

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

Rome, Italy
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32nd meeting of the Committee of the Whole

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paragraph 1 and paragraph 2 of article 10. Lastly, he noted that article 10 omitted to mention the important issue of referral of situations by the Council acting under Chapter VII of the Charter of the United Nations, which was, however, mentioned elsewhere, in article 6 (b).

44. **The Chairman** said that consideration of the Bureau discussion paper on part 2 (A/CONF.183/C.1/L.53) was thus concluded.

The meeting rose at 7.30 p.m.

32nd meeting

Friday, 10 July 1998, at 3.15 p.m.

Chairman: Mr. Kirsch (Canada)

A/CONF.183/C.1/SR.32

Agenda item 11 (*continued*)

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 (A/CONF.183/2/Add.1 and Corr.1, A/CONF.183/C.1/L.45/Add.2 and Corr.1, A/CONF.183/C.1/L.57, A/CONF.183/C.1/WGP/L.14/Add.2 and A/CONF.183/C.1/WGPM/L.2/Add.5 and Corr.1)

DRAFT STATUTE

PART 5. INVESTIGATION AND PROSECUTION (*continued*)

PART 6. THE TRIAL (*continued*)

Report of the Working Group on Procedural Matters (continued) (A/CONF.183/C.1/WGPM/L.2/Add.5 and Corr.1)

1. **Ms. Fernández de Gurmendi** (Argentina), Chairman of the Working Group on Procedural Matters, introducing the report of the Working Group (A/CONF.183/C.1/WGPM/L.2/Add.5 and Corr.1), said that the Group was transmitting to the Committee of the Whole for consideration article 54 bis, paragraph 1 (c), and article 72. Paragraph 4 of article 72 had been deleted. The footnote to paragraph 1 of that article was also to be deleted in the light of the fact that a proposal for a new paragraph was currently awaiting discussion.

2. **The Chairman** said that, if he heard no objection, he would take it that the Committee of the Whole wished to refer the provisions contained in the report, as orally amended, to the Drafting Committee.

3. *It was so decided.*

PART 4. COMPOSITION AND ADMINISTRATION OF THE COURT (*continued*)

Recommendations of the Coordinator (continued) (A/CONF.183/C.1/L.45/Add.2 and Corr.1)

4. **Mr. Rwelamira** (South Africa), Coordinator, introducing his report on part 4 of the draft Statute (A/CONF.183/C.1/L.45/Add.2

and Corr.1), drew attention to the new text being recommended for article 37, paragraph 1. That text would have implications for article 37, paragraph 5 (a), which had already been submitted to the Drafting Committee, and which would now need to be amended so as to specify that the number of judges of the International Criminal Court was 18. Article 37, paragraph 4 bis, as currently worded, would entail the consequential deletion of the words “[on each of the lists referred to in paragraph 4 bis]” from paragraph 8 (b). The words “violence against women and children”, in article 37, paragraph 7 (2), should be amended to read: “violence against women or children”. In article 40 a footnote should be added at the end of paragraph 1, to read: “Some delegations expressed the view that the predominance of judges with criminal trial experience should be reflected in the composition of the Chambers.”

5. One paragraph of article 49 was still pending, and would be transmitted to the Committee at a later stage.

6. **Mr. Krokmal** (Ukraine) said that his delegation welcomed the text of article 37 submitted in document A/CONF.183/C.1/L.45/Add.2 and Corr.1, which was a significant improvement on the original text proposed by the Preparatory Committee on the Establishment of an International Criminal Court. However, it was extremely important that the principle of equitable geographical representation should be applied not only at the candidate selection stage but also at the stage of the elections proper. The text of article 37, paragraph 1, as originally submitted by the Preparatory Committee had included a bracketed wording providing for a figure to serve as a criterion for equitable geographical representation. That provision had been omitted from the text proposed by the Coordinator, and should be reinstated. Accordingly, his delegation, together with the delegations of Belarus and Kazakhstan, was submitting a draft resolution on the question (A/CONF.183/C.1/L.57), which he urged the Committee to support.

