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

Rome, Italy
15 June - 17 July 1998

Document:-
A/CONF.183/C.1/SR.19

19th meeting of the Committee of the Whole

Extract from Volume II of the *Official Records of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court (Summary records of the plenary meetings and of the meetings of the Committee of the Whole)*

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delegation had proposed, in document A/CONF.183/C.1/L.14, the inclusion of a new paragraph in article 102, but had now withdrawn that proposal because many delegations believed that to ask for an advisory opinion from the International Court of Justice on controversies between States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

negotiation should be referred to the International Court of Justice. There were thus many policy issues to be resolved.

3. For article 109, there were also four options, all of which had their supporters. Further consultations were needed, and he suggested that discussion of the article be deferred.

4. Concerning article 110, which was closely linked to article 111, there was a general feeling that there should be a provision on amendments, but also that a period should be stipulated after which it would be possible to propose amendments. Some delegations considered that the review conference referred to in article 111 would be the appropriate body to consider such proposals. For paragraph 3, there were two options; in the case of option 2, it would need to be decided what kind of majority was required. In informal discussions, a proposal had also been made for a simplified procedure for dealing with amendments on matters described as being of an institutional nature.

5. Concerning article 111, there was the possibility of a merger with the preceding article. There were also two options: option 1 provided generally for the possibility of a special meeting of the Assembly of States Parties to review the Statute, while option 2 called more specifically for a meeting to review the list of crimes within the jurisdiction of the International Criminal Court. A final decision would depend on agreement on article 5.

6. Consultations were still needed to resolve the issues arising under article 112.

7. There had been a wide measure of support for inclusion of article 113, although some had favoured a more cautious approach. Questions had been raised as to whether the article was correctly placed within the Statute in view of its essentially political objective, and concern had been expressed that the article should fully and correctly reflect the 1969 Vienna Convention on the Law of Treaties.

8. Concerning article 114, there were two aspects which warranted further consideration. The first was the proposed link between entry into force of the Statute and completion of the Rules of Procedure and Evidence, an issue of substance which also had implications for negotiations under articles 52 and 53. The second was the idea that the deposit of instruments of ratification or acceptance by members of different geographical groups should be required. In his view, discussion of the article by the Committee of the Whole at the current stage was unlikely to produce useful results, and he suggested that further consultations be held.

9. There had been no difficulty over paragraphs 1 and 2 of article 115, and general support had been expressed for inclusion of the bracketed text, perhaps with some redrafting. Lastly, no problems had been raised in regard to article 116, which he suggested could be referred to the Drafting Committee.

10. **Mr. Shukri** (Syrian Arab Republic) said that he would prefer option 4 for article 108 because he believed that it was one of the fundamental responsibilities of the International Court of Justice to judge on disputes arising out of treaties. For article 109, he preferred option 4, under which there would be no article on reservations; article 19 of the Vienna Convention on the Law of Treaties already established the principle that reservations to a treaty were not permissible if they were incompatible with the purpose of the treaty.

11. Concerning article 110, he was flexible as to the period that should elapse before amendments were proposed, but considered a period of 10 years reasonable. For paragraph 3, he preferred option 2 with a requirement for a majority of either two thirds or three fourths of the States parties. Concerning article 111, he believed that review should be possible 5 to 10 years after entry into force, and agreed that articles 110 and 111 could be combined. It was important that in article 112 the words "ratification", "acceptance", "approval" and "accession" be retained, since they were words used in the Vienna Convention. For article 114, the number of instruments required to be deposited could be 60 or 65. In article 115, he would prefer deletion of the bracketed text.

