



Dual Distribution

COMMITTEE ON INTERNATIONAL CRIMINAL JURISDICTION

First Session

SUMMARY RECORD OF THE TWELFTH MEETING

held at the Palais des Nations, Geneva,  
on Thursday, 16 August 1951, at 10 a.m.

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Present:

Chairman: Mr. MORRIS

Members:

Australia	Mr. JYNES
China	Mr. WANG
Cuba	Mr. VALDES ROIG
Denmark	Mr. SØRENSEN
Egypt	MOSTAFA Bey
France	Mr. de LACHARRIÈRE
Iran	Mr. KHOSROVANI
Israel	Mr. ROBINSON
	Mr. COHN
Netherlands	Mr. RÖLING
Pakistan	Mr. MUNIR
Syria	Mr. TARAZI
United Kingdom of Great Britain and Northern Ireland	Mr. GORDON
United States of America	Mr. MAKTO
Uruguay	Mr. PINEYRO CHAIN

Secretariat:

Mr. Liang

Secretary to the Committee

1. JURISDICTION OF AN INTERNATIONAL CRIMINAL COURT:

Chapter II of annex II to the Secretary-General's memorandum (continued)  
(A/AC.48/1, A/AC.48/L.7, A/AC.48/L.8)

Article 30 of annex II (A/AC.48/1) (continued)

1. The CHAIRMAN requested the Committee to resume its consideration of the text submitted by the special sub-committee set up to prepare a revised wording for article 30, which dealt with the law to be applied by the international criminal court.<sup>1)</sup>

2. Mr. de LACHARRIÈRE (France), speaking as Chairman of the special sub-committee, recalled that the text prepared to define the law to be applied by the court had given rise to various comments both as to form and substance which the Committee should consider.

3. The Netherlands representative had asked that all reference to the law to be applied by the court be omitted. The Chinese and Australian representatives had asked whether it might not be advisable to enumerate in the statute the sources of the law to be applied by the court. He repeated that the special sub-committee had felt that it was interpreting the opinion of the majority in the Committee in considering that it would not be desirable to make such an enumeration.

4. Furthermore, the Danish representative had put forward two observations in regard to the wording. Referring to the expression "crimes of international concern", he had rightly pointed out that all the crimes for which the Committee had assumed that the court would have jurisdiction, including crimes under international law, would be crimes of international concern. The expression might be amplified by the addition of the words "provided for in paragraph (b) of article A", that was to say, the article in which the two categories of crimes, over which it had been decided the court should have jurisdiction, would be mentioned.

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<sup>1)</sup> Summary Record of 11th meeting (A/AC.48/SR.11), paragraph 99.

5. The Danish representative had asked at the previous meeting whether the expression "font renvoi à" was faithfully rendered in English by the words "explicitly refer". He personally considered that the two expressions were sufficiently close to each other. If the Committee adopted the text, it could be left to the Secretariat, if necessary, to find a more precise equivalent.

6. Mr. LIANG, Secretary to the Committee, believed that it would be preferable for the Committee itself to decide on a suitable English equivalent for the French phrase "font renvoi à". The English equivalent given in the sub-committee's text, "explicitly referred", was, in his view, not adequate, for it was apparent from treatises on international law that the French word "renvoi" contained the notion of application.

7. He also considered that the term "general public international law" was cumbersome. While a distinction had been made by publicists between general public international law and international law, the text under consideration made a distinction between general public international law and international penal law, and he believed it would be sufficient to use the term "public international law".

8. Mr. SÖRENSEN (Denmark) said that the French representative's suggestion to clarify the first phrase in the second paragraph of the sub-committee's text was acceptable to him. He agreed with the Secretary's remarks concerning the English equivalent of the French phrase "font renvoi à". The Australian representative had suggested to him a way of introducing the idea of the application of the particular law by replacing the words "which granted it jurisdiction . . . explicitly refer to the said penal law" by the words "conferring the jurisdiction provides for the application of such national law". He supported that suggestion.

