UNITED NATIONS

GENERAL ASSEMBLY

Distr.
GENERAL

A/AC.65/SR.19
28 August 1953
ENGLISH
ORIGINAL: FRENCH

1953 COMMITTEE ON INTERNATIONAL CRIMINAL JURISDICTION

SUMMARY RECORD OF THE NINETEENTH MEETING

Held at Headquarters, New York,
on Friday, 14 August 1953, at 2.30 p.m.

CONTENTS

53-23471

PRESENT:

Chairman:	Mr. MORRIS	United States of America
Rapporteur:	Mr. RÖLING	Netherlands
Members:	Mr. GARCIA OLANO) Mr. LAUREL)	Argentina
	Mr. LOOMES	Australia
	Mr. DAUTRICOURT	Belgium
	Mr. WANG	China
	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. MAKTOS	United States of America
	Mr. PEREZ PEROZO	Venezuela
	Mr. NINCIC) 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.6, A/AC.65/L.8) (continued)

Article 29 (continued)

Mr. RÖLING (Netherlands) recalled that the Committee had before it a proposal for adding to article 29 of the draft statute a provision to the effect that, in the interest of the maintenance of peace, a United Nations organ, designated by the General Assembly, could prevent a particular case from being brought before the court. The wording should be vague enough to allow the General Assembly ample latitude to designate the organ in question and to choose, if it so wished, an organ already in existence. The main point was to state the principle.

The CHAIRMAN proposed the following wording: "In the interest of the maintenance of peace, a United Nations organ designated by the General Assembly may veto the presentation or prosecution of a particular case before the court". For the sake of the maintenance of peace proceedings already before the court might have to be stopped

Mr. RÖLING (Netherlands) supported the proposal.

Mr. MARMOR (Israel) thought that the word "veto" should be avoided, because of its psychological effect; he proposed the word "dismiss" instead.

Mr. MENDEZ (Philippines) felt that the Netherlands proposal might not be acceptable to some States which would otherwise be prepared to confer jurisdiction upon the court. He proposed the following text; "If, in the interest of peace, such proceedings seem inadvisable, the General Assembly or an international body it may authorize may recommend against such proceedings".

In no case should the General Assembly do more than make recommendations. The choice between dropping and continuing the proceedings would be left to the prosecuting attorney in his capacity as the complainant's agent. The complainant would decide whether the interest of the maintenance of peace should prevail over his own interests.

Mr. MERLE (France) opposed the idea of a right of control vested in the General Assembly, but thought it ought to have the power to stop any proceedings that were likely to jeopardize the maintenance of peace. That idea should be retained even if it was decided that the court would be established by convention. The logical course would be to draft alternative texts. The Netherlands proposal would be embodied in one and omitted in the other. In that way the States parties to the convention would not be bound in advance. If the principle of United Nations intervention were adopted, he would request a vote on his proposal.

Mr. WANG (China) asked whether the Statute of the International Court of Justice conferred such power on the General Assembly.

Mr. RÖLING (Netherlands) replied in the negative; but the differences between the International Court of Justice and the international criminal court were so considerable that the Netherlands proposal was justified.

Mr. WANG (China) thought that the International Court of Justice adjudicated in cases involving States which might be no less important for the maintenance of peace than the cases likely to come before the international criminal court. He saw no reason for the innovation.

Mr. VALLAT (United Kingdom) felt that the Committee was again confronted with a problem on which it was very difficult to take a stand because the whole

question of the court's establishment remained uncertain. If, for example, the court was established outside the United Nations and a regional group of States acceded to it at the beginning, the intervention by the United Nations would hardly be justified. Moreover, under the proposed wording the United Nations would be able to intervene in the affairs of States, which was against the spirit of the Charter; It was also inconsistent with the spirit of the Charter not to confer on the Security Council powers directly related to its principal function which was to maintain international peace and security.

The Philippine proposal was wise but unnecessary. Under the Charter, the General Assembly was free at any time to make recommendations; there was no need to refer to that power in the court's statute. At the moment it was preferable not to include any provision of the kind proposed.

Mr. LOOMES (Australia) opposed the Netherlands proposal. Like the Chinese representative, he felt that there was no reason to depart from the provisions of the Statute of the International Court of Justice. The power conferred by the Charter, a recommending power, should not be extended to a decision to bind the court. A case falling within the jurisdiction of the international criminal court might be connected with the maintenance of peace, in which event the General Assembly, or the Security Council, might recommend the complainant State not to bring the case before the court. That was the full extent of its intervention.

