UNITED
NATIONS

United Nations Diplomatic Conference
of Plenipotentiaries on the Establishment
of an International Criminal Court

Rome, Italy
15 June-17 July 1998

Distr.
GENERAL

A/CONF.183/C.1/SR.8
25 January 1999

ORIGINAL: ENGLISH

COMMITTEE OF THE WHOLE

SUMMARY RECORD OF THE 8th MEETING

Held at the Headquarters of the Food and Agriculture Organization of the United Nations
on Friday, 19 June 1998, at 3 p.m.

Chairman: Mr. P. KIRSCH (Canada)

CONTENTS

V.99-80456 (E)

The meeting was called to order at 3.20 p.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; A/CONF.183/C.1/L.1 and L.4)

Part 2 of the draft Statute (*continued*)

Jurisdiction (*continued*)

1. **Mr. NYASULU** (Malawi) said that he would be speaking on behalf of delegations of countries belonging to the Southern African Development Community (SADC) that were attending meetings of working groups. Referring to the first article 6 in document A/CONF.183/2/Add.1, he said that he would prefer the title "Exercise of jurisdiction". In paragraph 1, the square brackets around the words "and in accordance with the provisions of this Statute" should be removed and the words retained. However, it might be better to base the discussion on the text for article 6 in the "Further option for articles 6, 7, 10 and 11". He agreed with the suggestion that the words "may exercise its jurisdiction" in that text should be replaced by "shall have jurisdiction". The word "situation" was preferable to a word such as "matter". The text for article 7 in the "Further option", which would replace the original articles 7 and 9, presupposed that treaty crimes were not included. Article 7, paragraph 2, appeared to be designed to cover States that were not parties. It would be clearer if it read: "Where the provisions of article 6 (a) or 6 (b) should apply to a situation that relates to a State that is not a party to the present Statute, the Court may exercise jurisdiction only with the non-State Party's consent (in particular, the Court should seek the consent of the State that has custody of the suspect with respect to the crime, the State on the territory of which the crime in question may have been committed, and the State of nationality of the suspect)." He would then propose a paragraph 3 to read: "Such a 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 in accordance with the provisions of [insert the relevant reference]."

2. He supported the United Kingdom's views on article 11.

3. **Mr. SALINAS** (Chile) said that States that were not parties should have the right to submit complaints to the Court. In seeking universality, it was important not to exclude non-parties. Obviously the exercise of that right had to be subject to certain conditions, and the formula in article 7, paragraph 3, in the "Further option for articles 6, 7, 10 and 11" seemed appropriate. A State not a party to the Statute would consent to the exercise of jurisdiction by the Court with respect to the crime involved by submitting its acceptance to the Registrar.

4. Regarding the conditions for the Court's jurisdiction, acceptance by any one of the countries with an interest in the matter should be a sufficient precondition. As a general rule, the jurisdiction of the Court should be automatic for parties with respect to the crimes referred to in article 5. However, a State not a party to the Statute of the Court should be able, through a declaration deposited with the Registrar, to accept the obligation to cooperate with the Court concerning the trial of those responsible for crimes defined in the Statute.

5. The case of a State not party to the Statute in which heinous crimes had been committed and which had not accepted the Court's jurisdiction should be discussed in relation to the role of the Security Council. Under Chapter VII of the Charter, the Security Council could certainly submit a situation involving a State or its nationals to the Court.

6. In conclusion, with regard to the submission of a complaint by a State, he agreed generally with option 2 of the first article 11.

7. **Mr. DIVE** (Belgium) endorsed the statement made by the German delegation on the inherent and universal jurisdiction of the Court. The only way to enable the Court to act effectively was to recognize its inherent and universal competence, whatever the place or nationality of the victim. For that reason, the "further option" for article 9 proposed by Germany fully resolved that problem of the Court's jurisdiction—obviously subject to the principle of complementarity.

