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.14
20 November 1998

ORIGINAL: ENGLISH

COMMITTEE OF THE WHOLE

SUMMARY RECORD OF THE 14th MEETING

Held at the Headquarters of the Food and Agriculture Organization of the United Nations
on Wednesday, 24 June 1998, at 10 a.m.

Chairman: Mr. P. KIRSCH (Canada)

CONTENTS

V.98-57467 (E)

The meeting was called to order at 10.10 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.16)

Part 4 of the draft Statute

1. **Mr. RWELAMIRA** (South Africa), Coordinator for Part 4, said he thought that some of the articles in Part 4 of the draft text in document A/CONF.183/2/Add.1 were already at a stage where they could be referred to the Drafting Committee without debate or with very little debate in the Committee of the Whole. He suggested that the Committee might consider transmitting subparagraphs (a), (c) and (d) of article 35 to the Drafting Committee without any debate. Paragraphs 1 and 2 of article 39 contained no particular problems and might also be transmitted to the Drafting Committee. Paragraph 3 could also be sent to the Drafting Committee if the Committee of the Whole took the view that the content of the square brackets in subparagraph (a) was already covered by the notion of "the due administration of the Court".

2. Article 41 as it stood was a well-balanced and well-considered compromise text arrived at after extensive debate in the Preparatory Committee, and might likewise go to the Drafting Committee. Paragraphs 1, 2 and 3 of article 45 could also be sent on without further debate, but some discussion on paragraph 4 might be required.

3. Other articles recommended for transmission to the Drafting Committee were articles 46 and 48. A small correction was needed in article 48: "article 47" should be inserted after "set out in". He would also suggest that, as article 48 dealt with misconduct of a less serious nature than article 47, the second of the two bracketed alternatives in article 48, referring to the Regulations of the Court, might be chosen. The Committee might also wish to delete the bracketed reference to the Rules of Procedure and Evidence in article 50. Articles 46, 48, 50 and 51 could then go to the Drafting Committee.

4. The rest of the articles in Part 4 could be handled in two stages. Articles 35, 36, 37 and 40 raised difficult problems and could be debated first. After some discussion in the Committee of the Whole, they could be referred to an informal group, which the United Kingdom delegation had already agreed to coordinate.

5. After that, the Committee could take up the remaining provisions, namely articles 38, 39, 42 to 45, 47, 49, 52 and 53, as a second "cluster" of provisions.

6. Turning to the cluster of provisions that he had suggested should be considered first, he said, with regard to article 35 (b), that there had been a divergence of views in the Preparatory Committee on the question of whether there should be one or more pre-trial chambers. That question would need discussion.

7. Under article 36, the question of whether some Court judges should serve on a part-time basis, and whether the decision as to which judges should serve part-time should be taken by the Presidency or by States parties on the recommendation of the Presidency, would undoubtedly require debate in the Committee. His own feeling was that the matter should be left to the Presidency to decide in the light of the volume of work in the Court.

8. Article 37, which should perhaps be discussed jointly with article 40, raised the issue of the number of Court judges and whether, and if so how, the number of judges could be increased or decreased after the Court had been established. Paragraph 3 (b) dealt with the balance that should exist in the Court between judges with expertise in criminal law and those with expertise in international law. It would affect other provisions in the Statute, notably paragraphs 1, 5 and 6 of article 40. The options in paragraph 4 of article 37 concerning the nomination of judges, and paragraph 5 on the election of judges, would require debate. Paragraph 8 had been extensively debated in the Preparatory Committee. His recommendation would be that the square brackets around subparagraphs (b), (d) and (e) should be removed and that the alternative "bear in mind" should be used rather than "take into account the need for" in the *chapeau*.

9. The question of whether judges should hold office for five or for nine years under paragraph 10 of article 37 might best be discussed in the proposed informal group.

10. Article 40 might usefully be debated briefly in the Committee prior to a more detailed discussion in the informal group. The proposal in paragraph 7 for alternate judges had been debated extensively in the Preparatory Committee and might need discussion in the Committee.

11. **The CHAIRMAN** invited the Committee to give its views on the cluster of provisions that the Coordinator had suggested should be considered first, namely articles 35 (particularly subparagraph (b)), 36, 37 and 40. Comments could also be made at any time on the articles that the Coordinator had suggested should be referred to the Drafting Committee.

12. **Sir Franklin BERMAN** (United Kingdom) said that the issues raised in those articles were among the most fundamental for the entire establishment and structure of an international criminal court. It would be crucial to have provisions which would ensure a court of the right sort of quality.

13. With regard to article 35 (b), it was self-evident that there needed to be a pre-trial function in the Court. Turning to article 36, he said that the question of full-time versus part-time judges had a financial aspect but also raised the issue of the impartiality of judges and the avoidance of conflicts of interest. It was not easy to envisage a court consisting of part-time judges who exercised another function but could serve as judges of that court with complete professional detachment. The United Kingdom was in favour of a full-time court from the ouset.

