UNITED NATIONS

GENERAL ASSEMBLY

GENERAL

A/AC.48/SR.22
2 January 1952

ENGLISH
ORIGINAL: ENGLISH AND FRENCH

Dual Distribution

COMMITTEE ON INTERNATIONAL CRIMINAL JURISDICTION

First Session

SUMMARY RECORD OF THE TWENTY-SECOND MEETING

held at the Palais des Nations, Geneva
on Thursday, 23 August 1951, at 3 p.m.

CONTENTS:

Present:

Chairman:	Mr. MORRIS

Members:

Australia	Mr. WYNES
Brazil	Mr. AMADO
China	Mr. WANG
Denmark	Mr. SÖRENSEN
Egypt	MOSTAFA Bey
France	Mr. PINTO
Israel	Mr. ROBINSON
Netherlands	Mr. RÖLING
Pakistan	Mr. MUNIR
Syria	Mr. TARAZI
United Kingdom of Great Britain and Northern Ireland	Mr. JONES
United States of America	Mr. MAKTOS
Uruguay	Mr. PINEYRO CHAIN

Secretariat:

Mr. Liang	Secretary to the Committee

1. METHOD OF ESTABLISHING AN INTERNATIONAL CRIMINAL COURT

1. The CHAIRMAN suggested that before continuing consideration of chapter I of annex II to the Secretary-General's memorandum (A/AC.48/1), the Committee should take up the question of whether the international criminal court should be set up by resolution of the General Assembly or by international convention, or by a combination of both methods.

It was so agreed.

2. Mr. MAKTOS (United States of America) observed that the creation of the court by General Assembly resolution would probably be the easiest method, for in that way the court could be set up immediately, although States would only be bound to accept its jurisdiction by particular conventions subsequently concluded. The creation of the court by a convention to be ratified by States was, however, the method his delegation preferred: first, because of the intrinsic importance of such an organ as an international criminal court, secondly, because the adoption of such a method would lend dignity to its structure, and thirdly, because there was no great urgency for its creation.

3. Mr. ROBINSON (Israel) said that the important problem of the method of establishing the court was inseparably linked with the question of the kind of organ that could, in prevailing circumstances, be set up by the United Nations. The Committee had tentatively adopted a number of articles conferring rights and duties on the United Nations. Under one of those articles, the approval of an organ of the United Nations would be required in respect of jurisdiction to be conferred upon the court; another article laid down that the court should be open to an organ of the United Nations, and to such intergovernmental organizations as might be authorized by the United Nations; and certain functions had also been attributed to the General Assembly and to the Secretary-General in matters relating respectively to the administration of clemency and to the

execution of judgments. Thus a link had been created between the court and an unspecified organ or organs of the United Nations.

4. The problem of that relationship required careful analysis. There was, in the first place, the constitutional consideration of whether the structure envisaged under the Charter of the United Nations was incomplete without an international criminal court. In his view, the answer to that question was in the negative. The Charter was based on the collective responsibility of States for acts contrary to international law. Chapter VII of the Charter was based on the assumption of the collective responsibility of States, with the implied corollary of payment of damages. The principle of individual responsibility did not appear in the Charter, and it was significant that, whereas the international rights of men were mentioned in several places, the Charter made no specific reference to the international duties of men towards the international community. Such a duty was the underlying postulate of individual responsibility for crimes under international law. Consequently, the absence of an organ for the repression of international crimes did not constitute a lacuna in the structure implicit in the Charter. That legal consideration was strengthened by the significant and symbolic fact that on 26 June 1945, fifty representatives of States had signed the Charter at San Francisco, the very day on which representatives of four Great Powers had met to draft the London Charter of the International Military Tribunal, based on legal assumptions entirely different from those underlying the Charter of the United Nations.

