



Dual Distribution

COMMITTEE ON INTERNATIONAL CRIMINAL JURISDICTION

First Session

SUMMARY RECORD OF THE FIRST MEETING

held at the Palais des Nations, Geneva,
on Wednesday, 1 August 1951, at 3 p.m.

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Present:

Acting Chairman:

Mr. KERNO, Assistant Secretary-General in charge of the Legal Department.

later,

Chairman:

Mr. MORRIS (United States)

Members:

Australia

Mr. WYNES

China

Mr. WANG

Denmark

Mr. SÖRENSEN

Egypt

MOSTAFA Bey

France

Mr. de LACHARRIÈRE

Iran

Mr. KHOSROVANI

Israel

Mr. ROBINSON

Mr. COHN

Netherlands

Mr. RÖLING

Pakistan

Mr. MUNIR

Syria

Mr. TARAZI

United Kingdom of Great Britain
and Northern Ireland

Sir Frank SOSKICE

Mr. GORDON

Mr. JONES

United States of America

Mr. MAKTO

Uruguay

Mr. PINEYRO CHAIN

Secretariat:

Mr. Kerno

Assistant Secretary-General in
charge of the Legal Department

Mr. Liang

Secretary to the Committee

1. OPENING OF SESSION (item 1 of the provisional agenda) (A/AC.48/2)

1. The ACTING CHAIRMAN welcoming representatives to the first meeting of the Committee, said that he wished to outline the background of the task that lay before them. Since the end of the First World War numerous official and non-official efforts had been made to establish an international judicial organ with jurisdiction in criminal matters. A review of some of those efforts was to be found in the memorandum submitted by the Secretary-General in 1949 to the International Law Commission, entitled "Historical Survey of the Question of International Criminal Jurisdiction" (A/CN.4/7/Rev.1). It was therefore unnecessary for him to go over that ground again, and he would confine himself to the discussions which had taken place within the United Nations itself since 1946.

2. In the Committee on the Progressive Development of International Law and its Codification, which had been directed by the General Assembly to treat as a matter of primary importance plans for the formulation of the Nuremberg principles, the French representative, raising the question of an international criminal court,^{1/} had referred to the criticism of the Nuremberg Tribunal that it was composed only of representatives of victor States, and had urged consideration of the establishment of an international criminal court. Opinion had been divided but the Committee had finally decided by a majority vote to insert in its report a paragraph drawing the attention of the General Assembly to the fact that implementation of the Nuremberg principles, as well as the punishment of other international crimes recognized as such by international multipartite conventions, might render desirable the existence of an international judicial authority to exercise jurisdiction over such crimes. The report^{2/} had been discussed in 1947 by the Sixth Committee of the General Assembly, but no reference had been made to the establishment of an international criminal jurisdiction.

^{1/} A/AC.10/SR.2, 13 May 1947, p.2; see also French draft proposal A/AC.10/21.

^{2/} Official Records of the General Assembly, Second Session, Sixth Committee - Legal Questions, pages 173 to 182.

3. During the preparation of the Convention on the Prevention and Punishment of the Crime of Genocide, the question whether such crimes should be tried not only by national courts but, in certain cases, by an international tribunal also, had given rise to much controversy. Some States had felt that it was essential to grant jurisdiction to an international court; others that intervention by an international court would encroach upon national sovereignty; yet others that it would be futile to consider the question so long as no international criminal court existed. As a result of the debate article VI had been inserted in the Convention. It read:

"Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction."