8. **Mr. GARCIA LABAJO** (Spain) said that the proposals of the United Kingdom and the Republic of Korea clarified the issue of jurisdiction. Ratification or acceptance by a State of the Statute should automatically imply its acceptance of the jurisdiction of the Court for the core crimes. It was neither appropriate nor desirable that a subsequent declaration of consent should be required.

9. Another issue was the possibility for States that were not parties to the Statute to make an ad hoc declaration of acceptance for a given situation, whereby they also accepted all the obligations involved. In view of its solemn nature, the declaration should be submitted not to the Registrar of the Court but to the United Nations Secretary-General, as depository of the Statute, so that it could be distributed to all States.

10. A separate issue was the exercise of jurisdiction by the Court. There were two differing positions: one based on a strict and traditional view of the consent of States, and the other based on the principle of universal jurisdiction. The latter approach was attractive but entailed practical difficulties. It would be better to adopt the approach proposed by the United Kingdom, with the adjustments suggested by the Republic of Korea. Thus, in cases of referral by the Security Council, based on Chapter VII of the United Nations Charter, the principle of universal jurisdiction would operate. However, in cases of referral by a State party, there would need to be an appropriate jurisdictional nexus. As suggested by the Republic of Korea, there should be a plurality of possible jurisdictional links. The Court would then have a broad range of possibilities for exercising its jurisdiction.

11. A referral to the Court by States parties or by the Security Council should relate to a situation, not an individual case. Individual cases fell within the area of the Prosecutor. A distinction must also be drawn between admissibility and jurisdiction. In regard to jurisdiction, it was important to use the formula "shall have jurisdiction" rather than "may exercise jurisdiction".

12. **Mr. SKIBSTED** (Denmark) said that all States parties to the Statute should have competence to trigger the Court's action on a particular case. For the reason given by the United Kingdom, he preferred the draft for article 6 (a) in the "Further option for articles 6, 7, 10 and 11", using the same wording in relation to States as in relation to the Security Council: "... a situation ... is referred to the Prosecutor by a State Party".

13. He had certain misgivings with regard to the first article 7 entitled "Preconditions to the exercise of jurisdiction", and article 9. It was essential to an effective and independent Court that States acceding to the treaty should accept the Court's jurisdiction over all the crimes listed in the Statute, rather than "picking and choosing". Furthermore, he strongly believed that State consent should not be required for individual prosecutions or investigations to proceed. His concerns in that respect were well covered by the German proposal, but the United Kingdom proposal was welcome; it was well structured and had legal clarity.

14. He preferred the United Kingdom proposal for article 11.

15. **Mr. SADI** (Jordan) welcomed the German proposal concerning the universal jurisdiction of the Court. A State, under customary international law, could already prosecute a national or a non-national for the commission of an act of genocide no matter where it occurred, and the Court should at least enjoy similar jurisdictional powers. However, any mention of inherent jurisdiction over core crimes should be in the context of a workable, effective and balanced system of complementarity, whereby the Court would act as a court of last resort. The experience of treaty bodies should be drawn on in that regard. The role of the Prosecutor would also be of prime importance.

16. Concerning article 6, he asked whether, in addition to the Security Council, the United Nations Commission on Human Rights could act as a referral organ, since it was the prime United Nations organ dealing with gross and systematic violations of human rights.

17. **Mr. JANDA** (Czech Republic) said that the Statute should incorporate three principles if the effectiveness of the Court was to be ensured. The first was that all States parties should be entitled to bring complaints before the Court, without any other conditions. Second, the Court should have inherent or automatic jurisdiction over three or four core crimes regarded as such under international law, and a State that became a party to the Statute would automatically accept the jurisdiction of the Court with respect to the core crimes. Third, the Court must be entitled to exercise its jurisdiction without the need for further State consent. He fully supported the proposal introduced by Germany at the previous meeting.

18. **Mr. RAMA RAO** (India) agreed with those who had said that the question of jurisdiction was intrinsically linked to the nature of the crimes in article 5. Secondly, it was linked to the question of a universal or an effective court, and whether those two aims could be constructively matched. Clearly, there was an underlying political element. He was not in favour of designing a court whose structure would be so narrow that it would cater only to a certain group, at the cost of the vast majority of States.