9. He appreciated the reasons for which the Secretary had objected to the term "general public international law". If however the word "general" were omitted from that definition, the impression would be given that international penal law was distinct from public international law, but the former was clearly part of the latter as was brought out by the use of the word "general". An alternative formula however might be "other rules of public international law."

10. Mr. LIANG, Secretary to the Commission, said that as the court would apply all kinds of international law, the word "public" should not figure either in the alternative definition suggested by the Danish representative.

11. Mr. MAKTOŠ (United States of America) proposed an alternative text for article 30, reading:

"The court shall apply international law, including international criminal law, and, when applicable, national law."

That wording expressed more simply what the Committee had in mind, and repaired the omission in the sub-committee's text of mention of the application of national law to crimes under international law, to which attention had been drawn by the Netherlands representative.<sup>1)</sup>

12. He also considered that his wording more properly put first things first, by placing the generic category of international law before the specific category of international criminal law.

13. Mr. RÖLING (Netherlands) supported the United States proposal, which met the point he had made earlier.

14. At the suggestion of Mr. ROBINSON (Israel) and of the CHAIRMAN, Mr. MAKTOŠ (United States of America) agreed that the phrase "when applicable" should be replaced by the phrase "where appropriate".

15. Mr. de LACHARRIÈRE (France) saw no point in including in the statute of the court a text which was so short and so general. He would prefer to omit altogether any mention of the law to be applied by the court, rather than include a truism.

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<sup>1)</sup> Summary Record of the 11th meeting (A/AC.48/SR.11), paragraph 110.

16. Mr. PINEYRO CHAIN (Uruguay) informed the Committee of the view he had expounded in the Sub-Committee. Instead of referring first to public international law, and then to international penal law, he thought it would be better to reverse that order, on the grounds that the court's function was essentially the repression of crime. The essential rule to be observed by the court was the penal one, and any other rules of law which the court might have to apply would be supplementary and intended to facilitate the exercise of its repressive functions. In the case of crimes of aggression, for example, indictment was based on international penal law, whereas other supplementary concepts, as that of war belonged to general public international law. In the same way, the violation of the laws and customs of war, were a matter of international penal law, though it was general public international law which defined those laws and customs. Thus the law applicable was international penal law based on general public international law.

17. In drafting its text, the Committee should respect that logical order.

18. Mr. ROBINSON (Israel) said that, despite the fact that he had been a member of the sub-committee that had drafted the text before the Committee, he preferred the United States representative's text, since it was framed in more comprehensive and concise terms and made the necessary provision for the possible application of national law to crimes under international law. He could not share the French representative's view that the United States proposal would have no practical value, for he considered that the very fact of introducing a mention of international penal law into an international instrument would be a very great step forward. So far as the Uruguayan representative's objections were concerned, the United States proposal sought to bring out the contrast between international and national law, and not between public international law and international penal law.

19. Mr. WYNES (Australia) asked what objection the United States representative had to limiting the national law to be applied by the court to national law provided by conventions, special agreements or unilateral renunciations.

20. Mr. MAKTOS (United States of America) replied that he feared that such a limitation might be unduly restrictive on the court, for it was conceivable that a certain national law would have to be applied in a particular case although it had not actually been declared applicable by convention, special agreement or unilateral renunciation. For that reason, he had omitted mention of conventions and the like from his text.

21. The CHAIRMAN put to the vote the text proposed by the United States representative for article 30.

The United States text was approved by 7 votes to 3 with 4 abstentions.

22. Mr. TARAZI (Syria) said that he had abstained from voting because he considered the French text of the formula adopted both incomplete and inexact. International penal rules were not "droit" but "loi", and the court would have to apply "lois". The expression droit pénal international was consequently too vague. It would leave many cases doubtful.

2. PROCEDURE OF AN INTERNATIONAL CRIMINAL COURT (resumed from the eleventh meeting)<sup>1)</sup>

Chapter III to annex II to the Secretary-General's memorandum (A/AC.48/1, A/AC.48/L.7, A/AC.48/L.8)

23. The CHAIRMAN invited the Committee to resume consideration of the United States proposal (A/AC.48/L.7) concerning the establishment of a board of enquiry.

