2 580

22

UNITED NATIONS

GENERAL ASSEMBLY

GENERAL

A/AC.48/SR.5
12 December 1951

ENGLISH
ORIGINAL: ENGLISH/FRENCH

Dual Distribution

COMMITTEE ON INTERNATIONAL CRIMINAL JURISDICTION

First Session

SUMMARY RECORD OF THE FIFTH MEETING

held at the Palais des Nations, Geneva,
on Tuesday, 7 August 1951 at 9.45 a.m.

CONTENTS:

Present:

Chairman: Mr. MORRIS

Members:

Australia	Mr. WYNES
Brazil	Mr. AMADO
Cuba	Mr. VALDES ROIG
Denmark	Mr. SÖRENSEN
Egypt	MOSTAFA Bey
France	Mr. de LACHARRIÈRE
Iran	Mr. KHOSROVANI
Israel	Mr. ROBINSON
Netherlands	Mr. RÖLING
Pakistan	Mr. MUNIR
Syria	Mr. TARAZI
United Kingdom of Great Britain and Northern Ireland	Mr. GORDON
United States of America	Mr. MAKTOS
Uruguay	Mr. PINEYRO CHAIN

Secretariat:

Mr. Kerno	Assistant Secretary-General in charge of the Legal Department
Mr. Liang	Secretary to the Committee

1. JURISDICTION OF AN INTERNATIONAL CRIMINAL COURT:

Chapter II of annex II to the Secretary-General's memorandum (continued) (A/AC.48/1, A/AC.48/L.1, A/AC.48/L.2, A/AC.48/L.3 and Corr.1)

Article 24 (continued)

1. The CHAIRMAN welcomed the representative of Cuba, Mr. Valdes Roig, to the Committee Table.

2. Resuming the discussion on the jurisdiction of an international criminal court, he drew the attention of the Committee to the Pakistani amendment (A/AC.48/L.1) and to the United States amendment to that amendment (A/AC.48/L.2). The Committee had also before it working papers containing points for discussion suggested by the French representative(1) and by the Israeli representative.(2)

---

(1) Points for discussion suggested by the French representative:

1. Is the jurisdiction of the court to be based exclusively on conventions, or should a two-fold jurisdiction be envisaged: (a) international crimes, (b) conventions covering other crimes?

2. Is express mention to be made of genocide?

3. Are the conventions defining the court's competence to be confined to major crimes?

4. Will it be possible for the court to be seized by a special agreement (compromis) subsequent to the offence? If so, in what circumstances?

5. Could the court be seized by a unilateral decision on the part of a State, if no convention binding that State gave the court jurisdiction in respect of the crime in question? If so, in what circumstances?

(2) Points of discussion suggested by the representative of Israel:

1. What kind of jurisdiction: (a) crimes under international law
(b) other crimes of international concern.

2. Methods of conferring jurisdiction:

(a) automatically by the convention establishing the court
(b) by protocol attached to the convention
(c) by particular conventions
(d) by special "compromis"
(e) by unilateral declaration of States.

3. What role, if any, should be attributed to the General Assembly in all hypotheses of No.2?

4. The particular case of genocide.

3. Mr. de LACHARRIÈRE (France) said that in his opinion the amendment (A/AC.48/L.1) proposed by the representative of Pakistan at the previous meeting had the merit of raising a series of questions which required to be examined and settled one by one. The Committee's decisions on those various points would constitute so many directives for the Drafting Sub-Committee. On the basis of those directives, the Sub-Committee would prepare proposals which it would submit to the Committee for action in plenary meeting.

4. The list of questions he had prepared at the end of the previous meeting(1) was merely a rough draft, and an imperfect one at that. Among other things, he would be disposed to add to it the third question on the list prepared by the representative of Israel, namely, that of the possible role of the General Assembly in the various eventualities. Since he considered that both lists covered the whole subject adequately he would not specially urge the claims of his own.

