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COMMITTEE ON THE PROGRESSIVE DEVELOPMENT OF INTERNATIONAL LAW AND ITS CODIFICATION

SUMMARY RECORD OF THE EIGHTEENTH MEETING

Held at Lake Success, New York, on Wednesday, 4 June 1947, at 3:00 p.m.

Present:

Chairman:	Sir Dalip Singh	(India)
	Dr. Rodolfo Munoz	(Argentina)
	Dr. W. A. Wynes	(Australia)
	Dr. Gilberto Amado	(Brazil)
	Dr. Shuhsi Hsu	(China)
	Dr. Alberto Gonzalez Fernandez	(Colombia)
	Mr. Osman Ebeid	(Egypt)
	Prof. Henri Donnedieu de Vabres	(France)
	Dr. J. G. de Beus	(Netherlands)
	Mr. Roberto de la Guardia	(Panama)
	Dr. Alexander Bramson	(Poland)
	Mr. Erik Sjoberg	(Sweden)
	Prof. Dr. Vladimir Koretsky	(Union of Soviet Socialist Republics)
	Prof. J. L. Brierly	(United Kingdom)
	Prof. P. C. Jessup	(United States of America)
	Dr. Perez Perozo	(Vexezuela)
	Prof. Milan Bartos	(Yugoslavia)

The CHAIRMAN opened the meeting and gave the floor to Prof. BARTOS (Yugoslavia) who had asked to speak against the closure of the debate on the Argentine proposal concerning co-operation with the Pan-American Union.

Prof. BARTOS (Yugoslavia) observed that the rule on closure of the debate in the Rules of Procedure intended to prevent the abuse of the freedom of speech by endless repetitions. However, the Argentine proposal had not been fully discussed. Prof. JESSUP (United States of America) had withdrawn his conciliatory proposal in view of the objections of the representative for the Union of Soviet Socialist Republics, but some representatives were considering making Prof. JESSUP's proposal their own, which they were entitled to do as a

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proposal once submitted to any meeting becomes its property. As the representatives in favour of the American proposal had not been able to pronounce themselves and a compromise was therefore still possible, Prof. BARTOS (Yugoslavia) considered they should be given an opportunity to speak.

Mr. SJOBORG (Sweden) supported Prof. BARTOS also in view of the fact that the text of the Argentine proposal had only been distributed late on the day before and he considered that a discussion of it was required.

The CHAIRMAN put the motion for closure to the vote, which was carried by 8 votes in favour with 7 against.

The CHAIRMAN thereupon asked the representative for Argentina whether the Argentine proposal, on which a decision was now to be taken, would be the text with the two changes and one addition proposed by the CHAIRMAN himself at the sixteenth meeting of the Committee. This being agreed on the CHAIRMAN read out the text:

> "That the Committee request the Rapporteur to include in his Report a special reference to the importance and necessity of consultation between the International Law Commission and the Pan-American Union. The Rapporteur is also requested to indicate that the Commission to be appointed should consider the convenience of being in frequent communication with the organs of the Pan-American Union whose task is the Codification of the International Law in the Inter-American system, without disregarding the claims of other systems of law."

The representative of Venezuela demanding a roll call, the Secretary, at the request of the CHAIRMAN, proceeded to take a roll call. The following representatives recorded a vote in favour of the Argentine proposal: Argentina, Brazil, China, Colombia, India, the Netherlands, Panama, United Kingdom, United States of America, Venezuela. The following representatives voted against the proposal: Egypt, France, Union of Soviet

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Socialist Republics, Yugoslavia. The representatives for Poland and Sweden abstained.

Prof. DONNEDIEU DE VABRES (France) observed that he had voted against the closure of the debate and also against the Argentine proposal not because he underestimated the uncontested superiority of the Inter-American system in the field of codification of international law, but because the proposal as now adopted would result in inequality between the States. Prof. DONNEDIEU DE VABRES shared the opinion of Prof. KORETSKY (Union of Soviet Socialist Republics); that is, a universal organization like the United Nations should not single out one system or one group, as all were equal as of right. The superiority of the Inter-American system in this field was obvious, but did not justify its being given a privileged position.

