UNITED NATIONS

General Assembly

FIFTIETH SESSION

Official Records

SIXTH COMMITTEE
26th meeting
held on
Tuesday, 31 October 1995
at 10 a.m.
New York

SUMMARY RECORD OF THE 26th MEETING

Chairman: Mr. LEHMANN (Denmark)

CONTENTS

Distr. GENERAL
A/C.6/50/SR.26
9 November 1995

ORIGINAL: ENGLISH

95-81906 (E)

The meeting was called to order at 10.25 a.m.

AGENDA ITEM 142: ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT (continued) (A/50/22)

1. Mr. KOLOMA (Mozambique) said that the report of the Ad Hoc Committee on the Establishment of an International Criminal Court (A/50/22) raised a number of legal issues which had to be resolved before a decision could be taken with regard to the convening of an international conference of plenipotentiaries. Among the issues which remained to be clarified were: the relationship between the proposed international criminal court and national courts; the jurisdiction of the court, in particular the question of inherent jurisdiction; the crimes to be covered under its statute and the specification of those crimes, questions to be resolved within the framework of the still incomplete draft Code of Crimes against the Peace and Security of Mankind; and the relationship between States parties, States that were not parties and the international criminal court.

2. His delegation fully concurred with the conclusions reached by the Ad Hoc Committee in paragraphs 255-259 of its report. However, the Ad Hoc Committee had remained silent on the question of which body should carry out the remaining work on a consolidated text of a convention for an international criminal court. In his delegation's view, the International Law Commission, which had produced the text of the draft statute for an international criminal court, was in the best position to do so. If, however, it was not possible to entrust the Commission with that task, then it should be given to the current Ad Hoc Committee.

3. The members of the Ad Hoc Committee had disagreed with regard to when the international conference of plenipotentiaries should be convened, the earliest time being 1997. While fully recognizing the urgency of establishing an international criminal court, his delegation was also aware of the large amount of work that needed to be done before the international conference could be convened. It was imperative, for example, to complete and harmonize the draft Code of Crimes and the draft statute for the court.

4. His delegation thus shared the view of those advocating further work on the draft statute and related issues. While strongly supporting the early establishment of an international criminal court, it seriously questioned whether it would be possible to complete the bulk of the work in 1996. In principle, the plenipotentiary conference should not be held until the remaining preparatory work was completed. If that could be done within the next two years, his delegation would have no objection to holding the conference in 1997.

5. Mr. COVELIERS (Belgium) said that his country attached great importance to the establishment of an international criminal court and shared the views of the European Union on that subject. On several occasions his Government had officially endorsed the establishment, as rapidly as possible, of such a court, which would be mandated to bring to justice and punish the perpetrators of particularly serious acts whose odious nature constituted an insult to the conscience of mankind. It had supported the establishment of the two ad hoc tribunals dealing with the situations in the former Yugoslavia and Rwanda and

was contributing to their financing, for it believed that their creation constituted a rapid and indispensable response to the international community's need to punish those who had participated in the perpetration of the horrible massacres in those countries.

6. The establishment of a single, permanent court would obviate the need for ad hoc tribunals for particular crimes, thereby ensuring stability and consistency in international criminal jurisdiction. An international and independent court that was free from political pressures, established on a solid legal basis, accepted by all States to deal with well-defined crimes and capable of offering maximum guarantees to the defendants would provide, particularly where prevention was concerned, an appropriate instrument for dealing with crises which had adverse effects on entire peoples.

7. His country, which had participated in the work of the Ad Hoc Committee on the Establishment of an International Criminal Court, welcomed the progress made in identifying the often complex problems outstanding in that area. Also welcome was the fact that a real consensus existed within the Ad Hoc Committee as to the need to pursue actively their ambitious goal.

8. In terms of its competence rationae materiae, the proposed court should initially have jurisdiction over the most serious crimes: genocide, serious violations of the laws or customs applicable in armed conflict and crimes against humanity. A consensus with regard to limiting the court's jurisdiction, at least initially, to "core crimes" would facilitate its establishment. It would also be useful to incorporate in the statute a clause which would provide, after a fixed time period, for review and extension of the list of crimes under the court's jurisdiction.

9. The principle of complementarity was related to the question of the balance of jurisdiction between the international criminal court and national courts. In order to have effect, that principle would have to be reflected in clear and precise rules. To ensure its prestige, the court should have primacy of jurisdiction, as was the case with the ad hoc tribunals already in existence.

10. The proposed court would operate most effectively if it was not overly restricted by placing prior conditions on the exercise of its jurisdiction. Similarly, the prosecutor should have the power to initiate investigations and prosecutions.