19. He did not accept the idea that the International Criminal Court (ICC) should have automatic jurisdiction for States parties to the Statute. That would make the Court an exclusive institution. The jurisdiction of the Court should be based on the consent of States, and only States should have the ability to trigger the jurisdiction of the Court. There should be no political referral or political intervention in the Court's activities, and India did not favour any role for the Security Council in the activities of the International Criminal Court. Nor should the Prosecutor have powers *proprio motu* to prosecute or investigate.

20. He could not agree with the German proposal. The theory of an established universal jurisdiction was not acceptable to him, and did not provide a legal basis on which all States could agree.

21. State consent should be the foundation and fulcrum of the jurisdiction of the ICC, and territorial State consent and custodial State consent were essential elements. He had an open mind on the consent of other States.

22. **Mr. KROKHMAL** (Ukraine) said that the aim must be to find positions acceptable to everyone. The States parties to the Statute should be able to refer specific cases for examination by the Court, as well as whole situations of the type considered by the Security Council. He was also prepared to support the proposal that the Prosecutor should be able to trigger Court action. However, it was important that the Pre-Trial Chamber should exercise judicial control over the actions of the Prosecutor.

23. He saw advantages in the German proposal on jurisdiction, but was prepared to discuss the issues on the basis of other approaches. As to the conditions under which the jurisdiction of the Court would be implemented, there should be no differentiation based on the type of crime.

24. Finally, the role of the Security Council in maintaining peace was very important, but it should not be involved in the activities of the ICC. He disagreed with those delegations that argued that to allow the Court to act independently in relation to the crime of aggression would lead to competition with the Security Council. The Court's role should be to deal with individual perpetrators of the crimes concerned. There would be nothing abnormal in the Court and the Security Council considering situations simultaneously.

25. **Mr. TOMKA** (Slovakia) thought that the jurisdiction of the Court should cover only the three or four core crimes listed in article 5. The article on acceptance of the jurisdiction of the Court should logically precede the articles devoted to the exercise of jurisdiction. He strongly favoured the proposal according to which, by becoming a party to the Statute, a State would accept the jurisdiction of the Court *ipso facto*. He therefore supported the "further option" for article 9.

26. On the exercise of the Court's jurisdiction, he supported the text proposed by the Republic of Korea, except that "situations" and not "cases" should be referred to the Court by States. He did not agree with the proposal to replace "may exercise its" in article 6 in the "Further option for articles 6, 7, 10 and 11" by "shall have".

27. He supported the Republic of Korea's proposal on the preconditions to the exercise of jurisdiction. Finally, concerning the referral of a situation by a State to the Court, he fully supported article 11 as proposed in the "Further option for articles 6, 7, 10 and 11".

28. **Mr. MANONGI** (United Republic of Tanzania) supported the comments made earlier by the representative of Malawi. States should have referral powers, to the extent that such powers related to a "situation" and not to a "matter". He therefore supported article 6 (a) in the "Further option for articles 6, 7, 10 and 11", and the *chapeau* as amended by the delegation of the United Kingdom.

29. He strongly subscribed to the idea that a State would accept the Court's jurisdiction with respect to the crimes in article 5 upon ratification of the Statute. No further consent should be required in order to trigger the Court's jurisdiction, as reflected in article 7, paragraph 1, of the "Further option". He was opposed to a selective approach, which would undermine the legitimacy of the Court.

30. **Ms. DASKALOPOULOU-LIVADA** (Greece) said that, as she was in favour of "automatic" or inherent jurisdiction for the four core crimes contained in article 5, she considered that paragraph 2 of article 6 (first version) could be deleted. Furthermore, the reference to "interested States" made little sense.

31. She was generally in favour of the idea that it should not be necessary for certain States to be parties to the Statute in order for the Court to act, but thought that general agreement would more easily be reached if the custodial and territorial States were required to be parties to the Statute. She could accept a provision that only one of those two States must be a party to the Statute, although it could prove somewhat impractical.