5. It would, however, be a mistake to conclude that the establishment of an international criminal court would run counter to the letter and spirit of the Charter, for four reasons. First, the principle of the individual responsibility of natural persons was not inconsistent with, nor was it a substitute for, the principle of the collective responsibility of States; the former was supplementary to the latter. Secondly, the Charter did not represent a comprehensive code of international law; other legal institutions could be brought within the framework of the United Nations, for which no specific provision was made in the Charter. The law of the United Nations was broader than the law of the Charter.

Thirdly, it could be claimed that the United Nations was called upon to promote the progressive development of international law; and the establishment of an international criminal court would be an important step in that direction. Fourthly, in recent years the General Assembly had twice re-affirmed the Nuremberg principles, among which were the principle of individual responsibility and that of the trial of criminals by an international court.

6. The ideal solution for the establishment of the court within the framework of the United Nations would, he submitted, be by way of amendment of the Charter. Only thus could such a court be endowed with the standing of the International Court of Justice, the Security Council and the General Assembly. While it had been rightly stated that in prevailing circumstances such amendment was out of the question, the Committee would be failing in its duty if it did not draw the conclusion that, if created, the court would not be a tribunal of the United Nations as a whole, but only of a part of it. That was a most far-reaching conclusion. The main danger of such non-universality would be that, in the absence of full access to evidence, the court would take its decisions on the basis of available but incomplete evidence. The Nuremberg Tribunal could not be taken as a precedent, for it had suffered from a plethora of evidence supplied by the perpetrators of the crimes which it had tried. It was highly questionable whether a non-universal court for trying individuals charged with grave crimes was at all conceivable.

7. In the face of such difficulties, two courses were possible: either to abandon the project, or to make the best of things in the hope that some improvement in international relations would eventually take place. The Committee had elected to adopt the latter course.

8. According to the Secretary-General's memorandum, there were no obstacles to the establishment of the court as a subsidiary organ to one of the principal organs of the United Nations, and in that connexion reference had been made to paragraph 2 of Article 7 of the Charter. Such a solution, however, would have several disadvantages.

9. First, as things stood, the court could be attached to and be responsible to no other principal organ than the General Assembly itself, and the question was whether the latter could create such a judicial organ. The competence of a subsidiary organ of the General Assembly was supposed to be part of the competence of the General Assembly. Could it be claimed that the competence of the international criminal court would, at least in part, be co-extensive with that of the General Assembly? Again, as it was generally accepted that the work of a subsidiary organ could be performed by the principal organ, could it be assumed that the General Assembly could itself administer international criminal justice?

10. Secondly, under Article 22 of the Charter the General Assembly could establish such subsidiary organs as it deemed necessary for the performance of its functions. Could it be claimed that the administration of international criminal justice was part of the General Assembly's functions, or that the power to condemn individuals was part of the recommendatory powers conferred upon the General Assembly?

11. Thirdly, and assuming that the foregoing difficulties could be overcome, could it be claimed that subsidiary status would not place the court in an inferior position and diminish its prestige?

12. Fourthly, under such an arrangement the court could be dissolved by the General Assembly, and would thus have no guarantee of permanency; and its status would therefore be inferior to that of an organ such as the Commission on Human Rights, the existence of which was provided for under Article 68 of the Charter. Would it be compatible with the dignity of such a court to rely for its existence on the will of the General Assembly or on the whims of the First, Sixth, and especially the Fifth, Committees?

13. Fifthly, as a subsidiary organ, the court would have to submit annual reports to the General Assembly. The latter might merely consider and take note of them; on the other hand, some delegations might wish to criticize the court either for its inactivity or for what it had done. Could it be the wish of the Committee to subject the court to such treatment?

14. As to the advantages of being a subsidiary organ of the General Assembly, the court would admittedly benefit from being associated with the United Nations which was universal, at least in conception, and all-embracing in its fields of activity; above all, the court would be in a position to benefit from the facilities and services of the United Nations. Under such an arrangement, too, the budgetary position of the court would be less precarious than if the court were independent of the United Nations.

