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CONTENTS

Chairman: Mr. V. OUTRATA (Czechoslovakia).

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

[Item 52]*

1. The CHAIRMAN explained that the revised draft resolution (A/C.6/L.151/Rev.1) submitted jointly by the delegations of Cuba, France and Iran incorporated the amendment submitted by the delegation of Israel (A/C.6/L.152), the United States amendment (A/C.6/L.158) and a portion of the amendment submitted by the delegation of the United Kingdom (A/C.6/L.153). He was not clear what would happen to the second portion of the United Kingdom amendment. The revised draft resolution submitted by the delegations of Canada and of the Union of South Africa (A/C.6/L.157/Rev.1) superseded their previous draft resolution (A/C.6/L.157). This revised draft resolution (A/C.6/L.157/Rev.1) is as follows:

"*The General Assembly,*

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

"*Considering* that the International Law Commission has concluded that it is desirable and possible to establish the international judicial organ in question;

"*Bearing in mind* article VI of the Convention on the Prevention and Punishment of the Crime of Genocide;

"*Decides* that a committee composed of the representatives of the following seventeen Member States (. . .) shall meet at Geneva on 1 August 1951 for the purpose of preparing one or more preliminary draft conventions and proposals relating to the establishment and the statute of an international criminal court;

"*Requests* the Secretary-General to prepare and submit to the committee referred to above one or more preliminary draft conventions regarding that court;

"*Requests* the Secretary-General to make all necessary arrangements for the convening of the committee referred to above and for its meetings;

"*Requests* the Secretary-General to communicate to the governments of Member States the report of the committee referred to above so that their observations may be submitted not later than 1 June 1952, and to place this question on the agenda of the seventh session of the General Assembly."

2. Mr. VAN GLABBEKE (Belgium) felt that it was time to take stock of the position. The delegations of the Soviet Union, Czechoslovakia, Poland and the Byelorussian SSR had expressed their opposition to the mere idea of international criminal jurisdiction. The representative of the USSR had argued that the establishment of such a jurisdiction would be an obvious breach of State sovereignty. That attitude was astonishing. As early as 1937, the USSR had been one of the thirteen signatories of the Convention for the Punishment of Terrorism, and at the International Congress of the French *Mouvement National Judiciaire* held in Paris from 24 to 27 October 1946, the USSR had been one of the twenty-two signatories of a motion recommending the establishment of an international criminal court. Soviet judges had also played a prominent part at Nürnberg. On none of those occasions had the Soviet Union invoked the argument it was invoking now.

3. Replying to the Polish representative's argument that the Charter was a bar to the creation of an international criminal jurisdiction, he noted that that argument had already been refuted by other representatives who had explained that it was proposed to establish that jurisdiction by convention, a perfectly normal procedure.

4. Turning to the Czechoslovak representative's argument that the Sixth Committee was engaged in building

* Indicates the item number on the General Assembly agenda.

a house from the roof down, he said that so far the Committee was merely studying plans with a view to making the premises attractive to the greatest possible number of tenants. There was no question of the immediate creation of an international criminal jurisdiction, a proposal with regard to which the Belgian delegation had already expressed formal reservations; it was a matter, as the United States representative had said, of considering the headway made by the idea of creating an international criminal jurisdiction. Governments could not commit themselves unless they had precise texts before them.

5. He felt that opinion might well be divided on whether codification should or should not precede the creation of the judicial organ responsible for applying the law thus codified. He quoted an extract from an article by Professor Jean Graven in the *Revue de Droit International* (1948, No. 1, page 30) which stated that, as long as there was no judicial organ for the trial of international crimes, there would be neither serious codification of international criminal law nor any serious application of an international sanction, and the world would continue to live in legal anarchy under the rule of violence and injustice, with the risk of disaster. In any event, he agreed with the representative of France that, assuming that an international criminal court was a matter for the distant future, the work of codification would continue to progress in the meantime and that there was, therefore, no reason why efforts should not be made immediately towards the creation of the proposed court. The new jurisdiction, when it was created, would certainly be able to use the results of the codification currently in progress.

