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COMMITTEE OF THE WHOLE

SUMMARY RECORD OF THE 12th MEETING

Held at the Headquarters of the Food and Agriculture Organization of the United Nations
on Tuesday, 23 June 1998, at 10 a.m.

Chairman: Mr. P. KIRSCH (Canada)

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V.98-57465 (E)

The meeting was called to order at 10.20 a.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 and Corr.1; A/CONF.183/C.1/L.9 and L.14)

Part 2 of the draft Statute (*continued*)

Articles 14 to 19 (*admissibility*) (*continued*)

1. **Mr. ABDELKADER MAHMUD** (Iraq) said that he was in favour of the "alternative approach" set out at the end of article 15, the view of his delegation being that complementarity between the Court and national jurisdictions implied mutual respect and trust. He had no problem with paragraph 1 of article 16 and the first part of paragraph 2, but considered that paragraphs 3, 4 and 5 should be deleted. Iraq could accept paragraph 1 of article 17 subject to its comments regarding article 15, and could accept paragraph 2 apart from the second bracketed subparagraph following subparagraph (b). The expression "State Party" should be used rather than the expression "State". His delegation favoured the "alternative approach" for article 18. It would propose that article 19 be deleted since it gave rise to a number of complicated problems, notably in relation to the sovereignty of States. Lastly, in respect to article 20, concerning applicable law, he considered that paragraph 1 (b) was unnecessary and could be deleted, and he favoured option 2 for paragraph 1 (c).

2. **Mr. NAGAMINE** (Japan) supported the formulation proposed for article 15, and considered that article 16 should be retained, since the principle of complementarity should be applied even in the early stages of an investigation. Article 17 was a very important one, and he fully supported the view that the right of challenge provided for in paragraph 2 should not be limited to States parties. He did not favour inclusion of paragraph 6. While his delegation could basically support the wording of article 18, it would propose that the words "for the same conduct" be added in paragraph 3 after "shall be tried by the Court", for the sake of clarity. He fully understood the idea behind the proposal for article 19, but felt that it should be addressed with the utmost care since sensitive issues of national policy were involved.

3. **Ms. CUETO** (Cuba) said that although the draft text of article 15 could be a good basis for compromise, it tended to place too much emphasis on evaluating the conduct of national courts, and she supported the proposals of Mexico in document A/CONF.183/C.1/L.14 in that regard. Concerning article 16, Cuba was concerned to preserve the principle that States should have the right to appeal against the initial decisions of the Court. In article 17, the term "accused" should be used and the word "suspect" deleted. She favoured the expression "a State" rather than "a State Party". Her delegation could accept the deletion of article 14 on the understanding that its contents were reflected in article 17. Article 18 appeared to contain an excessive number of exceptions to the *ne bis in idem* principle, and she considered that the "alternative approach" described at the end of the article was preferable.

4. **Mr. GONZALEZ GALVEZ** (Mexico), introducing his delegation's proposals (A/CONF.183/C.1/L.14), noted that they contained a proposal for a new article 12 *bis* and proposed amendments to articles 102 and 108 as well as to article 15. Concerning the suggestions made in regard to article 15, he noted that, as pointed out in document A/CONF.183/2/Add.1, the draft given there was not an agreed text. His delegation's proposals were aimed at facilitating agreement. If they were adopted, a related change would be appropriate in article 18, paragraph 3 (b).

5. **Mr. EFFENDI** (Indonesia) said he was flexible on articles 14, 16, 17 and 20. He preferred the "alternative approaches" suggested for articles 15 and 18, because they were in line with the principle of complementarity, and proposed that article 19 be deleted.

6. **Mr. KADDAH** (Syrian Arab Republic) said his delegation too preferred the "alternative approaches", which embodied the idea of complementarity. The Court should not have jurisdiction in cases that were being investigated or had been dealt with by a State. The amendments submitted by Mexico were helpful in clarifying the proposed exceptions to that rule.

7. **Mr. MAHMOOD** (Pakistan) said his delegation was flexible regarding article 14. On article 15, concerning admissibility, it supported the principle of the primacy of national jurisdiction, which was necessary in order to preserve national sovereignty and to avoid situations of conflict between the jurisdiction of the State and the jurisdiction of the Court. It should be the responsibility of the State to prosecute criminals: the Court's role should be to complement the State's judicial system if the latter proved inadequate.