15. The next problem was whether the court should be set up by a General Assembly resolution. In that connexion, the following factors had to be taken into consideration.

16. While the details of the machinery necessary for setting up an international criminal court had not yet been worked out in full, the general outline, on which there was unanimity or quasi-unanimity among delegations, was clear. The statute of the court would be adopted in one manner or another, but the court would not start functioning at once. An effort would then be made to induce governments to conclude a convention or conventions dealing with such problems as the apprehension of culprits, the securing of evidence, the provision by States of legal assistance and so forth. Conventions defining crimes and conventions conferring jurisdiction upon the court would also have to be concluded, and at some moment in the course of all that treaty procedure the court would be able to start functioning, and its officers would be elected.

17. Even supposing that the United Nations was empowered to adopt the statute of the court, its implementation would be impossible without ad hoc conferences of States prepared to give up some of their sovereignty in favour of the international community. Thus, all the steps but one in that long process would be taken by way of international convention, and the question arose whether it was reasonable in the circumstances to consider the adoption of the statute by the General Assembly. Admittedly, it could be asserted that the statute did not impose any particular duties or confer any particular rights on Member States, and that its establishment by way of resolution was

therefore the most natural procedure. The implications of such a procedure should not, however, be overlooked. No exact information was available as to the attitude of governments towards the establishment of the court, and there was no doubt that it would meet opposition of varying degree, and that in part the opposition would be directed to matters of detail rather than to those of principle. Thus, in order to obtain a majority, and probably a two-thirds majority, some compromise would be necessary: that would tend to weaken the provisions of the statute. The paradoxical situation would then arise that, as had been clearly brought out in the experience of the last five years with conventions sponsored by the United Nations, those governments that had no intention of participating in the new organization would have the greatest influence in determining the provisions of its statute. Such considerations were in no way weakened by the realization that such a paradoxical method would still be preferable to a debate in which numerous delegations would take no part, deliberately or otherwise.

18. The alternative to the creation of the court by a General Assembly resolution was to convene a conference of States wishing to participate in the establishment of the court. A resolution calling for such a conference would meet with less opposition, and would transfer the centre of gravity of the discussions to the future conference. But the difficulties attending such a solution could not be overlooked.

19. The reasons for which governments participated, or declined to participate, in conferences were not always apparent. As a rule, however, only governments interested in a particular project were prepared to provide the necessary men and money. The purpose of the convention could be defeated if the number of participants was not sufficiently large, and it could be further weakened by whittling down of the provisions of the statute, paucity of signatures, slow ratification, difficulties of implementation and, if it were concluded outside the framework of the United Nations, by aggravation of the problems of facilities and finance. And the larger the number of conventions to be concluded and ratified, the more complicated would the problem become.

20. While the possibility of a comprehensive conference with a broad agenda should not be excluded, it would be wiser to envisage a series of conferences dealing with different aspects of the matter. What was important at the present juncture was not so much the attainment of the final goal, as continuity of effort.

21. One of the advantages of the creation of the court by international convention was that, since the Charter made no provision for any category of organ other than principal and subsidiary organs, an organ created by an international convention concluded at a conference convened under the auspices of the United Nations might claim a status sui generis even within the framework of the United Nations itself. Such a method might, therefore, provide a way out of the dilemma of amending the Charter or labelling the court a subsidiary organ of the General Assembly.

22. Despite such considerations, his delegation felt that it would be premature for the Committee to commit itself one way or the other. He submitted, moreover, that for two reasons the Committee could take no final decision on the two alternatives at its present session. In the first place, the problem had not been adequately discussed. Sweeping statements had been made, but there had been no careful analysis of the possibilities and the difficulties. Such analysis should be undertaken not only by governments, but by independent scholars who should be called upon to examine the problem and other important questions in connexion with the international criminal court, so as to enable the General Assembly to take its decisions en toute connaissance de cause. Secondly, it was doubtful whether the Committee could be called representative, or how far its members could commit their governments. For one thing, one bloc of countries had chosen not to participate in the work of the Committee. Again, India and Peru were not represented. Of the remaining fifteen members, three had made statements definitely opposing the establishment of the court, and two or three had favoured its establishment. The remainder had not committed themselves on that basic problem, and the majority of representatives had emphasized time

and again that they were speaking in a personal capacity. Only a few had received detailed and precise instructions from their governments. It was thus questionable whether any decision of the Committee on so crucial a matter would be of assistance to the General Assembly.

