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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. The CHAIRMAN opened the debate on part IV of the report of the International Law Commission (A/1316), drawing attention to the draft resolutions which were before the Committee.

2. The first, submitted by Cuba (A/C.6/L.126), 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 by 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 over which jurisdiction will be conferred upon that organ by international conventions;

"Considering that the International Law Commission, after an exhaustive consideration of the matter, has concluded that the establishment of such an international judicial organ is both desirable and possible;

"Noting that article VI of the Convention on the Prevention and Punishment of the Crime of Genocide provides for the possible establishment of an international penal tribunal competent to try persons charged with genocide or any of the other acts enumerated in article III, and that the said Convention is to enter into force on 7 January 1951;

"Instructs the International Law Commission to prepare a draft statute governing the establishment and functions of an international penal tribunal for the trial of persons charged with genocide or other crimes over which jurisdiction will or may be conferred upon that organ by international conventions."

3. The second draft resolution before the Committee

was that submitted jointly by the delegations of Cuba, France and Iran (A/C.6/L.151), reading 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 over which jurisdiction will be conferred upon that organ by international conventions;

"Considering that after a thorough examination of the question, the International Law Commission has concluded that it is desirable and possible to establish the international judicial organ in question;

"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 other acts enumerated in article III of the Convention, and that the Convention is to enter into force on 12 January 1951;

"Decides that a committee composed of the representatives of the following fifteen Member States (.....) shall meet at Geneva on 1 August 1951 for the purpose of preparing a preliminary draft convention relating to the establishment and the statute of such a court for submission to the next regular session of the General Assembly;

"Invites the Governments of the Member States to address to the Secretary-General their comments on the organization and functioning of the court and instructs the Secretary-General to transmit such comments to the committee;

"Requests the Secretary-General to convene the committee and make the arrangements necessary for its meetings."

4. Mr. GARCIA AMADOR (Cuba) said the Cuban draft resolution (A/C.6/L.126) was intended to further the establishment of an international criminal tri-

* Indicates the item number on the General Assembly agenda.

bunal. The concept of such a court was not new, for the history of that idea could be traced back to the era of the League of Nations. The *Historical Survey of the Question of International Criminal Jurisdiction* (A/CN.4/7/Rev.1), prepared by the United Nations Secretariat, emphasized that ever since the close of the First World War, great interest had been shown in the establishment of an international criminal tribunal to judge persons accused of certain crimes under international law.

5. The 1937 International Conference on the Repression of Terrorism held at Geneva under the auspices of the League of Nations had adopted two conventions, one of which provided for the establishment of an international criminal tribunal. The question had subsequently been raised in the United Nations Committee on the Progressive Development of International Law and its Codification which had decided to draw the attention of the General Assembly to the desirability of establishing an international judicial authority with competence to try certain crimes under international law.

6. The matter had come up again during the elaboration of the Convention on the Prevention and Punishment of the Crime of Genocide, for the draft conventions prepared by the Secretariat (E/447) and the *Ad Hoc* Committee on Genocide of the Economic and Social Council¹ had both contemplated the establishment of an international criminal tribunal. In 1948, at the first part of the third session of the General Assembly, the Sixth Committee had discussed the matter (93rd, 97th-100th, 128th-134th meetings) and had decided (130th meeting) by 29 votes in favour and 9 against, with 5 abstentions, to include in article VI of the Convention on Genocide the clause referring to such a tribunal.

7. In its resolution 260 B (III) the General Assembly had recognized the growing need for an international criminal tribunal and had invited the International Law Commission to study the desirability and possibility of establishing such an international judicial organ. That resolution had been adopted by 43 votes in favour to 6 against, with 3 abstentions.²

8. The International Law Commission had examined the question thoroughly on the basis of two special reports presenting opposite points of view, and had decided by a large majority that the establishment of an international judicial organ was both desirable and possible.

9. In view of those considerations, and bearing in mind that the Convention on Genocide would enter into force on 12 January 1951, Mr. García Amador felt that the General Assembly should continue to foster the progressive development of international law through the preparation of a draft statute for an international criminal tribunal.

10. After submitting the Cuban draft resolution (A/C.6/L.126), he had consulted with other delegations and was now convinced that instead of referring the matter to the International Law Commission, it

would be better to set up a committee composed of the representatives of Member States to prepare a preliminary draft convention on the establishment and the statute of such a court. For one thing, the International Law Commission was already overburdened with work. Secondly, since the draft statute would ultimately have to be approved by the General Assembly, it would be better if the original draft were prepared by representatives acting in accordance with the instructions of their governments.

11. The Cuban delegation therefore withdrew its original draft resolution (A/C.6/L.126) in favour of the joint draft resolution (A/C.6/L.151), which differed from the original proposal only as to the procedure proposed for the elaboration of the draft statute.

