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COMMITTEE OF THE WHOLE

SUMMARY RECORD OF THE 20th MEETING

Held at the Headquarters of the Food and Agriculture Organization of the United Nations
on Tuesday, 30 June 1998, at 10 a.m.

Chairman: Mr. P. KIRSCH (Canada)

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V.98-57473 (E)

The meeting was called to order at 10.20 a.m.

CONSIDERATION OF THE QUESTION CONCERNING THE FINALIZATION AND ADOPTION OF A CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT IN ACCORDANCE WITH GENERAL ASSEMBLY RESOLUTIONS 51/207 OF 17 DECEMBER 1996 AND 52/160 OF 15 DECEMBER 1997 (*continued*) (A/CONF.183/2/Add.1 and Corr.1; A/CONF.183/C.1/L.14/Rev.1, L.22, L.24 and L.29)

Part 13 of the draft Statute (*continued*)

1. **Mr. QU Wencheng** (China) said that he preferred option 4 in article 108, "Settlement of disputes", but could agree to option 2. Amendments should preferably be made only five or ten years after the Statute entered into force. They should, as far as possible, be adopted by consensus but, failing that, by a vote. He preferred option 1 for the review conference, and agreed with what had been said by the representative of Japan at the previous meeting. Article 113 should be deleted since it might cause confusion, especially the second sentence.

2. **Mr. KOURULA** (Finland) preferred option 3 in article 108, but was prepared to discuss possible additions related, for example, to what the representative of Australia had referred to as "administrative" issues. He was in favour of article 111 ("Review of the Statute"), and welcomed the Danish proposal (A/CONF.183/C.1/L.29). Article 113 could be accepted, for the reasons given by the representative of Norway.

3. **Ms. MEKHEMAR** (Egypt) thought that there was no need for an article on the settlement of disputes, since there were general rules applicable. If such an article was included, the arbiter should be a third party and not the Court itself.

4. A period of five or ten years would be appropriate before the introduction of any amendments to the Statute. Proposed amendments should be considered by a review conference. Given the significance of the Statute, the preference should be for the adoption of amendments by consensus but, failing that, the required majority should be two thirds of the States parties. Articles 110 and 111 could be merged because they covered the same topic. The Swiss proposal for those articles (A/CONF.183/C.1/L.24), differentiating between different kinds of amendments, would need careful study. He agreed with the text of article 112 subject to the deletion of the bracketed words "without any kind of discrimination", which were out of place in such a provision. Article 113 was not needed. He supported the first two paragraphs of article 115 ("Withdrawal"), but the bracketed text was repetitive and should be deleted.

5. **Mr. KERMA** (Algeria) preferred option 4 in article 108, namely the option of having no article on dispute settlement in the Statute. In article 110, paragraph 1, he would favour a five-year period from the date of entry into force of the Statute before amendments could be proposed. In paragraph 3 he preferred option 2, with provision for the adoption of amendments by a two-thirds majority of the States present and voting. In article 111, he preferred option 2, with the deletion of the square brackets around the word "Five". That article was very important, since it would provide for a review of the list of crimes falling within the jurisdiction of the Court. He had reservations about article 113 as currently worded. He accepted articles 112, 115 and 116, including the paragraph in square brackets in article 115.

6. **Mr. KIDA** (Nigeria) preferred option 2 in article 108. He was flexible about the number of years to be specified in article 110, paragraph 1. In paragraph 3 of article 110, he favoured option 2, with a requirement for a two-thirds majority of all States, and he favoured the deletion of paragraph 6.

7. **Mr. JERMAN** (United Arab Emirates) preferred option 2 in article 108 because it seemed more comprehensive, while remaining sufficiently flexible. The period specified in article 110, paragraph 1, should be long enough to enable the proposed preparatory commission to establish the necessary rules and procedures. He preferred option 2 of paragraph 3, with the adoption of an amendment at a review conference by a two-thirds majority of all the States parties. In paragraph 5 the proportion of the States parties depositing ratifications or acceptances should be two thirds. He found articles 111 and 112 acceptable. Article 113 should be in line with the 1969 Vienna Convention on the Law of Treaties.