Mr. RÖLING (Netherlands) recalled that his text did not specify what organ would be empowered to intervene. He was merely raising the principle of intervention. Admittedly the Charter only provided for recommendations, but there was nothing to prevent States from deciding to abide by decisions of the General Assembly, a practice for which precedents existed.

The Committee should be guided by the interests of the United Nations. If it considered it conducive to the Organization's interests that the United Nations

should be able, once the court was established, to intervene in the interest of the maintenance of peace, then the Committee should propose an appropriate provision.

Mr. MAKTOS (United States of America) said that he would vote for the Netherlands proposal without any illusions as to the outcome. As the Committee had decided to omit article 28 of the draft statute, the proposed text would have the advantage of providing for what seemed, after all, a desirable power to intervene on the part of the United Nations. Nothing prevented States from deciding that certain cases would not be brought before the court if the United Nations was opposed to such action. That decision would be effective whatever the method of the court's establishment: convention, resolution or resolution followed by convention. But he hoped, on account of the existence of the veto, that the Security Council would do nothing to affect the work of the court.

Mr. RÖLING (Netherlands) was prepared to redraft his proposal, it being his view that only the principle of intervention should be accepted. He therefore proposed the following wording: "a United Nations organ later to be designated...". The Committee would point out in its report that it had not taken any decision with respect to the selection of that organ.

Mr. MAURTUA (Peru) replied that he was much more concerned with the spirit than with the wording of the Netherlands proposal. Its principle affected the court's future independence and the free will of the parties. It conflicted with the spirit of the Charter. The proposed provision would, to some extent, establish a prior jurisdiction of the General Assembly and compel States, as a first step, to consult the United Nations.

Mr. MENDEZ (Philippines) felt that the debate was exceeding its logical limits. The Committee's task was to draft the statute of the international criminal court and not that of another United Nations organ. While provision should be made for intervention by the United Nations, that was not a matter for the international criminal court which should only concern itself with justice and not with political considerations.

Mr. WANG (China) considered it inconceivable that the interests of justice should conflict with the maintenance of peace.

Mr. RÖLING (Netherlands), replying to the Philippine representative, pointed out that it was precisely because the court should only concern itself with the administration of justice that some other body should weigh the political considerations of a case and its repercussions upon the interests of peace. In reply to the Chinese representative, he referred to his earlier example of the Economic and Social Council's debate on the report on forced labour. For the sake of the maintenance of peace, the Council had refrained from dwelling upon certain conclusions contained in that report. Surely to try and sentence an accused person would be a much more serious and dangerous matter than to discuss a report. The necessities of political expediency precluded the strict enforcement of justice in all cases and at all times.

Mr. WANG (China) asked, with reference to the example in question, whether the United Nations should or could object to a trial involving forced labour if some States had conferred jurisdiction upon the court in respect of that particular crime.

Mr. RÖLING (Netherlands) replied that a distinction should be made between conferment of jurisdiction in general in respect of specific kinds of crimes, and bringing a specific case before the court.

Mr. PEREZ PEROZO (Venezuela) observed that, during the debate on article 29, sub-paragraphs (a) and (b), he had made a statement indicating a measure of support for the views of the Netherlands representative. Surely it was not intended that the United Nations should not, under any circumstances, be allowed to intervene before the court. However, the Committee might simply indicate in its report that its deletion of sub-paragraph (a) was not intended to prevent the United Nations from making representations to the court when the interests of peace were endangered. The statute should not be so drafted as to create the impression that the court's work might endanger international peace and security. He would abstain from voting on the Netherlands amendment.

Mr. MENDEZ (Philippines) agreed with the Venezuelan representative although he maintained his contention that the General Assembly should confine itself to recommendations. Consequently, he withdrew his proposal.

Mr. GARCIA OLANO (Argentina) also agreed with the Venezuelan representative.

Mr. DAUTRICOURT (Belgium) felt that provision for a possible suspension of proceedings would improve the Netherlands amendment.

Mr. RÖLING (Netherlands) considered that the word "stop" would cover that point.

The CHAIRMAN put to the vote the Netherlands proposal for the addition of the following provision to article 29: "In the interest of maintenance of peace, a United Nations organ later to be designated by the United Nations, may stop the presentation or prosecution of a particular case before the court".