12. There were no grounds for considering that a decision was urgent on the political aspects of the question whether it was desirable or possible at present to establish an international criminal tribunal. Moreover, it had been the International Law Commission's task to decide whether such an action would be desirable or possible. Under the joint draft resolution, the General Assembly merely recommended the preparation of a preliminary draft convention relating to the establishment and the statute of an international criminal tribunal, without prejudice as to the desirability or possibility of establishing such a body. He thought that the availability of a draft statute would facilitate the General Assembly's task when it had to take a decision on the political aspects of the problem.

13. Mr. FITZMAURICE (United Kingdom) said his government felt that part IV of the International Law Commission's report was open to serious criticism, not so much as regards the conclusions reached, although his Government disagreed with them, but mainly as regards the method of reaching those conclusions. He was not criticizing the individual members of the Commission, for in his view the faults of part IV of the report were to be ascribed to the fact that the Commission as a whole had approached the matter from too restricted a point of view and had interpreted the question addressed to it much too narrowly and literally.

14. The International Law Commission had been invited "to study the desirability and possibility of establishing an international judicial organ for the trial of persons charged with genocide or other crimes over which jurisdiction will be conferred upon that organ by international conventions" (General Assembly resolution 260 B (III)), which to his mind implied that the Commission should study not only the desirability in principle but also the possibility in practice, of setting up such an organ. At the third session of the General Assembly at Paris, the word "possibility" had been inserted to ensure that the practical aspects of the problem, as well as the theoretical, were studied.

15. He felt that the Commission had confined itself broadly to the desirability of setting up an international criminal tribunal, and had given virtually no study to the question of the practical possibility of such an organ. Although it had discussed the report (A/CN.4/20) of one of its Rapporteurs, Mr. Sandström, which drew attention to the various practical difficulties involved in the functioning of such a tribunal, in paragraph 137 of its report, the Commission had merely said that such

¹ *Official Records of the Economic and Social Council, Seventh Session, Supplement No. 6, Report of the Ad Hoc Committee on Genocide.*

² *Official Records of the General Assembly, Third Session, Part I, Plenary Meetings, p. 851.*

difficulties had been referred to without making any suggestions for overcoming them.

16. One reason for that appeared to be that the Commission had over-simplified the matter by interpreting the term "possibility" in a restricted manner, taking it to mean the physical possibility of constituting the tribunal, whereas the General Assembly had intended it to mean the practical possibility that such a court should function. The essential question, of course, was whether after the preliminary arrangements had been made the court could function in a practical way.

17. Paragraph 139 seemed to bear out his contention, for it stated that "even if it were found that the establishment of the international judicial organ envisaged was not practicable or expedient at this time, this did not mean that it was not possible". That would seem to imply that the establishment of an international criminal tribunal was not practical or expedient at that time, and was only possible in a purely formal sense.

18. He felt therefore that the Commission had not properly understood its task. Moreover, he did not feel that the Commission had adequately explained why, after stating that it was not impossible to set up an international criminal tribunal, it had decided that such action would be both possible and desirable.

19. He thought the defects of part IV of the International Law Commission's report could also be traced to the curious view that possibility was in some sense a derivative of desirability. The reasoning of one Rapporteur, Mr. Alfaro, whose report (A/CN.4/15) the Commission had approved in substance, seemed to be that, because in the past it had been held desirable to establish an international criminal tribunal, it must be possible, as otherwise those views would not have been expressed. That was of course a complete *non sequitur*.

20. The United Kingdom delegation held that the question of desirability was dependent on that of possibility. However desirable anything might be in theory, if it was not a practical possibility, the attempt to create it could only result in failure and therefore, in the realistic as opposed to the idealistic sense, the project was not in the circumstances desirable.

21. He therefore agreed with the views of the second Rapporteur, Mr. Sandström, summarized in paragraphs 133 and 134 of the International Law Commission's report, who held that it was impossible to consider separately desirability and possibility; that an international criminal court would be desirable only if effective; and that, if found to be ineffective, it must be considered that its establishment was not desirable.

22. He was not arguing whether or not the court would be effective. His only point was that Mr. Sandström's approach to the problem had been correct, for the first step must be to consider whether the proposed court could be effective and function in a practical and useful way. Unless it would function effectively, to discuss the court's desirability would be fruitless.

23. Nevertheless, the International Law Commission seemed to have assumed desirability on idealistic ground and to have brushed aside questions of practical possibility on the basis that it was physically possible to constitute the tribunal. The United Kingdom representative thought that an unrealistic and rather un-

helpful conclusion which would not advance the cause of the international criminal court because no attempt had been made to cope with the practical difficulties of the problem. Until definite proposals were made for meeting those difficulties, little of real value could be accomplished.

24. The Commission also seemed to have concluded that the proposed court was desirable on the unusual ground that the desire for such a court had often been expressed in the past. That, however, was to confuse what was "desired" with what was "desirable". His delegation had hoped that the International Law Commission would examine the matter closely and, if it decided that the court was desirable, would give some concrete reason for its view instead of merely recapitulating previously expressed views that such a court was desirable.