23. The purpose of his statement, which he did not claim to be exhaustive, was to set problems rather than to solve them. It was the considered view of his delegation that the Committee should not offer a solution to the problem, but that its report should contain a succinct account of the possible alternatives and of the arguments for and against them. One of the main implications of such an approach would be the deferment of the consideration of at least parts of chapter I in the draft statute (on the organization of the court) until the basic problem of the role of the United Nations in the new institution had been definitely clarified, since many of the statute's provisions would have to be framed differently according to whether the court was an organ of the United Nations or an independent institution.

24. In brief, if the court were to be established as an organ of the United Nations, that could only be done by labelling it a subsidiary organ of the General Assembly. The serious disadvantages of such a label would far outweigh the advantages of such a procedure. The method could have been adopted, were there no need for a number of subsequent instruments which, by their very nature, could only be international conventions. Reference of the statute to the General Assembly for approval would afford States opposing the establishment of such an institution an opportunity of whittling down its provisions, and reasonable doubt might well be entertained as to whether the Committee could take a decision at that stage either on form or on substance.

25. His delegation, therefore, suggested that the Committee should make no recommendation as to how the court should be established; but that its report should include an analysis of the advantages and disadvantages of the various possibilities. It also proposed that the chapter on the organization of the court in the preliminary draft statutes attached to the Secretary-General's memorandum should not be considered until a final decision, which was not at

present possible, had been taken on the method of creating the court.

26. Mr. PINTO (France) said that he would confine his remarks to two of the Israeli representative's conclusions: that the Committee should not include in its draft statute a chapter on the organization of the court; and that it should refrain from making any recommendations to the General Assembly on the procedure for establishing the court.

27. He felt, on the contrary, that it was essential to present the General Assembly with an all-inclusive draft, and that it would be difficult to avoid recommending a specific procedure for establishing the court.

28. On the latter point, his delegation held that the statute of the court should be established in its final form by international convention.

29. MOSTAFA Bey (Egypt) submitted that, as the initiative in establishing the court had been taken by the United Nations, it was desirable that the task of preparing a convention for the purpose of establishing the court should be entrusted to an international conference, convened by resolution of the General Assembly, to which Member and non-member States of the United Nations would be invited. The conference should take as the basis for its work the draft statute drawn up by the Committee with any amendments thereto which the General Assembly might make.

30. That was precisely the procedure which had been adopted in framing the Convention Relating to the Status of Refugees, at present open for signature.

31. Mr. RÖLING (Netherlands) said that he was somewhat reluctant, after hearing the eloquent statement of the Israeli representative, to speak in favour of the establishment of the court by General Assembly resolution. He was not in a position to go deeply into the Israeli representative's arguments, some of which were weighty, but others of which not so convincing as might appear at first sight.

32. In his view, a convention was generally necessary when States were to undertake obligations. It would be noted that an effort had been made to

refrain from imposing obligations on States in the statute establishing the court. When setting up the court, States would be binding themselves to the achievement of an ideal goal, but not to the assumption of real obligations. Establishment by resolution would have the effect of creating a skeleton to which subsequent conventions would give flesh and blood, and indeed life itself.

33. One disadvantage of creating the court by means of a convention would be that as possibly only a relatively small number of States would ratify such a convention, there would be difficulty in determining how the judges should be elected, with the ultimate result that not all the various legal systems of the world would be represented in the court. In fact, it would not be the world court that was envisaged.