14. Regarding article 37, it could be assumed to be generally accepted that there should be a system that would ensure judges of the highest quality as members of the Court. More difficult was the question of qualifications. He did not think that it was a matter of competition between criminal law and international law. There would be many people, including some candidates for the Court, who would have experience both in criminal law and practice and in international law. Nor could every candidate for the Court represent an ideal model of the qualifications required. The Statute would set out a pattern and it was to be hoped that as many candidates as possible would come as close as possible to the ideal.

15. There was also a very important distinction between knowledge in particular fields of law and the professional competence and experience which indicated that a candidate was the sort of person likely to be able to deal effectively with the function of judge. Reference should be made to both knowledge and professional qualifications.

16. The Court should not be over-large. The functions covered in articles 37 and 40 would suggest a court of around 17 members. It should be structured around pre-trial, trial and appeal functions. The professional activity involved at

those three different levels was not identical and some discussion would be required on the numbers and on the qualities and qualifications needed at each level. That area had not been addressed in detail in the Preparatory Committee.

17. There should be a certain degree of flexibility in the composition of the Court, and there should be provision for the movement of judges between one function and another, with the exception of the appeal function. It would be neither proper nor possible for judges assigned to the appeal function to be transferred ad hoc to perform any function below that level, as that might impair the appeal function.

18. With regard to the question of nomination and election, it was important that the nominating process should not be a political process but should be one designed to identify candidates who fulfilled the qualifications required by the Statute. One possibility would be to follow the procedure used for elections to the International Court of Justice and have the national groups in the Permanent Court of Arbitration nominate candidates. Another would be to rely on procedures used within each State for the selection of its own judges. Election must be by secret ballot in the Assembly of States Parties, and it was fundamental that nothing in the Statute could in any way affect the right of each State party to make its own choice as to which candidate it would vote for. However, there could be some screening process between the completion of the nomination phase and the election phase, to enable Governments to make a good choice. In the United Kingdom's experience of such elections, Governments were often confronted with a list of candidates without the necessary information to help them to choose. One great advantage of an objective screening process was that it could help States parties take into account the criteria referred to in paragraph 8 of article 37, as well as the qualities of the individual candidates.

19. **Mr. IMBIKI** (Madagascar) said that article 35 (b) should provide for two pre-trial chambers. There should also be a provision allowing the President to move judges between the different chambers as required. Under article 36, judges should serve on a full-time basis once the Court was seized of a matter. It was undesirable that judges should engage in other activities while serving as judges of the Court.

20. In paragraph 2 (a) of article 37, it should be for the President acting on behalf of the Court to propose increases or decreases in the number of judges. In paragraph 2 (b), a simple majority would be preferable and, under paragraph 5, one half of the States parties should constitute a quorum.

21. In paragraph 8, subparagraphs (d) and (e) might hinder the representation of certain States or groups of States.

22. Paragraph 10 should provide for a nine-year mandate, to be closer to the situation in the International Court of Justice.

23. Paragraph 11 was acceptable as it stood but might be amended to provide for the fact that a judge might be unable to continue to carry out his or her functions. Article 40 should provide for "Pre-Trial Chambers" in the plural and for chambers composed of five judges.

24. **Mr. YAÑEZ-BARNUEVO** (Spain) asked whether article 51 would be submitted to the Drafting Committee together with document A/CONF.183/C.1/L.16, which contained a proposal by 14 delegations, including his own.

25. **The CHAIRMAN** said it was his understanding that article 51 would be referred to the Drafting Committee together with that proposal.

26. **Mr. REBAGLIATI** (Argentina) expressed general agreement with the views expressed by the representative of the United Kingdom. Candidates could be nominated by bodies such as the national groups in the Permanent Court of Arbitration, or through national mechanisms used for the appointment of senior judges. States might prefer either of those options or a combination.

27. With regard to the qualities and qualifications of candidates, the aim would be for candidates to have all the intellectual and moral qualities and qualifications listed, including practical experience in criminal and international law.

28. His delegation was flexible as to whether judges should serve on a full-time or part-time basis. There were precedents in other similar bodies for judges working part-time, with clear limitations on the exercise of other functions. The maximum number of judges should be 17.

29. In discussing the number of judges and their terms of service, the financial implications should not be overlooked. It might not be possible at the outset to finance what might be described as an ideal court.

30. His delegation endorsed the view of the United Kingdom that there should be a screening process for candidates. The mechanism must be objective and equitable geographical distribution must be ensured.

