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Establishment of an International
Criminal Court**

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COMMITTEE OF THE WHOLE

BUREAU PROPOSAL

THIS PROPOSAL IS NOT FINAL, AS IT CONTAINS SOME OPTIONS AND CERTAIN PROVISIONS REQUIRE FURTHER DRAFTING. THIS PROPOSAL WILL BE ADJUSTED IN THE LIGHT OF DISCUSSIONS WHICH FOLLOW.

PART 2. JURISDICTION, ADMISSIBILITY AND APPLICABLE LAW

Article 5

Crimes within the jurisdiction of the Court

The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

- (a) The crime of genocide;
- (b) Crimes against humanity;
- (c) War crimes.

The crime of aggression and one or more of the treaty crimes (terrorism, drug trafficking and crimes against United Nations personnel) may be inserted in the draft Statute if generally accepted provisions are developed by interested delegations by the end of Monday, 13 July. If no generally accepted definitions are presented, the Bureau will propose that the interest in addressing these crimes be reflected in some other manner, for example, by a Protocol or review conference.

GE.98-71787 (E)

ROM.98-2757

Article 5 bis

Genocide

For the purpose of the present Statute, the crime of genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) killing members of the group;
- (b) causing serious bodily or mental harm to members of the group;
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) imposing measures intended to prevent births within the group;
- (e) forcibly transferring children of the group to another group.

Article 5 ter

Crimes against humanity

1. For the purpose of the present Statute, a crime against humanity means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population and with knowledge of the attack:

- (a) Murder;
 - (b) Extermination;
 - (c) Enslavement;
 - (d) Deportation or forcible transfer of population;
 - (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
 - (f) Torture;
 - (g) **(Crimes of sexual violence) Drafting requires further discussion;**
 - (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
 - (i) Enforced disappearance of persons;
 - (i bis) The crime of apartheid;
 - (j) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.
- Other proposals have been made on the topics of terrorism and economic embargoes, and further discussion may be required.**

2. For the purpose of paragraph 1:

- (a) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;

(a bis) "Extermination" includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;

(a ter) "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the deprivation of physical liberty in the course of trafficking in persons, in particular women and children for the purpose of sexual exploitation;

(b) "Deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;

(c) "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;

(d) "Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;

(d bis) "The crime of apartheid" means inhumane acts of a character similar to those referred to in paragraph 1 above, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;

(e) "Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

Article 5 quater

War crimes

Option 1

The Court shall have jurisdiction in respect of war crimes only when committed as part of a plan or policy or as part of a large-scale commission of such crimes.

Option 2

The Court shall have jurisdiction in respect of war crimes in particular when committed as a part of a plan or policy or as part of a large-scale commission of such crimes.

For the purpose of the present Statute, war crimes means:

A. Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

- (a) Wilful killing;
- (b) Torture or inhuman treatment, including biological experiments;
- (c) Wilfully causing great suffering, or serious injury to body or health;
- (d) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
- (e) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
- (f) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
- (g) Unlawful deportation or transfer or unlawful confinement;
- (h) Taking of hostages.

B. Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:

- (a) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
 - (a bis) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;
 - (a ter) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the law of armed conflict; (**former r bis**)
- (b) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;
- (c) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;
- (d) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;
- (e) Making perfidious use of flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well

as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;

(f) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;

(g) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historical monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

(h) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his interest, and which cause death to or seriously endanger the health of such person or persons;

(i) Killing or wounding treacherously individuals belonging to the hostile nation or army;

(j) Declaring that no quarter will be given;

(k) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;

(l) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;

(m) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;

(n) Pillaging a town or place, even when taken by assault;

(o) Employing the following weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of international humanitarian law:

- (i) Poison or poisoned weapons,
- (ii) Asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices,
- (iii) Bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions,
- (iv) Bacteriological (biological) agents or toxins for hostile purposes or in armed conflict,
- (v) Chemical weapons as defined in and prohibited by the 1993 Convention on the Prohibition of the Development,

Production, Stockpiling and Use of Chemical Weapons and On Their Destruction,

- (vi) Such other weapons or weapons systems as become the subject of a comprehensive prohibition, subject to a determination to that effect by the Assembly of States Parties, in accordance with the procedure laid down in article 111 of this Statute; **Drafting subject to further discussion**

(p) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

(p bis) **(crimes of sexual violence) drafting requires further discussion;**

(q) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;

(r) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using, in conformity with international law, the distinctive emblems of the Geneva Conventions;

(s) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;

(t) Conscripting or enlisting children under the age of fifteen years into national armed forces or using them to participate actively in hostilities;

Section C of this article applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.

