



Thursday, 18 November 1954,
at 10.50 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) (concluded)

GENERAL DEBATE (concluded)

1. Mr. TRIKUMDAS (India) said he had considered, with the other sponsors of the joint draft resolution (A/C.6/L.338), whether the text of the draft resolution could be amended on the lines suggested by the Netherlands representative (424th meeting). The sponsors had regretfully decided they could not accept that suggestion, which they regarded as premature. The atmosphere was unfavourable for the codification of international criminal law, for the time was unfortunately still far distant when a code would be able to win acceptance in the only suitable form, that of an instrument covering adjective as well as substantive law.

2. With the consent of his fellow sponsors of the joint draft resolution he had agreed to the deletion of operative paragraph 1 because, perhaps owing to an error of interpretation, some had apparently construed it as signifying approval of the actual contents of the code submitted by the International Law Commission. It was a matter for regret that immediately after that conciliatory gesture the Polish representative should have launched into severe strictures upon a provision just deleted.

3. At the previous meeting the Israel representative had quoted the German philosopher Jaspers, whose condemnation of neutrality that representative appeared to have accepted. Mr. Trikumdas took strong exception to that view. Neutrality was not neutralism; it was a positive decision, a refusal to take sides; for the idea that a choice must be made was a fallacy. So far as neutrality in time of war was concerned, it could be argued that war never solved any problem, so that neutrality was a wise attitude. In time of peace, neutrality was the attitude of those Governments which refused to commit themselves in advance or to be won over by the often specious arguments advanced by prospective belligerents. It had been the experience of India and other countries during and after the Second World War that the great principles that, ostensibly, battle was joined to uphold were too often given practical effect in the form of a revival of oppression.

4. India was a passionately and sincerely democratic country, opposed not only to totalitarian pseudo-freedom but also to capitalism in all its forms. Its position of neutrality between those two systems was enjoined upon it by the wisdom of the old maxim *caveat emptor*.

5. Mr. TARAZI (Syria) observed that two trends had emerged during the discussion. Some wished to begin studying the substance of the problem at once, a course that he felt would be premature. Others considered that the question at present before the Committee was only a procedural one. Their views were expressed in the joint draft resolution, for which the Syrian delegation would vote.

6. Some of those who opposed postponement had maintained that it was perfectly feasible to undertake separate studies of the definition of aggression, which had now been referred to a special committee, and of the notion of aggression as defined in the draft code. Admittedly there were differences, since in the former case the definition would serve as a guide to the competent organs, whereas in the code aggression would be regarded as a crime, entailing the imposition of penalties on individuals, not on States. Despite those differences, however, aggression was an indivisible concept, of which there could not be more than one definition.

7. He agreed with what the Indian representative had just said about neutrality.

8. Without going into the draft code in detail, he wished to point out that the International Law Commission had exceeded the terms of reference assigned to it by the General Assembly. The Assembly had entrusted to it the formulation of the principles of Nürnberg, which referred only to war crimes. In its draft code the Commission applied those principles to crimes committed in time of peace. Moreover the draft code dealt with genocide, and defined it without reference to the convention that had been concluded concerning the prevention and punishment of that crime. That was a shortcoming, indeed an error.

9. Some delegations had expressed the hope that the provisions of the code could later be incorporated in national codes; Mr. Tarazi quoted several articles from a chapter of the new Syrian Criminal Code that dealt with offences against international law.

10. The Netherlands representative's proposal that a study should be undertaken to determine how the Nürnberg principles had been incorporated in national laws (424th meeting) was an interesting idea. However, it would be dangerous to assign the task to the Secretariat, for such a study would entail, at least implicitly, judgments of value that the Secretariat, being by definition neutral, could not allow itself to pass. The study could be entrusted to a special committee.

11. Mr. EL ERIAN (Egypt) said that from the very outset his Government had supported every effort made to further the execution of the task laid on the General Assembly by Article 13 of the Charter, namely that of encouraging the progressive development of international law and its codification. It was in that spirit that it had sought to frame its observations (A/2162 and Add.1, section 5) on the first draft code of offences against the peace and security of mankind.

12. He paid tribute to the work done by the International Law Commission and the special rapporteur, Mr. Spiropoulos; he was glad to find that the Commission had given full weight to the Egyptian Government's observations in the new draft code, in particular in the drafting of article 4.

