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1953 COMMITTEE ON INTERNATIONAL CRIMINAL JURISDICTION

SUMMARY RECORD OF THE SEVENTEENTH MEETING

Held at Headquarters, New York,
on Thursday, 13 August 1953, at 2.30 p.m.

COMMENTS

Re-examination of the draft statue prepared by the 1951 Committee on International Criminal Jurisdiction (A/2136, A/AC.65/L.7) (continued)

53-23157

PRESENT:

Chairman:	Mr. MORRIS	United States of America
Rapporteur:	Mr. RÜLING	Netherlands
Members:	Mr. GARCIA OLANO Mr. LAUREL	Argentina
	Mr. LOOMES	Australia
	Mr. DAUTRICOURT	Belgium
	Mr. WANG	China
	Mr. MERLE	France
	Mr. MARMOR	Israel
	Mr. de la OSSA	Panama
	Mr. MAURTUA	Peru
	Mr. MENDEZ	Philippines
	Mr. VALLAT	United Kingdom of Great Britain and Northern Ireland
	Mr. MAKTOS	United States of America
	Mr. PEREZ PEROZO	Venezuela
	Mr. NINCIC	Yugoslavia
Secretariat:	Mr. LIU	Secretary of the Committee

RE-EXAMINATION OF THE DRAFT STATUTE PREPARED BY THE 1951 COMMITTEE ON INTERNATIONAL CRIMINAL JURISDICTION (A/2136, A/AC.65/L.7) (continued)

Article 26, paragraph 2

Mr. MAKTOS (United States of America) felt that the Committee, having adopted a very broadly worded paragraph 1, should endeavour in paragraph 2 to restrict the methods whereby jurisdiction would be conferred upon the court. That jurisdiction should be conferred by convention only and not by special agreement or unilateral declaration, for adoption of the last two methods would enable a single State among the sixty or seventy recognizing the court's jurisdiction to seize the court of issues which none of the others considered to be crimes under international law, whereas on that point the broadest possible agreement should exist. Moreover, as a rule very serious crimes would be involved and it would not be proper for a case to be referred to the court at the request of merely one State, for otherwise consequences not foreseen in the original draft statute might ensue. To define the jurisdiction of the court by a convention was one thing; to permit States to submit cases involving crimes punishable under their domestic legislation or customary law was quite another matter. It was also illogical to broaden the theoretical jurisdiction of the court when in fact, most States were not prepared to recognize its jurisdiction. He therefore proposed that article 26, paragraph 2, should read: "No State shall be bound by the jurisdiction of the Court unless that State has conferred jurisdiction by convention."

Mr. GARCIA OLANO (Argentina) proposed the addition of the following clause: "or, with respect to a particular case, by special agreement or by unilateral declaration."

Mr. LOOMES (Australia) was unable to support either the United States proposal or the Argentine amendment. The United States representative had taken the view that the generality of paragraph 1 strengthened the case for restricting the scope of paragraph 2. However, the two paragraphs were not as closely related as the United States representative seemed to think. Paragraph 1 defined the sources of the court's jurisdiction, whereas paragraph 2 dealt with the methods by which States might confer that jurisdiction. They were free to stipulate any reservations they wished in the instrument under which they recognized the court's jurisdiction. States should be allowed the utmost latitude with respect to conferment of jurisdiction upon the court. There was no reason why a State should not, on its own initiative, confer jurisdiction upon the court in respect of every international crime. As for the criterion of the seriousness of a crime, referred to by the United States representative, a perfectly satisfactory precedent for that point was contained in Article 36 of the Statute of the International Court of Justice which dealt with cases certainly no less serious than international crimes. The Argentine amendment appeared, for no valid reason, to make a distinction between "general" and "particular" jurisdiction. If special agreements and unilateral declarations could be applied to particular crimes, there was no reason why they should not be used to confer general jurisdiction upon the court.

Mr. MAKTOS (United States of America) pointed out that the comparison with the International Court of Justice was not justified. Whereas the latter could rely on a highly developed body of authority from its very inception, international criminal law was still in its infancy.

Mr. RÖLING (Netherlands) observed that if the convention method were adopted as the only one by which jurisdiction could be conferred upon the court, nothing would prevent two or three States from submitting issues to the court which none of the other States considered to be crimes under international law. Therefore, conventions did not offer any greater safeguards in that respect than unilateral declarations.

