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Summary record of the 42nd meeting

Topic:
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Extract from the Yearbook of the International Law Commission:-
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89. Mr. CÓRDOVA agreed that the question of contumacy should be given special attention.

90. Mr. YEPES felt that the arguments put forward by Mr. Sandström against the establishment of an international criminal court showed that while it was difficult, it was not impossible. The International Law Commission could not abandon a project merely because it was difficult to put into execution.

91. Mr. SANDSTRÖM asked whether an international tribunal of the type contemplated could hope to attain the proposed objective—e.g., the suppression of the crime of genocide.

92. The CHAIRMAN mentioned that Mr. Sandström's report included a number of arguments against the setting up of an international tribunal. Yet his conclusion was not that the establishment of such an organ was impossible. With regard to genocide, for example, some States would wish to keep their domestic jurisdiction, whereas others (France, for example) favoured an international jurisdiction.

93. The question of judgment *in contumaciam* arose in national legislations also, but these continued to function all the same.

94. Mr. el-KHOURY thought that all the disadvantages of an international criminal jurisdiction cited by Mr. Sandström were to be found in national jurisdictions as well. Possibly some of them were more obvious in relation to international jurisdiction, but that was no argument for challenging the usefulness of an international judicial organ with competence in the criminal field.

95. Replying to a question by the Chairman concerning paragraph 38, Mr. SANDSTRÖM said he would prefer, if the circumstances arose, to see the defects of the Nürnberg trial repeated, rather than have an international tribunal incapable of pronouncing a judgment and punishing the guilty parties.

96. Mr. ALFORA argued that world opinion had demanded the establishment of an international court long before the Nürnberg trial. He mentioned as an example the "International Association of Criminal Law" set up immediately after the First World War. Hence the argument that the desire to establish an international criminal jurisdiction had originated in certain criticisms of the Nürnberg trial was inacceptable.

97. Mr. CÓRDOVA shared this view. Moreover, as he pointed out, at Nürnberg the victors had tried the defeated, a fact which had been criticized the world over. They were now contemplating the establishment of a court which would try criminals on both sides. In a war, crimes against humanity might be committed by both sides, and the Nürnberg Court in trying only the defeated had not shown an absolute regard for justice.

98. Mr. AMADO wondered whether, in the event of another war, both sides would summon their respective criminals to appear before an international tribunal.

99. Mr. KERNO (Assistant Secretary-General) agreed that the Nürnberg Court had only been able to function by reason of the total defeat of one of the parties to the conflict, and a complete agreement between the victors; but the Commission must not start out from the assumption that aggressors might be the victors, as that would mean the negation of all international law.

100. Mr. YEPES thought that all the arguments now raised against the establishment of an international criminal jurisdiction were brought out whenever there was any question of taking a step forward in the field of international law.

Paragraphs 39 and 40 gave rise to no discussion, and the CHAIRMAN ruled that the study of the report was concluded.

The meeting rose at 12.55 p.m.

42nd MEETING

Thursday, 8 June 1950, at 10 a.m.

CONTENTS

Chairman: Mr. Georges SCELLE.

Rapporteur: Mr. Ricardo J. ALFARO.

Present:

Members: Mr. Gilberto AMADO. Mr. James L. BRIERLY. Mr. Roberto CÓRDOVA. Mr. J. P. A. FRANÇOIS. Mr. Shuhsi HSU. Mr. Manley O. HUDSON. Mr. Faris el-KHOURY, Mr. A. E. F. SANDSTRÖM. Mr. Jesús María YEPES.

Secretariat: Mr. Ivan KERNO (Assistant Secretary-General in charge of the Legal Department); Mr. Yuen-li LIANG (Director of the Division for the Development and Codification of International Law, and Secretary to the Commission).

