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Agenda item 55:

Draft Code of Offences against the Peace and
Security of Mankind (continued). 149Chairman: Mr. Santiago PEREZ PEREZ (Venezuela).

AGENDA ITEM 55

**Draft Code of Offences against the Peace and Security
of Mankind (A/3650; A/C.6/L.418) (continued)**

1. Mr. VAZQUEZ CARRIZOSA (Colombia) said that at the 544th meeting he had opposed a debate relating purely to procedure. His delegation was accordingly not satisfied with the Philippine draft resolution (A/C.6/L.418), which tended to relegate the Nuremberg principles to the archives of the Secretariat. It was surprising that those principles no longer aroused the enthusiasm with which they had been greeted in 1945. It was no solution to relate the item to the definition of aggression. The world wanted to know whether the Nuremberg principles were part of international penal law. Accordingly, some procedure should be suggested to the General Assembly which would allow a study of those principles, a matter still more urgent than attempts to define aggression.

2. The charters of the international military tribunals of Nuremberg and Tokyo were a landmark in the history of the development of international penal law because they had established the position of the individual in international law. Research was needed to determine the extent of the transformation and the scope of the principle *nullum crimen sine lege*. Donnedieu de Vabres and Pella held opposing views, one maintaining that the principle was not a part of international law and the other that it was. The question could not be pushed into the background; some procedure should be devised to enable the United Nations to study it.

3. He quoted paragraph 29 of the Secretary-General's memorandum entitled Survey of International Law in relation to the Work of Codification of the International Law Commission (A/CN.4/1/Rev.1), which stated that, in consequence of the judgements of Nuremberg and Tokyo, the individual was subject to international penal law. The rights and duties of individuals were prescribed partly by national and partly by international law, and the first, if it contained any principles contrary to fundamental human rights, must yield to the second. He also recalled that in 1949, in the International Law Commission, Mr. Spiropoulos had pointed out that certain provisions of the Charter related to war. It was therefore necessary to determine the precise scope of the Nuremberg principles, and to resume the codification of the law of war which had been in abeyance since 1907.

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4. The procedure proposed by resolution 1181 (XII) of the General Assembly, which had established a committee to consider the question of resuming work on the definition of aggression, might be followed. That same committee, or a sub-committee, might decide when it would be proper to reconsider the draft Code of Offences against the Peace and Security of Mankind. In that way the question would be linked with that of the definition of aggression. The same course might be followed in respect of international criminal jurisdiction. He reserved the right to submit amendments to the Philippine draft resolution if his suggestions were favourably received.

5. Mr. LUNA (Spain) said that when visiting Germany in 1935 he had heard Reichsminister Frank declare in a xenophobic speech that, according to the Nazi philosophy, the principle *nullum crimen sine lege* was not in keeping with the spirit of the German people under Hitler, and that any act hostile to the Hitlerian society was punishable. The Spanish delegation, wishing to stress the fundamental importance of the principle, associated itself with the view expressed by the Colombian representative.

6. The draft code should form the subject of further study, and for that purpose the solution suggested by the representative of Colombia was satisfactory to the Spanish delegation. He added that there had been little change in juridical problems since the time of the League of Nations, and that law had not progressed as fast as science. The principle of the "reason of State" was intolerable, and he considered it the Committee's duty to deal with the problem before it.

7. Mr. CHAUMONT (France) said he wished to dispel any misconception concerning the French delegation's attitude to the principle of a code of offences against the peace and security of mankind. Its earlier attitude, favouring the adoption of a code, had not changed. Those who had participated in the early debates in the United Nations would remember that the French delegation had been one of the champions of new principles which could be used as a basis for constructive international penal law. The French delegation had fought to secure recognition of the Nuremberg principles by the United Nations and so to ensure the adoption of the Convention on the Prevention and Punishment of the Crime of Genocide in particular article VI which provided for the establishment of an international penal tribunal (General Assembly resolution 260 A (III), annex). His delegation's position on that subject was similar to that which it had adopted on the question of defining aggression. Whatever the impression that might have been formed in certain quarters, France was still in favour of such a definition.

