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COMMITTEE ON INTERNATIONAL CRIMINAL JURISDICTION

First Session

SUMMARY RECORD OF THE THIRD MEETING

held at the Palais des Nations, Geneva,
on Friday, 3 August 1951, at 9.45 a.m.

CONTENTS:

Present:

Chairman:	Mr. MORRIS
Members:	
Australia	Mr. WYNES
Brazil	Mr. AMADO
China	Mr. WANG
Denmark	Mr. SÖRENSEN
Egypt	MOSTAFA Bey
France	Mr. de LACHARRIERE
Iran	Mr. KHOSROVANI
Israel	Mr. ROBINSON
Netherlands	Mr. RÖLING
Pakistan	Mr. MUNIR
Syria	Mr. TARAZI
United Kingdom of Great Britain and Northern Ireland	Mr. GORDON
United States of America	Mr. MAKTOS
Uruguay	Mr. PINEYRO CHAIN
Secretariat:	
Mr. Kerno	Assistant Secretary-General in charge of the Legal Department
Mr. Liang	Secretary to the Committee

1. GENERAL DISCUSSION (item 2 of the agenda) (continued)

1. The CHAIRMAN, requesting the Committee to continue with the general discussion, recalled that it still had to decide whether it would begin work immediately on the preliminary draft in annex I to the Secretary-General's memorandum (A/AC.48/1).

2. Mr. MAKTOS (United States of America) said that, before the Committee embarked upon a detailed examination of any of the annexes, it must first decide whether the international criminal court should be established by General Assembly resolution or by international convention, and whether it should be a permanent body or an ad hoc tribunal. It would be inappropriate to set up a sub-Committee to consider those questions, as they were important questions of policy which should be decided by the Committee itself. However, whatever the decision it should only be provisional, and subject to review by the Committee at any time in the light of subsequent discussions.

3. Mr. WANG (China), on the contrary, thought that the question as to whether the international criminal court should be appointed by resolution or by convention and whether it should be an ad hoc or a permanent body would ultimately be decided by the General Assembly. The first problem before the Committee was to decide whether it should submit to the General Assembly one draft only, or alternative drafts. In his opinion, the Committee could select one draft for recommendation, if it so desired, but it should submit alternatives, and it should therefore examine all the three drafts set out in the annexes to the Secretary-General's memorandum.

4. The CHAIRMAN pointed out that under General Assembly resolution 489(V) the Committee was requested to prepare "one or more preliminary draft conventions and proposals relating to the establishment and the statute of an international criminal court". The Committee could well decide during its deliberations whether it would prepare one, or more than one, proposal, but it did not need to decide forthwith.

5. Mr. WANG (China) maintained his view, on the ground that if the Committee recommended only one method of establishing an international criminal court but the General Assembly preferred another, the General Assembly would have no concrete proposal to work upon. The first task of the Committee must therefore be to take a decision on the question of alternative drafts and proposals.

6. Mr. MAKTOS (United States of America) disagreed with the Chinese representative, as the General Assembly would certainly have nothing concrete to work on if the Committee merely submitted alternative proposals and drafts without making a definite recommendation in favour of any one of them. Moreover, if the procedure suggested by the Chinese representative were adopted, much time would be lost. It would be preferable to take no decision regarding alternatives for the time being, as that could be done during the progress of the work; the draft statute, in any case, would be very nearly the same regardless of whether it was decided that the court should be set up by General Assembly resolution or by international convention.

7. Mr. AMADO (Brazil) said that in its resolution the General Assembly had laid down terms of reference for a committee consisting of the representatives of seventeen States, which was to prepare "one or more preliminary draft conventions". The first thing to be done, therefore, was to decide whether the Committee proposed to submit to the General Assembly a single draft or more than one draft.

8. Members should keep in mind that the Committee was composed not of experts acting in an individual capacity but of governmental representatives. They must examine the possibility of submitting to the General Assembly recommendations on the establishment of an international criminal court, and consider whether it appeared feasible to translate into practical reality the idealism of those who were anxious to anticipate historical processes.

9. While at the preceding meeting[1] he had had occasion to outline briefly the Brazilian Government's views on the matter, he was nevertheless prepared to play his part in the work of the Committee with a view to making a choice between the various possibilities available.

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1) Summary Record of the 2nd meeting (A/AC.48/SR.2) paragraphs 25 to 33.

