UNITED
NATIONS

United Nations Diplomatic Conference
of Plenipotentiaries on the Establishment
of an International Criminal Court

Rome, Italy
15 June-17 July 1998

Distr.
GENERAL

A/CONF.183/C.1/SR.11
20 November 1998

ORIGINAL: ENGLISH

COMMITTEE OF THE WHOLE

SUMMARY RECORD OF THE 11th MEETING

Held at the Headquarters of the Food and Agriculture Organization of the United Nations
on Monday, 22 June 1998, at 7 p.m.

*Chairman*: Mr. IVAN (Romania) (Vice-Chairman)

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V.98-57464 (E)

*The meeting was called to order at 7.10 p.m.*

**CONSIDERATION OF THE QUESTION CONCERNING THE FINALIZATION AND ADOPTION OF A CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT IN ACCORDANCE WITH GENERAL ASSEMBLY RESOLUTIONS 51/207 OF 17 DECEMBER 1996 AND 52/160 OF 15 DECEMBER 1997** (*continued*) (A/CONF.183/2/Add.1; A/CONF.183/C.1/L.7)

*Part 2 of the draft Statute* (*continued*)

*Jurisdiction* (*continued*)

1. **Ms. DIOP** (Senegal), referring to the role of the Security Council in respect of the International Criminal Court, said that, in her delegation's view, no political structure should hamper the Court's action. The Court should be independent of the Council and any other political body. Regarding the Council's referral of matters to the Court, her delegation could accept the second subparagraph (b) of article 6 in the United Kingdom proposal ("Further option for articles 6, 7, 10 and 11" in document A/CONF.183/2/Add.1), with the deletion of the square brackets around the words "acting under Chapter VII of the Charter of the United Nations". With regard to article 10, the work of the Court should not be obstructed by the action of the Council. The former was a legal authority and the latter a political body, and they should perform their roles within their respective spheres. The inclusion of language pointing to the need for coordination between their activities might be considered, but otherwise Senegal favoured the deletion of article 10, whether in the original version or the United Kingdom version, and also of paragraph 3 of article 11 in the United Kingdom proposal.

2. **Ms. CHATOOR** (Trinidad and Tobago) said that, in her delegation's view, there had to be a relationship between the Security Council and the Court, particularly when the Council acted under Chapter VII of the Charter. However, only situations, and not individual cases, should be referred to the Court by the Council, and the latter's determination under Chapter VII of the Charter should be supported by a specific resolution. With regard to article 10 of the United Kingdom proposal, her delegation could go along with paragraph 1 if acts of aggression were included in the crimes within the Court's jurisdiction, but felt that the twelve-month period proposed in paragraph 2 was perhaps too long. Finally, Trinidad and Tobago could support the proposed amendment to provide for the preservation of evidence.

3. **Mr. GÜNEY** (Turkey) said that it was reasonable for the Security Council, as a body which had set up ad hoc tribunals, to be able to refer cases to the Court. However, where the Council acted pursuant to Chapter VII of the Charter, an appropriate balance needed to be established between it and the Court. The Turkish delegation considered the granting of full discretionary authority to the Prosecutor, whether ex officio or *proprio motu*, to be unacceptable, and favoured the deletion of article 6 (original version), paragraphs 1 (c) and 2, article 12 and article 13. Regarding the role of the Council, paragraph 2 of article 10 (United Kingdom proposal) could provide a basis for reaching a possible solution to the problem.

4. **Mr. KROKHMAL** (Ukraine) said that his delegation wished to emphasize that the Security Council was not the sole body responsible for the maintenance of international peace and security. Option 2 for paragraph 7 of article 10 (original version) and the United Kingdom proposal for article 10 were based on the idea that the determination of the facts regarding acts of aggression and of the prerequisites for the Court's exercising of its jurisdiction was the prerogative of the Council. Ukraine preferred option 1 for paragraphs 4 and 7 of article 10 (original version).

