Document:-
A/CN.4/SR.41

Summary record of the 41st meeting

Topic:
Question of international criminal jurisdiction

Extract from the Yearbook of the International Law Commission:-
1950 , **vol. I**

cidentally, United Nations publications were available for sale to the general public and could thus be acquired by any one who did not receive them free of charge. In any case, it was impossible to distribute the *Treaty Series* to every law professor in the world.

Paragraph 74 did not give rise to any comment. The Commission approved the Secretariat's suggestion (A/CN.4/27 end of paragraph 4) that a complete index of the League of Nations Treaty Series be prepared.

71. Mr. HUDSON turned to paragraph 76, wich contained two suggestions he felt to be very useful.

72. Mr. LIANG (Secretary to the Commission) argued that these suggestions would also involve budgetary and administrative considerations, since the divisional staff was insufficient for such a task. But obviously only the United Nations library was competent to carry it out.

Paragraph 76 was approved.

73. In reply to Mr. Hudson, Mr. KERNO (Assistant Secretary-General) said that on the subject of paragraph 78 the Secretariat might get in touch with the International Court of Justice to enquire as to the distribution of the Court's publications.

Paragraphs 79, 80, 81 and 82 were approved.

74. Mr. LIANG (Secretary to the Commission) asked Mr. Hudson whether, when stating, as recorded in paragraph 83, that the Commission might wish to urge that the publication of Professor Lauterpacht's *Annual Digest* be continued, he had taken into consideration the financial difficulties involved in printing this collection.

75. Mr. HUDSON replied that it was no part of the Commission's duty to deal with financial considerations, but that if the report mentioned the Commission's wish, it could be quoted in support of any application for possible financial assistance to that publication.

76. Mr. SANDSTRÖM was afraid that the action suggested in paragraph 83 would overlap with Professor Lauterpacht's *Annual Digest.*

77. A similar objection was raised by Mr. KERNO (Assistant Secretary-General) in respect of paragraph 85 and the Peaslee collection. It was agreed that such a collection should include the Constitutions of all States Members and non-members of the United Nations.

78. Referring to paragraph 86, Mr. LIANG (Secretary to the Commission) pointed out that the Secretariat was at present making a collection covering national legislation on the regime of the high seas and on treaties.

79. Mr. KERNO (Assistant Secretary-General) said on the subject of paragraph 91 that the Secretariat already had in hand such a *répertoire*, in the form of a commentary on the Charter.

80. With regard to paragraph 92, Mr. HUDSON considered the reply from UNESCO on the subject of a possible revision of the Brussels Convention of 1886 for the Exchange of Official Documents (See A/CN.4/16/Add.1) as unsatisfactory. He felt that a world convention on the subject would be most valuable.

Paragraphs 83, 84, 85, 86, 87, 88, 89, 90, 91, 92 and 93 were approved.

81. The CHAIRMAN declared that the Commission had now dealt with all the recommendations, and thanked Mr. Hudson for the working paper he had submitted.

The meeting rose at 1.10 p.m.

41st MEETING

Wednesday, 7 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 (III) B of 9 December 1948) (item 4 of the agenda) (A/CN.4/15; A/CN.4/20)

1. The CHAIRMAN thought, as did the Rapporteurs, that the more negative view, that of Mr. Sandström (A/CN.4/20), should be taken first.

2. Mr. SANDSTRÖM said that the question before the Commission admitted of some diversity of opinion. One of the chief factors, to his mind, was the present political situation.

Mr. SANDSTRÖM began the reading of his report.

3. After paragraph 2 of the report had been read, Mr. CÓRDOVA pointed out that Article 2, paragraph 6, of the Charter extended the provisions of the Charter

to non-member States. He wondered whether the composition of the proposed court could not be extended to include States not members of the United Nations.

4. Mr. SANDSTRÖM replied that he had considered the court only as within the framework of the United Nations, because he regarded the United Nations as universal in principle. In paragraph 2 (b) he had spoken of a " jurisdiction universal in principle ".

5. The CHAIRMAN remarked that Mr. Sandström seemed inclined to the conclusion that the International Criminal Court must necessarily be established within the framework of the United Nations. Later on, the report considered whether the court should be regarded as one of the principal organs of the United Nations.

6. He personally did not think that the interpretation of the General Assembly resolution had necessarily such implications. The resolution did not state that the international judicial organ must necessarily be a United Nations organ. Its establishment might be decided by a convention concluded by a group of States. Mr. Sandström had postulated a dilemma; either the court will be established in such and such a way, or it cannot be established at all. The question at issue was whether it was desirable to establish a criminal court.

