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COMMITTEE ON INTERNATIONAL CRIMINAL JURISDICTION

First Session

SUMMARY RECORD OF THE TWENTY-FIFTH MEETING

held at the Palais des Nations, Geneva,  
on Tuesday, 28 August 1951, at 10 a.m.

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Draft statute for an international criminal court,  
prepared by the Drafting Sub-Committee



Present:

Chairman:

Mr. MORRIS

Members:

|   |                   |
|---|-------------------|
| Australia   | Mr. WINES         |
| Brazil  | Mr. AMADO         |
| China   | Mr. WANG          |
| Cuba  | Mr. VALDES ROIG   |
| Denmark   | Mr. SÖRENSEN      |
| France  | Mr. PINTO         |
| Iran  | Mr. KHOSROVANI    |
| Israel  | Mr. ROBINSON      |
| Netherlands   | Mr. RÖLING        |
| Pakistan  | Mr. MUNIR         |
| Syria   | Mr. TARAZI        |
| United Kingdom of Great Britain<br>and Northern Ireland | Mr. JONES         |
| United States of America                                | Mr. MAKTOB        |
| Uruguay   | Mr. PINEYRO CHAIN |

Secretariat:

Mr. Liang

Secretary to the Committee



DRAFT STATUTE FOR AN INTERNATIONAL CRIMINAL COURT, PREPARED BY THE DRAFTING SUB-COMMITTEE (A/AC.48/L.1 and A/AC.48/L.17)

1. The CHAIRMAN drew the attention of the Committee to the draft statute (A/AC.48/L.17) for an international criminal court prepared by the Drafting Sub-Committee. That document contained texts elaborated by the Drafting Sub-Committee on the basis of the decisions in principle taken by the Committee, on the provisions in the preliminary draft contained in annex II to the Secretary-General's memorandum (A/AC.48/L.1), and on other articles proposed by delegations. Insofar as the provisions drafted by the Drafting Sub-Committee reflected the Committee's decisions, he hoped they would stand. He would as Chairman accept amendments to articles in the Drafting Sub-Committee's text in cases where they deviated from the decisions in principle already taken and even where such amendments ran counter to principles already adopted. He hoped, however, that in the latter event the Committee would refrain from indulging in lengthy debates.

2. Mr. SØRENSEN (Denmark), Rapporteur, explained that the titles given to the various articles in document A/AC.48/L.17 had been included for purposes of reference and identification, but should not be regarded as interpretations of substance. The Drafting Sub-Committee recommended that those titles be retained, and that it be left to the body concerned with the adoption of the statute for an international criminal court to take a final decision as to whether or not they should be deleted. He would suggest that the Committee examine the draft statute (A/AC.48/L.17) article by article.

It was so agreed.



Chapter I: General Principles

Article 1 - Purpose of the Court

3. Mr. SÖRENSEN (Denmark), Rapporteur, said that the first part of article 1 down to the word "concern" was in accordance with the Committee's decision as to the crimes over which the court should have jurisdiction.<sup>1)</sup> The Drafting Subcommittee had felt that the clause "as may be provided in conventions or special agreements among States parties to the present Statute" expressed the opinion of the majority of the members of the Committee.<sup>2)</sup>

4. Mr. ROBINSON (Israel) referring to the words "or other crimes of international concern", said that the problem of the inclusion of that category of crimes had been fully debated, and the result had been inconclusive.<sup>3)</sup> The matter should therefore be re-opened. Some members felt strongly that to give the court jurisdiction over a series of minor crimes could not fail to diminish its authority and dignity; that the need for conferring such jurisdiction upon the court had not been demonstrated; that the handling of such cases would have a detrimental effect on the mentality of the judges of the court when they came to try crimes under international law; and that the difference between crimes under international law and other crimes of international concern was one of quality rather than of quantity, so that they required to be tried by judges with a different background. For those and many other reasons well-known to the Committee, he moved the deletion of the words in question.

