

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

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18th meeting of the Committee of the Whole

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18th meeting

Monday, 29 June 1998, at 10.25 a.m.

Chairman: Mr. Kirsch (Canada)

A/CONF.183/C.1/SR.18

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 and A/CONF.183/C.1/L.16)

DRAFT STATUTE

PART 11. ASSEMBLY OF STATES PARTIES

PART 12. FINANCING OF THE COURT

1. **Mr. S.R. Rao** (India), Coordinator for parts 11 and 12, said that part 11 consisted of article 102. With respect to paragraph 1, he suggested that the Committee of the Whole should focus on the question of which States should be members or observers in the Assembly of States Parties. By way of an analogy, he noted that several States not yet parties to the United Nations Convention on the Law of the Sea took part in meetings of the States parties to the Convention as observers.

2. In paragraph 2, which dealt with the functions of the Assembly, some subparagraphs or parts of subparagraphs were in square brackets.

3. Paragraph 2 (a) referred to the Preparatory Commission for the International Criminal Court whose establishment was proposed (see A/CONF.183/2/Add.1 and Corr.1, annex).

4. On paragraph 2 (d), he said that it was considered that the Assembly should approve the budget of the Court, while the budget estimates could be prepared by the Court itself. Paragraph 2 (e) dealt with the possibility that additional judges might be required. Paragraph 2 (f), on matters relating to non-cooperation, would have to be coordinated with article 86, in part 9 of the draft Statute. Paragraph 2 (g) covered possible future functions of the Assembly which could not be foreseen at present.

5. Paragraph 3 dealt with the Bureau of the Assembly. On 3 (a), a decision was needed as to what the number of members should be. It had also been suggested that there should be more than one Vice-President. The criteria for election of the Bureau (3 (b)) might be considered in the light of decisions taken concerning other bodies mentioned in the Statute.

6. Paragraph 3 (c) referred to other subsidiary bodies that might be established by the Assembly. A decision was needed as to whether any oversight mechanism should deal with all the operations of the Court or only with non-judicial administration.

7. Paragraph 4 mentioned the possibility of holding special sessions of the Assembly, and the question was whether they could be convened by the Bureau or should be convened only at the request of one third of the States parties.

8. Paragraph 6 was in square brackets. It dealt with loss of voting rights by States failing to pay contributions and would be subject to finalization of the provisions on the financing of the Court.

9. Turning to part 12 ("Financing of the Court"), he said that article 104 dealt with the funds of the Court, and there were three options. According to option 1, the funds would comprise assessed contributions made by States parties. Under option 2, the expenses of the Court would be borne by the United Nations, subject to the approval of the General Assembly. That would imply that not only the States parties to the Statute but all States Members of the United Nations would be contributing to the expenses of the Court. Option 3 provided that the Court's funds should include both assessed contributions by States parties and funds provided by the United Nations, but that during an initial phase, still to be determined, the expenses should be borne by the United Nations, subject to the approval of the General Assembly.

10. Article 105 dealt with voluntary contributions, which were to be utilized in accordance with criteria adopted by the States parties. With respect to article 106 ("Assessment of contributions"), a decision still had to be taken as to whether assessments should be based on the scale used for the regular budget of the United Nations or on a multi-unit class system like that used in the International Telecommunication Union or the Universal Postal Union.

11. He suggested that informal discussions should be held on the question of financing.

12. **Mr. Yáñez-Barnuevo** (Spain), introducing the amendment in document A/CONF.183/C.1/L.16, said that the proposal relating to article 102 was for the addition of a paragraph specifying that the official and working languages of the Assembly of States Parties should be those of the General Assembly, namely Arabic, Chinese, English, French, Russian and Spanish.

13. With regard to article 102, paragraph 1, he considered that the Assembly should be composed of States parties but that other States signatories either to the Statute or to the Final Act should participate as observers.

14. With regard to paragraph 2, he was in favour of the Assembly's considering recommendations of the preparatory

commission and considering any question relating to non-cooperation by States parties.

15. As to paragraph 3 (a), the President of the Court, the Prosecutor and the Registrar should be able to participate as observers but not as members in the meetings of the Bureau; the judicial functions of the Court must be kept separate from political and administrative considerations and the functions of the Assembly of States Parties.

