

No. 54/43/UN9/20

INTERNATIONAL CRIMINAL JURISDICTION

Text of a statement on November 24, 1954, by Mr. Charles Stein, Q.C., Canadian Representative in the Sixth Committee of the ninth session of the United Nations General Assembly, New York, on agenda item 50 - International criminal jurisdiction: Report of the 1953 Committee on International Criminal Jurisdiction

Note: The text of the resolution adopted by the Committee and the results of the voting are included at the end of the statement.

The desirability of the conduct of states and individuals affecting the world at large being governed by the rule of law would hardly be denied by anyone, I should think. One means of achieving this idea is to provide for the punishment of individuals in a position of authority who abuse their trust, for instance by leading states into aggressive wars or by committing the crime of genocide and so violating fundamental rights. For this reason, my government favours the idea of an international criminal court vested with jurisdiction to try and impose punishment on individuals for acts alleged to have been committed by them contrary to some code or body of international criminal law.

However, my delegation is of the opinion, for the reasons I shall briefly outline, that further consideration of the proposal to establish an international criminal court should be postponed.

In the course of the debate on the question of defining aggression, I stated that one test which my government felt any proposed definition of aggression should meet was the preservation of the existing authority and powers of the Security Council and the General Assembly under the Charter of the United Nations, with respect to determining whether an act of aggression has been committed. Now, it should be borne in mind that the first and most important crime which any suggested international criminal court would have jurisdiction to try is likely to be the crime of aggression, whatever this concept may eventually comprehend under a decision of recommendation of the United Nations or under an international convention, i.e., whether it is restricted to the use of armed force or is extended to other notions and acts, such as the threat of the use of armed force and subversion. This aspect of the problem of the definition of aggression in turn necessarily involves the question of the relationship between any proposed international criminal court

and the United Nations, more precisely of harmonizing the jurisdiction and functions of the court with those of the Security Council and the General Assembly under the United Nations Charter. For instance, some member states might well hold the view that the court should not be empowered to try any individual for the crime of aggression in any case where the Security Council or the Assembly had decided that no aggression had been committed by the state to which the accused individual belonged or where the Security Council or the General Assembly was still seized of the matter.

It therefore seems to my delegation that here is one important point, amongst others, which requires postponement of further consideration of the international criminal jurisdiction project until a decision has been reached on the definition of aggression.

The second reason which my delegation thinks strongly militates in favour of such postponement is that we have just agreed to recommend to the General Assembly postponement of further consideration of the draft code of offences against the peace and security of mankind. Such code, if it is ever agreed upon, will no doubt constitute the main body of law to be applied by the suggested international criminal court. It is quite conceivable that if the statute of the proposed court is discussed after an agreement has been reached on the draft code, the majority of the member states may wish, at the outset at least, to restrict the jurisdiction of the court to the interpretation and application of that code, or of that code and of one or more conventions (such as the Genocide Convention).

A third reason is that the question of penalties has been left open and is not likely to be decided separately from the code. It is indeed a matter the regulation of which can hardly be severed from that of the responsibility of individuals and from that of the nature and seriousness of the crimes.

In conclusion we believe that the time has not come when the project of the establishment of an international criminal court can usefully be proceeded with. The valuable work of the International Law Commission and of the two special committees set up by the General Assembly to study the question will not have been performed in vain. These studies have focused attention on the problem and they will be most useful in its future consideration. For the moment, and for the reasons outlined above, my delegation is prepared to vote in favour of a proposal which would call for the postponement of this project until decisions have been reached on the definition of aggression and the draft code of offences.



Voting Results

Following is the text of a resolution (U.N. Doc. A/RESOLUTION/266) adopted by the Sixth Committee on November 26 by a vote of 37 in favour (including Canada) to none against, with 7 abstentions, and adopted on the report of the Sixth Committee (A/2827) in a plenary session of the General Assembly on December 14 by a vote of 34 in favour to none against, with 7 abstentions:

Text of Resolution

The General Assembly,

Having received the report^{1/} 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^{2/} 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^{3/} consideration of the draft Code until the 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. 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 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.

1/ See Official Records of the General Assembly, Ninth Session, Supplement No. 12, document A/2645.

2/ See A/RESOLUTION/243.

3/ See A/RESOLUTION/245.

