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COMMITTEE ON INTERNATIONAL CRIMINAL JURISDICTION

First Session

SUMMARY RECORD OF THE TWENTY-THIRD MEETING

held at the Palais des Nations, Geneva,
on Friday, 24 August 1951, at 9 a.m.

CONTENTS:

Present:

Chairman:	Mr. MORRIS
Members:	
Australia	Mr. WYNES
China	Mr. WANG
Cuba	Mr. VALDES ROIG
Denmark	Mr. SÖRENSEN
Egypt	MOSTAFA Bey
France	Mr. de LACHARRIÈRE
Israel	Mr. ROBINSON
Netherlands	Mr. RÖLING
Pakistan	Mr. MUNIR
Syria	Mr. TARAZI
United Kingdom of Great Britain and Northern Ireland	Mr. JONES Mr. TURNER
United States of America	Mr. MAKTOS
Uruguay	Mr. PINEYRO CHAIN

Secretariat:

Mr. Liang	Secretary to the Committee

ORGANIZATION OF AN INTERNATIONAL CRIMINAL COURT:

Chapter I of annex II to the Secretary-General's memorandum (continued) (A/AC.48/1, A/AC.48/L.9, A/AC.48/L.3)

Article 2

1. The CHAIRMAN requested the Committee to resume its consideration of Chapter I of annex II to the Secretary-General's memorandum.

2. Mr. SÖRENSEN (Denmark), Rapporteur, explained that article 2 dealt with the question of whether there should be deputy judges in addition to ordinary judges, and also with that of the number of judges of which the court should consist. He would propose, in his personal capacity, that as, in his view, deputy judges were not necessary, no provision for them should be made in the statute. He also proposed that, bearing in mind the general wish of the Committee that their number should not be too large but that the court should be representative of the various legal systems of the world, there should be nine judges of the court.

It was unanimously agreed that no provision should be made in the statute in respect of deputy judges.

The Danish representative's proposal that the court should consist of nine judges was adopted by 9 votes to none with 2 abstentions.

Article 3

3. Mr. SÖRENSEN (Denmark), said that, as the principles laid down in article 3 were generally accepted, he would propose its adoption, as it stood.

Paragraph 1 of article 3 was unanimously adopted.

Paragraph 2 of article 3 was unanimously adopted.

Article 4

4. Mr. SÖRENSEN (Denmark) proposed that paragraph 1 of article 4, being a straightforward provision, should be adopted as it stood.

Paragraph 1 of article 4 was unanimously adopted.

5. Mr. SÖRENSEN (Denmark) pointed out that the alternative texts for paragraph 3 were based on the assumption that one of the alternatives for article 1 would be adopted. In view of the Committee's decision on article 1, however, paragraph 3 should be deleted[1].

The deletion of paragraph 3 of article 4 was unanimously approved.

6. Mr. SÖRENSEN (Denmark) saw little difference between the two alternative texts for paragraph 2. In his view, the alternative in the right-hand column was unnecessarily complicated and, in fact, amounted to nothing more than the provision in the left-hand column, since, in the majority of cases, a national group appointed by a government would give effect to the wishes of that government. Moreover, the adoption of the second procedure would entail provision in respect of the setting up of a national group in those countries which were not represented on the Permanent Court of Arbitration. He preferred the more simple procedure provided for in the text in the left-hand column, and moved its adoption.

7. Mr. MAKTOS (United States of America) was in favour of extending the right of nominating candidates to all States Members of the United Nations.

8. The CHAIRMAN believed that such extension would tend to enhance world interest in the court.

9. Mr. SÖRENSEN (Denmark) submitted that the issue turned on a question of policy, which would again come into play in connexion with the election of judges.

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1) Summary record of the 22nd meeting (A/AC.48/SR.22), paragraph 86.

The extension of the right to nominate candidates to all States Members of the United Nations would give an opportunity to such of those States as opposed in principle the establishment of the court. to nominate candidates and to participate in the election of its members, and thus to have an unjustified and possibly adverse influence on its composition. That, in his view, would not be desirable. The creation of the court by international convention would mean that it would be set up by a group of States Members and possibly non-members of the United Nations, and he believed that that principle, now that it had been adopted, should be retained throughout the statute.

10. Mr. ROBINSON (Israel), supporting the Danish representative, said that there were two further objections to the United States proposal. First, States might well be reluctant to sign the convention establishing the court if the cardinal right of electing its judges could be exercised by States which were not parties to that convention. Secondly, it was questionable whether the General Assembly, whose powers were not unlimited, could secure the authority to elect the judges of a court which had been created both by Member States and by non-member States of the United Nations. The precedent created on the occasion of the signing of the Paris Peace Treaties, when the Secretary-General of the United Nations had been given the power to appoint a third member to certain commissions[1] could not be taken as a guide because all the great Powers negotiating those treaties had also been Members of the United Nations, and thus had felt no need to oppose the power given to the Secretary-General.

11. Mr. LIANG, Secretary to the Committee, drew attention to the precedent created when the Permanent Court of International Justice had been established by a separate convention which had vested the power of electing the judges of that Court in the League of Nations. In his view, when it came to the question of electing judges to the international criminal court, there would be no objection to entrusting that election to organs of the United Nations, especially if the convention setting up the court was adopted by the General Assembly.

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1) Treaty of Peace with Bulgaria, Article 36; with Finland, Article 35; with Hungary, Article 40; with Italy, Article 83; and with Romania, Article 38.