5. **Mr. JERMAN** (United Arab Emirates) said that interference of the Security Council, whose role was political, in the Court's activities could undermine the latter's independence and impede its work. There was a need to ensure

that no contradiction arose between their respective roles. While it was admissible for a complaint to be lodged with the Prosecutor under Chapter VI of the Charter, careful thought should be given to the possibility of the Council's referral of such matters under Chapter VII. The Belgian and Singaporean proposals might serve to strike the necessary balance.

6. **Ms. VARGAS** (Colombia) said that her delegation felt that the Court's independence and impartiality should be clearly reflected in the Statute. While the Court should have an institutional relationship with the United Nations, none of the latter's bodies ought to have any influence over the Court or be able to obstruct its activities. Colombia viewed with concern those provisions of the draft which might enable the Council to thwart the jurisdiction of the Court. Despite the commendable efforts made to reach a compromise, it was necessary to seek further alternatives.

7. **Mr. YAÑEZ-BARNUEVO** (Spain) said that his delegation considered that the Statute should make provision for the Security Council to be able to refer situations to the Court whenever crimes specified in the Statute appeared to have been committed. That would enable the Council to avoid establishing ad hoc tribunals and would allow it to discharge its functions pursuant to Chapter VII of the Charter. Some delegations had mentioned the possibility of the referral of submissions to the Court by other United Nations bodies. That was acceptable to Spain, provided that they were principal, and not subsidiary, organs; any such referral would not have the same effect as a referral by the Council acting under Chapter VII of the Charter. His delegation agreed with the observations by the representative of Italy concerning the role of the Council with regard to the crime of aggression.

8. Concerning the issue of the suspension of proceedings at the request of the Council, the provision contained in article 23, paragraph 3, of the original draft Statute prepared by the International Law Commission had the effect of requiring the Court to seek the Council's permission to engage in proceedings relating to matters already under consideration by the Council, with the possibility of a veto by one of its members. That was totally unacceptable. The compromise submitted by Singapore and amended by Canada, involving a request for a temporary suspension of proceedings, could, together with a number of safeguards, be envisaged. Neither the wording of paragraph 6 of article 10 (original version) nor that of paragraph 2 of the United Kingdom proposal for article 10 (in the "Further option for articles 6, 7, 10 and 11") was entirely satisfactory. The text should be couched in positive terms, as proposed by the Netherlands. The request should be made formally, in a way that enabled the Council to exercise its authority pursuant to the Charter, and a formal decision on the request should be taken by the Court after it had heard the views of the Prosecutor and interested States. An extension of the suspension should be allowable but subject to a time limit. The Court should take all appropriate measures for the preservation of evidence and any other precautionary measures in the interests of justice. For the sake of clarity, the various issues might be set out in separate provisions.

9. **Mr. GEVORGIAN** (Russian Federation) said that, in his delegation's view, the triggering role should be an unconditional right of the Security Council. With regard to paragraph 2 of the United Kingdom proposal for article 10, the Russian Federation did not believe that it was possible in principle for the provisions of the Charter to be amended by any other international instrument; those provisions would override any others. Extreme caution was therefore called for in the drafting of the Statute. His delegation did not see any conflict between the "political" role of the Council and the activities of the Court. The Council was intended to have a political impact on States and the Court would be playing an essential role in the maintenance of peace and security.

10. **Mr. CHUKRI** (Syrian Arab Republic) said that, under article 10, paragraph 1, of the United Kingdom proposal, the Court would be unable to exercise jurisdiction with respect to a crime of aggression unless the Security Council had first determined that a State had committed such an act. In over 200 cases dealt with by it, the Council had avoided making such a determination. It had become a club of superpowers, whose right of veto could protect thousands of

international criminals by blocking the Court's procedures. Therefore, in order to have a court that would deal with all who committed international crimes, his delegation was against assigning any role to the Security Council.