25. There was little foundation for such views. Although the oft-cited Geneva Convention of 1937³ provided for the creation of an international judicial organ for the trial of persons responsible for terrorism, that court was not functioning, for it had never been set up. The fate of that Convention should be a warning against initiating projects of an idealistic character, the practical application and implications of which had never been worked out.

26. The Nürnberg and Tokyo War Crimes Tribunals were also cited in support of an international criminal tribunal, but the special circumstances in which those Tribunals had been constituted and had functioned were often ignored; they had functioned in the course of post-war occupation of the territory of a vanquished enemy. They afforded no evidence that similar tribunals could function in an ordinary country under normal peace-time conditions. Paragraph 137 of the report of the International Law Commission indicated that those considerations had been drawn to its attention. Nevertheless, although the Commission had finally decided that the proposed court would be desirable and possible, it had not explained how it proposed to meet the objections which had been raised to the proposal.

27. For those reasons, the United Kingdom delegation would vote against part IV of the International Law Commission's report, if its conclusion should be put to a vote. Without discussing the substance of the matter, Mr. Fitzmaurice said that, like Mr. Sandström and Professor Hudson, Professor Brierly and Professor Amado, he felt that the idea of an international criminal court was not a practical project; he could see no need for it at present and doubted whether it was desirable in existing circumstances.

28. Although the matter had not been given sufficient study, he did not think it should be sent back to the International Law Commission, partly because he was opposed on principle to sending matters back to the Commission, but chiefly because he thought the project was premature. If the idea of an international criminal court was ever to become a reality, he emphasized that an exhaustive study on realistic lines would ultimately have to be carried out.

29. Turning to the question of the joint draft resolution (A/C.6/L.151), he said he could not subscribe to

³ Convention for the Creation of an International Criminal Court, opened for signature at Geneva, 16 November 1937.

the second paragraph of the text for he did not feel the International Law Commission had made "a thorough examination of the question". In those circumstances, he thought the second paragraph vitiated the entire joint draft resolution.

30. It might be useful for a number of Member States to consider the problem if they reviewed the practical difficulties in the way of the functioning of an international criminal court. He feared, however, that those States would not study the question whether the creation of such a court would be desirable or possible, for the second paragraph of the draft resolution seemed to imply that their work would be done on the assumption that the International Law Commission had in fact made a thorough examination of the question, and that its conclusion that an international criminal court was both desirable and possible had been accepted. As the draft resolution stood, the proposed committee would merely have to assume that there were no practical difficulties in the way of such a project and proceed to draft a statute for an international criminal court. For those reasons, he did not feel the proposal would advance the cause of such an organ.

31. He reserved his position on the draft resolution for the moment, adding that if his interpretation of the text was correct, he would be constrained to vote against it.

32. Mr. CHAUMONT (France) intended to confine his remarks mainly to the procedural aspects of the problem, but if the Sixth Committee decided later to discuss the substance of part IV of the International Law Commission's report, he reserved the right to explain why his delegation felt that the creation of an international criminal tribunal was both desirable and possible.

33. He wholeheartedly endorsed the Commission's conclusions as set forth in part IV of its report. The position of the French Government was well known on that issue and it would continue to favour the establishment of an international criminal jurisdiction.

34. The United Kingdom representative had described certain defects in the International Law Commission's method of work, saying that it had not given sufficient study to the practical possibility of creating an international judicial organ which would function effectively. Mr. Chaumont thought, however, that it would be impossible to study those aspects of the matter adequately until such an organ had actually been put into operation. For that reason, he felt that arguments against the establishment of an international criminal tribunal could not be based on the precedent that the convention on the suppression of terrorism, which provided for such a court, had never been put into effect. The orderly procedure was to draft a statute and set up a court. It was impossible to prejudge the practical functioning of an international criminal tribunal before it was set up. He wondered what would have been the results if the same arguments had been raised against the establishment of the Permanent Court of International Justice or the International Court of Justice.

35. He hoped the United Kingdom representative would explain the practical difficulties of the project further, because the matter was not very clear. If the political differences prevailing in the world at the pres-

ent time were considered an obstacle, that argument would apply to any project the United Nations proposed to undertake. On the basis of that argument, it might be said that the efforts which were being made to combat aggression were also idealistic undertakings which did not correspond to the realities of the existing world situation.

36. The obstacles summarized in paragraph 137 of the International Law Commission's report, if considered valid, implied a condemnation of the Nürnberg trial, for the inference was that the Nürnberg precedent had been established merely because the victor had been in a position to mete out justice to the vanquished. That implication, however, completely discarded the legal justification for those trials. Moreover, the governments which favoured the establishment of an international criminal jurisdiction did so precisely because they wished to establish firm principles of international law which would avoid such criticism in future. They wished to have a court which could accomplish in peacetime what the Nürnberg Tribunal had been compelled to do in the difficult period at the end of the war.