The amendment was rejected by 6 votes to 4, with 4 abstentions.

Mr. RÖLING (Netherlands) proposed the inclusion of his text in the alternative provision applicable if a court should be established with close relations with the United Nations.

Mr. MENDEZ (Philippines), referring to the Venezuelan representative's proposal, felt that the Committee should, in its report, mention the reasons for which it had rejected the Netherlands proposal.

Mr. PEREZ PEROZO (Venezuela) observed that he had wished to define the scope of the Netherlands proposal. As the latter had been rejected, he withdrew his proposal which no longer served any purpose.

Mr. MAURTUA (Peru) was unable to understand why a vote should be taken on the latest Netherlands proposal since the Committee had rejected the principle which Mr. Röling had proposed.

The CHAIRMAN explained that the vote would be tentative: the proposed text would only become a Committee recommendation if the General Assembly decided to establish the court by resolution.

Mr. RÖLING (Netherlands) observed that it was precisely the second vote he had requested which would indicate whether the Committee had objected to the very principle of his proposal or merely to its application regardless of the method by which the court was established.

The text proposed by the Netherlands representative as an alternative to the text of article 29 of the draft statute was tentatively adopted by 5 votes to 3, with 5 abstentions.

Article 26

Mr. RÖLING (Netherlands) felt that it would be desirable to make provision for the conferment of appellate jurisdiction upon the court so that, after trial before a national court, an accused would be able to appeal to the international criminal court. Such a provision would contribute greatly to the development and unification of international criminal law. He recalled the difficulties which had arisen at the end of the Second World War,

when crimes under international law had been brought before the national courts of different States: the interpretations adopted had not always been consistent with each other. The International Red Cross had adopted a resolution embodying the idea in 1949. He therefore proposed that article 26 of the draft statute should be followed by an article entitled "Appellate Jurisdiction" and worded: "A State may confer appelate jurisdiction on the Court to review a decision made by a national court of that State".

Mr. MENDEZ (Philippines) asked how the Netherlands proposal affected the Israel proposal approved at the previous meeting, which provided that the decisions of the international criminal court were not to influence the rules of jurisdiction and procedure of national courts.

Mr. RÖLING (Netherlands) said that his proposal was perfectly consistent with that text.

Mr. MENDEZ (Philippines) pointed out that in some States the Constitution reserved to the national Supreme Court the exclusive right to give the final decision in all cases. He wondered what would happen if a State whose courts had jurisdiction ratione loci referred to the court a case involving the nationals of another State which thereupon challenged the appellate jurisdiction of the international criminal court on the grounds of its own Constitution.

The CHAIRMAN acknowledged that in such a case a possible conflict of laws arose; the problem of incompatibilities could be referred to a special drafting committee, and the vote would be taken on the principle only.

Mr. MAURTUA (Peru) reminded the Committee that the hierarchy of appeal was strictly defined in all countries. In Peru, at all events, the final decision rested with the Supreme Court. He could not support the conferment of appellate jurisdiction upon the court.

Mr. MERLE (France) noted that the proposed text provided merely that a State "might" confer appellate jurisdiction on the court; plainly, the provision in no way impaired the sovereignty of States wishing to dissociate themselves from such a practice.

He supported the proposal, which would give States an opportunity to alter their national procedure to allow for appeals to the international criminal court, and which would contribute to the unification of international criminal law. Indeed, the possibility of appealing to the court was probably implicit in the conferment of jurisdiction by unilateral declaration, a provision which the Committee had approved. It would, nevertheless, be desirable to provide for appellate jurisdiction expressly.

In reply to a question from Mr. LOOMES (Australia), Mr. RÖLING (Netherlands) stated that in deciding an appeal the court would obviously apply international criminal law and not the national law of the first instance.

Mr. LOOMES (Australia) recalled the discussion on article 2; he had thought it reasonable to assume that the hearing of an appeal would be one of the cases in which the court would be called upon to apply national law, for instance laws of evidence and procedure.

The CHAIRMAN asked who would have the right to appeal to the court.