4. The General Assembly had also adopted resolution 260 B (III) of 9 December, 1948, inviting 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", and had requested the Commission "in carrying out this task, to pay attention to the possibility of establishing a Criminal Chamber of the International Court of Justice". The International Law Commission had decided that the establishment of an international criminal court was both desirable and possible, but it had not gone so far as to recommend the alternative of a criminal chamber within the International Court of Justice.^{1/}

5. In the Sixth Committee, the conclusions of the International Law Commission had been fully endorsed by some representatives, although others had strongly opposed the establishment of an international criminal court. The majority had preferred, however, not to express an opinion in abstracto on the substantive issue of the desirability and possibility of such a court, and had not wished to

^{1/} Official Records of the General Assembly, fifth session, Supplement No. 12, (A/1316), paragraphs 128 to 145.

take up any position on the matter until they had before them a draft statute for the court. In accordance with that view, the Sixth Committee had recommended, and the General Assembly had adopted, resolution 489 (V) of 12 December 1950, setting up a committee on international criminal jurisdiction "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 scope and the nature of the terms of reference given to the Committee had thus been clearly defined.

6. The same resolution had also requested the Secretary-General to prepare and submit to the Committee one or more preliminary draft conventions and proposals regarding such a court, to communicate the report of the Committee to 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. In pursuance of that resolution, the Secretary-General had submitted to the Committee a memorandum concerning the creation of an international criminal court, followed by annexes containing preliminary drafts of a statute for a court (A/AC.48/1). That memorandum did not claim to exhaust the subject or outline all possible solutions to the problems raised by the establishment of an international criminal court.

7. In part I of the memorandum, the question was discussed by what means the court might be established; whether by resolution of the General Assembly, or by an international convention, or perhaps by a combination of those two systems. Part II dealt with the statute of the court, and discussed its jurisdiction and functions, its composition, competence to apply to it, and the law to be applied by it, certain procedural questions and the question of appeals against its judgments. Part III contained considerations concerning the expenses of the court. Annex I contained a preliminary draft of a statute for the court, based on the assumption that the court would be established by a resolution of the General Assembly; annex II, a preliminary draft of a statute, based on the assumption that the court would be established by an international convention. In both cases it was assumed that the court would be a tribunal of fixed composition. In

case it were found preferable to establish a court on the lines of the Permanent Court of Arbitration, annex III contained a preliminary draft according to which the court would consist of a panel of members from which judges could be chosen to form an ad hoc tribunal to sit whenever cases had to be tried.

8. At the next meeting of the Committee the report (A/CN.4/48) of the third session of the International Law Commission would be circulated for the information of representatives, as it contained a chapter relating to a draft code of offences against the peace and security of mankind which would be of particular interest to the members of the Committee in connexion with the question of international criminal jurisdiction.

9. The Secretary-General had received a letter from the Indian Government regretting its inability to send a representative to take part in the work of the Committee. It was not for lack of interest in the problems before the Committee, but because the Indian Government had no qualified person available to act as its representative.

2. ELECTION OF OFFICERS (item 2 of the provisional agenda)

10. The ACTING CHAIRMAN then took up the question of the procedure to be followed by the Committee. No special rules of procedure had been drawn up for the Committee, as it was assumed that the rules of procedure of the General Assembly^{1/} would be used unless otherwise decided. It might be considered desirable to defer the election of a Vice-Chairman, or Vice-Chairmen, and a Rapporteur until the following day, but it was desirable to proceed at once to the election of a Chairman. He therefore invited proposals for the office of Chairman.

11. MOSTAFA Bey (Egypt) proposed Mr. Morris (United States of America).

12. Sir Frank SOSKICE (United Kingdom) and Mr. WANG (China) seconded the proposal.

Mr. Morris (United States of America) was elected Chairman by acclamation.

Mr. Morris took the Chair.

13. The CHAIRMAN thanked the Secretariat for the detailed, scholarly and objective memorandum it had submitted (A/AC.48/1), which, he hoped, would provide the basis for the Committee's discussions.

14. It seemed wise to use the General Assembly's rules of procedure, which he would interpret to mean that the will of the majority would prevail, but that the minority would be entitled to a fair hearing.

It was agreed that the Committee should be governed by the rules of procedure of the General Assembly.

15. The CHAIRMAN thought that there would be no objection to deferring the election of the other officers of the Committee till the following meeting.

It was so agreed.

