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Chairman:

Mr. MORRIS United States of America

Rapporteur:

Mr. RÖLING Netherlands

Members:

Mr. GARCIA OLANO Argentina

Mr. LOOMES Australia

Mr. DAUTRICOURT Belgium

Mr. WANG China

Mr. DONS-MOELLER Denmark

Mr. SAMI Egypt

Mr. MERLE France

Mr. MARMOR Israel

Mr. MAURTUA Peru

Mr. MENDEZ Philippines

Mr. VALLAT United Kingdom of Great Britain and
Northern Ireland

Mr. MAKROS 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.9 and A/AC.65/L.10) (concluded)

Article 7, paragraph 1 (alternative A)

Mr. MAKTOF (United States of America) proposed that the words "parties to the present Statute" should be replaced by "which have conferred jurisdiction upon the Court".

Mr. VALLAT (United Kingdom) asked for a vote. Some members felt that a point of substance was involved in the proposed amendment.

Mr. MERLE (France) agreed. The point was whether rights and obligations under the statute should be confined to States which acceded to the statute or to States which conferred jurisdiction upon the court. It might be decided that rights and obligations under some articles of the statute should be restricted to the former and under other articles to the latter.

The CHAIRMAN felt that the purpose of the United States amendment was merely to ensure uniformity of style throughout the draft statute.

Mr. RÖLING (Netherlands) observed that some States might accede to the statute but might not agree to confer jurisdiction upon the court. The question was whether they should have any voice in the court's affairs. In so far as article 7 was concerned, he supported the United States proposal.

Mr. MERLE (France) said that the Netherlands representative had stated the problem clearly. He, too, would vote in favour of the United States amendment to article 7.

Mr. BOZOVIC (Yugoslavia) objected to the amendment. The point was whether the proposed court should be a real international criminal court or one in name only. He felt that it should be a real court and would therefore vote against the amendment.

The CHAIRMAN put the United States amendment to the vote.

The United States amendment was adopted by 3 votes to 2, with 5 abstentions.

Article 7, paragraph 1 (alternative B)

The CHAIRMAN observed that the United States had proposed that the words "shall have accepted the jurisdiction of" should be replaced by "have conferred jurisdiction upon".

The United States amendment was adopted by 3 votes to none, with 8 abstentions.

Article 8, paragraph 2 (alternative A)

The CHAIRMAN observed that the United States had proposed that the words "parties to the present Statute" should be replaced by "which have conferred jurisdiction upon the Court" in paragraph 2.

The United States amendment was adopted by 4 votes to 2, with 5 abstentions.

Article 8, paragraph 2 (alternative B)

Mr. RÖLING (Netherlands) suggested that the words "Alternative B" should be inserted after "Article 7" in paragraph 2 of alternative B. The same insertion should be made in other articles, wherever applicable.

It was so decided.

Article 9 (alternative A)

The CHAIRMAN observed that the United States representative had proposed that the words "parties to the present Statute" should be replaced by "which have conferred jurisdiction upon the Court".

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

Article 11, paragraph 1 (alternative A)

The CHAIRMAN observed that the United States representative had proposed that the words "parties to the present Statute" should be replaced by "which have conferred jurisdiction upon the Court".

The United States amendment was adopted by 7 votes to 2, with 5 abstentions.

Article 11, paragraph 2 (alternatives A and B)

Mr. RÖLING (Netherlands) pointed out that paragraph 2 was identical in alternatives A and B. It should therefore be deleted from one of the drafts. His proposal would also affect other articles, wherever applicable.

The Netherlands proposal was adopted by 6 votes to none, with 5 abstentions.

Article 23

The CHAIRMAN observed that the United States representative had proposed that the word "confer" should be replaced by "have conferred" and that the words "and Parole" should be inserted immediately after "Board of Clemency".

The United States amendment was adopted by 6 votes to none, with 6 abstentions.

Article 26, paragraph 3

The CHAIRMAN observed that the United States representative had proposed that the words "may specify" should be replaced by "have specified".

The United States amendment was adopted by 2 votes to none, with 9 abstentions.

Article 27, paragraph 2

The CHAIRMAN observed that the United States representative had proposed that the word "laws" should be used instead of "rules". The former had a broader meaning.

Mr. MERLE (France) said that the French text should not be amended. In French, lois had a narrower meaning than règles.

Mr. GARCIA OLANO (Argentina) observed that a change corresponding to the proposed amendment should be made in the Spanish text.