5. He formally proposed that the Committee should not examine the amendment submitted by the Pakistani representative or the subsequent amendment thereto submitted by the United States delegation, but should devote its time to answering general questions concerning the jurisdiction of the court.

6. The CHAIRMAN suggested that the Committee begin by considering the first point suggested by the French representative, namely, whether the jurisdiction of the court should be based exclusively on conventions, or whether a twofold jurisdiction should be envisaged, namely: (a) international crimes and (b) conventions covering other crimes.

7. Mr. ROBINSON (Israel) agreed that it would be premature for the Committee to vote on the Pakistani amendment, the more so as the United States representative had subsequently proposed an amendment to it. In his opinion, it was desirable for the Committee first to define clearly three or four problems, then to attempt to reach a decision upon them; the Drafting Sub-Committee could endeavour to express that decision, if any, in appropriate language, and the Committee as a

---

(1) Summary Record of the 4th meeting (A/AC.48/SR.4) paragraph 75.

whole could then take a final decision on the basis of the Sub-Committee's text. He therefore supported the French representative's views regarding the most suitable method of procedure.

8. Mr. TARAZI (Syria) observed that members who had attempted to list the ideas to which the Commission's work should relate had considerably advanced the discussions.

9. The Secretary-General's memorandum (A/AC.48/1), the clarity and precision of which deserved unstinted praise, suggested a number of considerations which it would appear useful to introduce into future debates.

10. Before examining the different ideas listed by the French representative, the Committee must settle the question of how the international criminal court was to be established. Should it be an organ of the United Nations? Would a vote by the General Assembly be sufficient? Would an international convention be required for the purpose? The first solution should be rejected since it would postulate application of Articles 108 and 109 of the Charter, which would be difficult in the existing circumstances.

11. The procedure of a vote by the General Assembly raised many difficulties, among which must be mentioned, apart from the observations contained in the Secretary-General's memorandum, the existing differences of opinion regarding the role and operation of the United Nations, deriving from the interpretation placed upon the Charter itself. In that respect there were two diametrically opposite tendencies: that of the western jurists; and that of jurists who were not prepared to recognize the existence of a supra-national structure. For western jurists, such as Professors Scelle, Kelsen, Lauterpacht and Preuss, the Charter of the United Nations had, as it were, put an end to the concept of the sovereignty of States. That sovereignty belonged to the United Nations, for the Charter, in Article 2, paragraph 7, only left States a "special domain". Professor Scelle had in a course of lectures delivered at the Paris Faculty of Law in 1947-1948 expressed the view that sovereignty henceforth came under international law, and that the individual was therefore subject to that law. According to that writer, everything amounted to a greater or lesser degree of

what he called international federalism. The State acted on behalf of the international community through an ingenious mechanism called the "dissociation of functions".

12. In the course he had given in 1949 at the Hague Academy of International Law on "Article 2, paragraph 7, of the United Nations Charter and questions coming within domestic jurisdiction", Professor L. Preuss had concluded that "the authors of the Charter certainly intended, by the new formulation they have given to the provision concerning domestic jurisdiction, strictly to delimit the powers of the United Nations; but the very flexibility of the wording they have used has permitted the United Nations to exercise, in domestic affairs, an influence which would not have been possible under a provision such as that of Article 15, paragraph 8, of the League of Nations Covenant"(1).

13. The opposite theory was that based on the fact that the Charter adopted the principle of sovereign equality of States, affirming that that sovereignty was the rule, the jurisdiction of the United Nations being the exception, and the United Nations not being a supra-national organization. According to the advocates of that theory, apart from the matters listed in the Charter, no organ of the United Nations had the right to take a decision which might affect a Member State in any way. In the course he had given at the Hague Academy of International Law in 1947 on the Soviet Union doctrine of international law, Mr. Krylov, the Soviet Union judge of the International Court of Justice, had maintained that "Article 2 of the Charter prescribes the sovereign equality of Member States, the inviolability of territories against all external aggression and the prohibition of intervention in the internal affairs of another State"(2).