37. As to the procedure for dealing with part IV of the International Law Commission's report, he thought the General Assembly could not merely note the Commission's views on whether an international criminal tribunal was desirable or possible. The General Assembly was compelled to recommend the establishment of such an organ not so much because of the provisions of resolution 260 B (III) but because the Convention on Genocide would shortly come into force.

38. Article VI of the Convention on Genocide provided that "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." From that text it was clear that while acceptance of the competence of the international penal tribunal might be optional, the General Assembly was compelled to set up the judicial organ in question. Those States which ratified or acceded to the Convention on Genocide were bound by its provisions to assist in the establishment of that tribunal.

39. The antecedents of article VI would explain the apparent contradiction in the General Assembly's decision to insert article VI in the Convention on Genocide, while requesting the International Law Commission to study the desirability and possibility of establishing an international judicial organ. In 1948, the Sixth Committee had decided (130th meeting) to include article VI with its mention of an international penal tribunal in the Convention on Genocide, thus reversing an earlier decision it had taken in the matter. After its original decision to omit the reference to an international criminal organ from the Convention on Genocide, the representative of Iran had introduced (98th meeting) a draft resolution (A/C.6/218) to request the International Law Commission to decide whether the establishment of such a body would be desirable and possible. When the Sixth Committee reversed its original decision, it had already adopted (99th meeting) the Iranian proposal and it was deemed unnecessary to reconsider

that decision. As a result, the General Assembly had invited the International Law Commission to study the desirability and possibility of establishing an international judicial body, despite the fact that article VI of the Convention on Genocide provided that such a body should be created.

40. The French delegation felt therefore that the proper procedure would be for the General Assembly to recommend the establishment of an international criminal tribunal, leaving it to a committee of representatives of governments to determine the respective competence of the national courts and the international organ when drafting the statute for the proposed international criminal tribunal.

41. The General Assembly should take concrete steps by elaborating a draft convention to establish the proposed body. That was the only possible procedure, for to set up such a court in the guise of a merely subsidiary United Nations organ would not be satisfactory. In that matter he endorsed the views of Mr. Sandström, which were set out in paragraphs 6 to 8 of his report (A/CN.4/20). Logically, the proposed tribunal could not be dependent upon another United Nations organ, such as the General Assembly, which could not confer upon that court a power of decision which it did not itself possess. If the proposed tribunal were set up as a principal organ of the United Nations, however, it would be necessary to consider the lengthy and complex procedure of amending the Charter. To avoid those difficulties, therefore, it would be best to set up an independent organ by means of a multilateral convention. That solution would enable States signatories to the Convention on Genocide—which were not Members of the United Nations—to participate in the proposed tribunal, and would also safeguard the sovereign rights of States. That procedure had been followed regarding the Convention on Genocide and other instruments.

42. Turning to the joint draft resolution (A/C.6/L.151), he said it had been drafted in the light of the encouraging study made by the International Law Commission on the question of international criminal jurisdiction, and suggested that a committee composed of representatives of governments should be set up to draft a statute for the proposed international criminal court. He did not intend to discuss the organization, functioning and composition of the court, although he was prepared to do so, for he felt that that should be the task of the proposed committee. He stressed that the joint draft resolution invited governments to address their comments on the problem to the committee, which was essential for the proper consideration of the whole question.

43. Those were the preliminary observations he wished to make. If the Sixth Committee were to discuss the substance of part IV of the International Law Commission's report, he would explain why from the legal viewpoint the French delegation felt it was desirable and possible to provide for a method of punishing crimes under international law, and also why his delegation felt there was no valid reason for failing to establish an international criminal tribunal at present.

44. Mr. MAKOTOS (United States of America) recalled that under resolution 260 B (III), the International Law Commission had been invited to study the

desirability and possibility of establishing an international criminal court. The Commission had replied in the affirmative to both those questions, but had decided not to recommend the establishment of a criminal chamber of the International Court of Justice—a question it had also been asked to study under the same resolution. It was now for the General Assembly to decide what action it should take on part IV of the International Law Commission's report. In his opinion, the question of the establishment of an international criminal court could not be settled *in abstracto*. Whether governments agreed or disagreed with the conclusions in the report, it was essential that a concrete text should be submitted to them before they took a final decision on the subject. He therefore agreed with the French representative that it was premature at that stage to discuss the substance of the matter. The question before the Committee was purely one of procedure as was clear from the joint draft resolution (A/C.6/L.151). That resolution did not imply any approval or disapproval of the Commission's conclusions, neither would its adoption imply any commitments, either moral or legal, on the part of governments to agree to the establishment of a court and to accept the draft convention referred to in the operative part, for governments obviously could not undertake to accede to a convention before they had seen its text.