3. PROGRAMME OF WORK

16. Mr. KERNO (Assistant Secretary-General) suggested that a decision might be taken on the number of meetings to be held daily. The Secretariat was able to deal with two meetings daily, if required, and a meeting could also be held on Saturday mornings.

17. Mr. ROBINSON (Israel) said that he had had experience of two meetings a day, and had found that under those conditions neither he nor members of other delegations had had time to study the documents or make proper preparations for the following meeting. The result had been, not progress, but confusion. The Committee was faced with a task at least as difficult as that with which the International Law Commission had been faced, for it would be breaking new ground in a virgin field in international relations. He suggested, therefore, that there should be a firm rule that only one meeting be held each day, from 9.45 a.m. to 1 p.m.

18. Sir Frank SOSKICE (United Kingdom) considered that the proper procedure for the Committee would be first to have a general exchange of views, then to examine the preliminary drafts in detail, possibly setting up sub-committees for that purpose. In order that the stage of general considerations might be got

through as quickly as possible, he proposed that the Committee begin with two full meetings every day.

19. Mr. WYNES (Australia) said that his Government had not yet seen the Secretary-General's memorandum, so that it would be impossible for him to give its general views until he had received instructions. He therefore supported the Israeli representative's proposal, at least so far as the rest of that week was concerned.

20. Mr. SÖRENSEN (Denmark) thought it desirable that the general discussion should be ended as quickly as possible, and he therefore supported the United Kingdom representative's proposal. After the general discussion, texts would have to be considered, and drafting problems and new proposals might require time for reflection; but it could be decided to modify the programme, if required, in accordance with the progress of the work.

21. The CHAIRMAN put to the vote the proposal that, on the following two days only, one meeting be held in the morning from 9.45 a.m. to 1 p.m. The Committee could, of course, he pointed out, always alter its decision regarding the number of meetings a day, and on Friday it would decide on the programme for the following week.

The proposal that only one meeting be held daily for the next two days was adopted by 6 votes to 5.

4. ADOPTION OF THE AGENDA (item 3 of the provisional agenda)

22. Mr. KERNO (Assistant Secretary-General) pointed out that the agenda in document A/AC.48/2 was only provisional, so that an agenda had still to be adopted by the Committee.

23. The CHAIRMAN proposed that the agenda consist of the following items:

- 1) election of Vice-Chairmen and Rapporteur;
- 2) general discussion; and
- 3) consideration of the drafts framed by the Secretariat.

The agenda proposed by the Chairman was adopted unanimously.

24. Mr. KERNO (Assistant Secretary-General) explained that all United Nations meetings were public, unless a decision were taken to the contrary.

It was agreed that the Committee should meet in public.

5. GENERAL DISCUSSION (item 2 of the agenda).

25. Mr. WANG (China) explained his Government's general views on the question of the establishment of an international criminal court. When the question had been discussed in the International Law Commission and in the Sixth Committee of the General Assembly, Mr. Hsu as member of the former and his country's representative in the latter had expressed his delegation's readiness to support the project, on the ground that the rule of law should be established internationally, as it had been nationally, at the earliest possible moment.^{1/} There would be many difficulties in the way, but his country hoped that they would not prove insurmountable; the establishment of an international criminal court would be a great step forward in a field in which very little had been done.

26. It was not, however, for the Committee to embark upon a detailed discussion of whether such a court should be created or not. That question had already been discussed on many occasions, and the Committee had merely been asked to prepare preliminary drafts of a statute for the court, so that the General Assembly might have specific proposals before it. In his opinion, therefore,

^{1/}Official Records of the General Assembly, fifth session, Sixth Committee, 243rd meeting, paragraphs 74 to 77.

the Committee should concentrate on drafting the statute rather than on the general question of setting up an international criminal court.

27. The Secretary-General's memorandum on the creation of an international criminal court bore witness to exhaustive research, and he felt that it should be taken as the basis for the Committee's discussions. His Government had no fixed ideas regarding the detailed organization of the criminal court, but was willing to exchange views on the subject with other governments.

The meeting rose at 4.5 p.m.