10. The preliminary question was whether the Committee should concentrate all its efforts on producing a single draft, or consider several variants. It was important at the very outset to know the attitude of members of the Committee on that issue.

11. Mr. de LACHARRIÈRE (France), said that he was not yet in a position to give an opinion as to the desirability of submitting one draft or more than one draft to the General Assembly. Judging from the sceptical forecasts - which he trusted would not prove accurate - of certain members, the Committee was not even certain that it could produce a single draft.

12. Nor was he able to give his views on the manner in which the court should be set up, so long as the purpose of the court had not been defined. The natural sequence of ideas should be followed. A decision must first of all be taken on the functions that it was desired to allot to the court. To that end the Committee should begin by examining the articles of the Secretary-General's preliminary draft dealing with the jurisdiction of the court. Then, on the basis of the decisions taken on that point, it could take up the articles relating to the organization of the court, the procedure for setting it up being studied only at the third stage, in the light of the outcome of the other two questions.

13. Mr. ROBINSON (Israel) said that the Committee was evading the laws of logic; the proposals so far put forward had all put the cart before the horse. As yet, only five out of the fourteen members present in the Committee had stated the general views of their governments, and of those five three had opposed the establishment of an international criminal court. It was impossible to embark upon a detailed discussion of a draft if the general sense of the Committee had not yet emerged. The reason why there were opposing views on the methods of work to be adopted was that the essential preliminary namely a proper general discussion had not been carried out. Only through a discussion and analysis of problems deriving from such a general discussion could it be decided how the preliminary drafts should be approached, and whether the Committee should submit one or more than one to the General Assembly.

14. He therefore proposed that the meeting be adjourned until Monday 6 August, to

give members of the Committee an opportunity of expressing the general views of their governments. The adjournment would permit members to seek instructions and to ponder the problems that had already been raised during the discussion.

15. Mr. SÖRENSEN (Denmark), while agreeing that all members should state the general views of their governments, thought that it was useful to discuss methods of work. The discussion that had taken place might perhaps also clarify the general views of delegations. On the question of alternative drafts, he felt that the first aim of the Committee should be to prepare, or to attempt to prepare, one preliminary draft, for, as the French representative had said, it might find it impossible to prepare even one. It was, after all, the task of the Committee to recommend something, and it might be found feasible to submit, not alternative drafts, but one draft containing alternative provisions. To take an immediate decision on the question of alternatives might thus prejudice the final outcome of the Committee's deliberations. The Committee should proceed on the assumption that it would prepare one draft only, leaving open the possibility of alternative drafts or alternative articles. He therefore opposed the suggestions made by the Chinese representative.

16. It was true that certain general principles relating to the jurisdiction of the court required discussion on the theoretical level; nevertheless, it would be helpful to have a draft on which to base such a discussion, and if the text in one or another of the annexes to the Secretary-General's memorandum were taken, it would not preclude discussion of those abstract questions as and when each new chapter or section was taken up. It was established practice in the United Nations that a working paper such as that represented by any of those annexes committed no government, and could be freely amended.

17. The question which then arose of which text should be adopted as a basis for discussion was closely connected with that raised by the French representative on whether an examination of the draft should begin with article 1, or elsewhere. He agreed with the French representative that it would be more logical to begin with the question of the jurisdiction and functions of an international criminal court, and he therefore proposed that the Committee should start on Chapter II of

either annex I or annex II to the Secretary-General's memorandum.

18. Such a proposal at once raised the question of which annex should be taken. There was much to be said in favour of the French representative's argument that it was impossible to decide that question before a decision had been reached regarding the jurisdiction and functions of the court. There was however a practical difficulty that the chapters on jurisdiction differed, and must necessarily differ, according to the way in which the court was to be established. He therefore agreed with the United States representative that it was essential first to take a provisional decision on which annex should be examined. As the decision would be provisional, the Committee would be perfectly free to reverse it.

19. He could not, however, agree with the United States representative's proposal that the Committee should also decide as a preliminary issue the question whether the court should be a permanent body or an ad hoc tribunal. Chapters II and III in annex III would be the same as the corresponding chapters in either annex I or annex II, and the question of jurisdiction could therefore be discussed without prejudice to the question whether the court would be permanent or not. That issue could therefore be left in abeyance for the time being.

