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1953 COMMITTEE ON INTERNATIONAL CRIMINAL JURISDICTION

SUMMARY RECORD OF THE TENTH MEETING

Held at Headquarters, New York,
on Thursday, 6 August 1953, at 2.30 p.m.

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53-22252

PRESENT:

Chairman:	Mr. MORRIS	United States of America
Rapporteur:	Mr. ROLING	Netherlands
Members:	Mr. GARCIA OLANO	Argentina
	Mr. LOOMES	Australia
	Mr. DAUTRICOURT	Belgium
	Mr. WANG	China
	Mr. THORSEN	Denmark
	Mr. SAMI	Egypt
	Mr. MERLE	France
	Mr. [illegible]OR	Israel
	Mr. [illegible]UA	Peru
	Mr. MENDEZ	Philippines
	Mr. VALLAT	United Kingdom of Great Britain and Northern Ireland
	Mr. MAKTOS	United States of America
	Mr. PEREZ PEROZO	Venezuela
	Mr. BOZOVIC	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.5) (continued)

Article 7 (continued)

The CHAIRMAN observed that the Netherlands amendment to the United States amendment to article 7 of the draft statute (A/AC.65/L.5), which had been accepted by the United States representative, illustrated the relationship between articles 7, 8, 9 and 11, and that discussion of article 7 should take into account those other articles.

In reply to a question from Mr. LOOMES (Australia), Mr. MAKTOS (United States of America) stated that he had no preconceived ideas as to the form to be taken by the meeting of States to elect judges, and had phrased his amendment to allow for differences of view on the subject; there would, however, be no constitutional objection to a decision by the General Assembly to call a joint meeting of the Assembly and non-member States which would have accepted the jurisdiction of the court. Such a procedure was used to include Liechtenstein and Switzerland in matters relating to the International Court of Justice.

The CHAIRMAN referred to the report of the 1951 Committee on International Criminal Jurisdiction (A/2136), which made clear in paragraph 48 that the drafting of article 7 had been based on the premise that the court was to be established by the convention method. He read out paragraph 50 in support of the United States amendment.

Mr. PEREZ PEROZO (Venezuela) referred to the Chairman's earlier observation on the 1951 Committee's view that candidates for judgeship in a court established by General Assembly resolution should be nominated by the General Assembly itself, and agreed with the Chinese representative's statement at an earlier meeting that to adopt the United States amendment would prejudge the issue of the method of establishing the court. A court set up by General Assembly resolution as a subsidiary organ of the Assembly as provided for in

Article 22 of the Charter should consist of judges nominated by United Nations Members and elected by the Assembly; but if the court were to be established by a convention imposing responsibilities on only some of the Members of the United Nations, it would not be in order for the election of judges to be the responsibility of all the Members. The same reasoning applied to the method of establishing the court proposed by the United States representative.

Mr. MAKTOS (United States of America) agreed with Mr. VALLAT (United Kingdom) that support for one or other of the draft texts of article 7 offered respectively by the 1951 Committee's draft statute and his own amendment did not commit any delegation to support the establishment of the court as a United Nations organ, or of a particular method of establishing it. The Venezuelan representative's objection to the United States amendment could be overcome by stating in the Committee's report that the choice of text of article 7 did not prejudge the method of establishment of the court; the aim in deciding upon the form of article 7 was to give the court prestige and the widest possible appeal, which would be best achieved by the combined wisdom of sixty States.

A vote for the United States amendment violated no constitutional principles the General Assembly had the right to accept obligations placed upon it by the statute, as it had done in the cases of the Libya and Eritrea tribunals, without claiming the court as its own subsidiary organ.

Mr. GARCIA OLANO (Argentina) proposed that the Committee should present two alternative texts of article 7, worded respectively on the lines of the 1951 draft statute and the United States amendment as amended by the Netherlands representative.

Mr. ROLING (Netherlands) supported the proposal. He felt that the criterion ultimately determining the choice of text for article 7 should be the relative closeness or looseness of links between the United Nations and the court.

Mr. PEREZ PEROZO (Venezuela) said that the crucial question was that of the responsibility of the United Nations, and disagreed with the observations of the 1951 Committee which had viewed the form of article 7 as dependent on

the method of establishment of the court by convention: the conference at which the convention was adopted might itself decide that judges should be nominated and elected not by the States parties alone but by the General Assembly plus the non-member States parties.