14. The foregoing considerations showed the objections, in the existing state of international law, to establishing the court by a resolution of the General Assembly, which organ, moreover, under the terms of Article 13 and the following articles of the Charter, was only entitled to make recommendations. Since

---

(1) Académie de droit international, Recueil des Cours, tome 74, p.649, (Secretariat translation).

(2) Ibid, tome 70, p.431 (Secretariat translation).

unanimity had not been reached on the interpretation of the Charter, and the establishment of an international criminal court would entail partial surrender of sovereignty, it could only be effected by means of a convention. It was by a convention alone that States would be able deliberately to define what they intended to establish. There was no reason, however, why such a convention should not first be the subject of a general discussion in, and of a vote by, the General Assembly, which would recommend States to adopt it. That had been the procedure followed for the Convention on Genocide.

15. The discussions which had so far taken place in the Committee had amply demonstrated that the court's jurisdiction raised a number of questions. In submitting his amendment, the representative of Pakistan had made a laudable attempt to simplify the data. He had most justifiably referred to genocide, since the very subject of the Committee's discussions was really only a consequence of article VI of the Convention on Genocide. But since genocide was only one specific case, it would appear more rational to adopt a more general approach by giving a wider definition of crimes under international law.

16. Mr. MAKTOS (United States of America) said that in his experience, when abstract questions were discussed in United Nations bodies, debates were exceedingly lengthy, whereas consideration of specific texts was much briefer and less diffuse. In his opinion, therefore, any member who had a proposal or amendment to make should put it in writing for consideration by the Committee.

17. He contended that his own amendment (A/AC.48/L.2) to the Pakistani amendment could be divided into sections, which would cover many of the questions listed for discussion by the French and the Israeli representatives. Thus, the first point listed by the French representative was covered by that part of the United States amendment reading "The court shall have jurisdiction over such offences against the law of nations as may be provided in protocols to the present convention". The Committee could change that wording, or could decide upon separate conventions instead of upon protocols to the convention, but it had a definite text upon which to focus its attention, and in that respect had something more concrete before it than a mere abstract problem. Other points suggested for

discussion were similarly covered by his text, and on those not so covered, such as whether or not express mention should be made of genocide, a decision could be reached by a vote upon deletion of the relevant words from the Pakistani amendment. Again, the third question formulated by the French representative, namely, whether the conventions defining the court's competence should be confined to major crimes, would be solved if the United States amendment was adopted, for that question would not then come up, as either major or minor crimes could be inserted without limit either in protocols to the convention or in separate conventions.

18. With regard to the Israeli representative's suggested list of points for discussion, which he (Mr. Maktos) had opposed at the previous meeting(1) the remarks he had then made might have been interpreted as attributing motives to the Israeli representative other than mere disinterested desire to further the Committee's discussions. He had not intended any such implication, for that representative's list seemed to him to be inadequate only in that it divided up what in the United States view seemed indivisible; his country believed that there should be no jurisdiction unless expressly given by convention.

19. In his opinion, therefore, either the Pakistani amendment and his own amendment thereto might be considered first, or the first point for discussion suggested by the French representative might be taken up, or, again delegations might be asked to propose other definite amendments or texts.

20. Mr. RÖLING (Netherlands) was not convinced that all the members of the Committee had the same questions in mind when discussing the problem of jurisdiction. In his opinion, the points for discussion differed somewhat from those suggested either by the French or by the Israeli representative. The first relevant question did not concern the jurisdiction of the court, for the concept of jurisdiction at once raised other questions such as competence over territory or over persons. In his opinion, the first question to be discussed was what sort of crimes should come under consideration for the jurisdiction eventually to be conferred on the Court, namely: should it only try crimes under

---

(1) Summary record of the 4th meeting (A/AC.48/SR.4) paragraph 85.

international law, or also crimes under national law, and, on the other hand, should such crimes be major only or major and minor? Opposing views had been expressed on those issues, which must be settled by the Committee. It might be felt desirable to set some limitation to the type of crimes justifiable in order to protect the authority of the court. He proposed therefore that the first question be: "What category of crimes should be taken into consideration as coming eventually within the jurisdiction of the court?"

