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COMMITTEE OF THE WHOLE

SUMMARY RECORD OF THE 10th MEETING

Held at the Headquarters of the Food and Agriculture Organization of the United Nations
on Monday, 22 June 1998, at 3 p.m.

Chairman: Mr. P. KIRSCH (Canada)

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V.98-57463 (E)

The meeting was called to order at 3.15 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 and Corr.1; A/CONF.183/C.1/L.7)

Part 2 of the draft Statute (*continued*)

1. **Mr. POLITI** (Italy) said that Italy had always been in favour of giving the Prosecutor the authority to initiate investigations ex officio on the basis of information obtained from any source. His delegation supported the bracketed subparagraph (b) in the text for article 6 proposed in the "Further option for articles 6, 7, 10 and 11", as well as the text of article 12. In regard to the latter, it favoured the following formulation for the first sentence: "The Prosecutor may initiate investigations *proprio motu* or on the basis of information obtained from any source, in particular from Governments, United Nations organs and intergovernmental and non-governmental organizations." The second sentence would remain as drafted.

2. With regard to article 13, his preference was for an independent prosecutor who would not require specific authorization in order to initiate investigations. At the same time, he realized that a number of delegations were concerned that all possible guarantees should be provided against any improper use by the Prosecutor of the powers conferred on him or her, and could therefore accept the establishment of a mechanism of scrutiny on the basis of the proposals reflected in draft article 13.

3. **Mr. RWELAMIRA** (South Africa), speaking on behalf of the Southern African Development Community (SADC) and of his own delegation, said that he wished to associate himself with those who had spoken in favour of the inherent jurisdiction of the Court with regard to core crimes. The independence of the Prosecutor was critical to the effectiveness of the Court, and neither his delegation nor the SADC countries would like to see a situation in which the Prosecutor was dictated to either by individual States or by the Security Council.

4. Since the Prosecutor was a critical part of the trigger mechanism under the Statute, his or her role should be strengthened as much as possible, and he therefore supported the proposed article 6 in the "Further option for articles 6, 7, 10 and 11". Concerning article 12, he supported the view that the Prosecutor should be able to initiate investigations on the basis of information obtained from any source. In order to preserve the Prosecutor's independence, he would prefer the word "may" to be used in the article rather than the word "shall". In general, he would support removal of the brackets contained in the text.

5. Although his preference was for an independent prosecutor, he could accept the general content of the proposed article 13 in the light of the concerns expressed by others. Use of the Pre-Trial Chamber as a screening or filtering mechanism could allay some of the fears expressed, as well as providing a guarantee against unsubstantiated or frivolous complaints. However, he would like to have further discussion on the article before he took a firm position.

6. **Mr. BELLO** (Nigeria) said that the system of checks and balances which article 13 was intended to provide was inadequate. Under article 12, the Prosecutor was granted powers so enormous as to make that office a law unto itself. Moreover, those vast powers would invite complaints and ultimately make the Prosecutor ineffective. Nigeria therefore believed that articles 12 and 13, as well as the bracketed subparagraph (b) in article 6 in the "Further option for articles 6, 7, 10 and 11", should be deleted.

7. **Mr. MANONGI** (United Republic of Tanzania) said it was very important that the Prosecutor be given an ex officio role if the universal regime of human rights protection was to be strengthened rather than weakened. His delegation could therefore accept that the Prosecutor be empowered to initiate investigations *proprio motu*.

8. However, he agreed with earlier speakers that the powers granted to the Prosecutor under article 12 needed to be qualified by the provisions proposed in draft article 13, whereby prior authorization by a pre-trial chamber would be required before an investigation could proceed.

9. **Ms. LI Yanduan** (China) said that her delegation did not agree that the Prosecutor should be given powers of investigation ex officio. It therefore proposed that article 6, paragraph 1 (c), as well as articles 12 and 13, should be deleted.

10. **Mr. VERGNE SABOIA** (Brazil) said that his delegation believed that the Prosecutor should be given powers to bring matters before the Court, and was therefore in favour of retaining article 6, paragraph 1 (c), or a similar wording. On the other hand, the Prosecutor should also be able to initiate investigations on the basis of information from a variety of sources, as indicated in article 12. Those powers should be subject to certain safeguards, and in that context he supported the system proposed in article 13, in particular regarding the role of the Pre-Trial Chamber. In his view, that issue was also related to the question of admissibility.