16. With regard to paragraph 5, for decisions of the Assembly the majority should be half of the States parties plus one, except for amendment of the Statute and similar matters.

17. It would be important to include paragraph 6 as an incentive for payment of contributions on time and in full.

18. The key article in part 12 was article 104, and his delegation considered that the only option on which consensus could be reached was option 3.

19. With regard to article 106, the assessment of contributions should be based on the scale used for the regular budget of the United Nations. References should be made to the Assembly of States Parties in that article and in articles 103 and 105.

20. **Mr. Skibsted** (Denmark), speaking on part 12 and in particular article 104 and its three options, said that his delegation considered that stable financing was essential for the International Criminal Court to run effectively and smoothly. Financing of the Court should be a collective responsibility of all States, given the Court's universal nature and mandate. The establishment of the Court would be relatively expensive, and the financial burden of sharing in the costs should not be a disincentive to ratifying the Statute. The funding system should also reflect the Security Council's special responsibility for maintaining international peace and security. Expenses connected with the referral of situations to the Court by the Council should not be borne by States parties alone. Moreover, funding by States parties might subject the Court to the control of a small number of States. Attempts to finance international bodies entirely from contributions by States parties had proved unworkable in the past. For instance, the work of the Committee against Torture and the Committee on the Elimination of Racial Discrimination had been paralysed because dues had not been paid, and human rights monitoring bodies were now financed from the regular budget of the United Nations. The International Court of Justice was funded collectively by all States through the regular budget of the United Nations, even though only some 50 Member States accepted the compulsory jurisdiction of the Court; those States did not assume greater financial responsibility or greater budgetary control. Voluntary contributions should be encouraged, but only as additional funding.

21. Lastly, penalties for non-payment of contributions should be incorporated in the Statute.

22. **Mr. Mahmoud** (Iraq), speaking on article 102, said that his delegation would like the last sentence of paragraph 1 to read as follows: "The signatories of the Statute or the Final Act may be observers in the Assembly."

23. With respect to paragraph 2 (e), his delegation was in favour of full-time judges; the reference to judges appointed on a part-time basis should be deleted.

24. With regard to paragraph 2 (f), his delegation considered that the Assembly of States Parties should be the sole body to consider non-cooperation by States parties or States not parties.

25. Regarding paragraph 3 (b), he considered that the Bureau should be elected on the basis of equitable geographical distribution; it was insufficient to say that equitable geographical distribution should be "taken into account".

26. Turning to part 12, he said that his delegation preferred option 1 for article 104, with the funds of the Court comprising assessed contributions made by States parties.

27. **Mr. Al Hoiesh** (Saudi Arabia) said that his delegation would prefer option 3 for article 104 and would like to keep the provision for voluntary contributions in article 105.

28. With respect to article 106, his delegation would prefer the Court's scale of assessments to be that of the regular budget of the United Nations.

29. **Mr. Al-Shaibani** (Yemen) said that his delegation also preferred option 3 in article 104. With regard to article 106, his delegation would prefer the scale of assessment used for the regular budget of the United Nations.

30. **Ms. Chatoor** (Trinidad and Tobago), speaking on behalf of the States members of the Caribbean Community, endorsed the remarks of the representative of Denmark with respect to article 104. She had no particular difficulty with article 105. With respect to article 106, her preference was for the scale used for the regular budget of the United Nations, but consideration might also be given to the creation of a separate account, as with the United Nations peacekeeping budgets or the International Tribunals for the Former Yugoslavia and Rwanda.

31. With regard to article 107, the establishment of an independent auditor would need to be considered closely, since the United Nations system already had a well-developed oversight mechanism.

32. **Ms. Sundberg** (Sweden) endorsed the remarks of the representatives of Denmark and Trinidad and Tobago regarding the financing of the Court. Stable funding could be achieved only through assessed contributions borne collectively by all States Members of the United Nations. In cases of referral by the Security Council, in particular, Sweden would be unwilling to accept anything but collective financing by all Member States.

