



Dual Distribution

COMMITTEE ON INTERNATIONAL CRIMINAL JURISDICTION

First Session

SUMMARY RECORD OF THE TWENTY-FIRST MEETING

held at the Palais des Nations, Geneva,
on Thursday, 23 August 1951, at 10 a.m.

CONTENTS:

pages

- | | | |
|----|---|---------|
| 1. | Procedure of an international criminal court | |
| | Chapter III of annex II to the Secretary-General's memorandum (continued) | 3 - 13 |
| 2. | Organization of an international criminal court | |
| | Chapter I of annex II to the Secretary-General's memorandum | 13 - 21 |

Present:

Chairman: Mr. MORRIS

Members:

Australia	Mr. WYNES
Brazil	Mr. AMADO
China	Mr. WANG
Cuba	Mr. VALDES ROIG
Denmark	Mr. SÖRENSEN
Egypt	MOSTAFA Bey
France	Mr. de LACHARRIERE
Iran	Mr. KHOSROVANI
Israel	Mr. ROBINSON
Netherlands	Mr. ROLING
Pakistan	Mr. MUNIR
Syria	Mr. TARAZI
United Kingdom of Great Britain and Northern Ireland	Mr. JONES Mr. TURNER
United States of America	Mr. MAKTOB
Uruguay	Mr. PINEYRO CHAIN

Secretariat:

Mr. Liang

Secretary to the Committee

1. PROCEDURE OF AN INTERNATIONAL CRIMINAL COURT

Chapter III of annex II to the Secretary-General's memorandum (A/AC.48/1, A/AC.48/L.9) (continued)

1. Mr. SORENSEN (Denmark) Rapporteur, said that the Drafting Sub-Committee had drafted articles covering all the decisions taken by the Committee on the procedure of the international criminal court.
2. The Committee had completed its discussion of article 44 in annex II to the Secretary-General's memorandum, and was in a position to begin consideration of article 45. To that article, the United States delegation had proposed an amendment (A/AC.48/L.9).
3. The CHAIRMAN said that it was hoped that at the end of the week the Drafting Sub-Committee would be able to begin the work of reviewing the articles it had drafted in the light of the observations made by members of the Committee. The revised draft statute would be put before the Committee the following week, and after a second reading would again be referred to the Drafting Sub-Committee for final drafting.
4. He requested the Committee to resume its discussion of annex II to the Secretary-General's memorandum (A/AC.48/1).

Article 45 of annex II (A/AC.48/1).

5. Mr. MAKIOS (United States of America), introducing his amendment to article 45, said that his delegation considered that questions of detail would arise in connexion with the execution of sentences, such as the payment of expenses and the taking of the guilty person into custody. An international criminal court could scarcely be expected to deal with such details without detriment to its primary function. It therefore seemed desirable that the court should merely have to inform the Secretary-General that a sentence should be executed, and leave it to the Secretary-General to begin negotiations regarding such details. His amendment made suitable provision for such procedure.

6. Mr. ROLING (Netherlands) thought that until it had been decided whether the court was to be established by convention or by General Assembly resolution it would be difficult to come to a clear decision on article 45 and the United States amendment thereto. If the court were to be established by convention, its relationship with the United Nations might be loose. If, however, it was established by General Assembly resolution that relationship would be close, and much could then be said in favour of the United States amendment. He therefore proposed that discussion of article 45 be deferred until a decision had been taken on the relationship which would exist between the United Nations and the court.

7. MOSTAFA Bey (Egypt) pointed out that in the French text of the United States amendment to article 45 (A/AC.48/L.9) the expression "l'exécution des peines" was used; the English text spoke of the "execution of sentences". He thought that the French word "sentences" would be a better equivalent for the English "sentences".

8. Mr. de LACHARRIERE (France) asked on what the Secretariat had based its approach to the problem of execution of sentences, and the reasons for the provision that those sentences should be executed by the State designated by the court and party to the convention. He would also like to hear the opinion of the representative of the Secretariat on the United States amendment to article 45.

9. Mr. LIANG, Secretary to the Committee, said that the idea of the Secretariat's text was that where nationals of a State were sentenced, that State should execute the sentence. A State might also execute the sentence in cases where an offender had committed a crime in its territory, even though the guilty person was not one of its nationals. The United States amendment raised the important question of the part the Secretary-General could play in the execution of a sentence. So far as he could see, the chief difficulties would arise, not between the court and the Secretary-General, but in the arrangements to be made between the Secretary-General and the State concerned. Until the nature of such arrangements was made clearer, he could venture no opinion on whether they were practicable.