11. **Mr. SKIBSTED** (Denmark) said his delegation too believed that the Prosecutor should have powers of investigation ex officio. The text as drafted provided sufficient safeguards. The Prosecutor would have to decide that there was sufficient basis on which to proceed, and that evaluation would have to be approved by the Pre-Trial Chamber. The qualifications of the Prosecutor would have to be the same as those of the judges, and it was essential to ensure that the procedures for selecting members of the Court and for appointing the Prosecutor had the confidence of the world community.

12. The fact that the crimes to be tried by the Court were to be limited to the most serious offences should make it easier to agree on the prosecution of the offenders and allow the Court to become an effective instrument.

13. **Mr. IMBIKI** (Madagascar) said that if the Court was to be effective and credible it was important that the Prosecutor be made independent, and not subject to the authority of the Security Council. He or she would nevertheless not be immune from political pressures, which was why Madagascar agreed that any investigation launched should have the prior authorization of the Pre-Trial Chamber.

14. The Prosecutor would be required to initiate an investigation of a complaint brought by the Security Council or a State party; provision would have to be made to ensure that, should he or she refuse to act, the complainant could bring the matter to appeal.

15. **Mr. KAUL** (Germany) said Germany believed that in order to ensure the independence of the Prosecutor it was vital to give him or her the power to initiate investigations ex officio, since otherwise prosecutions could only be brought if a State party or the Security Council referred a situation to the Court. Giving the Prosecutor the power to act *proprio motu* would have the advantage of depoliticizing the process of initiating investigations.

16. Article 13 of the draft Statute reflected a proposal submitted jointly by Germany and Argentina. In response to the concerns expressed by a number of delegations, it would subject the Prosecutor to a form of judicial control when initiating investigations ex officio.

17. **Mr. SALAND** (Sweden) said his delegation did not wish the Court to be a mere tool of the Security Council; it should be truly effective, and the Prosecutor should be given an ex officio role. He fully supported the formula for judicial review contained in article 13, which would not only be a safeguard against frivolous complaints, but would also protect the Prosecutor from undue political pressure.

18. It was the duty of the Court at all stages of the proceedings to satisfy itself not only that it had jurisdiction in a particular case, but also that the case was admissible, and in that connection he agreed that lack of sufficient gravity should be a ground for inadmissibility.

19. **Ms. BLOKAR** (Slovenia) said that she supported the Prosecutor's right to trigger the Court mechanism and to initiate investigations ex officio. She therefore supported the bracketed subparagraph (b) of article 6 in the "Further option for articles 6, 7, 10 and 11".

20. She also supported article 12, with the deletion of the brackets around the words "and intergovernmental and non-governmental organizations", and the deletion of the last sentence. In response to those who had expressed the view that the Prosecutor should not have an ex officio or *proprio motu* role, she drew attention to article 43, paragraph 3, which stipulated that the Prosecutor was to be a person of high moral character, be highly competent and have extensive practical experience.

21. **Mr. KESSEL** (Canada) endorsed the views of those who favoured a prosecutor empowered to initiate proceedings ex officio based on information from all sources. Articles 12 and 13 provided sufficient safeguards in that respect, and he could not see how giving the Prosecutor the independence he or she needed could undermine the concept of complementarity.

22. **Ms. HERTZ** (Chile) said Chile had always believed that, if the Court was to be effective, the Prosecutor should be given powers to initiate investigations ex officio on the basis of reliable information. She could accept the wording proposed for article 6, and was in general agreement with the text of article 13, which should provide sufficient guarantees to satisfy both States parties and world opinion.

23. **Mr. Khalid Bin Ali Abdullah AL-KHALIFA** (Bahrain) said his delegation believed that the Prosecutor should not take action on his or her own initiative, and that the role he or she should play should be subject to clear limits. The sources of information used had to be limited too, so that information would be accurate and credible. The expression "any source" should be eliminated, as well as the mention of different sources. The Prosecutor's role should be subject to judicial control at all stages.

