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REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS SECOND SESSION

Report of the Sixth Committee

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I. INTRODUCTION

1. The General Assembly, at its 285th plenary meeting on 26 September 1950, decided to refer to the Sixth Committee, for consideration, the report (A/1316)* of the International Law Commission on its second session, held in Geneva from 5 June to 29 July 1950.

2. The Sixth Committee began its consideration of the report at its 225th meeting on 20 October 1950. It decided, after discussion, to take up the first four of the six parts of the report in numerical order. At its 245th meeting on 28 November 1950, it further decided not to proceed with a debate on parts V and VI, as these parts were intended merely to give information regarding the progress of the Commission's work on subjects on which final reports would be submitted to the General Assembly at a future session.

* See Official Records of the General Assembly, Fifth Session, Supplement No. 12.

II. CONSIDERATION OF PART I OF THE REPORT OF THE INTERNATIONAL LAW COMMISSION: GENERAL (INTRODUCTION AND MISCELLANEOUS DECISIONS)

3. The Sixth Committee discussed part I of the report at its 226th to 229th meetings inclusive, from 23 October to 28 October 1950. Three principal questions were dealt with during these debates, namely, the desirability of inviting the Commission to review its Statute with the object of recommending revisions thereof to the General Assembly, the emoluments of the members of the Commission and the extension of their term of office.

4. The question of a review of the Statute was raised in connexion with doubts expressed by a number of delegations as to whether the existing working conditions of the International Law Commission were such as to enable it to achieve rapid and positive results. It was pointed out that the Commission had been overloaded with special tasks entrusted to it by the General Assembly and lately also by the Economic and Social Council, and that the Commission had consequently made little progress in its essential work, the codification of international law. Many delegations considered that if this situation were not improved the prestige and utility of the Commission might suffer. They were therefore of the opinion that the Commission should examine its Statute with a view to ascertaining whether it could not be revised in order to improve the conditions under which the Commission was carrying on its work. The United Kingdom, accordingly, introduced a draft resolution (A/C.6/L.130) requesting the Commission to review its Statute with the object of making recommendations to the sixth session of the General Assembly concerning such revisions of the Statute as might appear desirable in the light of experience for the promotion of the Commission's work. Some delegations considered the terms used in the United Kingdom draft resolution too broad, and suggested that the scope of the proposed review of the Statute should be more precisely defined. Thus, France laid before the Committee an amendment (A/C.6/L.133) specifying that the purpose of the review would be to submit recommendations to the General Assembly concerning the organization of the Commission and especially concerning the methods most likely to ensure the continuity of its work. The Union of Soviet Socialist Republics proposed to limit further the scope of the review of the Statute and submitted an amendment (A/C.6/L.135) to the effect that the Commission would be requested to review the terms of article 17 of its Statute with the object of rendering it impossible for any task to be assigned to the Commission without a special decision of the General Assembly in each specific case.

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5. Before the United Kingdom draft resolution (A/C.6/L.130) and the two amendments thereto were put to the vote, the French amendment (A/C.6/L.133) was withdrawn. The USSR amendment (A/C.6/L.135) was rejected by 26 votes to 6, with 10 abstentions. The United Kingdom draft resolution was thereafter adopted by 36 votes to 7, with 2 abstentions. This draft resolution is contained in part VI of the present report.

6. In paragraph 21 of its report, the International Law Commission had suggested that the General Assembly, in order to make service in the Commission less onerous financially for its members, might wish to reconsider the terms of article 13 of the Commission's Statute according to which the members of the Commission shall be paid travel expenses and a per diem allowance at the same rate as the allowance paid to members of commissions of experts of the Economic and Social Council.

7. The great majority of the delegations were of the opinion that the present emoluments paid to the members of the Commission were inadequate, and favoured a revision of article 13 in order to allow the General Assembly to exercise wider discretion in determining the allowance to be accorded to them. Cuba, Egypt, France, Iran, the United Kingdom and the United States of America introduced a joint draft resolution (A/C.6/L.128) whereby the General Assembly, considering paragraph 21 of the report of the International Law Commission, the inadequacy of the emoluments paid to the members of the Commission, the importance of the Commission's work, the eminence of its members and the method of their election, would decide to modify article 13 as follows:

> "Members of the Commission shall be paid travel expenses, and shall also receive a special allowance, the amount of which shall be determined by the General Assembly."

Panama presented an amendment (A/C.6/L.134) which, after having been slightly modified following a suggestion by the French representative, proposed to add to the preamble of the joint draft resolution (A/C.6/L.128) a further consideration, namely, that the nature and scope of the work of the Commission were such as to require its members to devote considerable time in attendance at the necessarily long sessions of the Commission. This amendment, as modified, was accepted by the sponsors of the joint draft resolution.