21. The second question for discussion that he suggested arose from the difference between national communities and the international community. In national communities there was a central authority, and if that authority conferred jurisdiction upon a court, all members of the community became subject to that court; in an international community, however, there was no central authority, and jurisdiction could be conferred upon a body only to the extent that separate States were prepared to confer jurisdiction upon it. Every State was reluctant to confer jurisdiction on an international court which might impose its own interpretation of international criminal law upon the foreign policy of that State, and which might even go so far as to condemn officials of that State for carrying out that foreign policy. His second question therefore did not start with the court, but with the sovereign national State itself, and he suggested that it might be phrased as follows: "Under what conditions has a State to recognize the jurisdiction of the court over its own nationals?".

22. A possible answer to that question might be that a State would recognize such jurisdiction only to the extent that it had acceded to a convention conferring jurisdiction on the court. Such a limitation was not limitation of the concept of international crime, but only of international criminal jurisdiction in respect of international crime. The further question would then arise whether such recognition of jurisdiction by a State would follow only from a general declaration in abstracto before any crime was committed, or whether it could also follow from a special declaration after a crime had been committed.

23. His first question had arisen from his desire to protect the authority of an international court; the second from his desire to protect the sovereignty of States. If the sovereignty of States was taken as a starting point, the answer to his question would be the real determinant of the jurisdiction of the court, and such a point of departure would also provide the best conditions for the establishment of a court.

24. The idea behind all discussions on the subject of establishing an international criminal court was that the peace of the world should be protected from the disrupting effect of international crimes. His third question was therefore related to the protection of international peace, and asked what authority should be permitted to seize the court. The answer could be that the relevant decision would be taken by the General Assembly.

25. If those three questions were asked and answered, it seemed to him that all the points for discussion suggested by the French and Israeli representatives would be covered. There would be no need to mention genocide expressly, for it was a crime under international law; but a specific decision could be made with regard to it, if required, under his second question.

26. The answers to those three questions would inevitably raise yet a fourth question, namely, whether, if an individual was indicted by a decision of the General Assembly and his government considered that the international criminal court had no jurisdiction over him, it would have the right to raise the question of the court's jurisdiction before a body such as the International Court of Justice. Such a question would be of great importance and extremely complex, involving as it would the interpretation of treaties, and it might well be decided by the International Court of Justice.

27. In summarizing, he thought that the Committee should discuss the following questions:

A. What categories of crimes should be taken into consideration as coming eventually within the jurisdiction of the international criminal court as recognized by States?

B. Under what conditions should a State recognize the jurisdiction of the international criminal court?

(a) should recognition of jurisdiction, as for instance in the case of genocide, be linked with the establishment of the court itself?

(b) should recognition of jurisdiction be possible only by a priori declaration or convention?

(c) should recognition of jurisdiction be possible by a posteriori declaration or convention?

(d) should recognition of jurisdiction be possible in respect of relations with specifically mentioned States?

C. Which organ should be permitted to seize the court?

(a) a United Nations organ only?

(b) United Nations organs and other organs determined by special convention?

D. Should States be permitted to contest the jurisdiction of the international criminal court before the International Court of Justice?

28. He thought that it might perhaps be advisable to request the Drafting Sub-Committee to establish one list of questions on the basis of the French, Israeli and his own suggestions and the Pakistani and United States amendments, to be placed before the Committee for discussion.

29. Mr. GORDON (United Kingdom) supported the United States representative's proposal regarding the procedure to be followed by the Committee. The Pakistani and United States amendments covered all the points that had been raised, and any further points could be dealt with by further amendments or separately.

30. Mr. TARAZI (Syria) agreed with the Netherlands representative, that the various proposals should be sent to the Drafting Sub-Committee, which should classify them and report to the Committee.