6. For that reason, while approving certain aspects of the revised joint draft resolution submitted by Canada and the Union of South Africa (A/C.6/L.157/Rev.1), he felt obliged to express reservations in that connexion since it might well waste too much time, seeing that the question whether an international criminal court should be established had already been discussed for over thirty years. On the other hand, simply to let the matter drop and abandon the study of it, to follow the representative of the Soviet Union, would, as the representative of Pakistan had pointed out, be a confession of helplessness.

7. The Sixth Committee had a difficult task to perform. In addition to the purely legal considerations with which the report of the International Law Commission was concerned, the Committee would have to consider the political and governmental aspect with its immense obstacles. The greatest caution was therefore imperative.

8. He approved the proposal to enable governments to participate in a committee of seventeen members to reexamine the whole problem and in particular whether it was desirable and possible, from the political and governmental point of view, to establish an international criminal court. The committee should not be confined to preparing one or more preliminary drafts, but should be free to submit any pertinent observations required or suggestions regarding the problem as a whole. For that reason he regarded the United States amendment (A/C.6/L.158) as particularly important. There was, however, an error of translation in the French text of the amendment, which he believed should read *des avant-projets de convention 'ou' de formuler des propositions* and not *des avant-projets de convention 'et' de formuler des propositions*. The object of the United States amendment was to give the committee as much freedom of action as possible, in other words to enable it, if necessary, to refrain from accepting the opinions of the jurists of the International Law Commission and not to tie it down by obliging it to submit one or more preliminary draft conventions. He felt, therefore, that only the English text of the United States amendment was acceptable, and said that he would be glad if the United States representative would explain the point further.

9. He said he would also be glad to hear further details of the composition of the seventeen-member committee and the manner in which the two schools of thought which had appeared in the Sixth Committee would be represented. He thought that every precaution should be taken in order to interest governments in the matter; otherwise the effort well might be abortive.

10. Turning to the revised text of the draft resolution submitted by Cuba, France and Iran (A/C.6/L.151/Rev.1) he criticized the wording of the third paragraph, which he thought tended to obscure the real meaning of the reference to article VI of the Convention on the Prevention and Punishment of the Crime of Genocide. A mere reference was not enough and "bearing in mind" was a vague expression which should be avoided.

11. With regard to the title of the organ to be set up, he felt that the word "jurisdiction" was preferable to "court" or "tribunal".

12. With regard to the second paragraph of the operative part of the joint draft resolution submitted by Cuba, France and Iran, he asked that the Secretary-General should be requested to communicate the preliminary draft conventions to governments to enable them, if possible, to submit preliminary comments for the use of the committee. As the committee was to consist of seventeen members chosen by the Sixth Committee, he hoped that it would consider the question from the point of view of the general international interest, and that, despite the apprehension expressed during the discussion by one of the speakers, the members of the committee would not each defend his own government's point of view. He hoped that the preliminary draft convention would not be communicated to Member States only. The object was the preparation of an international convention to which the greatest possible number of States should be able to accede.

13. Mr. VALLAT (United Kingdom) said his delegation withdrew its amendments (A/C.6/L.153) which had been largely incorporated in the revised draft resolution of Cuba, France and Iran (A/C.6/L.151/Rev.1). The delegation of the United Kingdom was submitting a further amendment (A/C.6/L.159) which he hoped would also be accepted by the sponsors of the joint draft resolution, and which reads as follows:

"Add a new fourth paragraph:

"Bearing in mind that a final decision regarding the setting up of such international penal tribunal

cannot be taken except on the basis of concrete proposals."

14. Mr. COHEN (United States of America) said the United States amendment originally included the word "or" but that, on the request of the representative of France, he had agreed to replace "or" by "and". He thought the new wording was better because it gave the Committee full latitude to consider which points required the preparation of preliminary draft conventions and which points could be dealt with by means of simple proposals. Personally, he would have preferred "and/or" but American jurists tended to regard that expression as inelegant and too vague.

15. He would like to expand the fifth paragraph of the draft resolution in order to bring it into line with the fourth paragraph.

16. As regards the future oganization, he would prefer the word "organ" to the word "jurisdiction".

17. Mr. CHAUMONT (France) thanked the representative of the United Kingdom for withdrawing his earlier amendments. On behalf of the sponsors of the joint draft resolution he accepted the new United Kingdom amendment (A/C.6/L.159).