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8. The proposal to revise article 13 of the Statute was opposed by certain delegations on the ground that the members of the International Law Commission should not, with respect to subsistence allowance, be treated differently from equally eminent experts working for the United Nations in other fields. It was also pointed out by these representatives that the Advisory Committee on Administrative and Budgetary Questions had recommended that the subsistence allowance for members of subsidiary bodies of the General Assembly should be raised from $20 to $25 when they were meeting in New York.

9. Other delegations, while concurring with the majority view that article 13 should be revised, also thought it inadvisable to pay to the members of the International Law Commission a higher subsistence allowance than to other experts. According to this trend of opinion, it would be preferable to accord to the members of the Commission a honorarium or a special yearly allowance as a remuneration for the considerable amount of work required of them not only during but also between the session of the Commission. Amendments to that effect were introduced by the Philippines (A/C.6/L.129) and Norway (A/C.6/L.136).

10. When put to the vote, the Norwegian amendment was rejected by 16 votes to 13, with 16 abstentions, and the Philippine amendment was defeated by 13 votes to 1, with 31 abstentions. At the request of the Union of South Africa, the Panamanian addition to the preamble of the joint draft resolution was thereafter put to the vote separately and was adopted by 31 votes to 2, with 10 abstentions. Finally, the joint draft resolution, as modified and as a whole, was adopted by 37 votes to 1, with 6 abstentions. The draft resolution, as adopted, is included in part VI of the present report.

11. The Sixth Committee also considered a joint draft resolution (A/C.6/L.131) presented by Cuba and Egypt, whereby the General Assembly would fix at $35 per day the amount of the special allowance to be paid to the members of the Commission according to the proposed new wording of article 13. Opinion was divided as to whether the Sixth Committee was competent to entertain such a proposal. Some delegations held that there was nothing in the rules of procedure of the General Assembly to prevent the Sixth Committee from adopting the draft resolution. Other delegations argued the contrary view that, as the draft resolution dealt with a purely financial question, it was outside the competence of the Sixth Committee and was a matter to be decided by the Fifth Committee. After consultation among delegations, a compromise solution was

reached. The joint draft resolution (A/C.6/L.131) was replaced by a proposal introduced by Iran that the Sixth Committee should adopt the following voeu:

"The Sixth Committee expresses the desire that the special allowance provided for in the draft resolution adopted by it on 28 October 1950 should be 35 dollars per day."

12. At the request of Egypt, a roll-call vote was taken on the voeu. It was adopted by 31 votes to 8, with 5 abstentions, as follows:

In favour: Argentina, Belgium, Brazil, Burma, Chile, China, Colombia, Cuba, Denmark, Dominican Republic, Ecuador, Egypt, France, Guatemala, Iran, Iraq, Mexico, Norway, Pakistan, Panama, Peru, Saudi Arabia, Syria, Thailand, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela, Yemen, Yugoslavia.

Against: Australia, Byelorussian Soviet Socialist Republic, Czechoslovakia, New Zealand, Poland, Ukrainian Soviet Socialist Republic, Union of South Africa, Union of Soviet Socialist Republics.

Abstaining: Canada, Indonesia, Netherlands, Philippines, Sweden.

After the voting, the representatives of Afghanistan, Greece and India, who were absent during the roll-call vote, asked to be counted as voting in favour of the voeu.

13. In view of rule 152 of the rules of procedure, the Chairman of the Sixth Committee, in a letter dated 30 October 1950 (A/C.6/L.138), communicated to the President of the General Assembly the draft resolution adopted by the Committee regarding article 13 of the Statute of the International Law Commission, together with the voeu expressed by the Committee concerning the amount of the special allowance to be paid to the members of the Commission.

14. A majority of the delegations were in favour of extending the term of office of the present members of the Commission from three to five years. In support of this view, it was pointed out that the Commission would not be able to finish some of its most important tasks during the current period of office and that the work in progress on these tasks should not be interrupted by a change in membership. In particular, it would be highly detrimental to the efficiency of the Commission if new rapporteurs had to take over subjects on which a considerable volume of work had already been done. Against this view

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it was argued by some delegations that, even if the term of office of the present members were prolonged to five years, the same problem might arise at the end of the extended period. Attention was also drawn to the fact that, according to article 10 of the Statute of the Commission, the members were eligible for re-election and that there was no reason to doubt that the General Assembly would re-elect those members whose work it felt had been most useful.

15. Cuba, Chile, Egypt, Iran and Turkey introduced a joint draft resolution (A/C.6/L.132) which, in its operative part, set forth a decision to amend article 10 of the Statute of the Commission in order to extend the term of office of the members from three to five years, this extension to be applicable to the term of the members of the Commission elected in 1948. Belgium submitted an amendment (A/C.6/L.137) by which the scope of the operative part of the joint draft resolution would be limited to an extension of the term of the present members of the Commission, and the preamble of the draft resolution would be accordingly reworded. This amendment was accepted by the sponsors of the joint draft resolution after the Belgian representative had consented to delete from his text a phrase stating that the extension was made "by way of exception".