12. Mr. ROBINSON (Israel) contended that the precedent mentioned by the Secretary was not a good guide. The Permanent Court of International Justice had been established under article 14 of the Covenant of the League of Nations, but the Charter of the United Nations contained no provision under which an international criminal court could be set up.

13. Mr. MAKTOS (United States of America) said that in his view the answer to the first objection raised by the Israeli representative was that the General Assembly would be authorized to elect the judges of the court by the convention setting up that court, and that the General Assembly was perfectly entitled to accept such a mandate from States. As to the reluctance of States to sign a convention creating the court because of the participation in the election of its judges of States which had not adhered to the convention, it was to him unthinkable that States which were really anxious to see such a court established would be deterred from acceding to its statute for the mere reason that non-participating States had taken part in the election of its judges.

14. As for the Danish representative's comment that the adoption of the United States amendment would make it possible for certain States to exercise an undesirable influence on the composition of the court, he believed that the General Assembly as a whole could be relied upon to reduce such influence to a minimum. He therefore, urged the adoption of his amendment.

15. Mr. WYNES (Australia) said that, taking everything into consideration, he preferred the alternative text in the right-hand column, that was to say, the system devised for the election of judges to the International Court of Justice.

16. Mr. de LACHARRIÈRE (France) expressed agreement with the arguments put forward by the representatives of Denmark and of Israel.

17. The Committee's decision that the court should be set up by convention, would entail the formation of a freely-constituted community of States distinct from the United Nations which, though perhaps of more limited membership than

the latter, could include States which were not members of the United Nations. It was particularly desirable that certain major European states, such as Germany and Italy, should be able to play a part in international affairs.

18. That being so, it was necessary to stress the independent nature of the statute of the court and the fact that acceptance of it would be a voluntary act on the part of States. It would therefore be regrettable if a majority of the United Nations was given any part to play in the functioning of the court and indeed, the imposition on a minority of the decisions of the majority of the United Nations would be a failure to respect the conventional character of the statute.

19. Moreover, if the nomination of candidates for appointment to judgeships was entrusted to the General Assembly, there would be a danger of providing those States Members of the United Nations which rejected the very principle of the international court with repeated opportunities of re-opening the whole discussion, thereby undermining the prestige and authority of the court. Both on psychological and on moral grounds, the General Assembly should play no part in nominating candidates. It would be most unusual to make it obligatory for States which did not accept the very principle of the court to participate in its functioning.

20. Mr. WANG (China) said that he had the impression that in the course of the discussion the emphasis had shifted from the United States proposal that both States parties to the convention and States Members of the United Nations but non-parties to the convention should be entitled to submit the names of candidates, to the idea that the General Assembly and the Security Council should be entrusted with the task. The latter suggestion was an entirely different matter. As to the United States proposal itself, he considered that to allow States non-parties to the convention to take part in the nomination of judges would be a revolutionary step for which there was practically no precedent.

21. The CHAIRMAN in the absence of further comment put to the vote the United States proposal that the right of nominating candidates for judgeships should be extended to all States Members of the United Nations.

The United States proposal was rejected by 8 votes to 2 with 3 abstentions.

22. On the proposal of Mr. WYNES (Australia), the CHAIRMAN next put to the vote the alternative text in the right-hand column, for paragraph 2 of article 4.

That text was rejected by 7 votes to 2 with 4 abstentions.

23. The CHAIRMAN put to the vote the Danish representative's proposal that the alternative text in the left-hand column, for paragraph 2 of article 4, should be adopted.

The Danish representative's proposal was adopted by 6 votes to none with 7 abstentions.

24. Mr. SÖRENSEN (Denmark) said that as the alternative text for paragraph 2 of article 4 in the right-hand column had been rejected, the alternative text for paragraph 4 in the right-hand column could also be ruled out. The other text for paragraph 4 was identical with Article 6 of the Statute of the International Court of Justice, the terms of which he did not consider in any way objectionable, although he would not go into the question of whether they had served a useful purpose. He therefore moved the adoption of paragraph 4 as set out in the left-hand column.

25. Mr. WANG (China), supported by Mr. RÖLING (Netherlands) and Mr. MAKTOS (United States of America) submitted that, even though such a text appeared in the Statute of the International Court of Justice, it had no real significance, and therefore proposed its deletion.

26. Mr. SÖRENSEN (Denmark) withdrew his proposal.

It was unanimously agreed that paragraph 4 of article 4 should be deleted.

Article 5

27. Mr. SÖRENSEN (Denmark) considered that it would be useful if the Secretary-General were to issue a reminder to governments, as provided for in

article 5, and therefore moved the adoption of the latter. The phrase "National groups", enclosed in square brackets, would not, of course, be retained, in view of the decision taken on article 4.

28. Mr. LIANG, Secretary to the Committee, pointed out that article 5 not only provided for a reminder to governments, but also marked the actual initiation of the process of election of judges.

29. The CHAIRMAN, speaking as a representative of the United States of America, proposed that the article should begin with a paragraph to the effect that the date of the election of judges should be determined by the Secretary-General.

The United States proposal was adopted by 9 votes to none with 3 abstentions.

30. Mr. ROBINSON (Israel) did not believe that the right of addressing a request to governments and inviting them to undertake the nomination of candidates could be conferred upon the Secretary-General by a statute of the court.

31. Mr. LIANG, Secretary to the Committee, said that the Secretary-General would be authorized to discharge such a function if the convention conferring that assignment were adopted by or under the auspices of the General Assembly. The Secretary-General would not, of course, have such authority if the convention were not concluded under the auspices of the General Assembly.