32. The principle of inherent jurisdiction meant that there would be no need for article 9, apart from the provision allowing non-parties to consent to the jurisdiction of the Court for a particular case.

33. In article 11, she supported option 1, which specified that any State party might lodge a complaint referring a case or a situation, and could also support article 11 in the "Further option for articles 6, 7, 10 and 11".

34. Of the other articles in that "Further option", she was in favour of article 7, according to which States parties accepted the jurisdiction of the Court with respect to the crimes referred to in article 5 *ipso facto*. She did not agree with the *chapeau* of article 6 in the "Further option", but did agree with subparagraph (a) of that article.

35. **Mr. STIGEN** (Norway) said that he favoured the United Kingdom text for articles 6, 7 and 11 as a basis for discussion, in view of its clarity and cogency, although different rules would be needed if crimes other than the core crimes were included. He supported the notion of State referral of situations rather than individual cases, and was comfortable with the United Kingdom proposal in article 6 (a) of the "Further option for articles 6, 7, 10 and 11", which would mean the same kind of referral for States as for the Security Council. In the same context, he fully supported the United Kingdom proposal for article 11, paragraphs 1 and 2, on the mechanism for referrals.

36. Turning to article 7, he saw the force of the argument presented by Germany with regard to inherent jurisdiction. However, if that did not receive enough support, he would be receptive to the United Kingdom approach. The proposal by the Republic of Korea that the consent of one of four possible interested States should suffice might be the basis for a compromise. He fully concurred with the reasoning of the representative of Sweden in that regard. In any case, State consent should at most be called for once, when a State became a party to the Statute. Any requirements for State consent *in casu* would be totally incompatible with the credibility and effectiveness of the Court.

37. **Ms. LI Yanduan** (China) said that the two ways of accepting jurisdiction were not different in nature, but the requirement that States parties should accept inherent jurisdiction would exclude many countries otherwise willing to become parties to the Statute. The Court would then take a long time to achieve universality. The opt-in system would allow many countries to become parties to the Statute and allow the Court to acquire universality in a very short period of time. After that, the countries concerned could gradually accept the jurisdiction of the Court. The fact that the Court enjoyed universal support would serve as a strong deterrent with regard to the core crimes. She therefore favoured the opt-in system.

38. On paragraph 1 (b) of article 6 (original version), States not parties could be included, but it should be stipulated that they must have made declarations accepting the jurisdiction of the Court. Paragraph 2 of the article could be deleted. In article 7, she favoured option 2 for the opening clause of paragraph 1. On State consent, she supported subparagraphs (a), (b) and (e) of that paragraph and was flexible regarding (c) and (d) and also regarding paragraph 2, but suggested deleting the words "giving reasons thereof".

39. Turning to article 9, she would choose option 2. In article 11, she favoured option 1, but without the words in the first set of square brackets. Paragraph 2 should be deleted for the time being because it related to the treaty crimes.

40. She could accept the United Kingdom proposal for article 6 (a), but not for paragraph 1 of article 7. Paragraphs 2 and 3 of the United Kingdom's article 7 were acceptable and she was flexible concerning article 11.

41. **Mr. MAHMOOD** (Pakistan) said he had consistently held that, subject to the principle of complementarity, the Court should be independent and free from political influence of any kind. He therefore did not favour any role for the Security Council in the functioning of the Court. The Security Council was primarily a political body, and its decisions based on political considerations rather than legal principles.

42. Closely connected with the principle of complementarity was the trigger mechanism. Proceedings should be activated by the State concerned, which alone was in a position to determine whether it had the competence to try the offender itself, or refer the case to the ICC. Investigation by the Prosecutor should be initiated by States, for the same reason. However, once a State had initiated the proceedings, the Prosecutor should be given independence in the investigation process, and the State should cooperate with him in the investigation, in accordance with national laws.