C. In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:

(a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(b) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

(c) Taking of hostages;

(d) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court,

affording all judicial guarantees which are generally recognized as indispensable.

Section D of this article applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in a territory of a State Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations.

D. Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:

(a) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(b) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using, in conformity with international law, the distinctive emblems of the Geneva Conventions;

(b bis) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the law of armed conflict;

(c) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historical monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

(d) Pillaging a town or place, even when taken by assault;

(e) **Deleted (covered in section C)**

(e bis) **(crimes of sexual violence) drafting requires further discussion;**

(f) Conscripting or enlisting children under the age of fifteen years into armed forces or using them to participate actively in hostilities;

(g) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;

(h) Killing or wounding treacherously a combatant adversary;

(i) Declaring that no quarter will be given;

(j) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment

of the person concerned nor carried out in his interest, and which cause death to or seriously endanger the health of such person or persons;

(k) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;

Nothing in sections C and D shall affect the responsibility of a Government to maintain or re-establish law and order in the State or to defend the unity and territorial integrity of the State, by all means consistent with international law.

Article xx

Elements of crimes

1. Elements of crimes shall be formulated, interpreted and applied in a manner consistent with the terms of articles 5 bis, 5 ter, 5 quater and 21, paragraph 2.
2. Elements of crimes shall be adopted by the Assembly of States Parties ¹ in accordance with its Rules of Procedure, and shall be an annex to this Statute.
3. Elements of crimes may be amended in accordance with ... ²
4. Elements of crimes shall be adopted before the Prosecutor commences an investigation.

Article Y

Nothing in this Part of the present Statute shall be interpreted as limiting or prejudicing in any way existing or developing rules of international law for purposes other than this Statute.

Article 6

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 appears to have been committed is referred to the Prosecutor by a State Party in accordance with article 11;

¹Elements of crimes shall be formulated by the Preparatory Commission in accordance with a mandate to be included in the Final Act.

²Awaiting the outcome of discussions on article 110, and in particular the paragraph on amendments to article 5.

(b) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations; or

(c) The Prosecutor has initiated an investigation in respect of such a crime in accordance with article 12. **(Drafting of this provision may be changed if option 2 in article 12 is adopted.)**

Article 7

Preconditions to the exercise of jurisdiction

Preconditions for genocide

1. In the case of article 6, paragraph (a) or (c), the Court may exercise its jurisdiction with respect to the crime of genocide if one or more of the following States are Parties to the Statute, or have accepted jurisdiction in accordance with article 7 ter:

(a) 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;

(b) The State that has custody of the accused/suspect with respect to the crime;

(c) The State of which the accused/suspect of the crime is a national;
or

(d) The State of which the victim is a national.

Preconditions for crimes against humanity and war crimes

2. Option 1

In the case of article 6, paragraph (a) or (c), the Court may exercise its jurisdiction with respect to a crime referred to in articles 5 ter and 5 quater if one or more of the following States have accepted jurisdiction in accordance with article 7 bis or ter:

(a) 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;

(b) The State that has custody of the accused/suspect with respect to the crime;

(c) The State of which the accused/suspect of the crime is a national;
or

(d) The State of which the victim is a national.

Option 2

Where a situation has been referred to the Court by a State Party or where the Prosecutor has initiated an investigation, the Court shall have jurisdiction with respect to a crime referred to in articles 5 ter and 5 quater provided that the following States have accepted the jurisdiction

of the Court with respect to the crime in question in accordance with article 7 bis or ter:

(a) 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; and

(b) The State that has custody of the accused/suspect with respect to the crime.

Option 3

Where a situation has been referred to the Court by a State Party or where the Prosecutor has initiated an investigation, the Court shall have jurisdiction with respect to a crime referred to in article 5 ter and 5 quater provided that the State of nationality of the accused/suspect has accepted jurisdiction of the Court with respect to the crime in question in accordance with article 7 bis or ter.

Article 7 bis

Acceptance of jurisdiction

OPTION I

Automatic jurisdiction over all three core crimes

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 articles 5 bis, 5 ter and 5 quater.

