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CONTENTS

Chairman: Mr. V. OUTRATA (Czechoslovakia)

Letter from the President of the General Assembly to the Chairman of the Sixth Committee

[Item 52]*

1. The CHAIRMAN read a letter which he had received from the President of the General Assembly, requesting the Committee to expedite its work, in particular by not cancelling scheduled meetings and by holding night meetings if necessary, so that the General Assembly could finish its work by the proposed date of 30 November.

Report of the International Law Commission on the work of its second session (A/1316) (*continued*)

2. Mr. WASSARD (Denmark) had certain brief comments to make on the joint draft resolution (A/C.6/L.146), of which he was one of the authors.

3. After paying a tribute to the International Law Commission and to the representative of the Netherlands, who had placed his knowledge and his broad experience of international penal law at the disposal of the Committee, Mr. Wassard said that, for the reasons set forth by various representatives, in particular the representative of the Netherlands, it would be desirable to invite the International Law Commission to re-examine its formulation of the Nürnberg principles in the light of the observations made during the debate. The Commission might examine that question in connexion with, and within the framework of, the draft code of offences against the peace and security of mankind. That had been the original intention of the General Assembly; it had not been expressly stated in resolution 177 (II), because the Assembly felt that the content of the future code had not yet been exhaustively studied. The Danish delegation thought that a simultaneous study of the formulation of the Nürnberg principles and of the draft code of offences against the peace and security of mankind would be most useful at the present time.

4. Mr. MAURTUA (Peru) pointed out that his delegation in no way opposed the efforts made to define, if possible, the principles of international penal law. It was true that international penal law was evolving rapidly, but that evolution must not be allowed to interfere with the requirements of a well-ordered juridical system. The task should therefore be undertaken with due regard for the present state of world conscience.

5. The delegation of Peru recognized the fact that international law, to be effective, must provide for the imposition of sanctions. The smaller States were particularly anxious that measures should be taken to that end, since the last war and the others which had preceded it had shown clearly that certain States might constitute a threat to international order. It was a well-known fact that the mutual assistance pacts and the various multilateral non-aggression treaties had not prevented certain States from committing acts of aggression. Balance of power, therefore, was not enough; provision must be made for the legal application of effective sanctions.

6. In the opinion of the Peruvian delegation, there could no longer be any doubt that international penal law must rest upon a firm and well-defined foundation. It was the Nürnberg tribunal which had first pronounced an international sentence and laid down rules of international law. The famous Leipzig trials following the First World War had disappointed the hopes which had been placed in international penal justice. Nevertheless, the detailed analysis which the representatives of the Netherlands, Belgium and Argentina had made of the International Law Commission's formulation of the Nürnberg principles showed that the greatest prudence was desirable. For example, the question of the supremacy of international law over national law, an exceedingly complex and controversial problem, had not yet been resolved.

7. Another delicate problem was the question of the position of the individual in relation to international law. The representative of Greece had stressed the fact

* Indicates the item number on the General Assembly agenda.

that according to the principles recognized by the charter and judgment of Nürnberg, the individual was subject to international law; on that point he shared the opinion of his illustrious compatriot, Mr. Politis. Another school of thought did not recognize the international responsibility of the individual, while a third took an intermediate position. Finally, the Nürnberg Tribunal had considered its charter as a final formulation of international penal law as it existed at the time of the creation of the Tribunal. The extent to which that affirmation was true, and the extent to which the Tribunal or the charter had actually created international penal law, were open questions. For example, what was the legislative source with respect to crimes against peace? That question had not been settled by the Tribunal. The Pact of Paris of 1928 and the bilateral treaties of mutual assistance had been limited to a statement that the contracting parties renounced war as an instrument of international policy. But in none of those agreements was the condemnation of war based upon a study of its constituent elements *vis-à-vis* international penal law. It was of little use to define an act as criminal without making provision for sanctions. That was a serious deficiency in the work of the International Law Commission.

8. Moreover, principle I, as formulated by the Commission, was not a definition of an international crime. The principle set forth in the text, to the effect that any person was responsible for criminal acts committed by him, was already recognized in the national legislation of all countries. What constituted a crime under international law should have been specified before anything else. Crimes were clearly defined in national law and the same should be true in international law.