45. It was on that understanding that his delegation was prepared to accept the joint draft resolution. He hoped that other delegations would also be able to accept it on the same understanding if a few drafting changes were made. Commenting on the remarks made by the French representative on the third paragraph of the joint draft resolution, he recalled that he had been closely connected with the preparation of the Convention on Genocide from the very outset. He had himself proposed that an international criminal tribunal should be set up to try crimes of genocide, arguing that the crime would probably be committed in circumstances which would preclude the intervention of domestic tribunals. He had not, however, interpreted article VI of the Convention as embodying an obligation to set up an international criminal tribunal. In fact, the English text did not impose any such obligation for it read "... or by such an international penal tribunal as may have jurisdiction ...". He would be interested to hear the views of other members of the Committee on that point. In any event, any objections to the third paragraph of the draft resolution could be eliminated by substituting the words "relating to the institution ..." for the words "provides for the institution".

46. He fully agreed with the sponsors of the joint draft resolution that a Committee composed of government representatives would be better suited to the task of preparing a draft convention on the subject than the International Law Commission. His attitude was based on purely practical considerations and should not in any way be interpreted as a criticism of the International Law Commission. The Commission had a great deal of work to do, and as its members acted in their personal capacity it was not appropriate to ask it to consider questions with difficult political implications. The committee envisaged in the draft resolution should be composed of government representatives representing all the different legal systems and geographical regions of the world.

47. Turning to the points raised by the United Kingdom representative, he recalled that he had himself been present at the meetings of the International Law Commission during its second session. He assured the United Kingdom representative that the Commission had thoroughly considered both the desirability and the possibility of establishing an international criminal tribunal and had certainly not confined its discussion to the mere physical possibility of establishing such a tribunal. He agreed that the establishment of an international criminal tribunal would be desirable only if it were effective.

48. The United Kingdom representative had, however, raised no positive arguments to show that such a tribunal would not be effective. He had simply dealt with the arguments in favour of such a tribunal advanced by the Commission. In that connexion, Mr. Maktos explained that, in submitting his report, Mr. Alfaro had been well aware that the Geneva Convention of 1937 had proved ineffective. It was clear from Mr. Alfaro's report (A/CN.4/15) that he had mentioned the Geneva Convention and the Treaty of Versailles simply in order to show that public opinion had long favoured the establishment of an international criminal court. The United Kingdom representative's objections to the second paragraph of the draft resolution might be met if the word "thorough" were deleted.

49. The United Kingdom representative had also referred to the argument "that the Tribunals of Nürnberg and Tokyo could function effectively only because the States which established these Tribunals were occupying the territory in which the trials took place and had the accused in their power" (A/1316, paragraph 137). He emphasized that if a government signed a convention undertaking to deliver criminals for trial to an international tribunal, they would have both the moral and the legal obligation to do so. He stressed the importance of the moral obligation underlying the legal obligation, for that was an even stronger force than the presence of occupation troops and the power of the victor over the vanquished. That question however was not important for the time being, since the Committee was not called upon to approve the conclusions contained in part IV of the Commission's report during the current session of the Assembly. He repeated that adoption of the draft resolution would not commit any Member State on the issue of the desirability and possibility of an international criminal court.

50. Mr. GARCIA AMADOR (Cuba), referring to the United Kingdom representative's comments on the third paragraph of the joint draft resolution, suggested that the words "provides for the institution" might be replaced by the words "foresees the institution". That wording would in fact be more in line with the Spanish text which read "*preve el establecimiento*".

51. Mr. CHAUMONT (France) agreed to this and said that, provided the other sponsors of the joint draft resolution were in agreement, he was prepared to delete the word "thorough" from the second paragraph, if that would meet the objections raised by the United Kingdom representative.

52. Mr. FITZMAURICE (United Kingdom) replied that he would have to reserve his position on the draft resolution as a whole at that stage. Even if the word "thorough" were deleted from the second paragraph,

the committee to be set up under the fourth paragraph would still have to hold its discussions in the light of the conclusions reached by the International Law Commission. In other words, it would not be able to discuss whether it was actually desirable and possible to establish an international criminal court and would have no option but to prepare a draft convention relating to the establishment and the statute of such a court. In his opinion, the desirability and possibility of establishing such a court had not yet been adequately investigated. That question should still be left open therefore and should at least be included as part of the terms of reference of the committee.

53. He fully agreed with the United States representative that article VI of the Convention on Genocide did not in any way constitute an obligation to establish an international criminal tribunal. It was possible that the French text implied such an obligation, but he personally had never interpreted the article in that way when the Convention on Genocide had been adopted during the first part of the third session of the General Assembly. If the French representative's interpretation had been correct, the Committee's two decisions would have been quite incompatible, for it could not have adopted provisions obliging the United Nations to set up an international criminal tribunal and at the same time have asked the International Law Commission whether it was desirable or possible to set up such a tribunal.

54. Mr. CHAUMONT (France) said there was apparently some divergence between the English and French texts of article VI of the Convention on Genocide. The French text was more emphatic than the English for it referred to "*la cour internationale qui sera compétente . . .*". He had already explained in his first statement why there had been a certain contradiction between the two decisions taken by the Sixth Committee in 1948, and what had actually taken place could be seen from the summary records.

