UNITED NATIONS

GENERAL ASSEMBLY

GENERAL

A/AC.48/SR.24
3 January 1952

ENGLISH
ORIGINAL: ENGLISH AND FRENCH

Dual distribution

COMMITTEE ON INTERNATIONAL CRIMINAL JURISDICTION

First Session

SUMMARY RECORD OF THE TWENTY-FOURTH MEETING

held at the Palais des Nations, Geneva,
on Friday, 24 August 1951, at 3 p.m.

CONTENTS:

Present:

Chairman: Mr. MORRIS

Members:

Australia	Mr. WYNES
China	Mr. WANG
Denmark	Mr. SÖRENSEN
France	Mr. PINTO
Iran	Mr. KHOSROVANI
Israel	Mr. ROBINSON
Netherlands	Mr. RÖLING
Syria	Mr. TARAZI
United Kingdom of Great Britain and Northern Ireland	Mr. TURNER
United States of America	Mr. MAKTOS

Secretariat:

Mr. Liang	Secretary to the Committee

ORGANIZATION OF AN INTERNATIONAL CRIMINAL COURT

Chapter I of annex II to the Secretary-General's memorandum (continued) (A/AC.48/1, A/AC.48/L.13, A/AC.48/L.15, A/AC.48/L.16)

Article 19 A (A/AC.48/L.13)

1. The CHAIRMAN requested the Committee to resume its discussion of annex II to the Secretary-General's memorandum (A/AC.48/1). The United States delegation had proposed an additional article 19 A (A/AC.48/L.13).

2. Mr. MAKTOS (United States of America) said that his proposal was self-explanatory. Paragraph 2 of article 19 A was modelled on paragraph 3 of Article 23 of the Statute of the International Court of Justice.

3. Mr. WANG (China) said that if the court had nothing to do, it naturally would not sit. In the circumstances, paragraph 1 of the United States proposal seemed superfluous.

4. The CHAIRMAN thought that the United States proposal should be considered in two parts. There being no other comment on paragraph 1, he put it to the vote.

Paragraph 1 of the new article 19 A proposed by the United States delegation was adopted by 4 votes to none, with 5 abstentions.

5. Mr. PINTO (France) said that he had abstained from voting on paragraph 1 of article 19 A because he thought that it was drafted in too blunt a manner. He felt that it would be preferable for it to read, for example:

"The Court shall be a permanent body. It shall sit when convened by its President to try cases within its competence".

6. He commended that draft, provisional as it was, to the attention of the Drafting Sub-Committee.

7. In the absence of comment, the CHAIRMAN put to the vote paragraph 2 of the new article 19 A.

The Committee adopted paragraph 2 of article 19 A by 10 votes to none.

Article 20 of annex II (A/AC.48/1)

8. Mr. SÖRENSEN (Denmark) said that the Secretariat had put forward two alternative texts for article 20; the only difference between them was that one provided that the seat of the court should be established at The Hague, whereas the other left the question of the seat open, and included a provision that the registrar should reside at the seat of the court. The provision regarding the registrar had been omitted from the former text, because there had been a provision in the first alternative of article 19 that the court's registry work should be performed by the Registry of the International Court of Justice. The Committee had decided, however, against that provision, and a decision was required on whether the registrar should or should not reside at the seat of the court.

9. In his personal view it would be preferable to leave the question of the seat of the court open, as it would largely depend on which States became party to the statute establishing the court. He proposed therefore that the first alternative for article 20 be adopted.

10. Mr. RÖLING (Netherlands) pointed out that The Hague had the advantage of a long tradition of international jurisdiction. For that reason he preferred the draft establishing the seat of the court at The Hague.

11. Mr. SÖRENSEN (Denmark), in view of the Netherlands representative's remarks, withdrew his own proposal and declared that he would vote for the second alternative.

12. Mr. MAKTOS (United States of America) was reluctant to disagree with the Netherlands representative, especially as the International Court of Justice was established at The Hague; but he felt that there were good grounds for establishing the international criminal court at Geneva. He proposed, therefore, that Geneva be the seat of the court.

13. Mr. ROBINSON (Israel) and Mr. WANG (China) thought it difficult to choose between Geneva and The Hague, and therefore suggested that the question be left open.

14. The CHAIRMAN thought it would be better to decide first whether the seat of the court should be named or not. He accordingly put to the vote the question whether the provision should be left blank.

The Committee decided not to name the seat of the court, by 5 votes to 1, with 4 abstentions.

15. The CHAIRMAN put to the vote the second sentence in paragraph 1 of the first alternative for article 20.

The second sentence was unanimously adopted.

