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CONTENTS

Chairman: **Prince WAN WAITHAYAKON (Thailand).**

International criminal jurisdiction: report of the Committee on International Criminal Jurisdiction (A/2136, A/2186, A/2186/Add.1, A/C.6/L.261/Rev.1) (*concluded*)

[Item 52]*

1. Mr. McLEAN (Canada) said that the debate on the subject of international criminal jurisdiction had revealed three general categories of views. A first group of delegations considered that some positive action should be taken now to establish an international criminal court but that the method of conferring jurisdiction on that court might be held in abeyance. A second group, comprising a majority of the delegations, considered that the establishment of such a court in the existing state of international affairs was not feasible or practicable and that the time was not ripe for its establishment. A third and small group of delegations held that an international criminal court should not be established because it would be inconsistent with the principles of sovereignty of States and non-intervention, and that it would be contrary to the principles of the United Nations Charter and the Charter of the Nürnberg Tribunal.

2. Clearly, the great majority of delegations did not deny the desirability or indeed the possibility of establishing such a court. Most governments seemed to recognize a definite need for an international criminal court to deal effectively with crimes against humanity and to feel that its establishment, no matter how far in the future, was a worthy objective. The Canadian delegation concurred in that position.

3. Many delegations, including his own, considered that the establishment of an international criminal court would be an achievement in the United Nations comparable in importance to the creation of the Charter itself. The doubts which appeared to prevail in the minds of the majority were concerned with the timing and method of the court's establishment. It would be impossible for the Sixth Committee to recommend any positive action until those doubts were dispelled and until all governments had had an opportunity to consider all the various methods of establishing such a court and the implications and consequences of such action.

4. The Canadian Government had given careful consideration to the report of the Committee on International Criminal Jurisdiction (A/2136), particularly paragraph 17. It maintained its previous position that the establishment of an international criminal court was so closely related to the draft code of offences against the peace and security of mankind, an item which had been deleted from the agenda of the seventh session of the General Assembly, that it would not be practicable to take a final decision on the establishment of an international criminal court until general agreement had been reached on the adoption of the code of offences. Regardless of the system of government, criminal jurisdiction within a State involved three elements: criminal law, a judicial organ and enforcement machinery. The same elements were required for effective international criminal jurisdiction. In the absence of an effective criminal law, discussion of the other two elements became academic. It was doubtful whether general agreement on the establishment of an international criminal court could be obtained unless there was general acceptance of the basic law which such a court would apply. On no account should the Committee overlook that practical consideration.

5. The Canadian delegation was not prepared to support a proposal for the establishment of an international criminal court at the current session. It was, however, prepared to support and co-operate fully in any move to encourage further study of the methods of establishing such a court. The real issues were first, whether there was a reasonable prospect of States signing a convention to confer jurisdiction on a court, if established, and second, whether the court was likely to function effectively on the basis of the acceptance of such a convention by States.

6. The Canadian delegation would support further study not only of the methods of establishing an inter-

* Indicates the item number on the agenda of the General Assembly.

national criminal court, and their implications and consequences, but also of the implications and consequences resulting from the actual establishment of such a court. It was therefore not prepared to support the revised Swedish draft resolution (A/C.6/L.261/Rev.1 and Corr.1), which would have the practical effect of a recommendation to drop the matter for an indefinite period. It would, however, support in principle the revised joint draft resolution (A/C.6/L.260/Rev.1), which made provision for further study.

7. Mr. POVETYEV (Byelorussian Soviet Socialist Republic) stated that the delegation of the Byelorussian SSR had, from the very outset, objected to the proposal for a permanent international criminal court, because such a proposal was based on false premises and would endanger international co-operation and international security. International co-operation could be achieved only through complete recognition of the principles of national sovereignty and of non-intervention in the domestic affairs of States, in accordance with the provisions of the Charter. The proposal for an international criminal court would clearly violate the provisions of the Charter, for it meant that the court would be authorized to interfere in the domestic affairs of States and so infringe their sovereign rights with respect to their nationals. The report of the Committee on International Criminal Jurisdiction implicitly admitted that the establishment of an international criminal court would be inconsistent with the principle of the sovereignty of States.

