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INTERNATIONAL CRIMINAL JURISDICTION:
REPORT OF THE 1953 COMMITTEE ON INTERNATIONAL CRIMINAL
JURISDICTION

Report of the Sixth Committee

Rapporteur: Mr. F. ADAMIYAT (Iran)

1. At its seventh session, the General Assembly, having received the report^{1/} of the Committee on International Criminal Jurisdiction established under Assembly resolution 489 (V) of 12 December 1950, adopted resolution 687 (VII) of 5 December 1952. By this resolution, the General Assembly, considering, inter alia, that there was need for further study of problems relating to international criminal jurisdiction, established a Committee composed of one representative each of seventeen Member States, with the following terms of reference:

"(a) In the light of the comments and suggestions on the draft statute^{2/} submitted by Governments, as well as of those made during the debates in the Sixth Committee,

1/ See Official Records of the General Assembly, Seventh Session, Supplement No. 11, document A/2136.

2/ See "Draft statute for an international criminal court", annexed to the report of the Committee on International Criminal Jurisdiction.

- "(i) To explore the implications and consequences of establishing an international criminal court and of the various methods by which this might be done;
- "(ii) To study the relationship between such a court and the United Nations and its organs;
- "(iii) To re-examine the draft statute;
- "(b) To submit a report to be considered by the General Assembly at its ninth session."

2. In pursuance of the aforesaid resolution, the 1953 Committee on International Criminal Jurisdiction met at the Headquarters of the United Nations from 27 July to 20 August 1953 and drew up a report with a "revised draft statute for an international criminal court" annexed thereto.^{3/}

3. The item "International criminal jurisdiction: report of the 1953 Committee on International Criminal Jurisdiction" was included in the provisional agenda of the ninth session of the General Assembly. On the recommendation of the General Committee (A/2733), the General Assembly, at its 477th plenary meeting held on 24 September 1954, decided to include the item in the agenda of its ninth session and, at its 478th plenary meeting on 25 September, further decided to allocate the item to the Sixth Committee for consideration.

4. The Sixth Committee considered the item at its 426th to 430th meetings, from 23 to 29 November 1954.

5. From the outset of the general debate in the Committee, the suggestion was advanced that consideration of the question of international criminal jurisdiction should be postponed till a later session of the General Assembly. It was on this procedural question that most of the members of the Committee focussed their attention, although some representatives addressed themselves to the question whether, in the light of the report of the 1953 Committee on International Criminal Jurisdiction and of the revised draft statute for an international criminal court annexed thereto, an international criminal court should be established.

6. Some representatives stated that in principle they were in favour of the establishment of an international criminal court. It was pointed out that,

^{3/} See Official Records of the General Assembly, Ninth Session, Supplement No. 12, document A/2645.

although international criminal law could be enforced either by national courts or by ad hoc international courts, both such courts had their drawbacks. National courts could not punish offences in which the national Government was involved; they might, moreover, not be wholly impartial. Ad hoc international criminal courts had the inherent shortcomings for which the Nurnberg and Tokyo Tribunals had been criticized. It was said that, while a permanent international criminal court, if established now, would have its imperfections, national criminal jurisdiction had also been imperfect in its earlier stages of development. An international criminal court, although imperfect, should therefore be established in the hope and confidence that it would follow a line of development comparable to that of national criminal jurisdiction; its establishment would mean the adoption of jurisprudence which might serve as a standard for the whole world. The practical difficulties would no doubt be considerable but would probably not be insurmountable.

7. On the other hand, some representatives raised objections of principle to the establishment of an international criminal court such as envisaged by the 1953 Committee on International Criminal Jurisdiction. It was urged that the establishment of such a court would be incompatible with the principles of the United Nations Charter concerning State sovereignty and non-intervention in domestic affairs. It would be contrary to the principle of territorial jurisdiction, recognized in the Moscow Declaration of 30 October 1943, in the London Agreement of 8 August 1945 which established the Nurnberg Tribunal and in the instrument setting up the Tokyo Tribunal. It would not be in conformity with, but be prejudicial to the development of, international law. Furthermore, the 1953 Committee was said to have proposed to vest the United Nations with functions of a judicial nature which were outside the latter's competence.

8. Some representatives maintained that there was no need to establish the proposed court. War crimes could better be handled by national or military courts or by ad hoc international courts such as the Nurnberg and Tokyo Tribunals. The objection that ad hoc courts were composed of judges belonging to the victor countries and hence were unlikely to be impartial was unjustified, in the light of the experience of those two tribunals. In any case, it could be overcome by providing that all or some of the judges should be nationals of

neutral countries. As for crimes against the peace and security of mankind, these could not have been committed by individuals except acting in pursuance of government policy, and Governments could not normally be relied upon to surrender their nationals to international justice save in special circumstances, such as after a revolution. In this respect, it was also pointed out that the provisions in the revised draft statute that the proposed court was to try "crimes generally recognized under international law" (article 1) and that the court was to "apply international law, including international criminal law, and where appropriate, national law" (article 2) were vague and uncertain. While the draft code of offences against the peace and security of mankind might be part of the law to be applied by the court, the Sixth Committee had just decided to postpone further consideration of that draft, as well as of the question of defining aggression.

9. It was further pointed out that the court, if established, would not be able to function effectively. Under the revised draft statute (articles 26 to 28), the jurisdiction of the court would be greatly restricted, depending on conferment by States through convention, special agreement or unilateral declaration, which conferment, moreover, could be withdrawn by unilateral action. The revised draft statute was also said to have left unsolved the question of the assistance of States to the proposed court in the performance of its duties, article 31 providing merely that States "shall be obliged to render such assistance only in conformity with any convention or other instrument in which the State has accepted such obligation". Whether the court could operate effectively would depend on the co-operation of Governments and, it was maintained, there was very little evidence to show that such co-operation would be forthcoming, now or in the near future.

