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Chairman: Mr. V. OUTRATA (Czechoslovakia).

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

[Item 52]*

1. Mr. MOROZOV (Union of Soviet Socialist Republics) said that on every occasion on which the question of establishing a permanent international tribunal had been raised, his delegation had opposed it as being contrary to the sovereign right of States. The punishment of crimes committed in a State's territory was a matter within the jurisdiction of that State; the right to administer justice was inseparably bound up with the sovereignty of the State. That opinion had been expressed by many authors. Mr. Alfaro himself, though one of the most ardent advocates of an international judicial organ, had been unable to disguise the fact that its establishment would be contrary to the principle of sovereignty and would constitute intervention in the domestic affairs of States (A/CN.4/15). Mr. Alfaro avoided but did not solve the difficulty by simply stating that the principle of absolute sovereignty was incompatible with the present world order. His conclusion that the establishment of an international judicial organ was possible and desirable was thus based on a false principle.

2. Those who maintained that the principle of sovereignty conflicted with international co-operation should remember that the former principle was recognized in Article 2, paragraph 7, of the Charter.

3. Confirmation of the fact that the establishment of an international tribunal would lead to intervention in matters essentially within the domestic jurisdiction of a State was to be found in Mr. Sandström's report (A/CN.4/20), the conclusions of which differed from those of Mr. Alfaro.

4. The Soviet Union had opposed the establishment of an international criminal tribunal when the draft convention on genocide was under discussion; it had also voted against General Assembly resolution 260 B (III) inviting the International Law Commission to consider the desirability and possibility of establishing an inter-

national judicial organ for the trial of persons charged with genocide or other crimes over which jurisdiction would be conferred upon that organ by international conventions. The majority of the General Assembly had unfortunately not followed the same course.

5. In the opinion of the Soviet delegation, the conclusion of the majority of the International Law Commission that it was desirable and possible to establish an international judicial organ was erroneous. In the circumstances, his delegation felt that no useful purpose would be served by any further consideration of the question, and for that reason would not vote for the joint draft resolution of Cuba, France and Iran (A/C.6/L.151).

6. As a number of representatives had already pointed out, the third paragraph of that draft resolution distorted the clear meaning of article VI of the Convention on Genocide, which read as follows: "Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as *may have* jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction." The conclusion that the Convention provided for the institution of an international penal tribunal was therefore incorrect.

7. The French delegation had taken that interpretation of article VI a stage further in maintaining that, since the question of establishing an international penal tribunal had been decided in principle by the Convention on Genocide, the General Assembly was under an obligation to establish such a tribunal. The United Kingdom representative had rightly refuted that assertion by pointing out that article VI meant that if such a tribunal was established, it would have jurisdiction over the acts enumerated in the Convention on Genocide.

8. The delegation of the Soviet Union therefore supported the United Kingdom amendment proposing the substitution of the phrase "refers to" for the word "provides" in the first part of the third paragraph of the joint draft resolution (A/C.6/L.151), and would vote for that amendment although it had decided to vote against the joint draft resolution as a whole.

* Indicates the item number on the General Assembly agenda.

9. As regards the Canadian draft resolution (A/C.6/L.155) it was based on the idea that an international penal tribunal must be set up. That point was brought out in the following paragraph: "Considering that it is essential that any international penal tribunal be able to function effectively and usefully at all times . . .". He therefore opposed the Canadian draft resolution for the same reasons as he opposed the joint draft resolution.

10. Lastly, the Canadian draft resolution contained a paragraph which was entirely irrelevant to the question before the Committee, namely: "Recalling that the Charter and judgment of the Nürnberg Tribunal accepted as a basic principle that individuals may be responsible for crimes against peace, for war crimes and for crimes against humanity". If the object was to ensure that the Nürnberg principles should be re-examined when the question of an international penal tribunal was under consideration, such a proposal must be opposed.

11. If the author of the draft resolution insisted on the retention of this paragraph, the USSR delegation would not be able to take any decision on the point, since to do so would be going back on the decision already taken on part III of the report of the International Law Commission (A/1316).

12. Mr. LESAGE (Canada) explained that draft resolution A/C.6/L.155 had been replaced by draft resolution A/C.6/L.157, in which the paragraph mentioned by the Soviet Union representative had been deleted. This draft resolution reads as follows:

"The General Assembly,

"Recalling that in its resolution 260 B (III), it considered 'that, in the course of development of the international community, there will be an increasing need of an international judicial organ for the trial of certain crimes under international law', and that, in the same resolution, it invited the International Law Commission 'to study the desirability and possibility of establishing an international judicial organ for the trial of persons charged with genocide or other crimes, jurisdiction over which will be conferred upon that organ by international conventions',

"Having considered part IV of the report of the second session of the International Law Commission,

"Recalling that pursuant to its resolutions 95 (I), 177 (II) and . . . (V), the International Law Commission is to prepare a code of offences against the peace and security of mankind,

"Considering that it is essential that any international penal tribunal be able to function effectively and usefully at all times, and not merely when its power to apprehend and punish culprits is sanctioned by a military occupation and a surrender of the sovereign power of the State in which the culprits are to be found or in which their crimes are committed,

"Considering that it is preferable to make a final decision concerning the desirability and possibility of establishing an international penal court in the light of the text of the laws which such court would have to apply,

"Decides to postpone the consideration of part IV of the report of the second session of the International Law Commission until after the Commission

has submitted its codification of offences against the peace and security of mankind."

