . ."

41. Mr. SPIROPOULOS approved of the proposal since it emphasized the political nature of the crimes under consideration.

*The Commission accepted the proposal.*

42. Mr. AMADO pointed out that it would be necessary to say "*delictum*" and not "*delicta*" since only a single crime was referred to.

43. Mr. ALFARO thought the phrase "*delicta juris gentium*" might be deleted and that the word "acts" could be used instead of "topics".

*It was so decided.*

*Paragraph 3 (paragraph 150 of the "Report")*

44. Mr. HUDSON proposed deleting the third sentence, "The Commission would be reluctant to exclude principles which had been recognized as principles of international law in the Charter and judgment of the Nürnberg Tribunal."

45. The CHAIRMAN found the wording of the paragraph insufficiently direct.

46. Mr. HUDSON thought it would become so if the words "on the other hand" were deleted from the beginning of the last sentence.<sup>5</sup>

47. The CHAIRMAN pointed out that the Commission reserved the right to include only some of the Nürnberg Principles.

48. Mr. SPIROPOULOS recalled the fact that he had spoken in his report of "evaluation" of the Nürnberg Principles.

49. Mr. AMADO thought both the English and the French texts obscure. He read the second sentence of the paragraph and said that he understood it to mean that the Commission considered that place should be found for those principles in the draft Code but that it was free not to insert all of them. The last two sentences of the paragraph were difficult to follow.

50. Mr. KERNO (Assistant Secretary-General) said that the Commission had discussed the question a few weeks ago. The adoption of Mr. Hudson's proposal would mean that it interpreted the phrase: "indicating clearly the place to be accorded to the principles" as permitting it to indicate no place at all for those principles. The General Assembly had considered that the Nürnberg Principles constituted an important stage in the evolution of international law and that they should be confirmed. What had been established should not be lightly cast aside. The existing text of the report did at least say, in the sentence which it was proposed to delete, that the Commission, while reserving the right to leave out certain principles, would do so only for very serious reasons. While it had been the desire of the Assembly that a place be accorded to those principles, the Commission could clearly, upon reflection, arrive at the conclusion that there was no place for those principles in the draft Code.

51. Mr. HUDSON said that the text he proposed exactly embodied the decision taken the other day.

52. Mr. ALFARO pointed out that the text, as amended by Mr. Hudson, might seem to imply that the Commission intended to introduce great changes in the Nürnberg Principles, whereas that was not so. If the third sentence of the paragraph was struck out, some-

thing would have to be done to counteract the impression that the Commission attached scant importance to the Nürnberg Principles. In point of fact, it had made very few changes in those principles and then only for very sound reasons, for example, by introducing the element of the possibility of moral choice in the face of superior orders.

53. The CHAIRMAN drew attention to the fact that by saying "in their entirety" the Commission showed that it would subtract nothing from those principles but might change their order and manner of exposition. What was chiefly expected of the Commission was that it should indicate its conception of how those principles might be included. The phrase "in their entirety" was perhaps somewhat narrow. The Commission envisaged the possibility of adapting those principles, and of giving them a somewhat different technique.

54. Mr. CORDOVA considered Mr. Hudson's text excellent. The Commission was a body which should form its own estimate of its responsibilities. It could not confine itself simply to inserting provisions in a code. It must exercise its judgment. In other words, Mr. Hudson's proposal was clear and summed up the situation.

55. Mr. el-KHOURY thought it would be desirable to indicate the reasons for which certain principles were not included in the draft Code. The report could say, in that connexion: "Certain of the Nürnberg Principles not in accord with international law should not be incorporated . . ."

56. Mr. HUDSON thought that the first sentence of the paragraph might be retained and that the report might then say: "The sense of the Commission was that the phrase should be interpreted as leaving to the Commission freedom to appreciate the Nürnberg Principles and their formulation in view of their incorporation in the draft code."

57. Mr. ALFARO would prefer another rendering, since it was quite true to say that the Commission wished to include as much as possible in the draft Code. Practically speaking, it was incorporating all the principles. The Commission had omitted the enumerations contained in some of the principles and had improved the wording of certain principles but had kept the substance. The Nürnberg Principles were incorporated in the Code, and it was possible to put one's finger on the place they occupied. If it were asked where was the principle relating to forced labour, the Commission could reply that it came under Crime No. IX. But, when the Commission was able to improve those principles, as in the case of the possibility of moral choice, it should do so. Such questions should be very carefully considered, as the Nürnberg Principles, since their reaffirmation by the General Assembly, possessed a great significance which the Commission could not ignore.