11. The Ad Hoc Committee on the Establishment of an International Criminal Court had honourably discharged its mandate to review the major substantive and administrative issues arising out of the draft statute drawn up by the International Law Commission. The members of the Ad Hoc Committee had agreed that the Committee's mandate should be modified to allow them to move into an active drafting phase, and had so requested the General Assembly.

12. Belgium, along with many other countries, was convinced of the urgency of setting up an international criminal court and hoped that the spirit which had marked the work of the Ad Hoc Committee would be transformed into decisive progress on preparatory activities, in particular the drafting of a convention to be submitted to a conference of plenipotentiaries. In that connection, he

wished to thank the Government of Italy for offering to host the conference, which should be held as soon as possible.

13. Mr. RODRIGUEZ CEDEÑO (Venezuela) said that the proposed international criminal court must function on the basis of the principle of complementarity. The court would exercise its jurisdiction over the crimes specified in its statute provided that the requisite national jurisdictions were unavailable or ineffective and that States accepted its jurisdiction.

14. The purpose of the international criminal court was to punish and prevent particular crimes. To that end, perpetrators of such crimes must be punished by the capturing State, the State of origin, the State in which the crime was committed or an international criminal court. In cases where the international court had jurisdiction, the rules governing cooperation and extradition and transfer of the defendant must be carefully reviewed, bearing in mind States' internal laws and international commitments.

15. The draft statute for an international criminal court must be analysed in the light of both international law and domestic law. The draft statute, as the constitutional text of an international body, had to provide precise rules with regard to its structure and functioning. The statute had to include specific provisions on financial matters, regardless of whether the court would have its own budget or be dependent on that of the United Nations, and staff rules. It might also be important to incorporate in the statute provisions governing relations between States parties and the international criminal court. The administration of the court should be required to report periodically to States parties on the court's functioning and activities.

16. The proposed preparatory committee should review in 1995 the applicable substantive law mentioned in the draft statute, bearing in mind recent developments in international relations. The court's competence rationae materiae was one of the most important substantive issues in that connection. The basic question was whether the list of international crimes over which the court would have jurisdiction should be limited or more extensive. In his delegation's view, article 20 of the draft statute listed the most important international crimes under substantive law, although his delegation had serious reservations about including the crime of aggression.

17. To be effective, the international criminal court should have jurisdiction over a limited number of the most significant international crimes. In that connection, the draft Code of Crimes against the Peace and Security of Mankind could serve as a valid reference for the court where substantive law was concerned. At the same time, it was important to maintain a proper balance between the need for a limited jurisdiction and the need for a statute flexible enough to be modified in response to international developments.

18. The court's jurisdiction should be established within the framework of international law in general and international jurisdiction in particular. States would accept the jurisdiction of the court by becoming parties to its statute and by accepting its jurisdiction in respect of specific crimes. The sole exception was the crime of genocide, over which the court might have inherent jurisdiction.

19. It was widely accepted that the Court should determine its own competence, and that had important implications for the role of the Security Council. The Council played a primary, but not exclusive, role in the maintenance of international peace and security. The establishment of a universal, permanent and effective international criminal court would obviate the need for ad hoc tribunals created on the basis of political decisions. Moreover, the jurisdiction of an international tribunal must not be based on the decision of a political organ. The Security Council had, under the Charter of the United Nations, the authority to call attention to an offence or crime that would be covered in the proposed convention. However, the international criminal court would be empowered to determine its own jurisdiction.

20. The rules of the court should be adopted at the same time as its statute and could be based on the texts adopted in respect of the ad hoc tribunals established by the Security Council and other relevant texts.

21. From the point of view of internal law, the court's statute should be established on the basis of balanced principles and rules that would ensure the requisite harmonization with domestic substantive norms and penal procedures, in particular those pertaining to detention, imprisonment, transfer of the accused, pre-trial release, trials, evidence and sentencing.

22. In the light of the terrible crimes which continued to be committed in various parts of the world, there was an urgent need to establish an international criminal court. The Ad Hoc Committee had fulfilled its mandate. His delegation was therefore in favour of the establishment of a preparatory committee which would elaborate a text to be adopted at the conference of plenipotentiaries. It had no preconceived ideas as to the number or dates of meetings; what was important was to draw up a realistic programme of work that would result in a basic proposal, to be reviewed by the General Assembly at its fifty-first session and submitted to the conference of plenipotentiaries in 1997.

23. Mr. SALAND (Sweden) said that his delegation fully endorsed the statement on agenda item 142 made at the previous meeting by the representative of Spain on behalf of the European Union. Full advantage should be taken of the momentum created by the constructive work of the Ad Hoc Committee; it was time to move on to the drafting of a consolidated text of a convention for an international criminal court. To that end, a preparatory committee should be set up and a decision of principle should immediately be taken to hold, at the appropriate time, a conference of plenipotentiaries to consider the draft convention.