34. A court established by General Assembly resolution would be a subsidiary organ of the United Nations, but he could not agree with the Israeli representative that its standing would thereby be diminished. Its function would be to try individuals, and he considered that it would be quite fitting for a subsidiary organ of the United Nations to undertake such a task. The International Court of Justice dealt with disputes between States, but the General Assembly had the task of maintaining peace and consequently it would not be out of place for an international criminal court to function under its aegis. Nor could he subscribe to the view that it would be inappropriate for such an institution as the court to be responsible to the General Assembly and to be bound by the latter's decisions. If, for instance, the General Assembly decided that a State was an aggressor, and the court was called upon to try an individual responsible for the aggression committed by that State, it would surely be most undesirable if the court were not to be bound by that decision of the General Assembly, but was free to reverse it. The function of the court would not be to judge the issue of principle, but to try those responsible for the aggression already qualified by the General Assembly. Thus the fact that the court would be a subsidiary organ of the General Assembly was not so objectionable as some appeared to consider it.

35. He fully agreed with the Israeli representative that the establishment of the court by General Assembly resolution was a second best choice; but everyone knew that its establishment by amendment of the Charter was out of the question for the time being. Creation of the court by General Assembly resolution would make it possible to create a sound link between the organs of the United Nations and the court, and to set up a world tribunal on which all the legal systems of the world could be represented.

36. He was far from convinced by the Israeli representative's arguments, and favoured the establishment of the court by General Assembly resolution, leaving the implementation of its statute to future conventions.

37. Replying to the CHAIRMAN, he explained that his solution was not similar to that proposed by the Egyptian representative.

38. The CHAIRMAN observed that the Israeli representative was opposed to the Committee making a recommendation as to how the court should be established and could go no farther than approving the transmission of a draft statute to the General Assembly. The Egyptian representative, on the other hand, had gone beyond that, and proposed that the submission of the draft statute to the General Assembly should be followed by the latter convening an international conference for the purpose of setting up the court on the basis of the draft statute in the form in which it was finally approved by the General Assembly. In his (the Chairman's) view the procedure proposed by the Egyptian representative seemed the most natural and reasonable.

39. Mr. RÖLING(Netherlands) recalled the constant emphasis that had been placed in the course of the Committee's deliberations on the desirability of not seeking too high a degree of perfection, in order that the best possible results might be achieved. In his view, the best results would be achieved if the court were established by the General Assembly itself, probably on the basis of a two-thirds majority, and a conference was then convened under the auspices of the General Assembly in order to bring the court to life. He could see no reason why the opportunity should not be taken of having a full discussion in the General Assembly before States met in conference.

40. Mr. SÖRENSEN (Denmark) asked whether the Egyptian proposal really implied the convening of a conference for the conclusion of a convention on the establishment of the court.

41. MOSTAFA Bey (Egypt) replied that there was no reason for excluding the United Nations from the work of preparing the future convention, since it had taken the first step towards the creation of the court, and several articles of the draft statute under consideration explicitly referred to the United Nations or to some of its organs. On those grounds, he proposed that the General Assembly should invite States to a conference at which the convention establishing the court would be drawn up.

42. Unlike the Netherlands representative, he preferred that method to the method of creating the court by General Assembly resolution direct because the United Nations did not include all States in the world. Thus, creation by resolution would debar non-member States from taking part in the preparation of the statute, whereas it was desirable that all States should do so.

43. The CHAIRMAN wondered whether it was absolutely necessary to go into great detail on the method of the creation of the court before proceeding with consideration of the articles relating to the organization of the court, in the Secretariat's draft.

44. Mr. SÖRENSEN (Denmark), Rapporteur, considered that it was essential for the Committee to take a decision on the question of the method of creating the court before proceeding to consider details of its organization. For one thing, the rules relating to the election of judges would vary according to whether the court was set up by General Assembly resolution or by convention. It would be recalled that annex I to the Secretary-General's memorandum was based on the assumption that the court would be established by General Assembly resolution, and that annex II was based on the assumption that the court would be established by an international convention. Perhaps the best procedure would be to vote on the Israeli proposal that no recommendation should be made with regard to the method of establishing the court and, if that proposal were rejected, to decide between the two methods.