18. In reply to the representative of Belgium, he said that if "or" had been used instead of "and", the United States amendment could not have been accepted by France and Iran. If "or" had been used, the seventeen-member committee would have been at liberty not to prepare conventions and merely to make proposals. He thought that had not been the intention of the representative of the United States, and he thanked the latter for modifying his amendment. Mr. Chaumont also accepted the United States representative's suggestion that the fifth paragraph should be adapted to the fourth paragraph by the addition of the words "and to make proposals regarding the court".

19. The third paragraph of the revised joint draft resolution, which had been strongly criticized by the representative of Belgium, was the greatest sacrifice made by the French delegation. In the opinion of the French delegation, article IV of the Convention on the Prevention and Punishment of the Crime of Genocide made the establishment of an international court obligatory, and it was therefore essential that such a court should exist. Nevertheless, he was unwilling to accept the Belgian representative's interpretation of that point and explained that the mere reference to that article in the draft resolution was not intended to hide anything but merely to take a fact into account.

20. Mr. MAURTUA (Peru) recalled that he had already spoken on the substance of the matter under discussion. Nevertheless, as in the course of the discussion some representatives had made statements regarding the personality of States which struck him as somewhat sweeping, he felt obliged to define his delegation's attitude once and for all.

21. The report of the International Law Commission reflected a conflict of opinion on certain essential questions. It was stated in that report that the rule of law in the community of States could only be ensured by the establishment of the organs proposed in the report, and it would seem that there was a refusal to recognize the force of persuasion exercised on the community of nations by the law. It was also asserted that there was an applicable law, and reference had been made, in support of that assertion, to treaties and conventions, and even to conventions which had not been ratified or had not come into force, and also to the judgments of Nürnberg and Tokyo, which were said to constitute the positive law applicable. Yet according to other paragraphs of the same report, States were free to submit to an international criminal jurisdiction.

22. Those contradictory arguments had again been put forward during the discussions in the Sixth Committee. In the opinion of the Peruvian delegation, the fact which should be borne in mind was the argument that the establishment of an international penal tribunal was a necessity, if it was thought that the concept of national sovereignty should evolve at the same time as the needs of international life. That was a matter of considerable importance, and he wished to make certain comments thereon.

23. Obviously States were economically and politically interdependent; their interdependence found expression in a certain restriction of the powers of the national personality. Some representatives had said that the interdependence required a surrender of national sovereignty by States, but that was going too far; whilst he did not deny that acceptance of the principle of the absolute sovereignty of States would open the door to anarchy in international affairs, he thought that the discussions on that question had strayed into the field of intellectual conjecture.

24. The notion of State sovereignty had exercised the minds of men for a long time and that concern had given rise to a large number of drafts and resolutions which did not always take into account the actual state of legal knowledge. It was very difficult to lay down guiding principles of law without launching out into excessively vague generalizations or lapsing into sophistry. Many of the documents prepared by scientific institutions were often so simple as to be naïve, and contained doctrinal definitions and rules which had nothing in common with practical considerations. In those circumstances, the delegation of Peru was convinced that it should uphold a number of fundamental ideas which would retain their practical value for a specified period of time, ideas which could be formulated in such a way as to embody the essence of international legislation and jurisprudence.

25. In the opinion of his delegation, renunciation of sovereignty in the name of interdependence was not a principle of law. Indeed, interdependence made possible the existence of certain very useful rules of law. For instance, the regional groups recognized by the Charter of the United Nations, which were the result of geographical and historical interdependence, allowed of the division of labour and facilitated the maintenance of peace and security. Interdependence was not incompatible with national soevreignty; on the contrary, interdependence re-affirmed national sovereignty even if it linked it to the higher and recognized interests of the community of nations. The notion of interdependence, however flexible it might be, could not obscure the fact that national sovereignty was a supreme principle. Sovereign within their territory and interdepend-

ent outside their territory, the States controlled their destinies and determined their actions precisely because they were responsible for them. Hence they could not exercise their functions to the detriment of other States or infringe the sovereignty of those States, a sovereignty which was as legitimate as their own.