He proposed as an alternative to the Argentine proposal that the draft statute should contain one text for article 7, followed by a note giving the alternative text.

The CHAIRMAN invited the members of the Committee to adopt by vote a working hypothesis, either the Argentine proposal that two alternative texts of article 7 should be given in the draft statute, or that one text should be given there and the other dealt with in the body of the Committee's report.

The Argentine proposal was adopted by 6 votes, 3 votes being cast in favour of the alternative proposal.

Mr. LOOMES (Australia), explaining his vote for the Argentine proposal, felt that the criterion proposed by the Netherlands representative should be advanced by the Committee in its report.

Replying to an invitation by the CHAIRMAN to vote upon the inclusion of the United States amendment as one of the alternative texts of article 7, Mr. VALLAT (United Kingdom), Mr. GARCIA OLANO (Argentina) and Mr. RÖLING (Netherlands) agreed that, provided the principle of parallel presentation of the two alternative texts of article 7 in the draft statute were observed, and provided the Committee reported that the choice of alternative was to depend on the Assembly's decision to establish closer or less close links between the United Nations and the Court, no vote on that issue was necessary. The latter three representatives agreed in preferring that the links should be close, and that the United States amendment was the applicable text if the Assembly should decide in favour of close links; they considered, however, that provision must be made for a possible Assembly decision favouring looser links.

Mr. MERLE (France) said that he was against the alternative draft method and that he had voted against the Venezuelan proposal. But if that method was

adopted, it should be followed logically. He would not object to the adoption of the United States text as an alternative to article 7 of the draft statute prepared by the 1951 Committee. By such action the Committee would not have opted for either system; it had merely agreed not to adopt a decision for the time being. He therefore proposed the inclusion in the draft statute, as an alternative to article 7, of the wording of the draft statute of the 1951 Committee and the United States amendment as amended by the Netherlands representative. The final choice should be left to the Sixth Committee or the General Assembly.

Article 8

The CHAIRMAN explained that the alternative texts before the Committee were those given respectively in the 1951 draft statute and in the United States amendment (A/AC.65/L.5) as amended by the Netherlands representative to include the words "States referred to in article 7" instead of "States parties to the present Statute".

Mr. GARCIA OLANO (Argentina) proposed that the two alternative texts be presented side by side in the draft statute prepared by the Committee.

The proposal was adopted by 9 votes to 3, with 3 abstentions.

Article 9

The CHAIRMAN read the revised form of the United States amendment, as follows: "... the Members of the United Nations and those non-member States which shall have accepted the jurisdiction of the court".

A motion to present as alternative texts the wording of the 1951 draft statute and that of the United States amendment, as amended, was adopted by 9 votes to 3, with 3 abstentions.

Article 10

Mr. RÖLING (Netherlands) pointed out that the words "as far as possible" were intended to cover the situation in which judges were nominated and elected by the States parties to the statute.

The CHAIRMAN stated that it might not in practice prove feasible to include judges representing all legal systems and the electors must not be asked to do the impossible. The motion was that alternative texts should be prepared, one including and one omitting the words "as far as possible".

Mr. RÖLING (Netherlands) drew attention to paragraph 51 of the Report of the Committee on International Criminal Jurisdiction. In the light of that opinion it seemed logical to retain the existing text of article 10 and to delete the words "as far as possible" in the alternative text.

Mr. BOZOVIC (Yugoslavia) observed that the question depended on the number of States which adhered to the statute of an international criminal court. If only some fifteen or twenty States supported the court, the judges would presumably be nationals of those States. There was on the other hand no intrinsic reason why eminent jurists who were nationals of other States, or even stateless persons, should not serve. He proposed that the question be left open and decided in the light of subsequent experience.

The CHAIRMAN pointed out that if the words "as far as possible" were deleted, and if, as would probably happen, there was no representative of a particular legal system, it would be difficult to counter the objection that the court was not properly constituted.

Mr. RÖLING (Netherlands) suggested that the text of article 9 of the Statute of the International Court of Justice be followed. That Statute merely enjoined electors to "bear in mind" the representation of the principal legal systems of the world.

Mr. MERLE (France) and Mr. GARCIA OLANO (Argentina) thought that a decision should be made in favour of one text or the other; they considered that the method of submitting alternative texts was open to abuse.