16. Mr. SÖRENSEN (Denmark) said that there might be long periods during which the court would have no work to do. The provision in paragraph 2 of article 20 had been taken from the Statute of the International Court of Justice, but it had to be remembered that that Court had more work to do than an international criminal court would be likely to have, and in any event the provision in question had been framed in circumstances differing from those that would obtain in the case of the international criminal court. The registrar should not be precluded from exercising other functions in his own country or elsewhere. He accordingly proposed that paragraph 2 of article 20 be deleted.

17. The CHAIRMAN put to the vote the Danish proposal that paragraph 2 of article 20 be deleted.

The Danish proposal was unanimously adopted.

Articles 20A, 20B and 20C (A/AC.48/L.13)

18. Mr. MAKTOS (United States of America) said that articles 20 A, 20 B and 20 C proposed by his delegation were all based on the view that it was desirable that chambers should be set up within the court, on the grounds that

certain cases should be tried by smaller groups of judges. As the arguments in favour of chambers were well known, he would not recapitulate them, but it seemed to him that the first question to be settled by the Committee should be whether chambers were desired or not.

19. Mr. WYNES (Australia) pointed out that the Committee had decided that the court should consist of nine judges, with a quorum of five.(1) How could chambers be formed out of such a small number of judges?

20. Mr. MAKTOS (United States of America) thought that the difficulty connected with the quorum could be settled by adding to the Committee's decision regarding the full court the words "subject to the provisions of article 20 A". Thus, if a chamber consisted of five, or of four judges, the quorum could be three, four or five, as thought desirable. Those were matters of detail, however, and could be settled after the Committee had decided the preliminary question as to whether or not it was in favour of chambers.

21. Mr. WANG (China) pointed out that the earlier decision on the quorum was applicable only to the full court. The question of whether or not there should be chambers would raise fresh problems. Thus, what cases would be tried by the full court and what by the chambers? Who would choose the cases to be tried by the chambers? What would the composition of the chambers be, and which judges should be chosen to form them? Would the president of the court be invested with authority to decide such important questions?

22. The CHAIRMAN pointed out that paragraph 2 of article 20 A provided that the court itself would settle those questions.

23. Mr. PINTO (France) observed that articles 20 A, 20 B and 20 C, if adopted, must not be allowed to invalidate the principle already accepted by the Committee that there was to be no appeal within the court itself.(2)

(1) Summary Record of the 23rd meeting (A/AC.48/SR.23), paragraphs 2 and 124 to 128.
(2) Summary Record of the 20th meeting (A/AC.48/SR.20), paragraph 118.

If that principle were to be respected, paragraphs 2 and 3 of article 20 B would have to be deleted.

24. Mr. MAKTOS (United States of America) admitted that when the proposals regarding chambers had been framed by his delegation, it had been envisaged that the court would consist of fifteen judges. Now that the Committee had decided that there should only be nine judges, it would clearly be impossible to have three chambers consisting each of three judges, for the chambers would then be too small. If there were two chambers, one of five judges and the other of four, the chambers would be unequal. The French representative's objection to chambers, on the grounds that it had been decided that there should be no appeal within the court, did not really concern the question of chambers. Difficulties had been created by the decision that there should be only nine judges, but if the principle of chambers was accepted those difficulties could doubtless be overcome.

25. The CHAIRMAN drew attention to another argument in favour of chambers, namely, that if the Court had much work to do, it would be greatly expedited by simultaneously trying separate cases which did not involve the same accused or the same evidence.

26. Mr. RÖLING (Netherlands) enquired whether the United States proposal would enable groups of States to grant to one chamber jurisdiction over specific cases. If such a possibility were envisaged, the proposal could assume considerable importance, for a group of States desiring action in respect of a case involving them would naturally prefer that the case should be dealt with by those judges of the court belonging to that group, and acquainted with the national law of the constituent States and local conditions.

27. Mr. MAKTOS (United States of America) said that his proposal had been based on the feeling that a court of fifteen judges would be cumbersome, and could with advantage be divided up into chambers. In article 20 C a provision had been made that the chambers might sit and exercise their functions elsewhere

than at the seat of the court: that provision might satisfy the Netherlands representative. As the Committee had decided that the court should consist of only nine judges, he was inclined to believe that a chamber of three judges would be inadequate. If one of the chambers should have only four judges, its judgment should, in his view, be unanimous, unless it were felt that such a provision would be tantamount to conferring a right of veto upon one judge, in which case it might be decided instead that three should be regarded as a majority. The decision of the Committee regarding the number of judges had undoubtedly affected his proposal.

