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CONTENTS

Chairman: Mr. Francisco V. GARCIA AMADOR (Cuba).

AGENDA ITEM 50

International criminal jurisdiction: report of the 1953 Committee on International Criminal Jurisdiction (A/2645) *(continued)*

GENERAL DEBATE *(continued)*

1. Mr. STEIN (Canada) said that his Government was in favour of the establishment of an international criminal court to try certain crimes under international law committed by individuals. As he had stated in the debate on the question of defining aggression (413th meeting), aggression was probably the most important crime to be tried by such a court howsoever the term might ultimately be defined and whether or not it was confined to the use of force. The Canadian Government had consistently taken the view that any definition of aggression should not impair the powers vested in the Security Council and the General Assembly by the United Nations Charter to determine whether or not a particular act constituted aggression. Hence the competence and functions of an international criminal jurisdiction had to be reconciled with those exercised by the Security Council and the General Assembly under the Charter.

2. Because the question of defining aggression and that of setting up an international criminal court were interconnected, the Committee should not consider the second question before it had decided on the first.

3. Moreover, the Committee had just recommended that the General Assembly should postpone the study of the draft code of offences against the peace and security of mankind (A/2807, draft resolution II). The code would without doubt be the main text on which the international criminal court would rely. In fact, at least in the beginning, the court's competence might well be limited to the interpretation and application of the code and possibly one or more conventions such as the Convention on the Prevention and Punishment of the Crime of Genocide. That was the second reason why the Canadian delegation felt that the consideration of the item should be postponed.

4. The third reason for postponement was that the question of penalties, which was closely connected with that of the code, had not yet been settled. Indeed, the penalties could not be determined independently of the responsibility of individuals and of the nature and seriousness of their crimes.

5. The work of the International Law Commission and of the two special committees the General Assembly had set up to study the question of international criminal jurisdiction would prove most useful when the General Assembly resumed consideration of the item. For the time being, however, the Canadian delegation would vote for any proposal to postpone consideration of the question until the General Assembly had decided on the related questions of defining aggression and of the code of offences against the peace and security of mankind.

6. Mr. COLLIARD (France) said that the French delegation maintained the well-known position of the French Government on the question of setting up an international criminal jurisdiction. The report of the 1953 Committee (A/2645) and the revised draft statute annexed thereto seemed satisfactory on the whole. Nevertheless, if the Sixth Committee were now to study the question in detail, he would have some reservations to make particularly as regards article 2, concerning the law to be applied by the court, articles 47 and 53, concerning respectively separate opinions and the board of clemency and parole, article 29, regarding political screening of cases submitted, and paragraphs 107 and following of the report, which dealt with that article.

7. He noted that satisfactory progress had been made in the matter of implementation and that the majority of the 1953 Committee's members felt that, if an international criminal court was to be set up, the best and easiest way of doing that would be by means of a convention (A/2645, paragraphs 43 and 35).

8. The provision in article 1 of the revised draft statute, whereby the international criminal court would be set up to "try persons accused of crimes generally recognized under international law", established two fundamental principles; first, that there were such persons as international criminals and that those criminals were private individuals, and secondly, that there were certain crimes that were generally recognized under international law.

9. The problem of the individual and his place in international law was one of the most controversial subjects of public international law. It was necessary to determine to what extent the individual was a subject of international law. He noted that the individual was sometimes given special consideration in international law, as in the Geneva Conventions and in the conventions prepared under the auspices of the International Labour Office and the World Health Organization. The individual, the physical person, was invariably the beneficiary of the provisions of the various instruments of positive international law. The individual played an even greater part in international criminal

law, and the question to be settled in connexion with an international criminal jurisdiction was precisely what was the individual's place in international criminal law. There should be no doubt on that score. In the final analysis it was only logical that the individual should be criminally liable. It was hard to see how a moral person could be criminally liable. Any reference to the responsibility of a State was obviously to the civil responsibility of the State. Perhaps the solutions adopted in domestic criminal law might be applied in international criminal law. As he had stated at the 422nd meeting, he regarded the Nürnberg principles as part of positive international law. While those principles were open to some controversy, there were certain instruments of positive law that were not. That was true of the Convention on the Prevention and Punishment of the Crime of Genocide, article IV of which affirmed the criminal responsibility of individuals, whether they were rulers, public officials or private individuals.