5. The CHAIRMAN recalled that the Committee had agreed unanimously that jurisdiction should be conferred upon the court in respect of persons accused of crimes under international law, and by 8 votes to 5 that it should have jurisdiction in respect of persons accused of other crimes of international concern.<sup>4)</sup>

1) See Summary Record of the 5th meeting (A/AC.48/SR.5), paragraphs 54 and 70.

2) See Summary Record of the 7th meeting (A/AC.48/SR.7), paragraphs 17 and 26.

3) See Summary Record of the 5th meeting (A/AC.48/SR.5), paragraphs 55 to 71.

4) See Summary Record of the 5th meeting (A/AC.48/SR.5), paragraph 70.



6. Mr. AMADO (Brazil) said that he could well understand the reasons which had led some of the members of the Committee to suggest that the jurisdiction of the court should include, together with crimes under international law, other crimes of international concern. But for the reasons he had already had occasion to outline previously,<sup>1)</sup> which supplemented the reasons just given by the Israeli representative, he could not agree to the inclusion of the words "or other crimes of international concern" in article 1 of the draft statute. The international criminal court was to be a body set up to try major crimes against the peace and security of mankind. The Brazilian delegation regarded with disfavour the suggestion that the jurisdiction of the court should be extended to cover minor crimes of an entirely different kind. Criminals such as smugglers, forgers or individuals engaged in traffic in human beings should not be tried by a court which was to replace the Nuremberg Tribunal, and the establishment of which would constitute an important landmark in the history of international law.

7. The Brazilian delegation would therefore vote against the retention of the words "or other crimes of international concern."

8. Mr. PINTO (France) vigorously contested the criticisms levelled against the suggestion that the court should have jurisdiction to try persons accused of crimes of international concern. The Committee had already decided by an absolute majority in favour of conferring such jurisdiction on the court, and that was sufficient justification for maintaining the phrase which had been criticized; a course which the French delegation considered essential.

9. It had been argued that crimes of international concern were no part of crimes under international law, and that in any case they were minor crimes which should be no concern of the court. But crimes of international concern were unquestionably crimes under international law. International crimes themselves had in the first place been crimes punishable under the domestic law of most of the civilized countries. Such was the case, for example, with war crimes, and acts of genocide,

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1) See Summary Record of the 5th meeting (A/AC.48/SR.5), paragraph 71.



though admittedly during the Second World War such crimes had attained unprecedented dimensions. In the same way, the other crimes of international concern had an indisputably international aspect - either they were crimes committed in the territories of a number of States, or their perpetrators were nationals of several States, or, again, the punishment of such crimes was of international concern in that they offended against international morality. The traffic in narcotics and the traffic in persons must be regarded as offences against international public order. The same applied to attempts on the lives of heads of States.

10. Nor should crimes which threatened the very foundations of society be described as minor crimes. Even the Supreme Court of the United States of America did not consider that it was acting below its dignity in pronouncing on the legality of a judgment concerning a breach of a police regulation in a Middle-West township.

11. He urged the Committee to confirm its original vote, and to maintain the expression "or other crimes of international concern."

12. Mr. RÖLING (Netherlands) supported the Israeli proposal. In his view, the strongest argument in its favour was, perhaps, the fact that the Committee's terms of reference made no provision for consideration of the question of the establishment of an international criminal court to deal with other crimes of international concern. The Committee had been set up against the background of the Nuremberg and Tokio Trials, and of the International Law Commission's draft Code of Offences Against the Peace and Security of Mankind,<sup>1)</sup> where the underlying concern was with crimes under international law. If, as some members seemed to desire, the Committee should pronounce on the question of conferring jurisdiction upon the court in respect of persons accused of other crimes of international concern, the best, and only permissible, procedure would be for such a decision to be recorded in the Committee's report.

13. There was, however, another question worthy of consideration. It might, for instance, transpire that a crime not falling within the category of crimes under international law was committed to the detriment of the peaceful relations between

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1) See document A/CN.4/48, chapter IV.