55. That question, however, was one of interpretation and there was no need for the Committee to settle it at that stage, since no particular interpretation was reflected in the joint draft resolution under discussion.

56. Mr. ROBERTS (Union of South Africa) had intended to express full support for the views outlined by the United Kingdom representative regarding the "desirability" of establishing an international criminal court. However, noting that many new and interesting views had been expressed on the subject during the discussion, he wondered whether it might not be advisable to adjourn the meeting at that stage to give him, and perhaps other delegations as well, time to consider those views before making any statements.

57. Mr. PATHAK (India) emphasized that his remarks referred exclusively to the procedural aspect of the question and that he would express no views whatever regarding the substance, namely the desirability and possibility of establishing an international criminal court. Since his government was in no way committed in the matter, he would regard the preparation of the proposed preliminary draft convention relating to the establishment and statute of such a court as a study which his Government would be quite free either to accept or reject.

58. In the light of those observations, he would be prepared to vote for the joint draft resolution.

59. Mr. ROBINSON (Israel) said that he too would deal exclusively with the procedural aspect of the question and in so doing would address his remarks only to the operative part of the joint draft resolution before the Committee. In his opinion, the course proposed in the draft resolution would represent a next step in an investigation which was not yet complete. Under that proposal, the question would be referred to a new body which would no longer consider it in the abstract, as had been the case with the experts of the International Law Commission.

60. In that connexion, he wished to raise a few questions, the first of which was whether it would be wise to ask governments for their comments on the organization and functioning of the court before the question had been examined by the committee which it was intended should meet in Geneva in August 1951. Indeed, it was not clear on what documents or proposals governments should base their comments. Should they, for instance, base them on the report of the International Law Commission or on the conflicting reports of the two Rapporteurs whom it had appointed? Secondly, he doubted very much whether governments would have had time to determine their attitude toward any conclusions of the proposed committee if, having met in August 1951, that Committee were to refer its findings to the General Assembly in the following month.

61. In view of those considerations, he proposed that governments should not be invited to send their comments before the proposed committee had examined the question. In his opinion, the first step should be to ask the Secretary-General to prepare a preliminary draft or alternative drafts relating to the establishment and the statute of an international criminal court. The second step would be to convene the proposed committee on 1 August 1951, and the third to circulate the findings of that committee to governments and to invite them to send their comments by July 1952. The fourth and final step would be to refer the findings of the committee, together with the comments of governments, to the seventh session of the General Assembly which would then have all the necessary material to take a decision. He believed that the procedure he had outlined would represent a much more realistic approach to the problem.

62. Mr. CHAUMONT (France) explained that one of the reasons for the proposal to ask all Member States for their comments before the meeting of the proposed committee was that only fifteen of them would be represented on the committee. Furthermore, he believed that it would be most useful for the committee to work in the light of various plans and projects which might have already been prepared in the field by some governments. The French Government, for instance, had devoted much time to the problem and had elaborated very complete plans on the subject. Other governments might be in the same position and it would be advisable to give the committee the benefit of their experience and studies.

63. He feared that the suggestion of the representative of Israel that the matter should be referred only to the

seventh session of the General Assembly would defer the solution of the problem for too long. If the committee met in August 1951 and completed its work within some fifteen days, there was no reason why governments should be unable to express their views on the findings of the committee at the following session of the General Assembly. It would always be easy to include that problem as one of the last items on the Assembly agenda. In his opinion, the time factor was of secondary importance. Either governments were in favour of the proposal or they were not; if they were in favour, they would always find the necessary time to form an opinion and there would be no need for any delay. Consequently he hoped the representative of Israel would not press his suggestion on that point.

64. Mr. VAN GLABBEKE (Belgium) emphasized that he would not deal with the substance of the problem on which he wished to make the most explicit reservations.

65. In his opinion, the first exchange of views which had just taken place in the Committee had shown that the problem was not so urgent as had been alleged by some representatives. The arguments advanced by the French representative to prove that the matter was of extreme urgency were mainly based on the assertion that article VI of the Convention on Genocide, which was soon to come into force, clearly provided for the creation of an international criminal court. The discussion had shown that the article in question merely referred to the possible creation of such a court and could in no way be interpreted as binding States to set up that court. It was unfortunate that there should be any difference in wording between the French and English texts of article VI, but it was obvious that the English text was far less affirmative than the French. Consequently the interpretation given by the French representative was open to doubt.

66. Another preliminary question which the Committee might be well advised to examine would be the connexion between the codification of the principles of international criminal law and the creation of the proposed international criminal court. Indeed, if such a court were created before completion of the codification, what principles would it apply? Furthermore, there was a danger that principles which the court had not itself recognized would later be codified as part of international law.

67. In his opinion, the course advocated by the United States representative, as modified by the suggestions made by the representative of Israel, might provide a sufficient basis of agreement for progress in what was undoubtedly a most useful undertaking.