31. The Committee appeared to be divided into two schools of thought: those who, like the representatives of Pakistan and of the United States of America, wished the Committee to consider concrete proposals, and those who, like himself, wished the Committee to consider general questions. The list of those questions should be arranged and supplemented so as to take into account the points raised by the Netherlands representative. The remittal of the list to the Drafting Sub-Committee accordingly seemed indispensable.

32. Mr. WYNES (Australia) pointed out that both the Pakistani and the United States amendments referred to a convention establishing an international criminal court. He felt that the question of how such a court should be established ought not to be pre-judged, and feared that reference to such a convention might be interpreted as deciding the question.

33. The CHAIRMAN emphasized that all decisions taken by the Committee would be regarded as provisional. Only at the very end of the discussions would a final decision be taken.

34. Mr. de LACHARRIERE (France) had hoped that the Committee, following the sound advice given by the Assistant Secretary-General[1], would have avoided becoming involved in work of a drafting nature.

35. If however the Committee, favouring the latter course, wished to vote on texts contrary to the views expressed by the Netherlands and Syrian representatives

---

(1) Summary record of the 4th meeting (A/AC.48/SR.4), paragraph 35.

and by himself, those delegations who had expressed their point of view in general terms would have to be given sufficient time to enable them to submit their ideas in the form of amendments. For example, the representative of Uruguay who, at the previous meeting,(1) had classified the jurisdiction of the court under two headings, had not yet had the opportunity of formulating an appropriate amendment. In the same way, other ideas put forward by the Netherlands representative at the present meeting had not been expressed in concrete form.

36. The CHAIRMAN, summarizing the discussions, said that an issue had now been formulated which the Committee could vote upon. On the one hand, there was the Netherlands motion that the Drafting Sub-Committee should prepare one list of points for discussion, on the other, the United States motion that concrete proposals should be made and discussed in the form of amendments to the annex to the Secretary-General's memorandum (A/AC.48/1).

37. He accordingly put both motions to the vote, 9 members voted in favour of the Netherlands motion and 3 in favour of the United States motion.

38. The CHAIRMAN announced that the Committee would accordingly call upon the Drafting Sub-Committee to prepare at once one list of questions for discussion.

The meeting was suspended at 10.45 a.m., and was resumed at 12.05 p.m.

39. The CHAIRMAN requested the Committee to proceed to consideration of the list of points for discussion in connexion with the jurisdiction to be given to the international penal court, as contained in the document prepared by the Drafting Sub-Committee (A/AC.48/L.3 and Corr.1). Once the Rapporteur of the Drafting Sub-Committee had introduced the document, it would be in order for representatives to propose the addition of further questions or the deletion or amendment of those enumerated in that document.

---

(1) Summary Record of the 4th meeting (A/AC.48/SR.4), paragraph 61.

40. Mr. SORENSEN (Denmark) said that the Drafting Sub-Committee had attempted to combine the lists of points submitted by the French, Israeli and Netherlands representatives.

41. Point 1 dealt with the kind of crimes with which the Court would have to deal, and it might be that members of the Committee might wish to add further categories of crimes.

42. Point 2 dealt with a basic condition governing the jurisdiction of the Court, namely, whether or not its jurisdiction should be based exclusively on the consent of the State whose national was being tried. It also raised the question of the desirability or otherwise of subjecting such consent to the approval of an organ of the United Nations.

43. Point 3 dealt with the manner in which that basic condition was to be fulfilled, that was to say, in what manner the consent of States was to be expressed. Five possibilities were listed, and they were not all mutually exclusive.

44. Point 3 bis[1] explained the connexion between the points 1 and 3. When point 3 was reached, the Committee would have in mind the answer it had given to the questions under point 1, and if it was agreed that the court should have jurisdiction over crimes under international law and over other crimes of international concern, it was possible that the different methods of expressing consent might be agreed upon with respect to each of those two categories.

45. When drafting point 4 the Sub-Committee had had in mind the Pakistani representative's suggestion that genocide should be specifically mentioned in article 24, but had drafted the question in a more general way.