13. The Sixth Committee having shown that it desired, very wisely, to consider only the procedural aspects of the question, he wished merely to point out that any realistic study of the draft code must take three factors into account.

14. The first factor was the connexion between the draft code, the question of defining aggression and the question of an international criminal jurisdiction. The connexion with the definition of aggression, which the United Kingdom representative had emphasized at the very outset of the discussion (420th meeting), was referred to specifically in the joint draft resolution (A/C.6/L.338). The link with the question of an international criminal jurisdiction was no less plain, and the International Law Commission had referred to it in the comment on article 1 of the draft code in its latest report (A/2693, para. 50).

15. Secondly, the Governments of all Member States should be given the opportunity to study the provisions of the draft code in detail. Too few of them had made their views known so far.

16. Lastly, the draft code, being based on the United Nations Charter, would have to take the realities of the international situation into account if it was to be adopted by a sufficiently large majority of Member States.

17. His delegation would vote for the joint draft resolution.

18. Mr. HSU (China) regretted that the Netherlands representative had not made a more complete reply, at the previous meeting, to his remarks; he had not spoken, for instance, of the proposal that the code should include provisions condemning acts of inhumanity and subversion. The problem under discussion was essentially a practical one, and it could not be solved by purely theoretical arguments.

19. The Netherlands representative had proposed, without giving any reasons, that the Commission should confine itself to the formulation of the Nürnberg principles. That, however, was not the goal that the General Assembly had set. Indeed, the Netherlands representative appeared to wish even to reduce the scope of the Nürnberg principles, and thus betray the "revolution" that had been brought about.

20. He appealed to the Netherlands representative to change his attitude and not to allow legal prejudices to obscure the real interests of mankind.

21. Mr. SPIROPOULOS (Greece), speaking as special rapporteur of the International Law Commission, thanked the representatives who had congratulated the

International Law Commission, if not on the results it had achieved, then at least on the efforts it had made.

22. He also thanked the Israel representative for proposing (424th meeting) that he, Mr. Spiropoulos, should be asked to draw up the commentary on the draft code; he regretted, however, that owing to pressure of other commitments he would be unable to comply with that request. Commentaries on the draft code had already been drawn up; but he agreed with the Israel representative that more detailed commentaries would be useful. Such a study could be undertaken by either the International Law Commission or the Secretariat.

23. The atmosphere was hardly favourable at present for discussion of the substance of the draft code, but the Greek delegation would be ready to take an active part in such a discussion when the question came before the Committee again.

24. Mr. GALLEGOS (Ecuador) agreed with the Netherlands representative that, broadly speaking, two points of view had found expression during the discussion. Some representatives regarded the Nürnberg principles as being now generally accepted, while others thought that the Nürnberg law had merely been imposed by the victors on the vanquished. He agreed with the latter view to some extent and felt that the codification of the Nürnberg principles should be undertaken with caution. Capital punishment should not appear among the penalties provided by the code; it did not exist in some Latin-American countries.

25. The joint draft resolution seemed both clear and acceptable, and would receive the Ecuadorian delegation's vote.

26. Mr. COLLIARD (France) pointed out that he had said in his first statement (422nd meeting) that his delegation was not opposed to the idea of postponing the examination of the draft code. He had said, however, that the wording of the joint draft resolution was not entirely satisfactory; it was open to the interpretation that the draft code called for no comment by the Sixth Committee. While it had not asked for a discussion on substance, the French delegation had indicated that a general exchange of views would be useful. That exchange of views had taken place, and he was glad to note that the initial ambiguity had been eliminated; it was now clear that in deciding to postpone the examination of the draft code the Committee did not mean to imply that the International Law Commission's draft had reached final form. Moreover, operative paragraph 1 had been deleted.

27. His delegation would vote for the draft resolution as thus amended.

28. Mr. BALICKI (Poland) said in reply to the Indian representative that the Polish delegation's criticism of the International Law Commission's work had been of a general nature; doubtless it contrasted with the tendency on the part of some representatives to express congratulations for no reason. He was fully aware of the work the International Law Commission had done, and regarded some parts of the draft code as acceptable. The Indian representative's reaction had probably been due to a misunderstanding.