24. Some complex issues remained to be discussed by the preparatory committee. Other more divisive issues could probably be resolved only at the conference itself. The consensus already reached on a number of central issues demonstrated that work on the convention could proceed at an accelerated pace. A decision to move forward with determination would serve the additional purpose of bringing the urgency of the need to establish an international criminal court to the attention of a wider circle of Member States, which was imperative for the endeavour.

25. Sweden believed that the court should be complementary to national criminal justice systems and should be resorted to only when it found that such systems were unavailable or ineffective. The court's jurisdiction should be limited, at least at the outset, to "core crimes", meaning only the most serious offences under general international law. That, in conjunction with the principle of complementarity, would be the basis for the court's inherent jurisdiction. His delegation was attracted by the idea of including a review mechanism which could be used later to broaden the range of crimes within the court's jurisdiction.

26. Penalties must be specified. They should be confined to imprisonment; there was no need to include fines, since the court would adjudicate only the most serious offences. Inclusion of the death penalty would be totally unacceptable to Sweden.

27. The offences under the court's jurisdiction and the general rules of criminal law to be applied by the court must be clearly defined. It was of central importance to ensure full protection of the rights of the accused by setting high standards of due process and clearly defining the obligations of States to cooperate with the court.

28. The establishment of an international criminal court was a matter of great urgency. The United Nations must draw upon the experience gained in establishing the ad hoc tribunals for the former Yugoslavia and Rwanda and build on the momentum generated in favour of a permanent court.

29. Mrs. DASCALOPOULOU-LIVADA (Greece) said that the need for an international criminal court could no longer be questioned. Greece hoped that the establishment of a permanent criminal court would obviate the need to set up any more ad hoc tribunals in the future. While the establishment of such a court was no easy task, the report of the Ad Hoc Committee covered all the underlying principles and issues and pointed to the solutions which should be adopted.

30. The statement made on behalf of the European Union had set forth the general principles which should govern the establishment of the court. She would therefore address some more specific issues.

31. Greece supported the principle of complementarity and believed that it should be interpreted in a restrictive way so as not to make the court's jurisdiction residual to national jurisdiction without further requirements as to the qualifications of the latter. The relevant preambular paragraph of the draft statute should be further qualified in the body of the statute, possibly along the lines of the corresponding articles of the statutes of the tribunals for the former Yugoslavia and Rwanda. Thus the court should be given an opportunity to decide not only whether it had jurisdiction but also whether national jurisdiction satisfied in each particular case the requirements set out in the statute.

32. Her delegation could accept the list of crimes which should be covered by the statute contained in article 20, with the exception of the crimes dealt with in the anti-terrorist conventions because those conventions already provided for a specific system based on the principle of aut dedere aut judicare, which should remain intact. The crime of aggression must be included; it was formally

recognized in the Charter as a violation of a rule of international law with a jus cogens character and had been included in the draft Code of Crimes against the Peace and Security of Mankind. Aggression was a crime that could only be tried before an international tribunal, since in the vast majority of cases national courts of the victim State or States were not able to pass judgement.

33. The question of how to define aggression was not an insuperable obstacle; solutions should be sought in the work of the International Law Commission on the draft Code of Crimes. Her delegation believed that the link between the draft Code and the statute of the court could not be ignored, which was why it supported the proposal that a periodic review should be made of the list of crimes in the draft Code to keep it responsive to the needs of the times.

34. Concerning the involvement of the Security Council in determining whether or not an act of aggression had occurred, her delegation believed that the court should not be barred from exercising its jurisdiction on a particular case if the Council had not decided on the matter. Such a limitation would lead to paralysis and inaction, and had no counterpart in the Statute of the International Court of Justice.

35. The question of inherent jurisdiction was a superfluous notion in the context of a court that would be created by a treaty to which any State could become a party. From a legal perspective, there was no reason to differentiate among the crimes constituting the hard core of criminality; the court should have inherent jurisdiction over all the crimes identified in the statute. On the general question of the definitions of crimes in article 20 of the draft statute her delegation felt that the statutes of the two ad hoc tribunals could provide a useful basis, particularly in connection with serious violations of the laws and customs applicable in armed conflict and crimes against humanity.

36. Her delegation strongly believed that the rules of the court should be formulated in conjunction with the statute and annexed thereto so that States could participate in their elaboration, since many of the rules would have a decisive effect on the functioning and credibility of the court.

37. On the general question of States' cooperation with the court, her delegation felt that States must cooperate of their own accord and in accordance with national law. However, there must be guarantees to ensure that the court had the authority to proceed on its own if national authorities were found to be incapable of providing the necessary cooperation.

38. Her delegation felt that preparations for a diplomatic conference could begin. A preparatory committee or similar body should be set up in 1996 and a diplomatic conference could be scheduled for 1997, so as to take advantage of the momentum that existed.