68. He wished to make it quite clear, however, that while agreeing to the procedure suggested in the joint draft resolution, his delegation would reserve its position regarding both the desirability and the practical possibility of the establishment of an international criminal court.

69. Mr. FITZMAURICE (United Kingdom) wanted, by way of a tentative suggestion, to outline a few changes which, if adopted by the authors of the joint draft resolution, might make it possible for his delegation to vote in favour of their proposal. In his opinion, those changes would not really affect the substance of the proposal.

70. The words "after a thorough examination of the question" might be deleted from the second paragraph and the words "provides for the institution of" in the third paragraph might be replaced by the expression "refers to". In the fourth paragraph, the expression "for the purpose of preparing a preliminary draft convention" could be replaced by the words "for the purpose of considering the preparation of a preliminary draft convention". He also suggested that the following words should be inserted after the word "court" in the fourth paragraph: "in the course of which full account shall be taken of the necessity that if any such court is set up it should function effectively". He agreed with the representative of Israel that the reference to the "next" session of the General Assembly should be omitted because it was doubtful whether the committee's report would be ready in time.

71. The adoption of the drafting amendments he had suggested would make it possible first to avoid prejudging the issue in any way, because the committee would be free to decide whether or not a draft convention should be prepared; and secondly to ensure that the committee would take full account of all the difficulties which the establishment and functioning of an international criminal jurisdiction would encounter.

72. Mr. GARCIA AMADOR (Cuba) said that he could not possibly accept amendments when their authors refused to undertake to accept the draft resolution even if those amendments were adopted.

73. Furthermore, to accept the United Kingdom amendments to the operative part of the draft resolution would be tantamount to accepting all the views of the United Kingdom delegation on the question. The aim of the authors of the joint draft resolution was to provide for the preparation of a draft convention relating to the establishment and the statute of an international criminal court. In proposing that course, they were acting in accordance with the findings of the International Law Commission which had decided that the establishment of such a court was both desirable and possible. In view of the United Kingdom representative's disagreement with the findings of the International Law Commission, it was interesting to note that the United Kingdom figured among the delegations which had voted in favour of asking the International Law Commission to study that question (resolution 260 B (III)).

74. In his opinion, the Committee was faced with a question of principle which involved the prestige of the International Law Commission. The General Assembly had asked the Commission for its views. The Commission had examined the question and had expressed its opinions. Under the procedure advocated by the United Kingdom representative, the General Assembly would now ask another body to re-examine the question anew. Such a decision could only be interpreted as implying that the findings of the International Law Commission were not well founded.

75. Consequently, he appealed to the co-sponsors of the joint draft resolution to maintain their view that the only task of the proposed committee would be to prepare a draft convention, and not to examine all over again whether the establishment of an international criminal court was either desirable or possible, or both.

76. Mr. CHAUMONT (France) agreed whole-heartedly with the Cuban representative. He might possibly consider the drafting changes proposed by the United Kingdom in connexion with the preamble to the draft resolution, but he could not agree to his suggestions concerning its operative part, for their adoption would completely change the meaning of the proposal. It had been emphasized during the recent discussion on the formulation of the Nürnberg principles that the International Law Commission should not be asked to do the same work all over again. The United Kingdom representative was now proposing that the Committee should go much further and ask an entirely new body to reconsider the work of the International Law Commission. He wished to emphasize once more that it was impossible to form any opinion regarding the possibility of establishing an international judicial organ and of its functioning, without examining a draft statute for such a court. He had no objections to the amendments to the preamble suggested by the United Kingdom representative.

77. He might accept the suggestion made by the delegation of Israel that the Secretary-General should be asked to submit a preliminary draft or alternative drafts of such a statute. No such request had been made in the joint draft resolution because the Secretariat had already made such a study (A/CN.4/7/Rev.1). Nonetheless, if the representative of Israel felt that another study might be desirable in the light of the discussion in the Sixth Committee, Mr. Chaumont would have no objection to requesting it.

78. Mr. VAN GLABBEKE (Belgium) said that the International Law Commission—a Commission composed of legal experts—had examined and given its opinion on the purely juridical aspect of the question. Whether representatives agreed or disagreed with that opinion, it would be difficult to ask for the views of another body on exactly the same aspect of the question.

79. He believed, however, that when referring to the possibility of the creation of an international criminal court as opposed to its desirability, the United Kingdom representative had in fact been referring to the political aspect of the question as opposed to the purely juridical. Considering that the International Law Commission had examined the juridical side, there was no reason why the practical aspects, or rather the political implications, should not be considered by another body. Consequently, he agreed with the proposal that that aspect of the question should be referred to the proposed committee which would examine the various difficulties which the establishment and functioning of an international criminal jurisdiction would encounter, and how those difficulties could be overcome. The committee should be left completely free to examine the question and the issue should not be prejudged in any way. He felt sure that the International Law Commission would have no objection to such a course because it would certainly realize that the proposed committee would not be reconsidering the Commission's opinion, but would be examining an entirely different aspect of the problem.