Communication by Mr. Hudson, retiring Chairman, concerning a telegram from the Minister of Foreign Affairs of the People's Democratic Republic of China

1. Mr. HUDSON said that about 7 p.m. on 6 June he had received a telegram from the Secretary-General of the United Nations, addressed to the Chairman of the International Law Commission. The telegram had been sent in error to The Hague, and had been forwarded from there. It was dated 5 June. He did not know whether it would have arrived in time for the opening meeting of the present session if it had not been wrongly addressed.

2. In the telegram, the Secretary-General of the United Nations, at the request of the Minister for

Foreign Affairs of the People's Democratic Republic of China, transmitted a cable from the Minister, dated 5 June. As the Commission had already taken a decision [1] on the question raised in the telegram, and had rejected the proposal that Mr. Hsu cease to be one of its members, he wondered whether there was any point in reading the telegram, which was very long. The ending read: " Please note and reply by cable, and transmit the telegram to the International Law Commission ".

3. Mr. BRIERLY proposed that the telegram should not be read out, since it contained a personal attack on Mr. Hsu.

4. Mr. HUDSON said he saw no personal attack against Mr. Hsu in the telegram.

5. Mr. FRANÇOIS stated that if he had been present at the first meeting, he would have supported the Chairman's ruling that Mr. Koretsky's proposal was out of order, for the reasons given by the other members of the Commission.

Desirability and possibility of establishing an international judicial organ for the trial of persons charged with genocide or other crimes over which jurisdiction will be conferred upon that organ by international conventions: working papers by Messrs. Alfaro and Sandström (General Assembly resolution 260 B (III) of 9 December 1948) (item 4 of the agenda) (A/CN.4/15; A/CN.4/20) *(continued)*

6. Mr. ALFARO, the Rapporteur, said he would confine himself to dealing directly with the questions before the Commission, and if necessary refer to certain passages in his Report (A/CN.4/15).

7. General Assembly resolution 260 (III) B put three distinct questions to the Commission. The first was: " Is it *desirable* to establish an international judicial organ for the trial of persons charged with genocide and other crimes ? " This question was of the utmost importance. If " desirable " meant " useful ", the question was not difficult to answer. But could the Commission say that it was not of advantage to the peace and security of the world to institute an international criminal jurisdiction vested with power to try and to punish those persons who, acting for the States they ruled, destroyed the peace and security of mankind ? Any answer which could be given in respect of the community of States must be given also in respect of any national community. In both classes of community, there might be aggressors and disturbers of the peace, and it was necessary and desirable that some form of criminal jurisdiction exist, aimed at the punishment of disturbances of the public order.

8. Even if it were considered that the establishment of such a jurisdiction was not feasible, it was difficult to admit that it was not desirable. For that reason, at the previous meeting he had called attention to paragraph 14 of Mr. Sandström's Report (A/CN.4/20), written by Mr. Sandström after he had pointed out the serious obstacles to its realization to be found, in his opinion, in the political situation of our day.

9. His own answer to the question of desirability was given, in paragraph 128 of his Report, and in support of that answer he had referred to the universal mobilization of public opinion on behalf of the establishment of an international criminal jurisdiction which had taken place in the last thirty years (see A/CN.4/20, Part II: " Evolution of the Idea of an International Criminal Jurisdiction "). He cited article 227 of the Treaty of Versailles in which that sentiment was crystallised.

10. Since 1920, the idea of an international criminal court had had the support of a series of eminent jurists. An imposing amount of literature had been devoted to it, and many decisions in its favour taken by the official or unofficial groups listed in paragraphs 117-119 of his Report and in the remarkable work of the Secretary-General entitled " The Background of the Problem of International Criminal Jurisdiction " could be cited.

11. He then read out the end of Part III of his Report (from paragraph 120) in which he had quoted M. Raymond Poincaré and M. J. A. Roux as favouring the idea of an international criminal jurisdiction. He suggested, in conclusion, that the Commission might answer the first question contained in resolution 260 (III) B by expressing the opinion that it was desirable to establish an international judicial organ for the trial of persons charged with genocide and other crimes, with jurisdiction conferred by international conventions.