13. Mr. WASSARD (Denmark) said that, after studying the various draft resolutions, his delegation had decided to vote for the draft resolution presented jointly by Cuba, France and Iran (A/C.6/L.151) with the amendments proposed by the United Kingdom (A/C.6/L.153) and Israel (A/C.6/L.152). The procedure proposed in the amendments submitted by Israel was both convenient and expeditious. Since participation by a State in the drafting of a convention did not entail any obligation to adhere to that convention, the solution proposed in the Israel amendments seemed satisfactory to the Danish delegation.

14. He had a suggestion to make in connexion with paragraph 3 of the joint draft resolution, A/C.6/L.151, which reads: "*Bearing in mind* that article VI of the Convention on the Prevention and Punishment of the Crime of Genocide provides for the institution of an 'international penal tribunal' with jurisdiction to try persons charged with genocide or any of the other acts enumerated in article III of the Convention, and that the Convention is to enter into force on 12 January 1951". In the opinion of his delegation, paragraph 3 of the joint resolution should be deleted. It would be logical to include that paragraph only if there was general agreement that article VI of the Convention on Genocide made the establishment of an international penal tribunal obligatory. As that was not the case, it would be preferable to omit the paragraph. The operative part of the draft was sufficiently motivated by General Assembly resolution 260 B (III), which was recalled in paragraph 1 of the draft. If that suggestion were adopted, the United Kingdom amendment (A/C.6/L.153) providing for a new paragraph 4 "*Bearing in mind* also that no useful purpose will be served by setting up such an international penal tribunal unless it can function effectively" could perhaps be withdrawn. He was not making a formal proposal but merely a suggestion for consideration by the sponsors of the joint draft resolution and the amendment.

15. Miss NASRI (Egypt) said that the procedure proposed in the joint draft resolution of Cuba, France and Iran (A/C.6/L.151) for dealing with part IV of the report of the International Law Commission seemed to her to be wise, because it in no way prejudged the final attitude of States with regard to the establishment of an international criminal jurisdiction. Only an inter-governmental committee could perform the task of preparing a draft convention on the establishment and status of an international penal tribunal; that task could not be entrusted to the International Law Commission or to a subsidiary or principal organ of the United Nations. Moreover, in view of the fact that the Committee would have to prepare a preliminary draft, the governments of Member States would be invited to make remarks, and the fate of the convention would therefore depend in the last resort upon the attitude of Member States.

16. The Egyptian delegation was prepared to accept the first two parts of the United Kingdom amendment (A/C.6/L.153) to the joint draft resolution, since these would serve to improve the wording of the text, but her delegation could not subscribe to the rest of the amendment.

17. The Egyptian delegation accepted the Israel delegation's amendment (A/C.6/L.152), which would facilitate the task of the inter-governmental committee. Nevertheless, Miss Nasri proposed that the expression "including a preliminary draft" in the second line of paragraph 6 be replaced by the words "including the preliminary draft". Such a substitution would stress the fact that the committee's principal task would be to prepare that preliminary draft convention.

18. If the Israel amendments were adopted, the fifth paragraph of the joint draft resolution (A/C.6/L.151) should be deleted, in order to avoid any contradiction between the various provisions of that draft resolution.

19. For those reasons, and because she considered that the establishment of an international criminal jurisdiction would represent a logical and desirable step forward in international penal law, her delegation could not accept the draft resolution submitted jointly by Canada and the Union of South Africa (A/C.6/L.157).

20. Mr. AMADO (Brazil) recalled the circumstances in which the International Law Commission had been called upon to consider the desirability and possibility of setting up an international judicial organ, and pointed out that the Commission had confined itself to carrying out the precise task which had been assigned to it.

21. He recalled that he had suggested at the first session of the International Law Commission that two Rapporteurs, representing the different views expressed on the matter, should be appointed. Whereas Mr. Sandström had concluded (A/CN.4/20, paragraph 39) that, under the existing conditions of international relations, the operation of such an organ would be problematical, Mr. Alfaro had stated (A/CN.4/15, paragraphs 50 and 54) that not only was it desirable to establish such an organ, but that the experience acquired on the subject rendered its creation practicable. The International Law Commission had taken its decision by seven votes to three, with one abstention (A/1316, paragraph 140). He recalled that although he himself had admitted that it would be desirable to set up an organ to apply the rules of international penal law, he had doubted whether international legal procedure had reached a sufficient degree of development to provide that organ with the necessary powers to enable it to carry out its task.

22. Referring to the previous experiences of States in that connexion, he had quoted the examples of the Geneva Convention of 1937, which provided for the establishment of an international criminal court to judge individuals accused of offences against the Convention for the Prevention and Punishment of Terrorism, and the Nürnberg and Tokyo international military Tribunals, which had been set up under multilateral agreements.