32. Mr. MAKTOS (United States of America), believed that the Secretary-General could perform such a function by the very fact that the Charter provided that one of the objects of the United Nations was to improve international law and also because the General Assembly had, by a resolution, requested the Committee to prepare a draft statute for an international criminal court.

33. The CHAIRMAN put to the vote the text of article 5, which would become paragraph 2 of that article, recalling that the phrase "national groups" within square brackets would be dropped, and that the word "Governments" in the second line should read "States".

The text of article 5 as amended was adopted by 9 votes to 1 with 3 abstentions.

Article 6

34. Mr. SÖRENSEN (Denmark) suggested that the fate of the phrase in paragraph 1 reading "save as provided in article 10" should be left in abeyance until article 10 had been dealt with.

It was so agreed.

35. Mr. SÖRENSEN (Denmark) considered that article 6 as a whole was of an administrative character, and moved its adoption.

36. Mr. PINEYRO CHAIN (Uruguay), observing that he had abstained from voting on article 4, said he considered that a mixed system should be used in drawing up the list of candidates for judgeships.

37. The Committee, by its decision that the court should be established solely by international convention, had severed an important link with the United Nations and, indeed, by that severance, had to some extent deprived of their logical basis the various functions to be entrusted under the statute to the General Assembly. Provision must none the less be made for such functions in order to strengthen the authority of the court.

38. He accordingly proposed that the Secretary-General of the United Nations should be given the right, when drawing up the list of candidates, to add, after consulting the international academies devoted to the study of international law mentioned in paragraph 4 of article 4, the names of not more than five persons.

39. In that way, the body called upon to elect the judges would be provided with a means of forming a court offering greater guarantees of impartiality to all States, including those which, while not parties to the convention might be led to accede to it subsequently.

The amendment proposed by the Uruguayan representative was adopted by 3 votes to 1 with 8 abstentions.

40. The CHAIRMAN proposed to put paragraph 1, as amended, to the vote.

41. Mr. RÖLING (Netherlands) felt some difficulty in voting on paragraph 1 as amended. It should be noted that the Uruguayan amendment had secured only three votes. In his opinion the amendment created undesirable possibilities. As already agreed, the court would consist of nine members, and it did not seem right that it should be possible for five of them to be elected upon nomination by the Secretary-General.

42. Replying to a suggestion that a reconsideration of the matter could only be decided by a two-thirds majority of the Committee, Mr. MAKTOS (United States of America) said that he had been momentarily absent from the meeting when the vote in question had been taken. In his view, the adoption of the Uruguayan amendment was inconsistent with the decision taken on article 4. Consideration must also be given to the possibility of a Secretary-General being a national of a State opposed to the establishment of the court.

43. In all the circumstances it might be advisable for the Committee to remain faithful to its practice of not being over-formal in its voting procedure, especially as its decisions were still tentative, and to reconsider the matter.

44. Mr. de LACHARRIÈRE (France) thought that it did not necessarily follow, at least so far as administrative questions were concerned, that because the community of States on which the court would be based was to be distinct from the United Nations, the Secretary-General should be given no functions at all. Before international organs came into being, it was usual for one of the States party to the convention to assume the essential administrative functions. At the present time it was the normal thing to entrust such tasks to the Secretary-General of the United Nations, just as it had been normal, in the days of the League of Nations, to entrust such tasks to its Secretary-General, in order to avoid the expense of setting up a special administrative machine each time a convention brought a new international community into being.

45. The power of submitting candidates for seats on the bench of the court would, however, commit the Secretary-General politically, and would be going beyond the limits of purely administrative functions. It was for that reason that he had abstained from voting on the amendment submitted by the representative of Uruguay.

46. Mr. PINEYRO CHAIN (Uruguay) said that he would have no objection to the discussion being re-opened.

47. It was, however, essential to ensure the impartiality, prestige and authority of the court even in the eyes of those States which were not parties to the convention, by including in the list of candidates for the court, nationals of States other than those parties to the convention, with a view to encouraging such States to accede thereto.

48. It was in order to facilitate universal accession to the convention that he had suggested adding to the list of candidates a few names of acknowledged experts, selected by an organ of the United Nations. In his amendment, as in article 6 as originally drafted, the organ envisaged was the Secretary-General; it seemed unduly cumbersome, and indeed pointless, to entrust such nominations to the General Assembly or the Security Council. He maintained his amendment.

49. Several members having associated themselves with the United States representative, the CHAIRMAN proposed that in the light of the Uruguayan representative's readiness to accept a second vote on his amendment, and in the light of the general understanding that the voting procedure on provisional decisions need not be too formal, the rules of procedure could be set aside in the present instance and a second vote taken on the Uruguayan amendment.

It was so agreed.

On being put to the vote for a second time, the Uruguayan amendment was rejected by 7 votes to 3 with 3 abstentions.

50. The CHAIRMAN put paragraph 1 of article 6 to the vote.

Paragraph 1 of article 6 was adopted by 8 votes to 1 with 3 abstentions.

Paragraph 2 of article 6 was unanimously adopted.

Article 7

51. Mr. SÖRENSEN (Denmark) stated that article 7 reproduced the principle embodied in Article 9 of the Statute of the International Court of Justice. That principle was generally accepted, the only objection that might conceivably be raised being that some of the principal legal systems of the world might not be represented among the States signatories to the convention setting up the court. As, however, the election of judges would be carried out only on the basis of the list of candidates submitted by the States parties to the convention that objection might not be so important as appeared at first sight.