11. **Mr. MORSHED** (Bangladesh) said that he did not believe the dichotomy between the political and legal roles to be valid. When the Security Council acted under Article 39 of the Charter in cases involving the crime of aggression, its determination was the legal characterization of a situation. No court could escape the binding effect of such a determination. His delegation wished to reserve its position concerning the Council's role with regard to other crimes, particularly war crimes and those involving weapons of mass destruction, where the prevailing regime was so discriminatory that situations of considerable instability could arise.

12. **Mr. SEREKOISSE-SAMBA** (Central African Republic) said that the Security Council should not be denied the right to refer matters to the Court. The provision in article 10, paragraph 2, of the United Kingdom proposal ("Further option for articles 6, 7, 10 and 11") granting the Council power to suspend proceedings reflected a commendable desire to harmonize the actions of those two bodies; however, harmonization did not mean obstruction. Bearing in mind the operation of the statute of limitations under article 27, his delegation felt that paragraph 2 should be reworded so that the Council's right of suspension could not be renewed indefinitely.

13. **Mr. ROGOV** (Kazakhstan) said that the role of the Security Council should be limited to the initiation of cases or proceedings, whereupon the Court should be able to act independently. Perhaps the Council could be empowered to request the Court to suspend its consideration of a case, without the Court's decision on that request being prejudged. However, the Council's role in such an important issue as the determination of acts of aggression should not be disregarded. It might be true that the Council was not adapted to present-day circumstances and that the Charter should be amended accordingly, but for the time being the Council's role must be recognized.

14. **Mr. MANSOUR** (Tunisia) said that it was important to emphasize both the role played by the Security Council in the maintenance of international peace and security and the distinction between the political role of the Council and the legal role of the Court. The Council should be allowed to perform its role in accordance with Chapter VII of the Charter.

15. **Mr. ROWE** (Australia) said that Australia favoured the granting of power to the Security Council to refer situations to the Court when acting under Chapter VII of the Charter. It thus supported article 6, paragraph 1 (a), and article 10, paragraph 1 (original version). It also supported article 6 (b) of the United Kingdom proposal. If acts of aggression were included in the crimes within the Court's jurisdiction, Australia would support the proposal that no action by the Court be allowed to proceed without an appropriate determination by the Council under Article 39 of the Charter. In that regard, his delegation favoured option 1 for article 10 (original version), paragraph 4. Concerning the balance to be struck between the independence of the Court and the powers of the Council in matters being dealt with by the Council, his delegation believed that option 2 for article 10, the proposal by Singapore and Canada, in conjunction with article 10, paragraph 2, of the further option, represented the best approach for finding an acceptable solution.

16. **Mr. SCHEFFER** (United States of America) said that, in his delegation's view, it was important for the Security Council to refer situations to the Court under both Chapters VI and VII of the Charter. Consideration needed to be given to the different consequences arising from a referral under those two authorities. It might be necessary to examine exactly how to word article 10, paragraph 2, of the United Kingdom proposal. The United States delegation believed that a formal resolution by the Council was required with respect both to referrals and to the Council's actions as described in that paragraph 2, and that any action under that paragraph did not have to be exclusively action by the

Security Council pursuant to Chapter VII. The Belgian proposal (A/CONF.183/C.1/L.7), although interesting, was vague and would require further discussion.

17. **Mr. MAHMOOD** (Pakistan) said that all decisions of the Security Council, which was a political organ of the United Nations, were based on political considerations rather than legal principles. Pakistan found it difficult to accept that such political considerations should be infused into the functioning of the Court, and therefore shared the view that the Council should not have a role in the Court.

*Articles 14 to 19* (*admissibility*)

18. **Mr. HOLMES** (Canada), Coordinator, introducing articles 14 to 19, said that article 14 might be unnecessary in view of the similar text in paragraph 1 of article 17. He understood that most delegations felt that article 14 could be deleted, subject perhaps to clarification in article 17.