8. That Committee had not considered whether an international criminal court was really needed. Stripped of all legal phraseology, the proposal to establish such a court actually represented a transparent attempt by the ruling circles of the United States and its allies to create a new means of interfering in the domestic affairs of States and undermining their sovereignty. Accordingly, his delegation steadfastly maintained its opposition to the proposal and would vote against all resolutions for the establishment of such a court or for further study of a scheme which was defective and unrealistic and which would violate the provisions of the Charter.

9. Mr. NISOT (Belgium) commented critically on the way in which the draft statute dealt with the court's competence. The court's jurisdiction was not determined in advance: it might be defined in the actual indictment whereby a case was referred to the court, and for the purposes of that indictment; while its jurisdiction could be determined by convention, it could also be determined by purely unilateral action; even for the purposes of fixing the penalty it would have to take the instrument conferring jurisdiction into account. The existence of the court's powers, their limits and the conditions governing their exercise might well depend on the convenience of the plaintiff State. Moreover, regardless of the seriousness of his crime, a person's trial could be objected to by the State of which he was a national or by the State on whose territory the crime had been committed. As a direct result of its statute, the court would be incapable of administering justice uniformly and equally to all who were brought before it; its dispensation of justice would be *ad hoc,* haphazard and sporadic. Acts committed under identical conditions might or might not be punishable, depending on the preferences of each government, or they might be punishable differently. The draft statute had apparently been modelled on the principles which governed the establishment of arbitral tribunals to settle disputes between States. Yet criminal justice, which related to the liability of human beings, should obey entirely different principles. The draft statute seemed to disregard the most settled principles of modern criminal law, if it was borne in mind that the object was to establish an international criminal court which would try, not a category of offences committed in specified circumstances, but crimes which might, in the most general sense, be described as international. Accordingly, the draft statute marked a retrograde step, which was its fundamental flaw.

10. A second criticism was that the draft statute tended to establish a necessary link between the organization and operation of the court and the organization and operation of the United Nations. Its method of so doing set it in opposition to the Charter. Not only—as had been universally recognized—did it assume that the United Nations had a criminal competence which in fact it did not have, but also it purported to set up the General Assembly as a source of international law and obligations whereas in actual fact, and even under the Charter, in principle the Assembly had purely recommending powers. Moreover, the draft statute made no reference to the Security Council, which had the primary responsibility for the maintenance of peace and which by its findings and decisions, particularly in cases of aggression, could indirectly exert a considerable influence on the definition and conception of what should or should not constitute an international crime. The draft statute's conception of the powers of the Secretary-General was based on a no less serious misinterpretation of the Charter.

11. Since his delegation endorsed, on the whole, the many objections raised to the draft statute in the Sixth Committee, he would not elaborate further.

12. He hoped that upon the adoption of the joint resolution, the new committee would submit a draft statute which was consistent with international law and which would achieve a compromise between the realities of international life and the need for the sound administration of justice.

13. He expressed his good wishes for the proposed effort to elucidate the subject; his delegation felt that, as yet, it was not sufficiently well-informed to adopt a definite position concerning the principle of the establishment of a court.

14. Mr. HOLMBACK (Sweden) said that one of the objections to the original Swedish draft resolution (A/C.6/L.261) had been that it would destroy the idea of an international criminal court because it set no date for reconsideration of the subject by the General Assembly. The amendments submitted orally by the delegations of Panama and Egypt at the previous meeting, which the Swedish delegation had accepted, removed that objection.

15. In the revised text (A/C.6/L.261/Rev.1 and Corr.1), the Swedish draft resolution provided for reconsideration of the question at the eighth session of the General Assembly, regardless of the number of comments received from governments. The General

Assembly would then be free, in the light of the comments received from governments, to decide whether the work on the establishment of an international criminal court should be continued.

