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# 1953 COMMITTEE ON INTERNATIONAL CRIMINAL JURISDICTION

## SUMMARY RECORD OF THE TWENTY-FIRST MEETING

Held at Headquarters, New York,
on Tuesday, 18 August 1953, at 9.30 a.m.

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| Rapporteur: | Mr. RÖLING | Netherlands |
| Members: | Mr. LAUREL | Argentina |
| | Mr. LOOMES | Australia |
| | Mr. DAUTRICOURT | Belgium |
| | Mr. WANG | China |
| | Mr. SAMI | Egypt |
| | Mr. MERLE | France |
| | Mr. ROBINSON | Israel |
| | Mr. MAURTUA | Peru |
| | Mr. MENDEZ | Philippines |
| | Mr. VALLAT | United Kingdom of Great Britain and Northern Ireland |
| | Mr. MAKTOS | United States of America |
| | Mr. PEREZ PEROZO | Venezuela |
| | Mr. BOZOVIC | Yugoslavia |
| Secretariat: | Mr. LIU | Secretary of the Committee |

CONSIDERATION OF THE IMPLICATIONS AND CONSEQUENCES OF ESTABLISHING AN INTERNATIONAL CRIMINAL COURT (continued)
METHODS BY WHICH AN INTERNATIONAL CRIMINAL COURT MIGHT BE ESTABLISHED (A/AC.65/L.4/Rev.1) (continued)

Mr. MAKTOS (United States of America) recalled that the Committee had decided, at the previous meeting, to postpone the vote on his proposal that the existence of the court should be conditional on the conferment of jurisdiction by a certain number of States.

Mr. RÖLING (Netherlands) said the Committee should first reach a decision on the implications and consequences of the court's establishment.

The CHAIRMAN invited discussion on the implications and consequences of the establishment of an international criminal court.

Mr. VALLAT (United Kingdom) stressed that the Committee's main function was to study the consequences of the establishment of an international criminal court and to state whether, in its opinion, likely developments justified the establishment of the court at the moment. The submission of an adverse recommendation to the General Assembly would not imply that the project had been finally abandoned, but the point was whether the ideal should be pursued irrespective of circumstances or whether unjustified haste, which would only diminish the chances of success, should be avoided.

In keeping with its terms of reference the Committee had revised the draft statute prepared by the Geneva Committee. The revised text was not intrinsically bad and even contained some excellent provisions, such as article 38, which defined the rights of the accused, and the amended article 33 concerning the committing chamber. The statute was like a well constructed theorem. Unfortunately the premises on which it was based had not been proved. The most basic problems remained unsolved.

Some of the problems had been outlined by Sir Frank Soskice at the opening meeting of the Geneva Committee. Firstly, it was very probable that most persons accused of crimes under international law would be government agents

or leaders of revolutionary forces. The international criminal court would probably be unable to bring those persons to trial. Surely it would then appear to be obviously incapable of carrying out its functions. He wondered what procedure the court would adopt, for instance, with regard to the admissibility of evidence and testimony, and how sentences would be carried out. Sir Frank Soskice had added that it might be difficult to find competent judges to sit on the court.

He referred to the comments submitted by his Government on 5 June 1952 (A/2186) which Mr. Fitzmaurice had reiterated at the 321st meeting of the Sixth Committee. His Government considered that the preparation of a draft statute did not mean that the establishment of an international criminal court was desirable or that such a court could fulfil its functions effectively.

Firstly, the main flaw in the Geneva text was that the consent and co-operation of States were presumed. Their consent was essential, independently of the statute, for the conferment of jurisdiction, while both their consent and their active co-operation were necessary for the court to be able to function. In the absence of any universally recognized international authority wielding sufficient power, there was no other method of making sure that an international criminal court could function. His Government did not think that the necessary consent and co-operation would be forthcoming.

The court's main function would probably be to try persons accused of war crimes and of crimes against humanity. War crimes were not frequent enough to justify the establishment of a permanent international tribunal, particularly as other competent judicial bodies existed, such as national military tribunals and ad hoc international tribunals. It was not certain that a permanent international criminal tribunal would be in a better position to deal with war crimes.