43. Article 7 should refer only to complaints lodged by States, and the role of the Prosecutor in exercise of the Court's so-called inherent powers should be excluded. In article 9, he did not favour the notion of inherent jurisdiction of the Court, as that would violate the principle of complementarity. He did not fully agree with the provisions in option 1 for paragraph 1 of article 11 (original version). He preferred the word "matter" to "situation", which was a wider term and might bring within the jurisdiction of the Prosecutor issues not directly connected with the case.

44. Recalling the statement issued at Cartagena de Indias, Colombia, in May 1998 by the Ministers for Foreign Affairs and heads of delegations of the States members of the Movement of Non-Aligned Countries, he reaffirmed the basic principle of respect for sovereignty of States, emphasizing that the jurisdiction of the Court should be complementary to national jurisdictions and be based on the consent of the States concerned.

45. **Mr. PERRIN DE BRICHAMBAUT** (France) said that he would first comment on articles 6, 10 and 11 concerning referral to the Court. He would base his remarks on the version proposed by the United Kingdom. Article 6 should be formulated in the broadest terms, with referral to the Court of questions, complaints and situations. Furthermore, the Court should be able to have cases referred in three ways: by any State party to the Statute, by the Security Council, and by the Prosecutor. On the referral of a situation by a State party, the simple provisions contained in article 6 (a) in the "Further option for articles 6, 7 10 and 11" were, generally speaking, satisfactory.

46. The proposed article 10 provided an excellent working basis as far as the role of the Security Council was concerned. There must be consistency between the actions of the Court and the actions of the Security Council where there were situations endangering peace. The Statute should provide for the Security Council to be able to ask the Court to defer action in situations coming under Chapter VII of the United Nations Charter, as proposed in paragraph 2 of that article. It should be added, however, that it would be possible for the necessary measures to be taken to preserve evidence.

47. Regarding matters taken up on the Court's own initiative, he could accept the idea of a decision taken by common agreement between the Prosecutor and the Pre-Trial Chamber, in line with article 13 of the draft Statute, a provision originally proposed by Argentina and Germany. For the Prosecutor to take such a decision in isolation would not respect the necessary institutional balance.

48. On articles 7 and 9, the international community was perhaps not yet ready for the idea of universal jurisdiction, as put forward by Germany. There was no obligation on States not parties to the Statute to cooperate. Generally speaking, the State on whose territory the crime had been committed and the State of nationality of the accused or the custodial State would have to be parties to the Statute, or have accepted the competence of the Court, for the Court to be in a position to exercise its jurisdiction. That point was covered well in the United Kingdom version of article 7.

49. France felt that acceptance of the jurisdiction of the Court could be obligatory for any State becoming a party to the Statute with respect to the crime of genocide and crimes against humanity. War crimes, however, as defined in the 1907 Hague Convention and the Geneva Conventions and Additional Protocols, might be isolated acts. A solution must be found to enable States with particular difficulties in that area to be able to become parties to the Statute. It was not

a matter of drawing up an *à la carte* convention, but of allowing some flexibility. There could be a system requiring consent by the State of nationality of the perpetrator, so that the Court could exercise its jurisdiction. An amendment could be made to the United Kingdom version of article 7 or to article 9.

50. **Mr. DABOR** (Sierra Leone) said that he was strongly opposed to the idea of State consent on a case-by-case basis, or any type of consent mechanism that would subject the exercise of jurisdiction to a more or less generalized veto by States parties. He supported the idea of inherent jurisdiction over the core crimes, to be accepted by States by virtue of their becoming parties to the Statute. Regarding the proposal to require the consent of the territorial State, it would not provide sufficient safeguards to ensure the triggering of the ICC's jurisdiction. If a consent mechanism was retained, only the State where the person was resident or present should be required to give consent.

51. In the United Kingdom's proposal for article 7 (in the "Further option for articles 6, 7, 10 and 11"), he suggested that the word "crime" in paragraph 3 be changed to "situation". Otherwise a State not a party to the Statute would be able to accept jurisdiction over one crime and not over others forming part of the same situation.