16. The main difference between the revised Swedish draft resolution and the revised joint draft resolution (A/C.6/L.260/Rev.1) was that the joint text would establish a new committee immediately while the Swedish proposal would postpone that decision until the eighth session of the General Assembly. In view of the considerable objection raised to the report of the present Committee, it would be premature to proceed immediately to the establishment of a new committee the cost of which, to the Secretariat alone, would be $33,700 (A/C.6/L.263). Moreover, in addition to the expenses, to which many members of the Fifth Committee might object, it seemed unwise to waste the valuable time of many international lawyers in establishing a new committee immediately.

17. Mr. IBRAHIM KHAN (Pakistan) said that although the question of establishing an international criminal court was admittedly a very difficult one, the need for such a court had been recognized in General Assembly resolutions 260 B (III) and 489 (V), by the Committee on International Criminal Jurisdiction, and in the Sixth Committee. It was therefore pointless to re-examine the fundamental question whether such a court should be established, as was proposed in the United Kingdom amendments (A/C.6/L.262). Accordingly, he would vote against those amendments and in favour of the revised joint draft resolution (A/C.6/L.260/Rev.1).

18. Once it had been decided that an international criminal court was necessary for the preservation of international peace and that it should be established, no difficulty should be permitted to stand in its way. If the Charter did not provide for the creation of such a court, there was machinery for revising the Charter. Perhaps the committee to be set up under the joint draft resolution might explore those possibilities, too.

19. The critical remarks made in the Committee had served a useful purpose in clarifying the issue and counselling caution; they should not however prevent all further action. In law, as elsewhere, it was impossible to foresee all the possible results of a given step; the States which had recently come into being could never have been created if their establishment had depended on full anticipation of all the consequences of their new status. Similarly, the uncertainty regarding many aspects of the proposed international criminal court should not paralyse all action.

20. Mr. EL-TANAMLI (Egypt) said that while the revised joint draft resolution (A/C.6/L.260/Rev.1) tended to some extent to advance the idea of an international criminal court, it created the same vicious cycle as in the case of the Committee on International Criminal Jurisdiction. The Sixth Committee was asked to recommend the establishment of a new committee which would study a series of minor questions while evading the main issue. The idea of an international criminal court could not be advanced by the discussion of secondary questions. It was important to consider the primary question of the code which would be applied by that court. While an *ad hoc* committee could not decide on a code, progress could be made by asking the International Law Commission to continue its study of the matter.

21. The United Kingdom amendments were more realistic than the joint draft resolution because they had the virtue of at least posing the question. If the United Kingdom amendments were put to the vote before the Swedish draft resolution, he would support them.

22. The Egyptian delegation was, however, convinced that the primary requirement was information on the opinions of governments. On that basis, the Swedish draft resolution was preferable in that it requested governments' comments and would thus initiate international discussion which might produce practical results. The Swedish draft resolution did not drop the question from the agenda but called for its inclusion in the agenda of the eighth session of the General Assembly. The Egyptian delegation would therefore support the revised Swedish draft resolution, which would advance the principle of an international criminal court.

23. Mr. BAZZAZ (Iraq) said that after having studied the Geneva Committee's report and listened to the debate, he had reached the conclusion that the differences of opinion in the Sixth Committee were essentially differences of emphasis rather than of principle. With certain exceptions, those who for the moment opposed the establishment of an international criminal court admitted its desirability but considered that the time was not yet ripe for its establishment. On the other hand, those who favoured the establishment of the court were fully aware of the many obstacles in its way but thought that they were not insurmountable.

24. The Iraqi delegation could not share the optimism of the second group. Not only would the establishment of an international criminal court infringe the sovereignty of States, conflict with the United Nations Charter and increase the already heavy financial liabilities of States, but it would be a contradiction of the essential conception of criminal justice to authorize such a court to exercise its powers without clearly and explicitly defining the law it was to apply. Furthermore, the establishment of such a court might well increase international tension.