24. **Mr. MINOVES TRIQUELL** (Andorra) said that the Prosecutor's independent role was very important where heinous crimes were concerned. Articles 12 and 13 should be retained, as well as paragraph 1 (c) in article 6 (first version).

25. **Ms. DASKALOPOULOU-LIVADA** (Greece) said her delegation believed that the Prosecutor should be given powers to prosecute ex officio, since otherwise the bulk of the crimes which warranted international action would go uninvestigated and unpunished.

26. The precedent established by the ad hoc Tribunals for the former Yugoslavia and Rwanda militated in favour of such ex officio powers, and she accordingly favoured retention of article 6 (first version), paragraph 1 (c), or the bracketed subparagraph (b) of article 6 in the "Further option for articles 6, 7, 10 and 11". She also supported article

12, and could accept the idea embodied in article 13, provided that the Prosecutor was given the option of reintroducing a request if new evidence became available.

27. **Ms. DIOP** (Senegal) supported the view expressed by earlier speakers that a strong, independent Prosecutor empowered to obtain information ex officio was crucial if the Court was to be effective. She therefore favoured the variant contained in article 6 (first version), paragraph 1 (c).

28. She could accept the text proposed for article 12, provided that an alternative was found for the expression "from any source" in the first sentence. Not all sources of information were equally credible. She fully supported article 13; prior authorization by a pre-trial chamber would act as a safeguard against any abuses on the part of the Prosecutor.

29. **Mr. DHANBRI** (Tunisia) said that his country had some misgivings as to the powers being granted to the Prosecutor in the draft proposed. His delegation believed that action should only be initiated on the basis of a complaint submitted by a State.

30. **Mr. KERMA** (Algeria) said that the role assigned to the Prosecutor in the draft text posed certain problems in regard to the principle of complementarity. His delegation was opposed to granting the Prosecutor powers to initiate investigations ex officio. Such investigations could in any case only proceed subject to the approval of the Pre-Trial Chamber, and he considered that article 12 should either be deleted or completely redrafted.

31. **Mr. GOULIYEV** (Azerbaijan) supported the functions for the Prosecutor defined in article 12, and favoured deletion of the brackets around "and intergovernmental and non-governmental organizations". The brackets in article 13 should also be deleted. The crime of aggression should be included in the list of crimes within the jurisdiction of the Court contained in article 5.

32. **Mr. Tae-hyun CHOI** (Republic of Korea) said his delegation agreed with previous speakers that the Prosecutor should have ex officio powers of investigation, with no restriction on sources of information. He endorsed the content of article 13, but considered that it should provide specifically for the possibility of a prosecutor abusing his or her powers.

33. **Mr. CAFLISCH** (Switzerland) said that his delegation attached great importance to the Prosecutor being empowered to obtain information ex officio as provided for in the bracketed subparagraph (b) of article 6 in the "Further option for articles 6, 7, 10 and 11", and in article 12. Switzerland also supported the concept of control by the Pre-Trial Chamber contained in article 13.

34. **Mr. AGBETOMEY** (Togo) said that if the Court was to be effective the Prosecutor should be enabled to play his or her role to the full, and to bring before the Court situations that had come to his or her attention by whatever means, provided that there was sufficient information on which to base the prosecution.

35. In order to dispel the concerns expressed, there should be a system of safeguards to prevent the Prosecutor from being subject to undesirable influences. The provisions of article 6 (first version), paragraph 1 (c), and of articles 12 and 13 should therefore be retained.

36. **Mr. DABOR** (Sierra Leone) said the Prosecutor should be empowered to initiate investigations *proprio motu* on the basis of information received from victims, intergovernmental organizations or non-governmental organizations. However, those powers should be subject to the safeguards provided for in article 13. In the first line of article 12, the

word “may” should be used in preference to the word “shall”in order to give the Prosecutor discretion not to investigate frivolous complaints.

37. **Mr. GÜNEY** (Turkey) agreed with earlier speakers that to give an ex officio role to the Prosecutor would have adverse effects on the principle of complementarity. To extend the Prosecutor’s powers unduly might lead to a deluge of complaints of a political nature which could reduce his or her effectiveness.