8. But the procedural considerations which had decided its attitude to the definition of aggression caused his delegation likewise to doubt the practica-

bility of a thorough examination of the draft code. Though in favour of the draft code (and of an international penal tribunal) his delegation was yet bound to recognize that those principles had no chance of being adopted by the General Assembly at the moment. The situation was accordingly analogous to that in the case of the definition of aggression. A code of offences and a penal tribunal implied a prior general agreement which was unrealizable for the time being. In the circumstances, a middle course should be found between the two extremes of either proclaiming a body of principles which had not won general agreement, an unrealistic course, or adopting the negative position of the sceptics who wished to abandon those principles.

9. The solution suggested by the Netherlands representative (544th meeting, para. 17) was constructive. The proposed working party or special committee would certainly keep the question alive even independently of the question of defining aggression. In strictly legal logic, there were elements in the draft code that were not connected with the definition of aggression, but if matters pertaining to aggression, the Nuremberg principles and genocide, were excluded from that draft, hardly anything remained. From a practical and political point of view, a connexion between the draft code and the definition of aggression was essential.

10. The idea behind the Philippine draft resolution was therefore perfectly correct and consistent with the decision taken by the General Assembly in 1954 to relate the question of a code of offences against the peace and security of mankind to that of the definition of aggression. However he feared that, as it stood, the draft resolution seemed to be aimed at burying the question, whatever the intentions of the Philippine representative were in that regard.

11. The French delegation's position could be summarized under three heads. First, at the moment the Committee could do nothing to further the draft code or the idea of an international criminal court. Secondly, the French delegation opposed any solution that involved the loss of all that had been gained as a result of the judgements of the International Military Tribunal at Nuremberg and at Tokyo, and of the great post-war movement of ideas in favour of the principles formulated by those Tribunals. The public should not be given the impression that Governments were indifferent to that important question. Thirdly, so far as the most practical procedure was concerned, he said that the French delegation was prepared to accept the Philippine draft resolution if its text were revised so as not to give the impression that the question was being shelved for good.

12. He was attracted by the Colombian suggestion, for it gave the assurance that the draft code would not be dropped. Should the question be referred to the committee proposed in General Assembly resolution 1181 (XII)? That committee could not know in advance when the Governments would come to an agreement on the definition of aggression, and it would be more logical to refer the question of the draft code to another committee. Perhaps the Colombian representative would explain his position on that point.

13. Mr. NOGUEIRA (Brazil) reaffirmed the position which his delegation had adopted at the ninth session (422nd meeting) when it had submitted, jointly with other delegations, a text that had become General Assembly resolution 897 (IX). The Assembly had recognized that the draft Code of Offences against the Peace and Security of Mankind posed problems closely related to those raised by the definition of aggression. The considerations which had led to the adoption of that resolution in 1954 were still valid. The debate on the definition of aggression would clearly have a decisive bearing on the draft code. He confirmed his earlier general observations on the draft code.

14. He expressed support for the Philippine draft resolution.

15. The Colombian suggestion seemed reasonable, since it stressed the parallel between the course adopted in the case of the definition of aggression and that in the case of the draft code and was in keeping with the Philippine draft resolution and General Assembly resolution 897 (IX).

16. Mr. MALOLES (Philippines) said it was astonishing that the French representative should have questioned his intentions, which were very simple: he did not want the Committee to waste its time in sterile discussion.

17. He did not believe that a committee would serve a real purpose. A code of offences against the peace and security of mankind would be a hollow thing if it did not contain provisions concerning the most serious of those offences, aggression. Since aggression had not been defined, consideration of the question of the draft code should be deferred.

18. Mr. VAZQUEZ CARRIZOSA (Colombia) announced that, since his suggestion had received a favourable welcome, he would introduce a formal amendment to the Philippine draft resolution.

The meeting rose at 12.5 p.m.