16. When put to the vote, the joint draft resolution, as amended, was adopted by 37 votes to 8, with 2 abstentions. This draft resolution, as adopted, is included in part VI, below.

III. CONSIDERATION OF PART II OF THE REPORT OF THE INTERNATIONAL LAW COMMISSION: WAYS AND MEANS FOR MAKING THE EVIDENCE OF CUSTOMARY INTERNATIONAL LAW MORE READILY AVAILABLE

17. The Sixth Committee considered part II of the report of the Commission at its 230th and 231st meetings on 30 October and 2 November 1950.

18. It appeared clearly from the debate that the delegations were of the view that finding ways and means for making the evidence of customary international law more readily available was essentially a practical task which could be accomplished without a previous agreement on a precise definition of customary international law. Decisions by the Sixth Committee on the practical recommendations put forward by the International Law Commission in part II of its report should, therefore, not be taken to imply approval of statements of a theoretical or general character made by the Commission in this connexion. Some of these statements drew critical comments from several delegations. In particular, criticisms were levelled against the statement in paragraph 30 of the Commission's report that article 24 of the Statute of the Commission seemed to depart from the classification of sources of international law followed in article 38 of the Statute of the International Court of Justice, by including judicial decisions on questions of international law among the evidences of customary international law. A number of delegations declared that, in so far as this statement implied that article 38 of the Statute of the Court did not accept judicial decisions on questions of international law as evidence of customary international law, they dissented from such an interpretation of article 38.

19. The practical recommendations submitted by the International Law Commission in paragraphs 90-94 of its report were carefully considered by the Sixth Committee. It was noted that part of this vast programme of work was already being carried out by the Secretariat and that other parts of the programme entailed financial and administrative implications which needed further study. With respect to the recommendation in paragraph 92 that the Registry of the International Court of Justice should publish occasional digests of the Court's Reports, it was pointed out that such digests were already published in the Court's Yearbook. The suggestion in paragraph 94 that the General Assembly should give consideration to the desirability of an international convention concerning the general exchange of official publications relating to international law and international relations was supported by several delegations, but the majority view was that the question

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was not yet ripe for a decision.

20. Israel, the United Kingdom and the United States of America introduced a joint draft resolution (A/C.6/L.139) which, after having been amended by its sponsors in accordance with suggestions made by other delegations during the debate, was adopted by 41 votes to none, with 2 abstentions. As approved, the draft resolution takes note of part II of the Commission's report, expresses appreciation of the work of the Commission on the subject and invites the Secretary-General, in preparing his future programme of work in this field, to consider and report to the General Assembly upon the recommendations contained in paragraphs 90, 91 and 93 of the Commission's report in the light of the discussion held and the suggestions made thereon in the Sixth Committee. An amendment submitted by India to the effect that the Secretary-General should be requested to "take account of the possibility of co-ordination with similar activities undertaken by him" was withdrawn on the understanding that the suggestion would be recorded in the present report. The draft resolution, as adopted, is contained in part VI, below.

IV. CONSIDERATION OF PART III OF THE REPORT OF THE INTERNATIONAL LAW COMMISSION: FORMULATION OF THE NÜRNBERG PRINCIPLES

21. Part III of the report of the Commission was considered by the Sixth Committee at its 231st to 239th meetings inclusive, from 2 to 14 November 1950. Some delegations held the view that the formulation of the Nürnberg principles submitted by the International Law Commission in part III of its report should not be discussed in substance by the Committee at the present session. In support of this opinion, it was argued that the Commission had failed to consult the Governments of Member States in the course of its work on the subject, as was required by articles 16 and 21 of its Statute and that, in consequence of this omission, the Sixth Committee did not have at its disposal the necessary data for a thorough examination of the formulation submitted. On the other hand, the majority of the delegations were in favour of discussing the formulation in substance. A number of these delegations took the position that, in directing it to formulate the Nurnberg principles, the General Assembly had assigned to the International Law Commission a special task which did not come under the procedural rules contained in articles 16 and 21 and that, consequently, the Commission had not violated its Statute by reporting directly to the General Assembly without consulting the Governments. Other delegations adhering to the majority view based their opinion on the

practical consideration that a substantive debate was most likely to promote a solution of the problems facing the Committee in connexion with the Nürnberg principles and their formulation. The Sixth Committee accordingly entered upon a discussion in substance of part III of the Commission's report and the formulation of the Nürnberg principles included therein. In the course of these debates, careful attention was given to the terms of reference of the Commission contained in General Assembly resolution 177 (II), as well as to the interpretation placed upon them by the Commission. The Sixth Committee further examined in detail the principles formulated in the report. Finally, the Committee discussed the question of the action which should be recommended to the General Assembly regarding the formulation submitted by the Commission.