Mr. GARCIA OLANO (Argentina) did not object in principle to general conferment of jurisdiction by unilateral declaration. His proposal to restrict that method of conferment to concrete cases had been made merely because of the fears expressed by the United States representative.

Mr. RÖLING (Netherlands), replying to a question from Mr. VALLAT (United Kingdom), said that if the method of unilateral declaration was allowed, in principle a simple letter addressed by a head of State to the Secretary-General would suffice to confer jurisdiction upon the court.

Mr. MERLE (France) felt that the Argentine amendment was too restrictive. In fact, conferment of jurisdiction upon the court should not await the commission of a crime. In deference to the States which wished to be free to use the three methods of conferment of jurisdiction, he proposed deletion of the words "with respect to a particular case" from the Argentine amendment.

Mr. GARCIA OLANO (Argentina) accepted the proposal.

Mr. WANG (China) pointed out that the suggested text of paragraph 2 provided for recognition of the court's jurisdiction by implication only. He thought perhaps a positive wording would be better.

Mr. RÖLING (Netherlands) agreed that the paragraph should be worded positively. In fact, paragraph 1 in which it was stated that the court's jurisdiction should not be presumed obviously implied that a State would not be bound by the court's jurisdiction unless it had expressly conferred jurisdiction upon the court. Paragraph 2 should therefore begin with the words: "Jurisdiction may be conferred upon the Court...".

Mr. MAKTOS (United States of America) agreed that the proposed text was an improvement. He insisted, however, that the Committee should first vote on his proposal and then on the Argentine amendment.

Mr. GARCIA OLANO (Argentina) asked the Committee to vote first on his proposal as amended in accordance with the French representative's suggestion, in other words on the paragraph in its negative form.

Mr. MENDEZ (Philippines) wondered whether the French representative would accept the wording of the article as contained in the draft statute.

Mr. MERLE (France) felt that a distinction should be made between the question of a positive or negative wording for the paragraph, and the proposed methods of conferment. He was chiefly interested in the latter point.

Mr. VALLAT (United Kingdom) formally submitted the United States text in a positive wording.

The CHAIRMAN, in connexion with a point raised by Mr. MENDEZ (Philippines), suggested the following text in order to avoid repetition of the word "by": "A State may confer jurisdiction upon the Court by convention." He put that proposal to the vote.

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

The CHAIRMAN put the Argentine amendment, as amended by the French representative, to the vote. He added that adoption of the amendment might be invalidated by subsequent adoption of the original United States proposal.

The Committee tentatively adopted the Argentine amendment, as amended by the French representative, by 6 votes to 2, with 6 abstentions.

The text of article 26, paragraph 2, proposed by the United States representative, was rejected by 6 votes to 1, with 3 abstentions.

Mr. WANG (China) observed that article 26, paragraphs 1 and 2, were worded negatively so that there was no provision positively conferring jurisdiction. He felt that the Committee should vote on whether paragraph 2 should be worded positively or negatively.

The CHAIRMAN pointed out that the positive wording proposed earlier by the United Kingdom representative had been rejected.

Mr. VALLAT (United Kingdom) pointed out that the positive wording which he had proposed had referred to the United States proposal only and not to the Argentine amendment. Hence it was still possible to vote along the lines suggested by the Chinese representative.

Mr. LOOMES (Australia) agreed. He proposed that the following text should be put to the vote: "A State may confer jurisdiction upon the court by convention, by special agreement or by unilateral declaration."

Mr. GARCIA OLANO (Argentina) was still in favour of a negative wording which would be in keeping with paragraph 1, which stated that the jurisdiction of the court was not presumed.

Mr. MAKTOS (United States of America) requested a vote by division. He could vote for the proposed text up to and including the word "convention", but would be obliged to vote against the text as a whole.

Mr. VALLAT (United Kingdom) thought that the Committee should vote first on the words "A State may confer jurisdiction upon the court."

Mr. MARMOR (Israel) pointed out that the Australian representative's proposal referred only to the positive wording.

Mr. ROLING (Netherlands) recalled that the Committee had already voted on the substance of the paragraph and had decided that jurisdiction could be conferred upon the court by convention, by special agreement or by unilateral declaration. In accordance with the Chinese representative's original idea, he proposed that the Committee should vote only on whether the article should be positive or negative in form.