12. The CHAIRMAN observed that Raymond Poincaré was one of the most practical-minded statesmen France had ever had, and that J. A. Roux was an equally practical-minded criminal lawyer. He made this point to anticipate any criticism that the quotations were from mere theorists.

13. Mr. SANDSTRÖM said he was not a cynic, and he agreed that the ideal would be to establish an international criminal jurisdiction. But it was not enough that such a jurisdiction was desirable. He was only too well aware of the difficulties involved, and he was anxious that such a jurisdiction should be efficacious. Otherwise, it was doubtful whether it would be desirable to establish it. As J. A. Roux had put it: " Time works for it ", but he was not convinced that the moment had yet come.

14. Mr. AMADO paid tribute to the work of Mr. Alfaro as evidence of his faith and optimism. He was sure he was expressing the feelings of all the jurists in his country in saying that unquestionably it was desirable to establish such a jurisdiction. Mr. Alfaro had cited an impressive list of organizations in support of his thesis. A still longer list could be drawn up of organizations desiring peace. If wishing alone were sufficient, the task would be easy. He did not see how the type of court in question would function; nor could he accept the statement in the last paragraph of Part II, Section 3, of the report (para. 17). He could not believe that establishment of the court could prevent war. Unquestionably it was desirable, but he did not see how it was possible.

15. Mr. FRANÇOIS entirely agreed with Mr. Alfaro as to the establishment of an international criminal

[1] See Summary record of the 39th meeting, para. 18.

jurisdiction being desirable. But he wondered whether Mr. Alfaro was not being too optimistic when he said that the feeling that such an institution was desirable was evident throughout the world. A jurisdiction was certainly desired, but to judge the actions of opponents.

16. He wondered whether Mr. Alfaro could produce evidence that there had been a desire on the part of the Allies in the recent world war to submit to international jurisdiction war crimes committed in the ranks of the Allied forces. Obviously the seriousness of such crimes could not be compared with that of the crimes committed on the side of the Axis; but it could not be denied that war crimes were committed on the Allied side. Yet he had never seen any evidence of a desire to submit those crimes to an international jurisdiction.

17. Mr. ALFARO felt that the question put by Mr. François referred to the application of the principle rather than to the principle itself. He contemplated a situation in which the judicial organ under discussion would judge crimes committed by victors and defeated alike, as well as crimes committed in peacetime, genocide for example. He did not know of any publication which had called for the indictment of members of the Allied forces who had committed war crimes. But any person guilty of war crimes would have to be tried by the international tribunal.

18. Mr. el-KHOURY pointed out that Part I of Mr. Alfaro's report dealt only with the question whether the establishment of a court was desirable, and concluded that it was. The Commission too had to answer that question. He himself was anxious that such an organ should be established. It might transpire that what he desired was impossible, but that did not prevent him from desiring it.

19. Mr. HUDSON paid tribute to Mr. Alfaro for his most valuable report, though he wondered whether the list in paragraphs 116 and 118 of the report was not presented in an unduly impressive manner. Certainly, the idea had evolved within the las few years, and people who were strong advocates had had resolutions adopted by organizations. But the value of such resolutions must not be over-estimated. He knew by personal experience that often enough they mean very little.

20. He would remind them that the Convention for the Creation of an International Criminal Court, opened for signature at Geneva in 1937 (see A/CN.4/15, para. 26), had never been ratified, although signed by thirteen States. Professor Giraud had pointed out that in certain circumstances, for political reasons, a State might be anxious not to prosecute particular individuals in its own courts, preferring to hand them over to an international court. That was a notion which might open up new avenues. The Committee on the Progressive Development of International Law and its Codification convened in 1947 expressed itself very conservatively in its report: " Its judgment... may render desirable the existence of an international juridical authority to exercise jurisdiction over such crimes " (A/CN.4/15, para 45). He had given some thought to the questions involved, and he felt that what was ' desirable ' was what answered a need. The Commission had to give an opinion on this, bearing in mind the notion of the end in view.