22. With respect to its terms of reference under sub-paragraph (a) of resolution 177 (II), namely, to "formulate the principles of international law recognized in the Charter of the Nürnberg Tribunal and in the judgment of the Tribunal", the International Law Commission stated in paragraph 96 of its report that it had considered whether or not it should ascertain to what extent the principles contained in the Charter and judgment constituted principles of international law. The Commission had reached the conclusion that, since the Nürnberg principles had been affirmed by the General Assembly in its resolution 95 (I), the task entrusted to the Commission by sub-paragraph (a) of resolution 177 (II) was not to express any appreciation of these principles as principles of international law but merely to formulate them. In general, this interpretation of the Commission's terms of reference met with approval within the Sixth Committee.

23. Divergent opinions were expressed regarding the application by the Commission of its terms of reference in other respects. A number of delegations felt that the Commission had adhered too closely to the wording of the Charter of the Nürnberg Tribunal and, by this method, had been led to formulate rules rather than principles. It had also failed to pay sufficient attention to the fact that, as the Nürnberg Charter had been prepared with a view to prosecuting the major war criminals only, the details of its provisions could not always be applied to ordinary war criminals. Instead of copying to a large extent the specific rules of the Charter, the Commission should therefore have formulated merely the general concepts of fundamental importance embodied in the Charter and judgment. In the view of some delegations the Commission should also have gone further and have set

forth the general principles of international law on which the Charter and judgment had been based. According to this opinion, the Commission had not pursued its task exhaustively; it had only classified the juridical provisions and rulings of the Charter and judgment while it ought to have stated the underlying principles with a view to promoting the future development of international penal law. Several representatives, on the other hand, spoke in defence of the Commission on these points, and maintained that the Commission had correctly interpreted its mandate. The task of the Commission was, in their view, not to formulate a few principles in very general terms or to set forth the underlying principles of international law, but to abstract both from the Charter and from the proceedings of the Nürnberg Tribunal, a basic set of rules and principles which could form a species of small code on the subject to serve as a point of departure for further efforts in this field.

24. In this connexion, consideration was also given to the relation between the formulation of the Nürnberg principles and the task entrusted to the Commission in sub-paragraph (b) of resolution 177 (II), namely, to prepare a draft code of offences against the peace and security of mankind, indicating clearly the place to be accorded therein to these principles. It appeared from the debates that the majority of the representatives agreed with the view expressed by the International Law Commission that it was not bound to insert the Nürnberg principles in their entirety in the draft code and that it was not precluded from suggesting modification or development of the principles for the purpose of their incorporation in the draft code.

25. Numerous representatives also commented on the text of the seven principles formulated by the Commission. A great variety of views were expressed, and opinion was generally too divided to permit conclusions as to the sense of the Committee on the controversial issues. Some of the questions discussed are reviewed below.

26. Principles I and II gave rise to an exchange of opinions regarding the position of the individual in international law. Some members affirmed that the individual as well as the State could now be held directly responsible under international law. Others considered this opinion exaggerated and contended that there was no need to abandon the classic concept that international law is essentially concerned with relations between States. They agreed that individuals who committed crimes under international law should be subject to trial and

punishment, but asserted that this aim could be achieved by imposing upon States the obligation to punish the authors of such crimes or to allow them to be punished by other States or by a legally constituted international tribunal. In this connexion, several delegations also took exception to the statement made by the Commission to the effect that principles I and II implied the supremacy of international law over national law. It was argued by these delegations that the supremacy of international law was a theoretical concept which was far from being universally accepted. It was also affirmed by some delegations that this concept was contrary to the constitutions of their countries. On the other hand, a number of delegations agreed with the view of the Commission on this point.

27. Opinion was also divided on the question whether the Commission had been justified in departing from the provisions of articles 7 and 8 of the Nürnberg Charter when formulating principle III on the responsibility of Heads of States and responsible Government officials, and principle IV on the effect of superior orders. While a number of delegations were in favour of these changes as bringing the two principles in closer conformity with general principles of criminal law, others thought that the Commission should have retained the provisions of the Nürnberg Charter in this respect. Doubts were, in particular, expressed as to principle IV that superior orders are not a defence provided a moral choice was possible to the offender. It was contended that the term "moral choice", taken from the judgment, was ambiguous and should not have been included, at least not without clarification by definition or exemplification.

28. The right of a defendant to a fair trial on the facts and law, as provided in principle V, was, in substance, favoured by most delegations. Some representatives, however, regretted that the words "on the facts and law" had been included in the text of the principle, as this specification seemed to exclude questions of procedure from the principle of a fair trial. Against this opinion it was affirmed by other representatives that the word "law" referred not only to substantive law but also to procedural law.