The court would accordingly be expected to deal mainly with breaches of world peace and with crimes against humanity. But those crimes were almost invariably committed by persons acting in their capacity as public officials; and such persons could only be tried by the court in the event of a war ending with the total defeat and occupation of the State in question, or after a victorious revolution. Obviously therefore an international criminal court would exercise its jurisdiction only under fortuitous circumstances which would occur but rarely. Hence his Government considered the establishment of a permanent international court to be unjustified.

The draft statute did not explain how the court could summon witnesses, require the production of evidence or enforce its decisions. It therefore ran the risk of suffering the same fate as the tribunal established by the 1937 Convention for the Prevention and Punishment of Terrorism, the fate of remaining a nullity.

It should also be noted that the Geneva Committee's report categorically rejected all proposals to impose obligations on States under the statute itself.

His Government considered that, it being evident that an international criminal court could not exist unless States assumed very specific obligations, those obligations should be defined in the actual statute of the court. If States refused, it had to be concluded that the conditions essential for the court to exercise real jurisdiction did not yet exist.

He recalled the unfavourable opinions, doubts and differences of opinion expressed by the various States. Of the eleven governments which had submitted written comments, only four supported the establishment of an international criminal court unreservedly at the moment. On many occasions the United States representative had expressed the fear that only two or three States might become parties to the statute; and the Israel representative's sound advice had been that the Committee should seriously consider whether, for the time being, the idea of establishing an international criminal court should be dropped.

The Belgian Government had argued (A/AC.65/SR.5) that the very existence of an international criminal court would be a factor in the maintenance of peace. He felt, on the contrary, that a court which existed only in name would produce contempt for international institutions and even for international law.

It had also been said that an international criminal court would further the development of international criminal law. That might be so if a more or less recognized doctrine of international criminal law already existed. In point of fact, as several members of the Committee had admitted, international criminal law hardly existed at all at the moment; it existed to such a small extent that it had even been suggested that any idea of customary international criminal law should be excluded from the court's jurisdiction. Nor could there be any question of conferring legislative power upon the court. Hence the inevitable conclusion was that the court's decisions would carry very little weight.

He discussed some of the articles of the draft statute. Articles 15 and 22, dealing with the occupations and emoluments of judges, were not likely to attract the services of the most competent judges. Indeed, since the remuneratic of judges was purely nominal only jurists who also had other functions elsewhere could be considered, and they would probably not be very much inclined to apply for seats on the international criminal court. Article 24 left it entirely to the court to prescribe its rules of procedure and the principles governing the admission of evidence. That provision was by itself sufficient to make governments wary of the court. Article 26, dealing with the conferment of jurisdiction, stated the undeniable principle that the consent of States was essential for the conferment of jurisdiction, but it also showed no less clearly that very few States were at the moment prepared to confer jurisdiction upon an international criminal court. If jurisdiction was conferred, he wondered what the court's real powers would be. At first sight adequate powers were guaranteed by articles 40 and 42. But the right to order investigations and to issue warrants of arrest was useless if the means of enforcing those decisions were not provided. Under article 31 the means were left to the discretion of States. The latter also retained control over the court in regard to the imposition of penalties, to which article 32 referred. Those arguments clearly showed that the questions raised by the United Kingdom representative in the Geneva Committee still remained unanswered.

Reference had been made, inter alia, to the precedent of the court of the European Coal and Steel Community. The comparison was invalid, because that Community consisted of States which, for reasons of patent common interest, had unreservedly agreed to a restriction of their sovereignty. Moreover, that court was called upon to deal with facts altogether different from the crimes to be dealt with by an international criminal court, and the penalties provided were also quite different in nature.

He concluded that it would be premature to establish at the moment an international court which would accomplish nothing. The establishment of such a court would only make sense when governments were prepared to co-operate with it effectively. When that time came, it would be apparent that the Committee's work had not been in vain.