31. **Ms. JOYCE** (United States of America), referring to the suggestions made for provisions to be passed on to the Drafting Committee, said her delegation agreed that articles 35, 41, 46 and 50 should go to the Drafting Committee. As far as article 39 was concerned, the United States would prefer the contents of the square brackets in paragraph 3 (a) to be retained. Further discussion on that matter would be required; informal consultations might be useful.

32. With regard to article 45, the United States had some concerns on paragraph 3 and hoped that it could be considered further informally. Further discussion might also be required on article 48: the United States considered that, since the Prosecutor and judges were concerned, disciplinary measures should be dealt with in the Rules of Procedure and Evidence.

33. It would also be useful to have informal discussions on the proposal in document A/CONF.183/C.1/L.16 concerning article 51.

34. **Mr. SCHEFFER** (United States of America), referring to articles 35, 36, 37 and 40, said that the Court's moral authority would derive from its impartiality and credibility and it would only be as impartial and credible as its judges, the Prosecutor and others who assisted them. They must be individuals of the highest calibre. Despite the common goal of attracting and selecting the best people for the job, the draft Statute still reflected a certain degree of confusion as how to achieve that goal, especially with regard to judges. Some delegations had already been consulting informally in an attempt to find appropriate wording, and the United States was prepared to explore modalities and language, but was committed to certain core concepts. It was especially concerned about the need for criminal trial experience or its equivalent for judges who would be handling cases at the pre-trial or trial levels, whether as judges or advocates. It was critical that, for cases of the gravity of those that would be assigned to the Court, there should be judges with experience in regard to procedures. Some delegations had emphasized the need for judges to have knowledge of international law as well. The accommodation of that concern, however, should not be allowed to compromise the high standard that had been set for the way trials were conducted. The United States continued to believe that there should be a mechanism at the international level whereby countries could gain more information about candidates before election, and perhaps

even filter out clearly unqualified candidates, and looked forward to reviewing any proposals from other delegations in that regard.

35. The United States supported the need for overall balance in the composition of the Court and in particular the need to ensure the appointment of qualified women as well as men. Paragraph 8 (e) of article 37, which addressed the need for expertise on sexual and gender violence, was also important. On the basis of its experience in the Tribunals for the Former Yugoslavia and Rwanda, the United States believed that that issue needed to be covered explicitly in the Statute if the Court was to be responsive to the concerns of women caught up in international and internal conflicts.

36. Regarding the way in which the Chambers were to be set up, the provisions should be limited to broad parameters that would provide the necessary flexibility. The aim should be to set up a court with the capacity to adapt as needed. The need for a pre-trial function was clear. Provision should also be made for some limited rotation of judges between Chambers, but not between the Appeals Chamber and the Trial Chambers, since they were likely to be composed differently in terms of qualifications, and a truly independent Appeals Chamber was of particular importance. The Court should also be explicitly authorized to accept temporary assignments of personnel from States and other organizations, since that would provide a good way for the Court to obtain experienced staff at short notice and for limited periods to help with surges in its caseload.

37. As the United States had already indicated, it would prefer to see the Rules of Procedure and Evidence for the Court finalized before the conclusion of the Conference. Such a critical document would have to be completed before the Court could become operational and it was to be hoped that a way would be found to address that issue as soon as possible.

38. **Mr. VERWEIJ** (Netherlands) agreed that there should be continued informal consultations on the election and qualifications of judges.

39. With regard to article 35, he strongly favoured the establishment of a pre-trial chamber, but was flexible as to whether there should be one or more. With regard to article 36, he had doubts about the proposal for part-time judges and would appreciate further explanation of how a part-time system would work.

40. Article 37 warranted further study. One of the lessons learned from the ad hoc tribunals in that respect had been that, besides excellent personal qualifications, actual trial experience was vital. It would be particularly important, however, for judges with a knowledge of international law, including international humanitarian law, to be represented in the Chambers.

41. In relation to the selection and election process, further thought was needed on how an objective assessment of candidates could be ensured. He strongly supported the retention of paragraph 8 (e) of article 37.

42. **Mr. BELLO** (Nigeria), referring to article 35, agreed that the Court should have a pre-trial chamber, a trial chamber and an appeals chamber, and thought that the three chambers should be kept separate.

43. He supported the proposals for balanced geographical and gender representation. There should be judges from each geographical group as established by the United Nations General Assembly, and the principal legal systems of the world should be represented. If judges served for a period of five years, they should be eligible for re-election, but not if they served for nine years. Generally speaking, the provisions concerning the judges and the administration of the Court were acceptable, but in article 49 paragraphs 1 and 2 should be merged.