OPTION II

Automatic jurisdiction for genocide and opt-in for crimes against humanity and war crimes

1. A State which becomes a Party to the Statute thereby accepts the jurisdiction of the Court with respect to the crime of genocide.

2. With regard to the crimes referred to in articles 5 ter and 5 quater, a State Party to this Statute may:

(a) At the time it expresses its consent to be bound by the Statute, by declaration lodged with the depositary; or

(b) At a later time, by declaration lodged with the Registrar, accept the jurisdiction of the Court with respect to such of the crimes as it specifies in the declaration.

3. A declaration may be of general application, or may be limited to one or more of the crimes referred to in articles 5 ter and 5 quater.

4. A declaration may be made for a specified period, in which case it may not be withdrawn before the end of that period, or for an unspecified period, in which case it may be withdrawn only upon giving a six months' notice of withdrawal to the Registrar. Withdrawal does not affect proceedings already commenced under this Statute.

5. A declaration may not contain other limitations than those mentioned in paragraphs 2 to 4.

Article 7 ter

Acceptance by non-States Parties:

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.

Article 8

Temporal jurisdiction and non-retroactivity

1. A person shall not be criminally responsible under this Statute for conduct prior to its entry into force.

1 bis. If a State becomes a party to this Statute after its entry into force, the Court may exercise its jurisdiction in accordance with article 7 only with respect to conduct constituting a crime within the jurisdiction of the Court which occurred after the entry into force of this Statute for that State, unless that State has made a declaration under article 7 ter.

2. If the law as it appeared at the commission of the crimes is changed prior to final judgement in the case, the law more favourable to the accused shall be applied.

Article 8 combines current articles 8 and 22; placement could be considered.

Article 9

DELETED

Article 10

Role of the Security Council

Option 1

No investigation or prosecution may be commenced or proceeded with under the Statute for a period of 12 months after the Security Council, in a resolution adopted 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.

NB. The question of the need for preservation of evidence requires further discussion.

Option 2

In the event that the Court is requested by the Security Council, acting by resolution adopted under Chapter VII of the Charter of the United Nations, to suspend its investigation or prosecution of a situation for a specified period of time, then the Court shall suspend such activity for such a period of time; that request may be renewed by the Security Council under the same conditions.

Option 3

No such provision.

Article 11

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.

Article 12

Prosecutor

Option 1

1. The Prosecutor may initiate investigations proprio motu on the basis of information on alleged crimes within the jurisdiction of the Court obtained from States, organs of the United Nations, international intergovernmental and non-governmental organizations, victims, associations on their behalf, or any other reliable source.

2. Upon receipt of information relating to the commission of a crime within the jurisdiction of the Court, the Prosecutor shall analyse the seriousness of the information. For this purpose, he or she may seek additional information from States, organs of the United Nations, international intergovernmental or non-governmental organizations, victims or their representatives or other reliable sources that he or she deems appropriate, and may receive written or oral testimony at the seat of the Court.

3. If the Prosecutor concludes that there is a reasonable basis to proceed with an investigation, he or she shall submit to the Pre-Trial Chamber a request for authorization of an investigation, together with any supporting material collected. Victims may make representations to the Pre-Trial Chamber, in accordance with the Rules.

4. If the Pre-Trial Chamber, upon examination of the request and the accompanying material, considers that there is a reasonable basis to proceed with an investigation, and that the case appears to fall within the jurisdiction of the Court, having regard to article 15, it shall authorize the commencement of the investigation. This shall be without prejudice to subsequent determinations by the Court as to the jurisdiction of the case pursuant to article 17.

5. The refusal of the Pre-Trial Chamber to authorize the investigation shall not preclude the presentation of a subsequent request by the Prosecutor based on new facts or evidence pertaining to the same situation.

6. If, after the preliminary examination referred to in paragraphs 1 to 3, the Prosecutor concludes that the information provided does not constitute a reasonable basis for an investigation, he or she shall inform those who provided the information. This shall not preclude the Prosecutor from considering further information submitted in accordance with paragraph 1 pertaining to the same situation in the light of new facts or evidence.

Option 2

A provision for additional safeguards before the Prosecutor can act.

Article 13

Information submitted to the Prosecutor

DELETED

Article 14

Duty of the Court as to jurisdiction

FURTHER CONSULTATIONS

Article 15

Issues of admissibility

1. Having regard to paragraph 3 of the preamble, the Court shall determine that a case is inadmissible where:

(a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution;

(b) The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute;

(c) The person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted under paragraph 3 of article 18;

(d) The case is not of sufficient gravity to justify further action by the Court.