45. Mr. MAKTOS (United States of America) said that the Israeli proposal that no recommendation should be made as to how the court should be established ran counter to a paper (A/AC.48/L.15) which the United States delegation had submitted, containing formal clauses for a convention establishing the court. He was not at all convinced by the Israeli representative's arguments, and could see no reason why the Committee should not make recommendations on that important issue. His view was that the Egyptian proposal should be adopted.

46. If the court were created by the General Assembly, it would be an organ of that body. If it were created by a convention, it could be an organ sui generis. For that reason he favoured the latter method.

47. Mr. LIANG, Secretary to the Committee, thought it desirable that the Committee should take a vote on the question. It would be noted that if the court were created by an international convention, the election of judges could either be a matter for the parties to the convention or it could be entrusted to the General Assembly by the terms of the convention itself. The latter method had been followed in the case of the Permanent Court of International Justice. The Statute of the Court, attached to the Protocol of Signature, opened for signature on 16 December 1920, provided in article 4 that the members of the Court would be elected by the Assembly and Council of the League of Nations. In that connexion, the Committee would see that the Secretariat had set out the various possibilities on page 92 of document A/AC.48/1.

48. The court might be created as a principal organ of the United Nations, as a subsidiary organ, or even entirely outside the United Nations. When the Security Council or the General Assembly created an organ, those organs were subsidiary to the Council or the General Assembly, as the case might be. If the court were to be established by a conference of States, it could only be a United Nations organ if it remained within the framework of the United Nations. However, he considered that was a moot question.

49. The CHAIRMAN put to the vote the Israeli proposal that the Committee should make no recommendation as to whether the court should be created by an international convention or by General Assembly resolution.

The Israeli proposal was rejected by 10 votes to 1 with 2 abstentions.

50. The CHAIRMAN put to the vote the Netherlands proposal that the court should be created by General Assembly resolution.

The Netherlands proposal was rejected by 8 votes to 3 with 2 abstentions.

51. The CHAIRMAN said he would put to the vote the United States proposal that the court should be created by international convention.

52. Mr. AMADO (Brazil) sought clarification. It seemed to him that the Egyptian proposal that a conference should be convened by the General Assembly for the purpose of establishing the court had been overlooked.

53. MOSTAFA Bey (Egypt) said in explanation that he had proposed that the first step to be taken by the Committee should be to transmit the draft statute it had prepared to the General Assembly. Thereafter the General Assembly would adopt a resolution taking note of the Committee's work which it would endorse with any amendments to the draft statute that it deemed necessary and would convene a conference for the purpose of concluding a convention creating the international criminal court. The General Assembly would in that resolution recommend that the draft statute as amended by itself should be taken into consideration at the proposed conference.

54. In view of the present condition of the international community recourse must be had to an international convention for creating the court. It was common knowledge that conventions were the sole means whereby States would undertake commitments involving some surrender of their sovereignty. However, in order that the United Nations might also have some part in the conclusion of the convention, the conference would be convened under its auspices.

55. The same procedure had been frequently employed by the League of Nations, the decision to convene conferences for the purpose of preparing conventions having been taken by the Council or the Assembly.

56. Mr. PINTO (France) observed that the Egyptian representative's

proposal was not incompatible with that submitted by the United States representative, to which it was indeed complementary.

57. The procedure outlined by the Egyptian representative appeared quite reasonable.

58. The CHAIRMAN put to the vote the United States proposal that the court should be established by international convention.

The United States proposal was adopted by 6 votes to 2 with 6 abstentions.