10. Mr. WANG (China) felt that the question of the apprehension of an accused before trial and that of his punishment after trial were of a similar nature, in that they both required the consent and co-operation of States. It seemed to him that the same solution might be applied to the execution of sentences as had been found suitable for the apprehension of the accused.
11. Mr. SØRENSEN (Denmark) said that the Committee's decision regarding judicial assistance had been that a State should be obliged to execute warrants only in the manner provided for in the convention or instrument whereby the State had accepted such obligation.
12. Mr. WANG (China), felt that to make the execution of a sentence depend but upon the consent of a State would be to confer, as it were, a right of veto on that State and thus to nullify the proceedings of the court. Such a decision would seem contrary to the general attitude hitherto taken by the Committee.
13. Mr. TARAZI (Syria) thought that, in the matter of the execution of sentences, the statute of the court should contain provisions relating to the custody of accused persons awaiting trial. Would the court have a place for their detention? If it were decided that no such provision was to be included in the statute of the court, the question would have to be settled in any convention establishing the court.
14. Mr. de LACHARRIERE (France) explained that he had asked the Secretariat for an explanation not because he was opposed to the United States amendment, but because he wanted information on a particular problem which would be extremely difficult to solve. He wondered whether it would be possible to combine the two variants proposed by the United States delegation, and the Secretariat respectively. In practice, the situation would be the following; either the court would be dealing with a State which would agree to execute the sentence, in which case the simplest solution would be that proposed in the Secretariat's draft, under which the court, when pronouncing its sentence, would designate the State responsible for executing it; or the State designated by the court might not wish to accept the responsibility laid upon it, in which case it would be

necessary to have recourse to the Secretary-General of the United Nations who, in agreement with the court, would take the necessary measures with the State or States concerned to ensure that the sentence was executed. That suggested a formula by which the court would either designate the State responsible for executing the sentence, or would empower the Secretary-General to make the necessary arrangements with the States concerned to ensure the execution of that sentence. Such a formula would dispel the misgivings of the United States representative while maintaining the principle of article 45 of the Secretariat's draft.

15. He therefore wished formally to propose the following text for article 45:

"The Court shall designate the State to be charged with executing the sentence or shall request the Secretary-General of the United Nations to adopt the necessary measures for its execution".

16. Mr. AMADO (Brazil) thought that the problem put the Committee in a difficult situation. The United States proposal would place the Secretary-General in the position of an executioner or gaoler. The Secretariat's text proposed that the sentence should be executed by the State designated by the court; however, if that State found it impossible to carry out the sentence, where for example the court had pronounced the death penalty and the legislation of the State concerned did not provide for such a penalty, the court would be in a very difficult situation.

17. Perhaps the best solution would be to leave the question of the methods of executing sentences to be determined in particular conventions at a later date. The formula proposed by the United States representative, which provided that sentences should be executed in accordance with arrangements between the court and the Secretary-General of the United Nations was much too vague, as indeed was also that proposed in the Secretariat's draft. He himself had no solution to offer for the time being.

18. Mr. MAKTOU (United States of America) cited the case of the Nuremberg Trial, to illustrate the difficulty of a State executing a sentence. Had Germany

been called upon to execute the sentences passed upon the persons found guilty by the Nuremberg Tribunal, it would obviously not have been difficult for it to nullify those sentences. At the same time, if the international criminal court were required to consult conventions in order to find out if a State could execute a sentence, the result would be to impose upon the court the role of executioner. His own amendment seemed to avoid both those difficulties.

19. With regard to the objection raised by the Chinese representative, the fundamental attitude of his Government was that there would be no question of the Secretary-General making arrangements with a State unless that State had undertaken the obligation to execute the sentences of the court. That being so, he was prepared to accept the French proposal, provided that the following sentence was added to that proposal to make its meaning absolutely clear:

"A State shall be obliged to execute such sentences only in conformity with the provisions in the convention or instrument in which the State has accepted such obligation."