26. It should also be noted that the principle of sovereignty was the most effective means of defence for the small and medium-sized States which had not the material force to compel respect for their integrity. That did not, of course, mean that States were free to exercise their sovereignty to such an extent as to ignore the needs of the international community and, in that connexion, the multilateral treaties and conventions, by introducing certain restrictions on national sovereignty, were directed towards the common interests and welfare. But it should be noted that those treaties too often dealt with matters coming within the exclusive jurisdiction of States—a fact which explained the frequency with which reservations were made in treaties and conventions. He recalled the words of an eminent American jurist who had said that positive law should take into account the complexity of international life and, in particular, of national interests.

27. Consequently, his delegation was not opposed to the idea that international sanctions could establish the obligatory nature of the law. But the question of the establishment of an international penal tribunal gave rise to certain doubts, on the part of his delegation, regarding what the representative of Poland had called the effectiveness of such an organ. If the tribunal were to be a subsidiary organ of the United Nations, and hence had a certain autonomy, it could hardly be said to be effective if its decisions were not applied. It was true that paragraph 2 of Article 94 of the Charter authorized the Security Council to take measures to give effect to judgments of the International Court of Justice. However, if the proposed tribunal was to be able to appeal to the Security Council, the Charter would have to be amended to give the Security Council the same powers in respect of judgments of the new tribunal as it had in respect of the judgments of the International Court of Justice.

28. In that same connexion, he felt bound to point out that Mr. Sandström's statements were not sufficient evidence of the existence of a customary international law. Customary law did not contain anything that was sufficiently precise to constitute a law recognized and applied by all States. Moreover, customary law could not be applied, for mere custom hardly formed the basis of international law.

29. He then dealt with the various draft resolutions and amendments. His delegation gave general support to the revised draft resolution submitted by Cuba, France and Iran (A/C.6/L.151/Rev.1).

30. It particularly supported the Israel amendment (A/C.6/L.152) to the original draft (A/C.6/L.151), which had since been incorporated in the revised draft resolution. He thought that the amendment was of great practical value. He added that in his opinion the comments of the Sixth Committee should be transmitted to the committee contemplated in the draft resolution submitted by Cuba, France and Iran and that that committee should have more time than the period provided for in the joint draft resolution. His support of that draft resolution did not run counter to what he had just said regarding the existence of an applicable law, since the joint draft resolution provided only for preparatory study, the final decision being left to governments.

31. Mr. LESAGE (Canada) noted that the representative of France had said the proposed tribunal could be established only after several years, and that the work of the International Law Commission on the codification of international criminal law had made such progress that the report would be submitted to the next session of the General Assembly. The representative of France had sought to use those assertions as an argument in favour of the draft resolution which he had proposed for adoption. He had also said that it would be advisable, in the following year, to begin drafting a draft convention on the establishment of an international penal tribunal.

32. Mr. Lesage did not see that the conclusion reached by the French representative followed from the premises stated by him. If, on the one hand, several years were to pass before the tribunal could be established and if, on the other hand, the draft code prepared by the International Law Commission was to be submitted in the following year, he concluded that it was not the time factor which prevented them from proceeding methodically and logically as proposed in the joint draft resolution submitted by Canada and the Union of South Africa (A/C.6/L.157/Rev.1).

33. The representative of Belgium had spoken of the extreme difficulty and intricacy of the problem; he had said that the matter had been discussed for more than thirty years and that many years would have to pass before the international penal tribunal became a reality. The representative of Belgium had also said that the Committee should proceed with prudence. In those circumstances, Mr. Lesage wondered why the Belgian delegation was unable to support the joint draft resolution of Canada and South Africa, which advocated a logical and orderly procedure for a final solution of the problem.

34. He did not see how governments could be asked to give their opinion on a draft convention if, at the same time, they had not received the texts of the laws which the tribunal would be responsible for enforcing. The establishment of an international penal tribunal would entail restrictions on the national sovereignty of States. Several governments, including the Canadian Government, would not be ready to accept the draft convention unless the nature and extent of those restrictions was known to them beforehand. To sum up, he considered that any draft convention prepared *in abstracto,* without precise information beforehand, would be absolutely useless.

35. The representative of France had taken the delegations of Canada and of South Africa to task for opposing any preliminary work leading to a considered decision on the subject of the establishment of the tribunal. He feared, on the contrary, that acceptance of the proposal for the establishment of a seventeen-member committee would dangerously confuse a difficult matter, by dealing with it *in abstracto,* whereas no serious objection had been raised to the idea of waiting

for precise information which wonld simplify the drafting of a draft convention and would enable governments to arrive at a decision.

