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Held at Headquarters, New York,
on Thursday, 20 August 1953, at 10.30 a.m.

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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

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Mr. MENDEZ

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United Kingdom of Great Britain
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Venezuela

Mr. BOZOVIC

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Secretariat:

Mr. LIU

Secretary of the Committee

CONSIDERATION OF THE DRAFT REPORT OF THE COMMITTEE (Working Paper No. 1)

The CHAIRMAN requested the Committee to take up the provisional text of its draft report (A/AC.65/L.12). He congratulated the Secretariat on the speed with which the draft report had been reproduced and circulated to the members of the Committee.

Mr. ROLING (Netherlands), Rapporteur, introduced the Committee's draft report. He apologized to the French-speaking and Spanish-speaking delegations for his inability through lack of time to submit versions in those languages. He also apologized for any mistakes or omissions in the draft report due to the haste in which it had been prepared. He asked members to speak to him directly about any drafting changes which they wished to make, rather than move these in committee. He had intended to include in the report notes referring to the summary records of the meetings where the various aspects of the subject had been discussed. Unfortunately he had not had the time to do that reference work; but, if the Committee thought it would be useful, he was ready to undertake it. The draft report was based on the same plan as the 1951 Committee's report in order to facilitate comparison between the work done by the two Committees.

The CHAIRMAN congratulated the Rapporteur on the way in which he had carried out his work. In order to consider the draft report as quickly as possible, it would be advisable for members of the Committee to indicate which parts of the report they wished to have changed. Only comments on substantive points would be discussed by the Committee.

Mr. ROBINSON (Israel) felt that the already substantial work of the Rapporteur should not be increased by asking him to include in the report notes referring to the summary records of the meetings. The Secretariat could be asked to compile a document similar to that which it had prepared for the 1951 Committee (A/AC.48/4/Add. 1 and 2), which referred to the summary records of the meetings at which each article of the draft statute had been discussed.

Mr. LIU (Secretariat) said that he would be prepared to follow the Israel representative's suggestion, but pointed out that a reference list like the one prepared by the Secretariat for the 1951 Committee did not seem to be very useful for the 1953 Committee, as the report was relatively short.

Mr. VALLAT (United Kingdom) remarked that, as he had not participated in the Geneva Committee's discussions, he had found the summary record reference list which the Secretariat had prepared in 1951 very useful.

The CHAIRMAN thought that the Secretariat should also prepare a reference list referring to the summary records of the meetings where each item of the Committee's agenda had been considered.

Mr. VALLAT (United Kingdom) thought that both lists would be very useful.

Mr. ROBINSON (Israel) felt that the Secretariat could very well prepare one reference list referring to the summary records dealing with each item on the agenda, each article of the draft statute and each point considered.

Mr. RÖLING (Netherlands), Rapporteur, considered the suggestion excellent. If the Committee approved it, it would be mentioned in the report.

Mr. LOOMES (Australia) thought that the Israel representative's suggestion to prepare, along the lines indicated, a reference document separate from the report had some advantages, but that the document should be annexed to the report.

The CHAIRMAN asked the Rapporteur, the Israel representative and the Secretary of the Committee to confer on the best form of reference list.

Mr. MERLE (France) endorsed the congratulations addressed to the Rapporteur, who had done important and excellent work. He asked the Rapporteur, however, to clarify two points. The first point concerned appellate jurisdiction, the discussion of which had been somewhat extemporaneous. At the moment it appeared that the main question had been not so much whether the court should have appellate jurisdiction - far less cassation jurisdiction, which was unknown in many judicial systems - as whether the court should be able to rule on preliminary points of international law raised in national courts. It would therefore be sufficient to provide that the international criminal court could express an opinion on a point of international law disputed in a national court. It was out of the question to raise the whole matter again, but the report could indicate that the real problem of appellate jurisdiction had not been broached, and thus leave it open for consideration.

The second and more delicate point on which he desired clarification was raised by paragraph 17 of the draft report dealing with the drafting of alternative texts. The Committee had decided on the method of establishing the court. Hence the alternative texts mainly concerned the relations to be established between the court and the United Nations. The report did not indicate clearly enough that the two questions were interdependent. The draft statute prepared by the 1951 Committee had the merit of containing only one text. The statute submitted to the General Assembly by the 1953 Committee contained alternative texts to be applied as appropriate. If the method of establishing the court was considered to be connected with the relations between the court and the United Nations, it must be recognized that the 1953 Committee had decided the first question only, and it must also be asked whether the 1953 Committee was more favourably disposed than the 1951 Committee to the establishment of relations between the court and the United Nations.