Mr. GARCIA OLANO (Argentina) and Mr. MERLE (France) supported the proposal.

The CHAIRMAN put the Netherlands proposal to the vote.

The Committee adopted the Netherlands proposal by 9 votes to 1, with 1 abstention.

The Committee decided, by 6 votes to none, with 7 abstentions, that paragraph 2 of article 26 should be worded positively along the lines proposed by the Australian representative.

Paragraph 3

Mr. MERLE (France) thought that the word réserves in the second line of the French text of paragraph 3 was inappropriate technically. States could confer jurisdiction upon the court by convention, by special agreement or by unilateral declaration. Hence any reservations made by States would in practice be embodied in the instruments of accession and it was unnecessary to mention reservations in article 26.

Mr. ROLING (Netherlands) pointed out that the English text used the word "provisions" which was equivalent to the French term stipulations. That term should therefore be used in the French version of paragraph 3.

Mr. GARCIA OLANO (Argentina) remarked that the word disposiciones in the Spanish text was unsuitable and should be replaced by the word estipulaciones.

Mr. MAURTUA (Peru) thought that, for the sake of concordance, the words "or States" should be added after the words "the State".

The CHAIRMAN put to the vote paragraph 3 of the Drafting Sub-Committee's text of article 26 amended according to the proposals of the Netherlands and Peruvian representatives, on the understanding that the English, French and Spanish versions would be concorded.

Paragraph 3, as amended, was adopted by 11 votes to none, with 2 abstentions.

Paragraph 4

Mr. RÖLING (Netherlands) explained that, according to alternative A of the text of paragraph 4, disapproval of conferment of jurisdiction by the General Assembly made such jurisdiction ineffective from the time of disapproval. According to alternative B, conferment disapproved by the General Assembly was invalid ab initio.

Mr. MAKTOS (United States of America) thought that ex post facto disapproval of conferment of jurisdiction by the General Assembly could not, for example, bring back to life a person held guilty of a crime, sentenced to death and executed in the meanwhile. Hence, as the wording of article 26 of the draft statute prepared at Geneva provided, the jurisdiction of the court had to be approved by the General Assembly before the trial began. The United States delegation would vote against both alternatives of paragraph 3 proposed by the Drafting Sub-Committee and preferred the wording of article 28 of the draft statute, which should not be combined with article 27, as the two articles were quite different in purpose.

Mr. RÖLING (Netherlands) pointed out that the United States representative's argument was based on the idea that the General Assembly should protect the accused. Actually, that was the duty of the State. The General Assembly's function was to safeguard the court's authority.

Mr. WANG (China) felt that two questions arose: firstly, the prejudicial question whether the statue should include a provision of the kind proposed by the Drafting Sub-Committee; secondly, in the event that the preliminary question was settled in the affirmative, which text should be retained. He shared the opinion which the Israel representative had expressed at the previous meeting: there should not be any political screening of the jurisdiction conferred upon the court. The court's work would in any case be so delicate that it should not be complicated any further. As it was, the statute would include no specific provision on the conferment of jurisdiction upon the court, a circumstance which was not likely to facilitate the court's functioning.

The Israel representative had rightly pointed out that the Statute of the International Court of Justice contained no provision similar to that proposed by the Drafting Sub-Committee. Again, it was not very clear how the punishment of a crime could conflict with the maintenance of international peace. The Chinese delegation therefore proposed that all the provisions in the draft statute providing for the intervention of the General Assembly in the court's activities should be deleted.

Mr. MERLE (France) supported the Chinese representative's proposal. He read out the comments, reproduced on page 23 of document A/AC.65/1, which the French Government had submitted concerning article 28. Intervention by the General Assembly in the conferment of jurisdiction upon the court was undesirable and unjustified. It was inconceivable when the jurisdiction was conferred upon the court by a convention among sovereign States. It would be tantamount to a legislative veto directed against those States and no provision of the Charter could justify such a prerogative on the part of the General Assembly. Accordingly the French delegation opposed both the texts proposed by the Drafting Sub-Committee and the wording of article 28 in the draft statute.