Mr. RÖLING (Netherlands) explained that, in keeping with the resolution adopted by the International Red Cross, the right of appeal was to be established in the interest of the accused. However, if the principle of the appellate jurisdiction of the court was accepted, there would be nothing to prevent the prosecution from appealing. On the other hand, it should be understood that the international criminal court should not be appealed to in respect of all war crimes. The essential point was that certain cases should be referred to the court; the latter could then give universal interpretations on which the various national courts would be able to base their decisions.

Mr. MAKTOS (United States of America) said the proposed article was unnecessary and undesirable. Where a State had conferred jurisdiction on the court, and the conditions of competence provided for in article 1 were fulfilled, that State would be quite within its rights in referring a case to the court in second instance. An article dealing with the court's appellate jurisdiction, however, might be open to misinterpretation by international public opinion, which might take it that the international criminal court was essentially a court of appeal. He would oppose the Netherlands proposal.

Mr. MERLE (France), referring to the last observation of the Netherlands representative, felt that the latter had been thinking rather of appeal to a court of cassation than of appeal proper. Indeed, the chief consideration was, not to provide that the court should hold a complete re-trial covering both fact and law, but to make it possible to ask the court for the construction of a point of law. In such cases as the Oradour trial, in which it had been necessary to define the notion of collective liability either on the broad lines laid down in the statute of the Nürnberg tribunal or on the narrow construction given in the tribunal's own judgment, it would clearly have been desirable for the question to be referred to an international tribunal.

Mr. ROLING (Netherlands) said that the French representative had understood his intention exactly. He had chosen to use the word "appeal" because the notion of cassation was peculiar to the law of the countries of Continental Europe and foreign to Anglo-Saxon law.

Mr. MARMOR (Israel) feared that the Netherlands proposal might reintroduce the notion of crime of international concern, which the Committee had set aside. Where an act was clearly a crime under international law, why should not a State party to the case refer it to the international criminal court in the first instance?

Mr. RÖLING (Netherlands) replied that only crimes under international law would be referred to the court, but not all such crimes could be referred to it. Most war crimes would always be tried by national tribunals; for that reason it was important to allow for the possibility of certain critical cases being referred to the international jurisdiction.

The Netherlands proposal was rejected by 6 votes to 3, with 4 abstentions.

Article 28

Mr. WANG (China) recalled that the Netherlands representative had proposed a new text for article 28, to apply where jurisdiction was granted by unilateral declaration.

Mr. ROLING (Netherlands) proposed the following text: "Any State may withdraw its conferment of jurisdiction upon the court by giving one year's notice to that effect to the Secretary-General".

On the proposal of Mr. MAKTOS (United States of America), Mr. ROLING (Netherlands) amended his proposal as follows: "Any State may withdraw its conferment of jurisdiction. Such withdrawal shall take effect one year after the delivery of notice to that effect to the Secretary-General".

The Committee tentatively adopted, by 8 votes to none, with 2 abstentions, the new text of article 28 proposed by the Netherlands representative.

Article 36

The CHAIRMAN invited the Committee to consider Belgium's oral proposal that the words "and, as far as possible, of the States of which the victims are nationals" be added to the first paragraph of article 36.

The CHAIRMAN put the proposal to the vote.

The proposal was adopted by 3 votes to 2, with 7 abstentions.

Article 43

The CHAIRMAN put before the Committee the new text of article 43 proposed by Belgium (A/AC.65/L.8).

Mr. DAUTRICOURT (Belgium) pointed out that the text submitted to the Committee was supported by the French and Israel representatives. A better title for the new article 43 would be "Fair Trial" instead of "Dismissal of Case" which was the title of article 43 of the draft statute. The purpose of the article was to ensure a fair trial and also to avoid denial of justice. The proposed text therefore required the court to support by reasons any decision to suspend proceedings. On the other hand, the court should have the power to resume proceedings, if necessary, within the period of limitation. That period should be decided by the court itself and that was the purpose of the new article in working paper A/AC.65/L.8.

Mr. MARMOR (Israel) considered that the new article 43 should follow article 38 which dealt with the rights of the accused, since limitation was a right of the accused and a factor in a fair trial. The new article would then become article 39 of the draft statute.

Mr. MAKTOS (United States of America) considered it undesirable to adopt the proposed new text of article 43. It introduced the concept of limitation for the first time into international criminal law; a provision of positive law should not be incorporated in the statute. His delegation therefore still preferred the text of article 43 as it stood in the draft statute.