Mr. MAKTOS (United States of America) thanked the United Kingdom representative for his excellent statement of the views of his delegation. He (Mr. Maktos) had stated the United States delegation's views before but wished to reply to some of the objections raised by the United Kingdom representative.

The United States proposal did not involve establishing the court at that moment or, at least, it did not contemplate its establishment until a sufficient number of States had shown themselves willing to recognize its jurisdiction. The objection that the court would be unable to try persons guilty of crimes under international law was valid only if States did not recognize the court's jurisdiction. Moreover, if the method of establishing the court by General Assembly resolution followed by conventions was adopted, the objection appeared to apply, not to the binding force of the statute, but to the value of international conventions in general. If the States kept their word there would be nothing to prevent them from giving affect to the court's decisions.

Unlike the United Kingdom representative, he considered the chief merit of the draft statute to be that it involved States in no obligations. Since it was acknowledged that no international agreement was possible without the consent of States, the texts proposed should take that fact into account; indeed, it was for that reason that the United States delegation proposed that no international criminal court should be established until such consent had been obtained.

Since the establishment of ad hoc international military tribunals was admitted, he did not see why the idea of a permanent international tribunal should be rejected. Furthermore, the rarity of war and of the crimes arising out of it was not a reason for not providing for such eventualities.

With regard to the procedure for the production of evidence, a State would plainly not seize the court unless it was in possession of evidence satisfactory at least to the committing chamber. The application of the penalty, and of the court's other decisions, would be provided for not by the statutes but by the international conventions. In addition, the omission of obligations from the statute had the advantage of allowing States to recognize the court's jurisdiction over specified matters. It was obviously impossible to include in the statute a series of obligations which would be acceptable to all States.

If four States out of eleven approved the establishment of an international criminal court, that would be a considerable proportion. The diversity of the views expressed was in itself another argument in favour of a statute that imposed no obligations. He had pointed out earlier that, if the convention method was used, only three of four States might approve the establishment of the court; but if the court was established by a resolution of the General Assembly, followed by the attribution of jurisdiction by convention, his observation would not apply.

Like most other arguments advanced by the United Kingdom representative, that put forward in opposition to the Belgian view plainly presupposed an absolute refusal by all States to confer jurisdiction upon the court.

He did not think that the rules relating to the bench were such as to discourage eminent jurists from serving; membership of the court would, after all, be a great honour. For that matter, the members of the International Law Commission were in a similar position, yet that body had never lacked competent jurists. As to the objection to article 24, he considered that valid principles of international criminal procedure existed. The criticism levelled at articles 26, 32 and 42 of the statute was invalidated if provision was made for the conferment of jurisdiction by convention and if the effective establishment of the court was made subject to the consent of a certain number of States.

Lastly, he did not see in what way the absence of precedents was an objection to the establishment of the court. On the contrary, it seemed perfectly reasonable to submit to States a scheme which, to a greater or lesser degree, they would be willing to put into execution.

Mr. MERLE (France) thanked the United Kingdom representative for his statement, which had defined his Government's attitude and at the same time clearly expressed the principle that, if the Committee considered the establishment of the court inadvisable, it was its duty to record that view. The United Kingdom representative had opposed the attitude adopted by France, which in many respects was close to that of Belgium and the Netherlands. He wished accordingly

to stress that the French Government had no intention of seeking to attain an ideal without taking political and practical realities into account. It desired a progressive development, only to be realized by using the method of conventions conferring jurisdiction, flexible instruments which eliminated all conflict between idealism and realism.

The United Kingdom representative had noted that the draft statute created no direct obligation. He (Mr. Merle) regretted that omission, especially with regard to the assistance to be rendered to the court by States. As to the parallel with the body set up in 1937, for the prevention and punishment of terrorism, the Hague Convention had, in 1907, provided for a court of arbitration which had never sat; but that had not prevented the Permanent Court of International Justice from being established, and functioning, a few years later.

Lastly, it had been argued that in practice the court would have very little to do. Far from being a drawback, such a situation would be ideal. But, in any case, such a consideration was no argument against the court's establishment, any more than the hope that fires would not break out was an argument against the formation of fire brigades.