44. **Mr. CHUKRI** (Syrian Arab Republic) said that while he was flexible as to the number of pre-trial and trial chambers to be provided for in article 35 (b), he was in favour of only one appeals chamber. Regarding full-time versus part-time judges (article 36), his understanding was that all judges would be elected at the same time but would only be called upon to perform their functions when the need arose. While the number of judges could not be determined until a decision had been taken on the number of chambers, the number should be between 15 and 21. He fully supported paragraph 3 (a) of article 37; regarding paragraph 3 (b), recognized competence in international criminal law and international humanitarian law was particularly important, without prejudice to specialists in criminal law. International law and criminal law qualifications should be combined for the Appeals Chamber under article 40, paragraph 1.

45. With regard to paragraph 5 of article 37, two thirds of the States parties should constitute a quorum for elections. In the *chapeau* of paragraph 8, the expression "take into account the need for" was preferable to "bear in mind".

46. Paragraph 8 (a) was acceptable. Paragraph 8 (b) was unnecessary, as the main concern was to have as many legal systems as possible represented. Equitable geographical distribution was important, but gender balance might at times cause problems. Paragraph 8 (e) was unacceptable; he knew of no speciality called "gender violence". He hoped that the age restriction in paragraph 9 would be removed.

47. With regard to paragraph 10, five years was too short a period for judges to familiarize themselves with their task and to build up experience. They should hold office for nine years and be eligible for re-election.

48. A three-year period of service would be appropriate in paragraph 2 of article 40. The question of rotation between chambers was a sensitive one and the established rule was that no judge could consider a case in two different capacities. Provision should be made to avoid that.

49. **Mr. MATSUDA** (Japan), referring to article 35 (b), said that he would prefer pre-trial chambers set up on a case-by-case basis rather than a permanent chamber. In article 36, the second sentence should be deleted. In the last sentence, he agreed with the Coordinator that the Presidency should decide whether there was a need for judges serving on a full-time basis.

50. Without regard to paragraph 3 of article 37, his delegation shared the view that pre-trial chamber and trial chamber judges should have criminal trial experience. However, to allow people who were highly competent in international law to become judges of the Court, it would be appropriate to require either criminal trial experience or knowledge of international law. To ensure that there were enough judges with criminal trial experience, paragraph 7 should be retained and should require two thirds of the judges to have such experience.

51. In paragraph 4 of article 37, he preferred option 1. Under paragraph 5, judges should be elected by a two-thirds majority of the Assembly of States Parties. There should be no age limit, as in other similar bodies, and paragraph 9 should be deleted.

52. With regard to article 40, a term of office was inappropriate for chambers set up on a case-by-case basis. Paragraph 4 should therefore be deleted.

53. **Mr. PERRIN DE BRICHAMBAUT** (France) said that at least one pre-trial chamber should be established as soon as judges were elected. Experience in criminal law matters and experience in international law should be alternatives. Rather than having to have a specific number of years of professional experience, it should be sufficient

for judges to have extensive criminal law experience and the qualifications needed in their respective States for appointment to the highest judicial offices.

54. There should be at least 18 judges, elected by an absolute majority by the Assembly of States Parties on the basis of nominations submitted by each State party according to its national procedures.

55. The French delegation endorsed the views expressed by the United Kingdom delegation in respect of the examination and confirmation of the qualifications of judges. To guarantee their independence, judges should be elected for a non-renewable period of nine years.

56. **Mr. YEPEZ MARTINEZ** (Venezuela) said that he was prepared to agree to pre-trial chambers although in principle he felt that they were unnecessary, particularly at the outset. Members of the Court should devote themselves exclusively to their judicial functions, and should therefore serve on a full-time basis. Regarding article 37, he had no definite position on the number of judges; that would have to be determined on the basis of such criteria as geographical distribution and the need to include the world's main legal systems. The square brackets should be removed in paragraph 3 (a). Option 1 for paragraph 4 should be chosen; only States parties should be able to nominate judges for the Court. Paragraph 5 was acceptable, but the Assembly of States Parties should elect the judges by a two-thirds majority. Two thirds of the States parties should constitute a quorum. Paragraph 8 should refer to States parties and require representation of the principal legal systems of the world and equitable geographical distribution to be taken into account. Paragraph 9 could be deleted.

57. Paragraph 4 of article 39 was unnecessary. Regarding article 49, the privileges and immunities of members of the Court could be covered by a headquarters agreement with the host State. The question of working languages should be determined by consensus.

58. **Mr. TANKOANO** (Niger), referring to article 36, said that judges should serve on a full-time basis as in the International Court of Justice, irrespective of the number of cases before the Court.

59. **Mr. BARTON** (Slovakia), referring to article 35, said that he was flexible as to whether there should be one or several pre-trial chambers. With regard to article 36, judges should serve on a full-time basis. In article 37, paragraph 1, the number of judges should be between 15 and 18, and the text in square brackets should be kept. With regard to qualifications, the Court should consist of judges with experience in criminal and international law, but at the pre-trial and trial levels there should be a predominance of judges with criminal law experience. In the Appeals Chamber, there should be a balance of experience between criminal law and international law.