Mr. MERLE (France) emphasized that article 43 of the draft statute provided for acquittal of the accused where the court decided to dismiss the case. But acquittal had to be preceded by a trial, not merely by a decision to dismiss the case. If the court considered it impossible to ensure a fair trial it could only suspend proceedings and, to cover that contingency, there would have to be a time limit governing a decision to dismiss the case. The United States representative had pointed out that such a provision had not previously been introduced into international criminal law. That was not surprising since no individual person had previously been tried by an international criminal court. The provision was therefore logical.

Mr. LOOMES (Australia) agreed with the United States representative that the text of article 43 of the draft statute was preferable to the proposed new text. If the court dismissed a case it should be able to acquit the accused. Moreover, the proposed text providing for periods of limitation made innovations in positive law, and that was undesirable in a statute establishing a court.

Mr. MENDEZ (Philippines) saw no reason why the statute should not embrace the notion of limitation. He pointed out that it was for the court to set the period of limitation. The word "acquittal" should be used with care; there could in fact be no acquittal if there had been no trial.

Mr. RÖLING (Netherlands) proposed the deletion of the words "so long as the period of limitation has not expired" at the end of paragraph 2 of the proposed new text of article 43. If the idea of limitation were accepted it was evident that proceedings could be re-opened at any time up to the expiry of the period of limitation and it was thus not necessary to say so. If the idea were rejected, any mention of a period of limitation would be a reference to something which did not exist.

Mr. MAKTOS (United States of America), speaking on a point of order, pointed out that the three articles proposed by Belgium were interdependent; the Committee could therefore consider them separately but should vote on all three at the same time.

It was so decided.

Resuming the debate, Mr. MAKTOS (United States of America) supported the Netherlands amendment to the text of article 43 proposed by Belgium. The statute of the court should not mention a period of limitation which could be defined in the court's rules. Moreover, as he had stated, he did not think it

possible at that stage to introduce the new concept of limitation into international criminal law. Furthermore, under the Belgian proposal for article 44, the case must have been concluded and the court must have agreed that the accusation was not substantiated, before it could decide on acquittal. By contrast, article 43 of the draft statute provided that the court could at any time terminate the proceedings and acquit the accused.

In reply to an observation by the French representative, he added that the period of limitation did not serve the accused's interests. In fact, it held a constant threat over his head.

Mr. ROLING (Netherlands) stated that he would only vote for the text proposed by Belgium if all reference to a period of limitation were deleted, since that concept had no place in the statute. It was for that reason that he had submitted an oral amendment to paragraph 2 of the new text proposed for article 43.

Mr. MENDEZ (Philippines) thought that a period of limitation should not be defined too rigidly; the court should be left free to determine the period according to circumstances. Moreover, the proposed Belgian text used the word "complainant"; if the complainant was a State, that fact should be made clear by saying: "if the complainant State withdraws its complaint".

Mr. DAUTRICOURT (Belgium) agreed to amend his text accordingly.

Mr. MAURTUA (Peru) said he could agree to the first paragraph of the Belgian text of article 43 but would be reluctant to accept the second paragraph which dealt with the period of limitation and he made a formal proposal that the words "should not bar the resumption of the prosecution so long as the period of limitation has not expired" be deleted. The proposed text of article 44 stated

that the court alone could decide to discharge the accused. Actually, however, if the complainant State withdrew its complaint, the proceedings would automatically be terminated; there was no need for a court decision. Moreover, it must be known whether the termination of proceedings was permanent or temporary.

Mr. MENDEZ (Philippines) questioned the accuracy of the English version of the new article proposed by Belgium. It should be amended to read: "Except as provided in specific conventions, crimes under international law shall prescribe after fifteen years from the commission of the offence".

Mr. DAUTRICOURT (Belgium), replying to the Peruvian representative, stated that although withdrawal of the complaint certainly implied the discontinuance of the prosecution, the court alone was empowered to discharge the accused. If the court decided that the complaint was not substantiated, the accused might not be content with a withdrawal of the proceedings and insist on being tried in order to obtain his acquittal. That was the purpose of his proposed text for article 44. The new article fixed a period of limitation of fifteen years. That period had been proposed by the co-authors of the article. He himself would have preferred a period of ten years but the Committee should decide.

He drew attention to a change in the text of the new article as stated in working paper A/AC.65/L.8. Instead of "Except as provided in specific conventions" the text should read: "Except as specifically provided in instruments".

