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CONTENTS

Chairman: Mr. V. OUTRATA (Czechoslovakia).

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

[Item 52]*

1. The CHAIRMAN invited the Committee to continue the debate on part III of the report.

2. Mr. GOTTLIEB (Czechoslovakia) said that he would confine his remarks to the question of the International Law Commission's task.

3. In the view of his delegation, the Commission had in the main correctly interpreted its task under General Assembly resolution 177 (II) and rightly confined itself to the formulation of the principles of the charter and judgment of Nürnberg. That did not mean that his delegation necessarily agreed with all of the principles as formulated by the Commission. The limitation of the Commission's task and competence under the above resolution was of great substantive significance. The International Law Commission would have missed its purpose completely and gone against the General Assembly resolution, if it had proceeded on the assumption, made by some Commission members, that the principles expressed in the Charter of Nürnberg did not constitute part of existing international law at the time the charter had been drawn up, or if it had undertaken to evaluate those principles. He emphasized, in that connexion, that the Nürnberg Tribunal had not been an *ad hoc* military tribunal of the victorious Powers, but had tried and judged the fascist and nazi aggressors and war criminals on the basis of valid principles of international law.

4. The prevailing spirit of legal objectivity — which at times had made it appear as if the Sixth Committee had changed places with the Commission, the legal auxiliary organ of the General Assembly — should not be permitted to undermine the accepted principles of international law which had led the United Nations to victory over fascism and nazism. Fortunately, the excessive criticism levied against those principles could not shake them because they rested on such solid foundations as the Hague Conventions, the Briand-Kellogg Pact, the Conventions defining aggression signed at London in 1933, and the San Francisco Charter. None of the arguments put forward in favour of asking the Commission to re-examine whether the charter and judgment of Nürnberg were based on existing international law could be considered valid.

5. The United Nations had confirmed the principles of the Charter of Nürnberg during the Second World War, and the United Nations Organization had done the same after the war, in its resolution 177 (II); the obligations of such acts must be respected. The task of formulating those principles into principles of general validity was not a minor drafting matter which could have been attended to by a sub-committee of the Sixth Committee.

6. There were two general principles, however, which required more precise drafting and the approval of governments; the first was the question of the direct responsibility of the individual under international law. His delegation was of the opinion that recognition of certain "factual substances" as punishable under international law in no way altered the principle that only States were the subjects of international law. The theory advanced by certain members, that it was impossible to take into consideration abstract persons, e.g., States, was not only doubtful, but not founded on fact. In creating standards of international law which could apply to individuals, States were not acting as mere intermediaries. The concept of the punishability of the individual under international law did not exempt the individual from the jurisdiction of the State; it was not a case of extradition. Even from the point of view of implementation, it was primarily the responsibility of the State to enact appropriate provisions for the punishment of certain crimes.

7. The same applied to the second principle, that of the supremacy of international law (A/1316, paragraph 102). The Netherlands representative had proposed that the entire second principle should be reduced to the recognition of the supremacy of international law. That proposal, which went back to the concepts of the monistic school, which explained the structure of law as a hierarchy of norms, was not only utterly unac-

* Indicates the item number on the General Assembly agenda.

ceptable, but also superfluous, if it were accepted that the principle that the fundamental substance of international law was the common will of sovereign States. As a matter of fact, the Committee was concerned with the implementation of international agreements, which was governed by the principle *pacta sunt servanda.*

8. The existing divergencies in the conceptions of international law and the Soviet representative's remarks concerning the first and second principles — which the Czechoslovak delegation supported — showed the need for careful drafting. The General Assembly was not in a position nor was it competent to do that, the representatives not being mandated as for a specific diplomatic conference. All it could do was make general proposals to the International Law Commission.

9. During the discussions in the Committee, for example, there had been a lengthy debate on the concept of "moral choice" in principle IV. His delegation felt that the International Law Commission had exceeded its task of "formulating" with regard to that principle. Having stated, in its comment to principle III, that "the question of mitigating punishment is a matter for the competent Court to decide", it had taken an entirely opposite view in the case of principle IV. Moreover, a proviso such as that formed in principle IV might have undesirable effects psychologically. Furthermore, it was indeed odd that after the many objections raised in the Committee against abstract ideas such as States, that a vague concept which could so easily be abused should be preferred to the judgment of a qualified court.

10. He also reserved his government's opinion on the concept of "fair trial" and on the formulation of the principles in general.