On the contrary, the court would have a great part to play and much work to do in the prevention and punishment of "minor" crimes, and of international offences at present subject to domestic prosecution such as terrorism, traffic in women and children, traffic in narcotic drugs, and piracy. In the prevention and punishment of war crimes in particular France, like Belgium and the Netherlands, possessed special experience. The United Kingdom had dealt with war crimes under one single law of the Allied Control Commission. There would have been advantages in being able to submit the different decisions delivered in the four zones of occupation to a supreme organ for appeal or cassation. The special experience gained by the other three countries, which had tried war crimes under their national law, showed the potential value of an international criminal jurisdiction so far as the unification of the law applicable, standardization or equalization of penalties, and improvement of the administration of justice were

concerned. Besides being of great utility in the prevention and punishment of "minor" crimes - the most numerous - the international criminal court should also be empowered to try "major" crimes, though perhaps only at some future date. Such a delay, however, should not be an argument against preparing the necessary instrument, which should from the outset be drafted in flexible form.

Lastly, while he regretted in particular that the draft statute contained no provision for the automatic assistance of States and that it provided for clemency, he would vote for the principle that the establishment of the court was desirable.

Mr. MENDEZ (Philippines) observed that the Philippine delegation, which believed in an international criminal court even if it were nothing more than the symbol of an ideal, had proposed the establishment of a criminal chamber within the International Court of Justice, a solution which would have resolved certain basic difficulties. The chief difficulty, at the moment, was that crimes had not been defined. In that connexion, opinions had been given by Mr. Biddle in the Bulletin of the Department of State of the United States of America, dated 24 November 1946, and by Mr. Donnedieu de Vabres on pages 24 and 25 of his publication concerning the Nürnberg trial. Judge Biddle had said that the rules of land warfare adopted by the Hague Convention in 1907 "did not so much create new law, as formulate for more effective application a definition of those pracrices which had already been outlawed for many generations by most civilized nations." On the same point Professor Donnedieu de Vabres had said: "In effect a criminality does not result from the Hague Convention, but rather from common law." According to him, in no place did the Hague Convention qualify transgressions of its provisions as criminal. Courts martial which sentenced persons for transgressions were domestic military courts which had nothing to do with international criminal

jurisdiction. At that trial - and for the first time in the history of international criminal law - the principle of individual liability had been introduced. Some persons had criticized that innovation because it was intended to have retroactive effect. Others had pointed out that the court itself had only given a very vague definition of some crimes not found in common criminal law or had defined them simply by naming them. It was reasonable inference that, contrary to previous allegations made before the Committee, not only did the Hague Convention not contain legal definitions of crimes, but also the charter as well as the judgment of the Nürnberg Tribunal did not assume the responsibility of formulating definitions.

Another difficulty was that the court had no effective authority to enforce its decisions. Responsibility for the enforcement of its decisions was to be vested in States. While the court would provide some safeguard against international criminality, it could not perform its proper functions if it lacked effective authority and was unable to rely upon precise definitions of crimes. If the United Nations should develop the original idea of an armed force of an international character to enforce world order, it might be possible to establish a criminal court capable of giving orders that would be executed on its own authority rather than left completely in the hands of sovereign States.

It was unfortunate that, with respect to the revision of judgments, the statute had departed from the provisions of the Statute of the International Court of Justice; actually, the procedure was essential in criminal law. Another shortcoming was that, under the statute, the court's actions could be made subject to the decisions of an external body which would act on the basis of purely political considerations.

Mr. SAMI (Egypt) felt that the question of the court's competence was the very core of the problem of international criminal jurisdiction. Owing to the lack of precise definitions, and despite the most praiseworthy

motives, the court might be used for purposes which the majority of States Members of the United Nations were now unable to support. The language of articles 1 and 26 was too vague and unrealistic. The 1937 convention under which the court responsible for the prevention and punishment of terrorism had been established had at least had the merit of defining the crimes with which it was concerned.