The CHAIRMAN called for a decision on the motion that alternative texts should be prepared.

The motion was rejected by 10 votes to 3, with 3 abstentions.

The CHAIRMAN proposed that the existing text of article 10 be retained.

The motion was accepted by 8 votes to none, with 7 abstentions.

Article 11

The CHAIRMAN proposed that alternative texts of article 11, one as it appeared in the draft statute and one as amended by the United States and Netherlands representatives, should be adopted.

The motion was accepted by 8 votes to 3, with 4 abstentions.

Mr. LOOMES (Australia), Mr. DAUTRICOURT (Belgium), Mr. MERLE (France), Mr. MAKTOS (United States of America), Mr. PEREZ PEROZO (Venezuela) and Mr. BOZOVIC (Yugoslavia) stressed that in voting on the motion that alternative texts be submitted they were in no way implying a preference for either text.

Mr. VALLAT (United Kingdom) explained his abstention on similar grounds. He also said that he could not express a firm opinion on the merits of the alternatives because he could not, at the moment, visualize circumstances in which an international criminal court might be set up and, therefore, could not foresee what would be the best method of electing the judges.

Mr. RÖLING (Netherlands) stated that the task of the Committee was to submit to the General Assembly the most appropriate statutes, but the choice depended on the closeness of the links which it was desired to forge between the court and the United Nations. The voting in the Committee itself was of no significance since the members did not represent the United Nations as a whole. Parallel texts must be prepared and the decision left to the General Assembly.

Article 12

Paragraph 1

Mr. DAUTRICOURT (Belgium) proposed that the text of paragraph 1 be amended to read: "... the terms of five judges shall expire at the end of three years".

Mr. GARCIA OLANO (Argentina) pointed out that that question could not be decided until a decision had been reached regarding the quorum (article 45).

The CHAIRMAN proposed that consideration of paragraph 1 be deferred until article 45 was examined.

It was so decided.

Paragraph 2

Mr. MENDEZ (Philippines) proposed that the element of chance inherent in the drawing of lots should be eliminated and the decision on the term of service of judges should be based on the number of votes they received. It would be more logical if the three judges receiving the highest number of votes served for nine years, the three with the next highest number for six years and the three with the lowest number for three years.

The principle on which he based his proposal was already recognized in paragraph 2 of article 11.

Mr. MARMOR (Israel) observed that the Philippine proposal would detract from the prestige of the court. It would be unfortunate if the public were to know that a given judge had to retire after a term of three years because he had received fewer votes than other judges. He therefore favoured the text of the draft statute.

Mr. RÖLING (Netherlands) pointed out that article 12 was based on Article 13 of the Statute of the International Court of Justice and that there was no reason for changing the existing text.

Mr. MENDEZ (Philippines) replied that the Statute of the International Court of Justice was not sacrosanct. That Court might some day conclude that the procedure in Article 13 was not entirely fair. His proposal would eliminate the element of chance, according to which the judge obtaining a large number of votes might find that he had to serve a short term, while a judge receiving fewer votes might be chosen by lot to serve a longer term.

Mr. RÖLING (Netherlands) said that a judge who received a large number of votes and who was drawn by lot to serve a short term would still be eligible for re-election. Although the Statute of the International Court of Justice was not sacrosanct, it worked well and should not be changed except for very cogent reasons.

The CHAIRMAN put the Philippine proposal to the vote.

The proposal was rejected by 10 votes to 1, with 3 abstentions.

Paragraph 3

The CHAIRMAN recalled that the Philippine representative had suggested the addition, at the end of paragraph 3, of the words "This shall not apply in the case of a judge dismissed under article 18."

Mr. WANG (China) felt that there was no need to amend paragraph 3 because, under normal circumstances, no judge would be dismissed unless, in the unanimous opinion of the other judges, he had ceased to fulfil the conditions required for his continuance in office (article 18), in other words unless he had become physically or mentally unfit.

Mr. GARCIA OLANO (Argentina) felt that the Philippine proposal could be mentioned in the report without any amendment being made to paragraph 3.

Mr. MENDEZ (Philippine), referring to the Chinese representative's remarks, pointed out that a judge would not be "dismissed" because of physical or mental unfitness but for some more serious reason such as moral turpitude.

Mr. MAKTOS (United States of America) supported the Philippine representative.