20. There were many possible methods of executing a sentence. As the statute would not provide for execution, a convention conferring jurisdiction upon the court in respect of a specific crime could lay down special provisions regarding the execution of the sentence by the State concerned. Alternatively, provision could be made for the Secretary-General of the United Nations and the State concerned to enter into arrangements for the execution of the sentence, thereby envisaging such a possibility as that one State might have to keep imprisoned for life a national of another State. Yet another possibility would be for the United Nations itself to build a prison within the international territory it held in New York. There were yet other possible methods of executing sentences, but all should, in his view, be based on three fundamental assumptions: first, that no State would be obliged to carry out any such duty unless provided for in a subsequent convention; second, that such conventions would be entered into after the statute establishing the court had come into force; and third, that the details of the execution of a sentence would not be left to the court to deal with, but would in preference be entrusted to an international body of prestige and authority.

21. Mr. PINEYRO CHAIN (Uruguay) said that the Committee had arrived at a decisive point in its discussions. It was contemplating appealing to States to enable the sentences pronounced by the court to be executed. The ideal solution to that problem would clearly be for the court to enjoy a jurisdictional territory of its own but that would, unfortunately, not be possible. The question therefore remained of how a State could be compelled to ensure execution of the sentences imposed by the court. He thought it would be preferable if the conditions under which execution of sentences by a State was ensured, were fixed in a subsequent convention determining the conditions under which States would have to render assistance to the court. The first thing, then, was to enunciate that principle.

22. However, in cases where the State designated was not party to any convention fixing such obligations, it should be left to the Secretary-General, who for that purpose, would be better placed than the president of the court, to ensure execution of sentences. In any event, there would have to be an agreement between the Secretary-General of the United Nations and the court and, to that end, he proposed that article 45 as drafted by the Secretariat be replaced by the following text:

"The sentence shall be executed by States in accordance with conventions relating to the matter. In the absence of any such convention, the sentence shall be executed in the manner agreed upon between the court and the Secretary-General of the United Nations." ^{1/}

23. Mr. WANG (China) thought that the obligation of a State to execute both warrants apprehending criminals and sentences inflicted upon guilty persons should be specifically laid down in the statute. If no such obligation were imposed, there could be no international criminal court. The principle should be laid down, not in future conventions, but in the statute establishing the court; future conventions should be concerned only with the details of the execution. The decision of the Committee that a State should be obliged to execute warrants only in the manner provided for in the convention or instrument by which it had accepted such obligation was objectionable, inasmuch as it implied that a State was not bound

^{1/} Provisional text.

to accept such an obligation. The United States amendment suffered from the same defect. He therefore proposed that article 45 be replaced by the following provision: "

"Sentences shall be executed by the State designated by the Court, in accordance with arrangements provided in subsequent conventions among States parties to this convention".

24. The advantage of that proposal was that it squarely laid down in the statute the obligation of the State, and at the same time permitted States parties to the statute to regulate in later conventions the details of execution.

25. The CHAIRMAN pointed out that the Committee had earlier spent a considerable time in discussing the circumstances in which a State should execute warrants of arrest. The considered opinion of the majority of the members had been that a State should be obliged to execute such warrants only in the manner provided for in the convention or instrument by which it had accepted such an obligation.^{1/} In any case, the Chinese amendment to article 45 clearly did not depart from the principle adopted by the Committee in respect of the execution of warrants of arrest and that proposed by the United States representative for the execution of sentences. He wondered whether, in view of the discrepancy between his argument and the text he proposed, the Chinese representative wished to reconsider his proposal.

26. Mr. WANG (China) regarded his proposal as a compromise between his own views and those of the United States representative.

27. Mr. WYNES (Australia) preferred, on the whole, the Secretariat's draft of article 45. The sentence proposed by the United States representative as an addition to the French amendment caused him some concern, and he wondered whether the United States representative would be prepared to delete from it the word "only". That word threw into what was, perhaps, too strong relief the idea that a State would be bound to execute sentences only in conformity with the provisions in the convention by which the State had accepted such an obligation. It seemed to him

^{1/} Summary record of the 10th meeting (A/AC.48/SR.10), paragraph 86.

that if the word "only" were omitted, the idea would still be preserved, but without undue emphasis.