33. Only signatories to the Statute could be considered as members of the Assembly of States Parties. Sweden supported the establishment of a preparatory commission to work on the Rules of Procedure and Evidence and other questions outstanding from the present Conference. It also believed that the Assembly of States Parties should consider the budget; however, if it was agreed that the United Nations should finance the Court, the General Assembly would actually take the final decision on the budget. Sweden would like the Assembly of States Parties to consider non-cooperation by States parties and refer such matters to the Security Council, but its attitude was flexible and would depend on the outcome of the consultations on article 86. Sweden supported the inclusion of a provision on the loss of voting rights for countries in arrears.
34. **Mr. Al-Amery** (Qatar) supported option 3 for article 104. His delegation would prefer to see article 105 deleted, in order to guarantee the independence and impartiality of the Court.
35. **Ms. Mokitimi** (Lesotho) said that her delegation could accept article 102, paragraph 2, in general. It supported the removal of the square brackets around paragraph 2 (a), and considered that 2 (b) should be harmonized with the provisions in paragraph 1 of article 41 and paragraphs 1 and 2 of article 43 to ensure that management oversight by the Assembly of States Parties did not impede the independence of the judges and the Prosecutor. Paragraph 2 (f) needed to be strengthened to ensure that the Assembly was able to deal effectively with non-cooperative States. Paragraph 6 should ensure that all members paid their assessed contributions in full and on time by providing for the automatic suspension of a member in arrears.
36. On part 12, she agreed that the United Nations regular budget would offer sounder financial backing, but feared that political manoeuvring might undermine the Court's independence. If that independence could be guaranteed, financing from the United Nations budget would be preferable. She was flexible about the idea of initial financing by the United Nations. She agreed that the Court should be able to receive contributions, financial or otherwise, from other sources. She considered that the United Nations scale should be used for assessments.
37. **Ms. Feder** (Uruguay), referring to article 105, said that her delegation did not agree with the proposal to allow voluntary contributions to be used to finance the Court's activities. A problem had arisen in the United Nations as a result of the secondment or loaning of staff, which was a form of voluntary contribution. Voluntary contributions would be inappropriate for the Court, and article 105 should be deleted.
38. Her delegation favoured option 1 for article 104.
39. **Ms. Betancourt** (Venezuela) said that her country was a co-sponsor of document A/CONF.183/C.1/L.16 in which it was proposed that the official and working languages of the Assembly of States Parties should be those of the General Assembly.
40. Regarding article 102, her delegation considered that only signatory States could be members of the Assembly of States Parties. Others could participate as observers. Her delegation also considered that it should be possible for the President of the Court, the Prosecutor and the Registrar to participate as observers in meetings of the Bureau of the Assembly.
41. With regard to article 104, her delegation considered that only States parties to the Statute should finance the expenditures of the Court. Her delegation was in favour of option 1. It also supported deletion of article 105, so as to guarantee the Court's impartiality. As to the scale of assessment of contributions, her delegation considered that the United Nations scale should be used.
42. **Mr. Scheffer** (United States of America), referring to the question of who should be observers in the Assembly of States Parties under article 102, paragraph 1, said that his delegation believed that all signatories to the Final Act should be invited as observers since all participants in the Conference were potential parties to the Statute.
43. With respect to paragraph 2 (a) he considered that, if the proposed preparatory commission was entrusted with drafting the Rules of Procedure and Evidence or "elements of offences", those texts should be completed and enter into force along with the Statute itself, in which case the Assembly would not need to adopt them.
44. The issue of the Assembly's role in handling cases of non-cooperation with the Court was being addressed in connection with part 9 and did not need to be debated by the Committee at that stage.
45. His delegation agreed that flexibility was needed in respect of other functions to be performed by the Assembly since it was difficult at present to envisage precisely what they would be.
46. With regard to paragraph 5, he said that decisions should certainly be made by consensus as far as possible, failing which the requirement should be a two-thirds majority of those present and voting, representing an absolute majority of the States parties.
47. Under article 104, the Court should be funded by States parties to the Statute, as in the case of the Organization for the Prohibition of Chemical Weapons and the Comprehensive Nuclear-Test-Ban Treaty Organization. The future Court resembled those organizations both in budgetary size and operational scope. It would be appropriate, however, for United Nations contributions to be made to cover part of the cost of referrals to the Court by the Security Council.
48. He welcomed the provision in article 105 for voluntary contributions, which would be essential if the Court was to respond effectively to all the demands that would be placed on it. He could not see on what legal basis the Court could be fully funded by the United Nations regular budget, even at the outset. The Court would be more independent and financially stable if

it did not have to compete with other United Nations programmes as the International Tribunals for the Former Yugoslavia and Rwanda had had to.

