

25 March 1998

Original: English

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MAR 27 1998

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**Preparatory Committee on the Establishment
of an International Criminal Court**

16 March-3 April 1998

Working Group on Complementarity and Trigger Mechanism**Proposal by the United Kingdom of Great Britain and
Northern Ireland****Trigger mechanism**

1. The issues which are sometimes described together under the term "trigger mechanism" are among the most important for the future statute of the International Criminal Court. The United Kingdom of Great Britain and Northern Ireland believes it may be helpful to draw these issues together in the text contained in the annex to the present document; it sets out provisions which, it is hoped, may make it easier to reach eventual agreement.
2. As regards the question of *referral of a case to the Court* (article 6), there seems to be general agreement that States should have this power, although it may be preferable that States refer a situation (which may involve many different cases for investigation) rather than a single case. There is also strong support for referral by the Security Council. The question of whether the Prosecutor should have a right to investigate cases himself or herself, without referral by a State or the Security Council, is still under debate; the United Kingdom has not yet taken a position on this and the proposal annexed hereto therefore places in square brackets the references to an ex officio role for the Prosecutor (articles 6 (b), 7.2 and 46).
3. There are three categories of proposals for *acceptance of the Court's jurisdiction*. The first is that a State party to the statute may choose whether or not to accept the jurisdiction of the Court over some or all of the crimes within the Court's jurisdiction (the so-called opt-in/opt-out provision). The second, which can be taken with or without the first, is that before the Court exercises jurisdiction in a particular case, the consent of certain States (whether parties or not) is required: those States may include the territorial State, the custodial State, the State of nationality of the accused, and certain other specified categories of States (the so-called consent requirement provision).
4. The third option, which the United Kingdom favours, is that when a State becomes a party to the statute, it thereby accepts the exercise of the Court's jurisdiction, in respect



of all the core crimes and for every case which the Court investigates or prosecutes. This is the option which is set out in article 7 in the attached text.

5. A further proposal which has been made is that, on the assumption that there exists universal jurisdiction for the core crimes of genocide, crimes against humanity and war crimes, it is logical for the Court to be given jurisdiction irrespective of whether States are parties or not to the statute. This approach therefore concerns also the position of *non-States parties*. Under this proposal the Court would be able to exercise its jurisdiction regardless of whether the territorial State or other States have accepted the jurisdiction of the Court. In such a case, the consent of the State to cooperate with the Court would be desirable as a practical matter, and such a State would be able to notify its agreement to cooperate, but although the opening of an investigation would be subject to all the relevant provisions of the statute, no consent of the non-State party would be required.

6. In the view of the United Kingdom, the consent of certain categories of non-States parties *should* be required for the exercise of the Court's jurisdiction. In the attached text (article 7.2 and 7.3) the express consent of the custodial State and the territorial State is required; where those States are parties to the statute, their consent will not of course be needed, but if they are not parties the Court will not be able to exercise jurisdiction without their consent. The reference to the custodial State has been placed in square brackets because there may be disagreement as to whether it is the right State in this context.

7. There has been considerable debate about the role of the Security Council. Article 10.1 of the attached text provides that the Court may not exercise its jurisdiction with respect to the crime of aggression unless the Security Council has first made a determination that the State concerned has committed an act of aggression. Because the definition of aggression is itself in square brackets, article 10.1 has also been placed in square brackets in the attached text. Article 10.2 provides that if the Council requests the Court not to begin or carry on a prosecution or investigation, that request will be acceded to (this is a proposal which has been put forward by other States, in amendment of the original wording of article 23.3 of the ILC draft).

Annex

Article 6[21]. Exercise of jurisdiction

The Court may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if:

(a) a situation in which one or more of such crimes appear to have been committed is referred to the Prosecutor by a State Party in accordance with article 45[25];

[(b) the Prosecutor has initiated an investigation in respect of such a crime in accordance with Article 46[25 *bis*]]; or

(b) a situation in which one or more of such crimes appear to have been committed is referred to the Prosecutor by the Security Council [acting under Chapter VII of the Charter of the United Nations].

Article 7[22]. Acceptance of jurisdiction

1. A State which becomes a Party to the Statute thereby accepts the jurisdiction of the Court with respect to the crimes referred to in article 5.

2. Where a situation has been referred to the Court by a State Party [or where the Prosecutor has initiated an investigation], the Court may exercise its jurisdiction with respect to a crime referred to in article 5 provided that the following States are parties to the Statute or have accepted the jurisdiction of the Court with respect to the crime in question in accordance with paragraph 3 below:

[(a) the State that has custody of the suspect with respect to the crime ("custodial State"); and]

(b) the State on the territory of which the act or omission in question occurred, or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft.

3. If the acceptance of a State that is not a party to this Statute is required under paragraph 2 above, that State may, by declaration lodged with the Registrar, consent to the exercise of jurisdiction by the Court with respect to the crime in question. The accepting State shall cooperate with the Court without any delay or exception in accordance with part 9 of this Statute.

Article 10[23]. Role of the Security Council

[1. The Court may not exercise its jurisdiction with respect to a crime of aggression unless the Security Council has first determined under Chapter VII of the Charter of the United Nations that the State concerned has committed an act of aggression. A determination by the Security Council shall not be interpreted as in any way affecting the independence of the Court in its determination of the criminal responsibility of any person concerned.]

2. No investigation or prosecution may be commenced or proceeded with under this Statute [for a period of twelve months] after the Security Council[, acting under Chapter VII of the Charter of the United Nations,] has requested the Court to that effect; that request may be renewed by the Council under the same conditions.

Article 45[25]. Referral of a situation by a State

1. A State Party may refer to the Prosecutor a situation in which one or more crimes within the jurisdiction of the Court appear to have been committed, requesting the Prosecutor to investigate the situation for the purpose of determining whether one or more specific persons should be charged with the commission of such crimes.
2. As far as possible, a referral shall specify the relevant circumstances and be accompanied by such supporting documentation as is available to the complainant State.
3. The Prosecutor shall notify the Security Council of all situations referred under this article.

[Article 46[25 bis]. The Prosecutor]