Mr. RÖLING (Netherlands) supported the views of the French and Chinese representatives which were similar to his own Government's (page 24 of document A/AC.65/1). At the worst the General Assembly's control should be

purely negative; in other words the General Assembly should have the right only to prevent but not to approve of the conferment of jurisdiction.

Mr. DAUTRICOURT (Belgium) also supported the French and Chinese representatives' comments.

Mr. MAKTOS (United States of America), in reply to an observation made by the Israel representative at the previous meeting, pointed out that the purpose of the International Court of Justice was altogether different from that of the international criminal court. The International Court of Justice tried civil cases by virtue of a clearly defined right, whereas the international criminal court dealt with criminal cases by virtue of international criminal law which was still in the process of evolution. There was need for caution; a system should not be established which would make the international criminal court less acceptable to States. As a result of amendments to the court's draft statute, any State could confer jurisdiction on the court unilaterally in respect of an act which that State regarded as a crime under international law. It was being suggested that the General Assembly should not intervene in the conferment of jurisdiction, which was tantamount to dispensing with all control over such conferment. The Netherlands representative had said that the General Assembly's function was to safeguard the court's authority; actually, however, the accused, not the court, was to be protected by the General Assembly. That was why the General Assembly's control over the conferment of jurisdiction seemed to be essential.

Mr. WANG (China) recognized that the international criminal court and the International Court of Justice were very different in purpose. The United States representative apparently feared that some States might misuse the court by conferring jurisdiction upon it in cases where it was untenable that it should have jurisdiction. Such an attitude on the part of a sovereign State was highly improbable as it would turn against the State itself.

Mr. NINCIC (Yugoslavia) felt, like the United States representative, that the altogether dissimilar provisions in articles 27 and 28 should not be combined in one article. Those articles should be retained as they stood. The General Assembly should have its say in the conferment of jurisdiction. The Yugoslav delegation would therefore vote against the Chinese motion.

The CHAIRMAN put to the vote the Chinese proposal to delete from the draft statute all the provisions for the intervention of the General Assembly in the court's activities.

The proposal was adopted by 8 votes to 2, with 4 abstentions.

Article 25

Mr. ROLING (Netherlands) felt that there was some little confusion with regard to the jurisdiction of the court as to persons. He had proposed an amendment to article 25 in order to make its meaning clearer, while the Belgian representative had proposed a new text for the article. Strict instructions received by the Belgian representative from his Government had unfortunately made it impossible to reconcile the two proposals. He had pointed out to the Belgian representative that the latter's text differed in every respect from that adopted by the International Law Commission and from the text of the Convention on the Prevention and Punishment of the Crime of Genocide. The Israel representative had objected that the text of article IV of the Convention on Genocide would not allow the court to try dictators or usurpers guilty of crimes under international law. He did not agree. A dictator, or even a usurper, was still a natural person and a responsible ruler, and accordingly fully covered by article IV of the Convention. He accordingly maintained his proposal to amend article 25 by reproducing the provisions of article IV of the Convention on Genocide.

Mr. DAUTRICOURT (Belgium) maintained his proposed text of article 25, which was clearer than that of article IV of the Convention on Genocide and which read:

"The Court shall be competent to judge natural persons, including persons who have acted as rulers constitutionally or effectively responsible as well as persons who have acted in performance of their official duties."

Mr. GARCIA OLANO (Argentina) noted that the text for article 25 proposed by the Drafting Sub-Committee differed only in form from the text of the draft statue, of which, in fact, the last part was reproduced in it. It was unnecessary to repeat that the court should be competent to judge natural persons only, since the new article 1 of the Statute already said that the court should be competent to try natural persons accused of crimes under international law. There was no object in insisting that the court should be competent to judge responsible rulers for such a provision would restrict the scope of the article and lay the court open to challenges of its jurisdiction.

Mr. MAURTUA (Peru) cited the instance of a State involved in civil war, the insurgent government being subsequently recognized de facto. He wondered whether that government was to be considered constitutionally responsible.

Mr. MAKTOS (United States of America) said that, in the form in which it was presented by the Drafting Sub-Committee, article 25 appeared to mean that the court was not competent to judge anyone other than Heads of State or agents of government. He agreed with the Netherlands representative in preferring the text of article IV of the Convention on Genocide, on which the Government of the Philippines alone had made reservations.