28. The CHAIRMAN suggested that the Committee should decide on the general question of whether or not chambers should be provided for, and hold in abeyance its earlier decision regarding the number of judges, which could be reviewed later in the light of the decision concerning chambers.

29. Mr. WYNES (Australia) was prepared to accept the Chairman's suggestion. The problem of chambers raised issues such as whether the full court would decide what cases should be tried by the chambers, and whether the full court should be able to decide suo motu that so many judges should try a specific case.

30. Mr. RÖLING (Netherlands) suggested that it would be easier to accept the possibility of the court forming chambers if a suitable reference to subsequent conventions were inserted in article 20 A. Such a reference might read:

> "The Court, taking account of conventions conferring jurisdiction on it, may form one or more chambers ...".

31. Mr. SÖRENSEN (Denmark), interpreting the Netherlands proposal as meaning that the conventions mentioned would specify the members of the chamber, said that such a provision would give rise to serious practical difficulties. Such conventions would be to a great extent general in scope, and would not be concluded with specific cases in mind. On the other hand, the composition of the court might well change, and no convention could foresee the composition

of chambers at any given moment. As conventions would be permanent in character and the composition of the court temporary, the Netherlands proposal would hardly be feasible. It might be argued that when jurisdiction was conferred by special agreement such an objection would not be valid, but the consideration that it would mean an even wider departure from universality if a State were permitted to specify that only certain judges could try a case, militated against the inclusion of such a provision in a special agreement.

32. His own view was that the court should be single-chambered, not split up into groups each with different biasses and prejudices. A fair balance could be obtained with nine judges sitting as a single court, and he therefore opposed both the Netherlands proposal and the provisions of articles 20 A, 20 B and 20 C as proposed by the United States delegation.

33. The CHAIRMAN said that he had been impressed by the arguments already advanced in the Committee's discussions concerning the difficulty of amending the Charter of the United Nations or the Statute of the International Court of Justice. If the Netherlands proposal were accepted, it seemed to him that there would be a possibility of introducing chambers at a later stage, whereas if no such provision were made there might be difficulty in amending the statute establishing the court. The Danish representative's objection to chambers did not seem very strong in the face of a situation where several States were willing to confer jurisdiction in respect of a specific case, provided that it was tried by a specific chamber. Moreover, if a single-chambered court were decided upon, there would be no protection against it being inundated with work.

34. Mr. SÖRENSEN (Denmark) said that he had no strong objection to a group of States conferring jurisdiction on a specific chamber, provided that the convention doing so did not specify members of the chamber; he had interpreted the Netherlands proposal as meaning that it would. He still adhered, however, to his view that a single-chambered court was all that was required in the statute, for it was unnecessary to envisage any such complications in amending the statute, as existed in respect of the International Court of Justice. An

amendment to the Statute of that Court required ratification by the five permanent members of the Security Council to become effective, and thus for practical purposes came under the veto rule. It should be possible to provide in the statute for the international criminal court that a majority of the States parties to it could modify its structure if it were later found that chambers were desirable.

35. Mr. WANG (China) felt that the problem of chambers came within the range of those connected with the organization of the court. Several questions of jurisdiction had already been left to subsequent conventions, but in his view the question of chambers should not be treated in the same way, but in the statute itself. With regard to the question of the revision of the statute, there should be a provision less strict than the corresponding provisions in the Charter of the United Nations and the Statute of the International Court of Justice.

36. Mr. TARAZI (Syria) thought that the Committee ought first to deal with the preliminary question of whether or not each chamber should exercise a special jurisdiction.

37. Since the chief argument in favour of dividing the court into chambers was the need for dealing with cases quickly if there were a long cause list, he would be in favour of leaving it to the court itself to form chambers under a provision of its rules of procedure.

38. He therefore proposed that the Committee should adopt a provision empowering the court to form chambers, leaving it to the court itself to lay down in its rules the details of the provision's application.

39. Each chamber should be regarded as acting for the whole court.

40. Mr. RÖLING (Netherlands) did not think that it was necessary at that stage to consider the possibility of being flooded with work.

41. The issue of regionalism was one not of organization, but of policy, depending on the Committee's views on how States could best be persuaded to accept the

limitation of national sovereignty inherent in the establishment of an international court. There were two possible methods of encompassing such limitation: one was to proceed from the national level to the world level in one step, as had been done in the case of the United Nations; the other was to proceed from the national level to the regional international level. The latter was the easier approach, and should not be excluded; it was in any event not necessarily excluded by the first. International law could be developed simultaneously on a world-wide and on a regional level. The same might be done in establishing an international criminal court: while providing for a criminal court, it might be possible to allow also for its functioning on a regional basis.