2. In order to determine unwillingness in a particular case, the Court shall consider whether one or more of the following exist, as applicable:

(a) The proceedings were or are being undertaken or the national decision was made for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court as set out in article 5;

(b) There has been an unjustified delay in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice;

(c) The proceedings were not or are not being conducted independently or impartially in accordance with the norms of due process recognized by international law and they were or are being conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice.

3. In order to determine inability in a particular case, the Court shall consider whether, due to a total or partial collapse or unavailability of its national judicial system, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings.

Article 16

Preliminary rulings regarding admissibility

1. When a situation has been referred to the Court pursuant to article 6 (a) or the Prosecutor initiates an investigation pursuant to article 6 (c) and the Prosecutor has determined that there would be a reasonable basis to commence an investigation, the Prosecutor shall notify all States Parties and, where applicable, any non-States Parties that may have jurisdiction. The Prosecutor may notify such States on a confidential basis and, where the Prosecutor believes it necessary to protect persons, prevent destruction of evidence or prevent the absconding of persons, may limit the scope of the information provided to States.

2. Within one month of the receipt of such notice, a State may inform the Court that it is investigating or has investigated its nationals or others within its jurisdiction with respect to criminal acts that may constitute offences described in article 5 and that relate to the information provided in the notification to States. The Prosecutor may proceed with the investigation until such time as a State informs the Prosecutor of that State's investigation. At the request of a State which has been notified by the Prosecutor, the Prosecutor shall defer to the State's investigation of such persons unless the Prosecutor seeks a ruling of the Pre-Trial Chamber and a determination is made pursuant to article 15. In the case of a State that has jurisdiction and was not notified by the Prosecutor or if the State was notified but failed to inform the Prosecutor of its investigation within one month of the notification, the Prosecutor may defer to the State's investigation.

3. The Prosecutor's deferral to a State's investigation shall be open to review by the Prosecutor six months after the date of deferral or at any time when there has been a significant change of circumstances based on the State's

unwillingness or inability genuinely to carry out the investigation, in which case the Prosecutor shall seek a ruling of the Pre-Trial Chamber pursuant to article 15.

4. A ruling of the Pre-Trial Chamber pursuant to paragraphs 2 and 3 may be appealed to the Appeals Chamber by the State concerned or by the Prosecutor. At the request of either party, such appeal shall be heard on an expedited basis. The Appeals Chamber may authorize the Prosecutor to proceed with an investigation while the appeal is pending.

5. When the Prosecutor has deferred an investigation pursuant to paragraph 2, the Prosecutor may request that the State concerned periodically inform the Prosecutor on the progress of its investigations and any subsequent prosecutions. States Parties shall respond to such requests without undue delay. Where States fail to provide information on the progress of its investigations and any subsequent prosecutions, the Prosecutor may seek a ruling of the Pre-Trial Chamber pursuant to article 15.

6. Pending a preliminary ruling by the Pre-Trial Chamber under paragraph 2, or at any time where the Prosecutor has deferred an investigation under this article, the Prosecutor may, in exceptional circumstances, seek specific authority from the Pre-Trial Chamber to pursue investigative steps where there is a unique opportunity to obtain important evidence or there is a significant risk that such evidence will not be subsequently available.

7. The fact that a State has challenged a preliminary ruling under the present article shall not prejudice its right to challenge the admissibility of a case under article 17 based on significant additional facts or change of circumstances.

Article 17

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

FURTHER DISCUSSION NEEDED

Article 18

Ne bis in idem

1. Except as provided in this Statute, no person shall be tried before the Court with respect to conduct which formed the basis of crimes for which the person has been convicted or acquitted by the Court.

2. No person shall be tried before another court for a crime referred to in article 5 for which that person has already been convicted or acquitted by the Court.

3. No person who has been tried by another court for conduct also proscribed under article 5 shall be tried by the Court unless the proceedings in the other court:

(a) Were for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court; or

(b) Otherwise were not conducted independently or impartially in accordance with the norms of due process recognized by international law and were conducted in a manner which, in the circumstances, was inconsistent with an intent to bring the person concerned to justice.

Article 19

DELETED

Article 20

Applicable law

Drafting subject to further discussion in the Working Group.