12. **Mr. Pfirter** (Switzerland) said that for article 108 his delegation preferred option 3. He drew attention to a proposal by his delegation (A/CONF.183/C.1/L.24) for articles 110 and 111, which would soon be available in all languages and which was intended to provide a realistic solution to the problem of review of the Statute. His delegation was aware that a review against the wishes of some States parties was a delicate issue, but believed that it was not appropriate to give the right of veto to a single State party by requiring total consensus. A fact that also had to be taken into account was that some States which were Members of the United Nations did not have Governments which were in a position to act on their behalf by ratifying amendments to the Statute. Switzerland's proposal was that amendments should require a large majority, perhaps a five-sixths majority. The other essential element in the proposal was a simplified procedure for dealing with problems which were institutional in nature.

13. Concerning article 112, he saw no need for the bracketed words "without any kind of discrimination". He supported inclusion of article 113, as well as inclusion of the bracketed text in article 115.

14. **Mr. Rebagliati** (Argentina), referring to article 108, said that it was important that some provision be made in the Statute for the settlement of disputes. In his view, the International Criminal Court should be judge of its own jurisdiction, but disputes between States parties relating to other aspects of interpretation or application of the Statute should be settled by the classic mechanism of peaceful settlement through negotiation, conciliation, arbitration or, as a last resort, reference to the International Court of Justice. The Committee should be

prudent in its approach and should seek a solution which was in line with existing international practice.

15. He agreed that articles 110 and 111 might be combined. For the latter, he preferred option 2.

16. While he respected the intention behind article 113, he feared that it might give rise to confusion. He did not think that the first sentence was really necessary, but if it was to be retained he would like the wording to be brought into line with article 25 of the Vienna Convention on the Law of Treaties. The second sentence had a political objective, and he doubted whether it would be in conformity with the Vienna Convention to require States to comply with the provisions of the Statute before it had entered into force. If there was a majority in favour of inclusion of such a text, he believed that the proper place for it would be in the preamble.

17. **Mr. Quintana** (Colombia) said that his delegation preferred option 2 for article 108, subject to drafting improvements. The Statute was bound to give rise to disputes among States parties, and it was essential that a mechanism for settling such disputes be provided, whether it was through a political body, as proposed in option 2, or a judicial body. The Committee should not lose sight of the fact that the International Criminal Court that it was creating would be judging individuals and not States, and in his view option 1 was quite unacceptable.

18. **Mr. González Gálvez** (Mexico) agreed that articles 110 and 111 could be combined, but would prefer that article 113 be deleted.

19. **Mr. Dimovski** (The former Yugoslav Republic of Macedonia) said that his delegation would be unable to sign the Convention if the bracketed text in lines 1 and 2 of article 112, paragraph 1, was not adopted. He would therefore appreciate the understanding of other delegations in that regard.

20. **Mr. Aukrust** (Norway), referring to article 113, said that the French version of the title might suggest that what was proposed was the provisional application of the Statute. That notion should be dispelled. Rather, the article had been drafted in order to meet the concern that, during the interim period before the Statute entered into force, there might be a need for international prosecution of perpetrators of crimes within the Court's jurisdiction and that, accordingly, provision would have to be made for ensuring that the fact that the Statute had not yet entered into force should not be made a pretext for failure to initiate such prosecution. In his view, the Statute should give guidance on the principles to be followed in such cases.

21. Article 113 sought to clarify how the principle contained in article 18 of the Vienna Convention on the Law of Treaties would apply in practice pending entry into force of the Statute. He was open to suggestions as to where the article should be placed in the text of the Statute.

22. **Mr. Gevorgian** (Russian Federation) favoured option 2 for article 108, which he thought covered all the situations provided for in options 1 and 3, as well as all the concerns expressed by delegations. The first part of the sentence established that the Court was competent to decide questions relating to its judicial activities, and the second provided for a flexible approach under which the Assembly of States Parties could make recommendations for further means of settling a dispute, which could include referral to the International Court of Justice. He supported those speakers who had favoured a merger of articles 110 and 111.

23. Although he supported the idea behind article 113, he considered that it was more political than legal in nature and might thus have a more appropriate place in the Final Act of the Conference than in the Statute itself.