States. He had in mind acts of terrorism or the assassination of the Head of a State and the like. As the court would be established within the broad framework of the measures necessary for the maintenance of peace, it might reasonably be argued that there was no reason why it should not be given jurisdiction over such crimes. While the Committee had no authority to make provision for crimes of that nature, he was inclined to recommend that, in its report, the Committee should suggest to those called upon to establish the court that they should include a provision in its statute to the effect that the court would have jurisdiction to try other crimes whenever, at the request of the State or States concerned, the Security Council or the General Assembly, in the interests of the maintenance of Peace, submitted a case to the court.

14. Replying to the CHAIRMAN, he said he believed it might be advisable to take a vote on those two suggestions before proceeding to a vote on the Israeli proposal, as the vote on the latter might be affected by the decisions on the former.

15. The CHAIRMAN believed that it would be simpler to vote first on the Israeli proposal.

16. Mr. SÖRENSEN (Denmark) took the view that the Committee's terms of reference were sufficiently wide to enable it to deal with the question of conferring jurisdiction on the court in respect of other crimes of international concern. The Secretary-General, in preparing his memorandum (A/AC.48/1), had clearly been of the same opinion, since the draft statute he had submitted made provision for the inclusion of that category of crimes. Furthermore the deciding factor should be the desire of States to confer such authority upon the court. The retention of the words "or other crimes of international concern" in article 1 would enable the international community to meet the wishes of States, no matter how few, which considered it useful for the court to have jurisdiction over certain other crimes of international concern.

17. Again, it had been stated, and rightly, that the establishment of an international criminal jurisdiction would limit the sovereignty of States. The



retention of the words in question would have the effect of imposing that limitation of sovereignty by a process of, as it were, erosion, rather than by a frontal attack, and the need for the court to be established gradually was an important consideration in favour of the retention of the words "or other crimes of international concern."

18. Mr. NES (Australia) considered that the second category of crimes was vaguely defined; he would prefer to see mention of it deleted. It would, in his view, be unwise to confer such competence upon the court at the present stage in the political development of the world.

19. Mr. PINEYRO CHAIN (Uruguay) was in favour of retaining the provision giving the court jurisdiction to try persons accused of "other crimes of international concern". He had listened carefully to the remarks of the Israeli representative, both at the present meeting and previously.<sup>1)</sup> The objections raised could be summed up as follows: other crimes of international concern differed both qualitatively and quantitatively from crimes under international law.

20. It was undoubtedly important, however, to provide for the repression by international action of crimes such as the cutting of submarine cables, traffic in persons, traffic in narcotics, piracy etc., since such crimes affected the common interests of States. Those particular crimes would not, by themselves, justify the establishment of an international court; but once such a court existed, there was every reason why advantage should be taken of it to ensure that such crimes were dealt with more systematically. Any possible risk of the court's prestige being weakened by including such matters within its orbit would be offset by the provision in article 28 of the draft statute, under which any jurisdiction conferred upon the court would require the approval of the General Assembly.

21. Whatever decision was finally taken, the Committee's report should mention the opposite point of view.

22. Turning to the second part of article 1, namely, the expression "as may be provided in conventions or special agreements among States parties to the present Statute", he argued that the very nature of the court would be changed if the

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<sup>1)</sup> See Summary Record of the 5th meeting (A/AC.48/SR.5), paragraphs 66 to 68



jurisdiction given to it were to be strictly subordinated to provisions laid down by convention. The court was to be set up to apply current international criminal law. The decision to grant the court jurisdiction by convention would mean ignoring the international criminal law which already existed, in other words, narrowing the field of repression, and leaving the terrible and tragic responsibility for dealing with major crimes to some ad hoc tribunal that might be set up in future. He therefore proposed that those words be deleted.

23. In conclusion, he pointed out that article 1 was not in keeping with the wording of article 26, and ignored the possibility of jurisdiction being granted to the court by unilateral declaration.

24. Mr. MAKTOOS (United States of America) said that his delegation was strongly opposed to the deletion of the qualification that the crimes over which the court should have jurisdiction should only be those provided for in conventions. It was known that there were certain crimes, such as that of genocide, that definitely constituted crimes under international law, but in addition there were a number of borderline cases about which there was much uncertainty as to whether or not they came within the category of crimes under international law. To confer jurisdiction upon the court in respect of the latter might be to impinge upon national jurisdiction, which would be a mistake. Moreover, a provision relating to the jurisdiction of the court should be specific, not vague.