60. Judges should be elected by the Assembly of States Parties. Subparagraphs (d) and (e) of paragraph 8 were acceptable. A nine-year period would be appropriate in paragraph 10.

61. **Mr. LARREA DAVILA** (Ecuador) said that his delegation endorsed the comments made by the representative of Spain in connection with article 51 and associated itself with the sponsors of document A/CONF.183/C.1/L.16.

62. **Mr. MANSOUR** (Tunisia) said that the Court should consist of an appeals chamber, a trial chamber and a pre-trial chamber, the number of trial and pre-trial chambers depending on the number of cases before the Court. Judges should serve on a full-time basis. With regard to article 37, it was important that the principal legal systems and equitable geographical distribution should be taken into account in the election of judges, but paragraph 8 (e) was not necessary. The number of judges could vary according to the number of cases before the Court. He preferred option 2

for paragraph 4. The qualifications of judges in the Appeals Chamber and the Pre-Trial Chamber should not necessarily be the same. The Appeals Chamber should require higher qualifications and consist of five judges whereas the Pre-Trial Chamber should consist of three.

63. **Mr. SÖZEN** (Turkey) said that Part 4 of the draft Statute did not pose any real problems. In article 35, he would prefer an appeals chamber and a limited number of pre-trial chambers. The principle of equitable geographical distribution should ensure that there was not more than one judge from the same State. An age limit for judges was not provided for in the Statute of any other tribunal, and experience was the most important criterion.

64. **Mr. EL MASRY** (Egypt), referring to the articles that it was suggested should be submitted directly to the Drafting Committee, said that it was essential that article 45 should provide for the approval of the staff regulations by States parties. It might also be useful to include a reference to the need to deal with staff complaints, as well as a mechanism for resolving staff disputes. It was not clear in article 46 before whom the solemn undertaking would be made. It would be premature to submit article 51 to the Drafting Committee before taking a decision on document A/CONF.183/C.1/L.16, which his delegation fully supported.

65. With regard to the cluster of articles now under consideration, he was in favour of pre-trial chambers, in the plural, in article 35 (b). In article 37, paragraph 3 should emphasize impartiality, high moral stature and experience. The requirements in (i) and (ii) of paragraph 3 (b) should be alternatives; they should not both be requirements for each judge. Judges should be nominated by national groups in consultation with Governments. His delegation had strong reservations about the proposals for the Nominating Committee. In view of the many practical difficulties involved, the matter might best be left to the Assembly of States Parties. A possible procedure would be to have a series of ballots, allowing candidates to withdraw if they had little possibility of being elected. His delegation supported subparagraphs (a), (b), (c) and (d) of paragraph 8 but felt that subparagraph (e) was unnecessary; moreover, it did not mention other serious human rights violations such as torture and expulsions.

66. **Mr. PALACIOS TREVIÑO** (Mexico) supported the proposal contained in document A/CONF.183/C.1/ L.16, which was consistent with Mexico's general views on the use of the Spanish language. He also supported the comments of the United Kingdom on the professional qualifications for judges of the Court, as well as the methods of nomination and election. The election procedure should be as objective as possible, so that the best individuals, men or women, could be elected without any political influence. Nomination might best be left to national groups such as those in the Permanent Court of Arbitration. He was flexible as to the number of chambers in the Court, provided that there were sufficient to ensure that appeals, trials and pre-trial matters were dealt with by different people. He was also flexible as to the number of judges to be appointed, provided that different judges served different chambers.

67. **Mr. ZELLWEGER** (Switzerland), referring to paragraph 1 of article 37, said that the Court should be composed of no more than 15 judges, at least in its initial stages. Any increase in that number later on should be dealt with in accordance with the provisions on amendments to the Statute referred to in footnote 4 to paragraph 2 (a) of article 37. Switzerland intended to propose a new text for articles 110 and 111 which would cover the matter raised in that subparagraph.

68. With regard to paragraph 3 of article 37, care should be taken not to restrict the choice of candidates through criteria that were too narrow. Criminal trial experience and competence in international law should be alternatives; that was important for countries which did not have as large a pool of candidates representing both areas of competence as did the larger countries. For the same reason his delegation was against the strict criteria proposed regarding the

distribution of judges with experience in criminal law and judges with competence in international law in the different chambers.

69. It was important that judges should rotate between the Trial and Pre-Trial Chambers. To ensure that a judge did not hear the same case twice, teams of judges should be established as suggested in the footnote to article 40, paragraph 3.