Most civilized nations had recognized five international crimes: piracy, traffic in women and children, illicit traffic in narcotic drugs, obscene publications and the counterfeiting of currency. Some had added the destruction of submarine cables to the list. Those crimes had been the subject of numerous conventions, the object of which was to make them punishable everywhere. Hence, reciprocal rights and obligations had been established among States in respect of the offences in question. He wondered what effect the establishment of an international criminal court would have on those relationships; whether it would not upset existing rights and obligations; and whether it would not upset the very concept of international crime which had been recognized for more than a century.

In criminal law reasoning by analogy was inadmissible, and the protection of the rights of an accused person should be interpreted strictly. Precedents could not be relied on as an argument since earlier cases might have been tried irregularly; they could be used merely for purposes of interpretation. Likewise, some of the crimes mentioned in the so-called Nürnberg principles were referred to so vaguely that their definition might give rise to blackmail against some countries.

Other difficulties would arise in connexion with extradition treaties and political asylum. How could the latter principle be reconciled with that of handing an accused person over to the international criminal court?

Since the court's jurisdiction was not clearly specified in the statute and in view of the possibly disastrous consequences of that

vagueness, he felt that the words "special agreement" and "unilateral declaration" should be deleted from articles 1 and 26.

Less equitable than the much criticized Nürnberg and Tokyo tribunals, the United Nations refused to tell sovereign States what were the crimes for which their nationals might be tried, sentenced and stripped of their honour. The system contemplated might be similar in its results to that of lettres de cachet.

In conclusion, he said the court's establishment would be premature at the moment. A logical course would be to begin by codifying international criminal law and then, once that law had been accepted by the community of nations, to establish an international criminal court.

Mr. MAURTUA (Peru) stated that the Peruvian delegation had taken part in the Committee's proceedings although it did not approve the scheme as a whole. The establishment of the court would involve two problems. That of the predominance of international law presupposed the acceptance of an obligation of solidarity which, in its turn, was hampered by the notion of sovereignty, and could only be solved by the goodwill of States. International criminal law could not be the perfect expression of justice from the outset; its approach to perfection would be the accompaniment of a gradual development which took into account the complexity of the factors and the diversity of national interests. The other problem would be the status of the individual in international criminal law. The statute did not provide a sufficient guarantee of the existence of pre-established law. The Nürnberg principles were not universally accepted; the Covenant on Human Rights had not achieved practical application; so few States had as yet acceded to the Convention on Genocide that the Convention could not be regarded as having universal authority.

In those circumstances it was impolitic to go too fast or too far in the direction of restricting the exclusive jurisdiction of States; their monopoly could only be superseded by duly accepted advances.

If there was no way in which a system of positive law could be worked out, what were the practical possibilities? Firstly, the topics which could be defined by States would have to be classified. Some definitions would be universally accepted, others would be accepted by some States, others again would receive only an inadequate amount of support. At present, international criminal law defined neither crimes nor penalties; it had not advanced beyond the stage of statements of principle. In the absence of positive law, an international criminal court would be doomed to fail.

Mr. DAUTRICOURT (Belgium), who supported the positive arguments advanced by the United States and French representatives, quoted the opinion of his Government as expressed in document A/AC.65/3, paragraph 4 (a). The world had seen the Nürnberg and Tokyo special tribunals at work. In the absence of an international criminal court, similar circumstances would again produce the same situation; the world would again see the accused, and the nations to which they belonged, challenging the tribunals' jurisdiction, representing themselves as the victims of the victors' will, and boasting of their convictions for revolting crimes as though they were insignia of distinction. The existence of an international criminal court, pre-established by victor and vanquished alike, would bar any recurrence of such objectionable situations and would make for the establishment of fairer and sounder justice.

Mr. RÖLING (Netherlands) wished to reply to some objections raised by the United Kingdom representative. While it was generally agreed that the court was a worthy ideal, there was disagreement about the methods by which the ideal was to be attained. Some would prefer to wait until all the conditions requisite for the establishment of a genuine international jurisdiction equipped with full judicial powers were fulfilled. Others, in full awareness of the circumstances, sought to allow for them and to make small beginnings right away, and to wait no longer before taking the first steps along the road to the establishment of an authority that would be above States.