11. In view of the above considerations, he supported the Byelorussian draft resolution under which governments would be requested to comment on the formulation of the Nürnberg principles. He could not support those draft resolutions which were not based on the existing principles of international law as laid down in the Charter of Nürnberg.

12. Mr. MAKTOS (United States of America) noted that while there had been considerable difference of opinion over the nature of the principles, no one had questioned the validity of the underlying principles of the charter and judgment of Nürnberg, namely that crimes against peace, war crimes and crimes against humanity were punishable under international law. Some doubt seemed to exist as to the purpose of the formulation of those principles. As he had pointed out before, General Assembly resolution 177 (II) had entrusted the International Law Commission with two co-ordinate and interdependent tasks: formulation of the Nürnberg principles, and preparation of a draft code against the peace and security of mankind, incorporating those principles.

13. The first task might be considered a preliminary but necessary step to the second, and was mentioned separately in that resolution for emphasis only. The fact that the General Assembly had intended the principles to be formulated for the purpose of incorporation in a draft code was shown by its earlier resolution (95 (I)) in which it had affirmed those principles — an affirmation which could not and should not now be questioned — and asked the Committee for the Progressive Development and Codification of International Law to consider plans for the formulation of those principles in the context of a general codification of offences against the peace and security of mankind, or of an international criminal code. The charter and judgment of Nürnberg as such needed no formulation, as they spoke for themselves as part of the great literature of international law.

14. In view of the above, the purpose of the formulation, i.e., as a basis for study in the preparation of the draft code, reference back to the Commission for re-formulation of the principles would be academic and futile. As had been pointed out by other speakers, the Commission could not possibly give effect to the conflicting views expressed in the Sixth Committee, valuable though they were, nor could the Committee condense or synthesize those views for the Commission's benefit, as it was not a drafting body. It would still have to make a choice between conflicting points of view. Moreover, the Commission had already made a choice between the divergent views of its own members. Hence, if the Committee asked the Commission to formulate those principles anew, it might be faced with the same situation at a later session. The United States delegation felt that on the whole the Commission had formulated the Nürnberg principles well and accurately, although it did not commit itself to support that formulation in every detail.

15. Even if the Commission could not be expected to meet the different views expressed, the Committee's discussions would help it considerably in the preparation of a draft code of offences against the peace and security of mankind, which was the crucial and operative part of its work under resolution 177 (II) and which should not be delayed. After that second task had been completed, the principles could be discussed in the concrete context of the draft code.

16. For those reasons he supported the draft resolution presented by the United Kingdom (A/C.6/L.142) as amended by Cuba (A/C.6/L.144) and Uruguay (A/C.6/L.148), under which the Committee should now merely take note of the presented formulation.

17. Mr. JIMENEZ DE ARECHAGA (Uruguay) referred to the joint draft resolution (A/C.6/L.146) which had been submitted since he had made his previous statement at the 234th meeting. He fully agreed with the representatives who had pointed out that the observations made in the Sixth Committee had been extremely contradictory and that the Commission should be given more concrete guidance than that proposed in the joint draft resolution.

18. Three different trends had become apparent in the Committee. Some representatives had expressed doubts as to whether all or even the majority of the Nürnberg rules were actually principles of international law. Those representatives were naturally entitled to hold any views they wished, but he did not think that their purpose would be served by referring the question back to the Commission. The most logical thing

for those representatives to do would be to propose that the Assembly should revoke its resolution 95 (I) of 11 December 1946 or else that a new resolution should be adopted restricting the terms of the original resolution.

19. A second group of representatives had maintained that the Nürnberg rules were principles of international law, but they had argued that the Commission should have demonstrated that those principles had already existed as part of positive international law in 1945. That group also favoured the proposal that the formulation should be referred back to the International Law Commission. Their views, however, could hardly be met by the joint draft resolution since they seemed to wish the Commission to adopt an entirely new approach to the whole question.

20. Finally, there was a third group of representatives who supported the Commission's formulation with a few reservations. They too wished to refer the formulation back to the Commission. In his opinion, those representatives were unwittingly sacrificing the political aspect of the question to purely technical details, for to refer the formulation back to the Commission would be to weaken the positive affirmation adopted by the General Assembly in resolution 95 (I). There were doubtless certain important defects in the formulation, but he felt it would be more appropriate to correct those defects when the Committee came to discuss the draft code of offences against the peace and security of mankind.