9. Principle II raised an analogous question. The internal law of all countries tacitly accepted the principle of *nullum crimen sine lege*. In international law, that principle should be expressly stated to avoid all possibility of misunderstanding. In that connexion, States might draw up a series of conventions declaring their willingness to consider certain acts as international crimes. In view of the prevailing uncertainty on various principles of international law, the views of States should be ascertained before reaching a decision.

10. With respect to principle III, the representative of Belgium had already pointed out the difficulties which might arise in the application of that principle. Although the principle was a very important one, it must be borne in mind that in all democratic States, the head of State was responsible to the people for his acts.

11. Finally, the representative of Peru thought that principle V was contrary to the spirit of the charter of the Nürnberg Tribunal. Article 12 of that charter authorized the Tribunal to judge, *in absentia*, any person accused of crimes mentioned in article 6; and article 19 provided that the Tribunal should not be bound by the technical rules governing the submission of proof. In Mr. Maúrtua's opinion, the International Law Commission, in its formulation of principle V, should have taken into consideration article 19 of the charter of the Tribunal.

12. The discussion which had taken place in the Committee had shown that not all delegations evaluated the Nürnberg trials in the same way. Moreover, there was divided opinion between governments and experts. There were those who questioned the fact that the Nürnberg principles were recognized by international penal law at the time of the creation of the Tribunal, and who claimed, in particular, that the principle of *nullum crimen sine lege* had not been respected. It was essential, therefore, that States should agree on the principles of international penal law, with a view to formulating them.

13. The delegation of Peru thought, moreover, that the Nürnberg principles should not be formulated separately but should form an integral part of a code of offences against the peace and security of mankind. Therefore, the problem must be studied as a whole. Like the delegation of Israel, the Peruvian delegation considered that a system of safeguards was absolutely necessary, a system which clearly defined crimes and the penalties attaching thereto. Furthermore, the definition of a crime under international law must be universally accepted.

14. The task undertaken by the United Nations in the field under consideration had scarcely begun, and progress must be accompanied by great caution. It was for that reason that the International Law Commission had not specified whether or not the principles recognized by the charter and judgment of Nürnberg were principles of international law at the time of the creation of the Tribunal.

15. The task accomplished at Nürnberg and the work done by the International Law Commission constituted only one stage in the evolution of international law and a further step toward the elaboration of a code of offences against the peace and security of mankind. It was desirable for the International Law Commission to continue its work on the problem, but it was the duty of the Sixth Committee to examine thoroughly each principle formulated, in order to determine whether or not it was truly a principle of international penal law.

16. Mr. FITZMAURICE (United Kingdom) wondered whether it would not be desirable, on practical grounds, to combine in a single text the draft resolutions of the Byelorussian SSR (A/C.6/L.140) and the United Kingdom (A/C.6/L.142) with the joint draft resolution submitted by Argentina, Denmark, the Dominican Republic, Egypt, France, the Netherlands, Norway, Pakistan, Peru, Sweden and Syria (A/C.6/L.146).

17. He would not repeat the arguments already advanced by the Israel representative, which militated against adoption of the draft joint resolution. He would point out, however, that it was not advisable to overload the International Law Commission, which, in addition to the items normally contained in its agenda, must revise its statute, study the question of reservations to multilateral conventions, seek a definition of the term "aggressor", and, probably, study the question of recognition of governments.

18. The United Kingdom delegation considered that the objective sought by the sponsors of the draft joint resolution could be attained in another way. Instead of requesting the International Law Commission to reconsider the formulation of the Nürnberg principles in the light of the observations made in the Sixth

Committee, it would be enough to request it to bear those observations in mind in the final elaboration of the code of offences against the peace and security of mankind.

19. If that procedure was accepted by the Sixth Committee, the draft joint resolution might be amended as follows. The first paragraph of the preamble would remain unchanged. The text of the second paragraph might either be maintained or replaced by the Venezuelan amendment (A/C.6/L.147). The Cuban amendment (A/C.6/L.144) would be inserted between the second and third paragraphs of the present text. The third paragraph (which would become the fourth paragraph) would be amended as follows: "Considering that many delegations have made observations in the present session on this formulation". The fourth paragraph (which would become the fifth paragraph) would read as follows: "Requests the International Law Commission to take those observations into account in the preparation of the draft code of offences against the peace and security of mankind". That was one possible solution; he believed the Israel representative would offer another.