International criminal law might not as yet be so clearly defined as national criminal law. There was, nevertheless, a body of law which was not negligible, since it had made possible the trial of thousands of cases and had led to numerous convictions. The court would help in interpreting and defining that law.

As to procedure, the court, once it had been established, would be best qualified to lay down, in advance, the rules to be applied; in doing so, it would endeavour to reconcile the ideas of the different systems of law, particularly in the matter of evidence.

The parallel drawn with the European Coal and Steel Community was interesting, because it answered the objections of those who held that no government would agree to its nationals being tried by any tribunal other than a national one. A practical reply had been given. The high authority in the European Coal and Steel Community, as a judicial organ, was able to impose fines so heavy as to bring about what was nothing less than the civil death of certain offenders. It therefore possessed genuine international criminal jurisdiction.

The Committee's function was research and investigation: it should confine itself to indicating the various possible methods, their pros and cons, and their implications. The Committee should do no more than lay a foundation for the discussions of the General Assembly, by drafting a number of alternative texts. That had been the point of view expressed in paragraph 17 of the Geneva Committee's report (A/2136).

Mr. BOZOVIC (Yugoslavia) thought it more important to settle certain points - such as the number of States whose approval would be required for establishing the court - or to state what business was actually likely to come before the court, than to discuss how it would be set up. Its establishment was legally possible. Its desirability was rather more doubtful. In theory, the court might exercise a favourable influence upon the maintenance of peace. In practice, the present situation was such that the decision should preferably be postponed. However, although a good many problems remained to be solved, the work accomplished would mark a valuable stage in an evolution which had to be gradual.

Mr. VALLAT (United Kingdom) wished to reply to certain observations to which his statement had given rise. He noted with satisfaction that, generally speaking, the observations of the members of the Committee definitely showed that they felt that progress towards the establishment of an international criminal court had to be cautious. The debate had mainly dealt with the desirability of establishing an international criminal court immediately. Opinions differed sharply on the point, but he was bound to say that if, as had been stated, the existence of the court were to depend on acceptance of its statute by the States, and if its work demanded the consent and active co-operation of the States, it was doubtful how advisable it was to build an edifice upon mere assumptions.

It had also been said that, by establishing the court by a resolution to which its statute would be annexed, one could avoid making the court an "empty shell". It was to be feared that, in such a case, the statute would exist only on paper. Now that the work of the 1951 and 1953 Committees had been completed, it was for the States to say whether they wished to follow up the work undertaken by the Committee.

Mr. MERLE (France) thought that, when submitting the draft statute of the court to the General Assembly, the Committee should state which of the alternative texts it preferred.

The CHAIRMAN pointed out that the Committee had always so intended.

Mr. DAUTRICOURT (Belgium) said that his Government's views concerning the method of the court's establishment closely resembled those set forth in the Israel working paper (A/AC.65/L.4/Rev.1). He wished to describe them more fully so that the Committee might determine to what extent they coincided with those of the Israel Government. Accordingly he referred to his Government's observations (A/AC.65/3). The court could only be established, and have jurisdiction conferred upon it, under the auspices of the United Nations and by means of a convention as

provided in the Charter. But it was desirable that the international criminal jurisdiction should not be organically linked with an essentially political institution. Everything possible should be done to promote the independent existence and operation of the court in such a way as to avoid repeated or constant intervention in its affairs by the United Nations. While he had, as a working assumption, agreed to alternative texts being drawn up providing for the establishment of the court by a resolution of the General Assembly, or even the adoption of its statute by the Assembly, he had since been compelled to conclude that such a method implied the permanent existence of undesirable organic and functional ties between the court and the United Nations. The Belgian Government therefore only contemplated the establishment of the court by the exclusive means of a convention and in the following stages: (1) decision of the General Assembly of the United Nations to convene a conference of plenipotentiaries to draft the final text of and sign the convention relating to the statute of the international criminal court; (2) recommendation to the governments taking part in the conference to take into account the draft statutes submitted by the 1951 Committee and the 1953 Committee; (3) request to the Secretary-General to make the necessary arrangements for calling the conference; (4) request to the Secretary-General to suggest to the governments of all States, whether Members of the United Nations or not, that they should take part in the said conference of plenipotentiaries. The same procedure had been followed in the case of the Convention relating to the Status of Refugees.