46. Point 5 dealt with the question of who could seize the court, and the three possibilities listed were not mutually exclusive.

47. As to point 6, it would be noted that the question of what remedy should be given to States challenging the competence of the court referred not to an appeal from a decision of the court, but to a preliminary challenge of its jurisdiction.

---

(1) A/AC.48/L.3/Corr.1

48. Mr. MAKTOS (United States of America) enquired whether, in accordance with point 1(a), if the Committee decided that, jurisdiction should be conferred on the court in respect only of crimes under international law and if, for example, it also decided that consent should be expressed by particular conventions (3(c)), the result would be that a text would emerge substantially similar to that proposed by his delegation.(1)

49. Mr. SORENSEN (Denmark) said that, as the Drafting Sub-Committee had not considered any of the questions in the light of a specific text, he could not give an absolutely definite answer. He believed the general sense to be, however, that if the Committee answered points 1 and 3 along the lines indicated by the United States representative the resultant text would be very similar to that proposed by the latter.

50. Mr. LIANG, Secretary to the Committee, referred to point 2, and expressed doubt as to the appropriateness of the question "Should this consent also be subject to approval by any organ of the United Nations?" He found it difficult to see how the consent of a State to accept the jurisdiction of the court could be made subject to the approval of an organ of the United Nations. Such a situation would only be possible where a State had acted in violation of human rights, and then only under the terms of the International Covenant on Human Rights.

51. The CHAIRMAN believed it would be desirable to take up the Secretary's point when the Committee came to discuss point 2.

52. In reply to a question by Mr. TARAZI (Syria), the CHAIRMAN agreed as to the desirability of taking the points up seriatim, and of reaching conclusions on each separately, although he recognized that it might not always be possible to keep the discussion on each point absolutely water-tight. The conclusions reached by the Committee would, of course, only be regarded as tentative at the present stage in its work. The first point was to decide whether the court should have jurisdiction over crimes under international law.

---

(1) A/AC.48/L.2

Point 1 (A/AC.48/L.3)

Paragraph (a)

53. Mr. AMADO (Brazil) suggested that paragraph (a) should be put to the vote without prior discussion. It was self-evident that an international criminal court should have jurisdiction over crimes under international law.

54. Mr. MAKTOS (United States of America) supported the Brazilian representative's proposal, on the understanding that it would be possible for the question of the link between point 3 and point 1 to be raised when the Committee came to discuss point 3.

Point 1, paragraph (a), was adopted.

Paragraph (b)

55. Mr. KERNO (Assistant Secretary-General) submitted that the Committee's decision on point 1(b) would, as in the case of point 1(a), be one of principle; what the "other crimes" referred to should be, would be determined later.

56. Mr. MAKTOS (United States of America) felt that the use of the phrase "other crimes" was unscientific, and would broaden the issue to the extent of diminishing the usefulness of the court. Moreover, when "other crimes" became of definite concern to the international community, they would automatically be regarded as crimes under international law, as had already happened in the case of genocide. His delegation was opposed to the retention of paragraph (b).

57. Mr. de LACHARRIERE (France) said that, apart from major crimes under international law such as genocide and crimes against the peace and security of mankind, which in the ordinary way should constitute the court's field of jurisdiction in view of the fact that they wronged the international community as a whole and their definition and punishment were essentially an international matter, there was another category of crimes which were already dealt with by national legislation and for which the existence of an international organ of repression was not absolutely necessary, but which certain States might deem it useful to bring before the court envisaged. That category included, inter alia,

the crimes of counterfeiting and traffic in persons - crimes the punishment of which by national courts might not always be impartial or adequate. Why should States be denied the right to bring those crimes within the jurisdiction of the court through the medium of conventions?

