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SUMMARY RECORD OF THE FOURTEENTH MEETING

Held at Headquarters, New York,
on Tuesday, 11 August 1953, at 2.30 p.m.

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Chairman:	Mr. MORRIS	United States of America
Rapporteur:	Mr. RÖLING	Netherlands
Members:	Mr. GARCIA OLANO	Argentina
	Mr. LOOMES	Australia
	Mr. DAUTRICOURT	Belgium
	Mr. WANG	China
	Mr. DONS-NOELLER	Denmark
	Mr. SAMI	Egypt
	Mr. MERLE	France
	Mr. MARMOR	Israel
	Mr. MAURTUA	Peru
	Mr. MENDEZ	Philippines
	Mr. VALLAT	United Kingdom of Great Britain and Northern Ireland
	Mr. MARTOS	United States of America
	Mr. PEREZ PEROZO	Venezuela
	Mr. NINCIC	Yugoslavia
Secretariat:	Mr. LIU	Secretary of the Committee

RE-EXAMINATION OF THE DRAFT STATUTE PREPARED BY THE 1951 COMMITTEE ON INTERNATIONAL CRIMINAL JURISDICTION (A/2136, A/AC.65/L.6) (continued)

Article 34, paragraph 1

Mr. DAUTRICOURT (Belgium) thought that the system whereby a panel of ten persons designated an ad hoc prosecuting attorney for each case as it arose offered serious drawbacks. The prosecuting attorney ought to be chosen by the complainant State or States. That system had been employed in the Nürnberg and Tokyo trials and had given rise to no difficulty. He would therefore propose that paragraph 1 of article 34 should be replaced by the following text: "A jurist designated by the complainant State shall act as Prosecuting Attorney".

Mr. MARMOR (Israel) said that the Belgian proposal was not a new one. It had been made by the Netherlands at Geneva and recurred in the same country's written observations (A/AC.65/1, page 30), where it was stated that at the present stage of development of justice on an international level, a prosecuting attorney designated by a State would always be regarded as a representative of the country whose national he was, and that therefore it should be left to the State instituting proceedings to explain its charges.

Too much stress was being laid on the insufficient development of the international sense of justice. That sense was, after all, sufficiently far developed for the principle of the setting up of an international criminal court to have been accepted. Why then should it be considered not enough to permit the appointment of a public prosecutor to represent the international community which had an interest in proceedings for crimes under international law? The Netherlands Government had said in its observations that public opinion would find it difficult to accept the principle that one person should speak for the whole world. If there was some hesitation over conferring extensive powers on a prosecuting attorney designated by a representative body, there was nothing to prevent the appointment of one or more persons as his assistants.

Article 34 provided for the appointment of an ad hoc prosecuting attorney for each individual case. But the subsidiary organs established by the draft statute - the committing authority and the board of clemency - and the court itself, had a permanent character. The whole statute was marked by the desire for permanence. There was no reason for making an exception to that principle in the case of the prosecuting attorney. The qualifications, competence and activities of the latter being as described in the draft statute, there was no reason why, by contrast with the court's other permanent offices, the prosecuting attorney's should be singled out for treatment as an ad hoc office. Moreover, the prosecutor would have powers equal to those of the committing authority and could either sustain the charge before the court or withdraw the charge. He should therefore have the same status as the committing authority. Finally, it was undesirable that the prosecuting attorney should be appointed in the heat and stress of the moment of the crime which the court would have to try. Such an atmosphere would certainly not be conducive to the development of the international sense of justice spoken of by the Netherlands Government in its comments.

The CHAIRMAN informed the Israel representative that the question whether the prosecuting attorney should be a permanent official of the court or whether he should be chosen for each separate case had been discussed at great length by the 1951 Committee. The Committee had considered that a permanent official might at times, by reason of his nationality, find it awkward to act for the prosecution. For that reason it had decided in favour of the second system.

Mr. DAUTRICOURT (Belgium) thought that the method he had suggested was the simplest. The appointment of a prosecutor by a panel of ten persons was a complicated procedure which would unnecessarily hamper the functioning of the court.

Mr. VALLAT (United Kingdom) wondered whether the Belgian amendment proposed to limit the power to appoint a jurist to act for the prosecution to

a complainant State, in which case it would apply only to the case, referred to in article 29, paragraph (c), where proceedings were instituted by a single State party to the Statute.