20. Mr. LIANG, Secretary to the Committee, recalled that it had been suggested during the discussions that members of the Committee could, if they so desired, interrupt the discussion of particular problems in order to make general statements embodying the views of their respective governments.[1] Such a procedure might not be conducive to the continuity of the Committee's work, and the Committee might find it preferable to set a time limit for making such general statements.

21. The CHAIRMAN said that he did not propose to limit in any way any member's right to make a general statement, unless that right was abused, and in such an event the Committee would be free to take whatever action it deemed desirable.

22. Mr. de LACHARRIÈRE (France) agreed with the representative of Israel that members should be given the opportunity of submitting general observations.

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1) Summary Record of the 2nd meeting, paragraph 91.

Hitherto, the discussions had been concerned both with the Committee's working procedure and with the advisability of setting up a court. However, another aspect of the matter had not yet been investigated, namely, the part the court would play. Even those members of the Committee who were sceptical of the possibility of setting up the court could assist the Committee to define its jurisdiction; for, if that were restricted, the court itself would be all the easier to establish.

23. There was still room, therefore, for a general discussion on that point at least.

24. The French Government had shown by the action it had taken the importance it attached to the establishment of such an institution. A discussion on the advisability or inadvisability of the establishment of the court would not, however, appear to serve any useful purpose at the present stage of the Committee's work owing to the political aspects of the problem. An expression of opinion by the Committee would do nothing to assist governments. The General Assembly would, moreover, have to discuss the matter. The Committee's task was simply to prepare concrete proposals on the basis of which governments could take their decisions.

25. If the Committee first of all examined the jurisdiction of the court as indicated in the articles on the subject contained in chapter II of the annexes to the Secretary-General's memorandum, members who desired to do so would have an opportunity of expounding general considerations concerning the role their governments wished the court to play.

26. As regards the court's functions, various solutions were theoretically feasible. At the extreme limit of legal optimism, it was possible to envisage judges of a supreme court deciding who was the aggressor and solving all political problems. As against those Utopian views, which he himself was far from sharing, it might be maintained that certain crimes affecting the interests of a number of States were not suitably dealt with under national law. For instance, a forger might be sentenced by a French court for counterfeiting dollars or Swiss francs in French territory. The Governments of the United States of America or Switzerland might,

however, consider that the offender had not been so severely dealt with as he would have been by their own courts and accordingly blame the French Government, although it had no means of influencing its judges or juries.

27. The history of international relations was full of incidents of that nature. The international responsibility of governments might be involved by the decisions of courts which were absolutely free from any governmental control.

28. In the same context, mention could also be made of the drug traffic, the cutting of the submarine cables between countries and other offences under common law which it might be considered desirable to bring under the jurisdiction of an international criminal court.

29. A general discussion on the jurisdiction of the court might make it possible to find a compromise solution between those two extremes.

30. He was prepared to agree, as the representative of Denmark had done, that the Committee should start by examining chapter II of either annex I or II and had no objection to working on the basis of a court established by convention with the object of facilitating the Committee's work.

31. Mr. KERNO (Assistant Secretary-General) considered that it was natural and customary that, during the opening days, delegations should need a little time to get to the core of the matter. The observations of the representatives of Israel, Denmark and France would enable the Committee to determine which questions it should take up at the next meeting. It might be well to start with the crucial question of the court's jurisdiction. General considerations, expounded during its examination, could enable members who had not already done so to make known the general attitude of their governments.

32. Mr. WYNES (Australia) said that the assumption on which the foregoing discussion had been based was that an international criminal court, if established, would be set up either by international convention or by General Assembly resolution. There were, however, other possibilities, one of which was that the court should be set up as a principal organ of the United Nations. He did not propose to speak on the pros and cons of such an alternative, which would require amendment of Article 7

of the Charter of the United Nations, but he felt that the Committee should not overlook the fact that such an alternative did in fact exist. In that connexion, he drew attention to page 8 of document A/AC.48/1, in which it was stated that: "The procedure for amendments to the Charter is long and complicated, and it seems probable that the conditions laid down in Article 108 could not be fulfilled at the present time". The Committee should decide whether it agreed with that view, as well as on the alternative possibility of a court established as a subsidiary organ of the United Nations. That raised the question whether it could be said that an international criminal court was necessary to the General Assembly "for the performance of its functions" in accordance with Article 22 of the Charter.

33. Yet another possibility was that the international criminal court should be set up by resolution of the General Assembly, but with the obligations of States defined in a convention open for accession. It seemed to him that before the Committee decided whether the court should be set up by resolution or by convention and began examination of the relevant annex, it should first of all explore all other possibilities, including those he had mentioned.