23. The 1937 Convention had never come into force; the Nürnberg and Tokyo Tribunals had operated effectively and their sentences had been carried out, but those Tribunals were of a different nature from the one now proposed. Their verdicts contained a certain element characteristic of national penal jurisdictions, namely the power of coercion exercised by a State over its nationals. The Allied Powers had had that power, which was an attribute of sovereignty, as a result of their

complete victory; they had, so to speak, the power to make laws and to enforce them as if they were acting in their own territory.

24. Although he did not wish to question the legitimacy and justice of the Nürnberg and Tokyo sentences and the international character of the Tribunals which had passed those sentences, he did not think that, owing to the special circumstances in which they had operated, they constituted precedents for an international criminal jurisdiction as Mr. Alfaro had stated. He had therefore joined Mr. Brierly and Mr. Sandström in opposing Mr. Alfaro's conclusion, since he considered that although the establishment of an international criminal tribunal was desirable, its immediate establishment was impossible, in the existing state of development of international law.

25. If a decision had to be taken on the question of the practical possibility of the immediate establishment of an international penal tribunal, his delegation would be obliged to adopt the same attitude as it had taken in the International Law Commission. Nevertheless, in view of the tenor of the debate and of the proposal submitted jointly by Cuba, France and Iran (A/C.6/L.151) to postpone the substantive decision, the delegation of Brazil would be prepared to support that draft resolution which aimed at setting up an inter-governmental committee.

26. His delegation would therefore vote for that draft resolution and for the Israel amendments (A/C.6/L.152), desiring as it did to collaborate with those who wished to work towards an ideal with which it was in sympathy.

27. If the draft resolution was not adopted, the Brazilian delegation would vote for the Canadian resolution (A/C.6/L.155) which suggested a realistic solution and was based on full awareness of the existing conditions of international law.

28. Mr. LACHS (Poland) observed that the International Law Commission had devoted less than two pages of its report (A/1316) to the issue under discussion. He proposed to consider the matter of establishing an international criminal tribunal from the different points of view of the International Law Commission's report and of the political, juridical and practical aspects of the question.

29. The question was not a new one; it had been dealt with by previous international conferences, and by many committees and commissions. There had also been the two international military Tribunals of Nürnberg and Tokyo; but those two Tribunals had been set up as a result of special agreements due to the actual circumstances of war. There were some generally acknowledged international crimes which formed an integral part of positive international law.

30. It was therefore advisable to set aside those precedents and disregard them in considering the question before the Committee. It was also advisable to consider the problem of the procedure to be followed independently of the substantive problem, to examine it in the light of existing international law and not of future international law, and to consider it from the point of view of the governments represented on the Commission and from the point of view of the possibility of

setting up an international penal court at the present time.

31. The conclusions of the International Law Commission were unacceptable if those various points of view were taken into consideration. The main arguments for the establishment of an international criminal tribunal which were put forward in the Commission's report were inadequate and the recommendations it made were unacceptable. It was also noteworthy that the International Law Commission's decision had been taken by an affirmative vote of seven of the fifteen members of the Commission, and it was obvious that the International Law Commission had analysed the problem on a theoretical plane.

32. He was afraid that the discussions in the Sixth Committee had also been conducted on a theoretical plane. The representative of France had stated that it was difficult to foresee whether practical considerations would militate in favour of or against the establishment of an international tribunal, and the United States representative had said that the question should not be considered from a political angle. He did not consider that a proper solution could be reached if the political aspect of the question was ignored. The question affected the very foundations of international relations, and it was therefore impossible to confine the debate to pure theory.

33. Positive international law provided that all cases in which an individual was to be judged for actions committed by him fell within the competence of States. The establishment of an international tribunal seemed difficult to justify in those circumstances.

34. Moreover, the principal organs of the United Nations were fully listed in Article 7 of the Charter. That Article was not open to wide interpretation; only one interpretation was valid; it was impossible to establish new organs of the United Nations without amending the Charter. The International Law Commission, which admitted that the establishment of a criminal chamber of the International Court of Justice would necessitate an amendment of the Charter, did not consider that the establishment of an international tribunal would necessitate any amendment. He thought, however, that both measures would require an amendment of the Charter.

35. The Statute of the International Court of Justice, which was the only existing international judicial organ, specified that only States might be parties in cases before the Court. As the Court was only open to States, the establishment of a criminal chamber to judge individuals would be contrary to the Statute of that Court. Any modification of the principle according to which only States could be parties in cases before an international tribunal would be prejudicial to the principle of the sovereign equality of States. In order to pursue the study of the problem of establishing an international penal tribunal, it would be necessary to modify the Charter radically.

36. The question raised by the Netherlands representative (242nd meeting) as to whether the creation of an international penal tribunal had to be regarded as a logical consequence of the existence of international crimes was a very pertinent one, but he regretted that he was unable to agree with the Netherlands representa-

tive's answer to that question. There were more than a dozen international conventions of undeniable validity under which States had undertaken not only to recognize the illegality of crimes committed but to punish them within the framework of their national judicial organs; the conventions for the suppression of piracy, slavery and the white slave trade were examples. There could be no doubt that treaties and conventions, by stating the duties incumbent upon States, imposed upon States the material obligation to conform to them, in application of the fundamental rule: "*Pacta sunt servanda*".

