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on the Establishment of an
International Criminal Court

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COMMITTEE OF THE WHOLE

PROPOSAL SUBMITTED BY THE UNITED STATES OF AMERICA 1/

Article 7 ter

1. With respect to States not party to the Statute, the Court shall have jurisdiction over acts committed in the territory of a State not party, or committed by officials or agents of a State not party in the course of official duties and acknowledged by the State as such, only if the State or States in question have accepted jurisdiction in accordance with this article.
2. If the acceptance of a State that is not a Party to this Statute is required under article 7, 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.

1/ To be read together with A/CONF.183/C.1/L.70

POSSIBLE PROTOCOL FOR OPT-IN

Article 7 bis - Option 1

Article X

1. The Protocol annexed to this Statute shall be open for acceptance by any State at the time it becomes Party to the Statute.
2. The application of this Statute with respect to a State Party which accepts the Protocol in accordance with paragraph 1 shall be subject to the terms of the Protocol and the declaration made thereunder by the State Party in question.

PROTOCOL

Article 1

1. A State accepting this Protocol may make a declaration, at the time of its acceptance, that it does not accept the application of article 7 with respect to a crime referred to in article 5 ter or article 5 quater or both. The consent of the State in question shall thereupon be required, in accordance with the provisions of article 7 ter, before the Court may exercise its jurisdiction over the cases referred to in that paragraph.
2. A State Party to this Protocol shall not be able to refer a situation in accordance with article 11, except with respect to the crime of genocide.
- [3. In the event that any additional crimes or category of crimes is added to this Statute, while this Protocol is in force, a State accepting this Protocol may make a further declaration with the same effect as the declaration referred to in paragraph 1 with respect to that additional crime or category of crimes.] [Note: this could be superfluous if paragraph 5 of article 110 is adopted without the bracketed text on applicability of new crimes to all States Parties.]

Article 2

1. This Protocol shall enter into force with the Statute and shall remain in force thereafter for a period of 10 years, and may not be amended. Its duration may, however, be prolonged by the normal procedures for an amendment to the Statute pursuant to article 110.

2. A declaration under article 1 of this Protocol shall remain valid and effective for the duration of this Protocol, but may be withdrawn in whole or in part at any time.
3. A State Party accepting this Protocol shall have the right, notwithstanding article 115, paragraph 1, of the Statute, to withdraw from the Statute with immediate effect on the expiry of this Protocol.