The CHAIRMAN thought that the Belgian representative would not object to a modification of his proposal which would make it applicable also to article 29, paragraph (b). It would be enough to replace the words "complainant State" by the words "the complainant or complainants".

Mr. DAUTRICOURT (Belgium) was prepared to agree to a modification of his proposal along the lines suggested by the Chairman, on the understanding that the complainants were invariably States.

Mr. RÖLING (Netherlands) supported the principle behind the Belgian proposal, but thought that any complainant or complainants, including the General Assembly, should have the power to designate the prosecuting official.

Replying to the Israel representative, he agreed that reference was constantly being made to the embryonic state of international criminal law, but that was a fact which had to be taken into account. In the development of national law, the introduction of the office of prosecuting attorney had been the final stage while that of the judicial office had been the first stage in the process. International criminal law had not yet reached the final stage and for the time being it should be left to the State instituting proceedings to explain its charge.

The Israel representative had said that the court's prosecuting attorney should represent the international community. He agreed with that principle but felt that the community spirit was not yet sufficiently far developed to make it possible for the prosecuting attorney to act as spokesman for the world.

The Belgian representative had quoted in support of his proposal the example of the Nürnberg and Tokyo trials where the case for the prosecution had been stated by representatives designated by the complainant States. At Nürnberg there had been four prosecutors representing the numerous complainant States. As a matter of fact certain small nations had expressed anxiety at the way in which the prosecutors, who had not always understood the point of view

of the complainant States, had presented the charge. The precedent of the Nürnberg trials showed how important it was that the complainant State should itself present its charge.

He agreed with the Belgian representative that the procedure envisaged in article 34 was too complicated and would slow up the operation of the court. The Israel representative on an earlier occasion had been opposed to the creation of new organs within the United Nations. He, too, felt that no useful purpose could be served by setting up the panel of ten persons referred to in article 34. The Belgian proposal had the advantage of not requiring the creation of any new organ. The Netherlands would vote in favour of that proposal.

Mr. MENDEZ (Philippines) supported the Belgian proposal. The complainant State was of course best acquainted with the case submitted to the court and the election of a permanent Prosecuting Attorney would impair the flexibility which should be a feature of the international court. But the proposal should be supplemented by a provision granting the prosecuting attorney the privileges of diplomatic immunity. He might otherwise be exposed to threats and attacks, particularly during his travels in connexion with investigations.

Mr. LOOMES (Australia) asked the Belgian representative if he contemplated that the prosecuting attorney might appear before the committing authority as representative of the complainant State.

Mr. MAKTOS (United States of America) recalled that the Geneva Committee had been particularly anxious that the jurist appointed as prosecuting attorney should be absolutely impartial. If he were appointed by the complainant State his ability to make an objective appraisal of the facts would suffer. Moreover, the court would not normally be in the position of the Nürnberg or Tokyo tribunals of having to deal with numerous cases and a host of complainants. The prosecuting

attorney would have no difficulty in comprehending the viewpoint of a complainant State in an isolated case submitted to the court.

Mr. DAUTRICOURT (Belgium), replying to the Australian representative, said that the complainant State would judge for itself whether or not its representative before the committing authority and the prosecuting attorney should be one and the same person. In any case, the two functions would not have to be merged. In reply to the United States representative, he said that the prosecuting attorney would in any case be an eminent jurist whose indictment, in keeping with the dictates of his conscience, would take impartial account of all the circumstances of the case. His function would be different from and greater than that of a mere prosecuting body.

Mr. MENDEZ (Philippines) felt that the United States representative was not distinguishing sufficiently between the prosecution and the defence. Once the prosecuting attorney had become convinced of the guilt of the accused, he had to play the rôle of prosecutor. The accused's rights would not be jeopardized thereby, since arrangements for his defence would be made as provided in article 38. In the final analysis, it was the court which would decide between the prosecution and the defence.

The CHAIRMAN said there might be other methods of designating the prosecuting attorney. For example, if the amendments to article 33 proposed by Belgium were adopted, that important official might conceivably be designated by the committing chamber.