80. Mr. ABDOLAH (Iran) said it would be useful for the authors of the joint draft resolution to consult to the various remarks which had been made during the discussion and with other representatives, in the light of

cussion. He thought that they might later be able to submit a draft resolution which would be acceptable to all.

81. Mr. ROBINSON (Israel) was glad to note that the authors of the joint draft resolution had rallied to his point of view in some respects. They seemed to agree, for instance, that the Secretary-General should be asked to prepare a preliminary draft or alternative draft conventions relating to the establishment and the statute of an international criminal court. He still believed that the proposed committee would be unable to submit its findings to the sixth session of the General Assembly if it met only in August 1951, but if it were to meet earlier, in April 1951 for instance, it might be able to do so.

82. As for the comments of governments, they were always welcome and he would have no objection to governments' being asked for their comments before the committee began its work, provided that they would also have the right to submit their comments after the completion of the committee's work. That should be made quite clear in the draft resolution.

83. Mr. MAURTUA (Peru) said that, like the other speakers, he would refrain from entering into the detailed substance of the question. He agreed with the views expressed by the representative of Israel and emphasized that the Committee should adopt a systematic approach to the subject. The basic problem was to decide what laws the proposed international criminal court would apply once it had been established. Was there any codified law it could apply or would it have to base its judgments on recognized precedents and customary law? That question was vitally important and it should be settled in the early stages before the court itself was set up. In that connexion, he recalled that it had appeared from the discussions on part III of the Commission's report that, while reaching various conclusions, the International Law Commission had failed to define what was meant by a crime under international law. As a result, some of the aspects of the Nürnberg trials had remained controversial issues during the discussions in the Sixth Committee.

84. The Convention on Genocide had been mentioned as part of the law which an international criminal court would apply, but that Convention covered only a portion of the crimes under international law. Unfortunately the Geneva Convention of 1937 had never come into effect, and the rules laid down at the trials of Nürnberg and Tokyo had not been embodied in any international convention. The draft statutes prepared by various technical organs which were mentioned in paragraph 136 of the report could only be regarded as examples and not as any positive contribution to international law. Hence the Assembly's request to the International Law Commission to consider the desirability and possibility of setting up an international criminal court. The Commission had decided that it was both desirable and possible to set up such a court, but it remained to be seen whether all the relative factors had been duly taken into account. An international criminal court could not be set up until some definite rules had been established governing its procedure, and the establishment of such rules depended upon the willingness of States to give up their jurisdiction in favour of an international jurisdiction.

85. The question of establishing an international crim-

inal court opened up a wide field for speculation, and the Organization of American States had been studying the question ever since 1890. The attempts of that Organization to establish an inter-American court of justice, although unsuccessful as yet, should prove of great value to the United Nations when it came to take its final decision on the establishment of such a court.

86. In conclusion, he supported the joint draft resolution in principle, but felt that some drafting changes would be appropriate. He agreed with the representative of Israel that the committee to be set up under the joint draft resolution should work on the basis of a study prepared by the Secretariat. It was important that governments should submit their comments on general aspects of the question, but that alone would not suffice, for where such an important convention was concerned, governments should always have the last word.

87. Mr. BARTOS (Yugoslavia) referred members of the Committee to Article 1 of the United Nations Charter which clearly stated that one of the purposes of the United Nations was "to be a centre for harmonizing the actions of nations" in the attainment of their common ends. That provision should always be borne in mind when discussing the possibility of creating an international organ which would serve the purpose of harmonizing the actions of nations. If such an organ were set up outside the United Nations, that would be a violation of Article 1 of the Charter.

88. In his opinion, it was necessary to decide first on the exact basis which would underlie such an international criminal court and also on its exact competence. Indeed, the Peruvian representative had rightly pointed out that there was as yet no positive international law on the subject. Consequently, he believed that it was essential first to examine and decide upon the exact competence of the court and only then to discuss its creation.

89. He wished to make it quite clear that he was in favour of the creation of such a court which would satisfy an international need. However, he felt that the joint draft resolution, as it stood, presupposed that such a court would function. That, however, could not be decided before its exact competence had been clearly determined. In his opinion, the proposed committee should discuss the court's competence and also examine how its creation could be brought into line with the existing provisions of the Charter.

90. Mr. LIANG (Secretary of the Committee), in reply to a question asked by the United States representative, said that it would be very difficult to arrange for the proposed committee to meet at Geneva at the same time as the International Law Commission which was meeting on 15 May 1951 for a period of twelve weeks. Consequently, he thought it would be virtually impossible for the committee to meet before 1 August.

91. Mr. MAKTO (United States of America) said that in view of the statement made by the Secretary of the Committee, he agreed with the representative of Israel that the proposed committee should submit its findings to the seventh session of the General Assembly, and not to the sixth as proposed in the draft resolution. Referring to the statement made by the Peruvian representative, he agreed that it would be useful for the proposed committee to examine the question of the court's competence.

The meeting rose at 5.50 p.m.