29. Among the questions raised in relation to principle VI defining categories of international crimes, particular attention was given to the definition of crimes against humanity. Some delegations criticized the Commission for having retained the provision in article 6 (c) of the Nürnberg Charter that crimes against humanity could be committed only in connexion with crimes against peace or war crimes. They

asserted that this limitation did not apply to the concept of crimes against humanity as such, but only to the competence of the Nürnberg Tribunal to take cognizance of these crimes. In their opinion, crimes against humanity constituted a separate and independent category of international crimes distinguished from similar crimes under national law by the characteristic that they were, in general, committed by Governments, or with the complicity or tolerance of Governments, and, therefore, could be punished only on the international level. The concept of crimes against humanity had, furthermore, been incorporated in the Convention on the Prevention and Punishment of the Crime of Genocide, which would soon come into force. It would, therefore, in the view of these delegations, be contrary to international law to lay down as a principle that crimes against humanity could be committed only in connexion with crimes against peace or war crimes. On the other hand, other delegations maintained that no crimes against humanity existed under international law outside those defined by the Nürnberg Charter. They therefore considered that the definition of crimes against humanity given in principle VI was correct in substance. Some of these delegations, however, regretted that the Commission had not laid down, in the principle itself, that crimes against humanity could be committed both before and after a war. It was not sufficient, in their view, to state this fact only in the commentary to principle VI, as the Commission had done.

30. Certain delegations felt that principle VII was too broadly drafted, as it applied ordinary rules of complicity not only to war crimes and crimes against humanity, but also to crimes against peace. They argued that the Nürnberg Tribunal had taken great care to limit the scope of crimes against peace and had convicted only persons in very high positions of this crime. In contradiction to the stand thus taken by the Tribunal, principle VII made every person who, according to the general rules of complicity, was an accomplice to a crime against peace guilty of an international crime. On the other hand, several delegations expressed their agreement with principle VII as formulated, since in their view the courts would in each instance have wide discretion as to the application of the principle.

31. With respect to the question what action should be taken by the General Assembly on part III of the Commission's report various procedures were suggested in the course of the deliberations. The Byelorussian Soviet Socialist Republic presented a proposal (A/C.6/L.140) according to which the formulation of the

Nürnberg principles submitted by the International Law Commission would be referred back to the Commission for presentation to the Member States for their comments. France submitted a draft resolution (A/C.6/L.141/Rev.1) requesting the International Law Commission to continue its study of the Nürnberg principles and calling attention to the need of giving, within the framework of this study, a permanent validity to the principles, especially with regard to crimes against humanity as crimes independent of crimes against peace and war crimes. This latter draft resolution was subsequently replaced by a joint draft resolution (A/C.6/L.146), presented by Argentina, Denmark, the Dominican Republic, Egypt, France, the Netherlands, Norway, Pakistan, Peru, Sweden and Syria under which the International Law Commission would be invited to reconsider its formulation of the Nürnberg principles in the light of the observations made thereon by delegations during the present session of the General Assembly. The United Kingdom, on the other hand, proposed a draft resolution (A/C.6/L.142) whereby the General Assembly would take note of the formulation of the Nürnberg principles contained in part III of the Commission's report. An amendment to the United Kingdom draft was presented by Cuba (A/C.6/L.144) drawing attention to the close relation between the formulation of the Nürnberg principles and the task of preparing a draft code of offences against the peace and security of mankind. This amendment was accepted by the representative of the United Kingdom. Similar amendments to the United Kingdom draft were submitted by Iran (A/C.6/L.143) and Uruguay (A/C.6/L.148) and Venezuela introduced an amendment (A/C.6/L.147) suggesting a drafting change in its preamble.

32. After deliberation among the sponsors and other interested delegations, all the draft resolutions and amendments referred to in the foregoing paragraph, with the exception of the Byelorussian Soviet Socialist Republic draft resolution (A/C.6/L.140), were superseded by a new joint draft resolution (A/C.6/L.149) submitted by Argentina, Cuba, Denmark, the Dominican Republic, Egypt, France, Iran, the Netherlands, Norway, Pakistan, Peru, Sweden, Syria, the United Kingdom, the United States of America and Venezuela. The first three paragraphs of this joint draft resolution were of a formal and historical character. The fourth paragraph recalled that the International Law Commission had formulated certain principles recognized, according to the Commission, in the Charter and judgment of the Nürnberg Tribunal, and that many delegations had made observations during the present session on this formulation. As some delegations had maintained, in the course of the

debates, that to take note of the Commission's formulation would, in view of the history of the question, virtually imply approval of the principles as formulated by the Commission, this paragraph was worded to make it clear beyond doubt that no such approval was intended. After a drafting change, suggested by Belgium, had been accepted by the sponsors, the fifth paragraph stated that it was appropriate to give the Governments of Member States full opportunity to furnish their observations on the formulation. Without implying that the Commission had violated its Statute in omitting to consult the Governments in connexion with its work on the Nürnberg principles, the paragraph was meant to give satisfaction to those delegations which had advocated such consultation. The sixth and seventh paragraphs constituted the operative part of the draft resolution, inviting the Governments of Member States to furnish their observations on the formulation submitted by the Commission and requesting the Commission, in preparing the draft code of offences against the peace and security of mankind, to take account of the observations made on this formulation by delegations during the present session as well as of any observations which might be made by Governments.