58. The representative of Israel had suggested that the effect of entrusting the punishment of such crimes to the court would be to lower its prestige.(1) That observation was not altogether apt. Judges did not place themselves on the same level as the accused; the dignity of courts of high instance was not lowered by their trying petty delinquents. International co-operation, it might be added, was already very highly developed in various directions, and would be even further enhanced by extension of the court's jurisdiction to cover crimes of that kind despite their lesser importance as compared with the major crimes against humanity. If repression of crime was to be made more effective, he saw no reason why advantage should not be taken of that possibility.

59. Moreover, it would be well to determine the functions of the court in such a way as to provide it with more or less steady work which would enable public opinion to get used to its existence. It had often happened that eminent institutions developed out of cases of small moment. An excellent example of that process was afforded by the jurisdiction of the Conseil d'Etat in France, the work of which had gained recognition by progressive stages, and which at present checked the legality of all measures undertaken by the Government.

60. Besides, in the event of the commission of a major crime under international law, it would be an additional disgrace for the perpetrators to find themselves haled before the same court as tried international malefactors.

61. That was the idea covered by the somewhat vague formula used in paragraph (b). Its object was to enable the court to be given authority, by means of conventions concluded to that end, to deal with certain crimes not included in the list of crimes under international law.

---

(1) Summary record of the 4th meeting (A/AC.48/SR.4), paragraph 14.

62. The CHAIRMAN asked whether the United States representative would agree to conferring jurisdiction in respect of "other crimes of international concern" if the term "other crimes" was qualified by the words "which may be specified by convention".

63. Mr. MAKTOS (United States of America) said that he would have no objection to retention of that category of crimes, subject to the Chairman's suggested qualification, if it turned out that States were willing to conclude such conventions. He fully appreciated the French representative's observations. However, in the discussions on the crime of genocide a parallel problem had been raised, namely, whether cultural genocide should be included. It had been felt that if cultural genocide were included in the convention, the main purpose of the latter, which was to prevent the killing of human beings, might be defeated. He feared likewise that by giving the court jurisdiction over "other crimes of international concern", a very vague and broad category, the convention might not prove acceptable to quite a number of States. The Chairman's suggestion was an improvement, but he still felt that inclusion of the category at all would diminish the value of the convention. He would, however, vote with the majority if it favoured the retention of that category.

64. Mr. de LACHARRIERE (France) was anxious to answer the United States representative, who seemed to fear that the option given to States to bring other crimes before the court might result in congestion of its juridical activity. It was true that if States were left a completely free hand, through the medium of conventions concluded between two parties or a small number of parties, to designate an offence, regardless of its nature, as a crime of international concern, the court might find itself in a state of chaotic disorder as regards its jurisdiction.

65. To meet that danger, it might be provided that conventions intended to give the court jurisdiction to deal with crimes of international concern should be subject to the recommendation or the approval of the General Assembly. In that way, the conventions could not but be in harmony with the interests of the United Nations. That second-line jurisdiction of the court would only have effect on the

basis of conventions of sufficient interest to the international community as a whole. For example, if the international community was seeking to suppress counterfeiting, international bodies would naturally suggest recommending conventions conferring jurisdiction on the court to deal with that crime.

66. Mr. ROBINSON (Israel) said that he was inclined to question the value of the Chairman's suggested amendment to paragraph (b). If it were adopted, the first inference would be a contrario that jurisdiction could be given in respect of "crimes under international law" without the conclusion of conventions; and that was a possibility which the United States representative himself wished to avoid. He (Mr. Robinson) would prefer to maintain the existing wording of point 1(b); after all, point 1 aimed at establishing the limits of the court's jurisdiction.

67. Although he had made his delegation's position perfectly clear with regard to the granting of jurisdiction in respect of "other crimes of international concern", he would nevertheless comment on two points made by the French representative. While he agreed with him that the stature of a national court was not necessarily determined by the type of crimes with which it had to deal, he would point out that the emphasis shifted from the extent to the nature of a crime, when it came to a question of international courts. Thus, if that distinction were to be maintained, reference of national crimes to an international criminal court could not possibly add to its stature. The French representative had also emphasized the desirability of providing the court with work during periods when there were no crimes in international law for it to try. To his mind, however, the hearing of cases of smuggling, counterfeiting and the like might well have an adverse effect on the mental attitude of the judges and on their work when they came to try "crimes under international law".