59. Replying to Mr. WYNES (Australia), Mr. MAKTOS (United States of America) said that, although the General Assembly had under resolution 489(V) requested that the report of the Committee be communicated to governments of Member States so that their observations might be submitted not later than 1 June 1952, and that the question should be placed on the agenda of its seventh session, he believed that it was not absolutely essential to give effect to that request, if circumstances justified another course. He considered that either the Committee in its report, or the Egyptian Government, whose representative had sponsored the proposal that the court should be established by a convention concluded at an international conference, should request that the matter be placed on the agenda of the next (sixth) session of the General Assembly. The Committee should also recommend that a conference be convened to consider the draft statute which it would have prepared by the end of the present session. He believed that nothing further could be achieved by submitting the matter to governments for comment before passing the draft statute to the General Assembly.

60. Mr. ROBINSON (Israel) observed that the vote, in which six members only had supported the United States proposal whereas six had abstained, was a clear vindication of his own proposal that the Committee should not take a decision on the question. Such a decision could carry little weight with the General Assembly.

61. The CHAIRMAN said that that decision, like all the others taken so far by the Committee, was provisional and it was still possible that, when the

Committee came to take a final vote as to the action it should take in the matter, it would align itself with the Israeli representative's point of view.

62. Mr. PINEYRO CHAIN (Uruguay) expressed some surprise at the statement just made by the representative of Israel.

63. He himself had voted for the solution advocated by the Netherlands representative because he considered that the court, as an organ of the United Nations, must be established by a resolution of the General Assembly. That appeared to be the solution most appropriate to the character of the court and to the world-wide nature of the rules of law it would be called upon to apply.

ORGANIZATION OF AN INTERNATIONAL CRIMINAL COURT:

Chapter I of annex II to the Secretary-General's memorandum (resumed from the 21st meeting) (A/AC.48/1)

64. The CHAIRMAN said that in the light of the Committee's decision that the court should be established by international convention, it should now take up chapter I in annex II of the Secretary-General's memorandum (A/AC.48/1).

Article 1

65. Mr. SÖRENSEN (Denmark), Rapporteur, said that the issue was whether the judges of the court should be persons of the highest moral character and acknowledged authorities on criminal law, or persons of the highest moral character and acknowledged authorities on international law, or with judicial experience in criminal matters.

66. Mr. ROBINSON (Israel) pointed out that the Committee had adopted an article to the effect that the court should apply international law, including international criminal law, and, where appropriate, national law. The implication, therefore, was that, as international criminal law was considered a branch of international law, the technical qualification of the judges should be that they were acknowledged authorities in international law.

67. Mr. PINTO (France), supported by Mr. WYNES (Australia), suggested reproducing in article 1 of the draft statute the terms of Article 2 of the Statute of the International Court of Justice. The adoption of such a wording would relieve the organ electing the judges of the necessity for choosing between the two categories.

68. Mr. KHOSROVANI (Iran) supported the French representative's suggestion, the more especially as it would enable the Committee to avoid taking a decision as to what proportion of the judges should be chosen from one or other of the categories referred to in article 1.

69. Mr. RÖLING (Netherlands) observed that, as the court would be an international penal tribunal, the tendency would be to appoint jurists with experience in criminal law. A weakness of the Nuremburg and Tokio Tribunals had been that the majority of the judges had been men with experience in national criminal law who, applying national criminal law, had failed to give sufficient consideration to international law. He would therefore strongly urge the adoption of the proposal that the judges of the international criminal court should be authorities in international law.

70. Mr. SÖRENSEN (Denmark) considered that in prescribing the qualifications of judges it would be advisable to lay down that some members of the court should be men with judicial experience, so that the court would not be entirely made up of judges drawn from the academic sphere. Article 2 of the Statute of the International Court of Justice was based on that consideration. He would therefore support the French proposal. He would, however, suggest that for the purposes of the statute of the international criminal court the words "especially in international criminal law" should be added at the end of the text of Article 2 of the Statute of the International Court of Justice.