8. He found article 17 generally acceptable, although in his view States which were not States parties, even if interested, should not be permitted to challenge the Court's jurisdiction. He could accept paragraphs 1 and 2 of article 18, but paragraph 3 created problems in challenging the jurisdiction and procedures of national courts. He could support deletion of article 19. He found the text of article 20 acceptable, with a preference for option 1 of paragraph 1 (c).

9. **Ms. LI Yanduan** (China) said her delegation could agree to deletion of article 14. In article 15, the criteria for determining the unwillingness of a State to carry out an investigation listed in paragraph 2 were highly subjective, and gave the Court unduly wide powers. In fact, the judicial systems of most countries were capable of functioning properly: the cases of Rwanda and the former Yugoslavia were exceptions to the rule. In order to make the wording more objective, she proposed that in paragraph 2 (a) the words "in violation of the country's law" be added after the words "the national decision was made". In paragraph 2 (b), a reference to "national rules of procedure" should be included, and in paragraph 2 (c) a reference to "the general applicable standards of national rules of procedure". She supported the amendments proposed by Mexico. In article 17, the words "or a suspect" should be retained in paragraph 2 (a) and the words "a State" used in paragraph 2 (b). She could accept article 18, but considered that article 19 should be deleted.

10. **Mr. RAMA RAO** (India) said that, as his delegation saw it, the principle of complementarity, implying the primacy of national criminal jurisdictions, should be the bedrock of the entire Statute. He was flexible on article 14, but on article 15 he shared the views expressed by the representative of China concerning the criteria for determining unwillingness on the part of a State to prosecute, and would prefer the alternative approach suggested. He could accept the text proposed by the United States for article 16, subject to the same reservation regarding criteria for determining unwillingness, and could also accept article 18. Article 19 should be deleted.

11. **Mr. R. P. DOMINGOS** (Angola) considered that article 14 should incorporate paragraph 1 of article 17, and should be retained. He supported the amendments proposed by Mexico for article 15, and considered that the term "suspect" should be used in paragraph 2 (a) of article 17. Article 19 was important and should be retained, and he supported option 2 for paragraph 1 (c) of article 20.

12. **Mr. Young-wook CHUN** (Republic of Korea) said his delegation could agree to delete article 14, but supported retention of article 15. In article 17, paragraph 2, he would prefer to delete "or a suspect" in subparagraph (a), and would opt for "State Party" in subparagraph (b). He favoured retention of articles 18 and 19.

13. **Mr. NYASULU** (Malawi) endorsed the view that article 14 should be deleted. In article 15, he proposed that the word "genuinely" should be deleted in paragraph 1 (a) and (b). Paragraph 1 (c) could perhaps refer to "indictment proceedings" rather than a "complaint". Paragraphs 2 and 3 were very important and should be retained as they stood. He was not sure whether article 16 was necessary; he suggested that it might be taken up at a later stage together with articles 55 and 56. In article 17, paragraph 3, he proposed that "The challenge must take place" be replaced by "The challenge shall be made", and that "at a time later than the commencement of the trial" be replaced by "at a later stage". The last two lines of paragraph 3 appeared to him unnecessary, and paragraph 4 appeared to contradict paragraph 3. He proposed that paragraph 6 be deleted; once the Court had decided that a case was inadmissible, the Prosecutor would have to accept that decision. He endorsed the general view that article 19 should be deleted.

14. **Mr. KERMA** (Algeria) said that it was important clearly to define the principle of complementarity in the Statute in order to ensure that the Court would be accepted by the entire international community. He could go along with the majority view that article 14 should be deleted, provided that its contents were reflected in article 17.

15. He could support the Mexican proposal in regard to article 15, and in article 17 favoured the expression "a State" in paragraph 2 (b), as well as deletion of paragraph 6. In regard to article 18, he preferred the alternative approach suggested. Article 19 raised a number of complex and difficult issues and would be better deleted.