Mr. SJOSTRÖM (Sweden) also wanted to motivate his vote. If the debate had not been closed, he would have moved the proposal originally made by Prof. JESSUP which was consequently withdrawn by the latter.

Prof. DARTOS (Yugoslavia) observed that he had voted against the Argentine proposal in view of the fact that it created an inequality between the States. He expressed the greatest admiration for the American Republics which initiated codification of international law and particularly for the South American Republics which achieved the Bustamante Code. However, in Prof. DARTOS' opinion the wording of the proposal was unfortunate. He would have liked to see a text adopted which formed a compromise between the opposite points of view.

Dr. BRAMSON (Poland) explained that he had abstained from voting, although he was in sympathy with the spirit of the proposal. However, he considered its wording unsatisfactory and as implying a depreciation of other efforts at codification. He emphasized that he had the greatest admiration for the Inter-American system. Dr. BRAMSON reserved the right for his delegation to bring the matter up again in the General Assembly which he hoped would take a decision meeting the objections raised by

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several representatives in this Committee.

Prof. KORETSKY (Union of Soviet Socialist Republics) observed that the small majority by which the motion for closure was carried showed that several representatives still wanted to speak and he regretted that their voice could not be heard. The representative for the Union of Soviet Socialist Republics observed that the text as now adopted put the Pan-American Union apart and thereby gave it a privileged position which was a violation of the principle of equality between States and of equality between the various legal systems of the world and discriminated against those States whose works were not recognized by the resolution as just as important and just as indispensable for the work of the International Law Commission as those of the Pan-American Union. There would therefore be States with which in the sense of this resolution a close contact was not considered necessary nor frequent relations. Prof. KORETSKY considered that all States were equal within the United Nations however small they were.

Prof. JESSUP (United States of America) stated that he had voted in favour of the resolution as inherent in its text was the idea that any similar group and system would get the same treatment.

Prof. BARTOS (Yugoslavia) raised the question of the name of the future Commission. The English title "International Law Commission" had been translated into French by "Comité Juridique International" which was not a correct translation.

The CHAIRMAN asked whether Prof. DONNEDIEU DE VABRES (France) could make a suggestion for a better translation.

Prof. DONNEDIEU DE VABRES (France) considered that the French title now used was inaccurate and suggested that "Commission de droit international" would be a correct translation and entirely satisfactory to the French mind. This suggestion was approved.

The CHAIRMAN then opened the discussions on Item 4 of the Agenda, concerning the principles of international law recognized by the Charter, the

Nuremberg Tribunal and the judgment of that Tribunal, and he referred to the various documents presented by the Secretariat, the representative for France, the representative for Poland and the representative for the United States. The CHAIRMAN observed that in view of the fact that the proposal by the representative for the United States (document A/AC.10/36) concerned the scope of the terms of reference of the Committee, this proposal should be taken up first.

Prof. DONNEDIEU DE VABRES (France) observed that he had submitted three memoranda which gave the point of view not only of himself but also of the Commission of International Law in Paris.

The proposal by Prof. JESSUP (United States of America) was to the effect that this Committee could only study the methods by which the principles recognized in the Nuremberg Charter and judgment could be formulated.

In the opinion of Prof. DONNEDIEU DE VABRES (France) there was not a great difference between his own memoranda and the proposal of Prof. JESSUP (United States of America). He had never meant to say that the present Committee should prepare a draft of an international criminal code, not even a draft of articles on the Nuremberg principles. The difference mainly was that Prof. JESSUP (United States of America) wanted the present Committee merely to act as a transmitter of documents to the future Commission. It was true that Prof. JESSUP (United States of America) qualified this statement by saying that the reaffirmation of the Nuremberg principles was a matter of primary importance and that it should be laid down in a draft convention. However, Prof. DONNEDIEU DE VABRES was of the opinion that the General Assembly when it addressed itself to the present Committee, gave it a real task and did not intend that the Committee should only send on documents to the new Commission. He found support for his point of view in the proposal submitted by the Polish Delegation (A/AC.10/38) and considered that the General Assembly Resolution wanted the present Committee

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to give a concrete form to the Nuremberg principles.