52. Mr. JONES (United Kingdom) said that his delegation had abstained from voting on all the articles relating to the judges of the court, because it had been unable to visualize the arrangement as a whole. So far as article 7 was concerned, he believed that it would have to be literally interpreted and that, as a consequence, all the principal legal systems of the world would have to be represented in the election of judges. That provision seemed to him to be extremely wide, and by no means easy to carry out.

53. Mr. MUNIR (Pakistan) considered that article 7 should be deleted, arguing that it was out of place to give electors directions as to how they should vote.

54. Mr. ROBINSON (Israel) supported the Pakistani representative. The provision in the Statute of the International Court of Justice on which article 7 was based had now lost all meaning. For one thing, it would be impossible to ascertain whether or not electors had borne such considerations in mind; and again, revolutionary changes had taken place in various parts of the world since the Statute of the Permanent Court of International Justice had been adopted in

1920, so that it was more difficult to determine what were the main forms of civilization and what were the principal legal systems of the world.

55. Mr. de LACHARRIÈRE (France) said that, while he understood the criticisms of article 7, he considered them too severe. The terms of the article had been borrowed from the Statute of the International Court of Justice which, in its turn, had taken them from the Statute of the Permanent Court of International Justice. They had been framed at the time in order to avoid the more usual expression "equitable geographical distribution". As the judges in question were "denationalized" judges a less precise formula had been preferred, but one which also stressed the need for maintaining a certain balance in the composition of the Permanent Court of International Justice.

56. In his view, such a provision was fully justified if it were inserted merely for guidance. In international organs the need was felt for at least an approximate balance.

57. He therefore proposed the adoption of article 7, subject to the substitution of the words "shall as a body include as far as possible," for the words "shall as a body include". That less emphatic formula would indicate that the rule in question could not be fully applied if only a few States ratified the convention.

58. Mr. RÖLING (Netherlands) agreed with the French representative that such an organ as the court should represent the different legal systems of the world; but that was only the case where the organ represented the whole world. The Committee had decided that the Court should be established by convention, and as a result no one could know in advance what legal systems would be represented. Consequently, he must adhere to his view that it was not possible to retain the recommendation that the court should represent the principal legal systems of the world.

59. Mr. TABANI (Syria) proposed the substitution of the words "States parties to the present Convention" for the word "world", at the end of article 7.

60. That formula would bring article 7 into harmony with the decisions previously adopted by the Committee. Since the court would not be a universal organ, it would have to be considered as an organ regulating the relations between the States parties to the convention.

61. Mr. MAKTOS (United States of America) observed with regret that the Committee was drifting still further from the original concept of universality. While he fully agreed with the Netherlands representative, he believed that in the circumstances the best plan would be to adopt the Pakistani representative's proposal that article 7 be deleted.

62. Mr. PINEYRO CHAIN (Uruguay) thought that article 7 should be deleted for the practical reason mentioned by the Netherlands representative, namely, that the Committee did not know whether the number of accessions to the convention would give it a sufficiently universal character. It should also be pointed out that there would be more justification for the provisions of article 7 if the organ to be created was a legislative organ, or one responsible for interpreting an obscure unwritten law. The international criminal court would, on the contrary, have to interpret a particularly clear written law, so that the additional precaution proposed was superfluous.

63. Mr. SÖRENSEN (Denmark) submitted that the Committee's discussions on the question of the court's procedure had brought out that representation on the court of the principal legal systems of the world would be desirable. He adhered to that view, and considered article 7 to be necessary in order to ensure that no one legal system predominated. He would therefore urge the retention of article 7, but would accept the French amendment, for the inclusion of the words "as far as possible" would imply that there could be a limitation to the extent of representation of the main forms of civilization and of the existing principal legal systems of the world, due to the restrictive character of the list of candidates. The French amendment covered the Syrian proposal, and was a better way of expressing it.

64. The CHAIRMAN put to the vote the suggestion that the words "as far as possible" should be inserted after the words "to be elected shall" in article 7.

65. Mr. ROBINSON (Israel), speaking to a point of order, submitted that the Pakistani proposal that article 7 be deleted was the farthest removed from the original text, and should therefore be voted on first.

66. The CHAIRMAN ruled that the French amendment should be put to the vote first.

67. Mr. ROBINSON (Israel) challenged the ruling from the Chair.

The Israeli challenge to the Chairman's ruling was upheld by 7 votes to 1.

68. The CHAIRMAN put to the vote the Pakistani proposal that article 7 be deleted.

69. Mr. MAKTOS (United States of America) said that, although he had earlier expressed the view that it might be advisable to delete article 7, he now felt that the French amendment should meet with general approval. He would, therefore, vote in favour of it.

The Pakistani proposal for the deletion of article 7 was rejected by 6 votes to 4 with 2 abstentions.

70. Mr. TARAZI (Syria) withdrew his proposal in favour of the French amendment.

71. The CHAIRMAN put the French amendment to the vote.

The French amendment to article 7 was adopted by 6 votes to none with 7 abstentions.

Article 7, as amended, was adopted by 7 votes to none with 6 abstentions.

Article 8

72. Mr. SÖRENSEN (Denmark) said that six possible methods of electing the judges of the court were set out in article 8, although even that was probably not

an exhaustive list. The first method suggested was election by absolute majority of the General Assembly; the second election by absolute majority of the General Assembly, provided that such majority included three of the five permanent members of the Security Council; the third, election by the General Assembly by a two-thirds majority; the fourth, election by the General Assembly and the Security Council provided there was an absolute majority in each of those organs; the fifth, (second paragraph in column four of the English text), election by the International Court of Justice by an absolute majority and the last method was; election by an electoral college consisting of representatives of States parties to the convention, also by an absolute majority. Perhaps the simplest method of dealing with the problem would be to decide first as between election by United Nations bodies and election by an electoral college. Personally, he proposed that the sixth method be adopted. The substance of the matter had been discussed when the Committee had dealt with the question of the nomination of candidates, and he would not repeat the arguments then adduced.