20. He desired next to reply to a number of criticisms levelled at the views he had expressed during a previous statement, criticisms which must have been based on a misinterpretation of his words. Some representatives thought that he had questioned the validity of the charter of Nürnberg and that he had allowed it to be understood that the victor had laid down the law for the vanquished. He had never upheld such a theory. He had merely stated that he was not certain whether, before the war—that is to say in 1939 and not in 1945—some concepts had formed a definite part of international law. The French representative had tried to prove that those concepts were known before the war. That was unquestionable, but the fact that a concept existed did not make it a commonly accepted rule of international law. In his view, what had happened was that, between 1939 and 1945, concepts of aggressive wars and offences against peace and humanity which had hitherto existed only as concepts, had become definite rules of law accepted by all civilized nations. The charter and judgment of Nürnberg were based on those rules and he had never wished to imply that those instruments had no juridical foundation.

21. His observations relating to the position of the individual in international law had also been criticized. He had never said that individuals should not be punished for certain acts, such as offences against peace and humanity, and that, unless it was in accordance with their national laws, it was not possible to punish them. His observations had related solely to the *modus operandi,* to the legal methods to be used in attaining the generally desired objective. He had simply said that, in order to punish the individual, there was no need at all to regard him as being subject to international law, and that the desired result could be attained without affecting the classic concept that international law solely governs relations between States.

22. It was therefore sufficient for international law to impose on every State the duty to punish certain acts committed by individuals regardless of their nationality, or even in cases where they had no nationality. The Uruguayan representative had spoken of acts of piracy committed by a stateless person. In Mr. Fitzmaurice's view, piracy was punishable not because international law placed a direct obligation upon individuals not to commit acts of piracy, but solely because it permitted States to punish such acts, regardless of the nationality of the person committing those acts, or even in instances where the person had no nationality. In the case of crimes against peace and humanity, international law went even further. It imposed upon States the obligation to punish the authors of such crimes. If a State neglected to punish an individual who was guilty of those crimes, or if that individual was not punishable under the laws of his country, he could still be punished by other States or by a legally constituted international tribunal.

23. The Netherlands representative had therefore been mistaken in saying that, according to Mr. Fitzmaurice's view, the nazis who had been judged guilty of crimes against peace and humanity should not have been punished because they had not committed any act which was considered a crime under German law. Mr. Fitzmaurice had merely said that, in order to punish such persons, it was not necessary to confer international personality upon them and to consider them subject to international law. No one would dream of conferring international personality on a piece of land, or a river, for example, solely because international law proclaimed certain rights and obligations concerning that piece of land or that river, for it was upon States that international law laid those obligations. Moreover, it was the States which possessed rights and which were obliged to fulfil obligations concerning crimes against peace and mankind. The individual was only responsible through his national law, or because international law was considered part of his national law. If he was not punished by his own State, he could be punished by the other States or by an international tribunal.

24. He hoped those remarks would make his position clear so that no one would think that he considered individuals were not punishable for crimes against peace and humanity. The object was to achieve the same result by what seemed to be a better procedure, for to attribute international personality to the individual might have very dangerous consequences in certain fields.

25. Mr. ROBERTS (Union of South Africa) would not attempt to make any substantial addition to the scholarly and detailed observations made by so many representatives. He would merely explain his intended vote for the United Kingdom resolution (A/C.6/L.142). The International Law Commission had not ascertained whether the principles contained in the charter and judgment constituted principles of international law; it had simply noted those principles, having regard to the fact that they had been affirmed by the General Assembly. The General Assembly was not a legislative body, and it could not be accepted that the principles contained in the charter and judgment were principles of international law solely because the Nürnberg Tribunal had recognized them as such. The main objection of his delegation to the report was, therefore, that it left a doubt as to the international recognition of those principles as formulated. Article

13 1 a of the United Nations Charter required the General Assembly to encourage the development of international law and its codification, and it was for the International Law Commission to make recommendations to the Assembly for that purpose. It was difficult to see how the Commission could be of any assistance to the Assembly, if it expressed no opinion on the principles in question.