The United States amendment was adopted by 5 votes to none, with 8 abstentions.

Article 34

The CHAIRMAN pointed out that the words "prosecuting attorney" appeared in capital letters in paragraph 1 and in lower case in paragraph 2. The United States representative had proposed the use of capital letters in both paragraphs.

The United States amendment was adopted by 4 votes to 2, with 7 abstentions.

Article 37

The CHAIRMAN observed that the United States representative had proposed the deletion of the words "over the accused" and the replacement of "is" by "has been".

The United States amendments were adopted by 5 votes to none, with 8 abstentions.

Article 38, paragraph 3

The CHAIRMAN observed that the United States representative had proposed that the words "the oath" should be replaced by "an oath".

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

Article 42

The CHAIRMAN observed that the United States representative had proposed the use of "authority" instead of "powers" or "power" both in the heading and in the text of the article.

Mr. MERLE (France) said that the French text should remain unchanged.

Mr. GARCIA OLANO (Argentina) said the Spanish text should also remain unchanged.

The United States amendment was adopted by 3 votes to 2, with 7 abstentions.

Mr. MENDEZ (Philippines) proposed the deletion of the word "require" immediately before "production", insertion of the word "the" in its place, insertion of the word "to" before "rule" and also before "maintain".

The Philippine amendments were adopted by 6 votes to none, with 7 abstentions.

Article 36. paragraph 1

The CHAIRMAN observed that the words "of the State in which the crime is alleged to have been committed" had inadvertently been omitted. They should be inserted before "and as far as possible". A proposal to that effect had been made by the United States representative.

The United States amendment was adopted by 14 votes to none, with 1 abstention.

Article 52

Mr. RÖLING (Netherlands) proposed the addition of the words "and Parole" in the heading.

It was so decided.

Mr. RÖLING (Netherlands) proposed that paragraph 1 of alternative A should be amended to read: "The States which have conferred jurisdiction upon the Court shall, at the meetings and in the manner provided in Article 11, elect a Board of Clemency and Parole consisting of five persons".

The Netherlands proposal was adopted by 9 votes to none, with 7 abstentions.

Mr. RÖLING (Netherlands) proposed that paragraph 1 of alternative B should be amended to read: "The States referred to in article 7 (Alternative B) shall designate a Board of Clemency and Parole".

The Netherlands proposal was adopted by 7 votes to none, with 6 abstentions.

Mr. RÖLING (Netherlands) proposed that paragraph 2 of article 27 should become paragraph 4 of article 26.

The Netherlands proposal was adopted by 7 votes to none, with 6 abstentions.

Article 50

Mr. MENDEZ (Philippines) proposed that the title of article 50 (A/AC.65/L.10) should be amended to read "Double Jeopardy".

The Philippine proposal was adopted by 5 votes to none, with 8 abstentions.

Mr. MERLE (France) suggested that the French title should be amended to read Autorité de la chose jugée.

It was so agreed.

Mr. PEREZ-PEROZO (Venezuela) agreed with the French representative's interpretation of the title, which was reflected in the Spanish version.

The CHAIRMAN stressed that the titles of articles were included merely for the sake of guidance and were not authoritative.

Article 36

Mr. LOOMES (Australia) suggested that the words "or States" should be inserted after the words "of the State" in article 36.

The Australian amendment was adopted by 7 votes to nine, with 6 abstentions.

The CHAIRMAN recalled that the Israel representative had enquired what version of the draft statute was to be authentic, and had also raised the question of the language or languages of the court.

Mr. ROLING (Netherlands) remarked that the Israel representative had suggested that the question of the official languages of the statute should be mentioned in the Committee's report and that the languages of the court would be the subject of future discussion. The point might be decided by the court, which would adopt its own rules. There was therefore no need for a decision by the Committee at the moment.

Mr. MAKIOS (United States of America) proposed the addition of the following passage to the text of the Israel proposal adopted at the morning meeting: "The court shall come into existence upon approval of the statute of the court by the General Assembly and upon conferment of jurisdiction upon the court by not less than ... States."

Mr. MARMOR (Israel) said the United States proposal involved two new propositions which should be considered separately. It involved, firstly, the court's establishment by the approval of the General Assembly, and, secondly, its coming into existence upon the conferment of jurisdiction by a certain number of States. The first of the two procedures amounted to establishment of the court by the Assembly. However, the Committee had already disposed of that method by adopting the Israel proposal at the morning meeting (A/AC.65/SR.21).