Mr. MARMOR (Israel) said that the problem of a permanent prosecuting attorney, if he were not acceptable to the complainant State in certain cases or found it difficult by reason of his nationality to act for the prosecution, might be solved by a provision similar to that stipulated in article 17, paragraph 2, which spoke of the possibility that a judge might be challenged by a party. By providing for the same procedure in respect of a permanent prosecuting attorney, a good many objections would be met.

The machinery described in article 34 would definitely have to be simplified. Perhaps the prosecuting attorney should be designated by the court itself, or by the committing chamber. Admittedly, as the Netherlands representative had recalled, Mr. Robinson had argued against the excessive increase in the number of United Nations organs. In the present case, however, the organ was the court. Once the setting-up of the Court had been decided upon, that argument should not be relied upon in an attempt to do away with one of that organ's most important parts.

Mr. RÖLING (Netherlands) thought it would be very dangerous to leave it to the court to choose the prosecuting attorney. The court should, to the greatest extent possible, be very clearly separated from the prosecuting attorney and the defence, in order to remove any possible suspicion of influence on the court's part. A prosecuting attorney, whether permanent or ad hoc, would occupy an ambiguous position if he were designated by the court. It would be much simpler if he were selected by the complainant State.

Mr. VALLAT (United Kingdom) felt that the divergencies of viewpoint in the Committee were largely due to the profound differences between the judicial systems of the various countries. In the Anglo-Saxon countries, counsel for the prosecution presented the case quite objectively. He did not try to secure a conviction. If the prosecuting attorney were the complainant's agent he could hardly avoid being influenced by the pressure exerted on him by the latter. It was necessary to make every effort to ensure that the international criminal court applied the same strict rules of impartiality as governed the internal judicial systems of States. It was considerations of that kind that made it difficult for Anglo-Saxon jurists to adopt the Belgian proposals. Mr. Röling had described how the judiciary had developed internally. He had stated that the international judicature was still in its infancy, and that short cuts in its evolution were not desirable. The United Kingdom representative took the view that the defects

of the early stages of the organization of justice should not be perpetuated; originally, in Europe the main object of judicial process had been to protect feudal rights. If any lesson were to be learned from early history, it was the need for power to enforce penalties.

Mr. RÖLING (Netherlands) shared the United Kingdom representative's ideas concerning the prosecuting attorney's functions. That official's duty was, above all, to try to enlighten the court objectively. The fact that he was an agent of the complainant State did not necessarily imply that he would be partial and anxious to secure a conviction at all costs. Ideally, the prosecuting attorney should represent the community. That ideal, however, would not be attainable until some time in the distant future. Meanwhile the best solution was to have the prosecuting attorney designated by the complainant State.

Mr. LOOMES (Australia) thought that the function of enlightening the court on the facts from the point of view of the complainant State, was the responsibility of the complainant's agent before the committing chamber or committing authority. Once the matter had been brought before the court, the prosecuting attorney would assume the role of prosecutor, and should not deviate from the necessary impartiality. It was that double aspect of the two functions which had prompted his earlier question as to the possibility of the agent, before the chamber and the prosecuting attorney, before the court, being one and the same person.

The CHAIRMAN put to the vote the Belgian proposal to replace the first paragraph of article 34 provisionally by the following text:

"A jurist designated by the complainant or complainants shall assume the functions of prosecuting attorney".

The Belgian proposal was adopted by 6 votes to 5, with 3 abstentions.

Mr. MENDEZ (Philippines) referred to his earlier suggestion that the benefit of diplomatic immunity should be extended to the prosecuting attorney. Accordingly, he proposed that a wording modelled on that of article 14 should be adopted.

Mr. DAUTRICOURT (Belgium) thought that the benefit of such immunity should be extended not only to the prosecuting attorney, but also to the members of the committing authority - if that organ were retained in the form at present envisaged - and to those of the board of clemency. It would perhaps be more logical if the entire question were dealt with in one article.

Mr. LOOMES (Australia) asked whether the defence would also enjoy diplomatic immunity.

Mr. LIU (Secretary of the Committee) referred to article 42 of the Statute of the International Court of Justice.

Mr. RÖLING (Netherlands) drew attention to the fact that it would be very undesirable to grant the prosecutor specific rights with respect to diplomatic immunity, and not to grant those rights to the defence.