71. Mr. PINTO (France) was willing to agree to the Danish proposal. He would like the word "notamment" to be used in the French text, as a translation of the word "especially".

72. Mr. AMADO (Brazil) thought it indispensable to stress the need that the judges should be authorities on criminal law. The questions they would have

to deal with were neither questions of interests nor geographical ones. Those who would be called upon to weigh human responsibility in the balance and decide the fate of human beings and would accordingly be faced with psychological problems, must be specialists in criminal law.

73. International criminal law was not, however, as yet a recognized branch of law, and only a few research workers considered that it already constituted a separate subject of study.

He would accordingly vote against the addition of the phrase "especially in international criminal law".

74. Mr. KHOSROVANI (Iran) suggested that the question of the qualification of judges should be stated in general terms in article 1, and that their qualifications should be set out, somewhat on the lines of Article 2 of the Statute of the International Court of Justice, in article 4 of the draft statute, with some emphasis on the international criminal law aspect, but not so as to limit the choice of candidates.

75. MOSTAFA Bey (Egypt) saw no reason why both expressions could not be included. All the judges would, of necessity, be bound to possess legal knowledge in the fields of criminal and international law.

76. Moreover, in order to indicate that the court would have to take political considerations into account, he requested that the provision defining the qualifications required of judges should include the following:

"taking into account their wide knowledge of international affairs".

77. Mr. PINEYRO CHAIN (Uruguay) was prepared to follow, at least in part, the suggestion made by the representative of Denmark. Criminal law should not be excluded from the range of knowledge required of judges of the court. Although it might perhaps be said that allied military tribunals had been composed too exclusively of criminal lawyers, they would have been exposed to still more serious criticism had they consisted exclusively of international lawyers. The rules of municipal criminal law would re-appear, with some modifications, in international criminal law.

78. He therefore thought that the terms of Article 2 of the Statute of the International Court of Justice should be adopted but that mention should also be made of the knowledge of criminal law required of judges in exercising repressive jurisdiction. That could be done either by indicating in general terms that the judges should possess "recognized competence in the branches of law which they are called upon to apply" or by referring to "competence in international and criminal law".

79. He thought that the expression "international criminal law" should be avoided, since it referred to a specialized branch which had neither been fully developed nor even formulated.

80. Mr. MAKTOS (United States of America) proposed that, if the wording of Article 2 of the Statute of the International Court of Justice was to be taken as a basis, the words "who possess the qualifications required in their respective countries for appointment to the highest judicial offices" should be omitted. Those words did not appear to him to be essential, and might in fact impose an undue limitation on the selection of judges. If article 4 of the draft statute were adopted, it might be assumed that governments participating in the election of judges would not nominate candidates who did not possess the qualifications referred to in that phrase.

81. Mr. RÖLING (Netherlands) said that he could support the French proposal as amended by the Danish representative.

82. The CHAIRMAN put to the vote the United States amendment to the French proposal.

The United States proposal was rejected by 4 votes to 2, with 6 abstentions.

83. Mr. AMADO (Brazil) said that he would vote against the inclusion of the qualification that judges should be authorities on international criminal law for the reasons that he had previously stated.

84. Mr. TARAZI (Syria) suggested, as a compromise, that the end of the article dealing with the qualifications required of judges should be worded as

follows:

"..... jurisconsults of recognized competence in criminal law, international law and international criminal law."

85. Mr. AMADO (Brazil) repeated that there was no expert in criminal international law who was not, at the same time, an expert in international law. He could not accept without an emphatic protest the use of the expression "international criminal law", which had no scientific basis whatsoever.

86. The CHAIRMAN put to the vote the French proposal that the text of Article 2 of the Statute of the International Court of Justice should be adopted, as amended by the Danish representative, and reading:

"The Court shall be composed of a body of independent judges, elected regardless of their nationality from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law, especially in international criminal law".

The text proposed by the French representative for Article 1 was adopted by 8 votes to 1, with 5 abstentions.

The meeting rose at 5 p.m.