73. Mr. WYNES (Australia) said that, having regard to the view that the court should be closely linked with the United Nations, it would be preferable for judges to be elected by a United Nations body. He had on several occasions declared his preference for the establishment of the court by amendment of the Charter of the United Nations, but well appreciated the practical difficulties in the way of such a method, for the time being. Nevertheless, he would urge, in the event of the adoption of the Danish proposal that the judges be elected by an electoral college, that the Committee should still express in its report its view with regard to the election of judges by a United Nations body, in anticipation of the possible rejection, when the matter came before the General Assembly, of the Committee's recommendation that the court should be established by an international convention in favour either of its establishment by amendment of the Charter or by General Assembly resolution.

74. Replying to the CHAIRMAN, he confirmed his readiness to have that point dealt with after the Danish proposal had been disposed of.

75. Mr. MAKTOS (United States of America) said he could hardly share the view of the Danish representative that the same arguments applied to the election of the judges as applied to the nomination of candidates. States would know that they alone were empowered to nominate candidates so far as election of judges was concerned. If the General Assembly approved the convention setting up the court, the court would become an organ of the United Nations. At a later stage, his delegation would propose that States parties to that convention and the United Nations should share the expenses of the court, and he could well visualize the possibility of the Fifth Committee of the General Assembly declining to make funds available unless an organ of the United Nations had been empowered to elect the judges. Again, abandonment of the principle of universality in the election of judges would not enhance the dignity of the court. To give effect to all that he had in mind, he would propose that the first method, namely, election by absolute majority, of the General Assembly should be adopted, and that the text in the first column of article 8 be expanded by the insertion after the words "United Nations" of the words:

"meeting with representatives of States not members of the United Nations but which are parties to this Convention".

76. Mr. TARAZI (Syria) considered that the United States amendment should be examined from the point of view of its compatibility with the Charter of the United Nations. The aim of that amendment was to create a college comprising the General Assembly and representatives of non-member States of the United Nations to elect the judges. But it was explicitly stipulated in Article 9 of the Charter that the General Assembly should consist of all the Members of the United Nations. By providing that other States should join the General Assembly for the purpose of electing the judges the Committee would be departing from the provisions of the Charter.

77. Mr. LIANG, Secretary to the Committee, recalled that Switzerland had participated in the election of judges of the International Court of Justice, although Switzerland had not been a member of the United Nations. On that precedent, it would not be out of place to legislate for the election of judges

by the General Assembly in conjunction with States parties to the convention setting up the court.

The meeting was suspended at 11 a.m. and was resumed at 11.15 a.m.

78. Mr. WANG (China) supported the idea underlying the United States amendment, but wondered whether any constitutional difficulties would arise as a result of the Committee's decision to establish the court by international convention.

79. Mr. MAKTOS (United States of America) explained that there could be no objection to the court being established by international convention approved by the General Assembly. There were precedents for such a course of action.

80. Mr. de LaCHARRIÈRE (France) considered that the United States proposal that the judges be elected by a joint meeting of the General Assembly and States not members of the United Nations but parties to the convention setting up the court, would be acceptable provided that all members of the General Assembly took part in the election. In practice, however, there would be some difficulties. How, for instance, were States that refused to accept the principle of the establishment of an international criminal court, to be induced to assist in the election of the members of such a court? The representatives of such States would not fail, in the General Assembly, to make use of such occasions to voice criticisms of the court, with consequent impairment of its authority. Hence he considered that it would be preferable to provide that only States parties to the convention establishing the court should nominate candidates for appointment as judges and actually elect the members of the court.

81. The CHAIRMAN put to the vote the United States amendment to the first text for article 8.

The United States amendment was rejected by 5 votes to 2 with 6 abstentions.

82. The CHAIRMAN, turning to the Danish proposal that the Committee should adopt the last text for article 8, suggested that the words "an electoral college consisting of" might be deleted.

83. Mr. SÖRENSEN (Denmark) considered it necessary to state specifically that the judges would be elected at a meeting of the representatives of the various States, and not by correspondence.

Paragraph 1 (in the last column) of article 8, was adopted by 5 votes to 1 with 7 abstentions.

84. Mr. SÖRENSEN (Denmark) proposed the adoption of paragraph 2 in the last column of article 8, subject to drafting changes in the light of the decision already taken by the Committee with regard to the date of the elections.

Paragraph 2 (in the last column) of article 8 was adopted by 5 votes to none with 8 abstentions, subject to such drafting changes.

85. Mr. WYNES (Australia) in view of the decision the Committee had just taken moved that:

> "it be stated in the Rapporteur's report that, if the General Assembly should decide that the proposed court be created by the United Nations, election of the judges should be by the General Assembly and the Security Council, as set forth in the Statute of the International Court of Justice",

the part of the Statute concerned being article 8 et seq.

86. The CHAIRMAN suggested that the words "and the Security Council" be deleted, since he felt it would be preferable for the judges of the international criminal court to be elected by the General Assembly alone.

87. Mr. RÖLING (Netherlands) felt that, should the event the Australian representative had in mind come to pass, the idea previously advocated by the United States representative might be appropriate, namely, that the judges should be elected by the General Assembly and States parties to the convention which were not members of the United Nations.