38. **Mr. MATSUDA** (Japan) said that allowing the Prosecutor to launch investigations ex officio would upset the balance between States parties and the Court by making the latter a kind of “supra-structure” with authority over States. In his view, complaints by States parties and referrals by the Security Council should adequately cover all serious crimes of international concern. If the Prosecutor was pressured into taking up a case by outside influences, the credibility of the Prosecutor and of the Court could be jeopardized.

39. **Mr. AL AWADI** (United Arab Emirates) agreed that to give the Prosecutor an ex officio role could be dangerous: the role of initiating action belonged solely to States. His delegation did not support article 12 and could not accept article 6 (first version), paragraph 1 (c).

40. **Mr. MAHMOOD** (Pakistan) supported that position. However, once a State had initiated proceedings, the Prosecutor should be given full independence in conducting the investigation.

41. **Mr. DA COSTA LOBO** (Portugal) considered that the effectiveness and credibility of the Court would depend on the Prosecutor having ex officio powers to initiate investigations.

42. **Mr. KAM** (Burkino Faso) said that he, too, favoured empowering the Prosecutor to initiate proceedings as provided for in article 6 (first version), paragraph 1 (c), and in article 12. That would enable an independent prosecutor with a purely judicial role to act in cases where States or the Security Council might block investigations because of the political interests at stake. The Prosecutor’s powers should nevertheless be subject to control by the Pre-Trial Chamber.

43. **Ms. VEGA** (Peru) endorsed that view, and supported the joint proposal of Germany and Argentina contained in article 13.

44. **Mr. PEREZ OTERMIN** (Uruguay) considered that the risks of granting the Prosecutor ex officio competence were greater than the benefits, for the reasons already advanced by other speakers.

45. **Mr. HUARAKA** (Namibia) said that his country favoured an effective court and an independent prosecutor. It had been argued that a “rogue” prosecutor could emerge, but that was unlikely in view of the qualifications required for the office. It was important to have an effective, independent court, bearing in mind experience during the cold war. His delegation favoured retention of the relevant provisions of the draft.

46. **Ms. FRANKOWSKA** (Poland) supported articles 12 and 13.

47. **Ms. TASNEEM** (Bangladesh) said that, although the system of checks and balances provided by the provisions regarding the Pre-Trial Chamber offered some assurances against abuses by the Prosecutor, she was opposed to having so much power vested in a single individual. The composition of the Pre-Trial Chamber should be representative both in terms of equitable geographical distribution and in terms of the major international legal systems.

48. **The CHAIRMAN** invited comments on the role of the Security Council.

49. **Mr. KOURULA** (Finland), acting as Coordinator, drew attention in particular to the two options given for article 10, paragraph 7. Under option 1, no prosecution could be commenced arising from a situation being dealt with by the Security Council, unless the latter decided otherwise. Under option 2, which reflected a Singapore/Canadian proposal, the Court could proceed with a prosecution after a period of time unless requested not to do so by a vote of the Security Council. There had also been proposals from the United Kingdom and Belgium.

50. **Mr. MOLNAR** (Hungary), referring to article 13, proposed that a mention of "intergovernmental organizations" should be added in the second sentence of paragraph 1.

51. In regard to the Security Council, his delegation supported the Singapore/Canadian proposal, possibly with the amendments proposed by the United Kingdom and Belgium.

52. **Mr. GONZALEZ GALVEZ** (Mexico) noted that the Conference was taking place at a time when the United Nations was discussing a number of proposals for reform of the Security Council; those discussions were relevant to the present debate. The Conference should not repeat the mistake made at San Francisco by tying the new Court to the organs of the United Nations, like the International Court of Justice. The Security Council would be one source of information for the Court regarding the existence of situations involving aggression, but not the only one. However, the Council, or rather the United Nations as a whole, would have a role in ensuring that the Court's decisions were implemented.

53. **Mr. LAHIRI** (India) said that the Court was an independent judicial body, not a political forum. The Security Council's powers and responsibilities were already provided for in the United Nations Charter, and could not be subtracted from or added to by the Court's Statute. If the intention was to add to the Security Council's powers through the Court, it must be borne in mind that the Court, unlike the Council, had no role whatsoever in the maintenance of international peace and security. Moreover, a large majority of United Nations Member States considered that the structure of the Security Council was unrepresentative.