The CHAIRMAN pointed out that all the Committee's decisions were tentative.

Mr. WANG (China) proposed the insertion of the following phrase in the United States proposal: "when ... States shall have ratified the statute of the court drawn up by the international diplomatic conference" after the words "come into existence".

Mr. MAKIOS (United States of America) explained that his proposal referred to the draft statute which would be submitted to the General Assembly and which might be annexed to a General Assembly resolution. If such a resolution materialized, the General Assembly would have to approve the draft statute before any international diplomatic conference could be convened. Member States would thus have the opportunity of showing their attitude to the proposed court by their votes on the resolution. If a conference of ten or fifteen States was sufficient to deal with the matter there was no need for all the work already undertaken by the United Nations. He accepted the Chinese amendment.

Mr. WANG (China) pointed out that his amendment referred to the statute emerging from the international diplomatic conference and not to the text which might be annexed to a General Assembly resolution.

Mr. MERLE (France), supported by Mr. GARCIA OLANO (Argentina), stated that the United States proposal would invalidate the Committee's decision on the Israel proposed.

Mr. RÖLING (Netherlands) said that the United Nations functions mentioned in the draft statute would necessarily require the approval of the General Assembly before they could be exercised. The approval of the General Assembly was therefore implicit and need not be referred to in a formal statement.

The CHAIRMAN observed that, as the United States proposal was submitted as an addition to the Israel proposal, there was no conflict between them. The former was therefore in order.

Mr. GARCIA OLANO (Argentina) felt that since the United States proposal would in effect supplant the Israel proposal he would vote against it.

Mr. PEREZ-PEROZO (Venezuela) agreed with the Argentine representative. If the two conditions in the United States proposal were met, there would be no point in convening a conference to establish the court as the latter would already exist.

Mr. MARMOR (Israel) pointed out the difference between the adopted Israel proposal and the United States proposal now before the Committee. In the light of the discussions in the Committee on the methods of establishing the court, the United States proposal aiming at the court's establishment by the General Assembly was in contradiction to the adopted Israel proposal. The relationship between the court and the United Nations had been outlined in the Israel Working Paper (A/AC.65/L.4/Rev.1), which hardly implied the procedure indicated in the United States proposal.

Mr. VALLAT (United Kingdom) felt that the stipulation that approval by the General Assembly should be required was contrary to the trend of the Israel proposal, although it might possibly be included at some later stage. In any case, action by the General Assembly was not technically necessary unless certain functions were ascribed to the United Nations under the statute. Moreover there was a considerable difference between accepting certain functions and approving the statute.

Mr. MERLE (France) requested a separate vote on the two conditions stipulated in the United States proposal.

Mr. MAKTOŠ (United States of America) pointed out to the Argentine and United Kingdom representatives that the United Nations would be within its rights in imposing conditions for the convening of a diplomatic conference under its auspices; such conditions did not prevent any States from convening a conference unrelated to the United Nations. The question whether or not United Nations approval of the statute of the court was technically necessary was irrelevant; approval by sixty States was desirable. The Committee should make provision for General Assembly approval, not merely of the functions of the court, but of its statute.

After accepting an amendment proposed by Mr. Wang, he proposed three recommendations to be made to the General Assembly in the Committee's report.

The CHAIRMAN put the three recommendations to the vote.

The proposal to recommend to the General Assembly: "The Court shall come into existence when X States shall have conferred jurisdiction upon it" was adopted by 6 votes to 1, with 8 abstentions.

Mr. VALLAT (United Kingdom) felt that the views of the Committee on the second of the three recommendations would be better conveyed by an account of the discussion of that recommendation in the Committee's report than by a vote.

The proposal to recommend to the General Assembly: "The Court shall come into existence when the United Nations shall have approved the Statute of the Court drawn up by the International Diplomatic Conference" was rejected by 11 votes to 3, with 1 abstention.

The proposal to recommend to the General Assembly: "The Court shall come into existence when X States shall have ratified the Statute of the Court drawn up by the International Diplomatic Conference" was adopted by 5 votes to 4, with 6 abstentions.

Article 53

Mr. DAUTRICOURT (Belgium) pointed out that article 50 provided that the judgment should be final and without appeal; as the Committee had decided, by a narrow majority, to omit article 53 from the statute, the fate of an accused would

depend upon the Board of Clemency and Parole even if a new fact had been discovered of such a nature as to be a decisive factor. He had discussed the question with the Netherlands representative, who opposed the inclusion of article 53 on the grounds that to do so would invite political pressure upon the court for revision, and that article 53 stipulated no time limit for review. He felt, however, that political pressure would be directed to securing clemency rather than revision, and article 53 could be amended to stipulate a time limit.