34. Mr. KERNO (Assistant Secretary-General) pointed out that to become effective an amendment of the Charter of the United Nations required ratification by all the permanent members of the Security Council. In the existing circumstances, it seemed quite clear that an amendment for the purpose of establishing an international criminal court as a principal organ of the United Nations would be impracticable for political reasons. With regard to Article 22 of the Charter, the functions of the General Assembly, which were defined in Article 10 and succeeding Articles, had been interpreted very widely by the International Court of Justice and by the General Assembly itself. It was for the General Assembly to decide what those functions included, and what might legitimately be understood to come under the expression "performance of its functions".

The meeting was suspended at 11 a.m. and was resumed at 11.15 a.m.

35. The CHAIRMAN drew the attention of the Committee to rule 108 of the rules of procedure (A/520/Rev.1) of the General Assembly.

36. After a short discussion, it was agreed that, as the Committee was composed of seventeen Member States, under General Assembly resolution 489 (V), the quorum would be six, and nine members would have to be present for a question to be put to the vote, regardless of the fact that three government members had not sent representatives.

37. The CHAIRMAN called for formal proposals on the procedure to be followed by the Committee.

38. Mr. SÖRENSEN (Denmark) proposed that the Committee discuss the question of the jurisdiction and functions of an international criminal court, and take as its basic working paper annex II chapter II to the Secretary-General's memorandum (A/AC.48/1). He also suggested that any general statements of views by members should be made in the context of that discussion.

39. The CHAIRMAN, replying to Mr. ROBINSON (Israel), said that a member of the Committee could make a general statement of his views whenever he so desired, unless the Committee subsequently decided otherwise.

40. Mr. de LACHARRIÈRE (France) supported the Danish representative's proposal, which took account of the desire that provision should be made for the possibility of holding a general discussion. During the examination of chapter II, concerning the jurisdiction of the court, all the aspects of the problem could be brought out. The general discussion should, however, be specially concerned with that chapter. It would thus be possible to define clearly the functions to be discharged by the court.

41. Mr. SÖRENSEN (Denmark), replying to Mr. WYNES (Australia), said that the reason why he had suggested taking annex II as a basis for discussion was that he had concluded from the debate that the general feeling was in favour of the establishment of the court by international convention rather than by General Assembly resolution. The choice of annex II by the Committee was to be regarded as a working hypothesis, in favour of establishment by convention, which could be abandoned at any time.

42. Replying to Mr. WANG (China), Mr. LIANG, Secretary to the Committee, explained that the essential difference between the two methods of establishing the court was that the General Assembly could not impose obligations upon States by resolution. Thus, in annex I chapter II article 24, two additional sub-paragraphs, (a) and (b), were added to paragraph (3) to provide for conventions to enable the court to be given jurisdication over crimes under common law. In the case of annex II, where it was assumed that the court would be established by an international convention, no such provisions were required.

43. The CHAIRMAN put to the vote the Danish representative's proposal that the Committee begin immediately to discuss chapter II of annex II to the Secretary-General's memorandum (A/AC.48/1).

The proposal was adopted by 12 votes to none, with 2 abstentions.

2. CHAPTER II OF ANNEX II TO THE SECRETARY-GENERAL'S MEMORANDUM (A/AC.48/1)

44. The CHAIRMAN invited the Committee to take up article 24 of the preliminary draft of a statute for an international criminal court contained in annex II to the Secretary-General's memorandum (A/AC.48/1). There would be no objection to reference in the course of the discussion to article 24 of the preliminary draft contained in annex I to the same document.

45. Mr. KERNO (Assistant Secretary-General) referred the Committee to the comments in part II of the memorandum dealing with the jurisdiction of the Court.

46. Mr. LIANG, Secretary to the Committee, drew attention to the fact that the Secretary-General's memorandum had been prepared before the International Law Commission had reached its conclusions on the draft code of offences against the peace and security of mankind which were embodied in chapter IV of its report (A/CN.4/48). The Committee would no doubt wish to take account of those conclusions.

47. It would be noted that the French term "droit commun" in paragraphs 2 and 3 of article 24 had been translated into English by "common law". It was impossible to find an exact equivalent for the French term, and the term "common law" should not be construed as referring to the common law of Anglo-Saxon systems of law. For

present purposes it would be convenient to regard the expression "common law" as meaning "national law".