49 On the question of scales of assessment in article 106, his delegation strongly preferred a multi-unit class system along the lines of that used by the Universal Postal Union (UPU) or the International Telecommunication Union (ITU).

50 **Mr. Kawamura** (Japan) said, with respect to article 102, paragraph 1, that his delegation believed that States parties should be represented in the Assembly of States Parties and that the signatories of the Statute and the Final Act should be observers since they were potential States parties. The precedent of the International Seabed Authority could be followed.

51. With regard to paragraph 2 (*d*), the Assembly should consider and approve the budget of the Court, but in consultation with the President of the Court.

52. Paragraph 2 (*f*) should be retained, and he agreed that there was a need to ensure consistency between that provision and article 86.

53. With respect to paragraph 6, in order to ensure consistency with the Charter of the United Nations, the wording should be "two full years".

54. Turning to article 104, he agreed with the representative of the United States concerning the funds of the Court and was in favour of option 1. As an independent international organization, the Court's administrative and financial independence had to be ensured. There was an appropriate precedent in the International Tribunal for the Law of the Sea.

55. With respect to article 106, a multi-unit class system on the lines of that used in ITU or UPU would be appropriate. However, the wording "in accordance with an agreed scale of assessment" would be sufficient.

56. He suggested that a ceiling on States parties' contributions might be considered at some stage.

57. **Mr. Skillen** (Australia) said that his delegation supported option 2 for article 104 for the reasons given by the delegation of Denmark.

58. **Mr. Krokmal** (Ukraine), referring to article 102, paragraph 1, said that it would be advisable for States not parties to the Statute to be given observer status. With respect to paragraph 2 (*d*), he believed that the Assembly of States Parties should have the right to rule on financial issues. With regard to paragraph 3 (*b*), he believed that elections to the Bureau should take account of the principle of equitable geographical distribution and that there should be a provision requiring representation of each geographical group.

59. With regard to paragraph 5, he believed that a two-thirds majority was desirable for decision-making. With regard to

paragraph 6, he considered that a five-year period should be allowed for arrears.

60. Turning to article 104 on the funds of the Court, he believed that the Court should be financed by the contributions of States parties to ensure its independence.

61. Regarding article 106, he considered that the scale used for the regular budget of the United Nations was the most appropriate one.

62. **Mr. Qu Wencheng** (China) said in connection with article 102, paragraph 1, that his delegation considered that the signatories to the Final Act should be observers in the Assembly of States Parties. It was important that the signatories to the Final Act should be able to participate in such activities as considering draft rules of procedure and evidence.

63. With respect to the financing of the International Criminal Court, his delegation was in favour of option 1 for article 104. The future Court would be an independent body, unlike the International Court of Justice. If it was to remain independent, it should be funded by States parties.

64. With regard to article 105, his delegation considered that very strict criteria governing voluntary contributions would have to be drawn up to avoid their affecting the Court's impartiality. Any voluntary contributions would have to be complementary and additional to the main funding sources.

65. **Mr. Bartoň** (Slovakia), referring to article 102, paragraph 1, said that his delegation considered that States parties should have the status of members of the Assembly of States Parties. Signatories should have the status of observers.

66. In article 104, for the reasons given by the representatives of Denmark, Sweden and others, his delegation supported option 2. With respect to article 106, his delegation considered that the scale of assessments should be that of the United Nations.

67. **Mr. Agbetomey** (Togo) said that his delegation would prefer option 3 for article 104, as a middle course.

68. In respect of article 102, paragraph 2 (*f*), his delegation would prefer the wording "appropriate measures". With regard to paragraph 3 (*a*), there should be at least two Vice-Presidents.

69. **Mr. Rogov** (Kazakhstan), referring to article 102, said that his delegation considered that the signatory States of the Final Act should be observers in the Assembly of States Parties.

70. With regard to working languages, the working languages of the Court and the Assembly need not be the same; he thought that the working languages of the Assembly should be all the working languages of the United Nations.