24. **Mr. Al-Amery** (Qatar) said that, concerning article 108, he supported option 4 for the reasons already advanced by the representative of the Syrian Arab Republic. Concerning article 110, he supported paragraph 1 with the inclusion of the bracketed words "the Secretary-General of the United Nations", and paragraph 2 with the words "meeting of the Assembly of States Parties". For paragraph 3, he supported option 2 with the wording "shall require a three-fourths majority of all the States Parties". Lastly, he could accept paragraphs 4, 5 and 6, provided that paragraph 5 referred to "three fourths of all the States Parties".

25. **Mr. Scheffer** (United States of America) said that for article 108 his delegation favoured option 2. Article 110 was a critical article which needed to be carefully worded in order to ensure the continued viability of the treaty. The States parties should not be in a hurry to revise the Statute; time should be allowed for the International Criminal Court to begin operations, so that any revisions required could be made in the light of experience gained in implementing the Statute. Amendments should only be made at a review conference, and then only if they had the overwhelming support of States parties.

26. Regarding the signature of the Statute, the United States had requested that the dates should be placed in brackets in order to emphasize its view that the Rules of Procedure and Evidence and the elements of crimes should be an integral part of the Statute. Lastly, regarding article 113, he endorsed the views expressed by the representative of Norway. Justice ought not to stand still until the Court was established.

27. **Mr. Saland** (Sweden) said that for article 108 he favoured option 3, since any disputes that arose were likely to concern judicial functions and should therefore be settled by the Court itself. However, he was also ready to consider option 2. He supported the Swiss proposal for articles 110 and 111. Concerning the latter article, he saw merit in including a provision whereby a review conference would take place automatically 5 to 10 years after entry into force of the Statute to deal with any unresolved issues and also with any deficiencies in the Statute that might have emerged.

28. Concerning article 112, his delegation's position was that the Statute should stand alone and that any other instruments, for instance those governing rules of procedure and evidence,

should be secondary and should not affect the opening of the Statute for signature or indeed its entry into force. He wished to make clear, however, that Sweden would not wish the Court to start operating before rules of procedure and evidence had been adopted. He strongly supported article 113 as well as retention of the bracketed third paragraph of article 115.

29. **Mr. Al-Sa'aidi** (Kuwait) said that for article 108 he preferred option 2, but also supported the Mexican proposal to refer to the International Court of Justice. For article 109 he favoured option 4. Regarding article 110, he suggested that the period of time specified in paragraph 1 should be 10 years. For paragraph 3 he preferred option 2 with a requirement for a two-thirds majority of those present and voting. Paragraph 5 should require the deposit of instruments by two thirds of the States parties. Provision should be made in article 111 for review of the Statute after the expiry of a period of 5 to 10 years. He favoured retention of article 113 and supported the Syrian proposal regarding article 114.

30. **Mr. Lehmann** (Denmark) said that part 13 contained provisions which were standard in most treaties and which he supported. For article 108 he would prefer option 3 in combination with a provision on settlement of disputes between States. Some article on reservations must be included. An article on amendments was also needed, along the lines suggested in article 110. He supported articles 112 and 113.

31. Article 111 on review of the Statute was not a clause normally included in treaties, but he believed that some provision should be made for adjusting the Statute on the basis of experience gained in order to ensure that it served the interests of justice, fairness and efficiency. The text as it stood was somewhat cumbersome, and his delegation had prepared a new draft combining the two options, which would be circulated.

32. **Mr. Mansour** (Tunisia) said that his delegation favoured option 4 for article 108, and would propose 10 years for the period to be specified in article 110, paragraph 1. He had no particular problem with articles 112, 113 and 115.

33. **Ms. Pavlikovska** (Ukraine) said that she preferred option 1 for article 108, but would also be prepared to accept option 2. For article 109 she preferred option 2, with option B for paragraphs 1 and 2. She considered that article 113 could be deleted since its content was already covered by the corresponding provision in the Vienna Convention on the Law of Treaties. She would prefer article 114, paragraph 1, to read: "This Statute shall enter into force following the completion of the Rules of Procedure and Evidence on the 60th day following ... provided that such instruments have been deposited by no fewer than four members from each geographical group ...". For article 115, she favoured retention of the bracketed third paragraph.