After an exchange of views in which the Australian, Philippine and United Kingdom representatives took part, the CHAIRMAN suggested that the report should express the Committee's opinion on the question of immunities.

It was so decided.

Mr. MENDEZ (Philippines) thereupon withdrew his proposal.

Article 34, paragraph 2

Mr. MERLE (France) pointed out an error in the French text of the draft statute. The word contestations should certainly read constatations. He felt the opening passage of the paragraph should read: Le procureur saisira la cour d'un acte d'accusation fondé sur les faits établis par le comité, etc. ... ("the Prosecuting Attorney shall file with the Court an indictment of the accused based on the facts established by the Committing Authority, etc. ...").

Mr. GARCIA OLANO (Argentina) pointed out that the term conclusiones used in the Spanish text had neither the meaning of the French word faits nor that of the English word "findings".

The CHAIRMAN, observing that the representatives of the English-speaking countries considered the English text satisfactory, requested the representatives of Argentina, Belgium, France and Peru to work out jointly Spanish and French versions which exactly rendered the sense of the English text, and to propose those versions to the Committee.

Mr. MARMOR (Israel) asked whether, now that the prosecuting attorney would be designated by the complainant State, the costs of the prosecution should still be charged to the joint fund, as provided for in article 23.

Mr. RÖLING (Netherlands) pointed out that article 23 also provided for the reimbursement of the defence costs. There was therefore no difficulty.

The CHAIRMAN stated that the Committee's vote merely implied a change in the method of designating the prosecuting attorney.

The Committee tentatively adopted the English text of article 34, paragraph 2.

Article 33

Mr. DAUTRICOURT (Belgium), introducing his amendment (A/AC.65/L.6), explained that its essential object was to replace the committing authority by a chamber of the court, in other words by a judicial organ which would be a part of the court and whose decisions would be judicial decisions. Hence both titles of Chapter IV and article 33 and the text should speak of a committing "chamber".

The first paragraph of the proposed text provided for five judges (and not three, as he had at first suggested), in deference to the proposal of the United Kingdom representative, who had pointed out at the preceding meeting that the various judicial systems would not be adequately represented in a body of three judges. The election of the members of the chamber by the court was a consequence of the desire expressed in article 10, whilst the stipulation debarring a judge who had taken part in the committal proceedings of a case from adjudicating on the substance of that case ensured the application of the first paragraph of

article 16 and met the Philippine representative's observation that it would not be advisable for a judge to deal with a case on which he had reached a decision before.

In paragraphs 3 and 4 it would be sufficient to replace the word "Authority" by the word "Chamber".

Paragraph 4 introduced the notion of a serious offence so that complaints based on facts which were established but of minor importance were not referred to the court. The legal term ordonnance de renvoi ("commitment order") indicated that a judicial decision having the force of res judicata was involved.

Paragraph 5 meant that since the chamber was a judicial organ it could not give a ruling until both sides had been heard, that it exercised in the matter of investigation the powers vested in the court under article 31, and that on the question of evidence it had to ensure the equality of the accused - an individual - and the complainant - a State.

The proposed amendments to paragraph 6 were logical: since the chamber was an integral part of the court, it followed from article 24 that the court would settle the chamber's rules of procedure.

Mr. MENDEZ (Philippines), whilst approving the general scheme which the Belgian representative had outlined, asked for further particulars of the way in which the chamber's rules of procedure would be established. He feared that the chamber's action might influence the court's decision - in other words, that the investigatory function might usurp a part of the court's prerogatives in adjudicating on the substance of a case.

The CHAIRMAN recalled that most of the members of the 1951 Committee had acknowledged that the best solution would be to entrust the drafting and revision of the court's rules of procedure to the court itself. That was the practice in most countries. The courts decided upon their own procedure quite independently or in conformity with certain general legislative directives. The Belgian representative's proposal was based on that idea. Moreover, the court itself rather than the chamber should settle the procedure, for the chamber's five members would be appointed for one year only.

Mr. DAUTRICOURT (Belgium) said that the Chairman had explained his idea perfectly. The functions of the chamber were perfectly consistent with the general plan of the draft statute.