26. For the moment he saw no objections to merely noting the formulation which had been prepared by the International Law Commission, since that body would have to revert to the question when drafting a code of offences against the peace and security of mankind. No doubt when the time came, the International Law Commission would not fail to take account of the remarks made in the Sixth Committee. Moreover, as the question of the formulation of the Nürnberg principles was closely related to the question of the establishment of an international criminal jurisdiction, it was difficult to see the advantage of holding a detailed discussion on the former question at present. As the Australian representative had pointed out, it was clear that those principles should in due course be submitted to governments for their comments. For the time being, it would suffice merely to note the formulation, leaving aside even the preamble. He would, in any case, vote for the United Kingdom draft resolution as amended by Cuba and Venezuela.

27. Mr. ORTIZ TIRADO (Mexico) wished to make a few brief remarks and give some explanations which he felt were essential to enable the members of the Committee to complete consideration of the matter under discussion.

28. During his first intervention, at the 233rd meeting, on the subject of the formulation of the Nürnberg principles, he had said that he reserved the right to speak again, in the light of the subsequent debates in the Sixth Committee, in order to draw attention to the errors and omissions in the report of the International Law Commission which should be rectified. At that time his delegation had felt that the Commission had acquitted itself well of the task entrusted to it under General Assembly resolution 177 (II) which, in paragraph (*a*), asked the Commission to formulate the principles of international law recognized by the charter and judgment of the Nürnberg Tribunal. The Mexican delegation had felt that the Commission had been justified in confining itself to the formulation of those principles without considering whether or not they were principles of international law. In that connexion, there was no doubt that the Nürnberg judgment had given rise to new concepts of international penal law since some of the principles on which the charter and judgment had been founded had not existed at the time of the trial and could even have been considered contrary to certain existing principles of international law.

29. The debates which had taken place since his first statement revealed a wide divergence of views. Some representatives had said that the work done by the International Law Commission was not satisfactory, alleging either that the Commission had failed to formulate certain principles of substance and of procedure recognized by the charter and judgment of Nürnberg, that it had drafted some of those principles badly, that it had not listed them in the proper order or, lastly, that it had interpreted the scope of certain principles too broadly. Other representatives had asserted that the International Law Commission was competent not only to formulate the principles but to evaluate them as well, and had regretted that the Commission had not decided to evaluate the legal validity of those principles.

30. It appeared therefore that at the present stage of the debate, the Committee could not consider that a definitive formulation of the Nürnberg principles had been achieved, and therefore, could not accept the International Law Commission's formulation as a basis for the drafting of a code of offences against the peace and security of mankind in which, in accordance with paragraph (*b*) of resolution 177 (II), the place to be accorded to those principles should be clearly indicated.

31. Turning to discuss the various draft resolutions, he pointed out that since France was now one of the sponsors of the joint draft resolution (A/C.6/L.146), it could be taken for granted that the original French draft (A/C.6/L.141/Rev.1) had been withdrawn. In addition, the United Kingdom representative had accepted the Cuban amendment (A/C.6/L.144) to his draft resolution (A/C.6/L.142). There were therefore only three draft resolutions before the Committee: the United Kingdom draft resolution, the draft submitted by the Byelorussian SSR (A/C.6/L.140) and the joint draft resolution.

32. Although the United Kingdom draft resolution proposed that the Assembly should take note of the report of the International Law Commission, the United Kingdom representative had stated during the discussion that the Sixth Committee was entitled to criticize the formulation and, if any defects were found, to request the International Law Commission to reconsider the question. While accepting the principles as a whole in the formulation adopted by the International Law Commission, the United Kingdom representative had made a few comments on principles III, IV and VI. It seemed therefore that, in proposing that the Assembly should take note of the report, the United Kingdom delegation had meant to draw attention to the fact that the Committee had studied part III of the International Law Commission's report, without, however, expressing completely unreserved approval of its contents.

33. When submitting his amendment, which had subsequently been accepted by the United Kingdom delegation, the representative of Cuba had explained that the Sixth Committee should not confine itself to taking note of the International Law Commission's report since, under paragraph (*b*) of resolution 177 (II), the Commission had been asked to prepare a draft code of offences against the peace and security of mankind, indicating clearly the place to be accorded to the Nürnberg principles. Thus the Cuban amendment did not seem to be in complete harmony with the United Kingdom draft resolution, for that resolution did not contain a request to the International Law Commission to start its work afresh on the formulation of the Nürnberg principles.