21. He did not wish to see the Commission present to the public, as coming from men with special competence in international law, a notion which was completely illusory. If the Commission had to decide whether the establishment of the proposed court was desirable, its decision must not be mere airy nothings. He referred to paragraph 2 of the Preamble to resolution 260 (III) B. With regard to the possibility, this depended on the Commission's capacity to envisage the organization of an international court which could function effectively.

22. In paragraph 100 of his report, Mr. Alfaro had stated that " the international criminal jurisdiction *may* have to deal with the following crimes: . . . " Mr. Hudson surveyed the need for an international court in relation to each of the crimes listed by Mr. Alfaro: with regard to crimes against the peace, he would welcome an international court which would deal with such crimes. It had been stated that crimes of this kind had been defined at the Nürnberg Trial; but the definition given had been only in respect of acts committed in the name of the Axis Powers (Article 6 of the Charter of the International Military Tribunal). It was an extremely limited definition, formulated with reference to the specific case involved.

23. He would also like to have a definition of " aggressive war ". In the world today, each side would argue that the other was the aggressor. It was impossible to define an aggressor. Attempts to do so at San Francisco had proved vain. The only definition he knew was the one adopted in 1933 by the Geneva Conference for the Reduction and Limitation of Armaments [2] and incorporated in the treaties signed between the Soviet Union and her neighbour States. If either side could adopt its own definition, the other side would always be the aggressor, which would mean that the victor would always judge the defeated. However, an aggressor could not be defined before there was a war.

24. It was difficult to set up a tribunal in advance. If for example this had been done in 1930, the members of the tribunal would have included nationals of a number of States which world public opinion could have deemed unfit for membership during the last war.

25. With regard to war crimes, the question raised by Mr. François was very much to the point. But he would like to know what constituted war crimes. It was a point which caused great concern to the members of the armed forces he had had occasion to meet recently. Possibly the Nürnberg Charter could throw some light on this point.

26. With regard to genocide, he would like to hear the views of members of the Commission on the inadequacy of national jurisdictions to deal with this crime.

27. Referring to sub-heading (e) " Other undetermined crimes ", he did not understand what Mr. Alfaro meant by this.

28. Mr. ALFARO explained that he had used the

[2] See League of Nations document Conf. D/C.G.108.

word " undetermined " because resolution 260 (III) B mentioned genocide as a specific crime, and then spoke of other crimes which were undetermined.

29. Mr. HUDSON recalled that he had devoted a great deal of study to the question of piracy in his capacity as director of the Harvard Research in International Law at Harvard. He had reached the conclusion that piracy was not a crime under international law. It had been duly dealt with by national jurisdictions under national laws, simply because international law had granted all States universal competence to judge it. The Harvard Research in International Law had established that the repression of that crime was adequate. Hence there was no need for an international court on that account.

30. Slave trade had never been declared an international crime. It was not necessary to submit it to an international tribunal. Traffic in women and traffic in narcotics were not international crimes. At the international conference on counterfeiting no one had suggested that it was an international crime or that any international jurisdiction was called for. Obscene publications were difficult to define. An international jurisdiction was not necessary in respect of them, any more than for damage to submarine cables. With regard to terrorism, there was a Convention signed in 1937.[3] But France had not found it necessary to appeal to an international jurisdiction to condemn the terrorists responsible for the Barthou murder in 1934.

31. It was where national jurisdiction was inadequate, that it could be said an international jurisdiction was called for, and therefore desirable. He did not know whether this analysis would appeal to members of the Commission, but he had felt that he must make it.