24. Mr. MAKTOS (United States of America), referring to article 3 (A/AC.48/L.7), said that, while his delegation was not wedded to the idea of the election of the members of the board by the General Assembly, he would urge one particular consideration. In his view, the court should not be dissociated from the United Nations; in fact, it would be desirable to create as many ties as possible between them, consistent always with judicial impartiality, although he would not go as far as to urge that the international criminal court should be an organ of the United Nations in the same way as was the International Court of Justice. Being convinced of the impartiality of the General Assembly, he repeated the view

<sup>1)</sup> Summary record of the 11th meeting (A/AC.48/SR.11) paragraphs 36 to 97.

he had expressed at the previous meeting,<sup>1)</sup> that the General Assembly could be relied upon to make sure that the election of the members of the board was carried out impartially.

25. Turning to the succeeding articles in the United States proposal (A/AC.48/L.7), he said that articles 4 to 6 dealt with matters of machinery for the election of the board. As to article 7, the question of the period of office of members of the board could be left over until a decision had been taken as to whether the establishment of a board was desirable. In articles 5 and 8, provision had been made for certain links with the United Nations. He recalled the concern felt by some members of the Committee that the interests of the accused person should be protected, and submitted that the provision in article 9 would not prejudice the interests of the individual.

26. The CHAIRMAN thought that a point had been reached when the idea of the attendance of an accused at an enquiry into his case could be further discussed.

27. Mr. COHN (Israel) said that, the Committee having decided that the primary purpose of the board of enquiry was the protection of the accused, the question now arising was what form that protection should take. When, at the 11th meeting, he had said that the individual should be protected from frivolous prosecution, he had had in mind not only lack of evidence but also frivolous accusations whereby the court would be exploited for propaganda purposes.<sup>2)</sup> The protection of the individual was sought where the issue was political and not judicial. Assuming that an accused were brought before the board of enquiry composed, not of judges but of representatives of States, his delegation wished to prevent the accused being committed for trial before a criminal court because of his political activities or political standing. He had no confidence in the ability of a body so composed to safeguard the interests of the individual. His

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1) Ibid. paragraph 81.

2) Summary Record of the 11th meeting (A/AC.48/SR.11) paragraph 73



idea being that the screening process should be conducted on a judicial basis, he agreed with the Danish representative that the court should be given power to appoint the members of the board, and withdrew his delegation's proposals (A/AC.48/L.8) in that respect in favour of the Danish proposal<sup>1)</sup>. He adhered to that position despite the legitimate desire for there to be close ties between the court and the United Nations.

28. Replying to the CHAIRMAN, he confirmed that each case should be the subject of two decisions, the first as to whether the accused should be tried by the international criminal court, the second as to whether he was guilty of the crime with which he was charged.

29. Mr. ROLING (Netherlands) felt that he should make his position perfectly clear with regard to the proposal for the establishment of a board of enquiry. The Committee had agreed that the international criminal court should deal principally with crimes under international law, and he would limit his observations to that category of crimes, particularly as he hoped that in the light of its discussions the Committee would ultimately rule out the other category, namely, other crimes of international concern.

30. The Committee had decided that an organ of the United Nations could bring a case before the court in respect of crimes under international law. There was every probability that the General Assembly might declare a State an aggressor, and the General Assembly could not be prevented from seeking to bring those responsible for that aggression before the international criminal court. In the event of the General Assembly having declared a State an aggressor, he could see no need, either on grounds of evidence or on grounds of political expediency, for a board of enquiry, that was to say, for a screening body to examine evidence before the court took cognizance of the case.

31. The court would be concerned with three types of crime under international law: crimes against peace; war crimes; and crimes against humanity. If a State had been declared an aggressor by resolution of the General Assembly and the court was established, the General Assembly could decide to bring the leaders

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<sup>1)</sup> Ibid. paragraph 93.

of that State before the court. The question was whether the General Assembly would wish to do so. After all, the primary function of the United Nations was to maintain peace, but it would be more than difficult to seek and achieve compromises with aggressors, on which the peace of the world might depend, in the face of an attempt to bring those responsible for the aggressive action before the court. Thus the question of whether the General Assembly should appeal to the court in such cases was a matter of political expediency. The same consideration applied where the persecution of groups, that was, crimes against humanity, were concerned.