10. Accordingly, the rule under which only physical persons could be criminally responsible under international law was a basic principle that should raise no further difficulties. It was obvious that an international criminal court would deal with individuals.

11. With reference to crimes, he said that the expression "crimes generally recognized under international law" was very general and covered a large number of crimes, including among others crimes of piracy.

12. The French delegation felt therefore that in principle there was no serious objection to the setting up of an international criminal jurisdiction. The few difficulties that might arise in connexion with the most serious crimes would probably not be insurmountable. The problem should, therefore, be considered from still another point of view.

13. The practical question at the moment was whether it was possible to set up an international criminal court forthwith. Some speakers, in particular the representative of Venezuela (422nd meeting), had pointed out the international criminal court would be guided by the code of offences against the peace and security of mankind and that consequently work on those two subjects should proceed simultaneously. The Canadian representative had emphasized the importance of crimes of aggression. The United Kingdom representative had stressed (426th meeting) that, if the court was not to be merely a paper creation, there would have to be international co-operation. The French delegate agreed that international co-operation was indeed essential.

14. In conclusion, he stated that the French delegation still favoured the establishment of an international criminal jurisdiction and that its idealism was not daunted by its awareness of the practical situation and of the fact that without patience there could be no enduring results.

15. Mr. SAPOZHNIKOV (Ukrainian Soviet Socialist Republic) recalled that at the General Assembly's seventh session, during the debate on the report of the Committee on International Criminal Jurisdiction (A/2136), the Ukrainian SSR delegation had opposed the establishment of a supposedly permanent international criminal court as being contrary to the principle of non-intervention in the domestic affairs of States and incompatible with State sovereignty.

16. It was true that the text proposed by the 1953 Committee (A/2645, annex), although very similar to the Geneva draft (A/2136, annex I), introduced certain changes and that the functions originally proposed to be conferred on the United Nations were thereby diminished. For example, the former article 28 had been eliminated, article 33 no longer said that the committing chamber was set up "within the framework of the United Nations", and article 52 (new article 51) no longer required the Secretary-General to assist in the execution of sentences.

17. Nevertheless, in the new draft were included alternative texts that contained provisions concerning the participation of member States in the election of members of the court (articles 7, 8, 9, 11 and 53) and a provision in accordance with which a United Nations organ might stop the presentation or prosecution of a particular case before the court (article 29). The 1953 Committee had vested the United Nations with functions of a judicial nature that were outside its competence, and the revised text was as open to criticism on that score as the first draft had been.

18. Even on the assumption that the proposed international criminal court had no connexion with the United Nations, its basic defect would nevertheless subsist. Its proposed establishment presupposed that States renounced the sovereign right to exercise criminal jurisdiction over acts committed on their territory. In not recognizing that right, which derived directly from State sovereignty, the draft statute constituted an instrument of intervention in the domestic affairs of States and so violated Article 2(7) of the Charter. That had been the complaint of some members of the 1953 Committee, who had contended that an international criminal court would be incompatible with the structure of the United Nations and would put a strain on international co-operation (A/2645, paragraph 17).

19. The revised draft statute, besides being at variance with the Charter in disregarding the principle of State sovereignty, was also inconsistent with positive international law, especially the Nürnberg principles as enunciated in the Moscow Declaration of 1943 and the London Agreement of 1945 and as confirmed by General Assembly resolution 95 (I). The Moscow Declaration provided, in its first clause, that individuals guilty of atrocities would be sent back to the countries where they had perpetrated their deeds, in order that they might be judged according to the laws of those countries. Articles 1, 4 and 6 of the London Agreement confirmed that principle. It followed that the States parties to the Nürnberg Charter had not renounced their right to exercise criminal jurisdiction in respect of crimes committed on their territory. That undisputed and inalienable right of States had been confirmed by General Assembly resolution 3 (I).