42. Mr. ROBINSON (Israel) said that the idea of chambers was to expedite the work of the court. They would not, however, achieve that purpose, for the United States proposal provided that points of law could be referred to the full court and that the full court might upon application review the final judgment of a chamber. The result would be to increase, rather than to reduce, the work of the full court. Moreover, if the latter consisted of nine judges and a chamber of five, it would be futile to refer any question decided by the chamber to the full court, for the judges in such a chamber would form more than half the number in the full court.

43. Another objection to the United States proposal was that the judgment of a chamber would be considered as delivered and pronounced by the court, thus enabling difficult points of international criminal law to be settled by a body other than the full court. It would be impossible for a unified system of international criminal jurisdiction to evolve in such circumstances.

44. The idea of regionalism advocated by the Netherlands representative was vitiated by the fact that in practice things happened differently from the way the Netherlands representative had visualized. Thus, for example, any difficulties arising in the Pan-American Union were never referred to the United Nations, but always solved within the Union. Again, the Central American States, when they had decided in the past to create a Central American Court of

Justice[1] had not approached the Pan-American Union, but had created a court among themselves. The world trend being such, any regional courts required for specific cases would be created separately from the international criminal court.

45. There was thus no case for chambers, from the point of view of regionalism, international criminal law or expediency. There remained the argument that if the work the court had to do was excessive, chambers could lighten it considerably. The answer was that if that happened, a liberal provision for amendment of the court's statute would enable chambers to be set up without undue delay. He therefore opposed the United States proposal.

46. Mr. MAKTOS (United States of America) said that in effect his proposal would conflict with the Netherlands representative's idea of regionalism; he agreed with the arguments advanced against that concept. He also opposed the Syrian representative's proposal that the decision should be left to the court itself, for it would be extremely dangerous to confer such a power upon it. The purpose of his proposal had been solely to expedite the work of the court.

47. Mr. PINTO (France) said that his delegation was not much in favour of the creation of chambers within the court. It would, however, support the Syrian proposal, provided it was clearly understood that the decisions of a chamber could not be referred back to the full court on appeal or application for revision. That reservation accorded with the decision which the Committee had taken by a large majority,[2] not to allow any appeal within the court.

48. The CHAIRMAN, summarizing the discussion, said that two broad issues had been raised. One view was that it was desirable that the court should be a single chamber in its initial period and at the present stage in the development

---

1) Convention for the Establishment of an International Central American Tribunal signed at Washington, February 7, 1923. In force, March 12, 1925. Text in, Manley O. Hudson "International Legislation", Vol.II, 1922-1924, pages 908 to 942; also in American Journal of International Law, Vol.17 - 1923 - supplement, pages 83 to 112.

2) Summary Record of the 20th meeting (A/AC.48/SR.20), paragraph 118 (11 votes to 3 with 1 abstention).

of international criminal law; the other was that chambers would serve the practical purpose of helping to expedite the court's work. He accordingly called for a vote on whether the court be divisible into chambers.

The Committee declared against the formation of chambers by 6 votes to 2, with 2 abstentions.

49. The CHAIRMAN said that that decision disposed of the articles 20A, 20B and 20C proposed by the United States delegation. The next article for consideration was article 21 of annex II, to which the United States delegation had proposed an amendment (A/AC.48/L.13).

Article 21 of annex II (A/AC.48/1 and A/AC.48/L.13).

50. Mr. MAKTOS (United States of America) said that his amendment to article 21 was an amplification of the text, and was intended to ensure that the court should frame rules of evidence. Paragraph 2 was based on the experience gained at Nuremberg, where it had been found that rules and amendments had not been published in sufficient time to enable the prosecution and defence to know exactly what evidence was or was not admissible.

51. Mr. PINTO (France) had no objection in principle to the United States amendment. He wished, however, the word "intérieur" to be deleted from the French text of paragraph 2 of article 21 as amended. The rules of the court would not be "un règlement intérieur", since they would be published. The same observation applied to the French text of article 21 of the Secretariat's draft.

52. The CHAIRMAN said that the Drafting Sub-Committee would review the article and improve the language where necessary.

53. Mr. RÖLING (Netherlands) said that at the outset the Tokyo Tribunal had not been bound by technical rules of evidence, and the absence of published rules had caused much trouble. He therefore supported the United States amendment to article 21.