10. As stated in paragraph 5 above, the suggestion was made at the outset of the general debate for the postponement of further consideration of the question of international criminal jurisdiction until a later session of the General Assembly. It was recalled that the Sixth Committee had, during the present session, decided to recommend to the Assembly that the question of defining

aggression should be referred to a special committee which would meet in 1956 and report to the General Assembly at its eleventh session,^{4/} and that further consideration of the draft code of offences against the peace and security of mankind should be postponed until the said special committee on the question of defining aggression had submitted its report to the General Assembly.^{5/} As the question of international criminal jurisdiction was closely related to those of defining aggression and the draft code, its further consideration should be postponed until a later session of the General Assembly. The representative of Venezuela submitted a draft resolution in this sense.

11. The draft resolution of Venezuela (A/C.6/L.340) provided, in its operative part, that the General Assembly would (1) thank the 1953 Committee on International Criminal Jurisdiction for the efforts it had made in carrying out its terms of reference; and (2) decide to postpone consideration of the question of an international criminal jurisdiction until the session following the session at which the General Assembly took up the report of the new special committee on the question of defining aggression and the draft code of offences against the peace and security of mankind.

12. In the course of discussion on this draft resolution at the 429th meeting on 26 November 1954, the representative of Canada submitted an oral amendment to paragraph 2 of the operative part to read as follows: "decides to postpone consideration of the question of an international criminal jurisdiction until the General Assembly has taken up the report of the said special committee on the question of defining aggression and has taken up again the draft code of offences against the peace and security of mankind." This oral amendment was accepted by the sponsor of the draft resolution.

13. Another oral amendment was proposed by the representative of Israel. This would delete from paragraph 2 of the operative part, as amended by the Canadian amendment, and hence also from the preamble, all references to the question of

^{4/} See the report of the Sixth Committee on item 51 of the agenda: Question of defining aggression: report of the Special Committee on the Question of Defining Aggression, document A/2806.

^{5/} See the report of the Sixth Committee on item 49 of the agenda: Report of the International Law Commission on the work of its sixth session, document A/2807.

defining aggression. It was explained that to make the adoption of a definition of aggression a prior condition for the further consideration of the question of international criminal jurisdiction might have the effect of indefinitely postponing the latter. The representative of Venezuela, however, replied that his text did not stipulate, as a prior condition, that a definition of aggression must have been adopted by the General Assembly, but only that the report of the special committee and the draft code should have been taken up.

14. Still another oral amendment was proposed by the representative of Colombia to change paragraph 2 of the operative part to envisage that consideration of the question of international criminal jurisdiction should be postponed until such time as the General Assembly might think fit to take it up. The representative of Colombia stated that it was possible that the General Assembly, after considering the question of defining aggression and the draft code, might deem it inopportune to discuss the question of international criminal jurisdiction. The representative of Venezuela declared that, under his text, as amended by the Canadian amendment, after the General Assembly had considered the question of defining aggression and the draft code, the Secretary-General would place on the provisional agenda of the following session the question of international criminal jurisdiction; it would then be for the General Assembly to decide whether that item should be included in the final agenda. In view of this explanation, the representative of Colombia withdrew his amendment.

15. The Sixth Committee then proceeded to vote, in parts, on the Venezuelan draft resolution (A/C.6/L.340) and the Israel oral amendment thereto (referred to in paragraph 13 above), with the following results:

- (a) The Israel amendment was rejected by 22 votes to 3, with 22 abstentions.
- (b) Paragraph 2 of the operative part, as amended by the Canadian amendment, was adopted by 37 votes to none, with 7 abstentions.
- (c) Paragraph 1 was adopted by 36 votes to 5, with 4 abstentions.
- (d) The first paragraph of the preamble was adopted by 36 votes to none, with 5 abstentions.

- (e) The second paragraph was adopted by 35 votes to none, with 5 abstentions.
 - (f) The third paragraph was adopted by 35 votes to none, with 10 abstentions.
 - (g) The fourth paragraph was adopted by 35 votes to none, with 7 abstentions.
16. The Sixth Committee therefore recommends to the General Assembly the adoption of the following resolution:

INTERNATIONAL CRIMINAL JURISDICTION

The General Assembly,

Having received the report of the 1953 Committee on International Criminal Jurisdiction to which a revised draft statute for an international criminal court is annexed,

Considering the connexion between the question of defining aggression, the draft code of offences against the peace and security of mankind, and the question of an international criminal jurisdiction,

Considering that the General Assembly has established^{1/} a new special committee on the question of defining aggression to submit to the General Assembly at its eleventh session a detailed report with a draft definition of aggression, and that it has also postponed^{2/} consideration of the draft code until the said special committee has submitted its report, so that the question of the draft code will also be included in the provisional agenda of the eleventh session,

Considering that, after the General Assembly has examined the special committee's report and the draft code, an interval should be allowed before it resumes consideration of the question of an international criminal jurisdiction in order to give Governments sufficient time duly to consider the influence and effect of the first two questions in relation to the question of an international criminal jurisdiction,

^{1/} See document A/2806.

^{2/} See document A/2807.

1. Thanks the 1953 Committee on International Criminal Jurisdiction for the efforts it has made in carrying out its terms of reference;

2. Decides to postpone consideration of the question of an international criminal jurisdiction until the General Assembly has taken up the report of the said special committee on the question of defining aggression and has taken up again the draft code of offences against the peace and security of mankind.