36. In reply to a comment by the representative of Poland, who had said that certain States were attempting to restrict the national sovereignty of other States whilst attempting to maintain their own national sovereignty, he assured the Committee that his government was convinced that lasting peace could be established only if States agreed to surrender part of their national sovereignty. However, he wished to repeat that the Canadian Government wished, before announcing its decision, to know the extent to which national sovereignty would be restricted.

37. Recalling the suggestion made by the representative of the Union of South Africa that the Committee should vote first on the Canadian and South African draft, he read rule 130 of the rules of procedure according to which "a committee shall unless it decides otherwise" vote on the proposals in the order in which they have been submitted.

38. The Canadian representative therefore formally proposed that the draft resolution submitted by Canada and the Union of South Africa (A/C.6/L.157/Rev.1) should be voted upon first for various reasons. Firstly, the draft resolution dealt with a previous question, i.e., whether measures for establishing an international penal tribunal should be undertaken immediately or be postponed until the International Law Commission had prepared a draft code of offences against the peace and security of mankind.

39. Furthermore, if the draft resolution submitted by Canada and the Union of South Africa should not be adopted, Mr. Lesage would then like to be able to amend the draft resolution submitted jointly by Cuba, France and Iran.

40. It should also be noted that the code of offences against the peace and security of mankind was still only in the draft stage and that the final code would be very useful to the contemplated committee if such a committee should, for example, be established in 1951. The Canadian delegation was not opposed to the idea of setting up a committee of seventeen members, as proposed in the draft resolution submitted by Cuba, France and Iran, but would prefer to have it set up a little later.

41. If, therefore, that draft resolution should be voted upon first, the Canadian delegation would be obliged to oppose it, while at the same time regretting that that would mean rejecting the idea of establishing such a committee.

42. If, however, its own draft resolution should not be adopted, the Canadian delegation would like to make several drafting amendments to the draft resolution presented by Cuba, France and Iran, because it was not satisfied with the text of that draft. Therefore, on logical and practical grounds, the draft resolution submitted by Canada and the Union of South Africa should be voted upon first.

43. Mr. JUNG (India) recalled that the delegation of India had already supported the draft resolution originally submitted by Cuba, France and Iran (A/C.6/L.151). Inasmuch as that draft resolution had been amended, he wished to confirm that he would vote for the joint draft resolution as revised (A/C.6/L.151/Rev.1).

44. He wished to state, however, that it would be difficult, if not impossible, for his delegation to express an opinion at that time on the substance of the question. India would come to a decision on that matter at a later time when it could review the results accomplished by the committee proposed in the joint draft resolution.

45. Mr. ABDOH (Iran) said that since the representative of France had just disposed of the objections made by various representatives concerning the revised draft resolution presented by Cuba, France and Iran (A/C.6/L.151/Rev.1), he would confine himself to several remarks representing the views of his delegation.

46. He wished first of all to point out to the Committee members that the incorporation of the United States amendment (A/C.6/L.158) and the United Kingdom amendment (A/C.6/L.153) removed the difficulties to which the original draft resolution jointly presented by Cuba, France and Iran might have given rise in the case of certain delegations.

47. He understood that, where a delegation was categorically opposed to the idea of establishing an international penal tribunal, the argument that the establishment of such a tribunal would result in a loss of national sovereignty would be decisive. Where, however, a delegation believed only that it was premature to plan to establish such a tribunal, he was convinced that the joint draft resolution presented no danger. As a matter of fact, the operative part thereof provided simply for the establishment of a committee for the purpose of preparing a preliminary draft convention relating to the establishment and the statute of such a tribunal.

48. Mr. Abdoh said that he could see no objection to accepting the Canadian proposal whereby the draft resolution submitted by Canada and the Union of South Africa would be voted upon first. He would, in fact, be happy if the representatives of Canada and the Union of South Africa, as well as the various representatives supporting the draft resolution submitted by those two delegations, could be given an opportunity, if that draft should be defeated, to study the draft resolution submitted by Cuba, France and Iran. Moreover, as the Canadian representative himself had pointed out, the two draft resolutions were not incompatible in substance, and the representative of Iran did not see why the representative of Canada and the Union of South Africa could not accept the draft resolution submitted by Cuba, France and Iran.