88. Mr. MAKTOS (United States of America) agreed with the previous two speakers and considered that, if the Security Council were also to be concerned in the election of the judges, the election machinery might prove rather cumbersome.

89. Mr. TARAZI (Syria), speaking to a point of order, asked whether the Australian proposal constituted a formal motion on which the Committee would have to vote, or whether it was merely a request that the proposed text should be included in the Committee's report.

90. The CHAIRMAN explained that the text would be included in the report drawn up by the Rapporteur.

91. He then put to the vote his suggestion that the words "and the Security Council" be deleted from the Australian proposal.

The Chairman's proposal was adopted by 7 votes to none with 6 abstentions.

It was unanimously agreed that the Australian representative's text, as amended, should be included in the Rapporteur's report.

Article 9

92. Mr. SÖRENSEN (Denmark) pointed out that article 9 was identical in substance with Article 10, paragraph 3, of the Statute of the International Court of Justice.

Article 9 was adopted without discussion.

Article 10

93. The CHAIRMAN observed that article 10 of the Secretariat's draft would be deleted as a consequential amendment to the decision which had been taken on the method of election of the judges.[1)]

Article 11

94. Mr. SÖRENSEN (Denmark) explained that paragraph 1 of article 11 provided for the terms of office and for re-election of the judges.

The principle of re-election laid down in paragraph 1 of article 11 was approved without discussion.

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1) See paragraph 84 above.

95. Mr. RÖLING (Netherlands) said the possibility could be envisaged of the convention establishing the international criminal court being initially ratified by a single group of States representative of a single legal system. In such a case, countries later wishing to accede to the convention might, if the judges were elected for too long a period, be dissuaded from doing so simply because their legal systems were not represented in the court.

96. Mr. MAKTOS (United States of America) suggested that the terms of office of the judges should be staggered in the manner indicated in paragraph 1 of Article 13 of the Statute of the International Court of Justice, which, he suggested, might be adopted with appropriate modifications, the number of judges retiring at the end of three and six years being reduced from five to three.

The United States proposal was adopted by 7 votes to none with 5 abstentions.

97. Mr. MAKTOS (United States of America) said that, with the adoption of paragraph 1 of Article 13 of the Statute of the International Court of Justice, the remaining paragraphs (2, 3 and 4) of that article should also be adopted.

98. Mr. SÖRENSEN (Denmark) pointed out that paragraphs 3 and 4 of Article 13 of the Statute of the International Court of Justice were identical with paragraphs 2 and 3 of the Secretariat's draft for article 11. Paragraph 2 of Article 13 merely provided a useful mechanism for the election of judges whose terms expired at the end of the initial periods of office.

99. The CHAIRMAN put to the vote the United States proposal that paragraphs 2, 3 and 4 of Article 13 of the Statute of the International Court of Justice be adopted in place of paragraphs 2 and 3 of article 11 of the Secretariat's text.

The United States proposal was adopted by 8 votes to 1 with 3 abstentions.

Article 12

100. Mr. SÖRENSEN (Denmark) indicated that article 12 was modelled on Article 14 of the Statute of the International Court of Justice. He pointed out

that in view of the Committee's decision with regard to an electoral college, the alternative text suggested would have to be adopted, the last part of the article reading: "issue the invitations provided for in article 5 and fix the date of the election and convene the college".

Article 12, with the amendment suggested by the Rapporteur, was approved without discussion.

Article 13

101. Mr. SÖRENSEN (Denmark) indicated that article 13 was identical with Article 15 of the Statute of the International Court of Justice.

Article 13 was adopted without discussion.

Article 13A (A/AC.48/L.13)

102. Mr. MAKTOS (United States of America), introducing his proposed new article 13A (A/AC.48/L.13), said that, in his opinion, the judges should not be required to give up their professional activities, since, for reasons of economy, they would not be paid a full salary as judges of the court. On the other hand, their occupations should not be allowed to interfere with their duties as judges of the court.

103. In reply to questions from Mr. RÖLING (Netherlands) and Mr. PINEYRO CHAIN (Uruguay), he explained that, whereas Article 16 of the Statute of the International Court of Justice debarred judges from engaging in any professional activity, his own proposal was intended to prevent members of the court from engaging in such occupations as would interfere with their judicial duties as members of the court. It was not his intention to exclude any specific occupations, or to prevent professional men from being deprived of such opportunities as were offered them. Should a judge be unable to attend a session of the court for some professional reason at any given time, there might be no objection; it was only in the event of his attendance being prevented on several occasions that the president might call for his resignation. It was essential

that the judges should realize that their other occupations must be subordinated to their duties as members of the court.

The United States proposal for a new article 13A was approved without objection.

Article 14

104. Mr. SÖRENSEN (Denmark) indicated that article 14 was identical in substance with Article 17, paragraphs 2 and 3, of the Statute of the International Court of Justice, but the wording had been made rather more concise.

Article 14 was adopted without objection

Article 15

105. Mr. SÖRENSEN (Denmark) explained that article 15 was identical with Article 24 of the Statute of the International Court of Justice.

106. Mr. TARAZI (Syria) considered that the principle that parties should have the right to challenge a judge should be included in the court's statute. The court would rule on the challenge, and might even inflict a fine on the party in question should it consider the reasons for the challenge inadequate. The principle of challenging a judge was recognized by almost all legal systems, and it was desirable that it should be included in the statute of the court. The only reason why it had not been included in the Statute of the International Court of Justice was that that Court had no criminal jurisdiction.

