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on the Establishment of an
International Criminal Court**

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COMMITTEE OF THE WHOLE

WORKING PAPER ON ARTICLE 17

Challenges to the jurisdiction of the Court
or the admissibility of a case

1. The Court shall satisfy itself that it has jurisdiction in any case brought before it. 1/ The Court may, on its own motion, determine the admissibility of a case pursuant to article 15.
2. Challenges to the admissibility of the case, on the grounds referred to in article 15, or challenges to the jurisdiction of the Court may be made by:
 - (a) An accused or a person for whom a warrant of arrest or a summons to appear has been issued under article 58;
 - (b) A State 2/ which has jurisdiction over a case, on the ground that it is investigating or prosecuting the case or has investigated or prosecuted; or
 - [(c) A State from which consent is required under article 7 bis.] 3/

1/ Some delegates held the view that the issue achieved in this sentence should be dealt with in a separate article 14.

2/ A number of delegations accepted subparagraph (b) with the proviso that a State non-party which challenged the admissibility of a case under article 17 should assume the obligations of a State Party in accordance with the provisions of articles 15 and 16 and of Part 9.

3/ The final wording of subparagraphs (b) and (c) will depend upon the content of articles 7 bis and 15.

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The Prosecutor may seek a ruling from the Court regarding a question of jurisdiction or admissibility. In proceedings with respect to jurisdiction or admissibility, those having referred a situation under article 6, as well as victims, may also submit observations to the Court.

3. ⁴ The admissibility of a case or the jurisdiction of the Court may be challenged only once by any person or State referred to in paragraph 2. The challenge shall take place prior to or at the commencement of the trial. However, in exceptional circumstances, the Court may grant leave for a challenge to be brought more than once or at a time later than the commencement of the trial.

Challenges to the admissibility of a case, at the commencement of a trial, or subsequently with the leave of the Court may be based only on article 15, paragraph 1 (c). ⁵

4. A State referred to in paragraphs 2 (b) and (c) of this article shall make a challenge at the earliest opportunity.

5. Prior to the confirmation of the charges, challenges to the admissibility of a case or challenges to the jurisdiction of the Court shall be referred to the Pre-Trial Chamber. After confirmation of the charges, they shall be referred to the Trial Chamber.

Decisions with respect to jurisdiction or admissibility may be appealed to the Appeals Chamber, under article 81.

6. If a challenge is made by a State pursuant to paragraphs 2 (b) and (c), the Prosecutor shall suspend the investigation until such time as the Court makes a determination in accordance with article 15.

7. Pending a ruling by the Court, the Prosecutor may seek authority from the Court to:

(a) Pursue necessary investigative steps of the kind referred to in article 16, paragraph 6;

⁴It was suggested that if several States have jurisdiction over a case and one of those States has already challenged the jurisdiction of the Court, the remaining States should not bring additional challenges except on different grounds.

⁵The final wording of this subparagraph will depend on the content of article 15.

(b) Take a statement or testimony from a witness or complete the collection and examination of evidence which had begun prior to the making of the challenge; and

(c) Prevent, in cooperation with the relevant State(s), the absconding of persons in respect of whom the Prosecutor has already requested a warrant of arrest under article 58.

The making of a challenge shall not affect the validity of any act performed by the Prosecutor, or any order or warrant issued by the Court, prior to the making of the challenge.

8. If the Court has decided that a case is inadmissible under article 15, the Prosecutor may submit a request for a review of the decision when he or she is fully satisfied that new facts have arisen which negate the basis on which the case had previously been found inadmissible under article 15.

9. In the event that the Prosecutor, having regard to the matters referred to in article 15, defers an investigation, the Prosecutor may request that the relevant State make available to the Prosecutor information on the proceedings. Such information shall, at the request of the State concerned, be confidential.

If the Prosecutor thereafter decides to proceed with an investigation, he or she shall notify the State in respect of whose proceedings deferral has taken place.⁶

⁶This provision reflects the text of article 56.