7. Mr. HUDSON agreed with the Chairman. The main question was whether it was desirable and possible to establish the proposed organ. The General Assembly resolution did not stipulate that court must be a principal organ of the United Nations. In fact, the Charter alone could set up a principal organ of the United Nations. He hoped the Commission would leave aside the question of method.

8. Mr. KERNO (Assistant Secretary-General) referred to the discussions in the Sixth Committee at the third session of the General Assembly, on the draft Convention on Genocide and the vicissitudes of the question of an international criminal jurisdiction. The initial vote had rejected the idea of establishing such a jurisdiction. [1] Later, a formula had been adopted referring to national courts or an international criminal court,[2] and at the same time a draft resolution had been submitted [3] asking the International Law Commission to consider whether it was desirable and possible to establish an international criminal jurisdiction. The wording of Article VI of the Convention on Genocide ("... such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction ") was very conservative, as a number of States had indicated that they could not accept the Convention of Genocide if the jurisdiction of the international tribunal ware compulsory. The wording of resolution 260 (III) B, likewise left the International Law Commission free to make whatever proposals it thought fit regarding the establishment of the tribunal. Any criminal court it might have in mind was not necessarily to be an organ of the United Nations.

9. The CHAIRMAN wondered whether it would not be wise to postpone the question, and to take it up again after the Commission had considered whether it was desirable and possible to set up an international criminal jurisdiction. These were the two essential poimts.

10. Mr. SANDSTRÖM pointed out that in paragraph 2 (a) he had discussed the possibility of establishing the court outside the framework of the United Nations. He found it difficult to imagine how such a court could have its jurisdiction limited. The Convention must be open to all States willing to sign it.

11. The difficulty was to know in what circumstances States would be prepared to establish such a court with jurisdiction which in principal would be universal.

12. The CHAIRMAN also felt that the jurisdiction of the court must be universal. Any State, even if not a member of the United Nations, should be at liberty to accede to the Convention.

13. Mr. HUDSON had been surprised to read that the first alternative interpretation of resolution 260 (III) B presented very few difficulties (paragraph 2 (a) of Mr. Sandström's report). He personally felt quite the opposite—that it presented a great many difficulties. The question was to decide whether it was desirable and possible to establish some form of judicial organ.

14. The CHAIRMAN pointed out that the Commission had also been invited to study the question of conferring criminal jurisdiction on a Chamber of the International Court of Justice. Hence, it would also have to chose between a special court and a Criminal Chamber of the International Court. But the two main questions were whether the establishment of such a jurisdiction was desirable and whether it was possible.

15. Mr. CÓRDOVA said that the question was whether a tribunal was to be established which would be independent of the United Nations, or a tribunal within its framework. He felt that Mr. Sandström had only considered the second alternative. Having once decided this point, the establishment of a tribunal would present no difficulties. Did that mean it was desirable to establish it ? And Mr. Sandström had not discussed the possibility of establishing the tribunal outside the framework of the United Nations.

16. Mr. SANDSTRÖM said he had not discussed that possibility because he had felt that it was for the States signatories to the Convention setting up the tribunal to do so.

17. Mr. CÓRDOVA said that the question was whether it was desirable to establish the tribunal within the framework of the United Nations or outside it.

18. Mr. AMADO thought it would be better to decide first the preliminary question whether it was desirable to establish such a tribunal or not.

19. Mr. BRIERLY also felt that the Commission might adjourn discussion of this point. The problems with which the General Assembly resolution was concerned would be just the same whether a judicial organ

[1] *See Official Records of the General Assembly, Third session, part I, Sixth Committee,* 98th meeting, page 381.

[2] *Ibid.,* 129th meeting, page 684.

[3] By the Netherlands and Iran. *Ibid.* Annexes, page 27 Doc. A/C.6/248 and A/C.6/248/Rev.1.

were set up within the framework of the United Nations or outside it.

Mr. SANDSTRÖM went on with the reading of his report.

20. Mr. HUDSON remarked that paragraph 2 (c) inverted the order of the question raised in the General Assembly resolution.

21. Mr. SANDSTRÖM replied that the reason was explained in paragraph 3.

22. Mr. HUDSON thought the question might be approached by considering the need for establishing such a jurisdiction. First of all, was such an organ necessary ? If in fact it were, then it might perhaps be desirable. Later the possibility of supplying that need could be studied.