28. Mr. MAKTOS (United States of America) felt that the course of the discussion clearly showed the inadvisability of omitting the word "only" from his proposed addition to the French representative's text. The Chinese representative considered that his proposal, if accepted, would impose an obligation on States; the possibility of misinterpretation of his (Mr. Maktos's) proposal would be greatly increased if the word "only" were deleted. Why, indeed, should not the proposal be perfectly clear? There was no question of compromise: there could be, for the reasons he had stated, no provision in the statute establishing the court making it obligatory for States to execute sentences. As the Chairman had said, the subject had already been discussed at length in the matter of the execution of warrants, and the Committee's views had then been established. He could not agree to the omission of the word "only", for it expressed without ambiguity what he had in mind.

29. Mr. WANG (China) wondered whether the United States Government, having refused to accept a provision in the statute which would impose an obligation on it to execute warrants and sentences, would ever consent to accept such a provision under any subsequent convention. If it was prepared to accept such an obligation at a later stage, why should it not do so in the statute? How, indeed, could a State refuse to apprehend a criminal or to execute a sentence passed on a guilty person, and still remain party to the statute establishing the court?

30. Mr. MAKTOS (United States of America) was unable to commit his Government in respect of any future conventions it might deem proper to conclude. His Government's view was that the Committee should draft a statute establishing an international criminal court, but that it should not imperil the establishment of such a court by imposing on States in the statute obligations that could very well be dealt with in subsequent conventions.

31. The CHAIRMAN put to the vote the Chinese proposal.

The Chinese proposal was rejected by 5 votes to 3, with 7 abstentions.

32. Mr. MAKTOIS (United States of America) speaking to the Uruguayan proposal, said that the first sentence of that proposal was acceptable to him and in conformity with the position taken by himself and the French representative. The second sentence, however, raised the difficulty that if no convention existed the Secretary-General would have no particular power, and would probably find himself in a quandary as to the appropriate action to be taken. If the Uruguayan representative was prepared to withdraw the second sentence of his proposal, he would vote for it.

33. The CHAIRMAN thought that the Uruguayan proposal said much the same thing as the United States proposal, but in different words.

34. Mr. WANG (China) saw little difference between the Uruguayan proposal and the one he had put forward, for both established the obligation of States to execute sentences. In what respect did the Uruguayan proposal differ from his own?

35. Mr. PINEYRO CHAIN (Uruguay) regretted that the Chinese representative had not been present when the Committee had discussed the question whether or not certain obligations should be imposed on States. When considering the Secretariat's text of article 28, the Committee had decided that a State would only be bound to execute warrants issued by the court, or to comply with any requests for assistance addressed to it by the latter, under the conditions laid down in the convention or instrument by which it assumed such obligations. The Committee had thus adopted the principle that the statute of the court would place no obligations on States, but that such obligations should be fixed in particular conventions.

36. The execution of sentences, however, clearly constituted an obligation on States, and could not therefore be embodied in the statute of the court. Provision must, however, be made for a case where the State designated by the court to ensure execution of a sentence was not party to any convention fixing its obligations towards the court. It would be regrettable if, in such a case, the court were unable to secure execution of the sentence it had pronounced. The second part of his proposal was designed precisely to avoid such a danger.

37. The CHAIRMAN put to the vote the Uruguayan proposal.

The Uruguayan proposal was adopted by 7 votes to none, with 7 abstentions.

38. Mr. de LACHARRIÈRE (France), in the light of the Committee's decision, withdrew his proposal.

39. Mr. WYNES (Australia), explaining his vote, said that he had voted for the Uruguayan proposal on the strength of the arguments advanced by the Uruguayan representative. In that respect, his vote was different from what it had been on the question of the execution of warrants.

40. Mr. MAKTOŠ (United States of America), explaining his vote said that he had voted for the Uruguayan proposal on the understanding that it imposed no obligations upon States to execute sentences, except as provided for in subsequent conventions.

The meeting was suspended at 11.30 a.m. and was resumed at 11.45 a.m.

Article 45 A (A/AC.48/L.9)

41. Mr. MAKTOŠ (United States of America), introducing article 45 A in his proposal (A/AC.48/L.9), said that it was implicit in that text that the board of clemency, pardon and parole should be set up when the need for it arose; it was not, however, intended to imply that the General Assembly would be authorized to reject an affirmative decision of the board.

42. Mr. RÖLING (Netherlands) said that the idea of parole was a principle generally accepted by the civilized nations of the world. He felt, however, that it might involve some difficulties, first, because international law made no provision for the execution of the principle, and secondly because it was not possible to foresee the exact relationship between the court and the United Nations. If it were ultimately decided that the two bodies should be closely linked, he submitted that the right to grant parole should be exercised by the General Assembly through the board.