The CHAIRMAN invited the Committee to decide upon a suitable title for the new article 43 proposed by Belgium.

Mr. ROLING (Netherlands) proposed: "Impartial Trial". It was already stated in article 38, paragraph 2, that the accused should have a fair trial.

Mr. DAUTRICOURT (Belgium) would have preferred "Impartiality of the Trial".

Mr. MERLE (France) agreed to that title.

Mr. MARMOR (Israel) thought "Fair Trial" would be best. But, to avoid any difficulty, perhaps Belgium's proposed article 43 might become a paragraph 4 to article 38, which would obviate the need for a title.

It was so decided.

Mr. MENDEZ (Philippines) suggested that, in the first paragraph of article 43, as proposed by Belgium, the words "by a decision supported by reasons" be deleted.

Mr. DAUTRICOURT (Belgium), Mr. MARMOR (Israel) and Mr. MERLE (France) argued that the words should stand because it was essential that the reasons for suspending proceedings should be stated.

The CHAIRMAN put to the vote the Philippine oral amendment to Belgium's proposad article 43. The amendment was to the effect that, in the first paragraph, the words "by a decision supported by reasons" should be omitted.

The amendment was rejected by 6 votes to 1 with 2 abstentions.

The CHAIRMAN put to the vote the first paragraph of article 43 as proposed by Belgium (A/AC.65/L.8), which was to form paragraph 4 of article 38.

The first paragraph was adopted by 7 votes to 2, with 1 abstention.

The CHAIRMAN put to the vote the Peruvian oral amendment to the second paragraph of Belgium's proposed article 43. The amendment was to the effect that the words "dismissal shall not bar the resumption of the prosecution so long as the period of limitation has not expired" should be omitted.

The amendment was adopted by 6 votes to 3, with 2 abstentions.

Article 44

Mr. MAKTOS (United States of America) proposed that, in article 44 as proposed by Belgium, the words "if the complaint is not substantiated the Court shall acquit the accused" be deleted.

The CHAIRMAN put the United States proposal to the vote.

The proposal was rejected by 5 votes to 2, with 3 abstentions.

The CHAIRMAN put the text of article 44 as proposed by Belgium (A/AC.65/L.8) to the vote.

The text was adopted by 5 votes to 2, with 3 abstentions.

New article

Mr. LOCHES (Australia) observed that, the Committee having decided to omit, in the second paragraph of Belgium's proposed article 43 (which had become paragraph 4 of article 38), all mention of the period of limitation, the new article proposed by Belgium had become pointless.

Mr. DAUTRICOURT (Belgium) agreed.

Mr. MARMOR (Israel), as joint author of the new article, argued in favour of it, for he did not consider it incompatible with the Committee's vote on the second paragraph proposed for article 43. The new article might follow article 44 and its title might be "Period of Limitation".

Mr. MAKTOS (United States of America) noted the Belgian representative's opinion that, owing to the Committee's decision on the second paragraph proposed for article 43, the new article had become pointless. He hoped that the Belgian representative would vote accordingly, without feeling bound to support the joint authors of the text.

Mr. MAURTUA (Peru) pointed out that the Committee was about to vote upon the question of the period of limitation applicable to crimes under international law, without having defined the crimes under international law which came within the court's competence.

The CHAIRMAN put the new article proposed by Belgium (A/AC.65/L.8) to the vote.

The article was rejected by 7 votes to 3, with 1 abstention.

Articles 5 and 45

Mr. DAUTRICOURT (Belgium) pointed out that the Committee could not fix the quorum before having decided upon the number of judges of the court, which was the subject of article 5. In that connexion, he recalled that he had proposed to raise the number of judges to 15. The alteration to the draft statute had become necessary because the Committee had decided to replace the committing authority by a committing chamber composed of members of the court.

Mr. MERLE (France) observed that, in view of the provision that more than one national of the same State could not sit on the Bench (article 6, paragraph 2), the Belgian amendment required that at least fifteen States should have conferred jurisdiction upon the Court. Otherwise, article 5 would not apply. It was therefore perhaps premature to take a decision on the subject.

Mr. MARMOR (Israel) recalled that the voting on article 33 had referred only to the principle of setting up a committing chamber, and not to the number of judges who would sit in it (A/AC.65/SR.13). He proposed that there should be eleven judges: a quorum of five judges would suffice to form the court, and the committing chamber would be composed of three judges.