8. **Mr. WELBERTS** (Germany), referring to article 108, said that he was sensitive to the argument that no reference to settlement of disputes was needed. However, if there was such a reference, he would strongly favour option 3. Switzerland's proposal for article 110 should be given full consideration. In article 111, he favoured option 2. Concerning article 112, the Statute, in his view, stood by itself for the purpose of signature and ratification. Article 113 was very useful and should be kept. In article 115, the bracketed third paragraph should be kept.

9. **Ms. AGUIAR** (Dominican Republic) said that, if a provision on settlement of disputes were to be included, the Court itself should have the power to settle them. That principle was already enshrined in international law. She could envisage a merger of articles 110 and 111. A review of the Statute should take place after five years, to examine any difficulties encountered in its application and the possibility of amending the list of crimes in article 5. In article 110, paragraph 3, she preferred option 2, with a two-thirds majority of States present and voting. She supported option 2 for article 111. Article 113 should be retained as it stood. The purpose was to fill the void between the moment of signing the Statute and its entry into force.

10. **Mr. EFFENDI** (Indonesia) said that he supported the spirit and content of article 113, but thought that it might be possible to find an alternative way of achieving the purpose aimed at.

11. **Mr. HAFNER** (Austria) preferred option 3 in article 108, since option 2 might give rise to legal problems. If there was a general preference for option 2, he could accept it provided that the independence of the International Criminal Court was satisfactorily safeguarded. In article 110, he favoured option 2 of paragraph 3, perhaps prefaced by reference to a duty to try to achieve a consensus. In option 2, the majority should be a two-thirds or three-quarters majority of all the States parties, not only of those present and voting. In article 111, he particularly favoured option 2 because it drew a distinction between amendment and review mechanisms. The distinction related in particular to the effects of entry into force. Article 112 raised no problems, except that he saw no need for the words "without any kind of discrimination". He was very much in favour of the main thrust of article 113, which went beyond article 18 of the Vienna Convention on the Law of Treaties. He could accept article 115, though paragraph 2 and the bracketed paragraph could be merged.

12. **Mr. OUMAR MAIGA** (Mali) preferred option 2 in article 108, because it covered disputes between States parties as well as disputes relating to the Court's judicial activities. In article 110, he supported the first paragraph. In paragraph 3, he preferred option 2, with a two-thirds majority of States parties. He agreed with Australia that paragraph 6 could be deleted. In article 111, he preferred option 2, with provision for a five-year period. In article 112, the words "without any kind of discrimination" could perhaps be deleted. Article 113 could be deleted, because it was covered by the Vienna Convention on the Law of Treaties. The bracketed paragraph at the end of article 115 should become paragraph 2.

13. **Mr. DIMOVSKI** (The former Yugoslav Republic of Macedonia) said he wished to reiterate that, without the bracketed wording in the first line of article 112, paragraph 1, his delegation would not be able to sign the Convention. The effect of what had been proposed by some delegations would be to prevent his delegation from signing.

14. **Mr. NATHAN** (Israel) said that article 108 should provide for disputes between States to be dealt with initially by negotiation and, if negotiations failed, for the matter to be referred to the Assembly of States Parties. He therefore preferred option 2. He had no particular problem with the present draft of article 110, but preferred option 2, with a majority of three quarters of all the States parties. He preferred option 2 in article 111, but the convening of a review conference should perhaps be made subject to there being a minimum number of States interested in the convening of such a conference.

15. **Mr. ROBINSON** (Jamaica) thought that article 112 was not entirely consistent with United Nations practice, in that, under paragraph 2, the Statute was said to be subject to ratification, acceptance or approval by signatory States. It was enough to say that the Statute was subject to ratification, acceptance, approval or accession.

16. **Mr. GADYROV** (Azerbaijan) supported option 3 in article 108; all disputes should be settled by the Court itself.

17. In article 110, in principle, he favoured option 2, but he thought that the kind of majority should depend on the nature of the proposed amendments. For an amendment of a technical nature, a simple majority should be enough. If, however, the proposed amendment concerned issues fundamental to the concept of international criminal justice, or significant changes to the Statute and jurisdiction, a majority of two thirds or three quarters should be required.