25. The establishment of the Nürnberg and Tokyo Tribunals could not be cited as an analogy to prove that it was possible for an international criminal court to be set up, for those two Tribunals had been established by the victorious States and had tried subjects of the vanquished States.

26. An international criminal court could be established only when the principle of the rule of law was fully accepted by all States, great and small, and when the concept of justice was clearly defined and appreciated by all States. So long as ideals were sacrificed for the sake of expediency and justice neglected for the sake of peace, it was scarcely logical to aspire to such a court of international jurisprudence.

27. The question, then, was not the desirability of establishing the court but the practical possibility of doing so. In view of the existing state of affairs, he could only conclude that there was no possibility of

establishing the court either now or in the immediate future.

28. That being so, he would vote against the revised joint draft resolution (A/C.6/L.260/Rev.1) and would abstain from voting on the amendments to it.

29. Mr. MORRIS (United States of America) stated that from the time when the report of the International Law Commission covering its second session[1] had come before the Sixth Committee in 1950, the United States delegation had neither favoured nor opposed the establishment of an international criminal court. That attitude remained unchanged. The United States delegation had been, still was and expected to continue to be, willing and pleased to co-operate in exploring all aspects of such an institution. It was neither optimistic nor pessimistic regarding possible results.

30. Its attitude was not prompted by any desire to remain neutral on the subject, but rather by its anxiety to ensure that every aspect of the question should be before the Committee before any final decision was taken. The report of the Geneva Committee, followed by the enlightening discussion at present in progress, had done much to elucidate the subject. The United States delegation therefore felt that it would be desirable to set up another small group, similar in character to the Geneva Committee, to survey the suggestions and criticisms which had been made of the 1951 report. The work and conclusions of such a group would be of unquestionable value to all Members of the United Nations, for the best decisions were invariably those based on the greatest measure of information on any given subject.

31. The United States delegation felt that whatever merits the Swedish draft resolution might originally have had for handling the situation had been completely dissipated by the discussion that had taken place. It was difficult to believe that it would be possible to elicit by correspondence the views of any substantial number of governments in addition to those which had been heard through their representatives on the Sixth Committee. The time had come to decide whether the subject should be explored further or whether it should be dropped from the agenda. The United States delegation favoured a continuation of the investigation of the subject while it was still fresh in the minds of the representatives and while their interest was active. In view of the different attitudes that had been displayed during the discussion, there was no danger that the Sixth Committee, or any other United Nations body, would be rushed into the ill-considered adoption of any project for an international criminal court.

32. Should the Committee decide to continue its investigation through the mechanism proposed in the revised joint draft resolution, the United States delegation felt that the directives to the group in question should not imply either favour or disfavour of the idea of an international criminal court, nor should the group be expected to decide whether the establishment of such a court was feasible; all such questions of policy must be left to the decision of the Sixth Committee. The task of the group would be to assemble and consider all that had been said regarding the report and the draft statute submitted by the Committee on International Criminal Jurisdiction and to report back to the Sixth Committee regarding the type of statute that could take into account the comments and criticisms which the 1951 report had evoked. Since those ideas were incorporated in the revised joint draft resolution, the United States delegation would vote in favour of that proposal.

33. In conclusion, it being the first time that Mr. Morris had participated in the work of the Sixth Committee, he would like to compliment the Committee on the way it was working. To him as a newcomer, the discussion, which had been marked by its vigour and clarity, had been a most stimulating and inspiring experience.

34. Mrs. BASTID (France), referring to the objection which had been raised to the establishment of an international criminal court on the ground that such a court would infringe the sovereignty of States, pointed out that the Charter itself implied a certain limitation of sovereignty.