On the proposal of Mr. GARCIA OLANO (Argentina), the CHAIRMAN requested the Committee to vote on the Belgian proposal paragraph by paragraph.

Mr. MARMOR (Israel) proposed that paragraph 1 of the Belgian proposal should be voted on in two parts. The paragraph introduced two new ideas, firstly, the principle of the creation of a committing chamber not within the framework of the United Nations but as part of the court itself; secondly, the figure of five judges. He would vote in favour of the first point but it would be difficult for him to decide on the second point so long as the question of the number of judges was involved particularly as he intended to propose a different quorum.

The CHAIRMAN explained that the vote would relate solely to the principle and would be purely tentative, particularly with regard to the number of judges. He saw no objection to the Committee's voting separately on each sentence of the Belgian proposal.

Paragraph 1, first sentence

Mr. MERLE (France) thought it would be sufficient to say chaque année instead of annuellement et pour un an.

The CHAIRMAN thought that the term of office of the judges was related to the second sentence of the paragraph. It was therefore not superfluous to state expressly "for one year".

Mr. DAUTRICOURT (Belgium) agreed. He proposed that the French text should read: chaque année et pour un an.

It was so decided.

The Committee tentatively adopted the first sentence of paragraph 1 of the Belgian text by 11 votes to 1, with 3 abstentions.

In explanation of his abstention, Mr. MAKTOS (United States of America) said that he would have preferred the text drafted by the 1951 Committee, for he thought that the committing chamber and the court should be as independent as possible. While in no way impugning the impartiality of the judges of the court, he was afraid lest the election of those judges to a committing chamber might enable the latter to influence the court's decision. Lastly, in certain countries, judges could not be appointed members of an investigating jury. He would have preferred the members of the body responsible for examining the prima facie complaint not to be judges who might be inclined to consider the facts too much from a purely legal viewpoint.

Paragraph 1, second sentence

Mr. DAUTRICOURT (Belgium) explained that the purpose of the text was to ensure that vacancies on the committing chamber would be filled.

The CHAIRMAN observed that the sentence referred to judges whose term of office had expired. The word "retiring" did not express that idea clearly and he requested the Secretariat to see that the English text was brought into line with the French on that point.

In reply to a question by Mr. DAUTRICOURT (Belgium), Mr. MAKTOS (United States of America) said that the drafting sub-committee had agreed that the phrase "committing chamber" was the equivalent of the phrase chambre d'instruction of the French.

The Committee provisionally adopted the second sentence of paragraph 1 of the Belgian text by 14 votes to none, with 1 abstention.

Paragraph 1, third sentence

The Committee provisionally adopted the third sentence of paragraph 1 of the Belgian text by 14 votes to none, with 1 abstention.

Paragraph 2

Mr. VALLAT (United Kingdom) asked that paragraphs 2, 3 and 4 of the Belgian text should be submitted in the form of amendments to the Geneva Committee's text. Although he was not entirely in favour of those paragraphs he would nevertheless be able to vote for an amendment proposing only the substitution of the word "chamber" for the word "authority".

As Mr. DAUTRICOURT (Belgium) saw no objection to that procedure, the CHAIRMAN proposed that the United Kingdom representative's request should be granted.

It was so decided.

The Committee tentatively adopted the text of article 33, paragraph 2, as amended by the Belgian text, by 12 votes to none, with 3 abstentions.

Paragraph 3

Mr. MAURTUA (Peru) thought that paragraphs 2, 3 and 5 which all related to the duties of the committing chamber should be amalgamated.

Mr. ROLING (Netherlands) thought that paragraph 3 was superfluous. It was obvious that the chamber would "examine the evidence offered by the complainant to support the complaint". It would also be more logical to reverse the order of paragraphs 4 and 5.

Mr. GARCIA OLANO (Argentina), supported by Mr. PEREZ PEROZO (Venezuela) and by the CHAIRMAN, pointed out that the Committee was voting only on the principle and he proposed that it should be so left to the drafting sub-committee to make the drafting changes.

The Committee tentatively adopted the text of article 33, paragraph 3, as amended by the Belgian text, by 10 votes to 1, with 3 abstentions.