71. With regard to article 104, his delegation considered that option 3 would be an acceptable compromise.

72. Concerning article 105, in his delegation's view the concern that voluntary contributions might influence the impartiality of the Court was unwarranted. Voluntary contributions might be useful.
73. **Mr. da Costa Lobo** (Portugal) said, in connection with article 102, that the representatives of States that had signed the Statute should be able to participate in the Assembly of States Parties as observers.
74. As to article 104, although it might be logical to provide for financing by States parties, in view of previous experience his delegation was inclined to support option 2. Even if another solution were adopted, at least during the early years the Court should be financed from the United Nations budget.
75. **Mr. Bhattarai** (Nepal), referring to article 102, paragraph 1, said that his delegation considered that signatories of the Final Act should be observers in the Assembly of States Parties, but would prefer the wording to be "may participate as observers in the Assembly". Paragraph 2 (a) should stand. He endorsed the views of the Japanese representative that consideration and approval of the Court's budget should take place in consultation with the President of the Court.
76. Paragraph 2 (f) should be retained and the opening wording should be "consider, upon recommendation of the Court ...". In paragraph 3 (b), he was in favour of the words "have a representative character". In paragraph 3 (c), he favoured the wording "non-judicial administration". In paragraph 6, he favoured the wording "two full years".
77. **Mr. Kessel** (Canada) said that his delegation supported the views expressed by the representatives of Denmark, Trinidad and Tobago and Sweden with respect to the funding of the Court.
78. **Mr. Luhonge Kabinda Ngoy** (Democratic Republic of the Congo), referring to article 102, paragraph 1, said that States not parties to the Statute should be observers in the Assembly of States Parties.
79. With respect to paragraph 5, he said that, in the absence of consensus, an absolute majority of States parties should be able to take decisions.
80. In paragraph 6, he considered that a three-year period would be appropriate.
81. In article 104, he was in favour of option 3.
82. Voluntary contributions might jeopardize the Court's independence and he was therefore in favour of deleting article 105.
83. In connection with article 106, he believed that the scale of assessments used for the regular budget of the United Nations should be adopted.
84. **Mr. Mansour** (Tunisia) said that his delegation was in favour of option 3 for article 104. It wished article 105 to be deleted in order to guarantee the Court's independence and impartiality. It supported articles 106, 107 and 102.
85. **Mr. Shukri** (Syrian Arab Republic), referring to article 102, paragraph 1, said that his delegation considered that the signatories of the Statute, not the Final Act, should be either observers or members in the Assembly of States Parties.
86. In paragraph 3 (b), he proposed that the words "as far as possible" should be deleted; representation of the principal legal systems of the world should be guaranteed. With respect to paragraph 6, he considered that a period of two full years was sufficient.
87. Turning to article 103, he thought that the words "by the States Parties" at the end should read "by the Assembly of States Parties".
88. In article 104, he preferred option 3. With regard to article 105, he was in principle against the idea of voluntary contributions, but would not oppose it if the wording of the article safeguarded their unconditionality. It would be for the Court to decide on the criteria for accepting or refusing such contributions.
89. With regard to article 106, he considered that the contributions of States parties should be based on the scale of assessments used for the regular budget of the United Nations.
90. **Mr. Fall** (Guinea), referring to article 102, paragraph 1, said that the signatories of the Statute would presumably be members of the Assembly of States Parties, and there would be advantages in the signatories of the Final Act being able to sit as observers.
91. In paragraph 2 (f), he would prefer the alternatives "of the Bureau" and "appropriate". With regard to paragraph 3 (a), he would like there to be more than one Vice-President. It would be for the Conference to determine the number of members of the Bureau to be elected on the basis of equitable geographical distribution. The President, the Prosecutor and the Registrar should be able to participate as observers in meetings of the Bureau.
92. In article 104, his preference was for option 2, subject to the approval of the General Assembly. Article 105 should be deleted. Lastly, he supported the proposal regarding official and working languages (A/CONF.183/C.1/L.16).
93. **Mr. Maiga** (Mali) said that his delegation agreed that, under article 102, paragraph 1, the signatories of the Statute should be able to participate as observers in the Assembly of States Parties, but was not in favour of the signatories of the Final Act participating in the Assembly.
94. Paragraph 2 (a) should be kept. He endorsed the comments made by the representative of Guinea concerning paragraph 2 (f). With respect to paragraph 3 (a), he agreed that the President of the Court, the Prosecutor and the Registrar or their representatives should be able, as appropriate, to participate as observers in the meetings of the Bureau. With regard to paragraph 3 (b), the Bureau should have a representative character taking into account equitable geographical distribution. With regard to paragraph 6, sanctions should be imposed after two full years.