58. Mr. BRIERLY thought that the Commission should indicate in the report that, on the one hand, it had made some changes in the Nürnberg Principles, and on the other had left out certain parts of those principles. He proposed keeping the first and second

<sup>5</sup> That sentence read as follows: "On the other hand, should the Commission be convinced that any of the Nürnberg Principles ought not to be incorporated in the draft code or that any of them should be modified, it should be free to act accordingly."

sentences of paragraph 3 and replacing the third sentence by the following words:

“The Commission felt that the phrase did not preclude it from suggesting modifications or developments of those principles with a view to their incorporation in the draft Code.”

59. The CHAIRMAN pointed out that Mr. Hudson's proposal said exactly the same thing as Mr. Brierly's.

60. Mr. SPIROPOULOS found Mr. Brierly's proposal very interesting, but preferred Mr. Hudson's. The General Assembly had long discussed the question of the formulation and appreciation of the Nürnberg Principles. It had used the English term “evaluation”. He thought that Mr. Hudson's proposal was nearer to the decisions taken by the General Assembly.

61. The CHAIRMAN remarked that the French equivalent of the word “evaluation” used by the General Assembly was “appréciation” and it was the latter term that should be used in the French version of Mr. Hudson's proposal.

62. Mr. AMADO thought that a statement by the Commission on the modifications or omissions it had decided upon with regard to the Nürnberg Principles was the more necessary since the Commission had, for example, excluded from its consideration the criminal responsibility of States or organizations and had confined itself to the criminal responsibility of individuals. The report should therefore inform the General Assembly that, in accordance with the terms of reference it had been given, the Commission had not only formulated the Nürnberg Principles but had evaluated them.

63. Mr. BRIERLY was prepared to accept the text proposed by Mr. Hudson.

64. Mr. ALFARO was afraid that the Commission might run into difficulties if it said that it had evaluated the Nürnberg Principles, whereas formerly it had always spoken of only having formulated those principles. The Commission had adopted the principles, although with certain modifications, but it should think of the impression it would make by adding at that stage that it had also evaluated them. It should avoid giving rise to the impression that it had treated them lightly.

65. Mr. CORDOVA thought that the report might say that the Commission had formulated the principles, but that it had later evaluated them when it came to incorporating them in the draft Code. That fact was clearly brought out by Mr. Hudson's text.

66. The CHAIRMAN noted that the formulation of the principles by the Commission was almost the same thing as their adoption.

67. Mr. SPIROPOULOS thought that the Commission might leave it to the rapporteur to analyse the two closely related proposals and produce a single combined text for inclusion in the general report.

*It was so decided.*

*Paragraph 4 (paragraph 151 of the “Report”)*

68. Mr. HUDSON thought that the first sentence was better worded in English than in French. The question

was not one of “facts” involving criminal responsibility, but of persons who might be held criminally responsible.

69. Mr. AMADO noted that in the second sentence of the paragraph there was a difference between the French text and the English one. The phrase in the latter, “it would only deal with” seemed to him far preferable to “il vaut mieux traiter”. However, even the English text gave the impression that the Commission accepted the notion of the criminal responsibility of States.

70. Mr. el-KHOURY proposed deleting the words “for the time being” from the second sentence, after the words “was that”.

71. Mr. ALFARO explained that he had included those words in order to show that the decision was a tentative one.

72. The CHAIRMAN said that he was also in favour of deleting the words “for the time being” which did not seem to him accurately to reflect the sense of the Commission's decision.

73. Mr. CORDOVA proposed deleting the whole of the second sentence and leaving only the first.

74. Mr. ALFARO said he was prepared to accept Mr. Córdova's proposal.

75. The CHAIRMAN felt that the Commission could not leave the matter there. The first sentence merely recorded the fact that the Commission had studied the question and gave no indication of the decision, provisional it was true, which the Commission had reached. The General Assembly must, however, be given some such indication.

76. Mr. HUDSON proposed the following wording for the second sentence:

“The sense of the Commission was that it should only deal with the criminal responsibility of individuals.”

In other words, he had omitted the phrases “for the moment” and “and not of States or of organizations”.

*The proposal was accepted.*

*Paragraph 5 (paragraph 152 of the “Report”)<sup>6</sup>*

77. Mr. HUDSON did not think that the words “in this respect” could be used since they had no meaning in the context. It was, in any case, necessary to indicate the nature of the tentative decisions take by the Commission.