49. Mr. MAURTUA (Peru) said that his delegation wished to avoid having the status of an international criminal jurisdiction defined now. His delegation was not, however, opposed in principle to the establishment of such a jurisdiction, and it believed that there was no objection to undertaking the preliminary steps immediately. Those steps would consist of determining the structure of the proposed court and settling such related questions as the scope of the jurisdiction of the court, rules of evidence, procedural guarantees and the system of appointing judges. It would also be necessary

to determine the law to be applied by the court. The two subjects could be studied side by side, with the International Law Commission dealing with the law to be applied and the intergovernmental committee dealing with the physical structure of the court.

50. He concluded by saying that problems relating to the evolution of international law were delicate and required much time for their solution. For example, a movement that took form on the American continent in 1890 with the aim of establishing a judicial body had not yet become a reality.

51. Mr. VAN GLABBEKE (Belgium) thanked the representatives of France and the United States for the explanations given by them and observed that the use of the word "and" or the word "or" in the United States amendment was actually a sub-amendment made to the United States amendment by France with the consent of the United States. That clarification had been necessary, because the change had been presented as a simple mis-translation.

52. The explanations just given placed the Belgian delegation in a dilemma concerning its vote on the draft resolution submitted by Cuba, France and Iran. Most delegations had emphasized that they had intended to reserve their freedom of action with respect to the establishment of an international criminal jurisdiction. Under the terms of the joint draft resolution, however, those delegations were now about to commit themselves. The starting point had been, as the United Kingdom representative had pointed out, the fact that the International Law Commission had not undertaken an exhaustive study and that an examination of the matter from the political and governmental points of view and independently of the legal point of view was accordingly necessary.

53. If the joint draft resolution of Cuba, France and Iran were adopted, two preambles would be involved: firstly, the conclusion of the International Law Commission that the establishment of an international criminal jurisdiction was desirable and possible, and, secondly, article VI of the Convention on Genocide. It should be noted in that regard that the International Law Commission had not expressly recommended the establishment of an international criminal jurisdiction, and that moreover, while the Convention on Genocide referred to the possible existence of an international criminal jurisdiction, it did not require that such a jurisdiction should be created.

54. Those two preambles, however, were the basis for the establishment of an inter-governmental committee the activities of which would be limited by the terms of the resolution. In other words, the committee would no longer be able to examine whether the establishment of an international criminal jurisdiction was desirable and possible from the political and governmental point of view because that fact would have been considered as established by the resolution. The committee would be required to prepare a draft convention without being permitted to say how desirable it was to establish such a jurisdiction, if at all.

55. On the other hand, if the amendment submitted by the United States had not been modified, the committee would have been free to conclude that it could not present a preliminary draft convention because the establishment of an international criminal jurisdiction had not appeared politically desirable.

56. Hence, there was no misunderstanding between the representative of France and the representative of Belgium; but in fact they did not see eye to eye on the following point: to request the inter-governmental committee to prepare one or more draft conventions meant that it was barred from reopening the question whether the establishment of an international criminal jurisdiction was desirable and possible. That was the main reason why the Belgian delegation, although favourable to the idea of creating an international criminal jurisdiction, would be obliged to abstain from voting on the joint draft resolution submitted by Cuba, France and Iran.

57. Mr. MATTAR (Lebanon) explained the votes that would be cast by his delegation on the various draft resolutions.

58. He recalled both the terms of the resolution whereby the International Law Commission had been instructed to study the question under discussion and the affirmative reply which it had given to the following two items, viz., it was desirable and it was possible to establish an international criminal jurisdiction. The Lebanese delegation shared that point of view although it realized the practical and political difficulties involved in the establishment of such a jurisdiction. From a practical point of view his delegation doubted whether that jurisdiction could function effectively, and from a political point of view it realized that the establishment of such a jurisdiction would interfere with the sovereignty of States and imply that international law prevailed over municipal law. It was nevertheless to be hoped that the good faith of the States concerned would make it possible to overcome those difficulties.