70. **Mr. AL-THANI** (Qatar), referring to article 36, said that judges should serve on a full-time basis, to ensure complete impartiality. As the Court would be breaking new ground, it would be difficult to specify in paragraph 1 of article 37 the number of judges that would be required. There was also a need to ensure that the number could be increased if necessary. Paragraph 2 of article 37 was acceptable. In paragraph 5, election should be by the Assembly of States Parties on the basis of a two-thirds majority. Paragraph 8 (e) should be deleted because it was unduly selective. Age should not be a barrier to election, provided that a judge was in good health at the time. A five-year period of office would be reasonable, with three-year periods for the chambers under article 40.

71. **Ms. LI Ting** (China) said that the number of pre-trial chambers in article 35 would be determined by need and the provisions should therefore be kept flexible. The question of full-time or part-time service by judges in article 36 should not be determined solely on the basis of financial considerations. However, as the question had financial aspects, it should be decided by States parties.

72. China endorsed the views of Japan and France regarding criminal trial experience and competence in international law under article 37. The two areas of competence should be alternatives. Judges with experience in criminal trials would be required for the trial chambers. Paragraph 8 of article 37 was also important: the impartiality of the Court would depend on judges representing the principal legal systems of the world and there being equitable geographical distribution. The main forms of civilization should be represented; it was important that the Court should consider the stages of development and the situations of the different regions of the world. China was flexible, however, in respect of subparagraphs (d) and (e) of paragraph 8.

73. **Ms. VARGAS** (Colombia) said that she was in favour of the Permanent Court of Arbitration or the national groups referred to in the Statute of the International Court of Justice being responsible for the nomination of candidates. Judges in all chambers should work on a full-time basis except for those who had left the Court but were continuing to deal with cases that had not concluded. Judges should have competence in international law and particularly in international humanitarian law and human rights law, but criminal and trial experience was also important.

74. Judges should be elected by two thirds of the Assembly of States Parties. Among the criteria for election, it was important that the main legal systems of the world were represented, and that there should be equitable geographical distribution and gender balance. Judges should hold office for a term of nine years, non- renewable. The number of members of each chamber would depend on the decision taken on the total number of judges. It should be an odd number and not a high one, and would depend on work requirements.

75. **Mr. JANDA** (Czech Republic), referring to article 36, said that he would prefer judges to serve on a full-time basis from the outset. They should be elected by the Assembly of States Parties, and there should be a mixture of skills relating to criminal and international law among judges working in the Trial Chambers and Appeals Chambers. People with experience in criminal proceedings would be required for the Pre-Trial Chambers. Subparagraphs (d) and (e) of paragraph 8 should be retained with some editorial improvements in subparagraph (e), which could be left to the Drafting Committee.

76. **Mr. NYASULU** (Malawi) said that there should be between 15 and 18 judges to allow for three in the Presidency, seven in the Appeals Chamber, six in the Trial Chamber and two in the Pre-Trial Chambers. He would prefer to retain the full text of paragraph 3 (a) of article 37 and delete the square brackets. Qualifications should include criminal law or trial experience, together with professional competence in international law. Both (i) and (ii) in paragraph 3 (b) were necessary therefore, but some drafting changes might be useful to harmonize them. He preferred option 2 for paragraph 4; the Nominating Committee would also assess the requirements under paragraph 8, which should be retained in its entirety. Appeals judges should not serve in the Trial or Pre-Trial Chambers, but judges in the Trial and Pre-Trial Chambers could rotate. With regard to paragraph 10, either a term of five years with the possibility of re-election or single, staggered terms of nine years would be acceptable. In article 35 (b), he would prefer "Pre-Trial Chambers".

77. **Ms. WONG** (New Zealand) said that, to ensure the independence and effectiveness of the Court, the judges should be persons of high character, independence, impartiality and integrity, with recognized competence in international or criminal law and fluency in one of the working languages. She was also in favour of the principal legal systems of the world being represented, but not the main forms of civilization. She supported equitable geographical distribution and gender balance. Women were currently under-represented on international judicial bodies. The words "take into account the need for" should be retained in the *chapeau* of paragraph 8. Paragraph 8 (e) was important and should be retained, but the words "violence against children" should be replaced by "protection of children". The requirement in paragraph 3 (b) (i) for ten years' criminal law or trial experience would be too much if women were to be given due consideration as judges.

78. The reference to an "interested State" in paragraph 3 of article 42 was unacceptable.

79. **Mr. ASSHAIBANI** (Yemen) said that he was in favour of one trial chamber in article 35 (b), and in relation to article 36 endorsed the comments by the United Kingdom that judges should work on a full-time basis to guarantee their independence. With regard to judges' qualifications, practical experience was more important than academic qualifications. With regard to paragraph 8 of article 37, he emphasized the need for the representation of the principal legal systems and equitable geographical distribution.

