

GENERAL
ASSEMBLY

TWELFTH SESSION

Official Records

Monday, 2 December 1957,
at 3.25 p. m.

NEW YORK

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Chairman: Mr. Santiago PEREZ PEREZ (Venezuela).

Request by the Fourth Committee for an opinion by the Sixth Committee on the majority required for the adoption by the General Assembly of resolutions relating to matters concerning Non-Self-Governing Territories in accordance with Chapter XI of the Charter of the United Nations* (A/C.6/355; A/C.6/L.408, A/C.6/L.414 to 416) (concluded)

1. Mr. TABIBI (Afghanistan) said that, in order to meet the objections of the delegations of France and Portugal, the sponsors of the draft resolution (A/C.6/L.414) were prepared to modify the first preambulatory paragraph to read: "Recalling General Assembly resolution 684 (VII) of 6 November 1952".

2. The sponsors of the draft resolution were also prepared to accept the amendment submitted by Cuba, the Dominican Republic and Peru (A/C.6/L.416), provided it was worded in the following way: "States that it is not opportune at the present session to reply to the request of the Fourth Committee".

3. He hoped that the revised wording would be generally acceptable.

4. Mr. AHMED (India) said that he agreed with the general substance of the draft resolution contained in document A/C.6/L.414, but asked that the word "Considering" in the second preambulatory paragraph should be replaced by the word "Noting", which gave a clearer idea of the meaning the sponsors of the draft resolution had intended to convey.

5. Mr. CASTAÑEDA (Mexico) and Mr. TABIBI (Afghanistan) agreed to the modification proposed by the Indian representative.

6. Mr. ALVAREZ AYBAR (Dominican Republic) said that he had no objection to the modification proposed to the amendment contained in document A/C.6/L.416.

7. Mr. Alves MOREIRA (Portugal) said that, in view of the changes agreed to by the sponsors of the joint draft, his delegation withdrew its amendment (A/C.6/L.415).

8. The CHAIRMAN called for a vote on the joint draft resolution (A/C.6/L.414), as amended.

The draft resolution, as amended, was adopted by 56 votes to none, with 1 abstention.

AGENDA ITEM 55

Draft Code of Offences against the Peace and Security of Mankind (A/3650)

9. Mr. ROLING (Netherlands) recalled that by resolution 897 (IX) the General Assembly had postponed further consideration of the draft Code of Offences against the peace and security of mankind until the 1956 Special Committee on the Question of Defining Aggression had submitted its report. That Committee had since reported (A/3574) and, by resolution 1181 (XII), adopted at its 724th plenary meeting, the General Assembly had postponed the question of defining aggression until a more appropriate time; it was therefore proper to reconsider whether there existed an inseparable link between the Code and the definition of aggression.

10. The trials of war criminals had shown that, while the tribunals had discussed at length whether aggressive war was an international crime, they had not needed, for the purpose of deciding whether specific wars had been aggressive, any definition of aggression. The question had been one of fact rather than one of law.

11. In his opinion, criminal law, including international criminal law, did not stand in need of elaborate definitions. Every national legislation operated with undefined terms, such as "indecentcy". Similarly, in international law a definition of aggression was not indispensable. If, however, such a definition should be considered desirable, it would be comparatively easy to formulate it in the context of the Code, which should be a strictly legal instrument embodying the principles of international criminal law and hence uninfluenced by political considerations.

12. The charters and judgements of the tribunals which had tried war criminals and the reaffirmation of the principles of Nuremberg by General Assembly resolution 95 (I) had made it clear that international criminal law was part of the law of nations. There still remained, however, the task of formulating unequivocally that part of the law of nations, and it was the purpose of the Code to do so.

13. The International Law Commission had shown the tendency, both in its first draft of the code in 1951 (A/1858) and in its 1954 draft (A/2693), to add new crimes to those recognized in the judgements concerning war criminals. That tendency was regrettable, because branding an act as an international crime had serious consequences; it meant that individuals had a duty in international law to disobey their own national

*Title corrected at the request of the representative of Syria. See 543rd meeting, paras. 11 and 23.

authorities if ordered to perform the act in question. In the opinion of his delegation however, that duty existed in three specific cases only: in the case of military aggression, in that of violation of the laws of war, and in that of genocide and crimes against humanity. It was only in those three cases that national allegiance was superseded by loyalty to humanity.

14. In that connexion, he noted that the draft code as prepared by the International Law Commission (A/2693, para. 54) contained four kinds of rules: (a) rules of customary international law concerning the laws and usages of war; (b) rules of treaty law, such as the provisions concerning genocide; (c) rules formulated by the war crimes tribunals, such as those concerning crimes against the peace and crimes against humanity; and, finally (d) rules which had no basis in existing international law, such the provision concerning economic intervention (article 2, para. 9 of the draft Code).

15. In the opinion of his delegation, the task of the United Nations was to codify existing international criminal law by way of General Assembly resolution, rather than to undertake the progressive development of new rules, something which could only be done by means of a treaty.