34. He agreed with the United Kingdom representative that the principles should be accepted as they had been formulated, for the International Law Commission had not been asked to formulate the rules of international law underlying the Nürnberg principles, but simply to formulate the principles contained in the charter and judgment of Nürnberg. The observations made during the discussions in the Sixth Committee could serve as a basis for the Commission's work when it came to draft the code of offences against the peace and security of mankind. At that stage, the Commission would also have to take other factors into account, as the representatives of Brazil and Greece had pointed out.

35. In the light of all those considerations, he suggested that the operative part of the United Kingdom draft resolution should be replaced by the following paragraph:

> "*Requests* the International Law Commission to take into account the comments made during the present session, when it proceeds with its task under paragraph (*b*) of resolution 177 (II)."

36. Before submitting that text as a formal amendment, he would await the result of the discussions to be held at the United Kingdom representative's suggestion by the sponsors of the various draft resolutions.

37. For the reasons already given by other representatives, he could not support the draft resolution submitted by the Byelorussian SSR (A/C.6/L.140).

38. In conclusion, he wished to make three general comments. In the first place, as the representative of Brazil had remarked, principle I was based on the first paragraph of article 6 of the charter of the Tribunal, which dealt with the responsibility of the individual under international law. Since that paragraph did not draw any distinction between the criminal and his accomplices, he could see no reason why the International Law Commission should have devoted a separate principle to the responsibility of the accomplices. In the criminal law of most countries, the responsibility of accomplices and of the actual criminal were both governed by the same provisions.

39. In the second place, he felt that the remarks made by the representative of Brazil regarding the crime of genocide should be borne in mind together with General Assembly resolution 180 (II) which drew a very clear distinction between the crime of genocide and crimes against humanity.

40. Finally, although he agreed with the representative of Israel that principle V had not been correctly placed, he considered it should appear second on the list instead of first, as had been suggested by the representative of Israel.

41. Mr. WENDELEN (Belgium), speaking on a point of order, proposed that in order to follow up the suggestion made by the United Kingdom representative, the Committee should hear the remaining speakers on the list and then suspend the meeting so as to enable the sponsors of draft resolutions to hold an informal discussion. When the meeting was reconvened, the Committee might perhaps have only one text before it.

42. The CHAIRMAN suggested that the sponsors of the various draft resolutions should meet at 2.30 p.m., just before the afternoon meeting which was due to begin at 3 p.m.

43. Mr. FITZMAURICE (United Kingdom) pointed out that several members of the Committee had to attend a meeting of Sub-Committee 2 of the *Ad Hoc* Political Committee at 2 p.m. and would thus be unable to take part in the discussion to be held by the sponsors of the draft resolutions. He suggested that the sponsors should meet at 3 p.m. and that the Committee's afternoon meeting should not start until 4 p.m.

44. Mr. ROBERTS (Union of South Africa) said that, in those circumstances, it might perhaps be better to adjourn the discussion immediately.

45. Mr. MAKTOS (United States of America), supported by Mr. SPIROPOULOS (Greece) and Mr. AMADO (Brazil), thought it would be better to continue the general debate and to ask the sponsors of draft resolutions to meet at 3 p.m. The general debate could be resumed as soon as the informal discussions had been completed.

46. The CHAIRMAN ruled that the Committee should continue the general debate.

47. Mr. AMADO (Brazil) noted that there had been a change of attitude towards the question of the formulation of the Nürnberg principles. In 1946, the General Assembly had considered the question to be urgent. It had felt that the principles should be formulated as quickly as possible and made public. That had been the substance of President Truman's message to the 34th plenary meeting of the General Assembly of the United Nations, which had served as the basis for the original proposal. In fact, it was because of the urgency of the matter that the Assembly had preferred to request a simple formulation of the Nürnberg principles instead of a convention, for the preparation of a convention would have required lengthy negotiations and compromises which might have weakened the results established by the Nürnberg trials. Now, however, it seemed that the question was considered less urgent.

48. Many very divergent views had been expressed in the Sixth Committee about the International Law Commission's formulation of the Nürnberg principles.