54. Mr. WYNES (Australia) commenting upon part of the second sentence of the United States amendment, which read: "and shall apply rules of evidence

not inconsistent with this Statute and such principles", asked the United States representative whether he envisaged the court ever doing otherwise?

55. Mr. MAKTOS (United States of America) said that he had perhaps framed that provision with excessive caution. If the Committee felt that the phrase in question was redundant, he would not object to its deletion. If that were done, perhaps the words "and application" should be inserted after the word "admission" in the preceding clause.

56. The CHAIRMAN said that the clause to which the Australian representative had raised objections, in fact differentiated from the usual cases covered by published rules. It envisaged new situations requiring new rules.

57. Mr. WYNES (Australia) suggested that if such were the case the provision would be more suitably worded in the following way:

> "In cases not expressly covered by such rules the Court shall apply rules of evidence not inconsistent with this Statute and such principles".

58. Mr. WANG (China) felt that a more general provision would be preferable. There did not seem to be any reason why the rules of evidence should be specifically mentioned among the rules of procedure. He therefore preferred the Secretariat's text.

59. The CHAIRMAN thought it desirable first to ascertain whether any member disapproved of the Secretariat's draft. Once the Committee's opinion on it had been established, the United States amendment could be discussed.

60. The first sentence and the beginning of the second sentence of the United States amendment being identical with article 21 of annex II to the Secretary-General's memorandum, the CHAIRMAN put that article to the vote.

Article 21 of the Secretariat's draft (A/AC.48/1) was adopted unanimously.

61. Mr. MAKTOS (United States of America), replying to the Chinese representative's criticism, said that the question why rules of evidence were specifically mentioned had in part been disposed of by the Netherlands representative's observation on his experience of the Tokyo Tribunal. Another reason was that some persons made a distinction between rules of procedure and rules of evidence.

62. Mr. TARAZI (Syria) accepted the text proposed by the United States delegation, provided, however, that it was slightly amended by the addition at the end of paragraph 1 of the words "and be guided by the principal legal systems of the world". That would avoid any argument as to the respective merits of the Anglo-saxon and continental legal systems.

63. Mr. SÖRENSEN (Denmark), while agreeing that the court should frame its own rules of procedure and of evidence, did not think that it was desirable to provide in the statute for what the court should do if the rules of evidence it had framed did not expressly cover all the situations which arose. He felt, therefore, that the second clause of paragraph 1 of the United States amendment should be deleted, together with paragraph 2. The provision made in article 19 of the Charter of the International Military Tribunal, might well be used instead of the United States amendment.

64. He had no strong objection to the Syrian proposal, although he felt that the court would obviously draw on the principal legal systems of the world in framing its rules of evidence.

65. The CHAIRMAN considered that there was some substance in the criticism levelled against the last phrase of paragraph 1 of the United States amendment, as the court would obviously apply rules of evidence consistent with its statute and the principles it had itself adopted in framing its rules of evidence. He accordingly put to the vote paragraph 1 of the United States amendment up to the words "deems necessary" and omitting the final clause reading: "and shall apply .... such principles."

Paragraph 1 of the United States proposal, as amended, was adopted by 6 votes to none, with 3 abstentions.

66. Mr. TARAZI (Syria) observed that paragraph 2 of the United States text stated that the rules of the court and amendments thereto should be adopted and published as soon as practicable. In certain countries, such as Syria, it was customary for the rules and any amendments to them to be published in the official gazette. It would be advisable to know, therefore, how the rules of the court would be published. Would they be published by the United Nations or by the states parties to the convention establishing the court?

67. Mr. MAKTOS (United States of America) explained that it had been considered that the court, in the same way as the International Court of Justice, would issue various publications, among them its rules of evidence.

68. Explaining his abstention from the vote on paragraph 1, he said that he had done so out of loyalty to his delegation's text.

69. Mr. WANG (China) pointed out that whereas the Nuremberg and Tokyo Tribunals had been ad hoc institutions, the international criminal court would be a permanent body. Such being the case, the provision in paragraph 2 of the United States amendment seemed to be superfluous at best, and certainly inappropriate.

70. Mr. RÖLING (Netherlands) said that it was most important that the rules of evidence should be published before the court began to function. Much criticism that might otherwise be addressed to it on the strength of what had occurred both at Nuremberg and at Tokyo would thereby be forestalled.

71. The CHAIRMAN put to the vote paragraph 2 of the United States amendment (A/AC.48/L.13).

Paragraph 2 of The United States amendment was adopted by 8 votes to none, with 2 abstentions.