He therefore thought either that the Committee should reach a decision on the relations between the court and the United Nations or, if it considered a vote to be useless - because its decision on the method of establishing the court implied the choice of alternative texts A of the draft statute which it had prepared - that it should say so in the report.

Mr. MAKTOS (United States of America) thought that a discussion of the French proposal might take the Committee another week. When the Committee had voted on the alternative texts of the draft statute, it had not asked whether the alternative texts referred to any particular method of establishing the court. A number of provisions in the draft statute applied equally to the establishment of the court by convention and by a General Assembly resolution. As the Committee had decided on the method of establishing the court, there was now no point in choosing between the two texts proposed for some articles of the draft statute. The report need only mention that the Committee had decided in favour of the establishment of the court by convention. What was necessary was that the Sixth Committee should have before it a draft which could be applied if the court were to be established by convention; the draft statute prepared by the 1951 Committee already met that condition.

Mr. RÖLING (Netherlands), Rapporteur, thought that paragraph 61 of the draft report covered the French representative's point. He was, nevertheless, prepared to include the matter mentioned by Mr. Merle in paragraph 17.

Mr. ROBINSON (Israel) felt that the wish expressed by the French representative could be met by adding, at the end of paragraph 17, "(See also paragraph 61)", and by substituting the following words for the last sentence of paragraph 17:

"The draft statute is based on the establishment of a court by a convention concluded under the auspices of the United Nations. In order, however, to indicate another possibility, the Committee decided to present, where appropriate, alternative texts applicable in the event of the court's establishment by a resolution of the General Assembly."

Mr. DAUTRICOURT (Belgium) supported the French proposal, which offered a clear and simple solution to the problem. He proposed that the following words should be added to the relevant portion of section E of Chapter III: "The court should have organic and functional ties with the United Nations".

Mr. WANG (China) was not prepared to support that proposal, which he said reopened the whole question. The Committee had voted in favour of establishing the court by convention, but that did not mean that the court should have no link at all with the United Nations.

Mr. LOOMES (Australia) agreed with the Chinese representative, and asked what organic and functional links were proposed and how far they were to be established. The draft statute drawn up by the Committee in 1951 provided for liaison with the United Nations, and until he knew exactly what ties between the court and the Organization the Belgian representative had in mind, he could not support the Belgian proposal.

Mr. MENDEZ (Philippines) said that General Assembly resolution 687(VII) and the mandate given to the 1953 Committee by that resolution appeared in any case to imply that ties would exist between the court and the United Nations. However, the report might mention without further detail that the Committee felt it desirable that ties should be established between the court and the United Nations.

Mr. MERLE (France) preferred to leave well alone; the Belgian amendment went farther than the French proposal, which was not intended to open up a problem already resolved, but only to dispel the ambiguity remaining in the sentence. The Israel proposal was perfectly satisfactory in that respect.

Mr. RÖLING (Netherlands), speaking as Netherlands representative, associated himself with the statements of the representatives of China, Australia and France. The amendment put forward by the Belgian representative would not, he thought, be very helpful.

Mr. DAUTRICOURT (Belgium) said that he would be satisfied if it were made clear that the Committee's preference for the method of a convention implied the creation, under United Nations auspices, of a court which would nevertheless not be organically attached to the United Nations. It would be useful to make that point quite clear.

The CHAIRMAN thought that whoever read the report would have no doubt about the opinion of the Committee regarding the relations which should exist between the International Criminal Court and the United Nations. There were no grounds for attempting to sum up that opinion in a single very general sentence. The Israel proposal had the advantage of being clear and of avoiding all possibility of misinterpretation.

Mr. DAUTRICOURT (Belgium) withdrew his proposal.

Mr. MAKTOOS (United States of America) said that the sentence in question gave the impression that the Committee's discussions had been based on the assumption that the court would be established by convention. That had not been so in fact. The Committee had not voted in favour of the creation of the court by convention until it had finished examining the draft statute, which did not require any particular method of establishment.