25. Again, it had to be remembered that the qualification that crimes should be provided for in conventions was the only means of making sure that conditions relating to the surrender of accused and similar details of procedure would be properly dealt with, and of affording States the opportunity of declaring what conditions they were prepared to accept. He again urged the retention of the qualification, in the interests of a wide acceptance of the statute; its retention was unquestionably a most important condition of the United States Government's acceptance.

26. Mr. SÖRENSEN (Denmark) supported the amendment proposed by the Uruguayan representative, for the clause in question would give rise to difficulties of



interpretation. In his view, the purpose which the United States representative was aiming to achieve was adequately covered by the articles dealing with the conferment of jurisdiction on the court, and in particular by article 26, of the statute. It would be a matter of specifying in the instruments referred to in article 26 the crimes in respect of which jurisdiction should be conferred upon the court, and no State would be bound to accept such instruments if their provisions did not meet its wishes.

27. Mr. MAKTOŠ (United States of America) considered that it would not be enough to rely upon article 26, and reiterated his plea for the retention of the clause in question.

28. Mr. LLANG, Secretary to the Committee, explained that the Secretary-General, in suggesting that jurisdiction be conferred on the court in respect of crimes other than the so-called crimes under international law, had been influenced by the fact that very few international crimes had been explicitly defined. His memorandum (A/AC.48/1) did not presume to give any precise definition of such additional crimes, and in that respect he (the Secretary) agreed with the United States representative that the words "or other crimes of international concern" were vague. He also supported the view that deletion of the qualifying clause in article 1 would not be compensated for by any interpretation placed on another article of the statute.

29. The CHAIRMAN speaking as United States representative supported the stand taken by Mr. Maktoš.

30. Mr. MAKTOŠ (United States of America) moved that, since the qualifying clause covered both categories of crimes, the Uruguayan amendment should be put to the vote before the Israeli amendment.

It was so agreed.

31. The CHAIRMAN put to the vote the Uruguayan proposal that the clause "as may be provided in conventions or special agreements among States parties to the present Statute" be deleted from article 1.



The Uruguayan amendment was lost, 5 votes being cast in favour and 5 against, with 3 abstentions.

32. The CHAIRMAN put to the vote the Israeli proposal that the words "or other crimes of international concern" be deleted from article 1.

The Israeli proposal was adopted by 6 votes to 3 with 4 abstentions.

33. The CHAIRMAN put to the vote article 1, as amended.

Article 1, as amended, was adopted by 5 votes to 2 with 6 abstentions.

Article 2 - The Law to be Applied by the Court

34. Mr. SØRENSEN (Denmark), Rapporteur, stated that the text of article 2 was identical with the wording which the Committee had adopted in principle by 7 votes to 3 with 4 abstentions.<sup>1)</sup>

35. Mr. PINEYRO CHAÍN (Uruguay) proposed that article 2 be replaced by the following text:

"The Court shall apply international criminal law, international law and, where appropriate, national law".

36. In the case of a court called upon to try offences under international law and to punish the perpetrators of such crimes, reference should be made, in the first place, to international criminal law. However important the other legal norms might be, they were only complementary.

37. By analogy, it would be illogical in national law to instruct a court of criminal jurisdiction to apply common, including criminal law.

38. Mr. WYNES (Australia) recalled that he had previously objected to the phrase "where appropriate", and had moved that the article should be amended to read:

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1) See Summary Record of the 12th meeting (A/AC.48/SR.12), paragraph 21



"The Court shall apply international law, including international criminal law, and national law when the conventions or special agreements referred to in article 1 hereof so provide".