Furthermore, revision was a right, and only a judicial organ could give a ruling on a right. The Committee had shown itself keenly concerned with the rights of the accused, and would be harming those rights if it failed to provide for revision.

Had he not been taken unawares by the vote at the previous meeting to omit article 53, he would have proposed that paragraph 1 should be amended to read: "An accused, within ten years after the commission of the crime for which he has been convicted, may apply to the Court for revision of the judgment."

If the Committee decided to reconsider the inclusion of article 53 he would also propose that the word "Court" in paragraphs 2 and 3 should be replaced by the words "Committing Chamber".

Mr. RÖLING (Netherlands) pointed out that political conditions could change very quickly, and that any proceedings to secure a revision would be subjected to political bargaining. Crimes of the type which the court would try were complex, and evidence and arguments for revision of sentences would always be forthcoming. A situation in which good international relations came to depend on the decision of the court in respect of the revision of a judgment would expose the court to a high degree of political pressure and might prejudice the development and standing of the court in its difficult early years. The Committee had provided for a Board of Clemency and Parole which would not interfere with justice but which would be open to guidance on the grounds of political expediency. He disagreed with the Belgian representative's view that political pressure would be exerted only on the Board of Clemency and Parole if provision for revision was made; Germany and Japan desired the reversal of the sentences imposed on some of their nationals who had committed war crimes.

Mr. MENDEZ (Philippines) said it was a fundamental error to confuse clemency with revision. To eliminate revision went against the presumption of the innocence of an accused until found guilty; revision was an essential feature of all national legal systems.

Mr. PEREZ-PEROZO (Venezuela) agreed with the Philippine representative, and urged that, justice being one and indivisible, international legislation must include provision for revision as national legislations did. The provisions of article 53, paragraph 2 (a) and (b) provided adequate guarantees against the abuse of the procedure.

The Committee decided by 8 votes to 1, with 5 abstentions, to restore an article equivalent to article 53.

After some discussion concerning the inclusion of a time limit in paragraph 1, in which Mr. MENDEZ (Philippines), Mr. LOOMES (Australia), Mr. MAKIOS (United States of America) and Mr. DAUTRICOURT (Belgium) took part, Mr. MENDEZ (Philippines) proposed that paragraph 1 of article 53 of the 1951 draft statute should be maintained unchanged.

The proposal was adopted by 7 votes to 3, with 4 abstentions.

Mr. LOOMES (Australia), supported by Mr. MENDEZ (Philippines), agreed with the proposal of the Belgian representative that the word "Court" in the first sentence of paragraph 2 should be amended to read: "Committing Chamber"; thus any request for revision would, in accordance with paragraph 1, be addressed to the court, but it would be for the Committing Chamber to satisfy itself that a new fact had been discovered of such a nature as to be a decisive factor.

The CHAIRMAN and Mr. MAKIOS (United States of America) felt that the court, which had tried the case, was the appropriate body to decide whether an application should be entertained.

Mr. MAURTUA (Peru) considered that the Committing Chamber's function was only to examine the evidence offered in support of the complaint; it was for the

court to decide whether or not that evidence was substantiated. Similarly, a decision to review was a matter for the court.

The Belgian proposal that "Court" should be replaced by "Committing Chamber" in the first sentence of paragraph 2 was not adopted, 4 votes being cast in favour and 4 against, with 6 abstentions.

Mr. MENDEZ (Philippines), supported by Mr. GARCIA OLANO (Argentina), proposed that the words "or evidence" should be inserted after the word "fact" in paragraph 2 (a).

Mr. ROLING (Netherlands) pointed out that the use of the word "fact" alone followed the terminology of the Statute of the International Court of Justice, and hence should not be altered without strong reasons.

Supported by the Chairman, he maintained that a fact was discovered through evidence; the two expressions were not separate, but related and mutually dependent. A judge could only discover a fact through evidence.

The Philippine proposal was rejected by 7 votes to 1, with 5 abstentions.

Mr. DAUTRICOURT (Belgium), in view of the rejection of his amendment to paragraph 2, withdrew a similar amendment to paragraph 3.

A proposal by the Chairman that article 53 as contained in the 1951 draft should be retained in its original wording was adopted by 8 votes to none, with 6 abstentions.

The meeting rose at 6.0 p.m.