23. Mr. SANDSTRÖM thought that the principle of the desirability of the tribunal was beyond discussion. But would its establishment be desirable ? That was an entirely different matter, depending on the efficacy of the tribunal proposed.

24. Mr. HUDSON thought on the contrary that the question whether the tribunal were desirable must be discussed.

25. Mr. SANDSTRÖM regarded the question of desirability as one of objective assessment of facts.

26. The CHAIRMAN said he was struck by the fact that the Rapporteur tended to indentify desirability with possibility. The tendency seemed to arise from Mr. Sandström's argument that a tribunal would not be desirable unless it were feasible. He personally believed that the tribunal might be desirable if it were wanted on general ethical grounds. The question was whether in international society there existed a need arising from the lack of an international penal court.

27. Mr. SANDSTRÖM said he had not wished to take up an abstract position; his object had been to study the question from the practical standpoint.

28. The CHAIRMAN replied that the whole development of the report was concerned with the second issue, that of possibility. The first issue was a question of ethics.

29. Mr. FRANÇOIS suggested that Mr. Sandström present the whole of his report, and that the discussion be continued after it had been read.

30. Mr. CÓRDOVA also felt that the Commission would save time by completing the reading of the report and then coming back to the first point which was obviously the preliminary one.

31. Mr. el-KHOURY said he had gathered from a reading of the report that its author took it for granted that an international judicial organ was desirable. But Mr. Sandström's thesis was that it was impossible to establish it, and had argued that to desire something which was impossible would be futile. The Commission should go on with the study of Mr. Sandström's report, and examine the possibility of establishing the court.

32. The CHAIRMAN was less convinced than Mr. el-KHOURY that the question of desirability was a foregone conclusion; but one thing he was sure about, was that the General Assembly had asked the Commission to give its opinion on the point.

33. Mr. YEPES thought Mr. François' proposal was the most logical. Obviously the question of possibility was secondary, and the question of desirability was the main one.

34. Mr. SANDSTRÖM, continuing with the reading of his report, said that for the sake of clarity it would be preferable to deal first with the question of establishing a special penal court and then to discuss the establishment of a criminal chamber under the International Court of Justice. He read out paragraphs 4, 6, 7 and 8, and referred to his view already expressed, that the terms of reference given by the General Assembly covered only the establishment of a tribunal which would be a United Nations organ.

Mr. SANDSTRÖM next read paragraphs 9 and 10.

35. Mr. ALFARO did not think it would be necessary for the Charter to be amended in order for the General Assembly to establish a criminal court of justice, whether open to non-member States or not. It was a question of nomenclature. Supposing that a convention, signed at the suggestion of the United Nations by its Members, were to set up an international criminal court and the convention were open for signature by any country in the world, it would not be necessary to determine whether that constituted a special organ or a principal organ of the United Nations. It might be a separate organ; it need not be specified. If such a court were set up as a universal organ, it would constitute a new body created by the various States in the world, and not included in the list given in Article 7 of the Charter. Hence it was not necessary to amend the Charter in order to set up an international criminal court. But it would be necessary to amend the Statute of the International Court of Justice if a new chamber were created within its framework.

36. Mr. HSU agreed with Mr. Alfaro.

37. The CHAIRMAN informed Mr. Alfaro that the Statute of the International Court of Justice had become an integral part of the Charter and hence it could not be modified without modifying the Charter. He felt that the discussion was most useful, as the Commission would have to return to that point.

38. Mr. CÓRDOVA thought that if, in considering how to establish the tribunal, the Commission decided that it should come under the United Nations, it would be faced with two possibilities; either the establishment of an organ independent of the International Court of Justice, which would necessitate amending the Charter; or the creation of a special chamber of the International Court, which would involve modification of its Statute, which had the same legal status as the Charter. To carry out the latter measure, the same procedure would have to be followed as for amending the Charter; though of course it was not precisely the same thing as amending the Charter.

39. Mr. HUDSON did not think it necessary to discuss the point. Article 68 laid down a different procedure for amending the Statute from that required for

amending the Charter, since it contemplated that this procedure would be followed by non-member States which had accepted the Court's Statute.

40. Mr. SANDSTRÖM recalled that this report started from the assumption that the tribunal to be established would be an organ of the United Nations.