21. Accordingly, he had submitted an amendment (A/C.6/L.148), to the United Kingdom draft resolution (A/C.6/L.142). He hoped that the Committee would adopt that text in preference to the joint draft resolution which was both vague and ambiguous, for the International Law Commission would never be able to satisfy all the conflicting opinions expressed in the Committee. The amendment of Uruguay to the draft resolution of the United Kingdom would add in the last paragraph of that resolution after the words *"Takes note"*, the phrase *"with appreciation"*, and at the end of that draft resolution would add the following paragraph:

> *"Requests* the International Law Commission to take into account, as far as possible, the comments on the formulation expressed during the present session when it proceeds with the task of preparing, in accordance with sub-paragraph (*b*) of resolution 177 (II), a draft code of offences against the peace and security of mankind."

22. Mr. MOROZOV (Union of Soviet Socialist Republics) thought that the Committee had once again engaged in fruitless and unnecessary discussion. The reason for that was that the question under consideration had been insufficiently prepared, the Commission having formulated the principles without consulting the views of governments first, as required by its statute. The best course therefore would be to adopt the Byelorussian draft resolution (A/C.6/L.140) which, if it had been put to the vote when originally proposed, would have prevented much useless discussion. He hoped that in the future the Committee would refrain from considering questions which came to it without sufficient preparation.

23. The United Kingdom draft resolution (A/C.6/L.142), as well as the re-arrangement of that text with the other proposals before the Committee in one consolidated text which the representative of the United Kingdom had suggested at the 237th meeting, provided that the Committee should merely take note of the Commission's work, the reason being given that the principles could be considered after the Commission had completed the draft code of offences in which those principles were to find a place in accordance with resolution 177 (II). Yet before those principles could be incorporated in a code, they must obviously first be formulated. The Commission would not be able to indicate a place in the code for something which did not yet exist. That was the reason why a number of delegations, including his own, felt that the principles should be returned to the Commission for re-drafting in the light of government comments. The general and theoretical discussion which had taken place in the Committee could not replace government comments as many of those who had spoken might not have been properly briefed by their governments.

24. In view of those considerations, he could not agree with the United Kingdom representative that the Committee could do no more than take note of the Commission's work, and he supported the Byelorussian draft resolution (A/C.6/L.140).

25. Mr. TABIBI (Afghanistan) said that the formulation of the Nürnberg principles had been discussed from every angle and that all the legal aspects of the principles had been dealt with exhaustively. He would not enter into the substance of the matter but would simply explain his delegation's attitude towards the various draft resolutions submitted on the subject.

26. He did not agree with those who thought that the formulation should be referred back to the International Law Commission. The Commission had performed its task within the framework of General Assembly resolution 177 (II). Although the formulation was not based on general rules of international law because of the limited instructions contained in the Assembly's resolution, it did represent a significant step forward in the codification of international law. His delegation believed that the formulation would be valuable if it were taken into account when the Commission came to draft the general code of offences against the peace and security of mankind.

27. He did not think it would be useful to refer the formulation to governments for their comments, and he fully supported the United Kingdom draft resolution in the new form outlined at the 237th meeting. In conclusion, he emphasized that his government would always support principles which would provide guidance for the world in the future and would help to preserve international peace and security.

28. Mr. SPIROPOULOS (Greece) wished to reply to a few criticisms of the International Law Commission's work, which had been made since his previous statement (234th meeting), and to show they were contradictory.

29. In the first place, the representative of Belgium had mentioned certain omissions in the formulation submitted by the International Law Commission. He had said at the 235th meeting that another important point, mentioned by the representative of France, was

that the international community was authorized to lay down the procedure for inflicting punishment that was applicable internationally; it would be very dangerous to relinquish that procedural principle and to allow a State to institute such proceedings when in its discretion it saw fit to do so. In that connexion, he emphasized that the opposite view was expressed in the actual judgment of the Nürnberg Tribunal which stated: "The Charter is not an arbitrary exercise of power on the part of the victorious nations . . . The signatory Powers created this Tribunal, defined the law it was to administer, and made regulations for the proper conduct of the trial. In doing so, they have done together what any one of them might have done singly" (A/CN.4/22, p. 22). Thus it was quite clear from the judgment that the right to lay down the procedure for inflicting punishment to be applicable internationally was not the exclusive prerogative of the international community.