Mr. WANG (China) moved formally that the existing text of the draft statute should be adopted for article 25. The text submitted by the Drafting Sub-Committee did not, in fact, stipulate that the court should be competent to judge natural persons only. Furthermore, the text proposed by the Belgian representative brought in the constitutional question, which was exclusively the concern of sovereign States and thus a matter on which discussion should be avoided.

Mr. MENDEZ (Philippines), supporting the Chinese motion, nevertheless felt that the text of article 25 of the draft statute would be improved by the replacement of "who have acted as" by the words "who are or have been".

Mr. DAUTRICOURT (Belgium) pointed out to the Chinese representative that the existing text of article 25 spoke of Head of State and of agent of government but not of responsible rulers which was the key phrase.

Mr. NINCIC (Yugoslavia) asked the Chinese representative whether he proposed that the word "only" should remain in the text of article 25.

Mr. WANG (China) replied in the affirmative.

Mr. NINCIC (Yugoslavia) asked whether the Philippine amendment to article 25 was independent of the Chinese proposal.

Mr. WANG (China) expressed readiness to incorporate the Philippine amendment in his proposal.

Mr. MARMOR (Israel) asked the Belgian representative whether he would be willing to embody the Philippine amendment to article 25 in his own proposed text.

Mr. DAUTRICOURT (Belgium) replied that he was willing to alter his proposal on the lines indicated by the Philippine representative.

Mr. MAURTUA (Peru) considered that the proposed draft raised a serious problem for it implied that a Head of State in office could be charged before the court, which was inadmissible. Furthermore, in view of the terms of article 27, he wondered how a State, which was represented by its Head, could possibly agree to confer on the court competence to judge that Head.

Mr. WANG (China) replied to the Peruvian representative's first point that he accepted the Philippine amendment expressly on account of that objection. The scope of the court's competence would depend in reality on conventions by which competence would be conferred. Such conventions might subsequently exclude Heads of State in office from the competence of the court.

The CHAIRMAN recalled, with regard to the Peruvian representative's second point, that it had been envisaged that such provisions might form clauses in a peace treaty, or that a Head of State might wish to submit to the court's jurisdiction of his own accord in the hope of being cleared of particular charges.

Mr. NINCIC (Yugoslavia) proposed that the final part of the Chinese representative's proposed text should be supplemented to read: "members or agents of government".

Mr. WANG (China) accepted the Yugoslav amendment.

Mr. DAUTRICOURT (Belgium) considered that the words "members of government" did not mean the same as the word gouvernants, which was the only term acceptable to him. The nearest English equivalent of the term gouvernants was probably "rulers". For constitutional reasons, moreover, the Belgian delegation was opposed to any mention of Heads of State.

Mr. MAKINS (United States of America), supported by Mr. GARCIA OLANO (Argentina), proposed that article 25 should read: "The Court shall be competent to judge all natural persons." He pointed out to the Peruvian representative that the text provided for a mere option. Only States which agreed to submit to jurisdiction would be bound.

The CHAIRMAN put the Chinese amendment to the vote: under it article 25 was to read: "The Court shall be competent to judge natural persons, including persons who have acted as rulers constitutionally or effectively responsible as well as persons who have acted in performance of their official duties".

The amendment was rejected by 5 votes to 4, with 3 abstentions.

Mr. GARCIA OLANO (Argentina) referred to his amendment jointly submitted with the representative of the United States of America.

Mr. RÖLING (Netherlands) thought that the text of the amendment destroyed the essential accuracy which was the very purpose of article 25, namely that acts of government were among those which might be submitted to the jurisdiction of the court.

Mr. GARCIA OLANO (Argentina) suggested that the objection might be answered by the addition of the words "without exception" to the text of the amendment.

Mr. MAKTOS (United States of America) supported the suggestion.

The CHAIRMAN put to the vote the joint Argentine and United States amendment to article 25: "The Court shall be competent to judge all natural persons without exception."

The amendment was not adopted, 4 votes being cast in favour and 4 against, with 4 abstentions.

The CHAIRMAN, at the request of Mr. RÖLING (Netherlands), proposed that the Committee should first vote upon the Belgian amendment.

It was so decided by 7 votes to 1, with 5 abstentions.

The CHAIRMAN put the Belgian amendment, as modified by the Philippine amendment, to the vote.

The amendment was rejected by 7 votes to 3, with 3 abstentions.