29. The CHAIRMAN declared the general debate closed and invited the members of the Committee to

make their observations on the joint draft resolution or on any other proposal or amendment that might be submitted.

CONSIDERATION OF THE DRAFT RESOLUTION SUBMITTED BY BRAZIL, CANADA, DENMARK AND INDIA (A/C.6/L.338) AND AMENDMENTS THERETO (*concluded*)

30. Mr. ESKELUND (Denmark) regretted that the Polish representative had interpreted the USSR representative's statement (422nd meeting) as precluding any expression of appreciation of the International Law Commission.

31. He shared the Indian representative's views on the Netherlands proposal. He paid tribute to the sincerity of the Netherlands representative's statement, and regretted that he was unable to support his proposal. The Sixth Committee should limit itself to deferring the question of the draft code.

32. Mr. RÖLING (Netherlands) said that in view of the feeling in the Committee he would not submit his proposal formally and would vote in favour of the joint draft resolution.

33. He hoped that Governments would nevertheless be able to submit their comments on the revised articles at a later date and that it would be possible to carry out the study which he had suggested.

34. Mr. BRUNER (Yugoslavia) said that he had refrained from taking part in the discussion in order to save time, since the substance of the draft code could not at the moment be considered. The problem was nevertheless of considerable importance, and efforts should be made to solve it as quickly as possible in order to contribute to the development of international law. He noted with satisfaction that despite their differences of opinion the majority of representatives shared that view.

35. His delegation would vote for the joint draft resolution.

36. Mr. CASTAÑEDA (Mexico) said that he would support the joint draft resolution because the question of the draft code was connected with that of the definition of aggression. However, he deeply regretted that the General Assembly had not seen fit to make a last effort to define aggression at the current session.

37. He had been glad to note that the amended text of the draft code did not mention the problem of application. The distinction between the substance of the code and the measures of application was a useful one; the two questions were closely linked, but in the present international situation it was better to deal with them separately. He hoped that the ultimate adoption of a code of offences against the peace and security of mankind would not weaken the Convention on the Prevention and Punishment of the Crime of Genocide.

38. He agreed with the Netherlands representative that the Committee, while deferring the question, could have done so in a more constructive manner. An objective analysis of the post-war judgments would be useful, but it was doubtful whether the Secretariat was in a good position to undertake such a critique, particularly at the theoretical level; certain institutions—universities or law societies, for example—might be better placed to undertake the task. He would support

any proposal whereby the General Assembly would cause such a study to be carried out.

39. Mr. ALEFI (Afghanistan) said that his country, desirous as it was to ensure the maintenance of international peace and security, was whole-heartedly in favour of a code of offences against the peace and security of mankind, just as it was in favour of a definition of aggression.

40. His delegation would support the joint draft resolution, in the hope that when the Committee resumed consideration of the draft code it would be in a better position to discharge the task successfully than at the present time.

41. Mr. JORDAN (Bolivia) said that he would vote for the joint draft resolution. The study of the draft code required caution.

42. Mr. GEBARA (Lebanon) said that the Netherlands representative had given a brilliant historical review of the question. The principle of international juridical action was not yet generally recognized; he emphasized the novel and even revolutionary character of the Nürnberg and Tokyo judgments.

43. He agreed that the question of the code of offences against the peace and security of mankind was connected with that of the definition of aggression. As the intention of the Committee seemed to be to limit itself to a definition of armed aggression, the question would arise whether some of the provisions of the present draft code should not be deleted.

44. The purpose of the joint draft resolution was to postpone the consideration of the draft code until the new Special Committee on the Question of Defining Aggression had submitted its report. But what would the General Assembly do if the Special Committee failed to reach agreement? Should it then postpone the consideration of the draft code indefinitely? He considered that it would have been wiser to go into the substance of the question at once. In view of the feeling in the Committee, however, he would vote in favour of the joint draft resolution.

45. Mr. NANDY (Pakistan) said that he would vote for the joint draft resolution. He shared the Indian representative's views concerning the work of the International Law Commission.

46. Mr. MAHONEY (United States of America) said that the formulation of a draft code of offences against the peace and security of mankind was impractical and inappropriate at the present time, on account of the differences of views separating Governments with regard to their obligations under international law and because Governments, including the United States, were not prepared to subject their nationals to an international criminal jurisdiction.