37. In that connexion, he was convinced that the creation of an international penal tribunal would not afford a greater guarantee of respect for international justice. If States were not prepared to fulfil the obligations they had assumed, no international tribunal could compel them to do so. The Netherlands representative had remarked that an international penal tribunal, if established, would be able to deal only with secondary matters since in all likelihood States would not recognize the competence of the tribunal to deal with essential matters.

38. The futility of such a tribunal was therefore obvious, and he thought that it was wiser to rely on the only existing guarantee, the sense of duty which each State must have and its desire to fulfil all its obligations. That was the fundamental guarantee underlying all international conventions; the best example was the Charter of the United Nations, Article 2 of which provided that "All Members . . . shall fulfil in good faith the obligations assumed by them in accordance with the present Charter."

39. He agreed that from the practical point of view the question whether the duty of ensuring respect for international justice should be entrusted to States alone or to an international penal tribunal made little difference; from the theoretical point of view, however, it could not be denied that if an international penal tribunal were given competence to punish international crimes, the principle of the sovereignty of States would be violated. The representative of Canada had remarked that some States refused to relinquish their sovereignty but it should be remembered that in advocating the relinquishment of national sovereignty, certain States were endeavouring to induce other States to relinquish their sovereignty while attempting to retain their own. In fact, the principle of State sovereignty existed and could not be denied. If a State refused to honour its obligations, it would always be possible to have recourse to the sanctions provided by the Charter or by international conventions. In that connexion, he drew attention to article VIII of the Convention on Genocide which gave every contracting party the right to "call upon the competent organs of the United Nations to take such action . . . as they consider appropriate for the prevention and repression of acts of genocide . . ."

40. In his opinion the creation of an international penal tribunal was not necessary, and he was convinced that better results would be obtained by respecting the principle of State sovereignty and leaving to States the responsibility of fulfilling their obligations.

41. Mr. TARAZI (Syria) noted that there were two schools of thought in the Committee. Some agreed with

the International Law Commission that it was possible and desirable to establish an international criminal jurisdiction and were not discouraged by the difficulties of that enormous task. Others thought that, even if that jurisdiction were established, it would be impossible in practice to ensure that criminals were brought before it or to execute any sentence which might be imposed upon them.

42. The two points of view were not irreconcilable since they both rested on an interpretation, albeit a differing interpretation, of the Charter; the former believing that the Charter laid imperative obligations on Members, while the latter interpreted it in a different manner.

43. The delegation of Syria had always been in favour of the progressive development of international law, the purpose of which was to ensure international peace and security. The establishment of an international criminal court would help to attain that purpose, which was pursued by all nations that rejected the idea of a third world war.

44. After reading the reports of the International Law Commission and the various draft resolutions submitted, the delegation of Syria was convinced that the creation of an international criminal court would be a constructive step in the development of international law. One of the special Rapporteurs of the Commission, Mr. Alfaro, after reviewing steps in that direction taken in the past, had demonstrated the possibility of establishing such a court. The Commission had proposed the establishment of an international criminal jurisdiction for the purpose of punishing crimes committed against the peace and security of mankind. Opposition to the establishment of such a court was an implicit criticism of the value of the work of codification entrusted to the International Law Commission.

45. When the Commission was set up, the General Assembly had not realized that its task would be so arduous or that its work would involve the principle of State sovereignty, although that had been inevitable in view of the nature of the Commission's work. Moreover, States relinquished a portion of their sovereignty whenever they signed treaties or conventions, including commercial agreements; it was true for example of the most-favoured-nation clause. International relations were impossible without some limitation of sovereignty. The proposed committee would in any case always be at liberty to examine objections to the establishment of an international penal court and to include explicit clauses dealing with those objections in the draft convention.

46. For those reasons, and in the belief that the attempt to establish an international criminal jurisdiction would be a step forward in the development of international law and would assist in the consolidation of peace, the delegation of Syria supported the joint draft resolution submitted by Cuba, France and Iran (A/C.6/L.151).

47. With regard to the various amendments submitted, the delegation of Syria would make its position clear at the appropriate time by its vote. Nevertheless, it would point out that it was unwise to fix the date of the meeting of the proposed committee for 1 August 1951, as the authors of the joint draft resolution had done, since it was difficult to see how the committee,

if it met then, could prepare a draft convention in time for the next session of the General Assembly. It would be better to leave it to the Secretary-General to fix the date.

48. As regards the Polish representative's objection that the establishment of an international penal court would be inconsistent with the provisions of the Charter, in view of the fact that the Charter had set up only the International Court of Justice, he remarked that the proposal under consideration was for the establishment not of a criminal chamber of the International Court of Justice, but of a separate judicial organ which would be the creation of the States which had accepted its jurisdiction. He did not see in what respect the establishment of an international criminal court would be inconsistent with the Charter. It was true that the municipal law of most countries provided for control of the constitutionality of laws, and it was similarly desirable at the international level not to adopt any rule which was inconsistent with the Charter, but the Charter placed the United Nations under an obligation to encourage the progressive development of international law. The establishment of an international criminal court would undoubtedly have the effect of encouraging the development of international law and of consolidating the foundations of peace.