32. When it came to the question of States bringing accused persons before the court, he again doubted whether a board of enquiry was necessary. In the case of aggression, say, where a charge had been laid in respect of conspiracy to wage aggressive war, the possibility was that the General Assembly might have adopted a resolution declaring the particular State an aggressor, but had not sought to prosecute the leaders of that State on grounds of political expediency in the interests of world peace. In his view, it would be inadvisable for a State to bring such a case with all its attendant implications before the court for judgment without a prior decision on the part of the General Assembly that it was politically expedient that the government of the aggressor State should be tried for a crime against peace. It had to be recognized that justice was a means to an end and not an end in itself, the end being the welfare of the peoples of the world. Where the pursuit of justice was not in the interests of the welfare of mankind, it was better that justice should not be pursued, and that the prosecuting agency should in such circumstances be entitled to abstain from proceeding with the case, the latter being a common procedure under national systems of law which it would be well to introduce into an international system. In his view, the organ that would be able to decide whether the pursuit of justice would be in the public interest would be the Security Council or, even better under present conditions, the General Assembly.

33. He further contended that where a State had been charged with a crime of aggression, the question of the extent and the nature of the evidence could not be of much importance, for there would surely be no lack of valid evidence. The

all-important question was whether at such a time it would be expedient to run the risk of jeopardizing a possible compromise with the aggressor in the interest of peace by a penal judgment against those responsible for the aggression..

34. It would be recognized that war crimes and crimes against humanity, such as the wholesale murder of groups of people or the running of concentration camps and the like, were activities carried out on such a large scale that there could be no question of absence or inadequacy of evidence. No screening process therefore appeared necessary in such cases. There, too, considerations of political expediency obtained similar to those obtaining in the other cases he had mentioned.

35. Admittedly, a filtering process was necessary, but it should be conducted on the political plane; consequently, the screening body should be the General Assembly.

36. The French representative, in supporting the view that States should be entitled to bring accused before the court, had argued that preliminary consideration of a case by the General Assembly would almost certainly result in prejudging the issue. He, on the other hand, considered it essential to have a preliminary political discussion concerning the political expediency of bringing the accused before the court.

37. The CHAIRMAN said that the Netherlands representative had now brought to a head the issue as to whether a board of enquiry was desirable and, if so, what form it should take.

38. Mr. MAKTOG (United States of America) considered that the Committee should take a separate vote on whether there should be screening machinery in cases where the General Assembly, if given the power to do so, decided that the accused should be brought before the court for trial.

39. He believed that where it was a question of States bringing a case before the court, the Netherlands representative was not so much concerned with the question of whether a board of enquiry would be established, as with the question of whether a State's right to bring a charge should be limited by the necessity of securing the General Assembly's approval of such action. As he saw it, the General Assembly

would pronounce on the broad issue of whether, for instance, aggression had been committed, but would not examine the evidence on which a decision could be taken as to whether the various individuals charged had or had not taken action warranting their being brought before the court. It would then be the task of the board to screen the evidence brought against such individuals.

40. Mr. RÖLING (Netherlands) admitted that at the national level a screening process was necessary for the protection of the individual; but the need for such screening was not apparent in cases where the General Assembly decided whether or not a case should be taken before the court.

41. Mr. de LACHARRIERE (France) said that the important statement of the Netherlands representative had drawn the Committee's attention to a very serious aspect of the question, namely, the problem of what action the court could take in respect of authorities in power, a problem which arose from the fact that the court would not have at its disposal a police force of its own.

42. The Netherlands representative, referring to a possible conflict between the requirements of justice and those of peace, had expressed the view that since peace was the fundamental aim of any international community, justice must sometimes be sacrificed to it. He had concluded that the preliminary stage of application to the court must be effected on the political level.