35. The establishment of an international instrument such as the proposed international criminal court was indeed a very serious question, which should not be decided upon in haste. It was obvious that the majority of the Committee were in favour of further exploration of the subject and were only hesitant concerning the best procedure. The disadvantage of the Swedish draft resolution was that the 1953 session would find the Sixth Committee in possession of a certain number of replies from governments, from which it would be difficult to determine the main currents of opinion. The revised joint draft resolution, on the contrary, provided for further investigation of the subject by a special committee of experts, which as a small body would be able to achieve more fruitful results than would a more unwieldy group. At the ninth session of the General Assembly the Sixth Committee would have before it a carefully considered report upon which to base its deliberations. By that time the international situation might well have changed and the discussions might take place in a somewhat different atmosphere. The one disadvantage of the joint draft resolution was that it involved rather heavy expenditure. She felt, however, that the calculations which had been made were rather over-generous and she was confident that the Fifth Committee would be able to revise them.

36. The French delegation therefore favoured the revised joint draft resolution.

37. Mr. FITZMAURICE (United Kingdom) stated that, after discussing the matter with some of the sponsors of the joint draft resolution, his delegation had concluded that the revised text came closer to the United Kingdom position in that it provided for the proposed committee to do what the United Kingdom considered of great importance, namely, not only to examine ways and means of establishing an international criminal court but also to consider the fundamental preliminary questions which had been raised during the discussion in the Sixth Committee.

38. That being so, his delegation would withdraw the amendments (A/C.6/L.262) it had submitted to the first joint draft resolution (A/C.6/L.260).

[1] See *Official Records of the General Assembly, Fifth Session, Supplement No. 12.*

39. The CHAIRMAN stated that in accordancee with rule 130 of the rules of procedure, he would put the two draft resolutions to the vote in the order in which they had been submitted, unless the Committee decided otherwise.

40. Mr. HOLMBACK (Sweden) pointed out that since the revised Swedish draft resolution would have the effect of postponing the decision with regard to a new committee to consider the subject, it would be reasonable for it to be voted upon before the revised joint draft resolution, which provided for the establishment of a committee forthwith. He therefore moved formally, under rule 130, that the revised Swedish draft resolution should be voted upon first.

41. The CHAIRMAN put the Swedish motion to the vote.

The Swedish motion was adopted by 21 votes to 13, with 9 abstentions.

42. Mr. MOROZOV (Union of Soviet Socialist Republics) asked for the vote on the revised Swedish draft resolution to be taken paragraph by paragraph.

The first paragraph of the preamble of the revised Swedish draft resolution (A/C.6/L.261/Rev.1 and Corr.1) was adopted by 14 votes to 11, with 19 abstentions.

The second paragraph of the preamble was adopted by 15 votes to 8, with 20 abstentions.

The third paragraph of the preamble was adopted by 15 votes to 8, with 20 abstentions.

The fourth paragraph of the preamble was adopted by 17 votes to 11, with 17 abstentions.

Paragraph 1 of the operative part was adopted by 24 votes to 6, with 13 abstentions.

Paragraph 2 of the operative part was adopted by 21 votes to 18, with 5 abstentions.

Paragraph 3 of the operative part was adopted by 19 votes to 7, with 17 abstentions.

Paragraph 4 of the operative part was adopted by 19 votes to 7, with 14 abstentions.

At the request of the Netherlands representative, the vote on the revised Swedish draft resolution as a whole was taken by roll-call.

Turkey, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Ukrainian Soviet Socialist Republic, Union of South Africa, Union of Soviet Socialist Republics, Venezuela, Yemen, Yugoslavia, Afghanistan, Argentina, Brazil, Burma, Byelorussian Soviet Socialist Republic, Czechoslovakia, Dominican Republic, Egypt, India, Indonesia, Iraq, Lebanon, Peru, Poland, Saudi Arabia, Sweden, Syria.

Against: Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Australia, Canada, China, Cuba, El Salvador, France, Greece, Iran, Israel, Liberia, Mexico, Netherlands, Pakistan.

Abstaining: Belgium, Chile, Denmark, Haiti, Norway, Philippines, Thailand.