39. Mr. RÖLING (Netherlands) said that he had no strong feelings about the Uruguayan proposal, although he preferred the original text of article 2. As to the Australian amendment, he could not but oppose it. Its adoption would involve the court in serious difficulties in the event of a State official being brought before the court charged with a crime under international law, for the decision as to whether or not such a person was responsible for the crime might well be determined by national law not provided for in a convention. Although the court would only have jurisdiction in respect of crimes under international law, yet national law would often be involved, for example, where an accused pleaded superior orders or where a plea was based on his "nationality".

40. The CHAIRMAN put to the vote the Australian amendment to article 2.

The Australian amendment to article 2 was rejected by 9 votes to 1 with 3 abstentions.

41. The CHAIRMAN put to the vote the Uruguayan amendment to article 2.

The Uruguayan amendment to article 2 was rejected by 3 votes to 2 with 8 abstentions.

42. The CHAIRMAN put to the vote article 2 as originally drafted (A/AC.48/L.17).

Article 2, as originally drafted, was adopted by 9 votes to 1 with 2 abstentions.

43. Mr. MUNIR (Pakistan) explained that he had voted in favour of article 2 on the understanding that the enumeration of the law which the court was to apply was not exhaustive, that was to say, that article 2 referred to substantive law and not to procedural law.



44. Mr. T. RAZI (Syria) explained that he had abstained from voting as he considered that article 2 was capable of giving rise to misinterpretations.

Article 3 - Permanent Nature of the Court

45. Mr. WANG (China) proposed the deletion of the second sentence of article 3, reading: "Sessions shall be called only when matters before it require consideration".

46. Mr. SØRENSEN (Denmark), Rapporteur, stated that the Drafting Sub-Committee, in submitting its text for article 3, had sought to differentiate between the permanency of an international criminal court and the permanency of the International Court of Justice. The idea was that the international criminal court should be a permanent body in the organic sense of the term, but not in the functional sense. The second sentence had been included mainly to avoid giving the impression that some vast structure was being set up. He added that the Drafting Sub-Committee had agreed to omit a provision as to who should convene the court, deeming that to be a matter for the court's rules of procedure.

47. Mr. LING, Secretary to the Committee, appreciated the emphasis laid on the relative permanency of the court. The second sentence of article 3, however, seemed to imply that the court would have discretion to decide which of the matters brought before it should be dealt with. The idea of the relative permanency of the court might more conveniently be expressed by some such sentence as: "Sessions shall be called from time to time".

48. Mr. PINTO (France) asked the Committee, in view of the discussion in the Drafting Sub-Committee, to adopt the text as it stood.

49. Mr. WANG (China), in support of his proposal, submitted that the words "The Court shall be a permanent body" could imply permanency only in the organic sense. So far as he knew, no court anywhere in the world sat in permanent session.

50. Mr. SØRENSEN (Denmark), Rapporteur, said that, in including the words



"when matters before it require consideration", the Drafting Sub-Committee had had in mind that the court would have to establish its rules of procedure before any case was brought before it, and that as time went on it might require to hold a session for the purpose of revising those rules. To lay down that "sessions shall be called from time to time" might imply that sessions should be held at regular intervals; that had certainly not been the intention of the Drafting Sub-Committee.

51. Referring to the Chinese representative's remarks, he again pointed out that the Drafting Sub-Committee had thought it desirable to bring out the difference between an international criminal court and the International Court of Justice, which according to Article 23 of its Statute, remained permanently in session, except during the judicial vacations.

52. The CHAIRMAN put to the vote the Chinese proposal that the second sentence of article 3 be deleted.

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

53. The CHAIRMAN put to the vote article 3 as it stood (A/AC.48/L.17).

Article 3 was adopted by 13 votes to none with 1 abstention.

The meeting was suspended at 11.30 a.m. and was resumed at 11.45 a.m.

## Chapter II: Organization of the Court

### Article 4 - Qualifications of Judges

54. Mr. TARAZI (Syria) proposed that the last part of article 4 be amended to read:

"Jurisconsults of recognized competence in international criminal law and in international law"

55. The object of his amendment was to bring out the more prominent position that international criminal law would occupy in the law applied by the judges of the court. They would have to be better versed in international criminal law, which



was a more restricted subject, than in international law itself, the scope of which was much wider.

