



**Tuesday, 16 November 1954,  
 at 10.55 a.m.**

**New York**

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**Chairman: Mr. Francisco V. GARCIA AMADOR  
 (Cuba).**

**AGENDA ITEM 49**

**Report of the International Law Commission on the work of its sixth session (chapter III) (A/2693, A/C.6/L.338) (*continued*)**

**GENERAL DEBATE (*continued*)**

1. Mr. TRIKUMDAS (India) congratulated the International Law Commission on the work it had accomplished in drawing up the draft code of offences against the peace and security of mankind (A/2693, paragraph 54).
2. He regretted that the USSR delegation had objected (422nd meeting) to the use of the words "Expresses its appreciation" in paragraph 1 of the joint draft resolution (A/C.6/L.338) proposed by Brazil, Canada, Denmark and India. Unlike the USSR representative, he did not consider that the words in question implied approval. However, on behalf of his delegation and the co-sponsors, he proposed the deletion of paragraph 1 for the sake of securing the widest possible acceptance of the draft resolution. Paragraph 2 would become the only operative paragraph.
3. It would be quite illogical for the Committee at the current session to come to a decision on the draft code, and in particular on article 2, before knowing what would be the nature and the content of the definition of aggression that the Special Committee would recommend for adoption in 1956. If the Committee came to a decision now, and if the definition to be proposed were to be enumerative, as advocated by the USSR, many acts that would be described as acts of aggression in that definition would already have appeared in some paragraphs of article 2 of the draft code.
4. The two texts should be brought into line as much as possible, and the sponsors of the joint draft resolution thought that the best way of accomplishing that would be to defer the drafting of a code until after the new Special Committee on the Question of Defining Aggression had submitted its report. That procedure would also avoid premature and therefore unnecessary debate.
5. He reserved his right to speak again in the event that the joint draft resolution was rejected.
6. Mr. BALICKI (Poland) made some observations in reply to the Netherlands representative's statement

at the 421st meeting. Unlike that representative, he thought that if a State enacted legislative provisions relating to international crimes that was evidence of the peaceful intentions of that State; the USSR representative had also made some pertinent criticisms of the Netherlands representative's argument.

7. With regard to the joint draft resolution, he admitted that the codification of offences against the peace and security of mankind was so intimately connected with the definition of aggression that it was hard to codify the offences without defining aggression. The joint draft was therefore useful. Yet, while recognizing the valuable contribution made by each of the members of the International Law Commission, he was reluctant to congratulate the Commission on its work, for the results obtained were quite inadequate. Accordingly, he noted with satisfaction that the sponsors of the joint draft resolution had decided to omit operative paragraph 1.

8. He would vote in favour of the text as amended.

9. Mr. AYCINENA SALAZAR (Guatemala) said that his delegation, which had been in favour of a mixed definition of aggression, was pleased to see that the draft code contained a definition of that type.

10. A world that was still suffering from the consequences of its recent painful ordeal needed such a code. However, it could not be claimed that the draft before the Committee was exhaustive. For instance, the offences mentioned in article 2 (11) did not include torture, which some Governments, wishing to maintain themselves in power by every possible means, were not averse to employing. It was natural for a Government to take measures for its defence, but no Government should be allowed to resort to terror and to methods condemned by the most elementary principles of ethics and justice. Not only political and legal considerations, but humanitarian considerations, too, were involved.

11. A code drafted on the lines proposed by the International Law Commission would have the advantage of defining the rights and duties of Governments and of helping to make a reality of the democratic process. It would express the principles laid down by the Nürnberg Tribunal and would confirm the Universal Declaration of Human Rights, adopted in 1948.

12. He would have preferred it if the Sixth Committee had adopted and promulgated the code of offences against the peace and security of mankind with the least possible delay. Since, however, the questions of defining aggression and of drafting the list of crimes in that code were connected, further consideration of the draft should be postponed until the Special Committee on the Question of Defining Aggression had submitted its report in 1956. For that reason he was in favour of the joint draft resolution.

13. Mr. HSU (China), noting that several delegations had spoken on article 2 (11) of the draft code, said that the drafting of that text had been discussed thoroughly and at length by the International Law Commission. He suggested that Committee members might wish to consult the summary records of those discussions, which were contained in documents A/CN.4/SR.267 (pages 9-13), A/CN.4/SR.268 (pages 3-6), A/CN.4/SR.269 (pages 6-12), and A/CN.4/SR.270 (pages 7-9).

14. Mr. MAURTUA (Peru) recalled that the General Assembly in its resolution 95 (I) had confirmed the principles of international law recognized by the charter of the Nürnberg Tribunal and by that tribunal's judgment, and that, under its resolution 177 (II), it had asked the International Law Commission to formulate those principles and also to draft a code of offences against the peace and security of mankind. It had also by resolution 488 (V) requested that Commission, in its work, to take account of all observations which Governments had made or might make.

15. The International Law Commission, on the strength of the broad terms of reference that it had received from the General Assembly, had revised the previous formulation and even some of the principles.

16. On so vague a basis, the International Law Commission had endeavoured to draw up a code that was of necessity an improvised and academic work and not the realistic synthesis that it should be. The Netherlands representative had stated at the 421st meeting that the draft code contained four categories of rules. That being so, the draft code was bound to lack unity. The Netherlands representative had also spoken of revolutionary principles that had to be given a legal form. Codification, if it was to be sound, could not proceed by revolutionary methods.

17. He pointed out that the International Law Commission in its work of codification had exceeded its terms of reference under article 15 of its statute.

18. The draft submitted to the Sixth Committee lacked certain fundamental features. It did not deal with the guarantees provided by public authorities, the system of penalties, the question of competence, or with the circumstances that extenuated or aggravated liability. He noted, as he had done on an earlier occasion, that the International Law Commission had failed to define the word "offence" for the purposes of international law.

19. Some of the paragraphs of article 2 of the draft code were mutually contradictory. Article 3 might give rise to conflicts between the draft code and municipal law, particularly in the case of the democratic countries of Latin America, and it contained no provision for the settlement of those conflicts. Lastly, article 4 introduced a serious element of insecurity, for example in the organization of armed forces.

20. Mr. RÖLING (Netherlands) reserved his right to reply at the next meeting to some criticisms that had been made of his first statement.

21. He also proposed to speak on the joint draft resolution before the Committee (A/C.6/L.338) and to submit an amendment or another draft resolution, because he was dissatisfied with the proposal, made in the joint draft resolution, that the consideration of the question should be postponed. A more constructive approach was indicated so that the two-year interval before the new Special Committee on the Question of Defining Aggression submitted its report could be used profitably.

22. The CHAIRMAN proposed that the list of speakers in the general debate be closed.

*It was so decided.*

The meeting rose at 11.40 a.m.