



Seventh session  
Agenda item 52

## INTERNATIONAL CRIMINAL JURISDICTION

Report of the Sixth Committee

Rapporteur: Mr. E. WIKBORG (Norway)

1. The General Assembly, by resolution 260 B (III) of 9 December 1948, 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 over which jurisdiction will be conferred upon that organ by international conventions". The International Law Commission, after due consideration, reported to the General Assembly that the establishment of an international judicial organ such as that envisaged in the aforesaid resolution was desirable and possible.<sup>1/</sup>

2. At its fifth session, the General Assembly, having considered the report of the International Law Commission, adopted on 12 December 1950 resolution 489 (V) in which the Assembly, bearing in mind that a final decision regarding the setting up of an international penal tribunal could not be taken except on the basis of concrete proposals, inter alia, appointed a Committee "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". The resolution also requested the Secretary-General to communicate the report of the Committee to the governments of Member States so that their observations might be submitted not later than 1 June 1952, and to place the question on the agenda of the seventh session of the General Assembly.

<sup>1/</sup> See Official Records of the General Assembly, Fifth Session, Supplement No. 12, pages 15 and 16.

3. In pursuance of the aforesaid resolution, the Committee on International Criminal Jurisdiction convened at Geneva in August 1951 and drew up a report with a draft statute for an international criminal court annexed thereto.<sup>2/</sup> This report was communicated by the Secretary-General to the governments of Member States with a request for their observations. As of 23 September 1952, eleven governments had transmitted their observations on the report of the Committee; these observations were submitted by the Secretary-General to the General Assembly (A/2186 and A/2186/Add.1).

4. The item "International criminal jurisdiction: report of the Committee on International Criminal Jurisdiction" was included by the Secretary-General in the provisional agenda of the seventh session of the General Assembly (A/2158, item 53). On the recommendation of the General Committee, the General Assembly, at its 380th plenary meeting held on 16 October 1952, decided to include the item in the agenda of its seventh session and, at its 382nd plenary meeting on 17 October 1952; further decided to allocate the item to the Sixth Committee for consideration.

5. The Sixth Committee considered the item at its 321st to 328th meetings from 7 to 17 November 1952.

#### Proposals before the Sixth Committee

6. A joint draft resolution was submitted by Cuba, El Salvador, France, Iran, Israel, the Netherlands and the United States of America (A/C.6/L.260). To this joint draft resolution, a series of amendments was introduced by the United Kingdom (A/C.6/L.262). These amendments were, however, withdrawn by the sponsor at the 328th meeting of the Committee, in view of the submission of a revised text of the original joint draft resolution (see paragraph 7 below).

7. The revised text (A/C.6/L.260/Rev.1) of the original joint draft resolution provided, inter alia, for the appointment of a committee composed of the representatives of seventeen Member States, which States were left unspecified. The committee would meet in Geneva in August 1953 and would:

"(a) In the light of suggestions which have already been or may be made before 1 June 1953 by governments in their written observations, as well as of those made during the debates in the Sixth Committee,

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<sup>2/</sup> See Official Records of the General Assembly, Seventh Session, Supplement No. 11.

- "(i) To explore the implications and consequences of establishing the [international criminal] court and of the various manners by which this might be done,
  - "(ii) To study the relationship between such a court and the United Nations and its organs,
  - "(iii) To re-examine the draft statute [prepared by the Committee on International Criminal Jurisdiction],
- "(b) to submit a report to be considered by the General Assembly at its ninth session".

The same revised draft resolution also requested the Secretary-General to communicate the report of the proposed committee to the governments of Member States and to place the question of international criminal jurisdiction on the provisional agenda of the ninth session of the General Assembly.

8. Another draft resolution was introduced by Sweden (A/C.6/L.261). This was superseded by a revised draft resolution submitted by the same delegation. (A/C.6/L.261/Rev.1 and A/C.6/L.261/Rev.1/Corr.1), which incorporated certain oral amendments proposed by the representatives of Panama and Egypt at the 327th meeting of the Committee. The revised draft resolution by Sweden provided, inter alia, that the General Assembly should decide to postpone the consideration of the question of international criminal jurisdiction for one year in order to give sufficient time to Member States to present their observations. It urged the Member States which had not yet done so to make their comments and suggestions on the draft statute, in particular if they were of the opinion that further action should be taken by the General Assembly with a view to the establishment of an international criminal court. It also requested the Secretary-General "to publish the comments and suggestions received from governments for such use as the General Assembly may find desirable at a later stage and to place the question on the provisional agenda of the eighth session of the General Assembly".

#### Discussions in the Sixth Committee

9. Although some representatives alluded to such questions of detail as whether the proposed international criminal court should be established by a resolution of the General Assembly or by a convention among States or otherwise,

discussions in the Sixth Committee on the item were largely focussed upon the fundamental question of principle, namely, whether, in the light of the report of the Committee on International Criminal Jurisdiction and of the draft statute for an international criminal court annexed thereto, the General Assembly should, at the present juncture, proceed to take steps for the establishment of an international criminal court as a permanent body.