The United States delegation had, on instructions from its Government, voted against the establishment of the court by convention; it was therefore not in a position to discuss how effect should be given to this method of creation. If the Committee intended to do so, his delegation would be unable to take part in the discussion without first referring to its Government.

He pointed out that both alternatives of article 7 and of article 11 of the draft statute were equally applicable to a court set up under a General Assembly resolution and to one set up by convention.

It was essential, therefore, to make clear that the Committee had not decided from the start to study only the practical problems of creating a court by convention.

The CHAIRMAN observed that it was only necessary to read the summary records to realize that the method of setting up the court had been decided after the draft statute had been revised.

The amendment to the draft report (Working Paper No. 1) proposed by the Israel representative was adopted by 10 votes to none, with 3 abstentions.

Mr. WANG (China) proposed that in the last sentence of paragraph 17 of the draft report, the words after "international criminal court" should be replaced by the words "set up by a General Assembly resolution".

Mr. ROBINSON (Israel) thought that in drafting that sentence the Rapporteur had not been thinking only of the method of setting up the court.

Mr. RÖLING (Netherlands), Rapporteur, said that the text referred to the relations which were to exist between the International Criminal Court and the United Nations. The opinion emerging from the Committee's discussions had been that those relations could be close whatever method were adopted for the creation of the court. He could not, therefore, accept the Chinese amendment.

Mr. LOOMES (Australia) agreed. He had never doubted that the distinction between the alternatives was based on the degree of closeness of the relations which were to be established between the court and the United Nations, and not on the choice of a method of setting it up.

Mr. WANG (China) did not press his proposal. He remarked, however, that when the vote on the retention of the alternatives had been taken, he had imagined that those texts reflected the two different methods of setting up the court.

Mr. MENDEZ (Philippines) associated himself with the congratulations addressed to the Rapporteur. He also praised the Secretariat for the despatch with which the report had been completed. The Rapporteur had produced a very objective report which faithfully reflected the sense of the Committee on the various principles discussed. He suggested that, in keeping with what had actually happened, the proposals referred to in paragraphs 66, 70, 104, 116, 125 and 129 should be attributed to his delegation. It had also been a Philippine suggestion that the idea of assessors should be mentioned in the report in connexion with the reference to trial by jury, and he would like that fact stated. He had moved that personal safety should be mentioned as one of the rights of the accused and he suggested that that point should be referred to, for while there

was no problem in that respect in domestic jurisdiction, there could well be in international criminal cases and the report ought to show that the Committee had not overlooked it.

Moreover, in order to spare the feelings of those States which were particularly sensitive about sovereignty, the words "those duties transcended even obligations to the national State" in paragraph 19 should be replaced by the words "those duties transcended even certain obligations...". In the next sentence the words "implementing the...judgments" did not quite accurately represent the General Assembly's view regarding the Nürnberg judgments; he hoped that the Rapporteur would find a more suitable term than "implementing". In paragraph 119 the words "was unable to testify" should be replaced by the words "was not obliged to testify", because "unable" suggested some sort of physical impediment rather than a rule in some legal systems.

The report should express the Committee's wish that the competence of the Court should be recognized by the greatest possible number of States. Indeed, the prevention of crimes at international law directly affected public order and security in every country of the world, unlike civil disputes which concerned only the parties.

Mr. RÖLING (Netherlands), Rapporteur, said that he was prepared to introduce into the report the changes and particulars requested by the Philippines representative.

Mr. VALLAT (United Kingdom) said that he had submitted several amendments to the Rapporteur. In particular he proposed that at the end of paragraph 142, the word "possible" be replaced by the word "practicable". The last sentence of the report (paragraph 144) would reflect the Committee's views more accurately if it read: "The moment had come for the General Assembly to decide what, if any, further steps should be taken towards the establishment of an international criminal court".

Mr. RÖLING (Netherlands), Rapporteur, accepted the proposals of the United Kingdom representative.

Mr. MAURTUA (Peru) said that he had been impressed by the comments of the Philippines representative; he thought that the report should specifically mention important statements and powerful arguments which had considerably influenced the decisions of the Committee even though not formally submitted as motions or amendments. The question was one of equal treatment. In that matter he would rely on the Rapporteur.