19. Article 15, entitled "Issues of admissibility", was the result of extensive discussions in the Preparatory Committee concerning the principle of complementarity. In those discussions, virtually all States had indicated the importance which they attached to the inclusion of the principle of complementarity in the Statute—the principle that the primary obligation for the prosecution of crimes falling within the jurisdiction of the Court lay with States themselves. Also, most delegations had been of the view that, when States were unable or unwilling to fulfil that obligation, the Court should have jurisdiction to intervene. The idea was not that the Court should serve as an appellate body or a court of last resort for national legal systems. Where States assumed their obligations, the Court had no role; only where there was a failure due to inability or unwillingness was the Court engaged. Paragraph 1 of the article set out the basic approach, namely that the Court would determine that a case was inadmissible if it was being investigated or prosecuted by a State, or had been investigated and a decision not to proceed had been taken by the State, or the person concerned had already been tried, or the case was not of sufficient gravity. Subparagraphs (a) and (b) contained the exceptions where the Court could declare a case admissible, i.e. if the State was unwilling or unable to carry out the investigation or its decision not to prosecute was based on its unwillingness or inability to prosecute. The terms "unwillingness" and "inability" were defined in paragraphs 2 and 3 respectively. The draft in document A/CONF.183/2/Add.1 contained a number of footnotes indicating areas that might require adjustment depending on the outcome of discussions on other articles or parts of the draft Statute.

20. Article 16, relating to preliminary rulings regarding inadmissibility, had been proposed by the United States delegation, which had indicated that its proposal was not intended to reopen issues already agreed upon with regard to article 15, but related to different procedures affecting admissibility.

21. Article 17 dealt essentially with the procedural aspects of challenges to the jurisdiction of the Court or to the admissibility of a case. While agreement had been reached on most of its provisions in earlier discussions, some delegations had indicated that their final position would depend on the ultimate wording of article 15. Paragraph 1 set out the obligation of the Court to satisfy itself at all stages of the proceedings as to its jurisdiction over a case and the possibility for the Court to determine the admissibility of the case pursuant to article 15. The question of who had the right to challenge the admissibility of a case or the jurisdiction of the Court was dealt with in paragraph 2. All delegations had agreed that individuals, States and the Prosecutor should have that right. With regard to individuals, there was a link between paragraph 2 (a) and the question being dealt with by the Working Group on Procedural Matters regarding an agreed definition of suspects. Concerning States, some delegations had argued that only States referred to in article 15 should be granted the possibility of making challenges, while other delegations had favoured wider definitions, as reflected in the bracketed subparagraphs following subparagraph (b) of paragraph 2. There had

been consensus on the right of the Prosecutor to seek a ruling from the Court regarding issues of jurisdiction or admissibility. Paragraph 2 also provided for the possibility for other interested States to submit observations to the Court during its proceedings on admissibility or jurisdiction, and there had been agreement that victims, while not able to make a challenge, should also be entitled to make observations. The following two paragraphs described the modalities of such challenges and had been adopted by the Preparatory Committee without any square brackets, paragraph 3 stating that challenges could be made only once by any person or State prior to or at the commencement of the trial, and paragraph 4 stipulating that challenges must be made at the earliest opportunity, thereby ensuring that those procedures would not be used for purposes of delay or obstruction. However, in order to introduce flexibility for exceptional circumstances, it had been accepted that the Court itself could grant leave for a challenge to be brought more than once. Paragraph 5 dealt with the organ of the Court that would be competent to decide on issues of admissibility or jurisdiction. There had been general agreement that such matters should be referred to the Pre-Trial Chamber during the pre-trial stage and to the Trial Chamber after the charges had been confirmed. Paragraph 6, which had been deemed essential by a number of delegations, allowed the Prosecutor to request the Court to review a decision of inadmissibility if conditions required under article 15 were no longer met. However, the view had also been expressed that such a review procedure gave the Prosecutor too wide a power of appreciation over national proceedings.