Paragraph 4

Mr. MAURTUA (Peru) thought that the Belgian text went much too far, for it would be excessive to empower the committing chamber to "order" that a

prosecution should be instituted. The court should remain completely free to accept or reject the complaint.

Mr. ROLING (Netherlands) proposed that the Geneva Committee's wording should be maintained and that the phrase "transmit a commitment order" should be replaced by the words "so certify".

Mr. DAUTRICOURT (Belgium) emphasized that his proposal was broader in scope inasmuch as it transformed the chamber's decision into a judicial decision which brought the issue before the substantive court. He wondered why the Netherlands representative could not support the Belgian text.

Mr. ROLING (Netherlands) explained that in the Geneva Committee's view the essential function of the committing chamber was that it should sift the evidence. He realized that that was a judicial decision inasmuch as the chamber decided whether the evidence offered was sufficient. But it was the duty of the prosecuting attorney to continue the proceedings and the duty of the court to decide the case. The only function of the committing chamber should be to halt the proceedings if it considered that the facts had not been sufficiently established or that they did not justify the inference that a serious offence had been committed. That was why he was in favour of the phrase "so certify".

The CHAIRMAN pointed out that in the countries with an Anglo-Saxon system of law, the grand jury or the magistrate entrusted with examining the case prima facie was only entitled to express an opinion to the court.

Mr. DAUTRICOURT (Belgium) observed that the English term "commitment order" was much stronger than the legal expression "ordonnance de renvoi" which only meant a decision bringing the case before a court.

The CHAIRMAN accordingly proposed that the words "so certify" be inserted in the English text.

Mr. GARCIA OLANO (Argentina) supported by Mr. MAKTOS (United States of America) felt, nevertheless, that it was not merely a question of form and that the Belgian proposal went much farther than the text of the Geneva Committee. At all events, the words "so certify" were the only ones that could be accepted in the English text.

The CHAIRMAN asked what was the precise meaning of the words "serious offence".

Mr. VALLAT (United Kingdom) wished to point out that the word "serious" introduced a completely new factor which would result in the Committing Chamber no longer being asked to give a simple legal opinion on the evidence but also to assess values. He proposed that the Committee should adopt the Geneva text, only replacing the word "Committee" by the word "Chamber".

The CHAIRMAN put to the vote the proposal of the United Kingdom representative.

The Committee tentatively adopted the modified text of paragraph 4 of article 33 by 12 votes to 1, with 1 abstention.

Paragraph 5, sub-paragraph 1

The CHAIRMAN pointed out that in view of the last vote it was advisable, in the English text, to replace the word "order" by the word "certificate".

Mr. MAKTOS (United States of America) was of the opinion that the Committing Chamber should consider only the evidence adduced by the complainant and not the facts adduced by the accused. The judges of the Chamber had only to decide whether there was a prima facie case for the accusation. They were not called upon to institute legal proceedings. The words "and the accused" in the text proposed by the Belgian representative should therefore be deleted, as well as the whole of paragraph 5, which, in so far as it related to the complainant, duplicated paragraph 3.

Mr. MENDEZ (Philippines) wondered how the Chamber could take an impartia decision without having heard the accused.

The CHAIRMAN pointed out that under Anglo-Saxon law, neither the grand jury nor the examining magistrate heard the accused.

Mr. MENDEZ (Philippines) pointed out that in his country the examining magistrate was obliged to hear the accused.

The CHAIRMAN admitted that the 1951 Committee had decided in favour of that solution.

Mr. VALLAT (United Kingdom) emphasized that the fundamental problem at the preliminary sitting was to determine whether the evidence adduced by the complainant justified legal action. It would, however, be reasonable to allow the accused to comment on that evidence, in other words, to adopt the text drafted by the Geneva Committee, except for the words "and to adduce such evidence as he may desire".

Mr. ROLING (Netherlands) said that he was prepared to support that solution.

Mr. DAUTRICOURT (Belgium) reminded the Committee that the main object of his amendment was to hold the scales even between the prosecution and the defence before the Committing Chamber. It seemed to him that the method that would best serve the interests of justice would be to provide for a hearing of both sides each of the parties being entitled to produce all its evidence.

Mr. GARCIA OLANO (Argentina) proposed that the text of the draft statute, which constituted a compromise between the Belgian amendment and the solution proposed by the United Kingdom representative, be adhered to.