49. At one extreme, the representative of the Netherlands had seemed to be opposed to any formulation of principles unless it was drafted in very broad terms. Yet, the Commission could hardly condense the formulation any more than it had already done, since it had formulated only seven principles. Moreover, it could not have formulated those principles in vague terms.

50. At the other extreme, the representative of Belgium had held the view that the International Law Commission had not formulated all the principles contained in the charter and judgment and that those omissions should be rectified.

51. The representative of France, in his turn, had maintained that the Commission should have formulated not only the principles contained in the charter and judgment but also the subjacent principles. Mr. Amado appreciated the French delegation's consistency

on that point. For the French delegation, the formulation of the Nürnberg principles was part of the complete whole which would be made up of the formulation of general principles, the preparation of an international criminal code and the establishment of an international criminal jurisdiction. That was why the French delegation was concerned in the definition of crimes against humanity, without, however, going as far as Professor Georges Scelle, who considered that acts like the assassination of Gandhi were crimes against humanity.

52. In spite of all those divergent opinions, Mr. Amado was convinced that the International Law Commission had been right in its interpretation of the task entrusted to it; he believed that even if it were asked by the Sixth Committee to review its work, the Commission could not but maintain its original attitude.

53. The procedure suggested by the United Kingdom representative was not the best possible solution for, as he had suggested earlier, the best solution would be solemnly to proclaim the Nürnberg principles—a suggestion which had gained the support of the delegation of Uruguay. Since, however, the Cuban delegation had submitted an amendment linking the formulation of the Nürnberg principles with the preparation of a draft code of offences against the peace and security of mankind, his delegation would vote in favour of the United Kingdom proposal and would abandon the idea of submitting a formal draft resolution incorporating the views he had just outlined.

54. He then reviewed rapidly the principles proposed by the Netherlands representative, explaining why they appeared unacceptable to him.

55. The first principle proposed by the Netherlands representative was that of individual criminal responsibility under international law (including the criminal responsibility of heads of State and government officials). That principle repeated, in rather less apt terms, principle I of the International Law Commission; there was no need to specify, since that general rule applied to all, that it applied to heads of State and government officials. The International Law Commission had been right in considering the questions of responsibility of heads of State and officials separately.

56. The second principle proposed by the Netherlands representative was that of the supremacy of international law over national law (indicating that there were international duties which transcended the national obligations of obedience imposed by the individual State). The United Kingdom representative had already emphasized that the question of the supremacy of international law was entirely a matter of theory, and could not be included in the formulation. The discussions which had taken place on the question of the individual as a subject of international law, and the reservations made to any formal expression of that theory showed that the Netherlands formula would meet with strong opposition. It would have important repercussions on all fields of public international law and, in particular, on the question of the internal validity of treaties. The formulation proposed by the International Law Commission, which merely stated that individuals were not relieved from their international responsibility by the fact that their acts were not held to be crimes under the law of their country, was more prudent and had a better chance of being accepted by States.

57. The third principle proposed was that of a threefold individual responsibility: for crimes against peace, war crimes, and crimes against humanity. He could not accept such a principle, as responsibility was indivisible. The International Law Commission had proclaimed the principle that persons who had committed acts which constituted crimes under international law were responsible for those acts, meaning that they were responsible for all crimes in international law. The fact that there were three categories of international crime did not imply that there was separate responsibility for each of those crimes.

58. The fourth principle proposed by the Netherlands representative was that of fair trial. The Belgian representative, who had considered incomplete the formula proposed by the International Law Commission, had proposed at the 235th meeting that a reference to procedure should be added after the words "fair trial on the facts and law". The formula proposed by the Netherlands representative was vaguer than that which the International Law Commission had adopted. Moreover, the formula did not express a principle which was contained in the charter or judgment of Nürnberg; it was not a principle of international law, or even a general principle of law. It was a rule of ethics, a corollary to the concept of justice, for without fair trial there was no justice.