Preamble to the draft Statute

18. **Mr. YAÑEZ-BARNUEVO** (Spain), introducing his delegation's proposal in document A/CONF.183/C.1/L.22, said that the draft preamble in document A/CONF.183/2/Add.1 was, in his view, insufficient. The first paragraph in his delegation's draft was new; it was intended to underscore the basic motive for the creation of the International Criminal Court—the fact that, throughout the present century, millions of people had been victims of grave crimes that affected humanity. It also reflected an idea that appeared in the Preamble to the United Nations Charter. The next two paragraphs were based on the first two paragraphs of the original draft. They stressed the collective wish of the States represented at the Conference to foster and improve international cooperation in bringing to justice those who perpetrated grave international crimes, and the determination to create an International Criminal Court as a permanent body within the United Nations system, with jurisdiction over the most serious crimes that affected the international community as a whole.

19. The next paragraph was based on the text suggested in footnote 2 in document A/CONF.183/2/Add.1. The fifth paragraph was new, but reflected language found in other similar conventions. It stressed two particular concerns found in the United Nations Charter, the maintenance of international peace and security and respect for universal human rights.

20. The final paragraphs were safeguard clauses. One was based on the fourth preambular paragraph of the definition of aggression annexed to General Assembly resolution 3314 (XXIX), and made it clear that the Statute should not be interpreted as in any way affecting the scope of the provisions of the Charter relating to the functions and powers of the organs of the United Nations. The last paragraph was based on the preambular paragraphs of certain conventions dealing with the codification and progressive development of international law, and stressed that the Statute would not prevent general international law from continuing to govern those questions not expressly regulated in the Statute.

21. **Mr. NATHAN** (Israel) said that, although he would be quite happy with the existing text of the draft preamble, he had no major problem with the draft presented by the delegation of Spain. However, he had doubts about the proposed reference to a court "within the United Nations system", since what was proposed was that the Court should be an independent organ and not part of the United Nations system. He also thought that the sixth paragraph of the Spanish proposal was superfluous, because it was obvious that the Statute of the Court could have no impact on the provisions of the Charter of the United Nations.

22. In the third paragraph of the original draft and the fourth paragraph of the Spanish proposal, he would prefer the expression "criminal jurisdictions" to "criminal justice systems". The words "such a court is intended to be complementary" in the original draft should be replaced by the mandatory form "the Court shall be complementary".

23. **Ms. MEKHEMAR** (Egypt) said that the reference should be to "criminal jurisdictions", in line with the text of article 1 of the draft Statute.

24. **Mr. NYASULU** (Malawi) had no problems with paragraphs 1 and 2 of the text in document A/CONF.183/2/Add.1. He agreed that in the third paragraph the term should be "criminal jurisdictions". That paragraph, however, could be deleted, since it added little that was not contained in article 1. To replace the words "is intended to be complementary" by the words "shall be complementary" would be to move words from article 1 to the preamble. He would rather retain those words in article 1. He had no serious problems with the Spanish proposal in document A/CONF.183/C.1/L.22 except that it seemed to say the same as the present draft but at greater length. The fourth paragraph was unnecessary, but the second paragraph could perhaps take care of the point raised in the second sentence of article 113.

25. **Mr. MINOVES TRIQUELL** (Andorra) said that the preamble should briefly refer to the principles underlying the Statute, and it should also contain inspirational language and give the Statute a certain tone. The Spanish proposal, unlike the original draft, went a long way to meeting those objectives. He particularly supported the reference to the principles of the United Nations Charter.

26. **Ms. SHAHEN** (Libyan Arab Jamahiriya) said that she preferred the original draft of the preamble, but that the reference should be to complementarity to "criminal jurisdictions".

27. **Mr. AL-AMERY** (Qatar) supported the proposal to speak of "jurisdictions". He had no problems with regard to the first and second paragraphs.

28. **Mr. RINGERA** (Kenya) said that he preferred the original draft; the Spanish proposal was a little too wordy. He had no problem with the first two paragraphs of the original draft. For the third paragraph, however, he preferred the wording given in footnote 2 in the original draft.

29. **Mr. CHUKRI** (Syrian Arab Republic), supported by **Mr. MAHMOOD** (Pakistan), said that the wording of the third paragraph should be aligned with article 1.

30. **Mr. AGBETOMEY** (Togo) welcomed the Spanish proposal, which was more explicit than the original draft. However, certain expressions in the original draft, such as "crimes of concern to the international community", were preferable to the Spanish wording. In the fourth paragraph of the Spanish draft, he would prefer the formula "shall be complementary to national criminal jurisdictions".