Mr. MAKTOS (United States of America) explained that he had voted against the Belgian amendment because he preferred the text of the Netherlands amendment, which followed the wording of the Convention on Genocide.

The CHAIRMAN put to the vote the Netherlands amendment that article 25 should read: "The Court shall be competent to judge natural persons whether they are constitutionally responsible rulers, public officials or private individuals".

The amendment was tentatively adopted by 8 votes to 1, with 4 abstentions.

Mr. RÖLING (Netherlands) felt that, before discussing other articles, the Committee would consider two further problems relating to competence: that of the court's competence on appeal, and that of the effects of a withdrawal of competence conferred.

The CHAIRMAN said that preferably the articles of the draft statute and the proposals of the Drafting Sub-Committee should be considered first. Fresh problems might be raised before the final reading of the draft statute.

Articles 12 and 18

Mr. RÖLING (Netherlands) explained the significance of the alterations which the Drafting Sub-Committee had suggested, partly to satisfy the Philippine representative's desire for precision.

Mr. MENDEZ (Philippines) said that he was satisfied with the text produced by the Drafting Sub-Committee.

The CHAIRMAN put the redrafts of articles 12 and 18 to the vote.

The redrafts of articles 12 and 18 were tentatively adopted by 11 votes to none, with 2 abstentions.

Article 23

Mr. RÖLING (Netherlands) explained the purport of the alternatives proposed by the Drafting Sub-Committee. Alternative A reproduced the text of the Geneva draft, subject to two changes: (a) the expenses of the committing authority and of the prosecution were no longer mentioned, because they would become part of the court's expenses; and (b) the provisions relating to the reimbursement of the expenses of the defence were to be realized. Alternative B had the support of the States wishing the court's expenses to be borne by the United Nations. He proposed the following amendment to alternative B: the passage following the word "expenses" should be replaced by "of the defence as provided in article 38, paragraph 2, sub-paragraph (c)".

Mr. MAKTOS (United States of America) moved the rejection of alternative B. Although he was in favour of a close relationship between the United Nations and the court, he considered that a good many States would be discouraged by a provision of that nature from agreeing to the court's establishment. Furthermore, it was fair that the States which accepted the jurisdiction of the court should defray its costs. Lastly, it would be impossible at the moment to prepare an estimate of the financial implications which under the General Assembly's rules of procedure had to accompany such a proposal.

Mr. MERLE (France) thought that if even those advocating the establishment of a close relationship between the United Nations and the court were themselves not in favour of the adoption of alternative B, it would certainly not be advisable to let that text stand.

The CHAIRMAN put the proposal for deleting alternative B of article 23 to the vote.

Alternate B was rejected by 8 votes to 1, with 2 abstentions.

After a discussion between the representatives of the Netherlands, the Philippines and the United Kingdom, who agreed on certain formal amendments of the text proposed by the Drafting Sub-Committee, the CHAIRMAN put the draft text of article 23 to the vote in the following terms: "The States which confer jurisdiction upon the Court shall create and maintain a fund to be collected and administered in accordance with regulations adopted by the parties. From this fund shall be paid the cost of maintaining the Court and the Board of Clemency, including the expenses of the defence, as provided in article 38, paragraph 2, sub-paragraph (c), and as approved by the Court."

The Committee tentatively adopted that text by 9 votes to none, with 1 abstention.

Mr. GARCIA OLANO (Argentina) asked that in the translation into Spanish of the text which had just been adopted attention should be paid to two formal amendments which would be desirable: the present term defensor did not reproduce the idea of the French la défense, and the word gastos would have to be substituted for the word costos.

Mr. VALLAT (United Kingdom) stressed that the various formal amendments which had been adopted did not imply a definite attitude concerning the method of establishing the court.

Article 30

The CHAIRMAN explained the intention behind the amendments proposed by the Drafting Sub-Committee in article 30. Although the three amendments in question were perhaps not very important, those affecting paragraphs 2 and 3 brought up a matter of principle.

Mr. RÖLING (Netherlands), supporting the Chairman's explanations, supporting the Chairman's explanations, made it clear that although the French text of paragraph 2 might seem more complete and precise than the English text, the actual scope of the two versions was basically the same. They both meant that the court should consider the challenge at once, but that it was not bound to give an immediate decision.