16. **Mr. ZELLWEGER** (Switzerland) said that the text of article 15 was the fruit of long discussions and would be best left unchanged. On the other hand, article 16 introduced a number of obstacles which would not contribute to the smooth functioning of the Court: the safeguards and guarantees provided in articles 13 and 17 were quite sufficient in that regard. Article 17, paragraph 2 (a), should read simply "an accused", and paragraph 2 (b) should begin "a State which has jurisdiction ...". Paragraph 6 was important and should be retained, and article 18 represented a compromise solution which should not be altered. While he sympathized with the intent of article 19, he considered that it would raise major drafting problems and would be best omitted.

17. **Mr. AL HUSSEIN** (Jordan) said he could accept the compromise language of article 15, rather than the alternative approach suggested. In article 17, paragraph 2 (b), he too would prefer the expression "a State"; paragraph 6 of the article should be retained. The Japanese proposal for an amendment to article 18 could be considered, and on article 19 he supported the views expressed by Switzerland.

18. **Mr. YEE** (Singapore) said that the formulation of articles 15 and 18 represented a hard-won compromise, and he urged delegations to accept the articles as they stood. In article 17, paragraph 2 (b), his preference would be for "a State" rather than "a State Party", since the former was more in line with the concept of complementarity whereby exercise of jurisdiction was not limited to States parties alone. He could not accept article 19 as it stood, since it would constitute a clear violation of the principle *ne bis in idem* and was hard to reconcile with current rules governing procedure, cooperation and enforcement. Lastly, in relation to article 20, paragraph 1 (c), he was strongly opposed to option 2, which would violate the basic principle of equality of persons of different nationalities before the Court. Option 1 correctly defined how national laws should impact upon the applicable law of the Court.

19. **Mr. VERGNE SABOIA** (Brazil) said that, although he could accept the text of article 15 as it stood, he considered that the language proposed by Mexico would improve paragraph 2 (b) and (c) and paragraph 3. He

supported the views expressed by Switzerland in regard to article 17, paragraph 2 (a) and (b), and agreed that the many complex issues involved made it very difficult to find an acceptable formulation for article 19.

20. **Mr. DIAZ LA TORRE** (Peru) said his delegation too supported the Mexican proposal for the amendment of article 15, and preferred the term "accused" for article 17, paragraph 2 (a). Article 19 was unnecessary and could be deleted.

21. **Ms. KOLSHUS** (Norway) agreed that the text of article 15 represented an extremely important compromise, which Norway supported without reservation. On the other hand, she was still unconvinced that article 16 was necessary. In article 17, she would prefer "accused" in paragraph 2 (a) and "a State Party" in paragraph 2 (b), and supported retention of paragraph 6. She could accept article 18 but, while appreciating the intent behind article 19, was inclined to agree that it was best deleted.

22. **Mr. BELLO** (Nigeria) endorsed the view that article 14 should be deleted. On article 15, the criteria listed in paragraph 2 were too vague and subjective, and he preferred the alternative approach suggested, which was in line with the principle of complementarity and the third paragraph of the preamble to the Statute. He could accept article 16, subject to improved drafting, article 17 with the deletion of paragraph 6, and article 18, but considered that article 19 should be deleted.

23. **Mr. EL MASRY** (Egypt) said that although his preference would be for retaining article 14, he could go along with the majority view that it should be deleted. Article 15 as now drafted seemed to imply that the complementarity principle should be the exception rather than the rule, and that the Court was a supreme body which could pass judgement on national jurisdictions. The amendments proposed by Mexico improved the text because they introduced a more objective element, and he agreed that the word "genuinely" should be deleted in paragraph 1 (a) and (b).

24. In article 17, he would prefer paragraph 2 (a) to read "an accused or a suspect", and paragraph 2 (b) to begin "a State which has jurisdiction ..."; in paragraph 3, he would prefer that provision be made for making a challenge to the Court's jurisdiction at any time, not only prior to the trial or in exceptional circumstances. In article 18, he preferred the alternative approach. He considered that article 19 could be deleted.

25. **Mr. FADL** (Sudan) said that since so many speakers had emphasized the importance of the principle of complementarity, the Committee's task was now to ensure that that principle was adequately reflected in the text of the Statute. In his view, the existing text of article 15 was not clear and he supported the Mexican proposal. He agreed that articles 16 and 19 could be deleted.