1. The CHAIRMAN suggested that such difficulties might be solved in the process of discussion, since, in any event, all the provisions adopted by the Committee would subsequently have to be brought into line.

The Committee approved the principles expressed in article 45 A by 11 votes and none with 2 abstentions.

Article 46 of annex II (A/AC.48/1)

4. Mr. SORENSEN (Denmark) pointed out that article 46 of the Secretariat's draft was closely linked with article 45. He suggested that, in view of the decision which the Committee had just taken with respect to the latter article, article 46 might now be redundant. Death sentences, like the execution of sentences in general, might well be dealt with in a subsequent convention rather than in the statute of the court.

It was unanimously agreed that article 46 should be deleted.

2. ORGANIZATION OF AN INTERNATIONAL CRIMINAL COURT:

Chapter I of annex II to the Secretary-General's memorandum (A/AC.48/1; A/AC.48/L.14)

Pakistani proposal regarding the question of a jury (A/AC.48/L.14)

45. Mr. MUNIR (Pakistan), introducing his proposal said that he wished to amend his text to read: "Unless otherwise provided by any subsequent convention, trials before the Court shall be without jury."

46. The Committee had so far assumed that trials before the international criminal court would have no jury, and, if that was indeed to be the case, the statute should contain some specific ruling on the point. A national of a State where the jury system was the normal practice might claim the right to trial by jury, whereas the prosecution might maintain that, since the statute made no provision for a trial of that kind, the right could not be granted.

47. Two sets of circumstances might be encountered: either the statute would be ratified direct by a government without the approval of Parliament, or the approval

of Parliament would be required. In the first case, if the constitution of the State concerned provided for the legal guarantee of a jury, Parliament might declare that as the statute was contrary to the constitution, the trial of an accused national of that State could not be allowed. In case ratification by Parliament was required, it might be useful to draw the attention of the members of that Parliament to the fact that the statute did not provided for trial by jury. If, thereupon, Parliament approved the statute that would imply that a national of that State could not demand trial by jury. Specific reference to the question would obviate all possibility of objection or misunderstanding.

48. Mr. RÖLING (Netherlands) agreed that trials before the international criminal court should be without a jury, but saw no need for a specific statement to that effect, since many of the provisions which had already been adopted implied that the possibility of a jury was precluded. Furthermore, the amended version of the Pakistani text would encourage States to confer jurisdiction on the court only by conventions providing for trial by jury.

49. Mr. ROBINSON (Israel) considered that the Pakistani text was based on the assumption that the right to trial by jury was a right, enjoyed by all individuals, to be tried by their peers. He questioned whether such a principle was possible in an international court applying international law, and cited the case of the Nuremberg and Tokio Military Tribunals, where it would have been virtually impossible to nominate a jury composed of the peers of the accused, on the ground that nobody would admit to being the peer of such criminals.

50. Mr. MUNIR (Pakistan) said that, if the Committee considered that it was implicit in the statute that trials before the court should be without jury, and if the general principle of trial by jury involved too many complications, he was prepared to withdraw his amendment and revert to his original proposal.

51. Mr. MAKTOOS (United States of America) admitted the validity of the arguments advanced by the representatives of Israel and the Netherlands, but felt that the Pakistani text might secure better results.

52. Mr. TURNER (United Kingdom) agreed. He was prepared to accept the original Pakistani text.

53. Mr. RÖLING (Netherlands) was also ready to accept the original text.

The Pakistani amendment (A/AC.48/L.14) was adopted by 11 votes to none with 4 abstentions.

Rules of procedure of the court.

54. Mr. RÖLING (Netherlands) pointed out that the Committee had not yet conferred on the court the right to adopt its own rules of procedure. He accordingly proposed that an article should be included in the statute reading: "The Court shall adopt its own rules of procedure, subject to the following conditions:...", the conditions indicated being those resulting from the specific provisions which the Committee had adopted for inclusion in the statute.

55. Mr. WYNES (Australia) observed that the Committee had not yet discussed certain questions of procedure, such as the official languages of the court, which formed the subject of a separate article (Article 39) of the Statute of the International Court of Justice.

56. Mr. RÖLING (Netherlands) pointed out that the question of languages had already been decided. It had been agreed that the proceedings of the court would be held in a language which the accused understood, interpretation being provided where necessary.^{1/} Matters of detail could be left to the discretion of the court.