43. While he (Mr. de Lacharrière) entirely agreed with the premises on which that argument was based, he could not accept the conclusion. Up to the present, there had been a difference in opinion in the Committee between those who were in favour of a purely legal screening body and those who wanted a rather more political body connected with the United Nations. The Netherlands representative, going further still, had recommended that States should not be allowed to bring a case before the court directly, but that that function should be reserved for the Organs of the United Nations, concluding, correctly, that the action of the latter would make a screening organ unnecessary; the fact of the General Assembly having given an opinion would be a guarantee that the charge was properly founded.

44. He could not agree that the screening organ should be political. In the case

of rulers in power, the court would not in practice be able, when seized by a State, to take any effective action; it would not even be able to investigate. The charge would remain pending and could only result in a sentence if the United Nations later took measures against the State whose rulers were accused and removed them from power. Only then could the accused be arraigned and tried.

45. Thus, international political action would be required to enable the court to act. In the particular case of rulers in power, their being brought to trial would, by the very fact of their being in power, be subject to political considerations, so that the preliminary screening envisaged by the Netherlands representative would be unnecessary.

46. In other cases, care would have to be taken to keep out politics. Public opinion attached great importance to the decision to bring a matter before a court, whereas it frequently happened that when sentence was pronounced, necessarily after a considerable lapse of time, passions had cooled and the sentence went unnoticed. It was of great importance to public opinion to know that such and such a ruler or such and such a military leader had been brought before the court. The bringing of a charge before the court could not be made dependent on a political decision taken by the majority at any given moment. What State could flatter itself that it would always be one of that majority?

47. The Committee must avoid giving the impression that it was trying to take advantage of the fact that certain States were not represented, to create a kind of cold war. It must propose in good faith the creation of a body acceptable to all States Members of the United Nations. All the States could accept a body empowered to reject improper charges on as non-political a basis as possible, and composed of from three to five important personages whose impartiality no one would be able to question.

48. He felt that it was less important to provide formal safeguards for the accused than to protect them from publicity. He was in favour of closed sittings from which the public, the Press and, if necessary, counsel were excluded, even if that seemed to reduce the safeguards of the accused. The chief safeguard with which they should be provided was protection from sensational publicity.

49. In conclusion he supported the idea of a body whose members would be elected by the court or in any other manner which would guarantee that they were elected in an entirely non-political capacity.

The meeting was suspended at 11.50 a.m. and was resumed at 12.10 p.m.

50. Mr. SÖRENSEN (Denmark), Rapporteur, said that a number of questions which required decision had emerged from the discussion. The first was whether the object of the screening machinery was to decide upon the political expediency of the trial of any case before the court, or whether its object was solely to decide whether the evidence was sufficient to establish a prima facie case against the accused. If the Committee decided that the screening process should be purely judicial, the question would then arise whether it should merely decide whether a prima facie case existed, or whether it should also prepare the trial, inter alia, by the examination of witnesses. Another question concerned the composition of the organ entrusted with the screening process. Such an organ might consist either of members of the court or of non-members. If the latter, who should elect them? A final question requiring an answer was whether the accused should be allowed to appear before the agency carrying out the screening process.

51. Mr. COHN (Israel) held the view that the purpose of a body carrying out such a screening process should be to decide both whether a prima facie case existed or not and whether it was in the general interest that a charge should be preferred before the court. He could not vote on each aspect separately.

52. It seemed to him, however, that a question still requiring an answer was whether screening machinery was desirable or not. The Netherlands representative had maintained that it was not.

53. Mr. WANG (China) pointed out that that question had been asked at the previous meeting, when it had been decided that no attempt should be made to answer it until the United States proposal concerning a board of inquiry had been examined and it had been decided what functions such a board would carry out.

54. Mr. MAKTOŠ (United States of America) said that all the articles in his proposal had been discussed except articles 10 and 11, which were mainly procedural. He would therefore have no objection to a vote being taken on the question of whether or not a screening process was desirable. He thought, however, that the situation might be clarified if a vote were taken first on the question raised by the Netherlands representative, namely: whether, if the General Assembly recommended trial, there was any need for an additional examination by a board of inquiry.