The arguments for the more restricted view Prof. JESSUP (United States of America) took of this Committee's task were the insertion in the General Assembly Resolution of the words "plans for" a formulation of the Nuremberg principles. However, the fact remained that the General Assembly Resolution expressly mentioned that this subject was of primary importance.

A second argument of Prof. JESSUP (United States of America) was that this Committee was to study methods only and would consequently act ultra vires if it concerned itself with the making of substantive rules. However, the Committee dealt during three weeks with methods only. Now it was expected to do more than that. During the discussions on Item 3 it had been emphasized that international law consisted of public international law, private international law and criminal international law. Item 4 of the Agenda concerned criminal international law only and Item 6 dealt with genocide and gave to the Committee a definite task to give its opinion on the substance of genocide which the Economic and Social Council would put before it in the form of a draft convention.

In the opinion of Prof. DONNEDIEU DE VABRES the Committee was instructed to deal with the Nuremberg principles in the same way as it was instructed to act with regard to genocide. Moreover, genocide was a new and bold idea, and the Nuremberg Tribunal had even withheld itself from accepting it as a crime recognized in international law. Consequently, if the instructions on genocide were clear, a fortiori with regard to the Nuremberg principles which were already accepted as part of international law the Committee need not restrict itself to methods only. This was not only a matter of logic but this point of view found a firm foundation in the text of the General Assembly Resolution itself.

Prof. DONNEDIEU DE VABRES asked the Committee to proceed to a very simple study. It would not have to appreciate the principles of Nuremberg which had already been worded in the Statute of the Tribunal and in the

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judgment and had been approved by the General Assembly, but it had to bring these principles into the system of international criminal law.

Prof. DONNEDIEU DE VABRES divided his further observations into three parts.

With regard to the first part, the nature of international criminal law, he observed that in the first place it should be acknowledged that the supremacy of international law in the relations between the States also extended to international criminal law. The United Nations itself was a manifestation of this supremacy, was a result of the development of international law. Secondly, it should be laid down that the individual was a subject of international law and was responsible under international law. This system had been defended by Politis and had also found recognition in the prize courts. Thirdly, it was now recognized that no order from a superior in any hierarchy freed the individual from responsibility, if the act he was ordered to perform constituted a crime under international law. This rule was laid down in all the municipal legislations and was now also recognized in international law.

The second part of the observation by Prof. DONNEDIEU DE VABRES contained an enumeration of the various crimes envisaged by Item 4 of the Agenda. In the first place, the crimes against peace, the crime of a war of aggression. This crime was recognized not only by the Nuremberg Tribunal but also by various texts of the League of Nations and by the Briand-Kellogg Pact.

Secondly, the war crimes, which were in conformity with the common law, and thirdly, the crimes against humanity, amongst which genocide figured.

Lastly, Prof. DONNEDIEU DE VABRES dealt with the matter of an International Criminal Court. The terms of reference concerning the Nuromberg principles did not instruct the Committee to deal with this matter. However, in order to produce effective results the creation of such a Court would be necessary. It would be an organ to enforce observance of the rules of criminal international law. The Nuremberg Tribunal had been an ad hoc

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Tribunal. This would not have been necessary if in 1928 effect had been given to the plans for giving the Permanent Court of International Justice competence in criminal cases. If this mistake was made again, the results might be tragic.

Prof. DONNEDIEU DE VABRES emphasized that he spoke not only as a Judge in a Nuremberg Tribunal - he was aware that this judgment was not perfect and that objections of fact and of principle might be raised against it - but it had the immense merit of asserting the legal foundation of criminal international law. It was his wish and the wish of France - which, owing to the fact that within one century it had three times been the victim of aggression, had lost the force and prestige which it enjoyed before and which had been deprived of its "élite", - that the codification of international criminal law be undertaken, which would be of the utmost importance for France and for the security of international relations. By postponing this undertaking, the moral advantage of the Nuremberg judgment might go to waste.

Prof. DONNEDIEU DE VABRES urged the Committee to go further than the American document proposed. The resolution of the Committee should not only reaffirm the principles of Nuremberg but in addition give them a concrete formulation.