52. He supported the proposal made by the representative of Israel at the previous meeting that the reference to the custodial State should be replaced by a reference to the State where the suspect was resident. The proposals of the Republic of Korea offered a workable compromise. The requirement for consent should not be cumulative.

53. **Mr. CEDE** (Austria) said that he would concentrate on the United Kingdom proposals. He noted with satisfaction that, in article 6, the word "situation" had replaced "matter". On the understanding that the new article 7 would replace the original articles 7 and 9, the wording of paragraph 1 was adequate language to address the concept of inherent jurisdiction. He strongly favoured the principle that any State becoming a party to the Statute thereby accepted the jurisdiction of the Court with respect to the core crimes. Making the jurisdiction of the Court over core crimes dependent on acts of acceptance additional to ratification of the Statute would weaken the Court; it would also allow a State to gain the prestige of being a party to the Statute while having no intention of accepting the Court's jurisdiction at a later stage. An opt-in procedure would be an obstacle to a court with uniform jurisdiction over the core crimes, although it might be of value when considering treaty crimes.

54. In the new article 7, paragraph 2, the words "may exercise its jurisdiction" should become "shall have jurisdiction". Paragraph 2 (a) should be retained. In cases of grave breaches of the Geneva Conventions, it would seem appropriate to have the cooperation of the so-called "custodial State" or of the State of the nationality of the suspect. He was happy with the wording of the new article 11, on the understanding that it was to replace the original article 11.

55. **Mr. van BOVEN** (Netherlands) agreed that it would be wise to base the structure of the articles on the United Kingdom proposals. He shared the widely held view that the Court should have automatic jurisdiction with regard to all States parties in respect of the core crimes: genocide, war crimes and crimes against humanity.

56. The German proposal based on the principle of universal jurisdiction was a compelling proposition, with which he associated himself. However, if a substantial number of delegations were not able to accept it, and favoured some form of jurisdictional link between the crime committed and an interested State, he would have great sympathy for the proposal of the Republic of Korea that the requirement for a jurisdictional link with an interested State should be selective rather than cumulative.

57. **Mr. MATSUDA** (Japan) said that the relationship between the State and the ICC in terms of acceptance or exercise of jurisdiction remained one of the key issues of the Statute. The State consent mechanism was intertwined with the question of balance between the Court and States parties, as well as with the principle of complementarity. Japan agreed that a State should accept jurisdiction over the core crimes when it became a party to the Statute. On the question of referral of a matter or situation by a State party to the Prosecutor, he was now ready to support option 1 for paragraph 1 of article 11 (original version), allowing any State party to lodge a complaint with the Prosecutor. Japan remained opposed to giving triggering power to States not parties.

58. His delegation had reviewed its position on State consent for the exercise of the Court's jurisdiction, and could now support the idea of dispensing with a consent requirement for States parties. It therefore supported the formulation in article 7 of the "Further option for articles 6, 7, 10 and 11".

59. **Mr. DHANBRI** (Tunisia) said that he fully supported the notion of complementarity in the interests of respecting the sovereignty of States parties and achieving the largest possible number of accessions by States. In article 6 (original version), he would like subparagraphs (a) and (b) of paragraph 1 to be retained. However, subparagraph (c) should be deleted, because such autonomous power should not be given to the Prosecutor. Paragraph 2 should also be deleted. In article 7, he favoured option 2 for the opening clause and the retention of paragraph 3. He preferred option 2 of article 9. Paragraph 4 of article 10 should be deleted. In article 11, he preferred option 2. Articles 12 and 13 should be deleted.

60. **Ms. TOMIČ** (Slovenia) said that she would limit her comments to the text in the "Further option for articles 6, 7, 10 and 11". She fully supported article 6 (a) allowing a State to refer a situation to the Prosecutor; it would then be for the Prosecutor to decide whether to proceed with an investigation or not. The proposal to change "may exercise its" to "shall have" in the *chapeau* of article 6 should be considered carefully in the context of article 17, which spoke of the Court satisfying itself as to its jurisdiction. It might be better to use the words "has jurisdiction" or retain the original wording.