78. Mr. AMADO found paragraph 1 quite inadequate. It did not say all that should be said. The Commission had discussed at length the various offences which it wished to include in its draft Code and the report should give a picture of the discussions and conclusions.

79. Mr. HUDSON said that paragraph 8 (paragraph 157 of the “Report”) was complementary to para-

<sup>6</sup> Paragraph 5 read as follows:

5. Several meetings were devoted to a discussion of the particular offences to be included in the draft code and tentative decisions were taken by the Commission in this respect.

graph 5. It seemed to him, therefore, that the information contained in paragraph 8 could be transferred to paragraph 5.

80. Mr. LIANG (Secretary to the Commission) thought Mr. Hudson's proposal a good one.

81. Mr. KERNO (Assistant Secretary-General) considered that paragraphs 5 and 8 could be linked together by re-drafting paragraph 5 roughly as follows:

"Several meetings were devoted to discussion of the particular offences to be included in the draft Code; tentative decisions were taken by the Commission on the matter and referred to the drafting sub-committee, mentioned in paragraph 8 below."

82. Mr. ALFARO found Mr. Kerno's suggestion an excellent one. The Commission should not forget that a press release issued on 6 July had mentioned the draft Code that the Commission was in the course of elaborating. If the wording suggested by Mr. Kerno for paragraph 5 were adopted, the Commission would avoid causing any difficulties in connexion with the press release.

83. Mr. HUDSON also supported Mr. Kerno's suggestion.

*The suggestion was adopted.*

*Paragraph 6 (paragraphs 154 and 155 of the "Report")<sup>1</sup>*

84. Mr. SANDSTRÖM noted that the paragraph dealt both with the responsibility of Heads of States and high officials and with that of a person acting under superior orders. He thought that the question of the responsibility of Heads of States would give rise to a big discussion in the General Assembly. As regards the responsibility of a person acting under superior orders, the Commission, when formulating Principle IV, had stated that such a person could not be considered as free from responsibility if a moral choice had been possible to him. He regretted that no mention was made of that conclusion in the text of paragraph 6.

85. The CHAIRMAN thought that the omission could be repaired by including a reference to Principle IV.

86. Mr. AMADO thought that the word "tentatively" in the third line of the paragraph was superfluous, and should be deleted. There had been agreement in the Commission on the point.

87. Mr. HUDSON said that the remark made by Mr. Sandström had raised some doubt in his mind. As a matter of fact, the Commission had formally decided that there could be no freedom from responsibility if the author of a crime had had the possibility of a moral choice. He considered that that part of the Commission's decision should be reflected in paragraph 6.

88. Mr. YEPES observed that, on that point, the

Commission had departed from the Nürnberg Principles. He thought it indispensable that explicit mention of that fact should be made in paragraph 6.

89. Mr. ALFARO replied that the Commission had departed from the Charter, but not from the judgment of the Tribunal.

90. Mr. BRIERLY pointed out that the Commission had therefore not departed from the Nürnberg Principles, since under its terms of reference it was called upon to examine the Charter *and* the judgment.

91. The CHAIRMAN noted that, according to the text of paragraph 6, the Commission had decided that "the relevant Nürnberg Principles as formulated by the Commission should be applicable." He would like to point out in the first place that the word "relevant" should be replaced by the word "corresponding". He also found the expression "as formulated" insufficiently precise. The Commission had altered the definition of certain principles and the fact should be clearly stated.

92. Mr. HUDSON suggested saying that the Commission had decided to apply the Nürnberg Principles "with certain variations".

93. Mr. CÓRDOVA recalled that the Commission had been unanimous in modifying Principle IV. That decision should be maintained, and clear mention of it made in paragraph 6.

94. The CHAIRMAN thought that the report might say that the Commission had decided that the Nürnberg Principles should be applicable with one important modification.

95. Mr. HUDSON said that, having re-read the text of the principles, he would like to propose the following wording for paragraph 6:

"The Commission considered at some length the responsibility of a person acting as Head of State or as responsible Government official and that of a person acting under superior orders. The tentative decision taken on this matter follows the relevant principle of the Nürnberg Charter and judgment as formulated by the Commission."

96. Mr. YEPES moved that the paragraph should be divided into two parts, the first dealing with Heads of States and government officials, the second applying to persons acting under superior orders.