49. Mr. VALIAT (United Kingdom) wished to reply to a number of points raised by other representatives.

50. In the first place, the United Kingdom delegation accepted the proposal of the representative of Iran to replace the words "refers to a" by the word "envisages" in the United Kingdom amendment (A/C.6/L.153) to the third paragraph of the joint draft resolution (A/C.6/L.151).

51. With regard to the remarks of the Netherlands representative (242nd meeting) concerning the statement made by the United Kingdom representative at the 233rd meeting regarding the status of the individual under international law, he wished to state that nothing that the United Kingdom representative had said should be interpreted as meaning that the latter questioned the validity of the principles recognized by the Charter and judgment of the Nürnberg Tribunal.

52. The United Kingdom delegation preferred the joint Canadian and South African draft resolution (A/C.6/L.157) to the draft submitted jointly by Cuba, France and Iran since it regarded the former as more realistic; nevertheless, while agreeing in principle with the idea embodied in the fourth paragraph of the former resolution, the United Kingdom delegation felt that the paragraph might imply that the Sixth Committee had already decided to establish a permanent international criminal tribunal. For that reason he would prefer that the paragraph be replaced by the third United Kingdom amendment (A/C.6/L.153) proposing the addition of a new fourth sub-paragraph to the joint draft resolution.

53. Mr. TABIBI (Afghanistan) explained the attitude of his delegation with regard to the problem under discussion in the light of part IV of the report of the International Law Commission and the draft resolutions and amendments before the Sixth Committee.

54. Those draft resolutions and amendments advocated that the preparatory study necessary for the creation of

an international criminal tribunal should be undertaken at once. In the absence of any text of a draft convention on that subject, he would not discuss the substance of the question. From the point of view of procedure, the delegation of Afghanistan viewed favourably all efforts to start work at once in order to clear the ground.

55. The peoples of the world had long cherished the hope that an international penal tribunal would one day be created. In spite of the difficulties which the problem presents, it should be attacked without delay in the interest of the peace and security of mankind.

56. The delegation of Afghanistan supported the joint draft resolution (A/C.6/L.151) which laid down a practical, and practicable, procedure. When the proposed committee had prepared the draft convention and governments had submitted their observations on it, the General Assembly could at its seventh session consider the problem from the legal and political points of view and take a definitive decision.

57. If this joint draft resolution was not adopted, the delegation of Afghanistan would vote for the joint draft resolution of Canada and the Union of South Africa (A/C.6/L.157).

58. Mr. COHEN (United States of America) drew the attention of the Committee to the amendment (A/C.6/L.158) submitted by his delegation which would delete the words "a preliminary draft convention" in the fourth paragraph of the joint draft resolution (A/C.6/L.151), and insert in lieu thereof the words "preliminary draft conventions or proposals" in order to make it clear that no technical restriction would be imposed upon the projected committee. In that way the committee would not be restricted to preparing a single draft convention nor even be required to state its recommendations in the form of a draft convention. The committee might consider it preferable to prepare several instruments, one concerning the creation of the future international criminal court, another concerning the obligations of the contracting States, and so on. The committee might also decide that a convention was hardly necessary, and might prefer a General Assembly resolution. In any case, the delegation of the United States had felt that the committee should be left free to submit its recommendations in the form which it considered most suitable.

59. Mr. HERRERA BAEZ (Dominican Republic) said that the diplomatic history of his country showed that it had always favoured submitting international disputes to an international court or to arbitral procedure. Significant proof of that was the fact that it had accepted the compulsory jurisdiction of the International Court of Justice within the meaning of Article 36 of the Statute of the Court.

60. With regard to article VI of the Convention on Genocide, he would not undertake to discuss whether that article implied grammatically a pronouncement as to the need to create an international penal court. In this connexion, however, he would recall the position taken by the Dominican delegation at the time of the discussion of said article of the Convention on Genocide, when his delegation made it quite clear that under the Constitution of the Dominican Republic, any person

who committed a crime within that country was subject solely to the jurisdiction of its courts.

61. In any case, the question of creating an international court to try persons charged with crimes against peace and humanity represented an extremely complex judicial and political problem that must be carefully examined. A hasty decision on the matter should therefore be avoided as the international community would gain very little if the future court were only a forum in which States would engage in mutual insults. Before considering the creation of such a court, therefore, the crimes over which it would have jurisdiction should be specified.

62. For that reason, the delegation of the Dominican Republic supported the joint draft resolution of Canada and the Union of South Africa (A/C.6/L.157), the second and third paragraphs of which were no longer subject to the criticisms which the delegation of the Dominican Republic had expressed concerning the second and third paragraphs of the initial Canadian draft (A/C.6/L.155).

63. His delegation nevertheless maintained its reservation with regard to the fourth paragraph of the new draft which had reproduced the provisions of the fifth paragraph of the previous one. It would therefore like to see that paragraph replaced by the United Kingdom amendment (A/C.6/L.153). If the United Kingdom amendment was not adopted, the delegation of the Dominican Republic would abstain from the vote.