In reply to a question from Prof. KORETSKY (Union of Soviet Socialist Republics) what concrete proposals Prof. DONNEDIEU DE VABRES had in mind, the latter referred to his three memoranda, particularly the last one (document A/AC.10/34).

Dr. BRAMSON (Poland) observed that the American proposal wanted this Committee only to act as a post box. Dr. BRAMSON observed that several of the suggestions made in that proposal had already been adopted by the General Assembly except, of course, the matter of an International Criminal Court which had been raised by Prof. DONNEDIEU DE VABRES. Dr. BRAMSON

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stated that the words "study of methods" were only used in Items 3 (a) - (c) of the Agenda but not in Item 4 where the term "plans for formulation" was used. He doubted whether these words were intended to mean that the Committee was only to consider how the principles could be formulated but not their formulation itself. In Dr. BRAMSON's opinion Item 3 on the methods of the development of international law and codification was a matter on which the United Nations Governments had not expressed themselves, but with regard to the Nuremberg principles all the fifty-five Governments had approved the Resolution affirming said principles, so the Committee was already confronted with a set of laws and they had only to be formulated. In Dr. BRAMSON's opinion, in view of the fact that the General Assembly Resolution expressly declared the matter of primary importance, the Committee would not discharge its duties if it referred this task to the future Commission. He expressed his agreement with Prof. DONNEDIEU DE VABRES in that no code should be formulated but only principles.

The CHAIRMAN observed, speaking as representative of India, that he still was not clear about the distinction between "study of methods" and "plans for formulation". As CHAIRMAN he stated that there seemed to be general agreement that the proposals made by the United States representative be taken up first.

Prof. JESSUP (United States of America) observed that the reasons why he made these suggestions were given in his document and were based on the discussions in the Sixth Committee of the General Assembly. The several points raised by the representatives for France and Poland also found their answer in his document. He observed that the suggestions went further than the giving of a post-box role to the present Committee. He requested that the representatives ask him any questions about details of his suggestions.

Dr. AMADO (Brazil) observed that the study of the terms of reference of the Committee had shown that the point of view taken by the representative

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of the United States in document A/AC.10/36 was correct. It was not for this Committee to prepare a draft convention for the General Assembly giving a definition of the crimes against peace and against humanity and war crimes. This would be the task of the committee of experts chosen with the greatest care and its discussions would need thorough preparation. It would be entirely within the competence of the International Law Commission. It was true that the General Assembly considered the matter of the Nuremberg principles of primary importance. On the other hand, it had also followed another procedure in the field of international criminal law in charging the Economic and Social Council with the task of preparing a draft convention on genocide. Genocide was closely connected with the Nuremberg principles and it might be difficult to bring the matter of the Nuremberg principles, which would be dealt with by the International Law Commission, in harmony with the genocide convention of the Economic and Social Council.

This Committee had no power to study the merits or even the formulation of the Nuremberg principles, and as to genocide, it was only invited to give its opinion on the work of the Economic and Social Council. In Dr. AMADO's opinion, it would be useful for the Committee, in its recommendation to the General Assembly, to emphasize the necessity of studying the relationship between crimes against peace and humanity and genocide. Prof. DONNEDIEU DE VABRES (France) in his document A/AC.10/29 mentioned the vagueness of a definition of genocide, and wanted this Committee to give a more precise definition. In Dr. AMADO's opinion, this Committee should draw attention to the confusion which might result from the fact that two different organs of the United Nations were charged to formulate subjects of international criminal law which were closely connected.

Prof. DONNEDIEU DE VABRES (France) observed that if Prof. JESSUP's proposal was accepted, this Committee would not formulate the Nuremberg

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principles at all, but it would give its opinion on the genocide draft convention. He had advocated moderation with regard to genocide as this was a novel idea, but he did not recommend moderation with regard to the Nuremberg principles which were not vague nor new, but were laid down already in the Statute of the Tribunal and in its judgment.