57. Mr. MAKTOOS (United States of America), speaking to a point of order, indicated that the rules of the court were dealt with in the text he had proposed for article 21 (A/AC.48/L.13), and he consequently suggested that further discussion should be deferred until the Committee took up that document.

It was so agreed.

^{1/} Summary Record of the 15th meeting, (A/AC.48/SR.15), paragraph 54.

Nature of the court (permanent court or ad hoc tribunal)

58. Mr. SÖRENSEN (Denmark) said that although the Committee could consider chapter I of annex II to the Secretary-General's memorandum article by article, it might be more expedient first to take a decision on the principle of whether the court was to be permanent or not, and on the method of its creation. Once that issue had been decided, many problems of detail would prove easier to solve.

59. Mr. MAKTOŠ (United States of America) suggested that it might save time if the Chairman ascertained how many members of the Committee were prepared to vote on the nature of the court and the method of its establishment, whether by General Assembly resolution or by international convention.

60. Mr. ROBINSON (Israel) doubted whether the Committee was ready to take a decision on matters of such great importance without a preliminary discussion. He also wondered whether it was wise to take up both questions simultaneously.

61. Mr. JONES (United Kingdom) agreed with the Israeli representative. He himself was not prepared to vote on either of the two vital points at issue, as he had not yet received precise instructions from his Government.

62. Mr. MAKTOŠ (United States of America) withdrew his proposal.

63. The CHAIRMAN ruled that the Committee's discussions would be in the nature of an initial exchange of views on whether a permanent or ad hoc court would be created.

64. Mr. RÖLING (Netherlands), on being invited by the CHAIRMAN to give his views on the problem, observed that he had not been prepared for that request, but would briefly state his opinion. He was in favour of a permanent court. The Committee was aware of instances of ad hoc tribunals which had been set up to try cases at a time pregnant with hatred and revenge. Admittedly, their charters had provided for a fair trial for the accused, but that might not suffice in future. A permanent court, on the other hand, could draw up its rules objectively.

65. There was, however, a more important consideration which militated in favour of a permanent court. The existence of such a body, composed of persons of the highest moral character, would promote the development of international law along specific lines, and the establishment of an international criminal court would give a special impetus to the development of international criminal responsibility of individuals.

66. During the discussions in the Sixth Committee at the fifth session of the General Assembly, several delegations, especially those of the Soviet Union and Poland, had opposed the idea of an international criminal court because, in their view, the establishment of such a court would imply an encroachment on the sovereignty of States by merging their interests with those of the community of nations and mankind.^{1/} Such an attitude could only be described as out of date.

67. In addition, the very concept of international criminal law was a direct outcome of the impact of democracy on international affairs. It implied the application of the moral standards of ordinary people to international relationships. It meant that ordinary men and women were in favour of international relations being conducted decently, in accordance with the rules of law. The development of international law was dependent upon public opinion, and the very fact of there being an international criminal court, and the possibility of its being used, would stimulate the peoples of the world to call upon their governments to act in accordance with accepted principles.

68. In conclusion, he pointed out that a permanent court would not necessarily require the continued maintenance of a body of highly-paid judges, since the Secretariat's draft envisaged that such judges should merely hold themselves available for service with the court.

69. Mr. de LACHARRIÈRE (France) thought that the Netherlands representative

^{1/} Official Records of the General Assembly, fifth session. Sixth Committee, 243rd meeting, paragraphs 1 to 4, 39, 64, 95 and 244th meeting, paragraph 34.

had stated the question admirably; he fully endorsed his remarks. France was in favour of a permanent court.

70. Mr. VALDES ROIG (Cuba) also supported the Netherlands representative. As he had already pointed out, Cuba was wholeheartedly in favour of a permanent court.^{1/} However, its permanence should be construed in an organic, not a functional, sense.

71. Mr. PINEYRO CHAIN (Uruguay) had little to add to the arguments adduced by the Netherlands representative in support of a permanent court. In view of the objective aimed at in establishing an international criminal court, it was out of the question that it should not be of a permanent character. Its establishment would complete the structure of international criminal jurisdiction, which had both preventive and repressive aspects. If the court were to be endowed with that dual character, it was essential that it should be permanent.