26. **Mr. POLITI** (Italy) considered that the text of article 15 should remain unchanged. Article 16 as now drafted appeared to create a number of complicated procedural obstacles to the exercise of the Court's jurisdiction, which would have the effect of unnecessarily delaying the start of an investigation, but he would be ready to consider any revised formulation which might be put forward.

27. On article 17, he would like paragraph 2 (a) to read simply "an accused". While he was flexible regarding paragraph 2 (b), his preference was for the wording "a State Party"; he would be reluctant to allow States not parties, which did not share the burden of obligations under the Statute, to share the privilege of challenging the jurisdiction of the Court. On paragraph 6, he agreed that the Prosecutor should have the right to request a review of a decision of inadmissibility. He supported the text proposed for article 18 but, while sympathizing with the principle behind the proposal for article 19, agreed that it would be difficult to reach agreement on the text.

28. **Mr. GÜNEY** (Turkey), referring to the Mexican proposals contained in document A/CONF.183/C.1/L.14, said that he had earlier expressed the view that article 12 should be deleted; it followed that he could not support the article 12 *bis* proposed by Mexico. On the other hand, the proposals for article 15 represented a substantial improvement which his delegation could support.

29. He could accept the deletion of article 14 provided that its contents were faithfully reflected in article 17.

30. **Mr. GEVORGIAN** (Russian Federation) said that while his delegation did not consider retention or deletion of article 14 to be a major issue, articles 15 to 18 were of exceptional importance, because they would determine the extent to which States participated in the Statute, and hence the effectiveness of the Court. The first task of the Conference was to reach a generally acceptable agreement on the wording of those articles, and he urged that in carrying out that task all the views put forward by previous speakers, in particular by the representatives of China, India, Indonesia, Pakistan, Mexico, Egypt and Turkey, should be taken into account.

31. **Ms. TOMIČ** (Slovenia) said she supported article 15 as it stood. Her preliminary view on the Mexican proposals was that they would establish an additional threshold at a very early stage of the proceedings: her delegation would prefer not to go beyond the standards set in article 13 as now drafted. In article 17, paragraph 2 (a), she would prefer the term "an accused", and in paragraph 2 (b) would prefer "an interested State", which would cover both States parties and States not parties. She supported inclusion of paragraph 6 of that article, and favoured retention of articles 18 and 19.

32. **Mr. CHERQUAOUI** (Morocco) considered that article 14 should be retained, or else have its contents inserted in article 17. Concerning article 15, he preferred the alternative approach suggested, which would better ensure compliance with the principle of complementarity with national jurisdictions. He was flexible regarding article 17 and supported article 18 as it stood. He favoured deletion of article 19 and in article 20 preferred option 2 for paragraph 1 (c).

33. **Mr. TAFA** (Botswana) said he would prefer article 14 to be deleted, since its intent was already well articulated in article 17. Article 15 embodied the principle of complementarity excellently and he appealed to the Committee to leave it unchanged. He found article 17 generally acceptable, although in paragraph 2 (a) he would prefer "an accused" and in paragraph 2 (b), "a State". He fully supported article 18, which embodied a fundamental principle of criminal law, but considered that article 19 was fraught with controversy and would be better omitted.

34. **Mr. STILLFRIED** (Austria) said that article 15 was a carefully drafted compromise which ought to be left unchanged. Like many other delegations, he was unconvinced of the need to keep article 16, at least in its current form. Concerning article 17, paragraph 2 (a), he would prefer "an accused", but remained flexible regarding paragraph 2 (b), and supported retention of paragraph 6. Article 18 also represented a carefully drafted compromise, and he would prefer it to be retained as it stood. While sympathizing with the underlying concept of article 19, Austria recognized that it involved very delicate problems which would be difficult to resolve.

35. **Mr. MINOVES TRIQUELL** (Andorra) said the question of admissibility was central to the debate on the establishment of the Court. His Government attached great importance to the principle of complementarity, and considered that the system of checks and balances provided for under articles 13, 15 and 17 was sufficient to ensure that the jurisdiction of the Court was compatible with the judicial sovereignty of States. He had strong doubts as to the

need for article 16. On article 17, it might be useful to consider including in paragraph 4 a specific time limit for challenges by a State, and he favoured retention of paragraph 6. He supported inclusion of article 19.