Mr. VALLAT (United Kingdom) proposed as an amendment to the Argentine proposal that the words "and to adduce such evidence as he may desire", be deleted.

The CHAIRMAN put the United Kingdom amendment to the vote.

The Committee tentatively adopted, by 7 votes to 4, with 4 abstentions, the text of paragraph 5 of article 33 in the draft statute, as modified by the replacement of the word "Committee" by the word "Chamber" in accordance with the Belgian amendment and by the deletion of the words "and to adduce such evidence s he may desire" in accordance with the United Kingdom amendment.

Paragraph 5, sub-paragraph 2

In reply to a question by Mr. RÖLING (Netherlands), the CHAIRMAN said that in the normal proceedings before a grand jury, the latter could declare the evidence submitted to it to be insufficient or order an additional enquiry. The proposal before the Committee was therefore quite compatible with the procedure applied in the countries under Anglo-Saxon law.

Mr. VALLAT (United Kingdom) pointed out that the above procedure was nc the same as that normally applied in England, but the idea seemed to him reasonab and he would vote for the text proposed.

Mr. MERLE (France) enthusiastically supported the Belgian representative' proposal, which defined the functions of the preliminary investigation and offere an excellent opportunity of combining the Anglo-Saxon and Continental systems of law on the international plane.

Mr. LOOMES (Australia) felt that the proposal would leave too much initiative to the court, which should simply be able to call upon the complainant to prove his allegations; the onus of proof should rest on the complainant or prosecutor. The court should not undertake to provide such proof itself. He would abstain from voting.

Mr. DAUTRICOURT (Belgium) stressed that the aim of the proposed provision was also to restore the balance between the complainant, which was a State, and which had every facility for collecting evidence, and the accused, who was an individual. It was possible, moreover, that the parties might withhold some relevant evidence. The court should have power to call for the submission of that evidence.

Mr. MENDEZ (Philippines) said that if the Chamber considered the evidence submitted to it to be insufficient, it should confine itself to stopping the action.

The Committee tentatively adopted sub-paragraph 2 of paragraph 5 of the Belgian amendment by 8 votes to 1, with 6 abstentions.

Paragraph 5, sub-paragraph 3

The CHAIRMAN suggested to the Belgian representative that, as an improvement in the English text of sub-paragraph 3 of paragraph 5, the word "it" in the first line of the English version be replaced by the words "the Chamber". The French text could no doubt be modified in the same way.

Mr. DAUTRICOURT (Belgium) accepted this drafting amendment.

Mr. GARCIA OLANO (Argentina) considered that it was unnecessary to repeat for the Committing Chamber the provision which already appeared in article 31, paragraph 1, since the Chamber was an integral part of the court.

Mr. MAKTOS (United States of America) shared the opinion of the Argentine representative. If this provision were repeated in article 33, there was no reason for not repeating it elsewhere.

The CHAIRMAN observed that if the Chamber was a part of the court, the comment of the Argentine representative was a pertinent one. However, if that was not an established fact, it was better to repeat for the Committing Chamber the same provisions as for the court with regard to the assistance of the national authorities.

Mr. GARCIA OLANO (Argentina) said that in that case it was desirable to define the nature of the Chamber.

Mr. ROLING (Netherlands) proposed that in order to avoid any misunderstanding the words "including the Committing Chamber" should be added to

paragraph 1 of article 31, after the words "the Court". Thus sub-paragraph 3 of paragraph 5 of the Belgian proposal would become unnecessary.

Mr. DAUTRICOURT (Belgium) agreed to delete sub-paragraph 3 of paragraph 5 of his amendment provided that paragraph 1 of article 31 was amended as indicated by the Netherlands representative.

The CHAIRMAN put to the vote the verbal amendment of the Netherlands representative to paragraph 1 of article 31, namely that the words "including the Chamber" be added after the words "the Court".

The amendment was adopted by 10 votes to none, with 4 abstentions.

Paragraph 6

The CHAIRMAN put to the vote the text of paragraph 6 of the Belgian amendment to article 33.

The text of paragraph 6 of the Belgian amendment to article 33 was adopted by 13 votes to none, with 2 abstentions.

The meeting rose at 5.45 p.m.