33. An amendment (A/C.6/L.150) to the seventh paragraph of the joint draft resolution was proposed by Poland, to the effect that the International Law Commission would be invited to take the observations made in the Sixth Committee and by Governments into consideration in the final formulation of the principles of the Nürnberg Charter and judgment.

34. In the voting the Byelorussian draft resolution (A/C.6/L.140) was defeated by 21 votes to 5, with 15 abstentions. The first, second and third paragraphs of the joint draft resolution (A/C.6/L.149) were adopted unanimously. The fourth paragraph was adopted by 36 votes to 2, with 2 abstentions. The fifth paragraph, as modified, and the sixth paragraph were put to the vote together and adopted by 36 votes to none, with 6 abstentions. The Committee then proceeded to vote on the Polish amendment (A/C.6/L.150) to the seventh paragraph and rejected the amendment by 21 votes to 7, with 11 abstentions. The seventh paragraph was thereafter adopted by 32 votes to 5, with 3 abstentions. Finally, the joint draft resolution, as modified, was adopted as a whole by 32 votes to 1, with 8 abstentions. This draft resolution is contained in part VI of the present report.

V. CONSIDERATION OF PART IV OF THE REPORT OF THE INTERNATIONAL LAW COMMISSION: THE QUESTION OF INTERNATIONAL CRIMINAL JURISDICTION

35. The Sixth Committee discussed part IV of the report of the International Law Commission on the question of international criminal jurisdiction at its 240th to 246th meetings inclusive, from 16 to 29 November 1950. The problems dealt with in the course of the debates were related both to the substantive question of the desirability and possibility of establishing an international penal court and to the procedural question as to what action should be recommended to the General Assembly in this matter at the present session.

36. With respect to the substantive question, some representatives were of the opinion that, as the punishment of crimes committed in the territory of a State was a matter within the jurisdiction of that State, the establishment of an international criminal court would be contrary to the sovereign rights of States. Other delegations held that the creation of such a court was not a practical project. They felt that a court, without an international police force to bring the accused before it and to execute its sentences, would be unable to function effectively. Furthermore, as in their opinion the question of desirability was dependent on that of practical possibility, they also doubted whether it was desirable to set up the court in existing circumstances. The contrary position favouring the setting up of an international penal court was based on the view that the creation of an international criminal jurisdiction vested with power to try and punish persons who disturbed international public order was desirable as an effective contribution to the peace and security of the world. It was pointed out that public opinion had been in favour of an international criminal jurisdiction since the end of the First World War. It was denied that the establishment of such a court would constitute an infringement of national sovereignty, as the court could be created by an international convention adhered to voluntarily by the States. By using this procedure there would, furthermore, be no need for an amendment of the Charter of the United Nations. The establishment of such a court would also be in complete conformity with the principle of international co-operation laid down in the Charter.

37. The majority of the delegations, however, felt that the question of the establishment of an international penal court could not be settled in abstracto,

preferring therefore not to take a position on the question whether an international criminal court was possible or desirable until they had before them a draft statute of the said court and, if possible, a draft code of the law which the court would apply. Accordingly, the Committee gave careful consideration to the procedural question before it. Several representatives held the view that further consideration of part IV of the report of the International Law Commission should be postponed until after the Commission had submitted its draft code of offences against the peace and security of mankind. Others, on the other hand, were of the opinion that at this stage it would be preferable to set up an inter-governmental committee which could prepare a draft statute of an international criminal court, taking into account also the political aspects of the matter. It was also emphasized that the setting up of such a Committee would be without prejudice to the question of the desirability or possibility of establishing such a tribunal.

38. Canada submitted a draft resolution (A/C.6/L.155) which was replaced by a draft resolution (A/C.6/L.157), presented jointly by Canada and the Union of South Africa and subsequently revised by its authors (A/C.6/L.157/Rev.1). The revised joint draft resolution proposed to postpone the consideration of part IV of the report of the International Law Commission until after it had submitted its codification of offences against the peace and security of mankind.

39. Cuba, on the other hand, placed before the Committee a draft resolution (A/C.6/L.126) which suggested that the International Law Commission should be instructed to prepare a draft statute governing the establishment and functions of an international penal tribunal for the trial of persons charged with genocide or other crimes over which jurisdiction may be conferred upon that organ by international conventions. In the course of the deliberations the Cuban delegation withdrew this draft resolution in favour of a draft resolution presented jointly by Cuba, France and Iran (A/C.6/L.151). In its operative part, the joint draft resolution proposed that a committee composed of representatives of fifteen Member States should meet in Geneva on 1 August 1951 for the purpose of preparing a preliminary draft convention relating to the establishment and the statute of an international penal court, for submission to the next regular session of the General Assembly. It also suggested that the Governments of Member States should be invited to address to the Secretary-General their comments on the organization and functioning of such a court, and to instruct the Secretary-General to transmit

such comments to the inter-governmental committee.