30. Secondly, the representative of Belgium had also expressed regret that the members of the Commission had not felt it incumbent upon them to deal with the provisions concerning procedure contained in the Charter of Nürnberg. Mr. Spiropoulos explained that the Commission had felt it should confine its formulation to the elements of the charter embodying new rules of international law. It had therefore concentrated on the concept of the responsibility of the individual under international law and the type of crime for which an individual could be held responsible internationally. That was where the Charter of Nürnberg departed from the former concepts of international law and the Commission had considered the formulation of that principle to be of paramount importance. As for the provisions concerning procedure, the charter had made no innovations but had simply applied the procedure which had been used for generations in the internal law of States.

31. A third criticism had been made regarding the inclusion of the words "on the facts and law" at the end of principle V. He explained that the original text submitted to the International Law Commission by a sub-committee had referred simply to the right to a fair trial. On re-reading the judgment, however, Mr. Spiropoulos had discovered that it referred to a fair trial "on the facts and law". He had therefore incorporated the same wording in his draft and the Commission had accepted it. Since the words appeared in the judgment, he could see no reason why anyone should object to them.

32. Turning to the procedure which the Committee should adopt, he asked members to picture the result of referring the formulation back to the International Law Commission with a request that it should review it in the light of the observations made in the Sixth Committee. The Commission would have no idea where to begin or what views it was expected to take into consideration. There had been a sharp divergence of views on all the major criticisms of the Commission's formulation.

33. For example, the representative of the Netherlands had expressed the view that the Commission had given too wide an interpretation to the notion of complicity. Subsequently, however, the representative of Israel had contended that the Commission's interpretation was quite acceptable, since the judge in each instance would have wide discretion as to how the principle should be applied. The other members of the Committee had not mentioned that point and it might therefore be assumed that they found the Commission's text acceptable. What then was the Commission expected to do? The same situation had arisen in connexion with all the controversial issues.

34. To give another example, the representatives of Argentina and of Pakistan had expressed totally divergent views on the principle of *nulla poena sine lege*. The representative of Argentina had stated at the 235th meeting that in view of the fact that the principle of the non-retroactivity of penal laws had not been incorporated in the formulation, it was not surprising that corollary principles such as *nulla poena sine lege* or *non bis in idem* had also been omitted by the Commission. On the other hand, the representative of Pakistan at the 236th meeting had said that the principles formulated in the report did not include all those proclaimed in the charter and judgment of the Nürnberg Tribunal; they did not even express the essence of those principles, since the maxim *nullum crimen sine lege, nulla poena sine lege,* which the Tribunal had not applied in the Nürnberg trial, had been implicitly recognized by the Commission; consequently, neither the principle of *ex post facto* punishment recognized in the charter and judgment of the Nürnberg Tribunal nor the principle of the criminal responsibility of groups and organizations defined in articles 9, 10 and 11 of the Charter of Nürnberg appeared in the formulation.

35. Neither of those two views was upheld by the judgment of Nürnberg itself. Mr. Spiropoulos had noted the point in his own report to the International Law Commission (A/CN.4/22, page 17):

> "Thus, for instance, the Court, commenting on the plea of the defence that article 6 of the Charter, which enumerates the crimes for which the major war criminals were to be punished, constitutes an *ex post facto* law, conflicting with the principle *nullum crimen sine lege, nulla poena sine lege,* said: 'It is to be observed that the maxim *nullum crimen sine lege* is not a limitation of sovereignty, but is in general a principle of justice.'"

36. It was clear therefore that the Commission would have a very difficult time if it were to try to review the formulation in the light of such varied and contradictory comments. Moreover, the Commission had itself considered all the points that had been raised in the Sixth Committee before adopting the formulation.

37. As for the procedure which the Committee should follow, there were three possibilities. The first of these was that the Committee might accept the International Law Commission's formulation, but since acceptance implied approval it seemed unlikely that the majority of the Committee would agree to that solution.

38. The second possibility was to consider the International Law Commission's text as a draft formulation which the Assembly was quite free to discuss and amend before adopting it in its final form.

39. The third possibility was to follow the suggestion made by the United Kingdom representative and simply to take note of the formulation submitted by the Commission. His delegation would be prepared to

accept the United Kingdom text as it had been rearranged with the other proposals at the 237th meeting.

40. In his opinion, it should be borne in mind that the formulation had been prepared by an organ composed of highly qualified jurists. Naturally, representatives were entitled to disagree with the formulation just as they sometimes disagreed with an advisory opinion of the International Court of Justice. At the same time, however, no harm would be done if the General Assembly took note of the formulation which would then become an important document on international law. There were, of course, certain differences between the Commission's formulation and an advisory opinion of the International Court of Justice, but in the case at issue he felt they could be regarded in much the same light.