Mr. MAKTOS (United States of America) could not accept that proposal. A bench of three judges in the committing chamber would not be representative enough. Moreover, it seemed hardly reasonable to adopt a smaller quorum than half the total number of judges. He would vote for the Belgian proposal.

Mr. BOZOVIC (Yugoslavia) also supported the Belgian proposal, in spite of the French representative's doubts. Obviously, if the court were to have any authority, it must be recognized by a large number of States.

Mr. RÖLING (Netherlands) emphasized that the value of a court could not necessarily be expressed in terms of the number of judges sitting: he was in favour of a court of nine judges, with a quorum of five and a committing chamber of three judges.

The Israel proposal was rejected by 5 votes to 3, with 3 abstentions.

The Belgian amendment to article 33 of the draft statute was tentatively adopted by 4 votes to 2, with 5 abstentions.

Mr. DAUTRICOURT (Belgium) proposed that article 45, as it appeared in the draft statute, should be maintained.

Article 45, as it appeared in the draft statute, was tentatively adopted by 10 votes to 1, with 1 abstention.

Article 12

Mr. RÖLING (Netherlands) proposed, in view of the last vote, to replace the words "three judges" by "five judges" in the first paragraph of article 12.

It was so decided.

Article 33

Mr. DAUTRICOURT (Belgium) suggested that the figure of five judges of the committing chamber should be maintained, in accordance with his written proposal (A/AC.65/L.6).

It was so decided.

Article 46

Mr. LOOMES (Australia) asked what would be the consequences of a tie vote on final judgments and sentences.

Mr. ROLING (Netherlands) recalled that the 1951 Committee had wished to render conviction on the president's decision impossible. He admitted that the article was not clear enough.

The CHAIRMAN considered that, in the event of a tie vote, the court could not conclude that the accused was guilty.

Mr. LOOMES (Australia) asked whether a tie vote would entail the accused's acquittal.

Mr. ROLING (Netherlands) replied that the 1951 Committee had answered in the affirmative.

Mr. VALLAT (United Kingdom) noted that article 46 might lead to a deadlock if there were a majority on the question of guilt and a tie vote on the sentence to be imposed.

Mr. ROLING (Netherlands) pointed out that the judges could always reach a compromise on the sentence.

Mr. VALLAT (United Kingdom) wished to point out that a compromise might be difficult in cases where, as in the Tokyo trials, the judges had very different opinions on the sentence that should be imposed.

Mr. MENDEZ (Philippines) emphasized that these were very probable cases in view of the diversity of legal systems and the more or less latitude given to the judges in the various countries.

The CHAIRMAN proposed that the words "and sentences" should be deleted from article 46, paragraph 1.

Mr. VALLAT (United Kingdom) was not satisfied with that proposal. He felt that the president of the court should not perhaps have a decisive voice in the imposition of the sentence.

Mr. RÖLING (Netherlands) was of the opinion that article 46, paragraph 2, might apply to all the court's decisions, except the death sentence.

Mr. VALLAT (United Kingdom) proposed rather to adopt the text of article 55 of the Statute of the International Court of Justice, which read: "1. All questions should be decided by a majority of the judges present. 2. In the event of an equality of votes the President or the Judge who acts in his place should have the casting vote".

The CHAIRMAN proposed that the word "present" at the end of paragraph 1 should be replaced by the word "participating" which appeared in the text of the draft statute.

It was so decided.

Mr. VALLAT (United Kingdom) asked whether it would not be better to retain in the English text the term in the draft statute: "the vote of the presiding judge should be decisive", rather than adopt the expression in the Statute of the International Court of Justice, "the President .... shall have a casting vote". Indeed the method of voting was not unimportant. If the presiding judge had, not a casting vote, but a second vote, it was possible that his final decision would be influenced by the equality of votes.

Mr. RÖLING (Netherlands) considered that hardly probable. He pointed out that, if the presiding judge changed his mind, there was no equality of votes.

Mr. LOOMES (Australia) proposed that the text of the Statute of the International Court of Justice should be followed.

It was so decided.

Mr. RÖLING (Netherlands) proposed that the words: "with the exception of a decision to impose a death sentence" should be put before the beginning of paragraph 2.