32. Mr. ALFARO said he had intended to note the statements of members of the Commission as to the desirability in general of an international criminal jurisdiction; but as Mr. Hudson had devoted so much time to " other undertermined crimes over which jurisdiction might be conferred upon the International Criminal Court ", he would like to refer to paragraph 100 of his report. In sub-headings (a), (b), and (c) he had listed the crimes which the Commission had been requested to include in the prospective international penal code; in sub-heading (d) Genocide, for which there was a Convention; and under sub-heading (e) the " Other Undetermined Crimes " commonly referred to as " international crimes ".

33. Mr. HUDSON repeated that he could not accept the designation of these crimes as international crimes.

34. Mr. ALFARO said he had mentioned them because in various places they were referred to as international crimes. Whether they were or not was a question to be decided. He referred to his statement in paragraph 102 of his report (A/CN.4/15). The Commission might take note of the lucid exposition given by Mr. Hudson in order to delete from the proposed criminal code any reference to the crimes listed under sub-heading (e); but the question was purely incidental.

35. Mr. HUDSON argued that the essential point at the moment was to determine if necessary whether national jurisdiction were inadequate to deal with the crimes mentioned in the report, and whether there was a need for an international jurisdiction. If these two points could be proved, the question of the possibility of establishing an international jurisdiction could then be examined. Thus the desirability and the need for setting up an international jurisdiction were one and the same notion.

36. The CHAIRMAN agreed that the point called for examination by the Commission.

37. Mr. BRIERLY could not share Mr. Alfaro's view, but he commended his impartiality. Two kinds of international court could be envisaged, the one with strictly voluntary jurisdiction, and the other binding in character. The international court envisaged in the Convention of 1937 belonged to the first category, and States were free to try any of their nationals accused of crimes, or to hand them over to the international court. In certain instances, a government might prefer to hand over an accused person to the court. It was conceivable for example that France would have preferred to hand over to an international court the individuals guilty of the murder of the King of Yugoslavia in 1934.

38. But while the establishment of an international court with voluntary jurisdiction gave rise to no great difficulties, it ran the risk of being more or less useless, since it would not prevent the crimes condemned by the Nürnberg Court, nor the crime of genocide. But the establishment of an international court whose jurisdiction was to be binding, and which was to prevent such crimes, was a more difficult matter.

39. The only concern of the Commission was the establishment of an international court binding in its jurisdiction. If it were certain that such an organ would maintain peace, there could be no hesitation in agreeing that it was desirable; but the question was whether an international court could achieve that object. If an international court were established but could not function, it would be not only ineffectual, but it would also create dangerous illusions among the nations. Hence the question of possibility must be examined first. On page 42 of his report, Mr. Alfaro had set out his arguments in favour of establishing an international jurisdiction. But he had quoted a series of attempts which had never produced any result whatsoever and could not be regarded as precedents. As to the Nürnberg and Tokyo Tribunals, those were not real international courts, but tribunals set up by States which were victors and in occupation. Only the defeat of their enemies enabled them to function incidentally in a unilateral manner. If the defeat of the Axis had not been so complete, the German and Japanese leaders would never have agreed to collaborate in such an undertaking.

40. Hence he felt it was impossible to draft a convention under which all States would undertake to bring their nationals accused of crimes before an international

[3] Convention for the Creation of an International Criminal Court, see text in *Historical survey of the question of international criminal jurisdiction.* United Nations publication. Sales No.: 1949.V.8.pp.88-97.

tribunal. Even if they did undertake to do so, it was extremely probable that when the time came they would not honour their signatures. And after all, crimes against humanity were committed by individuals not of their own accord, but with the acquiescence of their governments. How then could it be hoped that those governments would agree to the accused persons being summoned before an international tribunal? Would the establishment of such an organ in 1930 have prevented the crimes of genocide perpetrated by Germany? An international criminal court would not be required to judge cases covered by national laws since if a government disapproved of the criminal activities of one of its nationals, is could summon him before a national tribunal. On the other hand, if it approved of his activities, it would not bring him before an international court. To prosecute a criminal without the co-operation of his government, an international court would have to have at its disposal, in the international sphere, a full-scale police organization comparable to that possessed by States on the national scale for the prevention of crimes. It was impossible to reconcile all those factors.