36. **Ms. WONG** (New Zealand) said that in her view it would be dangerous to reopen debate on article 15, the text of which represented the outcome of long and difficult negotiations. She had some concerns about article 16, which appeared to provide at least three opportunities for States to contest the Court's jurisdiction on the same matter. Article 19 was interesting and would increase the Court's effectiveness, but she recognized that there were problems associated with it.

37. **Mr. VAN BOVEN** (Netherlands) agreed that article 15 should be retained. On the question of admissibility, he believed that, as a general principle, domestic legislation granting impunity for heinous crimes covered by the Statute should not be a basis for determining that a case before the Court was inadmissible.

38. Concerning article 17, paragraph 2 (a), he favoured the term "an accused", and in paragraph 2 (b), the term "a State Party". He strongly supported the provision in the same paragraph to the effect that, in proceedings with respect to jurisdiction or admissibility, not only those submitting the case but also victims should be entitled to submit observations to the Court. He favoured retention of paragraph 6. Article 18, likewise the result of lengthy negotiations, was acceptable to his delegation, and he wished to express support for article 19, which embodied an important principle.

39. **Ms. VARGAS** (Colombia) supported the amendments proposed by Mexico to article 15, and those proposed orally by the United States to article 16. For article 17, paragraph 2 (b), she favoured using the expression "a State", but the wording should perhaps be made clearer.

40. **Mr. NIYOMRERKS** (Thailand) favoured deletion of article 14 but could support articles 15 and 16. For article 17, paragraph 2 (a), he would prefer "an accused" and in paragraph 2 (b) "a State". He supported retention of articles 18 and 19, and favoured option 2 for paragraph 1 (c) of article 20.

41. **Mr. PHAM TRUONG GIANG** (Viet Nam) said that complementarity was a fundamental principle of the Statute. According to that principle, whenever national jurisdiction was available to try a particular case, that case would not be admissible before the Court, and conversely a person who had been tried by the Court could not be tried again by another court.

42. He too favoured deletion of article 14, which was already reflected in article 17, but could accept the compromise text contained in article 15, which embodied the principle of complementarity. He would propose the deletion of paragraph 6 of article 17. He had no difficulty with article 18 but would favour deletion of article 19.

43. **Mr. PEREZ OTERMIN** (Uruguay) said that the task of the Conference was to strike a proper balance between the authority of the Court and the authority of legitimately constituted national judicial systems. For decisions by the Court to be given precedence over the decisions of national courts would not be in line with the notion of complementarity.

44. He supported article 15 in principle but considered that the Mexican proposals would improve the text. His delegation would suggest that the words "without grounds" be added after the word "unwilling" in paragraph 1 (a), and that the word "unfounded" be added before "purpose" in paragraph 2 (a). That change would help to safeguard the legitimate right of States to take decisions in the interests of national security.

45. His delegation had no objections to the deletion of article 14 provided that the principle it contained was clearly embodied in article 17. Concerning article 17, he too preferred the wording "an interested State" in paragraph 2 (b). He favoured article 18 but agreed that article 19 would be best deleted.

46. **Mr. DIAZ PANIAGUA** (Costa Rica) supported the view that discussion of article 15 should not be reopened, and did not think the Mexican proposals would improve the text. He saw no need for article 16, and on article 19 he considered that the problem would be better dealt with through cooperation between the Court and the court which had carried out the initial trial.

47. **Mr. AL ANSARI** (Kuwait), referring to article 17, said that in his view the right to make challenges should be limited to States parties. The text of article 18 would be improved if paragraphs 1 and 2 were combined in a single paragraph. Although the wording of article 19 was perhaps not sufficiently precise, he had no problem with it in legal terms.

48. **Mr. AL-AZIZI** (Oman) said that in respect to article 15 his delegation supported the alternative approach suggested. He supported article 17, and for article 18 favoured the alternative approach. Article 19 should be deleted.