31. **Mr. Young-wook CHUN** (Republic of Korea) said that the present wording of the second and third paragraphs of the original draft was rather restrictive and did not reflect the noble purpose of the Statute. The Spanish proposal provided a good basis for a new draft, and he supported it.

32. **Mr. GEVORGIAN** (Russian Federation) said that he had no particular problems with the original text of the preamble, although he would prefer the formula proposed in the footnote for the third paragraph. He was also ready to support the Spanish proposal. He welcomed the third paragraph, and did not think that the independence of the International Criminal Court would be threatened by its being established within the United Nations system. The Court should function within the existing system of international relations. He supported the fifth paragraph, because the purposes and principles of the United Nations Charter concerning the maintenance of international peace and security and respect for human rights were directly connected with the activities of the future Court.

33. **Mr. GÜNEY** (Turkey) thought that it was somewhat premature to discuss the preamble before the operative part of the Statute had been completed. In principle, he had no problem with the original draft, although he would prefer the wording in the footnote for the third paragraph.

34. **Ms. WILLSON** (United States of America) said that, in general, she found the original draft of the preamble acceptable, but could support many elements of the Spanish proposal.

ADOPTION OF A CONVENTION AND OTHER INSTRUMENTS DEEMED APPROPRIATE AND OF THE FINAL ACT OF THE CONFERENCE (A/CONF.183/2/Add.1; A/CONF.183/C.1/L.16)

35. **Mr. RAMA RAO** (India), speaking as Coordinator, introduced the draft Final Act, contained in part two of document A/CONF.183/2/Add.1. It was based on the usual form for final acts of conferences. The finalized Statute or convention would be inserted in the Final Act or annexed to it. In paragraph 14, the names of participating States would be inserted by the Secretariat from the list provided by the Credentials Committee. The Secretariat would also complete the blank spaces in paragraphs 15 to 19. The appropriate document numbers would be entered in paragraph 23. The square brackets in paragraph 24 related to the period during which the Statute would be open for signature, something that was still to be decided by the Conference.

36. In paragraph 26, there was a bracketed reference to a resolution on the establishment of a preparatory commission for the International Criminal Court. The brackets could perhaps now be removed.

37. He suggested that, subject to the necessary additions to which he had referred, the draft Final Act could be passed on to the Drafting Committee.

38. In the draft resolution in the annex, there were various issues to be decided regarding the establishment of the Preparatory Commission. There were several sets of square brackets in the draft, and three footnotes. One question concerned when the Commission should start its work. The main function of the Commission would be to make concrete proposals concerning arrangements for establishing the Court and bringing it into operation. Regarding paragraph 4 (d), it might be asked, since the Registrar would be responsible for proposing staff regulations under draft article 45, paragraph 3, of the Statute, what the function of the Commission would be in that connection. The suggestion was that the Commission should prepare a draft so that something would be available in advance.

39. A decision was also needed on whether the Commission would convene the Assembly of States Parties. Based on his consultations, he thought it might be appropriate for the Secretary-General rather than the Preparatory

Commission to convene the Assembly of States Parties. He therefore proposed the deletion of the text in square brackets in paragraph 5.

40. **Mr. YAÑEZ-BARNUEVO** (Spain), referring to paragraphs 23 and 24 of the draft Final Act, expressed the view that the established term "Statute" rather than the term "Convention" should be used in the title of the instrument establishing the International Criminal Court. That would also help to avoid confusion with other Rome conventions.

41. In paragraph 26, the brackets around "Resolution on the Establishment of the Preparatory Commission for the International Criminal Court" should be removed. Turning to the annexed resolution, he said that, under paragraph 1 of the operative part, he would like to see the Preparatory Commission convened as soon as possible following the signature of the Statute and once the United Nations General Assembly had been able to take action as indicated in paragraphs 7 and 8. The Commission should be convened, at the initiative either of the General Assembly or of the Secretary-General, once a stated number of signatures was received, and the number did not need to be very high.

42. He wished also to draw attention to document A/CONF.183/C.1/L.16, containing a proposal, submitted by his delegation along with others, to amend the draft resolution by adding a paragraph 3 *bis* according to which the official and working languages of the Preparatory Commission would be those of the United Nations General Assembly. That would reflect the established practice for such preparatory commissions.

43. Finally, with regard to the tasks of the Preparatory Commission, he was not convinced that it should discuss elements of offences at that stage. He agreed with all the other tasks listed.