48. Mr. MAKTOS (United States of America) preferred the provision in paragraph (3) to those in paragraphs (1) and (2) of article 24. The main task was to establish, if possible, an international criminal court. If, in addition, an attempt was made to lay down what the jurisdiction of such a court should be, the Committee would be undertaking a task which would inevitably make it impossible to build an adequate judicial structure dispensing the international field.

49. Were the Court given jurisdiction over crimes under international law and over crimes under common law involving the responsibility of one State party to the convention towards other States parties, much time would probably be spent in discussing paragraphs (1) and (2), and in the end few States would ratify the convention because of their inclusion. There were many different opinions as to what crimes were crimes under international law, and in fairness to a defendant it was essential that he should know exactly what he was charged with and the conditions under which he was being tried. Again, the provision in paragraph 2 gave rise to certain difficulties. What was meant by "responsibility" was not clear. In any event, crimes under common law could not, he submitted, involve the criminal responsibility of States. It was usual for such crimes to be dealt with by domestic courts. While it was true that in some States the punishment meted out by domestic courts was inadequate, there did not appear to be any good reason why such cases should be submitted to an international criminal court, which, in his view, should deal only with crimes that national courts were unable to handle.

50. Further, he conceived an international criminal court as adjudicating only serious crimes of international concern, and believed that specific mention of such crimes would have a limitative effect and radically reduce the number of States likely to accede to the convention.

51. He thus personally felt that the aim should be to set up an international penal tribunal and to leave to the future decision of States what crimes and which persons should be brought before it. Assuming that paragraph (3) of article 24 were adopted, the phrase "under common law", having been deleted, he could visualize the

possibility of a certain number of States agreeing at some future date that one or more crimes - for instance, the crime of genocide or the crime of aggression - should be brought under the jurisdiction of the international criminal court.

52. While it might be alleged that in such circumstances the court would have little or no work to do, he thought it possible to combine paragraph (3) of article 24 as he had propounded it with a further clause to the effect that the court should not be established until a certain number of States had ratified a convention giving the court jurisdiction over a specific crime or crimes. In that way, too, the difficulty of having to convince public opinion would be removed, for the accused person would know under what conditions he was to be tried, and no State would be likely to ratify the convention specifying the crimes unless its action in so doing had the support of public opinion in its country.

53. The views he had expressed were thrown out for the consideration of the Committee with a view to facilitating its work and with an eye to securing the greatest number of accessions to the instrument.

54. Mr. AMADO (Brazil) found merit in the United States approach to the problem, in that it appeared much less ambitious than what the French representative had apparently had in mind.

55. Mr. SÖRENSEN (Denmark) wished to make some tentative remarks in connexion with the United States representative's statement. He fully agreed with the latter that the term "crimes under international law" required clarification. It was too indefinite for the purposes of a convention such as the one under consideration. It might be possible, as the United States representative had suggested, to combine the three paragraphs of article 24, placing emphasis on the acceptance of the court's jurisdiction by States. Regard should be had, however, to what had gone before. It would be noted that in article VI of the Convention on the Prevention and Punishment of the Crime of Genocide, it was laid down that persons charged with genocide should 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 might have jurisdiction with respect to those Contracting parties which would have accepted its jurisdiction. That signified that no State was obliged to see its citizens committed for trial

before an international jurisdiction unless and until it had specifically accepted that jurisdiction. One way of accepting such jurisdiction would be for a State to adhere to a convention concerning an international criminal court, and if that method were adopted the arrangement would be complete. If, on the other hand, the method suggested by the United States representative were adopted, the court would try persons accused of crimes in respect of which States had accepted the jurisdiction of the court. As a result, no person could be brought before the court unless and until a new convention conferring jurisdiction in respect of a specific crime or crimes came into force, and that would apply equally to the crime of genocide. That seemed to him an unnecessary complication but he had no definite proposal to make for solving the problem.

56. With regard to a point made by the French representative, he felt that consideration should be given to the advisability of making the court accessible to States which in certain circumstances might agree to bring specific cases before it. He could visualize the possibility of extending the functions of the court in such a way that States whose national courts proved inadequate or less appropriate in given cases could bring such cases before the proposed international criminal court. He had in mind the types of cases mentioned by the French representative, and the less heinous war crimes. He therefore considered that the provisions of article 24 might be extended to include jurisdiction conferred on the court by agreement in respect of a given case, or even by way of compromise.