64. Mr. KHOMOUSKO (Byelorussian Soviet Socialist Republic) recalled that during the discussion of the draft convention on genocide, his delegation had already stated the reasons for which it would oppose the creation of an international penal court. In 1948, the delegation of the Byelorussian SSR had declared that the only way to proceed against the crime of genocide was to invite the States to make provision in their national legislation for its repression. It had also stated at the time that the creation of an international penal court was incompatible with the principle of the sovereignty of States. For all those reasons, the delegation of the Byelorussian SSR had voted against General Assembly resolution 260 B (III) inviting the International Law Commission to study the desirability and possibility of establishing an international judicial organ for the trial of persons charged with genocide or other crimes, jurisdiction over which would be conferred upon that organ by international convention.

65. Events had justified the attitude adopted by the delegation of the Byelorussian SSR. The reasons in support of the establishment of an international penal court put forward by the International Law Commission in its report were not warranted. Furthermore, the relevant reports submitted by the special Rapporteurs indicated that the establishment of an international penal court would be incompatible with the provisions of the Charter. Such a court would in fact violate the sovereignty of States by interfering in matters within their domestic jurisdiction and was therefore at variance with the provisions of Article 2, paragraph 7, of the Charter. One of the matters reserved by that Article was the right of States to try crimes committed in their own territory.

66. Consequently the delegation of the Byelorussian Soviet Socialist Republic considered, as did the delegation of the Soviet Union, that the joint draft resolution (A/C.6/L.151) was unacceptable.

67. Mr. BUNGE (Argentina) noted that the purpose of the joint draft resolution of Cuba, France and Iran (A/C.6/L.151), according to its sponsors, was to implement article VI of the Convention on Genocide and the recommendation of the International Law Commission in the terms of which it was desirable and possible to establish an international judicial organ for the trial of persons charged with genocide or other crimes, jurisdiction over which would be conferred upon that organ by international conventions.

68. In support of that draft, it had been said that the question was merely one of procedure and that the governments would not be called upon to consider the substance until they were in possession of the text of the draft convention.

69. The representative of the United Kingdom had rightly declared (240th meeting) that the International Law Commission had voiced no opinion on the practical possibility of establishing the international court under consideration. One of the special Rapporteurs of that Commission, Mr. Sandström, had raised objections in that respect, which the International Law Commission had not refuted. The problem was therefore far from being solved. The delegation of Argentina was not opposed in principle to the creation of a committee to prepare a preliminary draft convention but it agreed with the delegations of Canada and of the Union of South Africa that before creating an international court it was necessary to establish the law that that court would have to apply, and provide means for the execution of its sentences.

70. It would be futile, therefore, to speculate concerning an international penal court until an international penal code had been drawn up defining international crimes and fixing the penalties that they would entail. It had been stated that the future court would be guided by the Nürnberg principles. Those principles, however, were concepts which served as a basis for laws but were not themselves laws in the strict sense of the word. If the future international court functioned solely on the basis of those principles, there was no assurance that it would not encounter the same difficulties of interpretation that had arisen in the Sixth Committee. Moreover, the failure to establish the crimes and the penalties applicable to those crimes would confer upon that court a considerable amount of legislative authority which it should not be granted. Consequently, it would be premature to consider the establishment of an international penal court until international penal standards had been established.

71. As for the need to create an international police responsible for the appearance of the accused and the witnesses and the execution of sentences, that question did not deserve further consideration.

72. For those reasons, the delegation of Argentina, while acknowledging that it would be desirable to establish an international penal court, agreed with Mr. Sandström that it would be difficult for such a court to function. The delegation of Argentina was therefore opposed in principle to the establishment of such a

court. At the same time he thought there was nothing to prevent further consideration of that question, and his delegation would therefore support the joint resolution of Canada and the Union of South Africa (A/C.6/L.157), subject to the remarks made by the representatives of the United Kingdom and of the Dominican Republic on the fourth paragraph of that draft.

73. Mr. LESAGE (Canada) said that his delegation accepted the United Kingdom amendment to the fourth paragraph of the joint draft resolution (A/C.6/L.157).

74. Mr. HSU (China) said that the General Assembly had asked the International Law Commission to study the desirability and possibility of establishing an international judicial organ in the belief that in the course of the development of the international community there would be an increasing need of an international judicial organ for the trial of certain crimes under international law. The International Law Commission had now submitted its conclusions, which most members of the Sixth Committee appeared to accept, and it would be for the General Assembly to carry them into effect.

75. When the General Assembly had first taken up the question of the establishment of an international jurisdiction, a new world order had appeared to be dawning. Now, unfortunately, the international community had relapsed into its former state. The delegation of China considered that the General Assembly should not hesitate to establish an international jurisdiction, since whatever the vicissitudes of the political situation, it was clear that the international community was on the road towards a better order.

76. If the present situation improved, the existence of such a jurisdiction would prove no drawback; if it deteriorated, an international penal jurisdiction would be all the more needed. The events now unfolding in Korea showed that such a jurisdiction was needed to deal with aggressors.

77. For all those reasons, the delegation of China would vote for the joint draft resolution (A/C.6/L.151) as amended by the United States.