39. Mr. HILGER (Germany) said that Germany fully supported the statement made by the representative of Spain on behalf of the European Union.

40. Exactly 50 years earlier, in October 1945, the Nürnberg Tribunal had started its procedures against major German war criminals. In 1995, the world had again witnessed devastating crimes albeit on a lesser scale, which could not

be ignored. His delegation welcomed the establishment of the International Tribunals for the former Yugoslavia and for Rwanda as the first steps towards establishing an international criminal jurisdiction, and believed that their creation demonstrated the need for a permanent treaty-based system for such a jurisdiction. The draft statute was a significant achievement, but it needed improvement and adjustments as well as the participation of a larger number of States.

41. His delegation attached importance to the principle of complementarity. Prosecution and punishment must remain the responsibility of the State, and it was only in cases where national trial procedures were unavailable or ineffective that the international criminal court should play a role. On the other hand, the principle of complementarity must not completely dilute the functions of the court and its prosecutors; an appropriate balance had to be struck.

42. His delegation welcomed the tendency to limit the court's jurisdiction to a few extremely serious crimes of concern to the international community. Those "core crimes" should be genocide, serious violations of the laws and customs applicable in armed conflict, crimes against humanity and aggression. The United Nations, which had been created to save succeeding generations from the scourge of war, could not exclude aggression from the jurisdiction of the court. Moreover, the reduced list of crimes proposed for inclusion in the draft Code of Crimes against the Peace and Security of Mankind still included aggression. The Committee would have to consider the relationship between the Code and draft statute.

43. The role envisaged for the Security Council in the draft statute was essential if aggression was to be included, and if the court was to function within the context of the United Nations. The Security Council should have the power to refer a situation or a matter to the court.

44. Germany was in favour of simplifying the complicated opt-in/opt-out system in the draft statute: in becoming party to the statute, a State should accept the court's jurisdiction for the limited number of particularly serious crimes; if national jurisdiction was unavailable or ineffective, the prosecutor should have the power to investigate and prosecute. There should not be too many consent requirements for the functioning of the prosecution or the court.

45. His delegation felt that the rules of procedure should be drafted together with the statute so that they would be available to States that were considering becoming parties to the statute. Existing rules in the field of international criminal cooperation should be appropriately adjusted for the court.

46. Germany was in favour of setting up a preparatory committee as the logical next step towards the convening of an international conference, and of setting a date for the conference.

47. Mr. MOCHOCHOKO (Lesotho) said that the draft statute was a considerable improvement over the earlier draft, but needed to be further strengthened to ensure that it created a just, fair and effective international criminal institution. Lesotho supported the idea of establishing a preparatory committee

to negotiate a draft treaty for the establishment of an international criminal court. The establishment of such a court was long overdue and therefore an urgent priority.

48. Respect for the rule of law, both national and international, could not be maintained unless those who violated the most basic norms of civilized society were brought to justice. His delegation endorsed the view that the primary responsibility for protecting citizens from human rights violations lay with national Governments. However, Governments had frequently been unwilling or unable to take action, and the perpetrators of criminal acts had escaped without punishment. An international criminal court would complement national courts by being able to act where domestic jurisdiction was either unavailable or ineffective.

49. The international community could not undertake the daunting task of establishing ad hoc tribunals whenever civil war broke out. The political uncertainties and delays that characterized ad hoc approaches to a universal problem undermined their effectiveness. Ad hoc tribunals could not be a substitute for a permanent international criminal court with the ability to prosecute persons accused of gross violations of humanitarian and human rights law wherever the crimes were committed. Lesotho therefore welcomed the draft statute as a significant step towards establishing a universal jurisdiction for international crimes.

50. While the court must be able to try people on a broad range of crimes under international law, expanding the court's jurisdiction to include all the crimes under article 20 of the draft statute could dilute the court's authority and credibility. The crimes covered under subparagraphs (a), (c) and (d) were so abhorrent and well recognized under international law that they presented no jurisdictional problems. Limiting the court's jurisdiction to the most serious crimes would promote broad acceptance of the court by States, enhance its effectiveness and facilitate the consideration of other issues pertaining to its establishment. The statute should, however, leave open the possibility of broadening the court's jurisdiction to other "core crimes" as international criminal law developed.

51. The international community would continue to suffer as long as there was no way to bring perpetrators of human rights violations to justice. The obstacles to the establishment of an international criminal court were not insurmountable. Work should be begun on a draft text of a convention for an international court with a view to convening an international conference of plenipotentiaries to adopt such a text by 1997. That would be a first step towards creating a situation wherein the Charter of the United Nations and the Universal Declaration of Human Rights would become part of the body of law on which the world's political and social order was based.

The meeting rose at 11.40 a.m.