Article 21 A (A/CN.48/L.13)

72. Mr. RÖLING (Netherlands) felt that the provision that the archives of the court should be in the charge of the registrar ought to be placed in the rules of procedure drawn up by the court, not in the court's statute. He therefore proposed that article 21 A be rejected.

73. Mr. KHOSROVANI (Iran) thought that such a provision might well be incorporated in article 19.

74. The CHAIRMAN agreed that the provision was unimportant. He therefore put the Netherlands proposal to the vote.

The Netherlands proposal that article 21 A be rejected was adopted by 8 votes to none with 4 abstentions.

Article 22 of annex II and United States amendment thereto (A/AC.48/1 and A/AC.48/L.13)

75. Mr. MAKTOS (United States of America), introducing his amendment (A/AC.48/L.13) to article 22, said that it was based on Article 32 of the Statute of the International Court of Justice. As the Committee had decided that the court should be established by international convention and not by General Assembly resolution, paragraphs 4, 5, 6 and 7 of his amendment might have to be deleted, and also his amendment to article 23, which he accordingly withdrew.

76. The CHAIRMAN thought that the texts for article 22 should be considered in the following order: the first alternative in annex II (A/AC.48/1), the second alternative and the United States proposal amending the second alternative.

77. He asked if any member supported the first alternative for article 22 in annex II.

78. There being no support for that text, he called for comments on the second alternative, which contained the same provision, differently worded, as paragraph 1 of the United States proposal.

79. Mr. MAKTOS (United States of America), replying to a point raised by Mr. WANG (China), said that no difference in meaning was implied between the term "annual remuneration" and the term "compensation" which was used in his amendment.

80. Mr. PINTO (France) preferred the French text of paragraph 1 of the United States proposal, which read "Les membres de la Court recoivent une

indemnité", to that of article 22 of the Secretariat's text, which read "ils touchent une indemnité".

81. The CHAIRMAN enquired whether there was any opposition to the provisions of the Secretariat's second alternative draft of article 22 or paragraph 1 of the United States amendment thereto.

The Committee approved the provisions in question.

82. Mr. RÖLING (Netherlands) felt that the provisions of paragraphs 2 and 3 of the United States amendment should be left for decision at a later stage. He accordingly proposed their deletion.

83. Mr. WANG (China) thought that the Secretariat's second alternative adequately covered the whole of the United States amendment, and would therefore be enough in itself. The Committee must, however, decide who was to determine the emoluments of the judges: a delicate question that obviously could not be left to the court itself to answer. The United States amendment proposed that the General Assembly settle the question, but as the court would be independent of the United Nations, that seemed hardly feasible.

84. The CHAIRMAN thought that paragraphs 2 and 3 of the United States amendment should be considered separately.

85. He then put to the vote the Netherlands proposal that paragraphs 2 and 3 be deleted.

The Netherlands proposal was adopted by 7 votes to none, with 3 abstentions.

86. Mr. MAKTOS (United States of America) said that paragraphs 4 to 7 of his amendment had been framed on the assumption that the court would be established by General Assembly resolution. As the Committee had decided otherwise, it seemed to him that nothing could be done about those paragraphs until a decision had been taken by the Committee on article 23. He proposed therefore that discussion of paragraphs 4 to 7 of his amendment be deferred until article 23 had been dealt with.

It was so agreed.[1]

87. Mr. SÖRENSEN (Denmark) thought that as the principle contained in paragraph 7 of the United States amendment was applicable to all international civil servants, it should be applied to judges of the international criminal court, even if that court were not set up under the auspices of the United Nations. He therefore re-introduced that paragraph as his own amendment. The words "in those States parties to the Convention establishing this Court" might be added at the end.

88. Mr. PINTO (France) drew the attention of the Committee to paragraph 4 of the United States proposal. The last sentence of that paragraph was particularly important, and should be adopted, because it guaranteed the independence of the judges of the court.

89. Mr. TARAZI (Syria) was not opposed to paragraph 7 of the United States text of article 22, but pointed out that it duplicated the provisions of article 17 of the Secretariat's draft, whereby the judges, when engaged on the business of the court, would enjoy diplomatic privileges and immunities. Those privileges and immunities included exemption from all taxation on the salaries and compensation they received.

90. The CHAIRMAN pointed out that diplomatic representatives were subject to taxation in their own countries. The purpose of the Danish representative's amendment was to ensure that their emoluments were free from tax even in their own countries.

91. Mr. MAKTOS (United States of America) suggested that the provision of paragraph 7 of his amendment, although applicable only in the case of States parties to the convention establishing the court, should nevertheless be stated in the form of a recommendation in the Committee's report.