49. **Mr. MIRZAEE YENGEJEH** (Islamic Republic of Iran) joined earlier speakers in emphasizing the central importance of the principle of complementarity. He supported deletion of article 14, and for article 15 preferred the alternative approach. In article 17, paragraph 2 (b), he would prefer the term "a State", and would support deletion of paragraph 6 in the same article. While endorsing paragraphs 1 and 2 of article 18, he would prefer the deletion of paragraph 3. Lastly, he supported the deletion of article 19.

Article 20

50. **The CHAIRMAN** invited Mr. Saland (Sweden) to introduce article 20.

51. **Mr. SALAND** (Sweden), acting as Coordinator, said that article 20 was a key article of the Statute in that it indicated how "law" was to be interpreted. Discussion in the Preparatory Committee had shown considerable support for the order of precedence set out in paragraph 1, whereby the Court would apply firstly the Statute, secondly if necessary applicable treaties and rules of international law and, lastly, national law in one way or another.

52. He drew attention to the two options suggested for paragraph 1 (c). Under option 1, which had had the support of the broad majority, the Court would not apply any national law directly, but would rather apply general principles derived from laws to be found in different national legal systems. Under option 2, the Court would apply national law directly. Paragraph 2 of the article made reference to case law, and paragraph 3, which was a consensus text, required that the law applied should be consistent with certain internationally recognized values.

53. The United States proposal for paragraph 1 (a) (A/CONF.183/C.1/L.9) touched on a question of principle which had a bearing on many parts of the Statute, and he did not think that question could be resolved solely within the context of article 20. Concerning paragraph 3, he pointed out that footnote 63 in document A/CONF.183/2/Add.1 was now obsolete since the matter had already been dealt with in the context of article 21. The only issue of substance that remained to be discussed was therefore the choice of options for paragraph 1 (c), and he urged that discussion of it should be kept as brief as possible. Any outstanding issues could be dealt with in informal consultations.

54. **Mr. CHUKRI** (Syrian Arab Republic) said he had no basic problem with the text of article 20. He would prefer paragraph 1 (b) to read "if necessary, applicable treaties and the principles and rules of public international law, including the established principles of either the Geneva Conventions or international humanitarian law". For paragraph 1 (c), he favoured option 2.

55. **Mr. KOUAKOU BROU** (Côte d'Ivoire), supported by **Ms. SINJELA** (Zambia), said he favoured deletion of the brackets in paragraph 1 (b). Concerning paragraph 1 (c), he preferred option 1, since general principles of law derived from national laws came closer to international law, and thus would be more practical for the judge to apply as well as being an additional guarantee for the person being prosecuted. He supported retention of paragraphs 2 and 3.

56. **Mr. AL NOAÏMI** (United Arab Emirates) said that the Arabic version of paragraph 1 (b) should be aligned with the English version. For paragraph 1 (c), he would prefer option 2, with the deletion of the words "and only in so far as it is consistent with the objectives and purpose of this Statute" after the words "failing that".

57. **Mr. NYASULU** (Malawi) said that for paragraph 1 (c) he would prefer option 1. The words within brackets were taken care of by paragraph 3, and could therefore be deleted.

58. **Mr. AGBETOMEY** (Togo) also preferred option 1.

59. **Mr. JARASCH** (Germany) said he would prefer the phrase within brackets in paragraph 1 (b) to be retained. For paragraph 1 (c) he favoured option 1, and he could accept paragraphs 2 and 3. The United States proposal regarding paragraph 1 (a) should be dealt with in another context.

60. **Mr. BELLO** (Nigeria), referring to paragraph 1 (c), said that in his view option 1 lacked clarity and gave wide discretionary powers to the Court which were not based on any set criteria. He therefore preferred option 2.

61. **Mr. AL ANSARI** (Kuwait) said that for paragraph 1 (c) he would prefer option 1, with the words "of legal systems" replaced by "and from rules and regulations which constitute the legal systems". The words in brackets should be included.

62. **Ms. LI Yanduan** (China) said that for paragraph 1 (c) her delegation would prefer option 2.

63. **Mr. SALINAS** (Chile) said he would prefer paragraph 1 (b) to include a mention of international humanitarian law. For paragraph 1 (c) he favoured option 1.

64. **Mr. BAZEL** (Afghanistan) said he too would support removal of the brackets in paragraph 1 (b), but would suggest that "including the established principles of the law of armed conflict" be replaced by "including the established principles of international humanitarian law". For paragraph 1 (c), he favoured option 2.