Prof. BARTOS (Yugoslavia) observed that his country had suffered much from war crimes and crimes against humanity, not only during the last world war, but also in the 19th century. Therefore, he wholeheartedly supported the General Assembly Resolution. On the other hand, however, he understood that this Committee was only given the task of finding methods for the development and codification of international law. In his opinion, it had no competence to deal with matters of substance, and he therefore agreed with the point of view taken in the American suggestions which wanted this Committee to restrict itself to a study of methods, not only on account of its terms of reference, but also on account of its composition and the time at its disposal. If this Committee were to study the substance of the matter referred to in Item 4 of the agenda, it could rightly be reproached for having undertaken a task for which it lacked competence. Prof. BARTOS would prefer that a convention on the Nuremberg principles be concluded later, after a sound preparation, and by a commission of experts in this field.

Dr. BRAMSON (Poland) observed that Item 6 of the agenda on genocide had much in common with Item 4 of the Nuremberg principles. How could this Committee give an opinion on the genocide draft convention if it did not know what this crime really was. In order to learn what genocide really was, the Committee would have to study the matter of crimes against humanity. Only then would it be able to discharge its duty under Item 6. The Polish proposal, document A/AC.10/38, referred to Chapter II of Statute of the Nuremberg Tribunal which contained the principles. So this Committee had

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sufficient basis for forming its opinion.

Prof. BRIERLY (Rapporteur) observed that one point had been overlooked in the discussion: it was that the General Assembly gave to this Committee no task in connection with genocide, but the Secretary-General had transmitted to the Committee a resolution of the Economic and Social Council. The General Assembly resolution on genocide did not mention this Committee at all.

Prof. DONNEDIEU DE VABRES (France) considered that genocide was placed on the agenda, no matter from what organ this item originated. As this item was avowedly one of substance and was closely related to that of the Nuremberg principles, these principles should be studied by the Committee. Two attitudes might be taken: the Committee might disinterest itself entirely from both subjects, or devote itself to both with prudence and moderation. In his opinion, however, the intention of the General Assembly Resolution was very clear.

Prof. BARTOS (Yugoslavia) supported the view taken by Prof. BRIERLY. The General Assembly wanted this Committee to study the methods for development of international law and its codification, etc. A study of the substance of the Nuremberg principles should not be limited to a study of Chapter II of the Statute of the Tribunal, but the whole judgment had to be studied inasmuch as it was an application of those principles - there had been objections to this application raised not only within the Court itself, but also by other lawyers, law societies, etc. These would also have to be studied, all of which would require time.

The CHAIRMAN observed that he still had some doubts about what was right for the Committee to do and he felt there was still confusion on the conception of genocide. Apart from the fact that genocide was understood to be a crime which might occur both in times of war and in times of peace, whereas the crimes referred to in the Nuremberg principles were committed in times of war only, also the philological meaning of genocide was still not clear. In Prof. JESSUP's opinion, the study of this matter should be left to

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the experts of the International Law Commission. The other proposals before the Committee wanted it to elucidate the Nuremberg principles, put them in clear form and then transmit them to the future Commission.

Prof. KORETSKY (Union of Soviet Socialist Republics) also considered that the Committee should keep strictly to the wording of the General Assembly Resolution, otherwise, it would get lost in a field unknown to the members with the exception of Prof. DONNEDIEU DE VABRES. He agreed with Prof. BARTOS' opinion on the United States suggestions. He also considered that the Committee should not go beyond them. The punishment of war crimes was also very important for the Union of Soviet Socialist Republics who had suffered enormously under the war and lost millions of its people, not only on the battlefield. There was not a single family who had not lost one or more members during the occupation by the fascist powers. Therefore, the Union of Soviet Socialist Republics also considered it very important that these crimes be made punishable. However, the General Assembly Resolution was very wise in its limitation. The history of the Resolution, as recalled by Prof. JESSUP in his suggestions, explained the use of the words "plans for formulation." Prof. KORETSKY thought that some of the confusion arose from the fact that in the French translation, the word "plans" was translated by "projets", which also in the Russian translation called forth the idea that drafts had to be made, and as the Resolution on the Nuremberg principles was accepted unanimously, there already was a text on this point. Therefore, the intention of the General Assembly Resolution should only be that a way should be found to systematize the Nuremberg principles as part of international criminal law in a way that would be binding on all countries, for example, in a multipartite convention or in an International Criminal Code. It was, therefore, the task of this Committee to find a method for thus clarifying the Nuremberg principles. The Statute of the Nuremberg Tribunal was already existing law, but it had to be made binding on all the countries and on all the peoples. Viewed from this aspect,

/Prof. KORETSKY

Prof. KORETSKY saw the task of this Committee in the same way as Prof. JESSUP and he accepted his suggestions. He asked the CHAIR that the principles of Prof. JESSUP's proposals be accepted and that the Committee proceed to study their details. It would be for the International Law Commission to draft an international convention on the Nuremberg principles and on crimes against humanity and the security of the peoples.