34. **Mr. Molnár** (Hungary) said that for article 108 his delegation preferred option 3, although it would be prepared to accept inclusion of elements of option 2. For article 110, paragraph 3, he supported option 2; he was opposed to requiring that adoption of amendments should be by consensus. For article 111 he would prefer option 2 providing for automatic review of the list of crimes within the jurisdiction of the International Criminal Court after a certain period of time, and would be prepared to discuss combining that article with article 110. On article 112, his delegation considered that the Statute should be opened for signature following the successful conclusion of the Conference, and favoured inclusion of article 113 for the reasons advanced by the Norwegian delegation. Lastly, he supported article 115 with inclusion of the bracketed text.

35. **Ms. Daskalopoulou-Livada** (Greece) said that she preferred option 3 for article 108, as she saw no need to set up an elaborate settlement procedure in regard to functions of the Court which were not judicial. The proposal by Switzerland regarding articles 110 and 111 was of considerable merit: she was inclined to favour an amendment procedure dispensing with the need for an automatic review after a certain number of years had elapsed. For article 110, paragraph 3, she favoured option 2 with a requirement for a three-fourths majority of those present and voting, but had reservations as to the bracketed language in the first line of article 112, paragraph 1, which was unclear and was not in line with the standard language. She favoured article 113 in substance. She supported inclusion of the bracketed text in article 115, but perhaps it should be combined with paragraph 2.

36. **Ms. Wilmshurst** (United Kingdom of Great Britain and Northern Ireland) said that, concerning article 108, she shared the view expressed by the Syrian Arab Republic that there should be no article on settlement of disputes. She was particularly puzzled by option 3, which she found odd in language and unnecessary in substance. On article 110, paragraph 2, she suggested that consideration might be given to a compromise wording whereby amendments to some parts of the Statute, for instance part 4, could be considered at the Assembly of States Parties, and others could be considered at the proposed review conference. It would be in line with recent precedent for the adoption of amendments to require consensus and for their entry into force to require ratification by three fourths of the States parties. Concerning article 111, her delegation preferred option 1.

37. She noted that a number of delegations had expressed support for retention of the bracketed text in article 115, but pointed out that, in fact, that text was an alternative to paragraph 2 and could not just be added. Careful consideration would need to be given to the way in which the article was to be drafted.

38. **Mr. Yáñez-Barnuevo** (Spain), referring to article 108, said that he did not think it appropriate to include a provision on settlement of disputes in the final clauses; perhaps it should be included in part 2. At any rate, he agreed with previous speakers that there was room for a provision on settlement of disputes based on option 2.

39. He agreed that articles 110 and 111 should be considered jointly, although he was not sure that they would have to be combined. Concerning the proposal by Switzerland, he thought that one would have to spell out clearly which provisions were deemed to be of an institutional nature and thus subject to amendment through a simplified procedure. For article 110, paragraph 3, he would favour a combination of options 1 and 2 whereby, if consensus could not be reached on adoption of an amendment, such adoption should be by a three-fourths majority of States present and voting. While he recognized that the idea behind article 113 was a valid one, he did not think that the text was appropriate for inclusion in the body of the Statute. Concerning article 115, he shared the views expressed by the representative of the United Kingdom.