54. It had been suggested that a Security Council referral should create a "green channel" in which the safeguards provided under articles 6, 7 and 9 could be dispensed with, but it should be pointed out that a single veto by one of the five veto-holding members of the Council would be sufficient to block such a referral. India was completely opposed to such a discriminatory arrangement.

55. **Ms. BLOKAR** (Slovenia) said that as she saw it the Security Council, as the main international organ responsible for international peace and security, should have the power to refer situations to the Prosecutor. That should eliminate the need for ad hoc tribunals. She therefore supported the second subparagraph (b) of article 6 in the "Further option for articles 6, 7, 10 and 11".

56. Consideration of a matter by the Security Council should not prevent the Court from acting since, whereas the functions of the Council were political, those of the Court, like those of the International Court of Justice, were purely judicial. As a compromise, her delegation could accept the provision contained in paragraph 1 of article 10 in the "Further option"; the second sentence of that paragraph was particularly important. She could go along with paragraph 2, despite doubts regarding the time-frame involved and the clause concerning renewal.

57. She supported the Belgian proposal regarding the preservation of evidence.

58. **Mr. SALAND** (Sweden) said that he had no problem with the second subparagraph (b) of article 6 in the "Further option", provided that the Security Council was acting under Chapter VII of the United Nations Charter. He could accept article 10 of the "Further option" if the wording in square brackets in paragraph 2 was retained.

59. **Mr. SHARIAT-BAGHERI** (Islamic Republic of Iran) recalled the recent statement adopted by the States members of the Non-Aligned Movement at Cartagena. The Security Council's responsibilities under the Charter should not limit the role of the Court as a judicial body. The Court should be empowered to pronounce on acts of aggression independently if the Council failed to perform its role within a certain period of time, and it should be able to decide on the responsibility of an individual for an act of aggression freely, without political influence.

60. **Mr. STIGEN** (Norway) supported Security Council referrals of "situations", as opposed to cases, to the Court, and welcomed the relevant provisions of articles 6 and 10 in the "Further option for articles 6, 7, 10 and 11". The formula in article 10, paragraph 2, was satisfactory, and the Belgian suggestion to include language providing for preservation of evidence in that connection (see document A/CONF.183/C.1/L.7) was attractive.

61. The Statute should include a reference to the power of the Security Council to create ad hoc tribunals. In general, he had no fear that a Security Council role would lead to political interference with the independence of the Court.

62. **Mr. NYASULU** (Malawi) said it was clear that the Security Council should be among those entities empowered to refer situations to the Court, thus obviating the need for the creation of ad hoc tribunals. That would not mean that the Council would have any control over the action taken by the Court. The second subparagraph (b) of article 6 in the "Further option" covered that notion and was to be preferred.

63. He supported the subsequent articles of the "Further option". Should those texts not be acceptable, however, the first versions of articles 6 and 10 would have to be considered. Paragraph 1 of article 10 might not be necessary if agreement was reached on the relevant provisions of article 6. Paragraphs 2 and 3 were procedural and seemed unnecessary. On the remainder of the article, a compromise was needed, but it should be recognized that there was no incompatibility between the role of the Security Council under Chapter VII of the Charter and the functions of the Court. For paragraph 7, he suggested wording to the effect that no prosecution could be commenced when the Security Council had so requested, that such a request was not to be interpreted as affecting the Court's independence, and that the Court could proceed if the Council took no action within a reasonable time.

64. **Mr. WOUTERS** (Belgium), introducing his delegation's proposal (A/CONF.183/C.1/L.7), said that Belgium favoured the texts for articles 6 and 10 contained in the "Further options for articles 6, 7, 10 and 11". The Belgian proposal was for an addition to paragraph 2 to take into account the risk that relevant evidence might disappear during the period in which investigation and prosecution were suspended. The Prosecutor would be authorized in such situations to take measures to preserve evidence.