It was so agreed.

---

1) See below, paragraphs 96 to 98

Article 23 of annex II (A/AC.48/1)

92. Mr. SORENSEN (Denmark), pointed out that the words "the judges and" in paragraph 2 of the first alternative for article 23 had been inserted in error, and should be deleted.

93. The difference between the two drafts for that article could be seen at a glance: in the first version, the remuneration payable to judges would be chargeable to the States of which they were nationals, whereas the second version laid down that such remuneration would be met out of a joint fund. The second alternative provided an answer to the question raised by the Chinese representative: the States parties to the convention would be in a position to determine the amount of remuneration of the judges and other officials of the court.

94. His delegation preferred the idea of a joint fund, on the ground that such an arrangement would be more equitable than one whereby the emoluments of judges would be paid by the State of which they were nationals. He accordingly proposed that the second version be adopted.

95. In the absence of other comments on article 23, the CHAIRMAN put to the vote the Danish proposal.

The Danish proposal was adopted by 7 votes to none, with 3 abstentions.

Article 22 (A/AC.48/L.13) (resumed).

96. The CHAIRMAN pointed out that the decision on article 23 would affect paragraphs 4, 5 and 6 of the United States amendment (A/AC.48/L.13) to article 22.

97. Mr. MAKTOS (United States of America) said that if those three paragraphs were adopted, references to the General Assembly would have to be replaced by references either to the States parties to the convention establishing the court or to the joint fund on which a decision had just been taken.

98. The CHAIRMAN felt that it would be better if no provisions of the sort laid down in paragraphs 4 to 6 of the United States amendment were made by the Committee, as the States parties to the convention could well decide those

questions for themselves. He suggested, therefore, that paragraphs 4 to 6 of the United States amendment should not be taken up.

It was so agreed.

Additional article (A/AC.48/L.16)

99. Mr. SÖRENSEN (Denmark), introducing his proposed additional article (A/AC.48/L.16), said that there might arise in the future problems of interpretation of the statute of the international criminal court relating to the question of whether or not States parties to the statute could set up joint tribunals to try crimes affecting them. If his proposal were adopted, it would make it perfectly clear that States would have such powers. The proposal was also desirable when viewed in the light of past events. One of the provisions of the statute was that no person could be tried without the consent of the State of which he was a national. Under the statute, therefore, neither a Nuremberg nor a Tokyo Tribunal would have been able to function. The legal foundation of the Nuremberg Trial had been the unconditional surrender of Germany. His own country, in adhering to the London Agreement on the Nuremberg Tribunal, had held the view that under the ordinary rules of international law a State victim of crimes which might have been tried by local courts could set up an ad hoc tribunal of the type of the Nuremberg Tribunal. It was important for upholding the authority of the Nuremberg and Tokyo judgments that in the statute establishing the international criminal court a provision should be made to justify the legal basis of the Nuremberg and Tokyo Trials. From both points of view, therefore, it seemed to him that his proposal was desirable, and he accordingly moved its adoption.

100. Mr. MAKTOS (United States of America) was unable to see how the statute of the international criminal court, had it existed at the time, could have prevented the Nuremberg Trial from taking place. It would be dangerous to adopt the Danish proposal, for if it became common practice to make such provisions unfortunate precedents might be created. Their absence from any convention might in such circumstances be interpreted as excluding the establishment of ad hoc Tribunals. He would accordingly abstain from voting on the Danish proposal.

101. Mr. RÖLING (Netherlands) supported the Danish proposal on the ground that it was justified by the prevalent confusion on the question.

102. Mr. TURNER (United Kingdom) suggested the insertion of the words "be taken to" before the word "prejudice" in the Danish proposal. Such an addition might meet the United States representative's objections.

103. Replying to a question by Mr. ROBINSON (Israel), Mr. SÖRENSEN (Denmark) said that he did not insist upon the exact wording he had proposed, but would be quite prepared for it to be revised by the Drafting Sub-Committee.

104. Mr. TARAZI (Syria) pointed out that the Charter of the United Nations contained a similar provision (Article 95). As it had been considered necessary to include that provision in the Charter, its introduction into the convention could be regarded as equally necessary.

105. The CHAIRMAN put to the vote the Danish proposal (A/AC.48/L.16).

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

Further United States amendments (A/AC.48/L.15) to annex II of the Secretary-General's memorandum (A/AC.48/1)

106. Mr. MAKTOS (United States of America) suggested that the Committee consider first the articles at the end of his proposal, as they were less controversial. Referring to article 46 D, he said that he proposed to delete the words "and protocols thereto" from the last sentence of paragraph 2.