22. Article 18, relating to the principle of *ne bis in idem*, was closely linked to article 15. The exceptions to paragraph 1 set out in paragraph 3 were closely linked to the criteria laid down in subparagraphs (a) and (c) of paragraph 1 of article 15. The footnotes to article 18 in document A/CONF.183/2/Add.1 related primarily to drafting, but footnote 59 dealt with the possible need for additional exceptions and reflected the view of a few delegations.

23. Article 19 was untitled. In the discussions of the Preparatory Committee on article 18, it had been proposed that, even if a person had already been convicted, the Court should be able to try the case if a manifestly unfounded subsequent decision by the national authorities resulted in the suspension or termination of a sentence. There had been insufficient time for delegations to agree that such a provision be included and, if so, on where it should be placed.

24. **Ms. MEKHEMAR** (Egypt) said that her delegation had reservations regarding the deletion of article 14. It was still examining articles 15 and 18.

25. **Mr. SCHEFFER** (United States of America) said that he would like to introduce article 16. While his delegation supported the text of article 15 on issues of admissibility, it had proposed article 16 after it had become clear in the discussions of the Preparatory Committee that there was growing support for the concept of referrals of overall situations to the Court by the Security Council, a State party, or the Prosecutor acting *proprio motu*. In line with the principle of complementarity, it would then seem necessary to provide for a procedure, at the outset of a referral, which would recognize the ability of national judicial systems to investigate and prosecute the crimes concerned. Under the proposed article, the Prosecutor would be able to proceed immediately to conduct an independent investigation if, in the face of a challenge by a national judicial system, the Prosecutor could persuade the judge to allow him to do so. That did not contravene the principle set out in article 17, paragraph 3, whereby a person or State could challenge admissibility only once concerning an individual case relating to an individual suspect. The United States proposal concerned an overall matter referred to the Court at an earlier stage, when no particular suspects had been identified, and a State's right to launch full-scale investigations. Further consultations on the precise text would be useful. On the question of the preservation of evidence, consideration needed to be given to that not only in the context of the early stage of investigations dealt with in article 16 but also in the Committee's discussion of article 54 and other discussions concerned with the Prosecutor's right of investigation. In addition, it would be desirable to ensure that, at the initiative of the Prosecutor, the Court took account of any radical change in the circumstances in a country while its judicial system was conducting an investigation.

26. Copies of the statement of explanation on article 16 which had originally been submitted by his delegation to the Preparatory Committee would be made available to delegations present.

27. **Mr. GONZALEZ GALVEZ** (Mexico) said that the way in which the principle of complementarity was formulated was important. If it could not be based on the consent of States, there needed to be exceptions to national jurisdiction and safeguards to prevent interference with the sovereignty of States. His delegation would comment on article 15 when the proposed amendments which it had submitted in writing to the Secretariat had been distributed. Mexico felt that article 14 was unnecessary and could be deleted. Article 16 provided a sound basis for further examination. It was an important text, which supplemented the guarantees which the Statute aimed to provide.

28. **Mr. CORTHOUT** (Belgium) said that his delegation supported the deletion of article 14, which was redundant. It agreed in principle with article 15. Article 16 would add new obstacles to the exercise of the Court's jurisdiction; Belgium was therefore in favour of its deletion. Regarding article 17, challenges to the admissibility of a case should be possible only for an accused or for a State party which had jurisdiction over the crime on the ground that it was investigating or prosecuting the case or had investigated or prosecuted the case; also, his delegation favoured the inclusion of the proposed paragraph 6. The rule *ne bis in idem* was a fundamental principle of criminal procedural law and should apply in the two ways covered in paragraphs 1 and 2 of article 18, but should not be used to conceal situations or prevent the Court from exercising its jurisdiction in cases where an accused was the subject of a fake trial at the national level. Belgium therefore strongly supported the exceptions provided for in paragraph 3. Article 19, originally co-sponsored by Belgium, was intended to deal with situations where a person had been convicted at the national level but where the sentence was subsequently rendered ineffective through a manifestly unfounded decision on the suspension of its enforcement, or through a pardon, parole or commutation. If that measure prevented the application of an appropriate penalty, the Court should be empowered to exercise jurisdiction over the person concerned.

