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THE
COLLECTIVE CRIMINALITY OF STATES
AND THE
CRIMINAL LAW OF THE FUTURE

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THE CRIMINALITY OF WARS OF AGGRESSION AND THE
ORGANIZATION OF INTERNATIONAL REPRESSIVE
MEASURES

Reporter: M V V Pella, Professor at the
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The XXIIIrd Inter-Parliamentary Conference, having heard the report of M.V.V. Pella, realizing the possibility of a collective criminality of States and believing that that criminality should be studied from a scientific standpoint in order to determine the natural laws governing it and to decide upon methods for its prevention and suppression, resolves, to institute a permanent sub-committee within the Committee for the Study of Juridical Questions.

a. to undertake the study of all the social, political, economic and moral causes of wars of aggression and to find practical solutions for the prevention of that crime;

b. to draw up a preliminary draft of an International Legal Code.

For this purpose the Conference calls the attention of the sub-committee to the principles laid down by M.V.V. Pella in his report and summarized in the annex to the present resolution.

FUNDAMENTAL PRINCIPLES OF AN INTERNATIONAL LEGAL
CODE FOR THE REPRESSION OF INTERNATIONAL CRIMES

1. The International Legal Code must apply to all nations.

2. Measures of repression should apply not only to the act of declaring a war of aggression, but also to all acts on the part of individuals or of bodies of persons with a view to the preparation or the setting in motion of a war of aggression.

3. The principle should be recognized that individuals, independently of the responsibility of States are answerable for offences against public international order and the law of nations.

4. The offences committed by States or by individuals should be laid down and penalties provided for in advance in enactments drawn in precise terms. International repression should be founded on the principle *nulla poena sine lege*.

5. It would be desirable to indicate clearly in the general part of the preliminary draft of the International Legal Code the material, moral and unjust elements in an international offence, and in that way to determine the conditions of constraint, necessity and lawful defence in the sphere of international law.

6. Causes which may aggravate or diminish the responsibility of States must similarly be determined with special reference to the case of provocation, reparation of injury, repetition of the offence and premeditation.

7. In the event of there being two or more criminal States, special provision should be made for repressive measures in the case of complicity or partnership in a criminal design revealed by the conclusion of offensive alliances.

8. The sanctions imposed should be of two kinds:

A. Sanctions applicable to States:

a) Diplomatic sanctions: warning that diplomatic relations will be broken off; revocation of the exequatur granted to the consuls of the guilty State; withdrawal of the right to benefit by international agreements;

b) Legal sanctions; sequestration of property belonging to nationals of the guilty State in the territory of the other States; withdrawal from these nationals of the rights of industrial, literary, artistic, scientific and other property; prohibition to appear as a party in the Courts of the associated States; deprivation of civil rights;

c) Economic sanctions; application to the guilty States of measures depriving it of the advantages resulting from the economic solidarity of the nations and severing it from the economic life of the world by means of blockade, boycott, embargo, refusal to furnish foodstuffs or raw material, increased customs duties on products coming from the guilty State, refusal to grant loans, refusal to allow the securities of the delinquent State to be quoted on the Stock Exchanges, prohibition to use means of communication;

d) Resort to armed force.

B. Sanctions applicable to individuals:

- a) Warning.
- b) Fine.
- c) Admonition.
- d) Prohibition of residence.
- e) Incapacity in the future to hold diplomatic functions abroad.
- f) Imprisonment.
- g) Exile.

9. Provision must be made in the special part of the preliminary draft of the International Legal Code for all positive or negative acts which are regarded as prejudicial to international public order.

Penalties will thus have to be provided for the following offences:

A. Offences committed by States:

- a) The international crime of aggressive war.
- b) Violation of demilitarised zones.
- c) Non-fulfilment of the obligation to submit serious disputes to the Permanent Court of International Justice in cases in which that Court has compulsory jurisdiction.
- d) Military, naval, air, industrial and economic mobilization in the event of a dispute arising.
- e) Preparing or permitting to be prepared on its territory attacks directed against the internal security of another State, or aiding or abetting bands of evil-doers making raids on the territories of other States.
- f) Interference by one State in the internal political struggles of another by supplying grants of money or giving support of any kind to political parties.
- g) The mere unjustified threat of a war of aggression, a procedure which in the past took the form of an ultimatum.
- h) Raising effectives or arming beyond the limits laid down in conventions or treaties.

- i) Manoeuvres or mobilizations carried out for purposes of military demonstration or preparation for war.
- j) Violation of the diplomatic immunity of foreign representatives.
- k) Counterfeiting of money and bank notes and any other disloyal acts committed or connived at by one State for the purpose of injuring the financial credit of another State.

B. Offences committed by individuals:

- a) Declaration by a sovereign of a war of aggression.
- b) Abuse of his privileges by a diplomatic agent for the purpose of committing acts which are in flagrant contradiction to the fundamental principles of international public order, or which constitute acts preparatory to a war of aggression.
- c) International military offences and all other acts performed in time of war which are contrary to the rules and customs of international law.
- d) Ordinary common law offences committed by foreign armies in occupied territories (massacre, pillage, rape, theft, etc.).
- e) Dissemination of false news liable to endanger peace.

10. The Permanent Court of International Justice must have power to adjudicate upon all international crimes and offences.

11. With a view to the proper working of the International Legal Code, provision should be made at the Permanent Court for an International Public Prosecutor's Department and a Chamber before which offenders can be arraigned.

12. The preliminary investigations and the preparation of the evidence should be entrusted to ad hoc commissions of inquiry set up to discharge legal and political duties.

13. Offences committed by States shall be heard and determined by the Chambers of the Permanent Court in combined session.

14. Cases in which individuals are the responsible parties should be dealt with in a special criminal Chamber set up in accordance with article 26 of the Statute of the Court. This Chamber would have jurisdiction over all international offences committed by individuals and all offences which by their nature would not come within the jurisdiction of the national Courts.

15. The Court shall pronounce judgment both on the public accusation and on the claims for compensation filed by the injured States prejudiced by the international offence.

16. In the case of violent aggression, the Council of the League of Nations will take urgent counter police measures.

The Council of the League of Nations shall also have jurisdiction in regard to the execution of the decisions of the Permanent Court of International Justice.

It will indicate the methods by which these decisions are to be executed.

17. In order to reconcile the idea of general security with the special needs of individual States, all States Members of the League of Nations should be declared to be under a virtual obligation to take part in carrying out sanctions.

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This obligation would become operative in the case of each State only from the moment that the Council of the League of Nations called upon it to take part in repressive measures, and indicated to it the sanctions which it was bound to apply.

The part which each State will take in the carrying out of sanctions will be decided by the Council, which will have regard to the geographical, political and economic position of each State. The Council will decide, by reference to the nature of the dispute, which States are to intervene immediately. Should the necessity arise, other States would also be called upon to apply the sanctions.

18. States which have been called upon by the Council of the League of Nations to apply sanctions and which have refused to participate or do not participate loyally in putting the sanctions into effect shall also be liable under the International Legal Code.