The Philippine amendment to paragraph 3 was adopted by 5 votes to 3, with 5 abstentions.

Article 13

Mr. MAKTOS (United States of America) suggested that the report should explain that the expression "open court" referred to the international criminal court and that it would be possible for a judge to make a solemn declaration even before the court came into existence.

The CHAIRMAN felt that the matter should be referred to the Standing Drafting Sub-Committee which, if it so decided, could submit an appropriate text to the Committee.

It was so agreed.

Article 14

Mr. DAUTRICOURT (Belgium) proposed that the words "diplomatic privileges and immunities" should be replaced by the words "privileges and immunities similar to those accorded to diplomatic officials". Judges were not diplomats as they did not represent their countries.

Mr. MARMOR (Israel) pointed out that article 14 was based on Article 19 of the Statute of the International Court of Justice. To insert the qualification suggested by the Belgian representative would detract from the prestige of the

court, as it might imply that the privileges and immunities to be enjoyed by the judges were less than those accorded to diplomatic officials. Moreover, if the registrar and certain other high officials of the court were to enjoy such privileges, it would be advisable to adopt the exact wording of Article 19 of the Statute of the International Court of Justice.

Mr. MERLE (France) appreciated the concern felt by the Belgian representative but pointed out that the wording used in article 14 was current in the statutes of other international organs. The existing text did not infer that the judges were diplomatic officials, a fact which was in any case obvious from other articles of the draft statute.

Mr. WANG (China) proposed that the text of article 14 should be replaced by the exact wording of Article 19 of the Statute of the International Court of Justice.

Mr. MAKTOS (United States of America) recalled that, when the Statute of the International Court of Justice was being drafted at San Francisco, the question had arisen whether any provision on privileges and immunities should be included. It would be particularly difficult to define the meaning of "privileges and immunities similar to those accorded to diplomatic officials". He would therefore vote against the Chinese and Belgian proposals.

Mr. LOOMES (Australia) remarked that article 14 did not imply that the judges were diplomatic officials. Diplomatic privileges and immunities were defined in most countries and were extended to persons other than diplomats.

With regard to the Chinese amendment, he doubted whether the use of the words "the members of the court" would necessarily mean that the Registrar and other high officials were also entitled to diplomatic privileges and immunities. He agreed with the decision of the 1951 Committee not to include any provision in respect of the privileges of the Registrar.

Mr. ROLING (Netherlands) drew attention to General Assembly resolution 90 (I) paragraph 4 (a) and stressed that there would be no point in changing the text of article 14.

The CHAIRMAN put the Chinese amendment to the vote.

The amendment was not adopted, 5 votes being cast in favour and 5 against, with 5 abstentions.

Mr. MAURTUA (Peru) suggested that the Belgian proposal should be amended to read "the privileges and immunities recognized for diplomats".

Mr. DAUDRICOURT (Belgium) accepted the Peruvian amendment.

The Belgian proposal, as amended, was rejected by 8 votes to 3, with 3 abstentions

Article 14 was tentatively adopted.

Article 15

Article 15 was tentatively adopted.

Article 16

Mr. WANG (China) proposed that the Standing Drafting Sub-Committee clarify the words "in any capacity whatsoever".

Mr. LOOMES (Australia) felt that wording similar to that in article 17 of the Statute of the International Court of Justice might be used.

Mr. ROLING (Netherlands) recalled that some members of the 1951 Committee had felt that the wording of article 17 should be reproduced, and that it had been considered inappropriate to use the same text in respect of criminal proceedings.

Mr. MENDEZ (Philippines) supported the Chinese representative.

Mr. GARCIA OLANO (Argentina) preferred the text of the draft statute, but agreed with the Chinese representative that the wording should be left to the Standing Drafting Sub-Committee.

Mr. MENDEZ (Philippines) observed that it was not a question of drafting but of substance.

Mr. MARMOR (Israel) stated that the Committee would be ill-advised to try to list the various possible capacities in which judges might participate in dealing with a given case. Paragraph 2 solved the problem, as the court would decide in cases of doubt.

The CHAIRMAN put the Chinese proposal to the vote.

The proposal was rejected by 8 votes to 2, with 4 abstentions.

Article 16 was tentatively adopted.

The meeting rose at 5.5 p.m.

25/8 p.m.