68. In fact, none of the points made by the French representative had shaken his determination to vote against the inclusion of jurisdiction in respect of "other crimes of international concern".

69. Mr. ROLING (Netherlands) supported the Israeli representative's point of view. The principal task of the court would be to try major international

crimes, such as the crime of aggression, crimes against humanity, and war crimes. If it had to deal with questions of smuggling and the like, its stature would be diminished.

70. The CHAIRMAN put to the vote the proposal to include under the court's jurisdiction "other crimes of international concern" (point 1(b) in document A/AC.48/L.3).

The proposal was adopted by 8 votes to 5.

71. Mr. AMADO (Brazil) said that he had refrained from speaking on that issue as he had taken for granted that the vote was purely tentative and that the subject would be re-opened at a later stage. Much as he sympathized with the French representative's point of view, he still had in mind the many arguments adduced in favour of the opposite point of view and particularly the distinctions made by the Uruguayan representative.(1) He could not conceive of the court's dealing with those minor crimes which were really not international crimes. He hoped the decision just taken would prove to be even more tentative than the others.

Point 2

72. Mr. KERNO (Assistant Secretary-General) felt that there was a major difficulty in the question: "Shall the jurisdiction of the international criminal court in regard to nationals of a certain State be based on the consent of this particular State?" The question implied that the jurisdiction of the court would be based on the principle of nationality, and not on the principle of territoriality. It would be recalled that article VI of the Convention on Genocide based the competence of national tribunals on the principle of territoriality. Thus, if such a crime were committed in a particular country by a national of another country, the State in the territory of which the crime had been committed could under that article surrender the person charged to such international penal tribunal as had jurisdiction in the matter. That, however, did not appear to be envisaged in the first question under point 2.

---

(1) Summary record of the 4th meeting (A/AC.48/SR.4), paragraphs 56 to 61.

73. Mr. SORENSEN (Denmark) submitted that the basic issue of international jurisdiction bore some relation to the diplomatic protection of nationals. For instance, a government could under international law object to the trial of its nationals by a court in another country which was not competent under the rules of international law, and if those rules were violated, that question of jurisdiction might be submitted to the International Court of Justice, provided the States concerned had accepted its jurisdiction in respect of such matters. Similarly, a State entitled to exercise the protection of its nationals must be able to protect them when they were brought before an international court.

74. The Drafting Sub-Committee had not had in mind merely crimes against the interests of the individual's own country. The problem of international jurisdiction only arose when two States were interested in a particular case; in the first place, the State that desired to bring the person to trial on the basis of territoriality, and in the second place, the State that wished to protect its national. That was the basic idea behind the formulation of the first question under point 2. The view was taken that jurisdiction could not be conferred on the court in respect of the national of a particular State, unless the latter had accepted the court's jurisdiction irrespective of where the crime was committed. That might not be the generally accepted view, but as it had been put forward in the course of the discussion, the Drafting Sub-Committee had framed the question in that particular way.

75. Mr. LIANG, Secretary to the Committee, recalled the point he had made earlier[1] in connexion with the second question under point 2. That the consent of a State should be subject to review by an organ of the United Nations seemed to him to contravene the provisions of Article 2, paragraph 7, of the United Nations Charter. He could understand the question if it spoke of the refusal of the State to give its consent after first having accepted the obligation to submit to the jurisdiction of the Court, for then the United Nations might have a voice in the matter.

---

(1) Paragraph 50, above.

76. Mr. SORENSEN (Denmark), replying to the Secretary, said that the fact that the question had been included in the Drafting Sub-Committee's paper did not imply that it should be answered in the affirmative. He agreed with the Secretary that if a State consented to the jurisdiction of the court, there was no need for approval by the United Nations. The question, however, had been raised during discussion, and it seemed desirable to take a decision upon it.

The meeting rose at 1.30 p.m.