78. Mr. CABANA (Venezuela) said that on the question of an international penal jurisdiction, his government still maintained the position it had explained in its observations on the draft resolution on genocide prepared by the Secretary-General. The Government of Venezuela had declared in that connexion that an international penal jurisdiction could not be set up until circumstances were favourable.¹ The delegation of Venezuela believed that it would be premature to study the structure of an international criminal court before knowing what provisions such a court would be required to apply. In addition, it considered that before adopting the joint draft resolution, the members of the Commission should decide whether the establishment of an international criminal court, as proposed by the International Law Commission, would be useful and desirable. True though it might be that such a jurisdiction would be in line with certain trends in modern international law, it would nevertheless conflict with deeply-rooted traditions in many countries. That was a problem requiring very thorough study, failing which, the

¹ *Official Records of the General Assembly, Third Session, Part I, Sixth Committee, Summary Records of meetings, p. 390.*

conclusions arrived at, while technically brilliant, might be impracticable.

79. The delegation of Venezuela would therefore support the joint draft resolution submitted by Canada and the Union of South Africa (A/C.6/L.157) with the amendment to the fourth paragraph submitted by the United Kingdom.

80. Mr. CHAUMONT (France) said that he would not touch upon the substance of the question, but would merely comment briefly on various points raised by several delegations, particularly those of Canada, the Soviet Union and Poland.

81. He would then explain his delegation's attitude, as co-sponsor of the joint draft resolution (A/C.6/L.151), towards the various amendments which had been submitted.

82. The representative of Canada had raised a number of points of minor importance which Mr. Chaumont did not think needed to be further considered, such as the question of the financial implications of the draft resolution, which the sponsors of the draft had endeavoured to reduce to a minimum.

83. The Canadian representative's main argument was connected with the question of jurisdictional method; he claimed that an attempt was being made to establish an international judicial organ before there was a system of international law clearly enough defined to enable such an organ to apply the rules of international law. In other words, the representative of Canada was stressing the principle that a jurisdictional organ could not be established until the juridical rules it would be required to apply had been studied. But the draft resolution, as the terms in which its operative part was couched showed, had been worded with extreme caution and great moderation.

84. Moreover, the three delegations which had drafted it had accepted the amendment submitted by the delegation of Israel (A/C.6/L.152). The procedure envisaged in that amendment implied that the preparatory work for the elaboration of an international convention establishing the international penal tribunal would take up considerable time, and that the essential decisions would not in fact be taken until the General Assembly had before it one or more draft conventions from which it could choose. In a word, it might be safely assumed that the establishment of the international penal tribunal would take several years.

85. Moreover, it could be seen from Mr. Spiropoulos' report on the preparation of a draft code of offences against the peace and security of mankind (A/CN.4/25) that the work on that code was already in an advanced stage. There was therefore every reason to believe that by the time the statute of the international penal tribunal had been finally adopted, the draft code prepared by the International Law Commission would be ready.

86. Mr. Chaumont drew the attention of the Canadian representative and of other members of the Committee to a passage in Mr. Sandström's report (A/CN.4/20, paragraphs 27 and 28) in which he said that "... there now exist, on the basis of customary law, important rules of international criminal law which can be used for the repression of international crimes. Another thing is that further development of international criminal

law might be achieved through the conclusion of treaties". Mr. Sandström went on to say that "In view of the situation with regard to international criminal law, . . . the actual stage of development of international criminal law does not, taken by itself, prevent the establishment of an international criminal jurisdiction." If even Mr. Sandström, whom no one would suspect, in view of the conclusions of his report, of viewing favourably the establishment of an international criminal tribunal, declared that adequate juridical foundations existed, it might be safely assumed that those foundations did in fact exist.

87. The representatives of the Soviet Union, Poland and the Byelorussian SSR had argued that the establishment of an international penal tribunal would be contrary to the principles of national sovereignty. But as the representative of Syria had already pointed out, the concept of national sovereignty was extremely vague, and any international contractual obligation constituted a limitation on State sovereignty. The very fact that there existed an international community or an international law implied limitations on national sovereignty; and that being so, it could not be argued against an international penal organ that it restricted national sovereignty. If the facts were realistically viewed, it would appear that in the present era the tide was running against the strict application of the principle of the absolute sovereignty of States; considered as the free determination of its own powers by each State, national sovereignty was a principle incompatible with the realities of present-day politics.

88. The representative of Poland had in addition declared that the establishment of an international criminal tribunal would be a violation of the principles of the United Nations Charter, and would entail amending the provisions of the Charter. Such an assertion would be correct if the tribunal were envisaged as a subsidiary or principal organ of the United Nations; but there was no question of making the proposed tribunal a subsidiary United Nations organ; nor had it been the intention of the sponsors of the joint draft resolution (A/C.6/L.151) to make the tribunal one of the principal organs of the United Nations—which would, it was certainly true, have required a formal amendment of the Charter.

89. The sponsors of the draft resolution had made it quite clear that they were proposing the preparation of a preliminary draft convention; a procedure which, in law, respected the sovereignty of States, since the tribunal would have jurisdiction only over the States which had signed and ratified the convention. The tribunal would not therefore be a subsidiary or principal organ of the United Nations, but a new organ of the international community, established with the assistance of the United Nations, one of the purposes of which was to develop international law. That procedure had been followed for all international conventions, and it respected the principle of the sovereignty of States.