65. **Mr. NATHAN** (Israel), referring to paragraph 1 (b), considered that the bracketed phrase "including the established principles of the law of armed conflict" was unnecessary and could be deleted, since such principles obviously formed part of the principles of general international law. For paragraph 1 (c) he preferred option 1, since option 2 might have the effect of causing confusion and conflict in the Court's jurisprudence.

66. **Mr. TAFA** (Botswana) also considered that the bracketed words in paragraph 1 (b) should be deleted. For paragraph 1 (c) he preferred option 1; option 2 was too prescriptive.

67. **Ms. TOMIČ** (Slovenia) said she too would prefer deletion of the words in brackets in paragraph 1 (b). For paragraph 1 (c) she would favour option 1, which would guarantee for everyone the fundamental principle of equality before the law and before the Court.

68. **Mr. KROKHMAL** (Ukraine) said his delegation unconditionally supported article 20 as a whole, with a preference for option 1 for paragraph 1 (c), with the wording in brackets included, though it could perhaps be redrafted in positive terms.

69. **Mr. PALACIOS TREVIÑO** (Mexico) said he had no problem with paragraph 1 but had some small changes to propose. In paragraph 1 (a), the words "and its Rules of Procedure and Evidence", and in paragraph 1 (b) the words "if necessary", should be deleted. The bracketed words in paragraph 1 (b) should be included, and for paragraph 1 (c) he would prefer option 1.

70. **Mr. EL MASRY** (Egypt) said he would have no problem in accepting article 20 with the amendment proposed by the representative of Syria, and with option 2 for paragraph 1 (c).

71. **Mr. Young-wook CHUN** (Republic of Korea) supported the inclusion of the bracketed words in paragraph 1 (b), and for paragraph 1 (c) favoured option 1, but with the words in brackets deleted.

72. **Ms. DASKALOPOULOU-LIVADA** (Greece) considered that in paragraph 1 (b) the words in brackets were superfluous, since international law in any case included the law of armed conflict. She could agree to inclusion of a reference to international humanitarian law, and could support the Mexican representative's proposal for the deletion of the words "if necessary". For paragraph 1 (c), she supported option 1, with the inclusion of the words in brackets, which provided a useful safeguard.

73. **Mr. ADAMOU** (Niger) said that his delegation too favoured option 1 for paragraph 1 (c).

74. **Ms. VENTURINI** (Italy) considered that the bracketed text in paragraph 1 (b) should be included in order to highlight the importance of the principles of the law of armed conflict in matters to be decided by the Court. For paragraph 1 (c) she favoured option 1, with inclusion of the bracketed text, which was fully in conformity with the tradition of international instruments.

75. **Mr. ADDO** (Ghana), **Mr. KAM** (Burkina Faso) and **Mr. COTTIER** (Switzerland) supported the previous speaker's position.

76. **Mr. M'LU HONGO KABINDA-NGOY** (Democratic Republic of the Congo) considered that the drafting of paragraph 1 (a) could be clarified, and favoured deletion of the bracketed text in paragraph 1 (b). He preferred option 1 for paragraph 1 (c), with deletion of the bracketed text.

77. **Mr. AL-HAJERY** (Qatar) favoured option 2 for paragraph 1 (c).

78. **Mr. SCHEFFER** (United States of America) said that, in document A/CONF.183/C.1/L.9, his delegation was proposing that the words "and its Rules of Procedure and Evidence" in paragraph 1 (a) should be replaced by "including its annexes". The annexes, however they were ultimately negotiated, should be an integral part of the Statute

and therefore should have priority in any applicable law applied by the Court. He strongly supported inclusion of the bracketed text in paragraph 1 (b), since there was a need to ensure that war crimes were interpreted with reference to such principles as proportionality and military necessity, which were included in the law of armed conflict. For paragraph 1 (c) he favoured option 1 with the deletion of the bracketed text.

79. **Ms. VARGAS** (Colombia) said that it was unclear what was meant by "applicable treaties" in paragraph 1 (b). For paragraph 1 (c) she favoured option 1, with inclusion of the bracketed text.

The meeting rose at 1.05 p.m.