With regard to the matter of an International Criminal Court, Prof. KORETSKY was in favour of this idea, but he considered that it exceeded the terms of reference of this Committee. Further instructions from the General Assembly would be required before it could be taken up.

Dr. HSU (China) also approved of taking the United States suggestions as a basis of discussions and considered that the Committee should take into account the results of its discussions on Item 3 (a) - (c) of the agenda in discussing Item 4. China was one of the countries that had suffered too long from the absence of any formulation of criminal international law, even long before the European countries became victims of the violations of international law. Therefore, China took the greatest interest in this matter.

The CHAIRMAN put to the vote the proposal that document A/AC.10/36 be taken as a basis of discussion on the understanding that the words "plans for formulation" were equal to "study of methods". This proposal was carried by 14 votes in favour with 1 against and 1 abstention.
The CHAIRMAN opened the discussions on Points (a) - (d) on page 4 of the document referred to. It was agreed to have a general discussion at this meeting without proceeding to a vote.

Prof. KORETSKY (Union of Soviet Socialist Republics) observed that he agreed to the first sentence of Point (a). As to the second sentence, he considered that Prof. JESSUP might take into account that the General Assembly did not instruct this Committee to prepare an International Criminal Code, but only to indicate the place of the Nuremberg principles

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in such a Code. In Prof. KORETSKY's opinion with regard to crimes against humanity and security of mankind, it would be necessary to go beyond the Nuremberg principles. In regard to the fact that the Assembly Resolution mentioned a codification of crimes against peace and security of mankind, or an International Criminal Code, Prof. KORETSKY asked whether the Committee should decide between one or the other method, or indicate their order. This point had also been mentioned in the proposal made by the Polish representative, document A/AC.10/38. The General Assembly Resolution obviously wanted an opinion by experts.

In the third place, the Resolution mentioned the Nuremberg principles as a matter of primary importance (in French: "importance capitale"). In Prof. KORETSKY's opinion, the word "primary" did not mean "first", insofar as the order of the various tasks of the Codification Commission was concerned.

Prof. BARTOS (Yugoslavia) asked Prof. JESSUP why he used the word "code" in Point (a), while the General Assembly Resolution mentioned "codification". He also asked what was to be the draft on which the discussions should be based. In the third place, Prof. BARTOS considered that the method chosen with regard to Item 4 of the agenda should be in accordance with the earlier decisions of the Committee, and should be in the form of a draft convention, as was also expressed by Prof. JESSUP in the first sentence in Point (a).

Prof. DONNEDIEU DE VABRES (France) asked what Prof. JESSUP had in mind when he mentioned that the draft convention on the Nuremberg principles need not be deferred until the preparation of a complete code of offences against the peace and security of mankind, or a complete International Criminal Code. The first code would concern the crimes between States ("crimes interétatiques") but apart from those crimes, there was also the International Criminal Law dealing with crimes committed by the citizens of any State abroad or by foreigners within that State. Did Prof. JESSUP

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intend to include these two kinds of international law in one code, or did he envisage two codes? The solution of these problems was much more difficult than that of formulating the Nuremberg principles.

Prof. JESSUP (United States of America) stated that the French translation of his document was different from that of the General Assembly Resolution, but those changes were unintentional, as also the use of the word "code" instead of the word "codification". He preferred to keep to the text of the Assembly Resolution.

The CHAIRMAN repeated the question asked by Prof. KORETSKY whether Prof. JESSUP understood "primary" to mean "first". He also asked whether offences against mankind were not of prior importance to a general international criminal code.

The meeting was adjourned at 6:00 p.m.