40. Amendments to this joint draft resolution (A/C.6/L.151) were submitted by Israel (A/C.6/L.152), the United Kingdom (A/C.6/L.153) and the United States of America (A/C.6/L.158). In the light of these amendments, Cuba, France and Iran submitted a revised draft resolution (A/C.6/L.151/Rev.1), which incorporated, in substance, all the amendments except one of those suggested by the United Kingdom. This latter amendment was however re-drafted by its author, submitted as an amendment (A/C.6/L.159) to the revised draft resolution and, in this new form was accepted by the sponsors of that draft resolution. The joint draft resolution, as amended, recalled, in its first paragraph, resolution 260 B (III) inviting the International Law Commission to study the desirability and possibility of establishing an international penal court, and in its second paragraph it took account of the conclusion reached by the Commission that the creation of such a court was desirable and possible. In the third paragraph it referred to article VI of the Convention on the Prevention and Punishment of the Crime of Genocide, and in the fourth paragraph it included the United Kingdom amendment that a final decision regarding the setting up of an international penal court could not be taken except on the basis of concrete proposals. Consequently, in the operative part, it recommended the establishment of a committee composed of representatives of seventeen Member States which should meet in Geneva on 1 August 1951 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. It further requested the Secretary-General to prepare and submit to this inter-governmental committee one or more preliminary draft conventions and proposals regarding such a court, to make all necessary arrangements for the convening of the committee and for its meetings, to communicate to the Governments of Member States the report of the Committee so that their observations could be submitted not later than 1 June 1952, and to place this question on the agenda of the seventh session of the General Assembly.

41. Prior to the voting, the representatives of Canada and the Union of South Africa moved that their joint draft resolution (A/C.6/L.157/Rev.1) should be voted upon first. They felt that it dealt with a previous question, i.e. whether measures for establishing an international penal tribunal should be undertaken immediately or be postponed until the International Law Commission had prepared a draft code of offences against the peace and security of mankind. Moreover, they

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wished to reserve the right to make further amendments to the joint draft resolution submitted by Cuba, France and Iran if their draft resolution should not be adopted. This motion was rejected by 18 votes in favour, 18 against, with 11 abstentions.

42. At this point, the representative of Canada submitted an amendment to replace the second paragraph of draft resolution A/C.6/L.151/Rev.1 by the second paragraph of draft resolution A/C.6/L.157/Rev.1 which merely stated that the General Assembly had given "preliminary consideration to part IV of the report of the second session of the International Law Commission". This amendment was adopted by 20 votes to 16, with 12 abstentions. The draft resolution of Cuba, France and Iran, as amended, was voted upon in parts and finally adopted by 35 votes to 6, with 8 abstentions. In adopting this draft resolution, it was clearly the sense of the Committee that the establishment of the inter-governmental 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, would in no way commit the Governments as to the ultimate desirability and possibility of establishing such a court.

43. The Committee then considered the question of the composition of the inter-governmental committee. The Rapporteur introduced a proposal (A/C.6/L.160 and Corrs. 1 to 3) to the effect that the inter-governmental committee should be composed of representatives of the following Member States: Brazil, China, Cuba, Egypt, France, Iran, Israel, the Netherlands, Pakistan, Peru, Poland, Sweden, Syria, the Union of Soviet Socialist Republics, the United Kingdom, the United States of America and Uruguay. He then suggested that the membership of the Committee should be increased to nineteen and that Australia and India should be added to the list. However, as the representatives of Poland and the USSR stated that their countries were unable to accept membership on the Committee, Australia and India were included on the list without changing the number of members. The representative of Sweden thereupon requested that Denmark should be substituted for his country. The Rapporteur's proposal, as thus modified, was adopted by 36 votes to none, with 6 abstentions. The final text of the draft resolution is contained in part VI of the present report.

VI. DRAFT RESOLUTIONS RECOMMENDED BY THE SIXTH COMMITTEE

44. In consequence of the decisions taken, the Sixth Committee recommends to the General Assembly the adoption of the following resolutions:

REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS SECOND SESSION

Resolution A

REVIEW BY THE INTERNATIONAL LAW COMMISSION OF ITS STATUTE WITH THE OBJECT OF RECOMMENDING REVISIONS THEREOF TO THE GENERAL ASSEMBLY

The General Assembly,

Considering that it is of the greatest importance that the work of the International Law Commission should be carried on in the conditions most likely to enable the Commission to achieve rapid and positive results,

Having regard to certain doubts which have been expressed whether such conditions exist at the present time,

Requests the International Law Commission to review its Statute with the object of making recommendations to the sixth session of the General Assembly concerning revisions of the Statute which may appear desirable, in the light of experience, for the promotion of the Commission's work.