95. In article 104, he was in favour of option 2. With regard to article 105, his delegation considered that voluntary contributions would in no way affect the Court's impartiality.

96. With regard to article 106, his delegation was in favour of the scale of contributions to the regular budget of the United Nations being used for the Court.

97. **Mr. Ly** (Senegal) said that, with regard to article 102, paragraph 1, the signatories of the Final Act should be observers. Paragraph 2 (a) should be kept. However, subparagraphs (b) and (e) of paragraph 2 gave rise to concern regarding the independence of the Court. In subparagraph (f), the words "upon recommendation of the Court" should be used. Any formulation used for paragraph 3 (a) should safeguard the Court's independence. In paragraph 5, a two-thirds majority of those present and voting should suffice. With respect to paragraph 6, he considered that the provision should be drafted to ensure that countries which for obvious economic reasons could not fulfil their obligations should be dealt with sympathetically, whereas those which did have the economic means to do so should be punished more severely.

98. With regard to article 103, he endorsed the point made by the representative of the Syrian Arab Republic concerning the final phrase. In article 104, option 2 should be chosen. Regarding article 105, voluntary contributions should be allowed. With respect to article 106, he would prefer the scale used for the regular budget of the United Nations.

99. **Mr. Hakwenye** (Namibia), referring to article 102, paragraph 1, said that observers should be allowed to participate in the Assembly of States Parties.

100. With regard to paragraph 2 (d), he considered that the Assembly should consider and approve the budget for the Court in consultation with the Registrar, not with the President of the Court.

101. In article 104, he supported option 3. He was in favour of article 105 regarding voluntary contributions. With respect to article 106, he supported the view that the scale of assessments should be based on the United Nations regular budget.

102. **Ms. Blair** (United Kingdom of Great Britain and Northern Ireland) said, with regard to article 102, paragraph 1, she thought that the signatories of the Statute rather than those of the Final Act should be observers in the Assembly of States Parties. She supported inclusion of paragraph 2 (a). With respect to paragraph 3 (b), she favoured the wording "have a representative character" and the inclusion of the words "as far as possible". With regard to paragraph 5, she supported the requirement for a two-thirds majority of those present and voting for decision-making. With respect to paragraph 6, her delegation was in favour of the period in question being two full years.

103. Turning to article 104, she endorsed the comments made by the representative of Denmark.

104. With respect to article 106, she believed that assessments should be based on the scale used for the regular budget of the United Nations.

105. **Mr. Sayyid Said Hilal Al-Busaidy** (Oman), referring to article 102, paragraph 1, said that the signatories of the Final Act should be observers in the Assembly of States Parties. With respect to paragraph 3 (b), he supported the inclusion of a reference to equitable geographical distribution.

106. In article 104, he was in favour of option 3.

107. Article 105 should be retained, and he hoped that ways would be found to safeguard the independence of the Court.

108. With respect to article 106, he was in favour of contributions being assessed in accordance with the scale used for the regular budget of the United Nations. He also supported articles 103 and 107.

109. **Mr. Aukrust** (Norway) favoured option 2 for article 104. Financing by the United Nations would ease the ratification process for a number of States, including less developed countries. Funding by States parties had already failed in the case of other treaty bodies.

110. **Mr. Fortuna** (Mozambique), referring to article 102, paragraph 1, said that he supported the view that the signatory States of the Statute and Final Act should be observers in the Assembly of States Parties. With regard to paragraph 5, he was in favour of a two-thirds majority of those present and voting.

111. He supported option 3 for article 104 and was in favour of articles 105 and 106.

112. **Mr. Chun Young-wook** (Republic of Korea) said, in connection with article 102, paragraph 1, that his delegation believed that signatories of the Final Act should be observers in the Assembly of States Parties. With regard to paragraph 3 (a), the President of the Court, the Prosecutor and the Registrar should be able to participate in meetings of the Bureau as observers. With respect to paragraph 5, he was in favour of a two-thirds majority of those present and voting.

113. In article 104, he supported option 3 as a compromise formula.

114. **Mr. Nyasulu** (Malawi) supported the views expressed by the representatives of Denmark, Trinidad and Tobago and Sweden on article 104. Paragraph 6 of article 102 would lead to the exclusion of the least developed countries if option 1 was adopted for article 104. His delegation was in favour of option 3.