107. Mr. RÖLING (Netherlands) supported the Syrian representative's proposal, especially since the ri ht to challenge a judge had been refused by the Nuremberg and Tokyo Military Tribunals.

108. Mr. de LACHARRIÈRE (France) said that the Syrian representative had raised a very interesting and very important question. In criminal jurisdiction, the right to challenge a judge was a fundamental safeguard for the defence. The

reason why the Statute of the International Court of Justice made no provision for the exercise of that right was the one mentioned by the Syrian representative, but also because in the sphere of international law judges were more strictly bound by their judicial opinion. In the case of a judge having to pronounce a criminal sentence, he would be bound to take into account a number of personal and emotional factors. Hence the necessity for criminal jurisdiction to recognize the principle of challenge of judges.

109. However, the Syrian representative had surely gone beyond the ordinary concept of challenge. The continental legal system allowed the parties complete freedom to challenge a judge without giving any reasons for doing so. If it were decided that the court was competent to assess the reasons, it would raise certain difficulties. It was often embarrassing for one of the parties to state the reasons why it was felt necessary to challenge a judge, and if the court refused to accept the reasons stated as valid, the party challenging the judge would be placed in an awkward position in regard to the court and the members might be prejudiced unfavourably.

110. For that reason, he thought it would be better to recognize the principle of discretionary challenge as of right, without any obligation on the parties to give reasons therefore. No doubt that system, too, might give rise to objections, and he would be glad to hear them.

111. Mr. TARAZI (Syria) said that the main purpose of his proposal was to safeguard the court's prestige; but he was not opposed to the principle of discretionary challenge as suggested by the French representative, and he therefore proposed that the following provision be inserted in the Statute of the court:

"Each of the parties may ask the President for permission to challenge a judge sitting in his case."

112. The CHAIRMAN suggested that the Syrian representative's proposal might be clearer if it read: "Each of the parties has the right to prevent the sitting of one judge."

113. Mr. SÖRENSEN (Denmark) opposed any such idea, considering that it would be incompatible with the authority of the court. No one should be entitled to challenge a judge's right to sit in any given case since if, for any reason, a judge did not seem suitable to try a case, the president would take action in accordance with paragraph 2 of article 15.

114. Mr. RÖLING (Netherlands) said that he had originally supported the Syrian proposal, but if it was intended to grant both parties full freedom to challenge the right of any judge to sit, and if that challenge automatically debarred him from participating in the case, his support would be withdrawn. He pointed out that the Tokyo Military Tribunal had been composed of eleven judges for the trial of twenty-eight defendants, and that each of the judges had been challenged by one or more of the defendants; thus if such a principle had been admitted, not one of the judges would have been allowed to sit.

115. Mr. MUNIR (Pakistan) said that the proposal was based on a principle which he frankly did not understand. In Pakistan there was a rule, applying only to subordinate courts, that, if a fair trial were impossible, a request could be submitted for the case to go before a higher court. If, however, the attendance of any high court judge was challenged, a penalty of six months' imprisonment was imposable for contempt of court. Every judge was well able to decide whether he was biassed or not competent to try the case, and it frequently happened that judges asked to be excused.

116. The CHAIRMAN explained that, in the United States of America, the normal practice was that any party which considered a judge unsuitable to try a case approached the judge in private with the request that he should ask to be excused. Likewise, in the international criminal court, counsel could approach a judge through the intermediary of the president with a similar request. The whole matter would then be settled by the good sense of the judge concerned.

117. Mr. de LACHARRIÈRE (France) said that, as he had already intimated, he was in favour of the principle of discretionary challenge, which he considered a satisfactory system. That principle was recognized in French law, at least in

the case of a juror, if not in that of a judge, and constituted a fundamental guarantee for the defence. He realized, however, that if the Court consisted of nine or fifteen judges, and had to try, say, fifty accused persons, it would be extremely difficult to allow every one of them to challenge a judge. At the moment he had no solution to offer, and hence he thought it preferable to revert to the initial Syrian proposal, namely; that each of the parties should be entitled to challenge a judge, leaving it to the court to assess the grounds on which the challenge was based.

118. The CHAIRMAN suggested that the Syrian representative's idea might be rendered by some such text as:

"Any party may, through application to the President, question the appropriateness of any judge's sitting in that party's case."

119. Mr. TARAZI (Syria), replying to the Pakistan representative's objection said that the Syrian Code of Criminal Procedure did not regard the judge as having a sacred mission or as being infallible. All he did was to see that a public service - that of administering justice - was properly carried out. If the court considered that the grounds on which a judge was challenged were unsound, the president of the court could not impose any sanction on the party making the challenge.

120. As his own initial proposal had now been taken up again, he asked that it be inserted between paragraphs 2 and 3 of Article 15.

121. Mr. RÖLING (Netherlands) indicated that, although the manner of the application was not specified in the Chairman's text, he would prefer it to be public.

122. In reply to a question from Mr. KHOSROVANI (Iran), the CHAIRMAN confirmed that the provision would apply equally to the President of the court.

123. The CHAIRMAN called for a vote upon the text he had suggested, it being understood that the final drafting, and the position of the text, would be referred to the Drafting Sub-Committee.

The Chairman's text was adopted by 6 votes to 4, with 3 abstentions.

Article 15, as amended, was adopted by 9 votes to none, with 4 abstentions.