20. The revised draft statute departed from the Nürnberg principles in certain other respects. For example, if such a provision as draft article 27 had been in force at the time of the setting up of the Nürnberg Tribunal, it would not have been possible to try the Nazi leaders without the consent of Germany, and, even if Germany had recognized the jurisdiction of the Tribunal, it would not have been possible to try criminals in respect of acts committed on the territory of a State which did not recognize that jurisdiction.

21. He considered the revised draft statute unacceptable. The text conflicted with the principle of non-

intervention in the domestic affairs of States, with the principle of State sovereignty, with the United Nations Charter and with the Nürnberg principles. International courts for trying crimes against the peace and security of mankind and war crimes might and should be established for the consideration of particular cases. They should be created on the basis of equality of rights of the States that were parties to the agreement in each particular case on the creation of the court.

22. Mr. HSU (China) paid a tribute to the work of the special Committee, whose report could serve as a basis for constructive discussion. Nevertheless, he agreed that consideration of the item should be postponed to a later session, especially as there was no code of offences yet in existence.

23. Moreover, crimes under international law that were not of a political character, and which an international criminal court could try as soon as it was established—such as, for instance, piracy, traffic in women and children, counterfeiting and so forth, or acts of indirect aggression or of genocide committed by individuals without the support of their Governments—did not require, for their effective punishment the establishment of an international court.

24. Another reason that made it advisable to defer the question was that the special Committee's report had been clearly influenced by a disturbed international situation.

25. He wondered why the 1953 Committee, in considering the methods by which the court might be established, had rejected the possibility of an amendment of the Charter because of the majority required for amendment and had decided against the United States proposal (A/2645, paragraphs 43 *et seq.*) but had recommended the establishment of the court by a multilateral convention. That recommendation amounted to advising the General Assembly that it should dissociate itself from the question and renounce an important part of its fundamental mission. Moreover, it was practically certain that the international criminal court, if it came to be established, would not survive the inherent weakness resulting from its removal, even before its birth, from the General Assembly's tutelage.

26. The 1953 Committee had rightly declined to consider the establishment of the court under Article 22 of the Charter, which referred to subsidiary organs of the General Assembly. It had also been right in deleting article 28 of the 1951 draft (A/2136, annex I). It was difficult to understand, in the circumstances, why the special Committee had adopted alternative B (2) of article 29 of the latest draft, which stemmed from the same line of thought as the two ideas that had been rejected, and which would cause the administration of justice to be subordinated to considerations of expediency. Even if the special Committee had wished to pass on to the General Assembly the responsibility for rejecting that provision, it was evident that the international atmosphere had influenced its work; that factor, together with a number of other reasons, justified the postponement of the item.

Organization of the Committee's work and order of discussion of agenda items

27. The CHAIRMAN said that the President of the General Assembly had requested all the Committees to take steps to observe the deadline fixed for the closing of the session, 10 December. Although the Sixth Committee was well advanced with its work, other Committees were lagging. In order to enable those Committees to hold more meetings during the last few days, the Sixth Committee should endeavour to finish its agenda in the shortest possible time, especially by utilizing to the best advantage the time reserved for each meeting.

28. Mr. PEREZ PEROZO (Venezuela), acting on a suggestion made by Mr. COLLIARD (France), said that he would propose, at the beginning of the next meeting, a draft resolution providing for the postponement of the question of an international criminal jurisdiction to a later session of the General Assembly.

29. Mr. COLLIARD (France), replying to a question by the CHAIRMAN, said that if it were conducive to progress in the Committee's work he would not object to the question of an amendment to the rules of procedure of the General Assembly (item 60)—an item placed on the agenda at the request of the French delegation—being placed at the end of the agenda; the present items 6 and 7 of the Committee's agenda (items 64 and 65) would thus become items 5 and 6.

It was so decided.

30. The CHAIRMAN proposed that the list of speakers in the general debate on the question of an international criminal jurisdiction should be closed at the meeting of 25 November, not later than noon.

It was so decided.

The meeting rose at 5 p.m.

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