41. Mr. KERNO (Assistant Secretary-General) pointed out that to set up a principal organ of the United Nations, an amendment to the Charter would be required. Mr. Sandström seemed to wish to stress in his report that to oblige Members to accept an international penal court, such an amendment would be essential. But a General Assembly decision could set up an organ having jurisdiction over the States signatories to the relevant convention.

42. Mr. HUDSON thought the Commission was straying away from the question without discussing it.

43. The CHAIRMAN agreed that the point under discussion was not the main point at issue; but the Assembly had asked the Commission to deal with it. Before it could decide on one particular procedure, it must examine them all. The third question to be discussed was what authority would establish the jurisdiction concerned.

Mr. SANDSTRÖM read paragraphs 11 and 12 of his report.

44. Mr. CÓRDOVA thought Mr. Sandström held the view that the General Assembly was not competent to make the jurisdiction binding, and could not establish the court as an organ of the United Nations; but if the various States decided to make the competence of the court binding, they could easily do so by means of a convention.

45. Mr. SANDSTRÖM replied that he had not supposed that the court could not be established because its jurisdiction could not be made binding. He had stated that if the court were created, its jurisdiction would not be binding on Members of the United Nations without their consent.

46. Mr. YEPES suggested that a liberal interpretation be given to the Statute of the International Court of Justice; he argued that, in virtue of article 26, paragraph 2 of that Statute, it could be regarded as itself constituting a criminal chamber.

47. Mr. HUDSON objected that under article 34, paragraph 1, only States and not individuals may be parties in cases before the Court, and that under General Assembly resolution 260 (III) B, the Commission at the moment was concerned with the trial of individuals.

48. The CHAIRMAN said that the point raised by Mr. Yepes touched on the question of the criminality of States.

49. Mr. KERNO (Assistant Secretary-General) had had the same notion as Mr. Yepes with regard to the advisory opinion which could be requested of the Court under Article 96 of the Charter " on any legal question ". He wondered whether it would not be possible to include under the provisions of Article 96 questions of international criminal law—e.g., the question of the criminality of States. But at the moment the question at issue concerned the trial of individuals.

50. Mr. CÓRDOVA pointed out that the tribunal under discussion would have the power to pass sentence, which was not the case with an advisory opinion.

51. Mr. YEPES said he had raised this general question for the Commission to think over.

52. The CHAIRMAN said there was no question but that the jurisdiction of the penal court must be compulsory. The analogies drawn between the criminal court and the present International Court of Justice were unsound since recognition of the competence of the International Court was optional.

53. Mr. ALFARO said that the question of jurisdiction to be studied by the Commission was determined by the way it was put in resolution 260 (III) B. Hence the question raised by Mr. Yepes was not before the Commission.

54. Mr. HUDSON supported this view.

Mr. SANDSTRÖM read paragraph 13.

55. The CHAIRMAN said that the second conclusion must not be taken literally. The jurisdiction of the court would be binding on signatory States with respect to their own nationals.

56. Mr. SANDSTRÖM said he had regarded the jurisdiction as not compulsory on the grounds that it would only be compulsory for States signatories to the convention.

57. Mr. HUDSON thought that the first conclusion did not help matters. The question was whether the court could function. With regard to the second conclusion, the jurisdiction of the court would be such as the Convention conferred on it, and might be compulsory in so far as individuals were concerned. There was no point in discussing that particular question.

58. The CHAIRMAN agreed that the question had not arisen; but he felt that a court with competence dependent on a compromise was inconceivable. It would seem to conflict with the notion of a criminal court.

59. Mr. CÓRDOVA cited Article 2, paragraph 6 of the Charter. If the Charter were amended so that a criminal court could be set up within the framework of the United Nations, such a court would help to maintain international peace and security. Thus Article 2, paragraph 6 would be applicable. There would be an obligation an all States, even if they were not members of the United Nations; and if, for example, a guilty person took refuge on the territory of a non-member State, the latter would have to hand him over for trial by the court.

60. Mr. SANDSTRÖM did not accept this interpretation as correct. Such an obligation could not be deduced from Article 2, paragraph 6. In any case, he saw no point in raising the question.

61. Mr. HUDSON shared this view.

62. The CHAIRMAN considered that it was useful all the same to examine one of the consequences of establishing the court.

63. Mr. YEPES thought the first conclusion of paragraph 13 was too broad in conception. All that was needed was already stated if the paragraph stopped at " the International Court of Justice ". In order to create a chamber of the International Court, it was not necessary to amend the Court's Statute, as article 26 of that Statute provided for the establishment of a new chamber.