Resolution B

AMENDMENT TO ARTICLE 13 OF THE STATUTE OF THE INTERNATIONAL LAW COMMISSION

The General Assembly,

Having regard to paragraph 21 of the report of the International Law Commission on the work of its second session,

Noting the inadequacy of the emoluments paid to the members of the International Law Commission,

Bearing in mind the importance of the Commission's work, the eminence of its members and the method of their election,

Considering that the nature and scope of the work of the Commission are such as to require its members to devote considerable time in attendance at the necessarily long sessions of the Commission,

Decides to amend as follows article 13 of the Statute of the International Law Commission:

"Members of the Commission shall be paid travel expenses, and shall also receive a special allowance, the amount of which shall be determined by the General Assembly."

Resolution C

EXTENSION OF THE TERM OF OFFICE OF THE PRESENT MEMBERS OF THE INTERNATIONAL LAW COMMISSION

The General Assembly,

Having noted that the present three-year term of office of members of the International Law Commission is not sufficient to enable the Commission to achieve the tasks on which it is engaged before the current period of office expires,

Considering that, in order to enable positive results to be achieved, the term of office of the present members should be extended,

Resolves that, subject to any modifications which the General Assembly may make in the Statute of the International Law Commission, and without prejudice to such modifications, the term of office of the present members of the Commission shall be extended by two years, making a total period of five years from their election in 1948.

Resolution D

WAYS AND MEANS FOR MAKING THE EVIDENCE OF CUSTOMARY INTERNATIONAL LAW MORE READILY AVAILABLE

The General Assembly,

Noting part II (Ways and means for making the evidence of customary international law more readily available) of the report of the International Law Commission on the work of its second session,

Appreciating the work of the International Law Commission on this subject,

Invites the Secretary-General, in preparing his future programme of work in this field, to consider and report to the General Assembly upon the recommendations contained in paragraphs 90, 91 and 93 of part II of the report of the International Law Commission in the light of the discussion held and the suggestions made thereon in the Sixth Committee.

/Resolution E

Resolution E

FORMULATION OF THE NURNBERG PRINCIPLES

The General Assembly,

Having considered part III (Formulation of the Nurnberg principles) of the report of the International Law Commission on the work of its second session,

Recollecting that the General Assembly, by its resolution 95 (I) of 11 December 1946, unanimously affirmed the principles of international law recognized by the Charter of the Nurnberg Tribunal and the judgment of the Tribunal,

Considering that, by its resolution 177 (II) of 21 November 1947, the General Assembly directed the International Law Commission to formulate those principles, and also to prepare a draft code of offences against the peace and security of mankind,

Considering that the International Law Commission has formulated certain principles recognized, according to the Commission, in the Charter and judgment of the Nurnberg Tribunal, and that many delegations have made observations during the present session on this formulation,

Considering that it is appropriate to give the Governments of Member States full opportunity to furnish their observations on this formulation,

1. Invites the Governments of Member States to furnish their observations accordingly;

2. Requests the International Law Commission, in preparing the draft code of offences against the peace and security of mankind, to take account of the observations made on this formulation by delegations during the present session and of any observations which may be made by Governments.

Resolution F

INTERNATIONAL CRIMINAL JURISDICTION

The General Assembly,

Recalling that in its resolution 260 B (III) of 9 December 1948, it considered "that, in the course of development of the international community, there will be an increasing need of an international judicial organ for the trial of certain crimes under international law", and that, in the same resolution, it invited the International Law Commission "to study the desirability and possibility of establishing an international judicial organ

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for the trial of persons charged with genocide or other crimes over which jurisdiction will be conferred upon that organ by international conventions",

Having given preliminary consideration to part IV of the report of the International Law Commission on the work of its second session,

Bearing in mind article VI of the Convention on the Prevention and Punishment of the Crime of Genocide,

Bearing in mind, further, that a final decision regarding the setting up of such an international penal tribunal cannot be taken except on the basis of concrete proposals,

1. Decides that a committee composed of the representatives of the following seventeen Member States, namely, Australia, Brazil, China, Cuba, Denmark, Egypt, France, India, Iran, Israel, the Netherlands, Pakistan, Peru, Syria, the United Kingdom, the United States of America and Uruguay, shall meet in Geneva on 1 August 1951 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;

2. Requests the Secretary-General to prepare and submit to the committee referred to above one or more preliminary draft conventions and proposals regarding such a court;

3. Requests the Secretary-General to make all necessary arrangements for the convening of the committee and for its meetings;

4. Requests the Secretary-General to communicate the report of the committee to the Governments of Member States so that their observations may be submitted not later than 1 June 1952, and to place the question on the agenda of the seventh session of the General Assembly.