29. **Mr. SALINAS** (Chile) said that his delegation considered that article 14 was unnecessary and should be deleted. Regarding article 15, there was a need to explain more clearly the vague reference in paragraph 1 (d) to sufficient gravity in regard to the justification of the Court's further action. Chile considered a revision of the formulation of article 16 to be necessary, but would reserve its comments until it had examined the explanatory paper referred to by the representative of the United States of America. Finally, it fully supported the text of article 16, in particular the provisions of its third paragraph.

30. **Ms. ASSUNÇÃO** (Portugal) said that her delegation accepted the negotiated text of article 15 and did not wish to reopen the discussion on it. Concerning article 17, it preferred the wording "an accused or a suspect" in paragraph 2 (a), favoured the term "State Party" in paragraph 2 (b) and supported paragraph 6. It agreed in principle to the text of article 18. Portugal, which had been a co-sponsor of article 19, believed that the limitations on the principle *ne bis in idem* should be confined to exceptional cases but that the cases specified in article 19 were necessary.

31. **Mr. SCHEFFER** (United States of America) said that, in his delegation's view, article 14 could be deleted provided that the principle which was contained in it remained in article 17. The text of article 15, as currently drafted, was acceptable. Regarding article 17, paragraph 1 would need to be retained; in paragraph 2 (a), the only individual allowed to make challenges should be an accused, since allowing a suspect to do so would complicate the Court's procedures; in paragraph 2 (b), the challenge should be permissible by any State which met the criteria set forth in that subparagraph, as it would be inconsistent with the principle of complementarity not to recognize the interests of States that were not parties; and paragraph 6 required further discussion to ensure that its provisions were not abused. The

text of article 18 had been carefully formulated in previous discussions and should as far as possible remain intact. His delegation was still studying the proposed article 19.

32. **Mr. KELLMAN** (El Salvador) said that his delegation wished to stress that the application of the exceptions set out in article 18, paragraph 3 (a) and (b), and in article 19 was linked to the principle of complementarity. Certain positions adopted appeared to suggest a different interpretation of those provisions.

33. **Mr. BAZEL** (Afghanistan) said that his delegation believed that article 15 should additionally address the issue of admissibility in cases involving amnesties and should include a new paragraph providing for the inadmissibility of cases where there was a temporary interruption of a State's judicial system owing to civil strife. With regard to article 16, it preferred a one-year period in the last sentence of paragraph 2, and wished to suggest that the word "report" be replaced by "inform" in paragraph 4. The Afghan delegation believed that it was the sovereign right of States to decide on the commutation of a sentence or on a pardon, according to its national interests and crime policy, and therefore proposed the deletion of article 19.

34. **Ms. WILMSHURST** (United Kingdom) said that her delegation agreed to the deletion of article 14. It found article 15 acceptable. While sympathetic to the idea behind article 16, it had serious problems with the text as currently drafted, but was willing to consider any proposed changes. Regarding article 17, the United Kingdom delegation favoured "accused" in paragraph 2 (a); in paragraph 2 (b), it strongly supported the reference to "a State" since, if a State that was not a party was carrying out an effective prosecution in its own territory, there was no reason for the Court to intervene and also conduct a prosecution. Concerning article 19, while her delegation understood the reasons behind the proposed text, it was unsure whether it would be possible to reach agreement on it in view of the highly sensitive and difficult issues which it raised.

35. **Ms. DIOP** (Senegal) said that her delegation agreed that article 14 could be deleted. Article 15, which appeared to have broad support, was acceptable. Senegal had initially intended to request the deletion of article 16, but would re-examine the text in the light of the suggested changes. Concerning article 17, the phrase in square brackets should be deleted in paragraph 2 (a), and the reference to "a State Party" was preferable in paragraph 2 (b), since States parties would have obligations following ratification and the conduct of investigations and prosecutions would thus be facilitated. The text of article 17, paragraph 6, was acceptable, as was that of article 18, possibly with a few modifications.