72. Mr. WANG (China) asked whether the court was to be an independent body or an organ of the International Court of Justice. He recalled that that question had been raised in the International Law Commission and also in the Sixth Committee of the General Assembly. It might possibly be considered that the International Court of Justice was not seriously overworked, and that the trial of criminal cases might consequently be included in its functions. He felt that the matter should be settled by a vote.

73. Mr. AMADO (Brazil) pointed out that the intention was that the international criminal court should try individuals, whereas the International Court of Justice was concerned with disputes between States. The question had, moreover, been considered by the International Law Commission, which had recognized the difficulties involved in establishing a criminal chamber within the International Court of Justice, which could only be done by amending the Statute of that Court.

^{1/} Summary record of the 9th meeting (A/AC.48/SR.9), paragraph 12.

After due consideration, the Commission had decided not to recommend the establishment of such a chamber.^{1/}

74. He wished it to be understood that, while remaining sceptical as to the operation of the court under present world conditions, he had no wish to dash the hopes that might be raised by the establishment of an international criminal court. He fully recognized that the goal of all humanity was to achieve the universal rule of law.

75. Mr. WANG (China) thanked the Brazilian representative for his remarks and withdrew his question.

76. Mr. ROBINSON (Israel) asked whether the expression "a permanent court" implied monopoly, or whether it would be possible to set up other ad hoc courts in case of need. He could imagine situations in which a permanent court, faced with some world-wide disaster, would be prevented by its composition from trying such cases as arose. He consequently felt that some possibility should be afforded of establishing special courts to deal with special situations. He considered that more harm than good would be done by setting up a monopolistic court.

77. Mr. RÖLING (Netherlands) felt that the Israeli representative had raised a very difficult point, but thought that the jurisdiction granted to an international criminal court would not preclude the possibility of other courts being set up. In the event of war, for example, thousands of cases would clearly arise which the court would not be capable of handling. Moreover States had the right to try war crimes. They needed that right in order to be able, in particular circumstances, to try war crimes immediately after they had been committed.

78. Mr. TARAZI (Syria) agreed with the Netherlands representative. Article 95 of the Charter of the United Nations already provided that the existence of the International Court of Justice should not prevent States Members of the United Nations from entrusting the solution of their differences to other tribunals. That

^{1/} Official Records of the General Assembly, fifth session, Supplement No.12 (A/1316), paragraphs 141 to 145.

provision would naturally apply in the case of the international criminal court which it was proposed should be established. But the question how that was to be done had not yet been settled. He asked whether, if the court were created by a resolution of the General Assembly, that resolution would merely recommend States to accept the statute of the court, or whether it would itself constitute the instrument whereby the court was created.

79. Mr. MAKTOŠ (United States of America) did not consider it appropriate at the present stage to hold academic discussions on the possibility of creating other courts. It was regrettable that, even before deciding to establish one, the Committee should contemplate the possibility of others.

80. Mr. AMADO (Brazil) pointed out that the Secretary-General's memorandum stated that: "The permanence of the Court should be understood in the sense of organic, not of functional, permanence... Nevertheless, the Court would be permanent from an organic standpoint and would always be at the disposal of the United Nations (and if the occasion arose of States) which could lay a case before it".^{1/}

81. Mr. SÖRENSEN (Denmark) was in favour of a permanent court, and agreed with the Netherlands representative's explanation that such permanence should not be interpreted as implying monopoly. He could not agree that the present discussion was academic; on the contrary, it was very practical, and the Committee's decisions might have wide repercussions. He indicated his intention of introducing a proposal to the effect that nothing in the statute should prejudice the right of States to establish joint tribunals to deal with crimes of limited concern.

82. Mr. de LACHARRIÈRE (France), agreeing with the observations of the

^{1/} A/AC.48/1, page 33

representatives of Brazil, Denmark and the Netherlands, said that a "permanent" court would be permanent in the organic, not in the functional, sense. The fact that the court was permanent would by no means give it exclusive jurisdiction. Ad hoc international criminal tribunals might have to be created in the future, and the establishment of the international criminal court would in no sense preclude the possibility of subsequently creating other organs of similar jurisdictional character.

83. Mr. AMADO (Brazil) pointed out that the existence of a permanent court would not prevent States from having recourse to ad hoc tribunals if they so desired. He agreed with the representative of Denmark that the issue was of practical concern.

It was unanimously agreed that, in principle, a permanent court should be established.

The meeting rose at 1 p.m.