61. As to the acceptance of jurisdiction, she strongly opposed any State consent or opt-in system for the core crimes, and fully supported paragraph 1 of the United Kingdom proposal for article 7. She agreed with the proposal by the representative of the Republic of Korea for the Court to have jurisdiction over a case when one State out of the relevant categories of State was a party to the Statute.

62. She had no problem in accepting article 7, paragraph 3, concerning States not parties. In article 11, she accepted the first and second paragraphs.

63. **Mr. PALACIOS TREVIÑO** (Mexico) said that, as a general rule, States parties should refer situations, but they should not be prevented from submitting cases involving individual persons. Referrals should be supported by documentation.

64. For the Court to exercise its jurisdiction, it should be necessary for the State where the accused was and the State of nationality of the accused to have given their consent. A State which ratified the Statute thereby accepted the jurisdiction of the Court with respect to the crimes defined in article 5, pursuant to the provisions of the Statute, without the need for any additional consent. States not parties would need to give their consent; he did not agree that jurisdiction was universal. Moreover, questions of cooperation, as far as non-parties were concerned, should be the subject of a special agreement with the Court.

65. **Mr. CAFLISCH** (Switzerland) thought that the jurisdiction of the Court must be automatic. States could not become parties to the Statute of the Court and appoint judges to judge others unless they themselves submitted to its jurisdiction. A "universal" court must be universal in its jurisdiction. That meant jurisdiction with respect to the most serious crimes of international concern, and if necessary that limitation could be made clear in the relevant provision. He could accept either the German or the United Kingdom approach to the issue of jurisdiction. The proposals of the Republic of Korea established a good balance between those two approaches. The technique of alternative jurisdictional links was often used in criminal law when the perpetrator of a crime was in a State other than the State where the crime had been committed or his country of origin. If, however, an accumulation of jurisdictional links was required, it could involve only the State where the accused was and the State where the crime had taken place.

66. **Mr. RODRIGUEZ CEDEÑO** (Venezuela) welcomed the proposal of the United Kingdom ("Further options for articles 6, 7, 10 and 11") as a basis for discussion. There were two important issues. First, the action of the Court should be triggered primarily by States parties. Where States not parties were involved, the role of the Prosecutor or the Security Council could resolve the problem. The Prosecutor's competence would be very important in initiating criminal proceedings.

67. The Court should have universal jurisdiction over all crimes listed in article 5. In becoming a party to the Statute, a State would assume all the obligations inherent in that, which should include acceptance of the jurisdiction of the Court. An additional declaration should not be needed for the Court to take up a particular case.

68. Regarding paragraph 2 of the United Kingdom proposal for article 7, he thought that the original wording, "the Court may exercise its jurisdiction", was quite appropriate.

69. **Mr. SHARIAT BAGHERI** (Islamic Republic of Iran) wished to stress the fundamental importance of the principle of State consent. The consent of the custodial State, the territorial State and the State of nationality should be required. He had no problem with States referring cases to the Court. States not parties should also be able to do so, provided that they deposited a declaration with the Registrar accepting the Court's jurisdiction.

70. He was not in favour of automatic jurisdiction, which would delay the entry into force of the Statute. In the case of the International Court of Justice, only 60 States had so far accepted compulsory jurisdiction. There should be a separate procedure for accepting the jurisdiction of the International Criminal Court, particularly as the list of crimes to be included was not yet clear.

71. **Ms. VARGAS** (Colombia) supported the inherent jurisdiction of the Court for the core crimes. Ratification would imply acceptance of the jurisdiction of the Court. Only States parties should have the right to submit complaints to the Court. Universality depended on acceptance of jurisdiction, not on the right to complain. A State not a party should be able to accept the Court's jurisdiction in a specific case by a special declaration. The most acceptable version of article 7 was that proposed by the United Kingdom in the "Further option for articles 6, 7, 10 and 11". Two States must have given their consent, the custodial State of the accused and the territorial State where the crime had been committed.