New article on the "Quorum"

124. Mr. MAKTOS (United States of America) said that the Committee had previously agreed that his suggested article 38, entitled "Quorum" (A/AC.48/L.9), should be included in the chapter on the organiza n of the court.[1] He felt that the Committee had now reached an appropriate place for the insertion of that article, and pointed out that it was based on Article 25 of the Statute of the International Court of Justice, the only important changes being in the numbers. In place of the numbers eleven and nine appearing in paragraphs 2 and 3 of Article 25, he would suggest seven and five respectively.

125. Mr. PINEYRO CHAIN (Uruguay) pointed out that if a quorum of five were sufficient for a session of the court, three judges would constitute a majority. Thus, if the court consisted of nine members, three judges out of the nine could decide the court's sentence.

126. He was prepared to agree to a quorum of five, subject to the proviso that the majority required for a decision was reckoned on the total number of judges, that was, that it should in no case be less than five.

127. The CHAIRMAN understood that the Drafting Sub-Committee would be left to devise a text which would ensure that in no event would any affirmative action be taken by a vote of less than five members of the court.

128. He called for a vote on the text proposed by the United States representative, as amended by the representative of Uruguay.

The United States text, as amended, was adopted by 6 votes to none, with 4 abstentions.

129. Mr. de LACHARRIÈRE (France), explaining his vote, said that he had abstained because he had not had sufficient time to go into the question thoroughly. It was clear, however, that according to the decision just taken

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1) Summary record of the 18th meeting (A/AC.48/SR.18), paragraph 44.

by the Committee the following situation might arise: three judges would declare the accused person innocent, three would declare him guilty and advocated the infliction of capital punishment, and three would declare him guilty and recommended a sentence of penal servitude for life. Of the nine judges, six would thus have considered the accused person guilty, yet the majority would not be sufficient for imposition of the penalty. He must remind the Committee that in criminal matters it was often difficult to achieve a majority, as differences might arise among the judges as to the sentence.

Article 16

130. Mr. SÖRENSEN (Denmark) explained that article 16 had been taken from Article 18 of the Statute of the International Court of Justice.

Article 16 was adopted without discussion.

Article 17

131. Mr. SÖRENSEN (Denmark) explained that article 17 was based on Article 19 of the Statute of the International Court of Justice.

Article 17 was adopted without discussion.

Article 18

132. Mr. SÖRENSEN (Denmark), observed that article 18 was identical in substance with Article 20 of the Statute of the International Court of Justice.

Article 18 was adopted without discussion.

Article 19

133. Mr. SÖRENSEN (Denmark) explained that article 19 was based on Article 21 of the Statute of the International Court of Justice. In view of the Committee's decision on the term of office of the judges, he suggested that the figure three should be inserted to fill the blank in paragraph 1.

134. The CHAIRMAN pointed out that the word "they" in that paragraph might be amended to read "each".

It was so agreed.

Paragraph 1 of Article 19, as amended, was adopted without objection.

135. Mr. SÖRENSEN (Denmark) drew attention to the alternative texts prepared for paragraph 2. He personally preferred the first alternative, since he was opposed to any link between the International Court of Justice and the international criminal court in administrative matters. The former had won the approval of almost all the countries of the world, whereas the latter would very probably be opposed by a certain group of States. Such opposition might well prove prejudicial to the International Court of Justice if some such connexion, as was proposed in the second alternative text, were established.

136. Mr. RÖLING (Netherlands) considered the link to be so innocent that it could not possibly result in any damage to the International Court of Justice. If the first alternative were adopted, a new organ would be created which might well remain idle for long periods; the criticism had already been voiced that the International Court of Justice had little work to do. There was no reason why the existing machinery of that Court should not be used.

137. Mr. ROBINSON (Israel) suggested that the Committee was in danger of deciding matters on behalf of the International Court of Justice, and he felt it would be as well to avoid taking any definite decision. The International Court of Justice might very well decline to accept the responsibilities placed upon it, out of a desire to remain aloof from the stormy debates which the new organ of the United Nations would occasion. He agreed with the views of the Danish representative, and suggested that it could be decided at some later stage whether the Registrar of the International Court of Justice should act as the Registrar of the international criminal court.

138. Mr. KHOSROVANI (Iran) felt that acceptance of the first alternative would not necessarily exclude the possibility of some of the work for which the

Registrar of the international criminal court would be responsible being done by the Registrar of the International Court of Justice. Some arrangement between the two Courts might well prove possible.

139. Mr. MAKTOS (United States of America) considered that the two alternatives had been sufficiently discussed, and considered that paragraph 2 of article 19, could be put to the vote immediately.

140. Mr. TARAZI (Syria), speaking to a point of order, said that there was another way of looking at the question. In his opinion, the United States proposal should be examined in the light of the provisions of article 20 of the Secretariat's draft. Hence it would be better to defer discussion of Article 19 until a decision had been taken on article 20.

It was agreed that a vote should be taken on paragraph 2 of Article 19.

141. Mr. PINEYRO CHAIN (Uruguay) proposed a compromise for article 19. The court might appoint its registrar on a permanent basis, and such other officials as were necessary when in session only; or it might alternatively decide to make use of the officers of the International Court of Justice. He suggested, therefore, that a vote be taken first on the question of appointment of the registrar, and then on the appointment of the other officials.

142. The CHAIRMAN considered that the possibilities envisaged by the Uruguayan representative were already covered by the text, which, if adopted, would not preclude the court from calling upon the services of the International Court of Justice. Furthermore, if no officers were necessary, none would be appointed.

The first alternative text for paragraph 2 of Article 19 was adopted by 11 votes to none with 2 abstentions.

The meeting rose at 1.10 p.m.