80. Regarding paragraph 10, his delegation supported the proposal for a non-renewable nine-year term of office, on the understanding that a judge would be able to continue in office to complete a case. With regard to article 51, his delegation supported the proposal contained in document A/CONF.183/C.1/L.16, which should be discussed before referral to the Drafting Committee.

81. **Ms. MAKELA** (Finland) said that as far as paragraph 3 of article 37 was concerned, judges should be persons of high moral character and impartiality and have extensive criminal trial experience or recognized competence in international law, in particular international humanitarian law and human rights law. While criminal trial experience would be important for the Trial Chamber and Pre-Trial Chamber, those Chambers would also need judges with competence in international law. That requirement was even more important for judges of the Appeals Chamber.

82. In paragraph 8, she was strongly in favour of subparagraphs (d) and (e) being taken into account in the election of judges. The square brackets should be deleted. She was also in favour of having an age limit for judges, but was flexible as to what that limit should be. There should be small chambers, with five judges in the Appeals Chamber, three in the Trial Chamber and perhaps only one at the pre-trial level. That arrangement could be supplemented by a system of alternate judges. If the chambers were any larger, the number of situations in which judges would need to be disqualified might increase, which would hamper the functioning of the Court.

83. **Ms. DASKALOPOULOU-LIVADA** (Greece) said that, in paragraph 35 (b), she was in favour of providing for one or more pre-trial chambers, and in article 36 she would prefer judges working on a full-time basis. In paragraph 2 (a) of article 37, the President acting on behalf of the Court should be able to propose an increase, but not a decrease, in the number of judges. In paragraph 2 (b), she favoured a simple majority. Paragraph 3 (a) was of paramount importance. Paragraph 3 (b) should provide for "extensive" experience rather than "at least ten years", which was too rigid. Criminal trial experience should be sufficient. Recognized competence in international law should also be sufficient without further specification. Greece had as yet no clear position as to whether (i) and (ii) of paragraph 3 (b) should apply cumulatively, because that would be desirable but would not be feasible in most cases. She favoured option 1 for paragraph 4, with reference to "each State Party". In paragraph 5, she would prefer a two-thirds majority of States parties. The original number of judges should be 17 or 18. With regard to paragraph 8, she agreed with the Coordinator's suggestion that the phrase "bear in mind" should be used in the *chapeau*, and was flexible as to the retention of subparagraphs (d) and (e). In paragraph 10, she supported a non-renewable nine-year term of office. The last sentence of paragraph 1 of article 40 was inappropriate.

84. **Ms. BERGMAN** (Sweden) said that the organization of the Court was a task for the Court itself and could not be covered in detail in the Statute. She was in favour of a flexible solution in respect of the qualifications of judges, so that the Court as a whole, rather than each and every judge, would have a variety of skills and experience. Gender balance was particularly important. It should be left to the Presidency of the Court to ensure that chambers had judges with the requisite qualifications. The Pre-Trial Chamber and Trial Chamber should consist of three judges each, and the Appeals Chamber should have five judges. It should be possible to expand the Chambers by one or more judges if, for example, a long trial was anticipated. The proposal for a screening process to ensure the election of the best available judges worldwide was an interesting one. However, such a system would need to be transparent. Judges should hold office for a non-renewable period of nine years.

85. **Mr. MAHMOOD** (Pakistan) said that the reference in article 35 (b) should be to one Pre-Trial Chamber. In article 36, to minimize the financial implications, the Pre-Trial Chamber should only be established on a permanent basis once the Court was seized of a matter. States parties should decide by a two-thirds majority whether judges should serve on a full-time basis.

86. In Article 37, paragraph 2 (b), he favoured "a two-thirds majority of States Parties" without the words "present and voting at that meeting". He endorsed the views expressed by the representative of China on paragraph 8.

87. With regard to article 40, the Appeals Chamber should consist of five judges, the Trial Chamber of three judges and the Pre-Trial Chamber of one judge. The numbers should be kept to the minimum to ensure the efficiency of the Chambers and minimize expenditure.

88. **Mr. BAZEL** (Afghanistan) said that, in article 35 (b), he preferred "Trial Chambers" and "Pre-Trial Chambers". Judges should serve on a full-time basis under article 36. In paragraph 2 of article 37, he favoured the expression "acting on behalf of the Court". He shared the views of the representative of France on paragraph 3 (b). In paragraph 5, he favoured the election of judges by a two-thirds majority. In paragraph 8, only subparagraphs (a), (c) and (e) should be retained, the latter being amended by an additional sentence reading: "The expert on issues related to sexual and gender violence and violence against children should be a woman." In paragraph 10, he supported a nine-year term of office.

89. **Ms. DIOP** (Senegal) said that, among the articles that the Coordinator had suggested should be referred to the Drafting Committee, article 51 should only be referred to the Drafting Committee if accompanied by the proposal contained in document A/CONF.183/C.1/L.16.