7. **Mr. Shukri** (Syrian Arab Republic) said that he wished it to be recorded that his delegation strongly opposed article 37, paragraph 4 bis, and also the consequential amendment to paragraph 8 (b).

8. **The Chairman** asked if he could take it that the Committee of the Whole agreed to refer the provisions contained in the report of the Coordinator, as orally amended, to the Drafting Committee.

9. *It was so decided.*

PART 7. PENALTIES (*continued*)

Report of the Working Group on Penalties (continued)
(A/CONF.183/C.1/WGP/L.14/Add.2)

10. **Mr. Fife** (Norway), Chairman of the Working Group on Penalties, introducing the report of the Working Group (A/CONF.183/C.1/WGP/L.14/Add.2), said that the Group was transmitting to the Committee for consideration article 75,

paragraph 1. In that connection, he drew attention to a footnote indicating that the adoption of the paragraph was without prejudice to the issue of the inclusion or the non-inclusion of the death penalty, and also without prejudice to the structure of article 75. The Working Group also transmitted for consideration article 77, paragraph 3.

11. **The Chairman** said that, if he heard no objection, he would take it that the Committee of the Whole wished to refer the provisions contained in document A/CONF.183/C.1/WGP/L.14/Add.2 to the Drafting Committee.

12. *It was so decided.*

The meeting rose at 3.35 p.m.

33rd meeting

Monday, 13 July 1998, at 10.20 a.m.

Chairman: Mr. Kirsch (Canada)

A/CONF.183/C.1/SR.33

Agenda item 11 (*continued*)

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 (A/CONF.183/2/Add.1 and Corr.1, A/CONF.183/C.1/L.45/Add.3, A/CONF.183/C.1/L.59 and Corr.1, A/CONF.183/C.1/L.61 and Corr.1, A/CONF.183/C.1/WGAL/L.2, A/CONF.183/C.1/WGE/L.14/Add.1 and Corr.1 and A/CONF.183/C.1/WGPM/L.2/Add.6 and Corr.1)

DRAFT STATUTE

PART 2. JURISDICTION, ADMISSIBILITY AND APPLICABLE LAW (*continued*)

Proposal prepared by the Bureau (A/CONF.183/C.1/L.59 and Corr.1)

Article 5. Crimes within the jurisdiction of the Court

Article 5 bis. Genocide

Article 5 ter. Crimes against humanity

Article 5 quater. War crimes

Article xx. Elements of crimes

Article Y

Article 6. Exercise of jurisdiction

Article 7. Preconditions to the exercise of jurisdiction

Article 7 bis. Acceptance of jurisdiction

Article 7 ter. Acceptance by non-States Parties

Article 8. Temporal jurisdiction and non-retroactivity

Article 10. Role of the Security Council

Article 11. Referral of a situation by a State

Article 12. Prosecutor

Article 15. Issues of admissibility

Article 16. Preliminary rulings regarding admissibility

Article 18. *Ne bis in idem*

1. **The Chairman** invited the Committee of the Whole to begin consideration of the proposal for part 2 prepared by the Bureau and contained in document A/CONF.183/C.1/L.59 and Corr.1, some of whose provisions repeated or modified those contained in document A/CONF.183/C.1/L.53. Ways must now be found of resolving a number of hitherto intractable issues. It was not enough merely to advocate inclusion of elements in the Statute, without also giving thought to the problems that would result from their inclusion.

2. The Bureau invited comments on five specific issues: acceptance of the jurisdiction of the International Criminal Court, automatic or opt-in; preconditions to the exercise of jurisdiction; the options for suspension of investigation or prosecution by the Security Council; the desirability of additional safeguards for the Prosecutor's role; and the desirability of a provision – binding or otherwise – on elements of crimes.

3. **Mr. von Hebel** (Netherlands), Coordinator, introducing document A/CONF.183/C.1/L.59 and Corr.1, said that, with respect to article 5, the Bureau proposed that the jurisdiction