36. **Mr. SKILLEN** (Australia) said that his delegation agreed to the wording of article 15 but not with the alternative approach described at the end of that article. It favoured the deletion of article 16, but would reserve its position pending additional clarifications. Australia agreed with the remarks made by the representative of the United Kingdom concerning article 17, paragraph 2 (b), to the effect that non-parties should also have the right to make challenges, and it supported the inclusion of paragraph 6 in that article. It generally agreed with the provisions of article 18 but disagreed with the "alternative approach" set out at the end of that article. Regarding article 19, his delegation sympathized with the proposal but would suggest that it should be dropped if most delegations felt that its negotiation would unduly delay the work.

37. **Mr. GÜNEY** (Turkey) said that, in his delegation's view, article 14 could be deleted provided that the principle laid down in it was reflected elsewhere in the Statute. Articles 15 and 16 could be left aside pending further proposals. Article 17 was acceptable. Article 18, which dealt with one of the basic principles of criminal law, was closely linked to article 15 and needed to be brought into line with article 5 once a decision had been reached on it. With regard to article 19, Turkey agreed with the view expressed by the United Kingdom delegation.

38. **Mr. SYQUIA** (Philippines) said that his delegation had no objection to the deletion of article 14, which appeared to be redundant. Article 15 was acceptable. The support of the Philippines for article 16 would be subject to the information to be provided by the United States delegation. With regard to article 17, the phrase "an accused" was preferred in paragraph 2 (a), since there was no point in a suspect's being able to question admissibility; in paragraph 2 (b), the use of the term "State Party" was favoured; it would open up a two-way relationship between the Court and States parties whereas to allow States not parties to challenge admissibility would involve a one-way relationship, because the Court could not determine whether such States observed the principles laid down in the Statute. There were no objections to the text of article 18, or to that of article 19 provided that it did not include amnesty.

39. **Mr. ZIMMERMANN** (Germany) said that his delegation agreed to the deletion of article 14. Article 15 represented a carefully drafted compromise which should stand as presently worded. Concerning article 16, Germany wished to reserve its position until it had seen the written details to be provided by the United States delegation. With regard to article 17, only the accused and any State which had jurisdiction over the crime on the ground that it was investigating or prosecuting the case, or had investigated or prosecuted the case, should be able to challenge the jurisdiction of the Court; also, paragraph 6 of that article should be retained. Finally, the text of article 18 should remain as it stood.

40. **Ms. LEHTO** (Finland) said that, in her delegation's view, article 14 should be deleted. Article 15 was the result of extensive discussions and represented a good compromise; it should be retained as currently drafted. Footnote 42 to that article could be disregarded, since articles 18 and 19 dealt with the matters referred to in it. While appreciative of the presentation made by the representative of the United States on article 16, her delegation was still unconvinced of the need for such a procedure, but might wish to comment on the details subsequently. Concerning article 17, Finland's preference was for the deletion of the text in square brackets in paragraph 2 (a), the use of the words "A State Party" in the first line of paragraph 2 (b) and the deletion of the two bracketed subparagraphs following paragraph 2 (b). Paragraph 6 should be retained. Her delegation supported article 18, in its present form, and article 19, but was flexible with regard to its drafting.

41. **Ms. VARGAS** (Colombia) said that her delegation agreed to the deletion of article 14 provided that the principle involved was reflected in article 17. It wished to see the Mexican proposals before taking a decision on article 15 and would examine the information to be submitted by the United States delegation before adopting a position on article 16. Regarding article 19, Colombia agreed with the United Kingdom that major difficulties would be entailed in its negotiation and that it would thus be preferable to delete the article.