57. Mr. LIANG, Secretary to the Committee, replying to the United States representative's remarks, observed that the comments on page 18 of the Secretary-General's memorandum in no way implied that a State would be regarded as a criminal. The underlying thought was that in certain cases where a State would not be able to discharge its responsibility of prosecuting the offender and enforcing a sentence, an international criminal court would be better able to do so. That was, in fact, the sense of paragraph 2 of article 24.

58. As to the Danish representative's suggestion that some arrangement might be made for the voluntary submission of certain cases to the jurisdiction of the court, he could hardly conceive of two States agreeing to an ad hoc adjudication by an

international court, although he conceded that the point might be one for consideration at some later stage. For the present, such a formulation could scarcely be introduced into a convention such as the one under consideration.

59. Mr. de LACHARRIÈRE (France) said that the discussion which had just taken place had brought out an important idea, namely, that the jurisidction of the court ratione materiae would not be directly defined in the draft statute that the Committee was to prepare, but would be left for conventions to be drawn up later. That idea might make it possible to find common ground between members who wished an international criminal court to be set up as soon as possible and those who thought that it would be premature to do so.

60. The Brazilian representative had expressed his anxiety lest international law courts might be established on too grand a scale. The French Government had never intended that all international criminal questions should be settled by international jurisdiction. In theory, it might be held that aggression and preparation for aggression constituted the supreme crime under international law and that an international jurisdictional organ would remove the need for the Security Council and the armaments of States, which would be replaced by a small force of police responsible for executing the sovereign decisions of the court. But the French Government harboured no such illusions.

61. However, his Government considered that the international community was sufficiently far advanced for the establishment of an international criminal court to be contemplated.

62. The Nuremburg Tribunal constituted a precedent the principles of which had been approved of by the world at large. Public opinion had insisted on judgment and punishment of war crimes. The Allies owing to international failure, had to step into the breach and set up an ad hoc tribunal. The moment had now come to create an agency which would offer in advance every guarantee that justice would be done.

63. While it was true that it would be difficult for the court to take action with respect to responsible government officials during the exercise of their functions, that fact should not be regarded as an insuperable obstacle. The United States representative had, a little hastily perhaps, dismissed the idea of a criminal

court for minor offences in international law as of no practical value. Yet counterfeiting offences, which had earlier been cited by way of example, were not the only ones with which the court might deal. French military tribunals had had to try German war criminals and it could well be imagined that the French Government had not welcomed the idea of having to hold such trials. The judges had found themselves in difficulties of a psychological character, owing to the fact that, immediately after the war, public opinion had been in a state of understandable indignation. In Germany, on the other hand, many of the judgments must have seemed excessively severe and people might well have thought that the trials had not been conducted with all the requisite guarantees of impartiality. Had there been an international criminal court at the end of the war, the French Government would probably have preferred to entrust the trial of such criminals to it.

64. If an international criminal court could be of service in similar cases, it would already be fulfilling a very useful purpose. It might be advantageous in other cases as well. If the head of a State on a visit abroad was the victim of an attempt on his life or of studied insults, the government of the country in which the offence occurred would no doubt be glad to see the offenders tried by an international court.

65. Without seeking to draw up an exhaustive list of the cases over which an international criminal court might have jurisdiction, it was necessary to provide for the establishment of an institution of penal law whose competence would be determined by means of a general convention, or by bilateral agreements, or even by unilateral decisions. It was essential for an organ to be placed at the service of the international community; the question of its jurisdiction could be left for later.

66. For the moment, it would be sufficient to indicate that the jurisdiction of the court would be determined by conventions or whenever a State, in order to relieve itself of its international responsibility, decided to waive its own jurisdiction in favour of that of the court. Incidentally, the ideas he was outlining were simply a rough sketch, and should not be considered as constituting a formal proposal.

67. If at first the judges of the court had few cases to deal with, that would be no grave disadvantage. It would be possible to make administrative arrangements to

mitigate that defect, which in any case was not fundamental.

68. The objection might be raised that there would be a danger of public opinion being disillusioned about the court, if, during the first stage, it did not concern itself with major crimes in international law. There were, it might well be said, serious international crimes such as genocide, mass deportations and war-mongering; there were, moreover, States which accused other States of committing such crimes; yet the international criminal court did not concern itself with them, and took no cognizance of such charges.