97. Mr. KERNO (Assistant Secretary-General) thought that there was much to be said for giving satisfaction to the members of the General Assembly by referring, as Mr. Hudson's text did, not only to the Charter of the Nürnberg Tribunal, but also to the judgment pronounced by the Tribunal.

98. Mr. AMADO thought that when the Nürnberg Principles were mentioned, people usually thought only of the Charter of the Nürnberg Tribunal, and they would be astonished on reading the report to find that certain of the principles formulated by the Commission were not in entire conformity with those to be found in the Charter. Accordingly, it was necessary to state that the Commission had not only had recourse to the Charter, but had also based itself on the judgment in

<sup>1</sup> Paragraph 6 read as follows:

6. With respect to the responsibility of a person acting as Head of State or as responsible government official and the responsibility of a person acting under superior orders, the Commission tentatively decided that the relevant Nürnberg Principles as formulated by the Commission should be applicable.

formulating the principle relating to persons acting under superior orders.

99. The CHAIRMAN thought the discussion which had just taken place could be summed up by saying that the members of the Commission were unanimous in affirming that the Commission had made modifications in the Nürnberg Principles, and that the fact should be indicated in the report. At the same time, he felt that the Rapporteur had received sufficient guidance to be able to produce in the final draft of his report a formula which would give satisfaction to everybody. He also noted that the Commission was in favour of dividing the paragraph into two distinct parts as proposed by Mr. Yepes.

*Paragraph 7 (paragraph 156 of the "Report")*

100. Mr. HUDSON proposed deleting the words "under the draft Code" from the last line of the paragraph.

101. Mr. KERNO (Assistant Secretary-General) observed that the French translation of that part of the report required revision. The word "application" should be replaced by the words "mise en oeuvre" in that paragraph.

*These proposals were adopted.*

*Paragraph 8 (paragraph 157 of the "Report")*

102. Mr. ALFARO thought that a few words should be added to the paragraph to the effect that Mr. Spiropoulos, in his capacity as special rapporteur, had been requested to continue his work and submit a new report to the Commission at its next session. He suggested the following text:

"The draft was referred by the Commission to the special rapporteur, Mr. Spiropoulos, who was requested to continue work on the subject and to submit a further report to the Commission at its third session."

*It was so decided.*

*The meeting rose at 6.10 p.m.*

## 76th MEETING

*Tuesday, 25 July 1950, at 3 p.m.*

### CONTENTS

	<i>Page</i>
Commission's draft report covering the work of its second session ( <i>continued</i> ) . . . . .	283
Part III: Formulation of the Nürnberg Principles . . . . .	283
A. The Principles . . . . .	284
B. The Crimes . . . . .	289

*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. Jesús María YEPES.

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

### Commission's draft report covering the work of its second session (*continued*)

#### PART III: FORMULATION OF THE NÜRNBERG PRINCIPLE A/CN.4/R.7/ADD.3)<sup>1</sup>

1. Mr. HUDSON wished to know whether what was taking place was the first reading of the draft report, to be followed later by a second reading of the final text which would then be adopted officially. If the members of the Commission wished to have their individual opinions recorded in the report the time to express them would be at the second reading.

2. The CHAIRMAN replied that a second reading would certainly be required but that it would only be a partial one. Members of the Commission who had observations to make would make them at the second reading. In principle, apart from certain recommendations to the general rapporteur, the Commission had adopted what had been read.

3. Mr. HUDSON assumed that the report would be put to the vote at the second reading, in the first place section by section and then as a whole. He repeated that some members of the Commission might wish to express their personal opinions then, for inclusion in the report.

4. Mr. LIANG (Secretary of the Commission) asked whether the Commission contemplated a third reading. As a rule, if a member wished his observations to be included in the report he made them before the second reading.

5. Mr. HUDSON reminded the Commission that the previous year it had approved, during the second reading, memoranda setting out the opinions of certain of its members. He thought that procedure a good one.

6. Mr. LIANG (Secretary of the Commission) seemed to remember that the observations in question had been made at the first reading.

7. The CHAIRMAN thought it better for individual observations to be made at the first meeting.

8. Mr. HUDSON was not in favour of that procedure: he would like to have the revised text to be voted upon in front of him before giving his personal opinions.

9. The CHAIRMAN made the objection that that would involve a third reading, unless it were left to the Rapporteur to incorporate such observations in his report.

<sup>1</sup> Mimeographed document only. Parts of that document that differ from the "Report" are reproduced in footnote to the summary records. For other parts, see the "Report" in vol. II of the present publication.