Mr. MARMOR (Israel) said the language of paragraph 1 was not very happy. It seemed to create a link between two absolutely distinct rights, that of the parties and that of certain other States. The text should read: "The jurisdiction of the Court may be challenged by the parties to any proceeding and/or by any State referred to in article 27". He explained that of the two words "and" and "or" he would prefer that which in the Committee's view more clearly conveyed the absence of links between the two rights granted.

Mr. MAKTOS (United States of America) said that he preferred the text proposed by the Drafting Sub-Committee.

The CHAIRMAN put to the vote the text proposed by the Israel representative for paragraph 1 of article 30, retaining the word "or" and omitting "and".

The Committee tentatively adopted that text by 6 votes to none, with 5 abstentions.

Mr. WANG (China) said that paragraph 2 as drafted was not clear and that paragraph 3 was too broad. Under the provisions as they stood the court could not apparently rule on a challenge of its competence until the decision concerning substance had been made. It might be specified that the court should rule on challenges before the end of hearings.

Mr. RÖLING (Netherlands) said the court could hardly adopt a procedure that would be absurd. However, he wondered what was the meaning of "before the trial begins" in the English text of paragraph 2. In fact the proceedings began as soon as the challenge was raised. It would be preferable to say "shall be considered by the Court at once". Those comments did not apply to the French text.

Mr. WANG (China) added that the same paragraph spoke of challenges made "prior to the beginning of trial".

The CHAIRMAN proposed that those words should be replaced by "at the beginning of the trial".

Mr. VALLAT (United Kingdom) opposed the proposed addition to paragraph 2. As a matter of principle, an international criminal court should not be allowed to submit an accused to the publicity and anxiety of circumstantial and full hearings concerning substance, only to announce at the end that the matter was not within its jurisdiction.

Mr. RÖLING (Netherlands) considered that challenges of jurisdiction would almost always be based either on an issue of nationality or on an issue of territoriality with reference to the place where the crime had been committed; those were questions of fact. To clear them up, it would perhaps be necessary for the court to hear argument on the substance of the case. That situation had occurred in Tokyo. It was necessary to provide for it and, once again, the premis had to be that the court would not adopt any unreasonable procedure.

Mr. MENDEZ (Philippines) thought that challenges of jurisdiction should be ruled upon as soon as they were raised.

Mr. MARMOR (Israel) pointed out that the original wording of the draft statute, by using the verb "considered", left it open when the court would rule upon a challenge.

Mr. RÖLING (Netherlands) confirmed that the Geneva Committee had adopted the word "considered" after careful consideration because the text did not contain the idea of a ruling. The Drafting Sub-Committee had attempted to suggest a more precise draft.

Mr. GARCIA OLANO (Argentina) supported Mr. Röling's statements. There had been no desire to oblige the court to give a ruling before it thought fit.

Mr. MAURTUA (Peru) agreed with the United Kingdom representative that the draft of paragraph 2 was defective. The challenge of incompetence had a peremptory character. Its object was to avoid argument on substance. It should be provided that the court would give an immediate ruling when the challenge of incompetence was raised at the beginning of a case. When that plea was set up in the course of hearings, it would become simply a collateral issue to be dealt with in the judgment concerning the substance of the case.

Mr. GARCIA OLANO (Argentina) agreed with the representatives of Peru and the Philippines. Nevertheless the text should merely specify at what point the court would give its rulings on a challenge.

The CHAIRMAN put to the vote the text proposed for article 30, paragraph 2, in the following terms: "Such challenge made at the beginning of the trial shall be decided at once".

The Committee tentatively adopted that text by 7 votes to 2, with 2 abstentions.

Mr. MAKTOS (United States of America) suggested that the United Kingdom representative's comments on paragraph 2 might apply equally to paragraph 3.

The CHAIRMAN said it was the court's responsibility in the situation envisaged to determine whether it had sufficient particulars. To oblige the court to take an immediate decision in that case might well hamper its smooth functioning. In accordance with a suggestion by the Israel representative, he put to the vote

article 30, paragraph 3, in the following terms: "Such challenges made after the beginning of trial shall be decided by the Court at such time as the Court thinks fit".

The Committee tentatively adopted that text by 11 votes to none, with 1 abstention.

The meeting rose at 6.20 p.m.