The revised Swedish draft resolution was adopted by 23 votes to 16, with 7 abstentions.

43. Mr. MOROZOV (Union of Soviet Socialist Republics) explained that he had voted for paragraph 2, and against paragraph 1, of the operative part, and abstained on all the other paragraphs of the revised Swedish draft resolution. He had voted for the draft as a whole because, in the circumstances, it was the least objectionable proposal and did not, like the revised joint draft resolution (A/C.6/L.260/Rev.1) burden any committee with further pointless study of the question. His action did not affect his delegation's basic position on the question, or any action his delegation might decide to take on it in the future.

44. Mr. NISOT (Belgium) said that he had abstained on the revised Swedish proposal because, although he preferred the revised joint draft resolution, he had not wished to vote against any text which held out any prospect of further study.

45. Mr. FITZMAURICE (United Kingdom) explained that he had voted against the revised Swedish draft resolution, not because he disagreed with its contents or because he objected to postponement of the issue, but because the draft would inevitably lead to fruitless repetition of the debate at the eighth session. The few additional replies from governments which might be forthcoming in the meantime would hardly change the situation. The revised joint draft resolution, on the other hand, would have permitted more effective discussion in the long run.

46. Mr. TARAZI (Syria) said that he had voted for the revised Swedish draft resolution both in parts and as a whole because, in the light of the discussion, it seemed useless at the moment to set up a new committee which would face the same difficulties as its predecessor.

47. Mr. MENDEZ (Philippines) said that although he had voted for the separate paragraphs of the revised Swedish draft resolution containing statements of fact, he had abstained in the final vote on the text as a whole because he preferred the revised joint draft resolution.

48. Mr. ABDOH (Iran) said that he had voted against the revised Swedish draft resolution because he felt that the Committee on International Criminal Jurisdiction should continue its work on the question. He only hoped that many governments would submit their comments in accordance with that draft, so that some further progress could be achieved at the following session of the General Assembly.

49. Mr. GOMEZ ROBLEDO (Mexico) said he had voted against the revised Swedish draft resolution, not because he was opposed to the idea of an international criminal jurisdiction, but because he felt that the revised joint draft resolution was more effective.

50. Miss RUSAD (Indonesia) explained that she had voted for the revised Swedish draft resolution because she considered that further consultation of governments would be very useful.

51. Mr. HERRERA BAEZ (Dominican Republic) said he had supported the revised Swedish draft as a whole because it recognized certain essential facts, although he reserved his Government's position on paragraphs 2 and 4 of the operative part, which implied

that the question would be included in the agenda of the General Assembly's eighth session.

52. Mr. MAURTUA (Peru) explained that he had voted in favour of the revised Swedish draft in view of the need for further study of a number of questions, particularly those left unanswered by the Committee on International Criminal Jurisdiction, before any definite action could be taken. His vote did not prejudge in any way the comments which his Government might submit on the question of international criminal jurisdiction, in conformity with that resolution.

53. Mr. BARTOS (Yugoslavia) said he had voted for all the paragraphs in the preamble to the Swedish draft, which reviewed the existing situation, and for paragraph 1 of the operative part which paid a just tribute to the Committee on International Criminal Jurisdiction for its work. He had voted against paragraph 2 because it failed to make provision for the time necessary for further study of the question, and in favour of paragaph 3, which called upon governments to submit their comments.

54. He had supported the draft resolution as a whole because, notwithstanding its shortcomings, it would permit further study of the question on the basis of additional government comments, without prejudging the question of the establishment of a special committee at some later date.

55. Mr. BAZZAZ (Iraq) said that, though originally not in favour of the revised Swedish draft resolution, he had decided to vote for it since the proposal called for further study without committing governments to any future course of action.

56. Mr. EASTMAN (Australia) explained that he had voted against the revised Swedish draft resolution for the reasons given by the representatives of Iran and the United Kingdom. He would have voted in favour of the revised draft resolution had that text been put to the vote.

The meeting rose at 12.45 p.m.

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