Mr. ROBINSON (Israel) explained why his delegation had submitted working paper A/AC.65/L.4/Rev.1, which might serve as a basis for a General Assembly resolution if the Assembly decided to establish the court by a convention. The document should be annexed to the Committee's report. He submitted a formal proposal to that effect.

Mr. MAKTOS(United States of America) asked the Israel representative whether his working paper did not seem incompatible with a resolution of the General Assembly to which would be annexed the statute of the international criminal court, i.e. with the proposals in the working paper previously submitted by the United States.

Mr. ROBINSON (Israel) agreed that his proposal differed appreciably from that of the United States in that the final text of the court's statute would not be drawn up by the General Assembly, but by the conference of plenipotentiaries.

Mr. BOZOVIC (Yugoslavia) remarked that the working paper submitted by Israel was based on the assumption that the Committee had declared itself in favour of establishing the court by a convention. But certain members of the Committee, particularly the Netherlands representative, did not think the Committee should decide how the court should be established.

Mr. MAKTOS (United States of America) thought that the working paper submitted by Israel should not be annexed to the report, since undue importance would then be conferred upon it.

Mr. RÖLING (Netherlands) shared the opinion of the representative of the United States. The Israel representative might agree that the text of his working paper should appear in that chapter of the report dealing with the method of establishing the court.

Mr. ROBINSON (Israel) agreed, and withdrew his propcsal. However, he submitted the following new proposal, upon which he asked the Committee to decide:

"The 1953 Committee on International Criminal Jurisdiction considers that the best method of establishing the international criminal court would be by means of a convention prepared by an international diplomatic conference".

Mr. PEREZ PEROZO (Venezuela) asked the Israel representative whether his plan referred to a conference held under the auspices of the United Nations. If that were the case, it should be specified.

Mr. ROBINSON (Israel) replied that the working paper submitted by his delegation specified that the conference would be held under the auspices of the United Nations. However, he saw no objection to adding the words "convened under the auspices of the United Nations" to the text he had just submitted to the Committee.

Mr. PEREZ PEROZO (Venezuela) supported the Israel representative's motion. Nevertheless he wished to recall his Government's view that the court should be set up as a main organ of the United Nations. That would add to its status and give it great stability. However, such a step would require an amendment to the Charter, which was out of the question under the present circumstances. Further, the Venezuelan Government thought that to set up the court by a resolution of the General Assembly would be unconstitutional. Finally, in the view of his Government, the setting up of the court as a subsidiary organ of the United Nations was not desirable, since its function was to administer justice and not to maintain international peace and security. For want of a better method, the Venezuelan delegation considered it desirable to set up the court by convention, leaving the task of drafting its statute to a diplomatic conference. The States could thus make reservations to the convention if required. For that reason the Venezuelan delegation supported the Israel proposal. He also wished to make it clear that his delegation's position did not imply that it was convinced of the necessity of setting up an international criminal court. Indeed, it considered that international penal law was not yet sufficiently developed and sufficiently well defined to justify the setting up of an organ which would affect the national sovereignty of States.

At the present time States seemed disinclined to renounce even part of that sovereignty. Finally, the working of the court might cause friction between States thereby endangering international peace instead of helping to maintain and strengthen it.

Mr. BOZOVIC (Yugoslavia) asked the Israel representative if he considered that the best method of setting up the court was that which he was recommending in spite of the fact that the recommendation of the General Assembly might not obtain a two-thirds majority.