Arguments in favour of establishing an international criminal court

10. Some representatives expressed the view that the establishment of an international criminal court was desirable. It was pointed out that the individual had become a subject of international law. This fact and the concept of personal criminal responsibility in an international sense worked in favour of the establishment of an international criminal court. It was desirable that criminals should be tried by a court already in existence before the crime was committed, rather than by an ad hoc tribunal such as that of Nürnberg. A permanent court would be able to avoid the spirit of vengeance and hatred better than a court established ad hoc to deal with a specific case. The existence of a permanent international criminal court would serve as a deterrent to potential criminals and would contribute to international peace and friendly relations among States. Furthermore, it would contribute to the establishment of a body of precedents in international criminal law.

11. Those members of the Committee who were in favour of setting up an international criminal court further argued that such a step was practicable. It was pointed out that the court would have many functions to perform. It could carry out police action initiated by the Security Council. When governments were disavowed by their own people, as a result of a revolution or a change of régime, the new régime might agree to hand over the guilty leaders to the court. Conquered States after a war could be compelled to submit their leaders to trial by the court. International crimes committed in connexion with local conflicts could also be tried by the court. In addition, the crime of genocide would provide a sufficient basis for the intervention of the court. Lesser crimes of international concern, such as traffic in narcotic drugs, counterfeiting of currencies, damaging of submarine cables and traffic in persons, now subject to national jurisdiction, could be more effectively dealt with by an international

criminal court. The court might also act as a court of appeal or cassation with respect to minor war crimes. It was further said that the court would function properly without being constantly occupied. Moreover, it was not necessary that the court should impose many penalties: its effect on world opinion and on the conscience of mankind would make it much more difficult for governments to involve their peoples in a policy of aggression.

Arguments against establishing an international criminal court

12. On the other hand, some representatives expressed the view that the establishment of an international criminal court was fundamentally undesirable. It was contended that since criminal jurisdiction was part of the sovereign rights of States, the establishment of such a court would infringe upon the sovereignty of States. It would result in an interference in the domestic affairs of States and would violate Article 2, paragraph 7, of the Charter. It was incompatible with the principle of territorial jurisdiction, recognized in the Moscow Declaration of 30 October 1943 and in the London Agreement of 8 August 1945 which established the Nürnberg Tribunal, and the Nürnberg principles had been affirmed by the General Assembly in its resolution 95 (I) of 11 December 1946. The proposed court would be liable to be used as a forum for propaganda, and its establishment would prejudice international co-operation, increase international tension, and would not contribute to the maintenance of international peace.

13. Still other representatives, without contesting the desirability of establishing an international criminal court, took the position that such a step was impracticable under existing circumstances. The report of the Committee on International Criminal Jurisdiction and the draft statute annexed thereto were said to confirm this view. It was contended that a court such as that envisaged in the said draft statute would not be able to function. The draft statute imposed no obligations upon States, not only in respect of the attribution of jurisdiction to the court (article 26), but also in connexion with bringing the accused and witnesses before the court (article 27) and the execution of sentences passed by the court (article 52). All such matters were left to be dealt with by separate conventions. The draft statute indeed categorically provided that States should be obliged to assist the court in the

performance of its functions only in conformity with any convention or other instrument in which they accepted such obligation (article 31). Such a statute, it was argued, would be useless.

14. It was further contended that there was no need for an international criminal court. War crimes could be dealt with reasonably well by national tribunals, or by ad hoc international tribunals such as those of Nürnberg and Tokyo. Crimes against peace and crimes against humanity normally could not be committed by individuals except in their capacity as agents of the State and it would be possible to bring such persons to trial only in the exceptional case where the protection of their own government had been withdrawn, or where conditions of war, defeat, or general disorder made it possible to carry out the arrests of the individuals concerned and bring them before the court. An international criminal court, it was argued, could not be established on the assumption that cases with which it would have to deal would come before it only as a result of some international catastrophe. In any case, the existence of a permanent international criminal court was said to constitute no deterrent to crimes against peace and against humanity, since those who committed them relied on the protection of their governments and no government would ever start a war unless it expected to win. As regards lesser crimes of international concern, some representatives pointed out that these were being dealt with effectively by national courts in accordance with international conventions and that it was unnecessary to have an international criminal court to try such crimes.

15. It was also pointed out that ad hoc tribunals would be more effective than a permanent international criminal court. States might not be able to spare their best qualified judges for permanent membership of an international court unless it had a constant flow of work. The objection that ad hoc tribunals were unsatisfactory because they were set up by the victors could not be overcome by the establishment of a permanent international criminal court, since only the victors in a war would normally be in a position to bring the accused before a court. The objection that the judges of an ad hoc tribunal were often persons of the nationality of the victors could be overcome by appointing judges of neutral nationalities.