69. The difficulty was a real one. Some international police action might, however, be taken, provided it was called for by the Security Council in a decision adopted under the prescribed conditions of voting, that was, among other things with the consent of the five permanent members. Furthermore, though the court when faced with accusations against responsible government officials might be unable to take action, at least those officials, in refusing to accept the jurisdiction of the court, would be assuming a certain moral responsibility. The court would not be able to investigate the case of such officials, but it could take note of the complaints, and the matter would thus be placed on record for posterity. The responsible officials concerned would in that way receive a preliminary warning of the punishment awaiting them in the event of aggression.

70. The conscience of the world demanded the establishment of a criminal court, in the building up of which the future, described by a poet as "God's policeman", would perhaps have to play a part.

71. Mr. MAKTOS (United States of America), in reply to the Danish representative, pointed out that article VI of the Convention on the Prevention and Punishment of the Crime of Genocide itself made a new convention necessary in order that persons charged with genocide could be tried by an international penal tribunal. He had merely sought to show that if genocide or, for that matter, any other specific category of crimes, was specifically mentioned in a convention on the creation of an international criminal court, there was the possibility that States opposed to the Convention on Genocide would for that reason refuse to sign the former convention and that the more detailed the reference to crimes therein, the less

likely were States to ratify.

72. As to the French representative's suggestion that some arrangement might be made for extending the jurisdiction of the court to include minor crimes in international law, he felt that paragraph (3) of article 24 in annex II of the Secretary-General's memorandum was sufficiently broad for the purpose. He would add for the information of the French representative that it had not been his intention to suggest that minor crimes should not be tried by an international criminal court, but merely that such a court should not be set up for the express purpose of dealing with such crimes.

73. With regard to the Secretary's explanation of the expression "the responsibility of one State party to this Convention" in paragraph (2) of article 24, he (Mr. Maktos) observed that the comments on page 18 of the Secretary-General's report might not always be available to the man of law, much less to the layman, and that it was preferable to avoid the use of ambiguous terms. If "common law" merely meant "municipal law", then there was no reason for including the clause. The responsibility in question could not be criminal responsibility, for he failed to see how a State as such could be implicated even in the killing of a foreigner. Its responsibility could only be an obligation to pay damages.

74. A suggestion had been made that jurisdiction might be given to the court in respect of cases where important personages were assassinated. He would submit, however, that, even where a common citizen was the victim, the State's liability for damages would be equally involved. The result would be that under paragraph(2) of article 24 jurisdiction could be given to the court in all cases where an alien was killed. Paragraph (3) raised no such issue.

75. It should also be noted that if, for instance, the crime of genocide was specifically mentioned in the article, a number of problems would have to be solved, and their solution might render the convention unacceptable to many States. For one thing, a provision would have to be included making it obligatory for a State to surrender an accused person, and it was conceivable that a State might be willing to surrender a person accused of one type of crime yet unwilling to hand over a person accused of another.

76. He would again stress that his observations were not to be regarded as in any way final; they were merely reflections for further consideration by the Committee.

77. Mr. KERNO (Assistant Secretary-General) said that the Secretary-General's memorandum was intended to provide a basis for discussion and thought by the Committee, to describe the problem and suggest solutions for it. In Article 24, which had already given rise to an interesting discussion, an attempt had been made to draw attention to the fact that in international law there was now the notion of crimes under international law as distinct from crimes under national law. It would be noted that in article I of the Convention on the Prevention and Punishment of the Crime of Genocide the contracting parties "confirmed" that genocide was a crime. That meant that the Contracting Parties were confirming something the existence of which had already been recognized. It would be remembered that that same question arising from the instrument declaring what was existing law, or creating new law, had also been raised in respect of the Charter of the Nuremburg Tribunal. It was natural that when exploring the scope of the jurisdiction of an international criminal court, consideration should be given to crimes under international law and it was not unreasonable that such crimes should be the first to be placed under the jurisdiction of the court. It was for the Committee to consider whether that was possible forthwith or at some later time. Under paragraph (2) of article 24 attention had been drawn to the fact that there might be other crimes under droit commun which might equally well be placed under the jurisdiction of an international criminal court for good reasons of political expediency and the like.

78. Finally, article 24 was based on the assumption that jurisdiction could be given only under an arrangement by means of a convention between States; the obligation involved might be laid down under the convention establishing the court or under some later convention.

The meeting rose at 12.45 p.m.