41. The Commission had been asked in effect to state what, in its opinion, were the basic principles of international law embodied in the charter and judgment of Nürnberg. It would therefore be somewhat illogical to refer the formulation back to the Commission for it could not be expected suddenly to change its opinion on the subject. If the question had been connected with the development of international law, the situation would have been quite different, for the Commission would then have been bound to take into account the opinions of governments. When it came to codification or formulation of existing international law, however, the Commission should be regarded more as an advisory organ which could not be expected to alter its advice once it had given it. Naturally, the Commission's advice would not be binding upon any government, but would simply represent the views of eminent jurists just like the advisory opinions of the International Court of Justice.

42. In conclusion, Mr. Spiropoulos emphasized that the Committee's decision on the subject was highly important, for there was some danger that it might create an unfortunate precedent for the future. The best solution would be to take note of the formulation prepared by the Commission, possibly adding that the discussions in the Sixth Committee should be taken into account when the Commission came to draft the code of offences against the peace and security of mankind.

43. Finally, he mentioned that he had just received a copy of the fourth volume of a book entitled *Trials of War Criminals before the Nürnberg Military Tribunals under Control Council Law No. 10*,[1] which he thought should be included in all libraries on international law.

44. Mr. BARTOS (Yugoslavia) said that during the International Law Commission's sessions his delegation had assiduously kept itself informed of the Commission's progress. The Yugoslav Government had prepared its views on the question after an exhaustive study of the relevant documents and it was those views which Mr. Bartos had expressed in the Committee, and not his own. He felt that the discussion in the Committee had been well-organized, and comprehensive enough to establish certain concepts and criteria on the basis of which a decision on the substance of the matter could be taken.

[1] Washington, U. S. Government Printing Office, Nürnberg.

45. Most of the members of the Committee, who were speaking as the representatives of their governments, felt that the International Law Commission had done an excellent job and he thought therefore that there was no need to request the Commission to review its work. If the problem was returned to the Commission, it was unlikely that the eminent jurists composing that body could be induced to alter their views to satisfy the wishes of any particular government as expressed in the Sixth Committee or in a written comment.

46. Mr. Bartos felt that the criticisms voiced in the Committee had been directed at secondary matters. However, it was important that the Commission should bear these comments in mind, particularly when drafting the code of offences against the peace and security of mankind.

47. He thought that the proper solution would be to confirm the work the Commission had already accomplished and to request it when continuing its task to bear in mind the views which had been expressed during the debate. For that reason, he endorsed the United Kingdom draft resolution as amended.

48. Mr. LACHS (Poland), in reply to certain observations made by the representative of Brazil at the 237th meeting, recalled that in his original intervention on the subject, he had mentioned at the 236th meeting that Mr. Amado, in support of his thesis on the individual being a subject under international law, had referred to the advisory opinion of the Permanent Court of International Justice regarding the Danzig railway officials. Mr. Lachs recalled that in his statement he had also expressly observed that he would not discuss the merits of the case or dwell on the various issues for the sake of avoiding a prolonged discussion which would lead the Committee too far afield.

49. He did not feel the problem of authorities in international law was germane to the issue, but he had not meant to suggest that the representative of Brazil was not familiar with the *dicta* of the Permanent Court of International Justice.

50. The Polish representative contended that the Committee should now endeavour to come to a decision on the procedural aspects of the matter. The topic was so complex and controversial in nature, that a detailed debate on the substance would not lead to any satisfactory solution at that time.

51. Mr. MAKTOS (United States of America) disagreed with some of the conclusions advanced by the Greek representative, which he felt were in contradiction with the letter and spirit of the International Law Commission's statute. The Commission had the twofold task of codifying and developing international law. In regard to the second aspect of its task only, the Greek representative agreed that the Commission should take the Sixth Committee's views into account. However, concerning the task of codification, article 21 of the statute of the International Law Commission provided that "When the Commission considers a draft to be satisfactory, it shall request the Secretary-General to issue it as a Commission document." In paragraph 2 the statute went on to say that "The Commission shall request Governments to submit comments on this document within a reasonable time".

52. Article 22 of the statute further provided that "Taking such comments into consideration, the Commission shall prepare a final draft and explanatory report, which it shall submit with its recommendations through the Secretary-General to the General Assembly." Surely if the Commission decided a draft was "satisfactory", by implication it considered its work a re-statement of international law, but on such matters the views of the Sixth Committee should still be taken into account. Moreover, under the provisions of article 22, when its report was forwarded to the General Assembly, the Commission was compelled to take into account the comments expressed in the Sixth Committee.