41. The CHAIRMAN said that the Commission had to decide whether it was desirable, and also whether it was possible, to establish an international judicial organ. Certain speakers were inclined to link the two questions closely together.

42. Mr. HUDSON doubted whether it was possible to separate two aspects of a single problem.

43. The CHAIRMAN reminded him that the General Assembly resolution put the two questions separately. Hence the Commission must inquire whether the international community desired the establishment of an international judicial organ. Whether such a desire was legitimate was another question. The fears expressed by certain members of the Commission that public opinion might be disappointed amounted to an implicit admission that public opinion did harbour such a desire. The world was anxious that the lacuna caused by the fact that the civil International Court of Justice had no parallel International Criminal Court should be filled. He would suggest that the two questions be put to the vote separately: (1) Was the establishment of an international criminal jurisdiction desirable? and (2) was it possible?

44. Mr. CÓRDOVA also thought that two distinct questions had been put to the Commission. It was even possible to distinguish three: (a) whether the establishment of an international criminal tribunal was desirable and possible; (b) whether it was desirable, but not possible; (c) whether it was possible but not desirable. There was some confusion in the discussion; those who felt that the establishment of a tribunal was not desirable had to use arguments proving that it was not possible. He did not agree with Mr. Hudson's view that the need for establishing an international court should be proved in order to show that its establishment was desirable. In Mr. Alfaro's report, certain crimes were specified for which an international judicial organ seemed absolutely essential; whereas other crimes could usefully be judged by it, even though it might not be necessary. It seemed to him obvious that only an international court would be in a position to try persons responsible for bringing on an aggressive war. These obviously would not be summoned before the courts in their own countries, since after a conflict, the victor would never admit having been the aggressor, while the defeated side would always maintain that the other side was the aggressor. Furthermore, it was quite conceivable that there were still countries whose laws conferred on the Head of the State the right to make war, and where it would be impossible to have him condemned by a national tribunal. For cases of that kind, an international tribunal was essential.

45. Mr. HUDSON wondered whether an international judicial organ could judge a party accused by another party of preparing an aggressive war, before the conflict actually broke out.

46. The CHAIRMAN agreed that this was an important question, but was a matter rather for the International Court of Justice, and was one on which the Commission was not asked for its opinion. People complained that the United Nations had not at present at its disposal an executive organ capable of preventing war. If a government were accused of preparing for war, the Security Council might be incapable of activity owing to the veto and its present lack of armed forces; but if an international tribunal existed, the guilty parties might be able to be brought before it. Whatever type of organization were contemplated, it could always be objected that it would be unable to function. But should the Security Council be abolished on the grounds that the veto prevented it from working, or that Chapter VII of the Charter could not be applied? The establishment of an international criminal court could be desirable even though in certain circumstances such an organ would be incapable of functioning.

47. Mr. CÓRDOVA pointed out that there were those who maintained that an international jurisdiction was not necessary since national jurisdiction could deal with all cases. But it could be argued on the other hand that often enough crimes would be repressed more effectively by an international organ than by the national tribunal. Several speakers had maintained that a State would never summon its nationals guilty of crimes to appear before an international court. That was possible. But all States would be required beforehand to undertake that obligation, as being the only way of preventing the repetition of acts such as took place during the last war. It had been argued too that the Nürnberg and Tokyo Tribunals were military and unilateral in character. That was a further reason for setting up an international criminal court with power to give a fair trial to victors and vanquished alike, so as to avoid unilateral judgments such as they had witnessed after the second World War.

48. Mr. AMADO thought that before deciding on the question of " desirability ", it would be as well to know precisely in what sense the word was being used. Was it to be interpreted as reflecting " aspiration " or " need "—two very different things? He himself thought

that the word should be understood to signify the "ideal".