Mr. ROBINSON (Israel) replied that the problems to be solved, i.e. the method of setting up the court and the relationship between the court and the United Nations Organization, were questions of principle. The machinery needed to put these principles into practice remained to be decided.

Mr. VALLAT (United Kingdom) thought that the decision to be taken by the Committee was of capital importance. As several members were absent, it might be advisable to defer the vote so that all the members of the Committee could take part.

Mr. ROLING (Netherlands) confessed that he was hesitant in committing himself on the Israel proposal. The Committee should not take decisions on the political level, but only express its views. It was for the General Assembly to decide the method of setting up the court. It was for that reason that he had suggested that the Israel working paper should appear in the body of the report.

The CHAIRMAN thought it was difficult for members of the Committee to disregard political considerations entirely. The absence of some members should not delay the work of the Committee.

Mr. RÖLING (Netherlands) put forward a formal motion that the Committee should not reach a decision on the Israel proposal.

Mr. PEREZ PEROZO (Venezuela) considered that the Committee should decide on that proposal and thus suggest a solution to the General Assembly.

Mr. BOZOVIC (Yugoslavia) supported the Netherlands motion.

Mr. VALLAT (United Kingdom) thought it would be regrettable if the 1953 Committee failed to reaffirm the view of the 1951 Committee.

The CHAIRMAN put to the vote the Netherlands motion that the Committee should not come to a decision on the Israeli proposal.

The motion was rejected by 9 votes to 3 with one abstention.

The CHAIRMAN put to the vote the Israel proposal: "The 1953 Committee on International Criminal Jurisdiction considers that the best method of establishing the international criminal court would be by means of a convention prepared by an international diplomatic conference convened under the auspices of the United Nations."

The motion was adopted by 8 votes to 2 with 3 abstentions.

Mr. GARCIA OLANO (Argentina) explained his vote. He had abstained from voting on the Israel motion in order to show his support for the Netherlands motion.

Mr. LOOMES (Australia) explained his vote. Although Australia maintained its preference for an international criminal court set up as a main organ of the United Nations by amendment of the Charter, it recognized that under present circumstances it was impossible to amend the Charter to that effect. The Australian delegation had therefore associated itself with the Israel proposal.

Mr. VALLAT (United Kingdom) stressed that his vote in favour of the Israeli proposal did not imply that the United Kingdom Government favoured setting up an international criminal court or convening a diplomatic conference.

The CHAIRMAN pointed out that the Committee had still to decide on the proposals put forward by the United States delegation in the document it had just circulated. Those proposals referred mainly to drafting matters. It might be that other delegations had proposals of that nature to submit to the Committee.

Mr. RÖLING (Netherlands) considered that article 27, paragraph 2 would be more suitably placed in article 26, relating to the conferring of jurisdiction; it might form paragraph 4 of that article.

It was so decided.

Mr. ROBINSON (Israel) considered that the questions raised by the United States delegation could be settled directly between the United States representative and the Rapporteur.

Mr. RÖLING (Netherlands) did not agree that the United States delegation's proposals referred only to drafting questions. The Committee had to make a decision on a terminological matter of some importance.

Mr. MAKTOS (United States) said that he was reserving the right to submit to the Committee later on a proposal relating to the number of States which would have to confer jurisdiction on the court so that its statute could enter into force. That proposal would affect article 1.

Mr. ROBINSON (Israel) pointed out that several questions remained to be solved, particularly the official languages in which the statute should be drafted, the reservations to the convention, and the organ which would be competent to interpret the statute. Perhaps it could be mentioned in the report that the Committee had left the task of settling these questions to the diplomatic conference.

Mr. DAUTRICOURT (Belgium) said that the question of the language in which the proceedings of the Court were to be conducted also remained to be settled.

Mr. LOOMES (Australia) indicated his general agreement with the views of the United Kingdom as expressed during this meeting, and reserved the right, if considered necessary, to make a general statement when the report was discussed.

Mr. DAUTRICOURT (Belgium) reserved the right to make a statement at a later date about the deletion of article 53 of the statute, referring to the review of the court's findings.

The meeting rose at 1.15 p.m.