44. **Ms. WILLSON** (United States of America) said that paragraphs 1 to 23 of the draft Final Act presented no particular problems for her delegation. For the reasons already explained, the United States had requested the brackets contained in paragraph 24. Bearing in mind the need to pass articles on to the Drafting Committee, her delegation would accept the words in brackets in paragraph 24 of the Final Act and the corresponding words in brackets in article 112 of the draft Statue; however, it maintained its position that the Rules of Procedure and Evidence and the elements of offences were an integral part of the Statute and must be completed prior to its entry into force.

45. The brackets in paragraph 26 simply reflected the fact that there were still outstanding issues to be considered in the draft resolution concerned. They included the financing of the Preparatory Commission and the final preparation of the Rules of Procedure and Evidence.

46. The bracketed language in subparagraph (f) of operative paragraph 4 of the draft resolution should be deleted. Article 49 of the Statute would provide adequate privileges and immunities. Additionally, it was anticipated, as reflected in subparagraph (c), that the host country would conclude a headquarters agreement with the Court; that agreement should provide for the necessary privileges and immunities.

47. **Mr. BÜCHLI** (Netherlands) agreed that paragraph 4 (f) was redundant, as the general privileges and immunities of the Court would be covered by the Statute.

48. **Mr. KROKHMAL** (Ukraine) said that the dots at the end of paragraph 26 after the list of resolutions presumably meant that the list was not exhaustive. Some questions which were difficult to deal with within the framework of the Statute itself could perhaps be solved in the resolutions adopted by the Conference. The question of privileges and immunities was adequately dealt with in the draft Statute.

49. **Mr. AL ANSARI** (Kuwait) agreed that the term "Statute" should be used rather than "Convention". In paragraph 1 of the draft resolution, the wording should be "... as early as possible at a date to be decided by the General Assembly of the United Nations ...". Regarding the number of required signatures, 50 would be an acceptable figure, representing almost one third of the total number.

50. **Mr. GÜNEY** (Turkey) thought that paragraph 21 of the Final Act should refer to the draft originally prepared by the International Law Commission, and should read: "The Conference had before it a draft Convention on the Establishment of an International Criminal Court originally prepared by the International Law Commission and transmitted by the Preparatory Committee in accordance with its mandate."

51. **Mr. POLITI** (Italy) supported the removal of the brackets in paragraph 26. Referring to paragraph 24 and footnote 1 to the draft resolution, he reiterated his view that the Statute stood by itself and any secondary instrument, such as the Rules of Procedure and Evidence, should not affect the opening for signature or entry into force of the Statute.

52. On paragraph 1 of the draft resolution, he considered that the Preparatory Commission should be convened as soon as possible and that the number of signatures necessary to make paragraph 1 operative should not be very high. He supported the deletion of subparagraph (f). Finally, he agreed with the Coordinator regarding the deletion of the text in brackets in paragraph 5.

53. **Mr. KAWAMURA** (Japan), referring to paragraph 1 of the draft resolution, said that, as the Preparatory Commission's task was to propose practical arrangements for the establishment of the Court, it should be set up as soon as possible.

54. It might be appropriate to mention who was to draft the Rules of Procedure and Evidence, perhaps the United Nations Secretariat. He would support the deletion of subparagraph (d) of paragraph 4, because the staff regulations would be prepared by the Registrar as prescribed in paragraph 3 of article 45. Lastly, subparagraph (f) should be deleted, for the reason given by other speakers.

55. **Mr. GONZALEZ GALVEZ** (Mexico) had serious misgivings about the contents of the square brackets in paragraph 4 (a) of the draft resolution. It should be made clear that preparation of a text on elements of offences would take place at a later stage.

56. **Mr. MOMTAZ** (Islamic Republic of Iran) shared the views expressed by the representative of Turkey on the wording of paragraph 21 of the draft Final Act. In paragraph 23, he agreed that "Convention" should be replaced by "Statute". He was against deleting subparagraph (f) of paragraph 4 of the draft resolution, since article 49 of the draft Statute was not sufficiently explicit on privileges and immunities. He did not think it a good idea for the first meeting of the Commission to be convened by the Assembly of States Parties. A reference should also be made to the working languages of the Preparatory Commission.

The meeting rose at 12.40 p.m.