65. **Mr. SADI** (Jordan) said that it was not clear to him why the Security Council should be singled out, in preference to other United Nations organs, as authorized to make referrals to the Court. Nor did he understand why the Council would need to request the suspension of an investigation for as long as 12 months. The Court should not become a mere appendage to the Council.

66. **Mr. KESSEL** (Canada) said he saw the role of the Security Council vis-à-vis the Court as a positive one, which would increase the Court's effectiveness and avoid the need for the continual creation of ad hoc tribunals to deal with specific situations. He agreed that there could be a time limit for the suspension of the Court's work, but the role of

the Security Council in stopping wars and thus saving lives must be taken into account. The draft contained sufficient safeguards to protect the Court's independence.

67. **Mr. TAÏB** (Morocco) feared that political decisions taken by the Security Council might unduly influence the Court's decisions or hinder its action. The Council's role should be limited to referrals of situations involving acts of aggression.

68. **Mr. DIAZ PANIAGUA** (Costa Rica) said it must be acknowledged that the Security Council had a responsibility under the Charter for the maintenance of international peace and security. To avoid conflict, the role of the Council must be coordinated with the role of the Court in such a way that the latter's independence was guaranteed. Referrals by the Council to the Prosecutor should only be made under Chapter VII of the Charter, and the square brackets in the second subparagraph (b) of article 6 in the "Further option for articles 6, 7, 10 and 11" should be deleted. He agreed with the representative of Jordan that a twelve-month period of suspension of an investigation was too long. In any event, a request for such a suspension should only be made following a formal resolution on the part of the Security Council. He fully supported the Belgian proposal.

69. He agreed with earlier speakers that the Charter did not give the Security Council a monopoly in determining that an act of aggression had been committed. That could be determined by the victim State, the General Assembly or the Court. He therefore could not support paragraph 1 of article 10 in the "Further option".

70. **Mr. KAUL** (Germany) supported the inclusion of the second subparagraph (b) of article 6 in the "Further option". He also supported article 10, including the material in square brackets in paragraph 2, and the addition proposed by Belgium (A/CONF.183/C.1/L.7).

71. **Mr. A. DOMINGOS** (Angola) said that, in the case of any conflict of competence, there was need to ensure objectivity and credibility, and that could be done through the mechanism of prior authorization by the Pre-Trial Chamber. Articles 12 and 13 offered a good basis for agreement in that respect.

72. **Mr. AL-JABRY** (Oman) said that, if article 12 was retained, he would like to see changes made in the text to curb the powers of the Prosecutor to initiate action ex officio. To ensure the Court's independence, the role of the Security Council should be limited to referrals in cases of aggression.

73. **Mr. ONWONGA** (Kenya) said he was prepared to consider proposals that would strike a balance between the independence of the Court on the one hand and the proper role of the Security Council on the other. The proposed article 10 in the "Further option for articles 6, 7, 10 and 11" would serve as a useful starting point in that regard.

74. **Mr. DA COSTA LOBO** (Portugal) felt that the Security Council had a role to play within the area of its security responsibilities. Article 10 in the "Further option", with the Belgian amendment, would satisfy his concerns.

75. **Mr. van BOVEN** (Netherlands), referring to the proposals in the "Further option", said that he approved the provision allowing referral of a situation by the Security Council, which would institutionalize an already existing practice with regard to the situation in the former Yugoslavia and Rwanda. Paragraph 2 of article 10 should be worded positively, to the effect that an investigation or prosecution could be commenced or proceeded with unless the Security Council had requested suspension. It was also unclear up to what point the Security Council could intervene. It was essential to retain the reference to Chapter VII of the Charter. He fully supported the Belgian amendment.

76. Lastly, if the Conference decided to include the crime of aggression in the Statute of the Court, the role of the Security Council as defined in paragraph 1 of article 10 seemed to him essential.

77. **Ms. SHAHEN** (Libyan Arab Jamahiriya) supported the views expressed by Mexico and India. To give the Security Council, which was a political body, the right to trigger action would destroy confidence in the impartiality and independence of the Court, and thus detract from its credibility. Such an arrangement would enable the permanent Members of the Security Council to make the Court a tool for putting pressure on small, developing countries. Accordingly, her delegation considered that all references to the Security Council should be deleted from the draft Statute.