16. Some representatives, furthermore, expressed the opinion that it would be premature to take a final decision for the establishment of an international criminal court until general agreement had been reached on the law to be applied by the proposed court. The notion of "crimes under international law", a term employed in article 1 of the draft statute, was said to be novel and confused. Article 2, providing that "the court shall apply international law, including international criminal law, and where appropriate, national law", was said to be lacking in precision. It would be a contradiction of criminal justice to set up a court without clearly and explicitly defining the law it was to apply. The code of offences against the peace and security of mankind, prepared by the International Law Commission, had not yet been adopted by the General Assembly. Aggression, in particular, had not yet been defined and many believed that it never could be defined.

17. The fact that no delegation had as yet declared that its government would agree, at the moment, to recognize the jurisdiction of an international criminal court was also said to militate against the immediate establishment of such a court. The existing international situation was said to be such that the time was not yet ripe for such a step. In this connexion, it was noted that the Committee on International Criminal Jurisdiction had, in paragraph 17 of its report, stated that the study on the question of international criminal jurisdiction had to be "carried several steps forward before the problem of an international criminal jurisdiction with all its implications of a political as well as a juridical character, is ripe for decision".

#### Arguments for further study

18. A number of representatives, including virtually all those who were in favour of the establishment of an international criminal court, expressed the view that the Committee on International Criminal Jurisdiction had left unsolved many questions relating to the proposed court. Further study was therefore necessary before a final decision could be taken on the establishment of the court. It was with this purpose in view that Cuba, El Salvador, France, Iran, Israel, the Netherlands, and the United States of America had submitted their draft resolution (A/C.6/L.260) referred to above. This draft resolution, as did the revised text (A/C.6/L.260/Rev.1), called for the establishment of a special committee to undertake a further study of the matter.

Arguments for postponement of consideration

19. Some other representatives, however, noted that only eleven governments had submitted their observations on the report of the Committee on International Criminal Jurisdiction. It was essential to be apprised of the position of governments before the General Assembly could decide whether a special committee should be established or not. It was contended that, at any rate, the time had not come to establish an international criminal court. Such was the reasoning underlying the Swedish draft resolution (A/C.6/L.261) which urged Member States, not yet having done so to submit their comments on the draft statute, and which would, in effect, postpone indefinitely the consideration of the question of international criminal jurisdiction. Some other representatives, however, objected to an indefinite postponement of the consideration of the question. They were in favour of a postponement of one year, that is, until the eighth session of the General Assembly. This opinion was accepted by Sweden, which later revised its draft resolution (A/C.6/L.261/Rev.1).

Voting on proposals

20. At the conclusion of its discussions on the item, the Sixth Committee, on the motion of the representative of Sweden, decided, by 21 votes to 13, with 19 abstentions, to vote first upon the Swedish revised draft resolution (A/C.6/L.261/Rev.1).

The first paragraph of the preamble was adopted by 14 votes to 11, with 19 abstentions.

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

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

The fourth paragraph 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 was adopted by 21 votes to 18, with 5 abstentions.

Paragraph 3 was adopted by 19 votes to 7, with 17 abstentions.

Paragraph 4 was adopted by 19 votes to 7, with 14 abstentions.



The Swedish revised draft resolution as a whole was adopted by a roll call vote of 23 to 16, with 7 abstentions. The voting was as follows:

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

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

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

21. In view of the adoption of the Swedish revised draft resolution, the Committee did not vote upon the revised joint draft resolution submitted by Cuba, El Salvador, France, Iran, Israel, the Netherlands and the United States of America (A/C.6/L.260/Rev.1).

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22. The Sixth Committee therefore recommends to the General Assembly the adoption of the following resolution:

#### INTERNATIONAL CRIMINAL JURISDICTION

The General Assembly,

Bearing in mind that, by resolution 489 (V) of 12 December 1950, the General Assembly established a Committee consisting of representatives of seventeen Member States charged with the task of preparing one or more preliminary draft conventions and proposals relating to the establishment of an international criminal court,

Recalling that, by the same resolution, the General Assembly requested the Secretary-General to communicate the report of the Committee to the governments of Member States so that their observations could be submitted not later than 1 June 1952, and to place the question on the agenda of the seventh session of the General Assembly,

Noting that the Committee, meeting in August 1951, has prepared a report containing a draft statute for an international criminal court and that the Secretary-General, by a letter of 13 November 1951, has transmitted the Committee's report to the governments of Member States requesting their observations thereon,

Considering, however, that the number of States which have given their comments and suggestions is very small,

1. Expresses to the Committee on International Criminal Jurisdiction its appreciation for its valuable work on the draft statute;
2. Decides to postpone the consideration of this matter for one year in order to give sufficient time to Member States to present their observations;
3. Urges the Member States which have not yet done so to make their comments and suggestions on the draft statute, in particular if they are of the opinion that further action should be taken by the General Assembly with a view to the establishing of an international criminal court;
4. Requests the Secretary-General to publish the comments and suggestions received from governments for such use as the General Assembly may find desirable at a later stage and to place this question on the provisional agenda of the eighth session of the General Assembly.

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