107. Mr. LIANG, Secretary to the Committee, objected to the words "signatory and acceding States" in the same paragraph, and suggested that they be replaced by the words "States parties to the Convention".

108. Mr. MAKTOS (United States of America) accepted the Secretary's suggestion.

109. Mr. PINTO (France) said that the initial question was whether it was necessary to take a decision on parts III and IV of the United States amendments.

It was proposed to convene an international conference to prepare the final text of the court's statute. The provisions under discussion were identical in all international treaties, and it was surely outside the committee's terms of reference to discuss them. That task might be left to the conference envisaged

110. Mr. LIANG, Secretary to the Committee, had no particular objection to the formal clauses proposed by the United States delegation. Such formal clauses would not be out of place in the draft statute to be submitted to the General Assembly by the Committee, and might indeed be useful as a working paper for the proposed conference.

111. Mr. ROBINSON (Israel) pointed out that the Secretariat was frequently engaged in perfecting the language of formal clauses in conventions. As further improvement might still be possible, it seemed unnecessary for the Committee to commit itself at that stage to the clauses proposed by the United States representative. He supported the French representative's suggestion that parts III and IV of the United States amendment be deleted.

112. The CHAIRMAN put the French representative's suggestion to the vote.

The suggestion was adopted by 7 votes to none, with 2 abstentions.

113. Mr. MAKTOS (United States of America), introducing article 1 of part 1 of document A/AC.48/L.15, said that his delegation felt it desirable that no court should be set up until a number of States, to be decided by the Committee, had accepted its jurisdiction.

114. Mr. PINTO (France) asked the United States representative whether the new article 1 which he wished to have inserted into the convention was to be substituted for an article already adopted by the Drafting Sub-Committee on the same subject.

115. Mr. MAKTOS (United States of America) replied in the negative, and explained that his article referred to the entry into force of the convention.

116. Mr. PINTO (France) said that if that were the case, he approved the purpose of the new article proposed by the United States delegation. It would be well, however, to place the article at the end of the convention.

117. Mr. MAKTOS (United States of America) did not agree. It was clear from its contents that the article should appear at the beginning of the convention.

118. The CHAIRMAN suggested that it should be left to the Drafting Sub-Committee to decide where the article would be most appropriately placed.

119. Mr. LIANG, Secretary to the Committee, felt that article 1 might be more appropriately included in a separate instrument, as it had nothing whatever to do with the substantive provisions of the statute. In any case, he found it difficult to see how the article as drafted by the United States representative met the purpose it was intended to serve. Where indeed were specific crimes mentioned in the statute?

120. Mr. MAKTOS (United States of America) observed that the purpose of the article was to make the establishment of the court conditional on some jurisdiction being conferred upon it.

121. Mr. RÖLING (Netherlands) said that if the article were adopted, the court would not be established until the states parties to the statute had accepted its jurisdiction in respect of specific crimes. Such a provision would clearly mean postponing the establishment of the court indefinitely. He would therefore abstain from voting on the United States proposal. It would simply add to the delay caused by the unfortunate decision of the Committee to create the court by a convention instead of by General Assembly resolution.

122. Mr. SÖRENSEN (Denmark) felt that there should only be a provision to the effect that the court would not be established until a certain number of States had ratified the convention establishing it. As soon, however, as that convention had been ratified by a sufficient number of States, the court should be elected and should be ready to begin to function. He agreed with the Netherlands

representative that the United States proposal would mean undue postponement of the establishment of the court. The Committee had already agreed to general conventions and special agreements conferring jurisdiction on the court and to the unilateral renunciation of jurisdiction by States; in other words, it had accepted the principle of gradual development in the criminal jurisdiction of the court. It seemed to him that the court should continue to accept the principle of gradual development by agreeing to the establishment of the court even before jurisdiction had been conferred upon it. He therefore opposed the United States proposal for article 1, and proposed that it be rejected.

123. Mr. PINTO (France) supported the view of the Danish representative. There would be no point in waiting until a number of States had accepted the court's jurisdiction before establishing the court. On the other hand, a certain number of States would have to ratify the convention establishing the court before that convention could come into force. If that were not the implication in the United States proposal, he would vote against it.

124. The CHAIRMAN put to the vote the Danish proposal that part I of the United States amendments (A/AC.48/L.15) to annex II be deleted.

The Danish proposal was adopted by 7 votes to 1, with 2 abstentions.

The meeting rose at 6.05 p.m.