59. The establishment of an international criminal jurisdiction was the logical result of the General Assembly's request to the International Law Commission, and the next point to be settled was what procedure should be adopted. The delegation of Lebanon believed that the procedure proposed in the joint draft resolution submitted by Cuba, France and Iran was very satisfactory. The International Law Commission had, in fact, examined the legal aspects of the question, and the proposed committee would prepare a draft convention which allowed for political considerations.

60. The Lebanese delegation accordingly would vote for the draft resolution and for the amendments already accepted by its sponsors and included in the new text (A/C.6/L.151/Rev.1).

61. It would also vote for the United Kingdom amendment (A/C.6/L.159).

62. The delegation of Lebanon would vote against the draft resolution submitted by Canada and the Union of South Africa (A/C.6/L.157/Rev.1), which would delay the establishment of an international criminal jurisdiction. It was not necessary to defer the study of the matter until the draft code of offences against the peace and security of mankind had been concluded; although they were separate questions, the two could be studied simultaneously. Prudence undoubtedly required that precipitate action should be avoided, but action must

not be so slow as to prevent the desired goal from being reached in due time.

63. Mr. ESPINOSA (Cuba), speaking on a point of order, and referring to the Canadian representative's proposal regarding the order in which the various draft resolutions should be put to the vote, suggested, in agreement with the French representative, that the chronological order should be followed and that a vote should first be taken on the draft resolution submitted by Cuba, France and Iran, which antedated the draft resolution submitted by Canada and the Union of South Africa. Since it was a matter of two proposals relating to the same question, he requested the application of rule 130 of the rules of procedure.

64. Mr. DROHOJOWSKI (Poland) supported the Canadian representative's proposal that the draft resolution submitted by Canada and the Union of South Africa should be put to the vote first.

65. The CHAIRMAN ruled that that proposal should be put to the vote, since it had not been accepted by the sponsors of the other draft resolution.

The proposal was not adopted, 18 votes being cast in favour and 18 against, with 11 abstentions.

66. Mr. DROGUETT (Chile) explained his vote on the draft resolution submitted by Cuba, France and Iran. He stated that he would vote for that draft and for the amendments accepted by its sponsors. His delegation was favourable to the appointment of a committee to study the establishment and statute of a possible international criminal jurisdiction. It did not share the viewpoint of the Polish representative, who considered that a decision must be taken on the substance of the question before deciding to establish such a committee.

67. Mr. Droguett thought that it was necessary to act circumspectly. International law could only advance by successive stages. The General Assembly could not, however, adopt an attitude which would tend to hamper the development of international law, whereas Article 13 of the Charter gave it the task of promoting the progressive development of that law.

68. The preliminary draft convention or conventions to be prepared by the proposed committee would be a step toward the establishment of an international criminal jurisdiction. The idea was not new; it was to be found already in a resolution of the League of Nations of 1936, in the Geneva Convention of 1937, in the studies made by the United Nations War Crimes Commission in 1943, and in the charters of the Nürnberg and Tokyo Tribunals. Hence there was no reason to oppose such texts as the joint draft resolution submitted by Cuba, France and Iran which encouraged the establishment of such a jurisdiction and which had the advantage of not obliging States to commit themselves to it forthwith. His delegation would vote against the draft resolution submitted by Canada and the Union of South Africa.

69. The CHAIRMAN gave the floor to the Canadian representative who had reserved his right to submit an amendment to the draft resolution of Cuba, France and Iran in the event of the rejection of his proposal that the Canadian-South African draft resolution should be put to the vote first.

70. Mr. LESAGE (Canada) stressed that he had not yet commented upon the text of the joint draft resolution submitted by Cuba, France and Iran.

71. He proposed that the text of the second paragraph of that draft resolution should be replaced by the second paragraph of the draft resolution submitted by Canada and the Union of South Africa. It was better not to retain the present drafting of that paragraph because account must be taken of the fact that the conclusion of the International Law Commission had been adopted by only seven members of that Commission and of the fact that the substance of the question had not been examined by the Sixth Committee and that some of its members entertained doubts regarding the correctness of the conclusions of the International Law Commission.

72. Mr. ROBERTS (Union of South Africa), speaking on a point of order, emphasized that the draft resolution of Cuba, France and Iran had undergone some changes and that the Sixth Committee had not had an opportunity to discuss those changes. Thus, for example, the number of members of the proposed intergovernmental committee had been raised from fifteen to seventeen, whereas, on the contrary, some delegations were of the opinion that the number should have been reduced. His delegation would submit an amendment in that sense.