53. He suggested that to avoid creating a dangerous precedent, the juridical right of the General Assembly through the Sixth Committee to refer items back to the International Law Commission should be made perfectly clear.

54. Mr. SPIROPOULOS (Greece) pointed out that in his statement he had stressed that each case must be considered on its merits. His view was that if the comments of the Sixth Committee were not formulated clearly, the International Law Commission might find it difficult to decide which comments it should take into consideration. Moreover, as some delegations had expressed no views on many points, the Commission would be at a loss in those instances to know what had been the sense of a majority of the Committee.

55. Article 23 of the statute of the International Law Commission did indeed provide that "Whenever it deems it desirable, the General Assembly may refer drafts back to the Commission for reconsideration or redrafting." He wondered, however, whether that was the best procedure, and recalled that because of the doubts which had been raised on various points, the Commission had been requested to review its statute.

56. He mentioned that at the Hague Conference for the Codification of International Law, held in 1930, the questions had been formulated and circulated to governments for comment. States had submitted their views on what was existing law and work had been begun with those views in hand. In his experience, that procedure had been helpful and he thought it might prove to be also the right procedure for the International Law Commission.

57. He agreed that under article 23 of the statute, the Sixth Committee could refer matters relating to the codification of international law back to the Commission. He felt however that the formulation of the Nürnberg principles had been a special case and that no useful purpose would be served by sending it back.

58. Mr. MOROZOV (Union of Soviet Socialist Republics) said he could not support the Greek representative's interpretation of the relationship between the International Law Commission and the General Assembly, which was in his view contrary to the Commission's statute. Nor did he feel that the analogy drawn between the Commission and the International Court of Justice was fitting.

59. In view of the provisions of article 23, paragraph 2 of the statute, there could be no doubt that the Sixth Committee could refer drafts back to the Commission when it deemed desirable, whether they concerned questions of codification or of development of international law, and therefore the Committee should not accept the Greek representative's views which might create a dangerous precedent.

60. He would not speak again on the substance of the matter but said he felt the debate merely proved the wisdom of the Byelorussion SSR proposal that the draft submitted by the International Law Commission should be referred back to that body for presentation to the Member States for their comments.

61. Mr. SAIB (Iraq) felt the International Law Commission should reconsider the formulation of the Nürnberg principles and therefore would support the joint draft resolution (A/C.6/L.146), unless a more satisfactory text along the same lines were produced by the drafting committee.

62. With regard to the Byelorussian SSR proposal (A/C.6/L.140), he pointed out that the members of the Committee were representatives of their governments and competent to speak in the name of their governments. For that reason, he thought no useful purpose would be served by referring the draft back to the governments and therefore could not support that draft resolution.

63. Mr. LOBO (Pakistan) wished to clear up a misunderstanding. In his intervention at the 236th meeting, on the subject of the Nürnberg principles, to which the Greek representative had referred, he had asked whether these seven principles contained the quintessence extracted from the most important of the principles written into the charter and judgment of the Nürnberg Tribunal. At that same meeting he had further stated that such also was not the case for, as pointed out by his distinguished colleagues, the plea of *nullum crimen sine lege, nulla poena sine lege,* which was expressly ruled out by the Tribunal on the ground that this was not a limitation of sovereignty, but, in general, a principle of justice, and as such, had no application to the facts of the case, has in fact been tacitly admitted as a valid plea by the Commission. He had concluded therefore that the principle of *ex post facto* punishment recognized in the charter and judgment of the Nürnberg Tribunal found no place in the formulation.

64. His view was that by ruling out the principle of *nullum crimen sine lege* as inapplicable to the case, the Nürnberg Tribunal had actually upheld the principle of *ex post facto* punishment, whereas the International Law Commission, by omitting the formulation of the principle of *ex post facto* punishment seemed to have upheld the view that the principle of *nullum crimen sine lege* could be validly invoked in defence. It was clear, therefore, that his statement was not in contradiction with the views of the Argentine delegation on that point, but rather coincided with that position.

65. The CHAIRMAN proposed that the meeting should be adjourned in order to enable a drafting group composed of the sponsors of the various draft resolutions and amendments, and of any other representatives who might wish to take part in it, to prepare a draft resolution which could be circulated to the Committee in time for its next meeting.

It was so decided.

The meeting rose at 5.10 p.m.

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