115. His delegation had supported the deletion of article 45, paragraph 4, and would recommend the deletion of article 105 unless it was reworded to preclude its covering the situations envisaged in article 45, paragraph 4, and article 43, paragraph 9.

116. Concerning article 106, his delegation would prefer the United Nations scale of assessments if option 3 was adopted for article 104.

117. With respect to article 102, paragraph 6, his delegation was in favour of the period of two full years. It also supported the proposal in document A/CONF.183/C.1/L.16 regarding official and working languages.

118. **Ms. Shahen** (Libyan Arab Jamahiriya) said, with respect to article 102, paragraph 1, that she considered that the signatories of the Statute and the Final Act should be observers in the Assembly of States Parties.

119. With respect to paragraph 2 (f), she considered that the Assembly of States Parties should look into any question relating to non-cooperation by States parties and non-parties with the Court. The reference to the Security Council should be deleted.

120. With regard to paragraph 3 (a), she considered that the Registrar and the Prosecutor should be able to participate as observers in meetings of the Bureau. With regard to paragraph 3 (b), she stressed the importance of ensuring equitable geographical distribution and proposed the deletion of the words "as far as possible".

121. With regard to paragraph 6, she was in favour of a two-year period.

122. In article 104, her delegation was in favour of option 1. With regard to article 105, voluntary contributions should be looked upon as complementary contributions, but criteria to ensure the independence of the Court should be adopted. She endorsed the proposal in document A/CONF.183/C.1/L.16 concerning the Assembly's official and working languages.

123. **Mr. Bazel** (Afghanistan) said that his delegation shared the views of the Danish representative concerning the options for article 104. It supported the idea of voluntary contributions in article 105.

124. **Mr. Amehou** (Benin) endorsed the views of the representative of Denmark regarding the financing of the Court.

125. **Mr. Addo** (Ghana) said that article 102, paragraph 2 (f), should be dealt with only after article 86, paragraph 6, had been finalized. Article 102, paragraph 2 (e), would have financial implications, and the wording would be linked to the financial regulations of the Court. The remaining paragraphs of article 102 were satisfactory.

126. In article 104, Ghana's preference was for option 1, but paragraph 2 in option 3 could be kept. In article 106, his delegation favoured the wording: "The contributions of States Parties shall be assessed in accordance with an agreed scale of assessments based upon the scale used for the regular budget of the United Nations."

127. His delegation supported article 107.

128. **Mr. Welberts** (Germany) said that his delegation favoured option 3 for article 104 as a compromise between options 1 and 2. The Court needed stable funding but its authority might be compromised if it was dependent on the budget of the United

Nations, which was facing difficulties because of unpaid contributions. Moreover, the mid-term priority planning of the United Nations did not allow for appropriate and continuous funding of the Court. It would therefore be better for States parties to be responsible for allocating resources to the Court.

129. The burden of sharing the cost of the Court should not be a disincentive to ratifying the treaty. There should be no obstacle to States with less capacity to pay becoming parties to the Statute or filing complaints with the Court.

130. Germany would be in favour of including in the Statute a penalty provision for defaulting and late contributors going beyond that set out in article 102, paragraph 6.

131. **Mr. Al Hosani** (United Arab Emirates), referring to article 102, expressed the view that the signatories of the Statute and of the Final Act should be observers in the Assembly of States Parties. With regard to paragraph 3 (a), he considered that the President of the Court, the Prosecutor and the Registrar should be able to participate as observers in the meetings of the Bureau. With regard to paragraph 5, decisions on matters of substance should be taken by consensus or, failing that, approved by a two-thirds majority of those present and voting, representing an absolute majority of the States parties. With regard to paragraph 6, a State party should not have the right to vote if the amount of its arrears equalled or exceeded the amount of its contributions due for the preceding two full years. He endorsed the proposal in document A/CONF.183/C.1/L.16 regarding the official and working languages of the Assembly.

132. In article 104, he preferred option 3. Article 105 should be retained, due attention being paid to the independence of the Court on the basis of clear criteria to be adopted by the Assembly of States Parties.

133. Regarding article 106, contributions should be assessed in accordance with an agreed scale of assessment based on the scale used for the regular budget of the United Nations. At the end of the sentence, the words "after this is accepted by the Assembly of States Parties" should be added.