73. The CHAIRMAN, noting that the Committee was about to vote, declared that it would be contrary to rule 127 of the rules of procedure to submit amendments at the present stage unless a majority of the Committee members decided to suspend the meeting and resume consideration of the question at the next meeting. Since such was not the wish of the Committee, the Chairman put to the vote the Canadian amendment to replace the second paragraph of draft resolution A/C.6/L.151/Rev.1 by the second paragraph of draft resolution A/C.6/L.157/Rev.1.

The amendment was adopted by 20 votes to 16, with 12 abstentions.

74. The CHAIRMAN, before continuing with the vote on draft resolution A/C.6/L.151/Rev.1, drew attention to the fact that, the United Kingdom amendment (A/C.6/L.159) having been accepted by the sponsors of the joint draft resolution, the paragraph contained in that amendment must be inserted before the operative part of the joint draft resolution, and would thus form its fourth paragraph.

75. Mr. VAN GLABBEKE (Belgium) requested that the draft resolution should be put to the vote paragraph by paragraph and that the fifth paragraph should be divided into the following three parts: (*a*) "*Decides* that a committee composed of the representatives of the following seventeen Member States (. . .) shall meet at Geneva on 1 August 1951 for the purpose of . . ."; (*b*) "preparing one or more preliminary draft conventions and . . ."; (*c*) "proposals relating to the establishment and the statute of an international criminal court".

76. Mr. MOROZOV (Union of Soviet Socialist Republics) requested that, in view of the length of the draft resolution and of the fact that not all the Russian texts of the draft resolutions and amendments had been

distributed, each paragraph or part of a paragraph should be read before being put to the vote.

77. The CHAIRMAN stated that the Secretary of the Committee would read the paragraphs, as requested.

78. He put to the vote the first paragraph of draft resolution A/C.6/L.151/Rev.1.

The paragraph was adopted by 43 votes to none, with 6 abstentions.

79. The CHAIRMAN noted that the second paragraph had already been adopted, its wording being that of the amendment submitted by Canada.

80. The Chairman put to the vote the third paragraph of draft resolution A/C.6/L.151/Rev.1.

The paragraph was adopted by 32 votes to 2, with 16 abstentions.

81. The CHAIRMAN put to the vote the fourth paragraph of the draft resolution, consisting of the United Kingdom amendment (A/C.6/L.159).

The paragraph was adopted by 39 votes to none, with 8 abstentions.

82. The CHAIRMAN put to the vote the first part of the fifth paragraph: "*Decides* that a committee composed of the representatives of the following seventeen Member States (. . .) shall meet at Geneva on 1 August 1951 for the purpose of preparing . . ."

The first part of the fifth paragraph was adopted by 33 votes to 10, with 5 abstentions.

83. The CHAIRMAN put to the vote the second part of the fifth paragraph: "one or more preliminary draft conventions and . . ."

The second part of the fifth paragraph was adopted by 32 votes to 14, with 4 abstentions.

84. The CHAIRMAN put to the vote the third part of the fifth paragraph: "proposals relating to the establishment and the statute of an international criminal court".

The third part of the fifth paragraph was adopted by 35 votes to 9, with 6 abstentions.

85. The CHAIRMAN put to the vote the sixth paragraph as amended.

The paragraph was adopted by 36 votes to 6, with 6 abstentions.

86. The CHAIRMAN put to the vote the seventh paragraph.

The paragraph was adopted by 35 votes to 8, with 7 abstentions.

87. The CHAIRMAN put to the vote the last paragraph.

The paragraph was adopted by 38 votes to 2, with 9 abstentions.

88. The CHAIRMAN put to the vote the whole of draft resolution A/C.6/L.151/Rev.1 with the text resulting from the decisions just taken and subject to the composition of the committee set up pursuant to the fifth paragraph.

The draft resolution as a whole was adopted by 35 votes to 6, with 8 abstentions.

89. The CHAIRMAN stated that the question of the composition of the committee provided for in the draft resolution would be dealt with at the next meeting.

The meeting rose at 1.50 p.m.

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