90. She was in favour of a pre-trial chamber under article 35. The independence and impartiality of judges would best be assured if they served on a full-time basis, which would also ensure that conflicts of interest did not arise.

91. In paragraph 2 (a) of article 37, she was in favour of "the President acting on behalf of the Court" but was prepared to be flexible regarding the bracketed words "as well as any State Party". Paragraph 3 was satisfactory, but the drafting could be made clearer.

92. With regard to paragraph 8, and particularly subparagraphs (d) and (e), it was high time for discrimination against women in the legal field to cease and for a proper gender balance to be established. There were women with the high qualifications required. The International Criminal Tribunals for Rwanda and the Former Yugoslavia had been hampered by the lack of judges with experience in regard to violence against women, rape or discrimination against women. A woman who had been raped would naturally find it easier to talk about her experience to another woman. She appealed to all delegations to be as objective as possible in that regard.

93. Paragraph 9 should be deleted. She would prefer a nine-year, non-renewable term of office in paragraph 10.

94. **Mr. NATHAN** (Israel) said that article 35 (b) should provide for a trial chamber and pre-trial chambers to cover any need which might arise. Under article 36, judges should serve on a full-time basis to ensure their availability when needed and to be consistent with the nature of their office as judges of the Court.

95. Under paragraph 2 (a) of article 37, the President, acting on behalf of the Court, should be able to propose an increase or decrease in the number of judges according to the workload of the Court. Paragraph 3 (b) (i) should stipulate a specific minimum period of criminal trial experience as a judge, prosecutor or defending counsel or, as an alternative, recognized competence in international law. The number of judges needed with criminal law experience and the number with competence in international law should be specified. In addition to the formal qualifications of judges, it would be important to look into the actual experience and records of those offering their candidacy for the Court, a task which might be performed by a screening committee.

96. He preferred option 2 for paragraph 4. Under paragraph 5, the judges of the Court should be elected by secret ballot by a two-thirds majority of the States present and voting. The aim should be to eliminate political influence on the election of judges. In paragraph 8, subparagraphs (a), (c), (d) and (e) should be kept and subparagraph (b), which referred to a rather antiquated concept, should be deleted.

97. Article 40 should ensure that there was no rotation of judges between Appeals and Trial Chambers. Judges sitting in the Trial Chamber or Appeals Chamber would not be interchangeable. However, judges in the Trial Chamber might be eligible to serve in the Pre-Trial Chamber.

98. **Mr. AL AWADI** (United Arab Emirates) said that article 35 (b) should provide for pre-trial chambers which would be used when necessary and thus avoid the need to amend the Statute at a later stage. In article 36, he was in favour of judges serving on a full-time basis. In paragraph 2 (a) of article 37, the President should act only on behalf of the Court. Paragraph 3 (a) should be retained as it stood with the deletion of the square brackets and paragraph 3 (b) should stipulate both criminal law and trial experience. That did not mean that judges need not have additional qualifications. Under paragraph 4, each State party should have the right to submit nominations. In paragraph 5, judges

should be elected by secret ballot by a two-thirds majority of States parties present and voting, and two thirds of the States parties should constitute a quorum.

99. In paragraph 8, only subparagraphs (a) and (c) should be retained; that did not mean that the Court would not have access to the necessary expertise on questions of sexual or gender violence. In paragraph 10, judges should remain in office for nine years but not be eligible for re-election.

100. With regard to article 40, the Appeals Chamber should consist of seven judges, with five in the Trial Chamber and three in the Pre-Trial Chamber.

101. Regarding the articles to be referred to the Drafting Committee, article 51 should be referred to the Drafting Committee only if the Committee of the Whole accepted the proposal in document A/CONF.183/C.1/L.16.

102. **Mr. CORELL** (Representative of the Secretary-General), referring first to the Appeals Chamber, said that, as the rules stood, judges would be able to circulate between the Appeals Chamber and the Trial Chambers. That system functioned well at the national level, but would not be appropriate in the context of the International Criminal Court. It was important to bear in mind that judges rotating from the Trial Chambers to the Appeals Chamber would be disqualified except in very special circumstances.

103. With regard to the Trial Chambers, care should be taken to ensure that the Presidency had the necessary flexibility to ensure the smooth running of the Court. Rotation was important in any court and would be particularly important in the International Criminal Court provided that it was not tied strictly to dates.

104. At the pre-trial level, the Statute currently provided that the only task of the Pre-Trial Chambers would be to examine the pre-trial situation. That would disqualify all pre-trial judges rotating to the Trial Chambers.

105. It was important to bear those situations in mind in considering the total number of judges for the Court and the appropriate wording for the rules.

The meeting rose at 13.15 p.m.