16. However, the codification of existing international law had to be preceded by a certain amount of preparatory work, since some of the judgements of the war crimes tribunals departed from the provisions of the Charter, and the judgements themselves diverged from one another. Furthermore, such questions as the relationship between crimes against humanity and the crime of genocide would have to be considered, as well as the important problem of superior orders.

17. For those reasons, he suggested that a small working group, along the lines of the Special Committee on the Question of Defining Aggression, should be set up to indicate existing problems and controversies and offer solutions, and so to pave the way for fruitful discussion.

18. The United Nations was under a moral obligation to work on the draft code. After the Second World War, new rules of law had been applied by the victors to the vanquished. It was necessary to ensure that those rules were firmly recognized as generally binding rules of international law.

19. Whereas the public judged United Nations activities mainly by its more spectacular actions concerning specific political conflicts, history would judge the United Nations principally by its long-term projects. The draft Code of Offences against the Peace and Security of Mankind was one of those long-term projects, and one to which his delegation attached great importance; it dealt with international human duties, which were the necessary counterpart of international human rights.

20. The CHAIRMAN expressed the hope that, in discussing the most appropriate way of dealing with the item, representatives would adopt an objective approach and consider the exact purport of General Assembly resolution 897 (IX).

21. Mr. CHAUMONT (France) said that the Committee could consider only two possibilities: either to appoint a special committee, as suggested by the Netherlands representative, or to decide that under

resolution 897 (IX) the question had to remain in abeyance until the General Assembly had made some progress with the definition of aggression. A debate on the substance of the draft code, involving a study of each article, would serve no useful purpose at the present stage.

22. Mr. MAURTUA (Peru) said that the relationship between the draft code and the definition of aggression was of paramount importance. The draft code expressly declared aggression an international offence, and the Nuremberg principles could not be adequately clarified unless that offence was defined. The Netherlands representative's argument that criminal law did not require strict definitions could never apply to the law of nations, where the constituent elements of every international offence had to be clearly established. Without a satisfactory definition of aggression, the application of the Code might at any time be frustrated by political considerations.

23. The Peruvian delegation believed that the preparation of the Code was a task of progressive development of international law, and not merely one of codifying existing principles. Consequently, it felt that sufficient time should be allowed for new principles to evolve and crystallize. In that connexion, the Committee should remember that the Nuremberg principles, never having been unanimously adopted, were only a basis for further study.

24. Mr. VAZQUEZ CARRIZOSA (Colombia) said that representatives could not reasonably be expected to confine their remarks strictly to procedure. The judgement of the International Military Tribunal at Nuremberg had left many points unresolved, and a restricted discussion on the general principles involved would be most useful. In the Colombian delegation's view, the Committee could not decide to appoint a special committee, or to defer the question until after it had established the full significance of recent trends in the works of learned authors.

25. Mr. CHAUMONT (France) said that he had not meant to imply, in his earlier remarks, that the views of Governments should not be ventilated. He only hoped that the debate would concentrate primarily on the most effective steps which could be taken at the current session.

26. Mr. MALOLES (Philippines) said that the Secretary-General's note (A/3650) seemed to indicate that the General Assembly had decided to postpone consideration of the draft code until there was some agreement on a definition of aggression. It was indeed obvious that there could be no effective code without a definition of the most important of the offences to which the code was intended to apply, just as it would be useless to establish an international criminal court before determining what law such a body would apply. The only possible solution, therefore, would be to postpone discussion on those items until the question of defining aggression had been resolved.

27. Mr. KLUTZNICK (United States of America) agreed with the representatives of Peru and the Philippines that, without an accepted definition of aggression, the draft code might be very difficult to discuss. Since any consideration of the Netherlands representative's suggestion regarding the appointment of a special committee would inevitably lead to a debate on substance, the United States delegation hoped that any draft resolu-

tion which might be submitted proposing the postponement of further consideration would be voted on first.

28. Mr. MUFTI (Syria) said that he would be unable to support the suggestion concerning the establishment of a special committee, especially as the Netherlands representative had made no mention of its eventual composition or terms of reference. He hoped that the debate on the draft code would not be exclusively procedural, as a general exchange of views on its substance could be extremely useful. In particular, the Committee should invite the views of delegations which had not previously spoken on the question of the draft code. The Syrian delegation felt that a limited discussion on matters of substance would not be inconsistent with resolution 897 (IX).

29. Mr. MALOLES (Philippines) said that he would formally submit a draft resolution^{1/} proposing the deferment of the question until such time as the General Assembly reconsidered the question on defining aggression.

30. Mr. GLASER (Romania) said that the Philippine proposal inevitably raised certain non-procedural issues. Even the basic assumption that there was some indissoluble link between the draft code and the definition of aggression was open to question. In any event, the matter was an important one and should not be decided with undue haste.

The meeting rose at 5 p.m.

^{1/} Subsequently circulated as document A/C.6/L.418.