47. He would vote for the joint draft resolution because it left the General Assembly free to act as it saw fit when the report of the Special Committee on the Question of Defining Aggression had been submitted.

48. Mr. AYCINENA SALAZAR (Guatemala) said that he supported the joint draft resolution, but he maintained that it should have made reference to the Convention on the Prevention and Punishment of the Crime of Genocide.

49. Mr. PRATT DE MARIA (Uruguay), Mr. GARCIA OLANO (Argentina) and Mr. GALVAN (Dominican Republic) said that while they would vote for the draft resolution they reserved their positions with regard to the substance of the draft code drawn up by the International Law Commission.

50. Mr. MAURTUA (Peru), supported by Mr. MENDEZ (Philippines), felt that the operative part of the joint draft was inadequate. It did not indicate what procedure should be followed after the Special Committee on the Question of Defining Aggression had submitted its report.

51. Mr. TARAZI (Syria) thought that it might be possible to meet that point by specifying the procedure to be followed after submission of the report. It could be stated for example that the General Assembly would place the question of the draft code on the provisional agenda of the eleventh session.

52. Sir Gerald FITZMAURICE (United Kingdom) thought that such a statement would serve no purpose. Under the text of the operative part as it stood at present, the Secretary-General would be required to place the matter on the provisional agenda if he considered that the Special Committee's report would enable the Sixth Committee to take up the draft code with any prospects of progress.

53. Mr. MAURTUA (Peru) said that if, as was quite possible, the Special Committee failed to reach agreement, the Sixth Committee would have no draft definition before it in 1956. Not being in possession of all the necessary materials, it would then once again have to postpone consideration of the draft code, the text of which had to take the definition into account.

54. But even if the Special Committee drafted and recommended a definition of aggression, that definition could not be inserted automatically, as it stood, in the draft code. Governments would have to be given sufficient time to examine it, and the International Law Commission would have to be given the opportunity of bringing the list of crimes into line as far as possible with the agreed definition of aggression. Only when that was done would the Sixth Committee be able usefully to incorporate the elements of the definition of aggression into the draft code.

55. He therefore proposed that the operative part should be worded as follows:

"Decides to postpone further consideration of the draft code until a definition of aggression is ready for insertion in the draft code of offences against the peace and security of mankind".

56. Mr. MENDEZ (Philippines) agreed with the Peruvian representative that the definition recom-

mended by the Special Committee could not be incorporated verbatim into the draft code. Moreover the Special Committee might not succeed in drafting a definition; that possibility should be allowed for, and it therefore seemed unwise to adopt a resolution that would have the effect of placing the question of the code on the agenda of the eleventh session.

57. Mr. AMADO (Brazil) said that the connexion between the definition and the code was not so close that the two questions could not be considered at different sessions. However, since it was important that before a list of international crimes by individuals was drawn up, a list of crimes by States should be drafted, it would be better if the two questions could be considered at the same session.

58. Accordingly, he could not support the Peruvian representative's amendment and would stand by the draft resolution, which he had co-sponsored.

59. At the request of Mr. P. D. MOROZOV (Union of Soviet Socialist Republics), Mr. STAVROPOULOS (Secretariat) said that in conformity with rule 13 of the General Assembly's rules of procedure, the Secretary-General would place the consideration of the code of offences on the provisional agenda of the session following the submission of the Special Committee's report on the definition of aggression.

60. The CHAIRMAN said that under those circumstances there was no doubt that it rested with the General Assembly itself to decide whether it wished to take up the code of offences or to postpone consideration of the question.

61. The CHAIRMAN put to the vote the Peruvian representative's verbal amendment.

The amendment was rejected by 22 votes to 3, with 16 abstentions.

62. The CHAIRMAN put to the vote the joint draft resolution proposed by Brazil, Canada, Denmark and India (A/C.6/L.338), the first operative paragraph of which had been withdrawn by the sponsors.

63. Mr. MENDEZ (Philippines) asked for a separate vote on each paragraph.

The preamble was adopted by 43 votes to 1, with 1 abstention.

The operative part was adopted by 46 votes to 1, with 3 abstentions.

The draft resolution as a whole was adopted by 46 votes to none, with 3 abstentions.

The meeting rose at 1.10 p.m.