59. He then examined the joint draft resolution (A/C.6/L.146). He regretted that its authors in the phrase "*Considering* that the International Law Commission has formulated certain rules contained, according to the Commission, in the charter and judgment of the Nürnberg Tribunal", should have implied thereby some doubt as to whether the principles formulated by the International Law Commission were actually contained in the Nürnberg statute and judgment. The International Law Commission would have difficulty in giving effect to the phrase, contained in the draft resolution, "*Requests* the International Law Commission to reconsider its formulation in the light of those observations", in view of the many and conflicting views which had been advanced. The General Assembly's instructions to the International Law Commission had been clear and the International Law Commission had thought that it had carried out those instructions; still, difficulties had arisen. He feared that even greater difficulties might arise when the International Law Commission submitted a new formulation in the light of all the contradicting views which had been expressed.

60. The Brazilian delegation therefore would not vote in favour of the joint draft resolution.

61. He then commented on the word "academic" which had been used on several occasions. He did not think that there was any criterion for determining that a concept, a discussion or a question was "academic". A speaker called a question "academic" when it was unacceptable to him, and "practical" when it bore out his view.

62. In conclusion, he briefly examined the question of the individual as a subject of international law. In

reply to the remarks made at the 236th meeting by the Polish representative, Mr. Amado noted that he had not given general support to the principle of individual responsibility in international penal law, but had simply tried to show that for some years past there had been a growing tendency to recognize that international law could impose obligations upon and grant rights to individuals without the intervention of States. That was an essential concept in international criminal law, as human conduct was governed by the rule of law and, as the speaker himself had previously stated at the 231st meeting, "if the human being were to be disregarded, international law would be suspended in a vacuum peopled only by fictitious entities which traditional doctrine described as the moral personality".

63. As regards the advisory opinion of the Permanent Court of International Justice on the jurisdiction of Danzig courts over action brought by railway officials against the Polish administration, he had not stated that the Court had affirmed that the individual was a subject of international law, but simply that it had followed a certain tendency as a result of which doubt had been thrown on the classic concept of international personality. The Court had recognized that international agreements could establish rights and obligations of individuals.

64. That interpretation of the opinion of the Permanent Court of International Justice was shared by a number of authors. He cited, in particular, Professor Brierly's comments in his course at the Academy of International Law at The Hague on the subject of the general legal provisions concerning peace, in which he declared that positive international law was not incapable of granting rights to individuals, and that once that was admitted, it was difficult to deny that it was capable of granting them the status of subjects.[1] He also cited Professor Lauterpacht's conclusion, after he had made a legal analysis of the advisory opinion of the Permanent Court of International Justice, that the opinion of the Court was tantamount to a decisive rejection of the view that individuals could acquire rights only through the instrumentality of the municipal law of States. The exclusiveness of States as beneficiaries of international law was denied. None the less, Professor Lauterpacht had stated, the Court had so ingeniously moderated the expression of its opinion that it had been considered by some to be not so much an important change as a confirmation of established doctrine.[2]

65. The concept of the individual as a subject of international law had arisen at the beginning of the century and was bound to gain ground and find a definite place in international law.

66. The CHAIRMAN proposed that the authors of the draft resolutions should hold an informal consultation at 3 p.m., and that the official meeting of the Sixth Committee should start at 4 p.m.

67. Mr. KHOMUSKO (Byelorussian Soviet Socialist Republic) asked the Chairman to arrange for interpretation at the informal meeting.

68. The CHAIRMAN took note of that request.

69. Mr. MOROZOV (Union of Soviet Socialist Republics) thought that although certain delegations had presented no formal proposals, they should also be permitted to attend the meeting.

70. The CHAIRMAN confirmed that all representatives who had any suggestions to make could attend the meeting.

71. Mr. CABANA (Venezuela) noted that a number of representatives who were still on the speakers' list would no doubt wish to make their remarks before that meeting; on the other hand, it would no doubt be useful to those who would attend that meeting to hear the views of those representatives before beginning their work.

72. Mr. SPIROPOULOS (Greece) supported the Venezuelan representative's suggestion. He wished, as a member of the International Law Commission, to make certain remarks on the procedure for the possible amalgamation of the different draft resolutions.

73. The CHAIRMAN supported that view and said that the Sixth Committee would meet as usual at 3 p.m.

The meeting rose at 1.10 p.m.

[1] *Recueil des Cours*, vol. 58, p. 44.

[2] *The Development of International Law by the Permanent Court of International Justice*, by H. Lauterpacht, London, 1934, p. 52.

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