Mr. ROBINSON (Israel) thought that the details requested by the Philippines and Peru representatives fell outside the usual scope of reports and that their introduction would involve considerable work and delay the final publication of the report. The summary records contained all the necessary details.

Mr. WANG (China) made two comments on paragraphs 27 and 28. The words "other Members" in line 7 of paragraph 27 seemed to him to introduce a conception opposed to the views expressed at the beginning of the paragraph. In reality there was no conflict of opinion but two distinct subjects. It would be all to the good if that part of paragraph 27, from the words in question to the end, were to be inserted into another passage of the report, especially because the beginning of paragraph 28 ought to come immediately after the first part of paragraph 27, as there was an obvious link between the two texts. If the words "some Members" were used in the first sentence of paragraph 27, they should be used again in the first sentence of paragraph 28 in place of the words "many Members", which implied a difference in the relative numerical strength of the two groups of members.

Mr. RÖLING (Netherlands), Rapporteur, recognized the soundness of Mr. WANG's comments, and stated that he would correct the report accordingly.

Mr. GARCIA OLANO (Argentina) also congratulated the Rapporteur and the Secretariat. The first comment he had wished to make, concerning paragraph 144, had already been made by the United Kingdom representative. He was, moreover, in favour of deleting sub-paragraph (2) of paragraph 17, as the idea it expressed seemed to be covered by the neighbouring sub-paragraphs.

Mr. ROLING (Netherlands), Rapporteur, accepted that suggestion.

Mr. DAUTRICOURT (Belgium) thought that the last sentence of paragraph 20 was rather brief and seemed to imply imperfect justice. He proposed that it should be replaced by the sentence: "Even if the court were to have only limited jurisdiction and were to present only the possibility of recourse it is still necessary for the said court to exist".

Mr. ROLING (Netherlands), Rapporteur, emphasized that it was always a delicate matter to reproduce accurately the views expressed. It was difficult to decide on the spur of the moment whether the wording proposed by the Belgian representative accurately reflected the views of the members of the Committee. In any case the word "imperfect" obviously did not refer to the justice itself but to the operation of the court. He noted that no principle was at stake and proposed that Mr. DAUTRICOURT should meet him to settle a suitable form of words.

Mr. DAUTRICOURT (Belgium) agreed.

Mr. ROBINSON (Israel) suggested the omission of the last sentence of paragraph 20 of the report.

Mr. MAKIOS (United States of America) thought that it would be more accurate to replace the word "relation" in the first sentence of paragraph 27 by the word "conflict".

Mr. WANG (China) agreed that the word "conflict" would express more faithfully the idea which he had emphasized on several occasions.

Mr. ROLING (Netherlands), Rapporteur, said he would make this alteration.

Mr. BOZOVIC (Yugoslavia) joined in praising the Rapporteur and the Secretariat and pointed out that his approval of the report was subject to the reservation made in paragraph 15 and would in no way commit his Government to the decisions adopted.

Mr. RÖLING (Netherlands), Rapporteur, proposed that the word "appointed" in article 38, paragraph 4, of the Draft Statute (A/AC.65/L.11, English text) be replaced by the word "determined".

It was so decided.

The CHAIRMAN noted that the Committee had completed its agenda. He paid tribute to the valuable assistance of the minute-writers and interpreters and the precision and accuracy of their work, and to the devoted service of the whole staff. He thanked the Committee for achieving results in no way inferior to those achieved at Geneva in 1951. The Rapporteur deserved a special share of these congratulations.

Mr. MAURTUA (Peru), supported by the Philippines and United Kingdom representatives, said all the members of the Committee would praise the impartiality, skill and patience of the Chairman, whose smiling authority had succeeded, in particular, in imparting to it a sense of punctuality. The whole Committee paid tribute to the work accomplished by the Rapporteur. He himself joined in praising the members of the Secretariat.

The CHAIRMAN thanked the representative of Peru and the other members of the Committee.

Mr. RÖLING (Netherlands), Rapporteur, wished to express his satisfaction with the co-operation he had received at all stages, particularly from the member of the Secretariat appointed to help him draft the report.

The CHAIRMAN declared closed the session of the 1953 Committee on International Criminal Jurisdiction.

The meeting rose at 12.45 p.m.