42. **Mr. NATHAN** (Israel) said that his delegation favoured the deletion of article 14. Article 15 should be retained as currently worded. Article 16 would be given further consideration once the additional details had been made available by the United States delegation. With regard to article 17, in paragraph 2 (a) the words "or a suspect" should be retained; in paragraph 2 (b), the right of challenge should be conferred on all States and not solely on States parties; and paragraph 6 should be retained as presently drafted. While fully in agreement with the principle set out in article 18, his delegation felt that the wording of paragraph 3 (b) should perhaps be looked at since the concept seemed to overlap partly with that in paragraph 3 (a). Israel had a problem with article 19, since it might imply unwarranted interference with decisions of administrative organs of a State which had already tried a person for crimes covered by the Statute.

43. **Mr. YEPEZ MARTINEZ** (Venezuela) said that his delegation considered article 14 to be unnecessary since its substance appeared elsewhere in the Statute. While it would study the amendments to be submitted by the delegation of Mexico, it would prefer article 15 to remain unchanged, as its text represented a harmonious balance arrived at during earlier consultations. Concerning article 16, Venezuela would await the paper to be provided by the United

States delegation, but did not feel that such an article was necessary. With regard to article 17, the text of paragraph 1, dealing with the responsibility of the Court to satisfy itself as to its jurisdiction, should form a separate article; in paragraph 2 (a), reference to "an accused" only was preferable; and, in paragraph 2 (b), only States parties should be able to make challenges. Article 19 did not add clarity and should be deleted.

44. **Mr. SACIRBEGOVIC** (Bosnia and Herzegovina) said that his delegation felt that the "alternative approach" referred to in document A/CONF.183/2/Add.1 following article 15 and also following article 18 might be used to provide immunity from prosecution. In the situation prevailing in his region, a defence frequently employed in cases where persons were indicted was that they were being brought to trial by a national court, when that was not in fact true.

45. It had been asked why the Court should have jurisdiction over a matter being effectively handled by a national court, but he wished to point out that the main reason why the International Criminal Tribunal for the Former Yugoslavia, for example, had been set up was not because prosecution by local courts would have been ineffective but because the crimes involved were of such a nature that they demanded international attention.

46. **Ms. WYROZUMSKA** (Poland) said that, in her delegation's view, article 14 was redundant. The compromise text of article 15 had been achieved through long negotiations and should remain as it stood. Article 16 would create further obstacles to the Court's jurisdiction and should be deleted. With regard to article 17, Poland believed that, under paragraph 2, it should be possible for challenges to be made by an accused or by the State which had jurisdiction over the crime, and that the Prosecutor should be empowered to seek a ruling from the Court regarding a question of jurisdiction or admissibility; also, paragraph 6 should be retained. The wording of article 18 was acceptable. Poland shared the view that article 19 required further discussion and could pose problems, given the sensitivity of the issue; it would be preferable to delete it.

47. **Ms. LE FRAPER DU HELLEN** (France) said that her delegation would prefer to retain article 14 but could agree to its deletion if the principle it contained was reflected in article 17. The text of article 17, paragraph 1, might need redrafting; the Court should satisfy itself as to its jurisdiction as soon as a case was referred to it. The text of article 15 was well balanced and could be accepted. With regard to article 16, paragraph 1 was acceptable, but the point seemed already to be covered elsewhere in the Statute. Her delegation would revert to article 16 when more information was made available. Regarding article 17, it would be preferable to retain the reference to both an accused and a suspect; in paragraph 2 (b), the possibility of making challenges should not be available to States not parties; and paragraph 6, as currently worded, was acceptable. The text of article 18 could be accepted as it stood. Article 19 constituted an interesting proposal, but it would be very difficult to introduce such a sensitive provision into the Statute.

48. **Mr. MANSOUR** (Tunisia) said that his delegation had no objection to the articles on admissibility, but had questions regarding what would happen when certain individuals were prevented from being brought before the Court, and what standards would be applied by the Court in determining issues of admissibility under article 15. Also, the question of appeals was not mentioned in that article.

*The meeting rose at 9.40 p.m.*