78. **Mr. SALINAS** (Chile) said he supported the provision allowing the Security Council, under Chapter VII of the Charter, to refer to the Prosecutor situations which constituted a threat to peace and security, provided it had adopted a resolution to that effect. However, the Security Council should not be authorized to refer to the Prosecutor situations under Chapter VI of the Charter, as provided for in draft article 10, paragraph 3.

79. The problem of how to reconcile the independence of the Court with the freedom of the Security Council to take action if faced with a political crisis or a threat to peace was a difficult and sensitive one. It would be necessary to try to ensure that the Security Council acted strictly in accordance with its mandate under the Charter.

80. **Mr. RODRIGUEZ CEDEÑO** (Venezuela) said that it was quite legitimate for the Security Council to submit to the Court situations related to matters that fell within its competence. However, his delegation could not support the proposed provisions that would allow the Council to impose conditions on the Court.

81. **Mr. JANDA** (Czech Republic) said that the Security Council should be able to bring situations to the attention of the Court, and that the Court should not be able to consider an act of aggression unless the Security Council had first determined that such an act had been committed. Regarding the suspension of proceedings, he could accept the wording of paragraph 2 of article 10 in the "Further option for articles 6, 7, 10 and 11", with the addition proposed by Belgium, provided that all brackets in the text were removed.

82. **Mr. BELLO** (Nigeria) said that the Court should be free of all outside influence; however, there was no escaping the fact that the Security Council had a role under Chapter VII of the Charter. He could accept the text of the second subparagraph (b) of article 6 in the "Further option for articles 6, 7, 10 and 11", without the square brackets.

83. However, the provisions proposed in article 10 in the "Further option" would be a travesty of justice. If the Security Council had jurisdiction to determine whether or not an act of aggression had been committed, the Court's hands would be tied, whatever was said about its independence not being affected. Moreover, how could aggression on the part of one of the permanent members of the Security Council be referred to the Court if that member could veto such a referral? If it was the Conference's aspiration to create a free, fair and independent Court, the proposed article 10 should be rejected.

84. **Ms. LI Ting** (China) said that her delegation could not accept the provisions allowing the Prosecutor to initiate action ex officio; article 6 (first version), paragraph 1 (c), should be deleted.

85. It was essential that the Security Council be empowered to refer cases to the Court, since otherwise it might have to establish a succession of ad hoc tribunals in order to discharge its mandate under the Charter. The Security Council should also have the power to determine whether acts of aggression had been committed. The operations of the Court should not impede the Council in carrying out its important responsibilities for maintaining peace and security.

86. **Mr. SKIBSTED** (Denmark) said that the Security Council should be competent to refer situations to the Court, but should not interfere with its proceedings in any other way. The Council had exclusive responsibility for determining the existence of an act of aggression, but only the Court could decide whether the crime of aggression had been committed by an individual. The role given to the Council in the Statute meant that the crime of aggression must inevitably become one of the core crimes to be dealt with by the Court.

87. **Mr. VERGNE SABOIA** (Brazil) said that while he favoured an independent Court he believed there should be a functional relationship between it and other organs of the United Nations. He therefore supported the view that the Security Council should be empowered to refer situations to the Court, acting under Chapter VII and possibly also under Chapter VI of the Charter.

88. A decision by the Security Council to halt a prosecution by the Court should only be taken following a formal decision under Chapter VII and for a limited period of time. He therefore favoured either paragraph 7, option 2, in the first version of article 10, or the draft for article 10 in the "Further option for articles 6, 7, 10 and 11", provided that those two points were preserved. He supported the Belgian proposal (A/CONF.183/C.1/L.7).

89. **Ms. MEKHEMAR** (Egypt) urged that the Security Council's role should be kept within narrow limits to avoid politicizing the Court. The Council should be empowered to trigger the Court's action only when acting under Chapter VII of the Charter; the final decision would be taken by the Court. As she understood Article 39 of the Charter, the role of maintaining peace and security did not belong only to the Security Council, but also to other United Nations bodies, notably the General Assembly.