90. Mr. Chaumont proceeded to examine the various proposed amendments to the joint draft resolution (A/C.6/L.151). The representative of Iran had already said that the sponsors of the draft resolution were prepared to accept the Israel delegation's amendment (A/C.6/L.152), and the sponsors of the joint draft

would of course confer again with a view to the preparation of a new text embodying that amendment.

91. The delegations of Cuba, France and Iran were also prepared to accept the United States amendment (A/C.6/L.158). In that connexion, it should be noted that in the English text of the amendment the word "or" in the penultimate line should be replaced by "and", so as to conform with the French text.

92. The delegation of Iran had already said which of the amendments submitted by the United Kingdom it could accept. Mr. Chaumont agreed with the substitution of the words "refers to" for "provides for", in the third paragraph of the draft resolution (A/C.6/L.151). The first United Kingdom amendment in document A/C.6/L.153 had already been accepted by the sponsors of the joint draft resolution. In view of the many concessions these sponsors had made to the United Kingdom delegation, it was difficult to see why the delegation of the United Kingdom continued to give preference to the joint resolution submitted by Canada and the Union of South Africa (A/C.6/L.157).

93. The effect of that draft resolution was to defer the study of the problem until the code of offences against the peace and security of mankind had been completed. If the delegations of Canada and the Union of South Africa were not opposed to the establishment of an international penal tribunal, what danger did they see in a committee working on the preparation of one or more draft conventions or proposals on which the General Assembly could freely decide? By refusing the General Assembly the necessary working instruments, any preliminary work on the future establishment of an international penal tribunal was being obstructed. For those reasons, the delegation of France would oppose the draft resolution submitted jointly by Canada and the Union of South Africa (A/C.6/L.157).

94. Mr. BARTOS (Yugoslavia) said that he had already expressed his views on the advisability of creating an international penal tribunal; such a body would clearly have a definite contribution to make to international co-operation. The existing political circumstances and the necessary preparatory measures should be carefully studied, however.

95. In deciding upon such measures, political factors should not be neglected. There was no doubt that the creation of an international penal tribunal would impose some restrictions upon the sovereignty of the individual States, and the question therefore arose whether or not the States were willing to accept such limitations. In the opinion of the Yugoslav delegation, the present international tension left little hope of satisfactory results. If the present political tension were to diminish, the establishment of an international penal tribunal would undoubtedly be welcomed. But should that tension become more pronounced, there was no doubt that the creation of such a tribunal would increase the existing cleavage. The creation of such a court would result in widening the gulf between the nations in favour of creating that tribunal and the nations opposed to that action. Hence, premature action would not help to promote international co-operation.

96. In the second place, it must be borne in mind that, in the opinion of all States which championed respect for human rights, criminal law implied a definition of

the particular crime and of the penalty attaching to it. Before an international penal tribunal was created, therefore, the technical, and in particular the legal, conditions already existing, must be studied. The basis upon which the proposed tribunal was to function must be considered. In particular, how would it be possible to give to an international criminal court the right to create material criminal law contrary to the principle *nulla poena sine lege* and include that principle in the Universal Declaration of Human Rights?

97. Certain delegations had raised the objection that the creation of such a tribunal would be outside the terms of the Charter. Article 95 of the Charter was quite clear in that respect; the States were free to create such a body provided that in so doing they did not exceed the provisions of the Charter. Thus, the adoption of measures which might encourage the creation of such a body would not be outside the scope of the Charter, but the creation of such an organ as an organ of the United Nations would be outside that scope, because the Charter had not provided for such a court. That being understood, it remained to determine whether, in encouraging the creation of such a tribunal, the United Nations would be furthering international co-operation—a question which was purely political in character.

98. Despite all those considerations, he thought that the United Nations should study the problem, which was one of great importance. Consequently, all the draft resolutions which offered possibilities on the lines he had mentioned were acceptable. On the other hand, those which prejudged the issue and aimed at making the General Assembly create an international penal tribunal immediately, were not admissible.

99. For those reasons, the delegation of Yugoslavia would vote in favour of the joint draft resolution of Canada and the Union of South Africa (A/C.6/L.157), and, if necessary, for the draft resolution of Cuba, France and Iran (A/C.6/L.151), as a whole, since that text, although not entirely satisfactory, unquestionably represented a step forward.

100. Mr. ROBERTS (Union of South Africa), replying to the representative of the Soviet Union, said that the draft resolution presented by his delegation and that of Canada (A/C.6/L.157) in no way recognized the necessity of creating an international penal tribunal; it was limited to a proposal for postponement of consideration of the question. In point of fact, in the view of the South African and Canadian delegations, it was premature and useless, at the present moment, to discuss the question in abstract terms, when so many other problems remained to be solved. That was Mr. Roberts' reply to the question raised by the representative of France.

101. He stressed that there had been no reply to his question concerning the composition of the committee, the creation of which was proposed in the joint draft resolution of Cuba, France and Iran.

102. He requested that the joint draft resolution of Canada and the Union of South Africa should be voted on first; if it was not adopted, he reserved the right to comment in detail upon the composition of the committee proposed in the other draft resolution.

The meeting rose at 1.55 p.m.