134. **Mr. Manyang D'Awol** (Sudan) said that his delegation would prefer option 3 for article 104 and would like the scale of contributions mentioned in article 106 to be that of the United Nations.

135. **Mr. Masuku** (Swaziland) endorsed the views expressed by the delegations of Lesotho and Germany.

136. **Ms. Vega Pérez** (Peru) said that, in article 102, paragraph 1, she supported the proposal that signatories of the Statute should be members of the Assembly of States Parties. In article 104, she supported option 1. With regard to article 106, the scale used in the United Nations was to be recommended.

137. **Mr. Kam** (Burkina Faso) said that his delegation was in favour of option 3 for article 104.

138. **Mr. Ruphin** (Madagascar) said that he was in favour of option 3 for article 104. The independence of the Court would

depend more on its procedures and its competence than on the sources of its funding. Funding for national courts came from the State and their independence was not jeopardized because of it. In article 105, concerning voluntary contributions, wording might be found to specify that any such funds would be complementary. With regard to article 106, he was in favour of the adoption of the scale used for the regular budget of the United Nations.

139. **Mr. Mikulka** (Czech Republic) said that he preferred option 2 for article 104. The Court was intended to have a universal character and relations between the Court and the United Nations should be as close as possible. The Security Council would have certain functions under the Statute and the Court would be contributing towards maintaining international peace and security, which was one of the main objectives of the United Nations.

140. **Mr. González Gálvez** (Mexico) thought that references to the Security Council, especially in article 102, paragraph 2 (f), should not be considered at present, since they were being looked at in connection with part 9.

141. His delegation agreed that the Assembly should be able to allow a State to vote even though it had problems with its contributions, but thought that the last sentence in article 102, paragraph 6, might need amending. His delegation had proposed, in document A/CONF.183/C.1/L.14, the inclusion of a new paragraph in article 102, but had now withdrawn that proposal because many delegations believed that to ask for an advisory opinion from the International Court of Justice on controversies

between States parties and the International Criminal Court would be inappropriate. His delegation maintained its proposal concerning article 108 in part 13 of the draft Statute.

142. With regard to article 104, it was important to avoid placing yet another burden on the United Nations, and he therefore supported option 1. The only possibility for starting up the Court might be to provide for contributions by States parties and also a fund fed by voluntary contributions. However, article 105 might need to be amended.

143. He supported the view that it would be enough in article 106 to refer to "an agreed scale of assessment", without further specification.

144. **Mr. Wouters** (Belgium) said, with regard to part 12, that his delegation saw much merit in a system of financing through the United Nations supplemented by a system of voluntary contributions. He endorsed the arguments put forward in favour of option 2 for article 104. The Conference should decide what should be the main source of financing for the Court, and not postpone that difficult choice.

145. At least in the initial phase, outside assistance for the Court might be helpful.

146. He was not convinced that it would be desirable to create further external auditing mechanisms in addition to those already existing in the United Nations. However, that issue might be clarified in informal consultations.

The meeting rose at 1.15 p.m.

19th meeting

Monday, 29 June 1998, at 3.15 p.m.

Chairman: Mr. Kirsch (Canada)

later: Mr. Ivan (Romania) (Vice-Chairman)

later: Mr. Kirsch (Canada) (Chairman)

A/CONF.183/C.1/SR.19

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.14/Rev.1 and A/CONF.183/C.1/L.24)

DRAFT STATUTE

PART 13. FINAL CLAUSES

1. **The Chairman** invited the Coordinator for part 13 to introduce that part of the draft Statute (A/CONF.183/2/Add.1 and Corr.1).

2. **Mr. Slade** (Samoa), Coordinator for part 13, said that that part contained the final clauses. With regard to article 108, there was no consensus in favour of any of the four options suggested in the draft. The effect of option 3 would be to make the International Criminal Court judge of its own jurisdiction. Option 2, on the other hand, would not exclude the possibility of reference by the Assembly of States Parties of a dispute over the interpretation or application of the Statute to the International Court of Justice. Under option 4, there would be no provision on dispute settlement. There was a further proposal by Mexico, contained in document A/CONF.183/C.1/L.14/Rev.1, to the effect that any dispute between States parties relating to the interpretation or application of the Statute not resolved through