90. Concerning article 10, she rejected the idea that the Security Council should be permitted to impose restrictions on the Court. While the Council should have the right to deal initially with some matters, it should be empowered to prevent the Court from dealing with them only for a limited, non-renewable period.

91. **Ms. WONG** (New Zealand) supported the view that it needed to be made clear in the text that the Security Council could only prevent Court action by adopting a formal and specific resolution. With that clarification and the inclusion of a specific time limit, she could accept article 10 in the "Further option for articles 6, 7, 10 and 11".

92. **Mr. POLITI** (Italy) said that he, too, favoured enabling the Security Council to refer situations to the Court, to obviate the need for establishing new ad hoc tribunals whenever one or more of the core crimes appeared to have been committed. He preferred the formulation used in the second subparagraph (b) of article 6 in the "Further option". The text of article 10, paragraph 1, in that option was acceptable to his delegation.

93. The issue of the Security Council's power to block intervention by the Court was a delicate one, and it was important to provide guarantees that the Court's action would not be indefinitely impeded or gravely prejudiced. Any request for deferral of an investigation should be made only following a formal decision by the Council, and be confined to a specific period of time, with limited possibility of renewal. He, too, supported the Belgian proposal regarding the Prosecutor's right to take steps to preserve evidence.

94. **Ms. PIBALCHON** (Thailand) said that Thailand had no objections to article 6 (first version), paragraph 1 (a), or to article 10, paragraph 1, in the "Further option". She supported the view expressed by New Zealand that suspension by the Security Council of the Court's proceedings should depend on a Council resolution.

95. **Ms. WILMSHURST** (United Kingdom) said that her delegation strongly supported enabling the Security Council to make referrals, but agreed that that should be under Chapter VII of the Charter, and that the square brackets

in the second subparagraph (b) of article 6 in the "Further option" should be deleted. She was somewhat puzzled by the fears expressed by some delegations that such referrals would interfere with the independence of the Court simply because the Security Council was a political body: no one had accused the Security Council of interfering with the independence of the Tribunals for the former Yugoslavia and Rwanda, which had already been in operation for some time.

96. Concerning article 10 in the "Further option", she would favour removal of the brackets around "for a period of twelve months", in paragraph 2 but was not sure whether the reference to Chapter VII was appropriate, since the Council could be acting in accordance with its various responsibilities under the Charter.

97. **Mr. MATSUDA** (Japan) said that the relationship between the Security Council and the Court was a key issue. Since crimes within the Court's jurisdiction would be the most serious crimes of international concern, and since the Council was the principal organ responsible for maintaining international peace and security, it was right that the latter should have a role under the Statute. The Council should have the power to refer a situation to the Court, and in his view the consent of the parties concerned should not be required.

98. It would not be appropriate to totally prohibit the Court from exercising its functions with respect to a case simply because that case had already been taken up by the Security Council. In that regard, Japan basically supported the text in article 10 in the "Further option".

99. **Ms. DASKALOPOULOU-LIVADA** (Greece) said that she had no objection to the Council referring cases to the Court provided that it was acting under Chapter VII of the Charter. In regard to acts of aggression, she would favour the first two paragraphs of option 2 for paragraph 7 in the first version of article 10, including the reference to a time period and to the need for a format and specific decision by the Council. She could not support the proposed article 10 in the "Further option".

100. **Mr. DABOR** (Sierra Leone) said that he would have no objection to paragraph 1 of article 10 in the "Further option", but considered that the period of 12 months provided for in paragraph 2 was far too long: he proposed that the period be reduced to six months. He endorsed the Belgian proposal for preservation of evidence during such a period, and thought that witnesses, too, should be protected.

101. Further clarification was required concerning paragraph 2. The text as it stood would cover all crimes and not only the crime of aggression; it would be very dangerous, particularly if proceedings had already begun. There should also be a provision allowing a request for suspension of proceedings to be renewed once only.

102. **Mr. Tae-hyun CHOI** (Republic of Korea) said that his delegation could accept paragraphs 1, 2, 3, 5 and 6 of the first version of article 10. It favoured option 2 for paragraph 4, and option 2 for paragraph 7, without paragraph 2 of that option. In paragraph 3 of that option, the period of time in question should be specified.

The meeting rose at 6 p.m.