49. Mr. HUDSON inclined to the sense of "need", since he could not say that such a desire existed generally in the world. There was no point in considering the desire to establish something if the need for it was not felt. He suggested that a single question be put to the vote: was the establishment of an international court desirable and possible?

50. Mr. YEPES was in favour of the establishment of the court, and agreed with Mr. Hudson. If the advocates of the view that it was desirable to establish an international criminal court could prove that its establishment was impossible or dangerous, they would drop their argument. The two questions should be examined together, though they might be voted on separately.

51. The CHAIRMAN thought that the General Assembly resolution made it quite clear that there were two separate questions involved. The first—to which he would answer yes—was whether world public opinion desired the establishment of an international judicial organ.

52. Mr. HSU supported this view, and thought it was desirable to establish such an organ even if all States might not have the same opinion. The international community had reached a point where the creation of an international criminal court was a necessary development. It was a moral issue. But as manifold difficulties would arise when an international court was established, those difficultues must be pointed out to the General Assembly and practical suggestions made for overcoming them.

53. As Mr. SANDSTRÖM and Mr. BRIERLY were afraid they would be unable to answer with a plain "yes" or "no" to the question, the CHAIRMAN pointed out that any explanation of the voting would be included in the summary record.

54. Mr. BRIERLY felt that the two questions were so closely bound up that it was extremely difficult to separate them.

55. Mr. HUDSON was rather concerned about the possibility of voting on the two points separately. It would create a bad impression throughout the world if a majority of the Commission admitted that it was desirable to establish an international Court, and then went on to declare that it was impossible to do so.

56. Mr. ALFARO maintained that the two problems could be discussed separately, as they had been in his report; and then put to the vote together.

57. The CHAIRMAN said he would ask the Commission to decide the point at the next meeting.

The meeting rose at 1 p.m.

43rd MEETING

Friday, 9 June 1950, at 10 a.m.

CONTENTS

Chairman: Mr. Georges SCELLE.

Rapporteur: Mr. Ricardo J. ALFARO.

Present:

Members: Mr. Gilberto AMADO, Mr. James L. BRIERLY, Mr. Roberto CÓRDOVA, Mr. J. P. A. FRANÇOIS, Mr. Shuhsi HSU, Mr. Manley O. HUDSON, Mr. Faris el-KHOURY, Mr. A. E. F. SANDSTRÖM, Mr. Jesús María YEPES.

Secretariat: Mr. Ivan KERNO (Assistant Secretary-General in charge of the Legal Department); Mr. Yuen-li LIANG (Director of the Division for the Development and Codification of International Law, and Secretary to the Commission).

Desirability and possibility of establishing an international judicial organ for the trial of persons charged with genocide or other crimes over which jurisdiction will be conferred upon that organ by international conventions: working papers by Messrs. Alfaro and Sandström (General Assembly resolution 260 B (III) of 9 December 1948) (item 4 of the agenda) (A/CN.4/15) *(continued)*

1. The CHAIRMAN asked the Commission whether it felt that the problem had been sufficiently discussed at the previous meeting for a vote to be taken.

2. Mr. SANDSTRÖM considered that to vote merely yes or no would be of little value. He suggested that a member of each of the two groups which had emerged be asked to give a reasoned opinion, which the Commission would then discuss. Those members of the Commission who found themselves unable to agree with either would then have an opportunity to explain why.

3. The CHAIRMAN pointed out that in that case there would be a majority report and a minority report. At the previous meeting the suggestion had been rather to ask the Commission whether it wished to vote separately on the two questions at issue or to vote on one question combining the two points; he felt that it was on this that the Commission should decide first. There was no point in stating in advance that there would be two opinions. Although there was no precedent for presenting a majority and a minority report, obviously it was possible to do so.

4. Mr. YEPES remarked that the two reports already prepared answered Mr. Sandström's requirements.

5. The CHAIRMAN thought that the best method would be to consult the Commission as to how it wished to vote.