

THE COMMITTEE ON THE PROGRESSIVE DEVELOPMENT OF INTERNATIONAL
LAW AND ITS CODIFICATIONSUGGESTIONS BY THE UNITED STATES OF ITEM 4 OF THE PROVISIONAL AGENDA
OF THE COMMITTEE ON THE PROGRESSIVE DEVELOPMENT OF INTERNATIONAL
LAW AND ITS CODIFICATION (DOCUMENT A/AC.10/1 - 5 MAY 1947)

1. Item 4 of the Provisional Agenda of 5 May 1947 reads as follows:

"Plans for the formulation, in the context of a general codification of offences against the peace and security of mankind, or of an International Criminal Code, of the principles recognized in the Charter of the Nuremberg Tribunal and in the judgment of the Tribunal."

2. The language just quoted is identical with General Assembly Resolution 95 (1) of 11 December 1946 which also provides that our Committee should treat the plans for the formulation of the Nuremberg principles "as a matter of primary importance."
3. The function of our Committee is to study methods or "plans" for the formulation of the principles in question rather than to undertake consideration of substantive provisions. This is shown by an examination of the proceedings which culminated in the adoption of the above-mentioned resolution of 11 December 1946.

The resolution originated in a proposal by the Delegation of the United States, dated 15 November 1946 (document A/C.6/69).

The proposal provided that the General Assembly:

"1. reaffirms the principles of international law recognized by the Charter of the Nuremberg Tribunal and the judgment of the Tribunal.

"2. directs the Assembly Committee on the Codification of

International Law created by the Assembly's resolution of _____

/to

RECEIVED

JUN 2 1947

UNITED NATIONS
ARCHIVES

to treat as a matter of primary importance the formulation of the principles of the Charter of the Nuremberg Tribunal and of the Tribunal's judgment in the context of a general codification of offenses against the peace and security of mankind or in an International Criminal Code."

It will be noted that the proposal just quoted provided for the "formulation of the principles" rather than for "plans for the formulation". The addition of the word "plans" was made as a result of discussion in Sub-Committee 1 of the Sixth Committee to the effect that our Committee was to deal with methods and not with codification of substantive provisions. The representative of the Union of Soviet Socialist Republics, Mr. Durdenevski, suggested the elimination of paragraph 2 of the United States proposal quoted above because, by provision for "formulation of the principles" it dealt with codification itself rather than with methods. The representative of the United States, Mr. Fahy, then asked whether the addition of the words "plans for" in front of "the formulation of the principles" might not induce the representative of the Soviet Union to approve the paragraph in question (document A/C.6/Sub.1/W.35).

The provision that the Committee should treat the plans for the formulation of the Nuremberg principles "as a matter of primary importance" does not show that this Committee should deal with substantive provisions rather than methods. It should be noted that the words in the resolution "to treat as a matter of primary importance" are identical with those appearing in the above-mentioned proposal of the United States Delegation. The presence of these words in the proposal did not prevent the United States representative, Mr. Fahy, from suggesting the addition of the word "plans" in order to meet the point raised by the Union of Soviet Socialist Republics, that our Committee was not to deal with substantive provisions. In this connection, attention may also be called to the following statement in the summary record of the fourteenth meeting of the above-mentioned Sub-Committee (document A/C.6/Sub.1/W.36):

/"Mr. FAHY

"Mr. FAHEY (United States) asked that paragraph 3 be completed by adding the words 'The Committee should give priority of plans for the formulation . . .'. in order to emphasize that here again they were only dealing with preparatory work."

The above-mentioned resolution regarding the Nuremberg principles was adopted subsequent to the General Assembly Resolution of 11 December 1946, establishing our Committee. The latter resolution provided that the Committee was to deal with methodology and not with the formulation of substantive rules or principles of law. The decision to limit the discussion regarding the Nuremberg principles to methodology was in accord with the General Assembly's resolution prescribing our Committee's function.

It follows from the above, that our Committee is not to undertake discussion of substantive provisions. Furthermore, the formulation of the Nuremberg principles deserves careful and thorough study. Even if the Committee were empowered to undertake such study, its time schedule would not permit it to give to this subject the attention which it deserves. In this connection, the following statement in the memorandum submitted by the representative of France (A/AC.10/29) is pertinent.

"If it is true that the progressive development of public international law should be undertaken with caution, caution has never been more desirable than in the present case." For the reasons mentioned above, it is suggested that the discussion of substantive provisions should be undertaken by the Commission of Experts.

4. As to plans for the formulation of the Nuremberg principles, it may be noted that according to the above-mentioned resolution, the principles are to be formulated "in the context of a general codification of offenses against the peace and security of mankind, or of an International Criminal Code."

A "general codification of offenses against the peace and security of mankind" is a project which will consume considerable time. The

/preparation

preparation of a complete "International Criminal Code" will also require time. To postpone the formulation of the Nuremberg principles until the preparation of a general codification of the offenses envisaged by those principles as well as of other offenses against the peace of mankind is completed would result in considerable delay. The same result would follow if this formulation is postponed until the preparation of a complete International Criminal Code. In order to give effect to the provision that plans for the formulation of the Nuremberg principles should be considered as a matter of primary importance, the United States Delegation proposes the following:

(a) The Commission of Experts should be instructed to prepare a draft convention containing the Nuremberg principles. This draft convention need not be deferred until the preparation of a complete general code of offenses against the peace and security of mankind or of a complete International Criminal Code is finished. In view of the fact that the General Assembly Resolution of 11 December 1946, provides that the formulation of the Nuremberg principles should be considered as a matter of primary importance, this draft convention should be the first one to be prepared by the Commission.

(b) The preparation of the above-mentioned codes may be begun by the Commission of Experts at the same time as the formulation of the Nuremberg principles.

(c) In undertaking the formulation of the Nuremberg principles, the Commission of Experts should bear in mind that those principles may eventually be incorporated in the codes referred to in paragraph (a).

(d) Upon the completion of the said two codes or of either of them, the Commission of Experts may consider the question of including therein the provisions contained in the convention regarding the Nuremberg principles.

5. With respect to implementing the Nuremberg principles by the establishment of an International Criminal Court or of a Criminal Chamber in the International Court of Justice, it may be pointed out that, if our Committee is not to undertake discussion of substantive provisions regarding the Nuremberg principles, a fortiori it should not undertake discussion as to what means should be adopted with a view to enforcing substantive provisions not yet agreed upon. The question of jurisdiction and appropriate means of enforcement can obviously be considered more appropriately after the substantive provisions are settled. For these reasons, it is believed that the question of enforcement of the Nuremberg principles by the establishment of an International Criminal Court or otherwise should be deferred for consideration and study by the Commission of Experts. However, in view of the importance of the proposals of the French Delegation, the report of our Committee should contain special mention of this subject and should recommend that the attention of the Commission of Experts be called thereto.