Mr. MENDEZ (Philippines) observed that in many countries the death sentence could only be imposed if the judges were unanimous. He was of the opinion that a similar provision could be inserted in the draft statute.

Mr. RÖLING (Netherlands) was opposed to any provision of that kind; indeed it might be interpreted as a criticism of the Judgment of the International Military Tribunal for the Far East, which had imposed the death penalty by six votes to five. If some States wished to make reservations as to the imposition of the death sentence, they were free to do so under the conventions granting jurisdiction to the court.

Mr. MAURTUA (Peru) remarked that the proposed text left the event of a tie vote on the imposition of the death sentence in the air.

The CHAIRMAN considered that in that case the death sentence could not be imposed; the court must pronounce another sentence.

Mr. PEREZ PEROZO (Venezuela) stated that life imprisonment was not imposed in his country, which did not grant the extradition of accused persons liable to sentence of death or life imprisonment. He proposed that the beginning of paragraph 2 should be amended as follows: "with the exception of a decision to impose the death penalty or life imprisonment".

The Committee tentatively adopted the Venezuelan amendment by 8 votes to none, with 4 abstentions.

The Committee tentatively adopted the text of article 46 of the draft statute, amended in accordance with the United Kingdom proposal, by 10 votes to 1.

Article 47

Mr. MENDEZ (Philippines) proposed that article 47, paragraph 1, should be amended as follows: "shall be written and shall be stated, etc.".

Mr. MARMOR (Israel) pointed out that the statute should provide for the operation of the "double jeopardy" rule. It was therefore desirable that the judgment should state the facts which had been established by the court. He proposed that the words, "including the facts which have been established with regard to the accused's participation in the offence for which he has been indicted", should be added at the end of paragraph 1.

Mr. DAUTRICOURT (Belgium) proposed that the Israel representative's text should be replaced by the words: "including the charges which have been established".

Mr. MARMOR (Israel) accepted that wording.

Mr. MERLE (France) objected to the two amendments, which weighted the text unnecessarily. As paragraph 2 provided that the judgment must be signed by the presiding judge and by the clerk of the court, it seemed quite obvious that it

should be given in writing. Moreover, if the object of the Israel and Belgian amendment was to ensure respect for the decision, the court before which the case was brought for a second time would be able to appreciate the scope of the principle without it being necessary to include a mass of detail in the statute.

Mr. RÖLING (Netherlands), supported by the Philippine representative, recalled the provision of article 51 of the statute, which stated that: "no person... shall be subsequently tried before any court, etc.". That made the Israel amendment unnecessary. In any case, the judgment, by stating the grounds on which it was based, would make the facts sufficiently clear.

The CHAIRMAN put the amendment accepted by the Israel representative to the vote.

The amendment was rejected by 3 votes to 3, with 7 abstentions.

The CHAIRMAN put the Philippine amendment to the vote.

The amendment was rejected by 6 votes to 1, with 6 abstentions.

The CHAIRMAN, in the absence of any opposition to paragraph 2, noted that the Committee had tentatively adopted article 47 of the draft statute.

Article 48

Mr. DAUTRICOURT (Belgium) proposed that article 48 should be deleted.

Mr. LAUREL (Argentina) was in favour of it being retained.

Mr. MERLE (France) was opposed to that provision, but agreed that the question was very delicate, as it illustrated the opposition between two different legal conceptions. In international law there seemed to be an established tradition in favour of judges having the right to add an explanation of their own dissenting opinions. That idea, however, was still very dangerous, especially with regard to criminal law.

Mr. RÖLING (Netherlands) shared the view of the Belgian and French representatives, not only because it was in accordance with the systems in force in the three countries and in many others, but because experience, especially at Tokyo, had shown the advisability of keeping the proceedings in chamber secret.

Mr. MAKTOS (United States of America) thought that the right to express dissenting opinions sprang from the need of relations with the press and the right of the public to be fully informed.

Mr. VALLAT (United Kingdom) considered that the development of international law was even more important than the consideration emphasized by Mr. Maktos. Dissenting opinions were valuable in that respect and were sometimes more fruitful than the judgments themselves.

The CHAIRMAN put the Belgian amendment for the deletion of article 48 to the vote.

The amendment was rejected by 7 votes to 3, with 2 abstentions.

The CHAIRMAN noted that the Committee had tentatively adopted article 48 of the draft statute.

The meeting rose at 7.15 p.m.