72. **The CHAIRMAN** said that the discussion of Part 2 of the draft Statute would continue at the next meeting.

Part 3 of the draft Statute (*continued*) (A/CONF.183/C.1/WGGP/L.4)

73. **The CHAIRMAN** invited the Coordinator for Part 3 and Chairman of the Working Group on General Principles of Criminal Law to introduce the Group's report (A/CONF.183/C.1/WGGP/L.4).

74. **Mr. SALAND** (Sweden), Coordinator for Part 3 and Chairman of the Working Group, said that the text for article 21, entitled "*Nullum crimen sine lege*", was ready, subject to the proviso, mentioned in footnote 1, that an additional provision would be needed if the so-called treaty crimes were included within the jurisdiction of the Court. Article 22 on non-retroactivity was also agreed, with the proviso that paragraph 1 might have to be revisited, depending on what happened to article 8. Any additional language could, however, be placed in a separate paragraph, so the existing two paragraphs could be sent to the Drafting Committee. Article 23 on individual criminal responsibility was mostly complete, but paragraphs 5, 6 and 7 (c) were still under consideration. He drew attention to footnote 5: the reformulation of article 23 would mean that the bracketed paragraph 2 of article 5 could be deleted.

75. Paragraph 1 of article 24 was already with the Drafting Committee, and agreement had now been reached on paragraph 2. The former article 26, now provisionally called "Article X", had been drafted as a jurisdictional issue. There was agreement on the text, but it should be moved to an appropriate place in Part 2.

76. Concerning article 27, he drew attention to footnote 7 which stated that two delegations were of the view that there should be a statute of limitations for war crimes. He hoped that the two delegations concerned would be flexible and agree that the text could be sent to the Drafting Committee, despite the lack of complete consensus. An addition to the footnote was about to be circulated.

77. Since the adoption of the report, the Working Group had agreed that paragraph 4 of article 29 should be deleted.

78. The outstanding issues were article 23, paragraphs 5, 6 and 7 (c), article 25 and article 28, which were still under discussion, and articles 30 to 34, which there had not yet been time to discuss. He hoped to be able to report on the discussion of those provisions shortly.

79. He commended the agreed provisions for transmission to the Drafting Committee.

80. **Ms. WONG** (New Zealand) thought that footnote 3 should be amended to refer to "discussion of other articles", and not just to article 8, because there might be proposals in the final clauses which would have an impact.

81. **Mr. GARCIA LABAJO** (Spain) said that he had reservations on articles 22 and 24. Article 22 was closely related to article 8 and could be related to the final clauses, and he thought that it could be kept in abeyance for the time being. In paragraph 2 of article 24, it might be better to say, for example, "... jurisdiction in relation to acts for which that person is responsible".

82. **Mr. GÜNEY** (Turkey) said that some delegations had raised the problem of the absence of a statute of limitations from the point of view of complementarity.

83. **Mr. PEREZ OTERMIN** (Uruguay) thought that the Committee of the Whole should have time to consider the report of the Working Group before the provisions in question were passed on to the Drafting Committee.

84. **The CHAIRMAN** said that he would ask the Chairman of the Working Group to respond to the questions raised. He hoped that the Committee of the Whole could take a decision on the report at the next meeting.

85. **Mr. SALAND** (Sweden), Coordinator for Part 3 and Chairman of the Working Group on General Principles of Criminal Law, said that he would have no objection to the correction suggested by New Zealand. His impression was that the concerns of Spain on article 22 could be dealt with in separate paragraphs, without amending paragraphs 1 and 2.

86. There was no universal answer to the issue of complementarity—it would be a question of cooperation with States. He hoped, however, that the delegations concerned would be sufficiently flexible to allow the proposed text to be sent to the Drafting Committee.

The meeting rose at 6.10 p.m.