55. The CHAIRMAN suggested that it was not quite time for such a question to be settled by the Committee; the first question was whether a screening process of some kind should be provided for.

56. Mr. RÖLING (Netherlands) wondered whether the question of the desirability of a screening process could be answered until it had been decided which body or bodies would prefer charges. If it were decided that the General Assembly should be the sole organ authorized to prefer charges, there would be no necessity for a board of inquiry or other screening organ. The preliminary question should therefore be whether or not a State should have the right to apply direct to the court; if not, there would be no need for a screening process.

57. The CHAIRMAN disagreed, on the ground that a general principle was at stake. The Committee could decide whether a screening process was or was not necessary; if it decided that question in the affirmative, the question of how the process would be effected would then arise.

58. He put to the vote the question whether the Committee should proceed with the discussion of whether a screening process was required.

The Committee answered that question affirmatively by 11 votes to 1, with 2 abstentions.

59. The CHAIRMAN suggested that the Committee consider the Danish representative's first question, namely: whether the object of a screening process should be to decide upon the political expediency of a trial, or whether to decide whether the evidence adduced by the plaintiff was sufficient to establish a prima facie case against the accused.

60. Mr. COHN (Israel) was uncertain as to the meaning of the term "political expediency". If it were decided that a screening body should determine, from a purely political point of view, whether a case should be brought before the international criminal court, surely such a decision would run counter to the very conception of the former as a judicial body.

61. The CHAIRMAN agreed with the Israeli representative that such a conception of the purpose of the screening body would undoubtedly run counter to the United States idea of what such a body should be. The Netherlands representative however, had urged that the screening process should be mainly political, and the idea underlying the question was that the Committee should decide whether such a purpose was legitimate in respect of whatever body might be set up.

62. Mr. COHN (Israel) contended that any investigating authority acting as a screening body should have the power not only to declare whether the evidence was such as to establish a prima facie case, but also to declare that it was not in the general interest that a case should be tried before the international criminal court. It might be argued that general interest in that context came within the purview of the term "political expediency", but he would prefer to see the word "political" deleted. Put in other words, his view was that the inquiry should be judicial in nature, but that no accused should be committed for trial by the court if it were in the general interest that he should not be. The screening body could, for example, dismiss a complaint on the ground that "de minimis non curat practor".

63. Mr. PINERO CHAIN (Uruguay) recalled that, during a discussion on the same question at the 8th meeting, he had maintained that a State could not compel the court to try a case by submitting charges. A screening body was needed to act as an intermediary between the State and the court, both from the legal and from the political point of view. That body might be the General Assembly, or an international organ appointed by it, or, again, a new organ whose function it would be to weigh the political expediency of the case.<sup>1)</sup>

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<sup>1)</sup> Summary Record of the 8th meeting (A/AC.48/SR.8), paragraphs 118' and 119.



64. There was some analogy with domestic criminal law. Although under that law, the decision to prosecute was usually taken by the State, there were times when the individual had to be consulted, as, for instance, in cases involving the reputation of third parties, or in the case of sexual offences, because, in some instances, more harm would be done to the injured party by a prosecution than by letting the offender go free. Similarly, under international law, an attempt to punish a crime might provoke undesirable political agitation; hence the need for an ad hoc organ to decide whether or not it would be expedient to prosecute. It was for that reason that his delegation had voted for the motion when it had been a question of declaring that the General Assembly and other international organs should be entitled to bring cases before the court. On the other hand, it had voted against the French representative's proposal to give States the right to bring cases before the court.

65. The same problem arose with regard to the proposal to establish an organ to rule on charges submitted by States. The Netherlands representative had clearly demonstrated the disadvantages of allowing States to initiate proceedings before the court.

66. The French representative had brilliantly argued the necessity for separating justice from politics. But, it was by allowing States to bring matters before the court that politics would be introduced into the court. If, on the other hand, the Committee were to interpose another organ between the court and the State bringing the case, it would substitute a world political decision, the expression of the will of the international community, for a unilateral political initiative.