56. The CHAIRMAN put the Syrian amendment to the vote.

The Syrian amendment was lost, 3 votes being cast in favour of and 3 against, with 7 abstentions.

Article 4 was adopted by 11 votes to none with 2 abstentions.

Article 5 - Number of Judges

Article 5 was adopted by 9 votes to none with 5 abstentions.

Article 6 - Nationality of Judges

Paragraph 1 of article 6 was unanimously adopted.

Paragraph 2 of article 6 was unanimously adopted.

Article 6 as a whole was adopted by 13 votes to none with 1 abstention.

Article 7 - Nomination of Candidates

Article 7 was adopted by 10 votes to none with 3 abstentions.

Article 8 - Invitation to Nominate

57. Mr. PINTO (France) pointed out that the last line of the French text of article 8 should read: "personnes qualifiées susceptibles d'accepter de remplir les fonctions de juge",<sup>1)</sup>

58. Mr. VALDES ROIG (Cuba) proposed that the interval that must elapse between the date on which notice must be given by the Secretary-General to States of a pending election and the date of the election itself be increased from three to four months.

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1) Does not affect the English text of the article.



59. The CHAIRMAN put the Cuban proposal to the vote.

The Cuban proposal was rejected by 6 votes to 4 with 4 abstentions.

Article 8 was adopted by 12 votes to none with 2 abstentions.

Article 9 - List of Candidates

60. In reply to a question from Mr. AMADO (Brazil), Mr. SÖRENSEN (Denmark), Rapporteur, explained that article 9 was based on Article 7 of the Statute of the International Court of Justice; the purpose of drawing up the list in alphabetical order was to ensure that candidates would be considered as individuals, and not as representatives of any given country.

Article 9 was adopted by 9 votes to none with 5 abstentions.

Article 10 - Representative Character of the Court

Article 10 was adopted by 13 votes to 1

Article 11 - Election of Judges

61. Mr. SÖRENSEN (Denmark), Rapporteur, explained that the Drafting Subcommittee had preferred the wording "meetings of representatives of the States parties to the present Statute", to the expression "electoral college" used in the initial draft.<sup>1)</sup>

62. Mr. RÖLING (Netherlands) observed that it was difficult for members of the Committee who were in favour of the court being established by General Assembly resolution<sup>2)</sup> to vote in favour of article 11. If the court were created by the General Assembly, that body should elect the judges. If, therefore, he voted in favour of the article, it would be on the assumption that the court would be established by convention.

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1) See article 8 of chapter I of annex II to the Secretary-General's memorandum (A/AC.48/1) and Summary Record of the 23rd meeting (A/AC.48/SR.23), paragraphs 83 and 84.

2) See Summary Record of the 22nd meeting (A/AC.48/SR.22), paragraph 50.



63. Mr. SÖRENSEN (Denmark), Rapporteur, recalled that the Committee had adopted an Australian proposal that its report should indicate that, if the court were to be set up by General Assembly resolution, the Committee was in favour of the judges being elected by the General Assembly.<sup>1)</sup> That reference had already been included in paragraph 48 of the draft report (A/AC.48/L.18).

64. Mr. MAKTOŠ (United States of America), supported by Mr. VALDES ROIG (Cuba), suggested that the first sentence of paragraph 1 should be amended to read:

"The judges shall be elected by the General Assembly of the United Nations meeting with representatives of States not members of the United Nations, but parties to the present Statute ...".

65. What was needed was not a provincial, but a world court; if such a court were to be set up, the participation of the General Assembly in the election of the judges was essential.

66. Mr. PINEYRO CHAIN (Uruguay) was in favour of part of the United States amendment. In order to safeguard the universal character of the court, he proposed that the election of judges be entrusted to the General Assembly of the United Nations by absolute majority of the members present and voting. It did not, however, seem necessary to associate with the General Assembly the representatives of States parties to the statute but not members of the United Nations. To bring about such an association, it would be necessary for the General Assembly to meet under conditions for which the Charter made no provision.