64. The CHAIRMAN thought Mr. Yepes' remark was significant; but the Commission was not called upon at the moment to make any decision on Mr. Sandström's report.

65. Mr. HUDSON reserved his attitude on paragraph 14.

66. Mr. YEPES asked what were Mr. Hudson's objections to paragraph 14; but the CHAIRMAN felt that such matters could be raised when Mr. Alfaro's report was presented.

67. Mr. SANDSTRÖM continued with the reading of his report, and replying to a question by Mr. Hudson, pointed out that the discussion in the League of Nations mentioned in paragraph 25 was that referred to on page 11 of the *Historical survey of the question of international criminal jurisdiction.*[4]

68. Mr. HUDSON did not think that the second sentence in paragraph 27 gave a true picture of the situation. He wondered whether there really was any international customary law on the subject at present.

69. Mr. KERNO (Assistant Secretary-General) thought that the General Assembly resolution re-stating the principles of the Nürnberg trial was of some importance for the development of custom.

70. This was also the opinion of Mr. BRIERLY, who thought the members of the Commission were bound by that resolution, even if they did not endorse it.

71. Mr. ALFARO, supported by Mr. YEPES, argued that the resolution had brought about a sudden growth of customary law which could not be disregarded.

72. Mr. CÓRDOVA, on the other hand, wondered how a single act, even though it brought about a change in the legal situation, could establish custom, which essentially involved repetition.

73. The CHAIRMAN pointed out that it was not a single act that was involved; the Assembly resolution, in conjunction with the Charter and judgment of the Nürnberg Court, and the manifestations of public opinion, constituted a series of acts of a similar nature. In any case, in certain circumstances, a single act could establish custom, where it was unanimously accepted by world opinion.

74. Mr. ALFARO shared this view, adding that customary law was not necessarily a practice which had gone on for years. It might arise out of a series of acts which had taken place within a short space of time, and from which a number of general rules had been evolved.

75. Mr. CÓRDOVA argued that the Charter and the judgment of the Nürnberg Court had not created custom but had modified the law.

76. Mr. BRIERLY thought that this point of view disregarded the fact that the Nürnberg Court had declared that custom already existed—e.g., the Briand-Kellogg Pact—and that no new rule of law was involved.

77. Mr. HUDSON replied that the Nürnberg Court had nevertheless disregarded the very significant reservations made on the subject of the Briand-Kellogg Pact, reserving the right of legitimate defence and the right to choose that defence.

78. Mr. CÓRDOVA agreed with Mr. Hudson, adding that while the Briand-Kellogg Pact had designated aggressive war as a crime, it had not proposed any international sanction against it.

79. The CHAIRMAN thought that the Pact did propose a sanction, by allowing any State to go to the assistance of any other State which was a victim of aggression.

80. With regard to paragraph 28. Mr. Sandström said in reply to a question by Mr. Hudson that there were at present a number of rules of international criminal law which could be applied by a tribunal, so that such a tribunal could be established forthwith.

81. Mr. ALFARO pointed out that in paragraphs 14 and 28 Mr. Sandström examined the question whether it was desirable and also possible to establish an international criminal jurisdiction. Those two paragraphs showed that there was no obstacle from the legal point of view.

82. With reference to paragraph 29, the CHAIRMAN wondered whether crimes which were not inter-state in character could be regarded as coming under Article 7, paragraph 2 of the United Nations Charter.

83. Mr. YEPES made a reservation regarding the last two lines of paragraph 30.

84. A propos of the same article. Mr. BRIERLY pointed out that the Commission should deal with the criminality of individuals and not of States.

85. Mr. SANDSTRÖM agreed to omit from paragraphs 30 and 31 any mention of States as defendants.

86. With regard to paragraphs 30 and 31, the CHAIRMAN pointed out that various proposals had been made in the past to set up an international organ for public prosecution. A commission set up by the French Foreign Ministry, for example, had studied the possibility of establishing an international public prosecutor's department. No such organ existed at the present time, but the possibility could be contemplated.

87. Mr. SANDSTRÖM explained that paragraph 30 of his report was not concerned with a prosecuting body, but with means for bringing an accused person before a tribunal.

88. The CHAIRMAN thought that paragraph 37 was chiefly of interest to South American and other States where criminal legislation did not provide for judgments *in contumaciam.*

[4] United Nations publication, Sales No. 1949.V.8.

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