67. For those reasons, although, in general, he was in favour of the United States proposal, he considered the moment had come to declare that the proposed body should be responsible for ruling on the expediency of prosecuting. To that function might be added that of preparing the case, unless it were considered preferable to entrust that duty to a separate body.

68. The CHAIRMAN put to the vote the question whether a screening body should be purely judicial in function.

The Committee agreed, by 6 votes to 5, with 3 abstentions, that the screening body should be purely judicial in function.

69. Mr. MUNIR (Pakistan), explaining his vote, said that he had voted that the screening body should be purely judicial in function, on the assumption that the State, and not an organ of the United Nations, would be the sole initiator of proceedings before the court. :

70. The CHAIRMAN, replying to a point raised by Mr. WYNES (Australia), said that no definite decision had yet been taken by the Committee on whether a State could apply direct to the court or not.

71. Mr. MAKTOS (United States of America) said that, while he had voted in favour of the screening body having a purely judicial function, he felt that that body like the somewhat analogous Grand Jury of his own country, should make allowances for human frailty, to the extent that they might affect the decision as to expediency.

72. The CHAIRMAN, amplifying the comments of the United States representative, said that the screening body would not operate in vacuo. For example, if a decision that a case should be committed were likely to cause international turmoil to the extent of endangering the peace, the screening body would undoubtedly take such a fact into consideration.

73. Mr. COHN (Israel) pointed out that a screening body would not be analogous to the United States system of a Grand Jury if, as was held by some members of the Committee, persons with judicial qualifications sat as members. If a judge sitting on such a board of inquiry found evidence sufficient to establish a prima facie case, he would not pay heed to the international consequences flowing from his decision that an accused should be committed. He felt, therefore, that it should first be decided whether a procurator general should be appointed, on the lines of his delegation's proposal (A/AC.48/L.8). Such an official could determine the desirability of bringing a case before the international criminal court.

74. The CHAIRMAN said that the question of a procurator general would be considered in due course.

75. Mr. SÖRENSEN (Denmark) said that while on the one hand a Grand Jury merely decided whether the evidence was such as to establish a prima facie case against an accused, on the other hand a French juge d'instruction not only decided that question, but also examined witnesses in preparation for the trial of the accused before the court. His next question was, therefore, whether the object of a screening body should be not only to establish a prima facie case, but also to prepare the trial.

76. Mr. MAKOTOS (United States of America) said that in his country the work of preparing the trial was carried out by a prosecutor. In his opinion, a similar official might present evidence before the screening body and also before the trial court.

77. The CHAIRMAN said that it was too early to decide that question; the Israeli proposal for the appointment of a procurator general had yet to be examined.

78. Mr. COHN (Israel) pointed out that the French juge d'instruction fulfilled functions carried out to a large extent by the police in Anglo-Saxon countries. Thus, he went to the spot when crimes were committed and recorded evidence there. Clearly, no screening body established in connexion with an international criminal court could carry out such functions; it would have to decide on the basis of evidence assembled by others.

79. The CHAIRMAN, in view of the Israeli representative's comments, suggested that there was no necessity for the question raised by the Danish representative to be discussed by the Committee.

It was so agreed.

80. Mr. SÖRENSEN (Denmark) then asked for a decision on whether the screening body should consist of members of the court, or of non-members. Such a question raised the problem of the qualifications of the members, and was to some extent affected by the decision that the body should be purely judicial in nature.

81. Mr. COHN (Israel) said that at the preceding meeting<sup>1)</sup> he had proposed that the members of the screening body should be judges of the international criminal court. He now withdrew that proposal, in favour of the following provision:

"The court shall appoint an investigating authority. No indictment shall be filed with the court unless the investigating authority has certified that there is sufficient prima facie evidence to support the charges contained in the indictment."

The meeting rose at 1 p.m.

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1) Summary Record of the 11th meeting (A/AC.48/SR.11), paragraph 70.