67. He therefore proposed that the Committee should vote separately on the two parts of the United States amendment, that was to say, that it should vote first on the question whether the General Assembly should be entrusted with the election of judges, and then on the question whether the representatives of States parties to the statute, but not members of the United Nations, should take part in the election.

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1) See Summary Record of the 23rd meeting (A/AC.48/SR.23), paragraphs 85 to 91.



68. Mr. SÖRENSEN (Denmark), Rapporteur said that he could neither accept the Uruguayan nor the United States proposal, since they would both enable States not wishing to be concerned with the activities of the court to influence its composition.

The Uruguayan proposal was rejected by 7 votes to 4 with 3 abstentions.

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

69. Mr. VALDES ROIG (Cuba) proposed that the following phrase be added at the end of the first sentence of paragraph 1 of article 11:

"Subject to confirmation by the General Assembly of the United Nations".

70. That was a compromise solution which took due account of the United States representative's assertion that the appointment of judges by the General Assembly would increase the court's authority. It contemplated an election by the States parties to the statute as a first step, followed by confirmation of that election by the General Assembly, as the second step.

71. In reply to a question by the CHAIRMAN, he said that, in his opinion, it would be exceptional for the General Assembly not to confirm the decisions taken by the States parties to the statute.

72. Mr. TARAZI (Syria) considered the Cuban representative's proposal as already rejected in the light of the decisions just taken by the Committee.

73. The CHAIRMAN ruled that the Cuban amendment was in order, since no motion had as yet been tabled that the election of the judges should be subject to confirmation by the General Assembly.

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

Article 11 was adopted by 6 votes to 2 with 6 abstentions.

#### Article 12 - Terms of Office

Article 12 was adopted by 10 votes to none with 3 abstentions.



Article 13 - Solemn Declaration

74. Mr. ROBINSON (Israel) suggested that, although article 13 was based on Article 20 of the Statute of the International Court of Justice, the phrase "he will exercise his powers" might be improved by making it read: "he will perform his functions".<sup>1)</sup>

The Israeli proposal was adopted by 12 votes to none with 1 abstention.

Article 13, as amended, was unanimously adopted.

Article 14 - Privileges and Immunities

75. Mr. SØRENSEN (Denmark), Rapporteur, stated that the Drafting Sub-Committee had considered whether the privileges and immunities referred to in the article should be granted to persons other than the judges, such as witnesses and counsel. No recommendation had been agreed upon, but it was assumed that, if the Statute contained no express provisions on the point, it would be possible for such privileges and immunities to be granted to persons other than the judges under later conventions or arrangements.

76. Mr. RÖLING (Netherlands) felt that the phrase "when engaged on the 'business' of the Court" might be liable to misinterpretation. Moreover he did not like that wording. He therefore suggested that that phrase be amended to read: "when performing his functions".

77. Mr. LIANG, Secretary to the Committee, said that the expression "when performing his functions" would mean that the privileges might be continued to be limited to acts done by the judges in their official capacity, whereas the expression "when engaged on the business of the court" used in connexion with the term "diplomatic immunities" would cover their private acts as well.

78. Mr. SØRENSEN (Denmark), Rapporteur, indicated that the wording was

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1) This change does not affect the French text of the article.



precisely the same as that used in Article 19 of the Statute of the International Court of Justice.

The Netherlands amendment was rejected by 5 votes to 4 with 5 abstentions.

Article 14 was unanimously adopted.

Article 15 - Occupations of Judges

Article 15 was unanimously adopted.

Article 16 - Disability of Judges

79. Mr. PINEYRO CHAIN (Uruguay), referring to the heading of article 16 in the Spanish text, said that the word: "incapacidades" should be replaced by the word: "prohibiciones".

80. Mr. ROBINSON (Israel) suggested that the word "the" be deleted after the words "may participate in".

The Israeli proposal was adopted by 11 votes to none with 1 abstention.

Article 16, as amended, was adopted by 12 votes to none with 1 abstention.

The meeting rose at 1 p.m.