40. *Mr. Ivan (Romania), Vice-Chairman, took the chair.*

41. **Mr. Arévalo** (Chile) said that his delegation considered that some provision for the settlement of disputes should be included in the Statute, and would prefer option 2 for article 108, which covered not only disputes concerning the judicial functions of the Court but also disputes between States parties regarding interpretation or application of the Statute. Concerning articles 110 and 111, any amendment or review of the Statute should only be proposed after it had been in force for at least five years, and a fairly large majority should be required for the adoption of amendments. Article 113 as currently drafted caused some difficulty for his delegation because it appeared to confuse two separate issues, the first the legal effects of signature of treaties subject to ratification, and the second the possible provisional application of the Statute. Those two issues were governed by separate articles of the Vienna Convention on the Law of Treaties, articles 18 and 25. In article 115, the provisions in the bracketed paragraph seemed to be covered by paragraph 2.

42. **Mr. Rogov** (Kazakhstan) said that for article 108 he preferred option 2, and for article 110, paragraph 3, he preferred option 1. He supported the proposal that articles 110 and 111 be combined. He favoured retention of all the bracketed texts in article 112, and considered that the formulation contained in article 113 should be retained either in its current place or elsewhere in the Statute.

43. **Ms. Tomič** (Slovenia) favoured option 3 for article 108 and option 2 for article 110, paragraph 3. Provided that article 110, paragraph 6, was retained, there would be no need to provide for adoption by consensus, which would in effect mean that the veto of a single State party could block any amendment. She supported the simplified procedure for provisions of an institutional nature proposed by the delegation of Switzerland. Regarding article 111, she would favour a simplified provision for the convening of a review conference five years after entry into force of the Statute. Any amendments arising from such a review conference would be covered by the provisions of article 110. She favoured retention of article 113, which incorporated an important principle already enshrined in the Vienna Convention on the Law of Treaties, and fully supported the views expressed by the representative of Norway in that regard. Lastly, she was in favour of the bracketed paragraph in article 115, but agreed that it must be brought into line with paragraph 2.

44. **Mr. Bartoň** (Slovakia) said that for article 108 he would prefer option 2, but thought that the words "the International Court of Justice" could be substituted for the words "the Assembly of States Parties". For article 110, paragraph 3, he was inclined to support option 1, but was prepared to accept the suggestion made by the delegation of Switzerland. He also favoured retention of article 113, and in article 115 supported inclusion of the bracketed text.

45. **Ms. Betancourt** (Venezuela) said that, from the very beginning of the preparatory work, her delegation had emphasized the need for an article on settlement of disputes. For article 108 she was in favour of option 2. She also preferred option 2 for article 110, paragraph 3, and article 111. For article 113, it would be preferable to follow the wording used in the Vienna Convention on the Law of Treaties.

46. **Mr. Momtaz** (Islamic Republic of Iran) said that his delegation also favoured option 2 for article 108, with the possible inclusion of a reference to conflicts which might arise between the International Criminal Court and States parties. Article 109 was of great importance, and he favoured the general regime for reservations as envisaged in the relevant provisions of the Vienna Convention on the Law of Treaties. The wording of article 113 should also be in line with the wording of the Vienna Convention. Article 114 could refer to the deposit of the sixtieth or sixty-fifth instrument. He favoured retention of the bracketed text in article 115, and would like to reserve his delegation's position with regard to articles 110 and 111.

47. **Mr. Al-Saadi** (Oman) said that his delegation supported option 4 for both article 108 and article 109. For article 110, paragraph 3, he favoured option 2, and in paragraph 5 he would prefer "two thirds". For article 111, he favoured option 1 and was flexible regarding the period to be specified. Article 114, paragraph 1, should refer to the sixtieth day following the date of deposit of the instrument concerned and to four members from each geographical group. The bracketed text in article 115 should be retained.

48. **Mr. Simpson** (Australia) thought that disputes arising out of the Court's judicial function should come within the jurisdictional ambit of the Court itself. He also believed, however, that disputes of a more administrative nature could well be resolved by the Assembly of States Parties. Option 2 and option 3 for article 108 were therefore complementary. If option 2 was to be adopted, it might be useful to specify which disputes were to be characterized as "administrative" for the purposes of the article.

49. He was sympathetic to the idea of combining articles 110 and 111. In the former, he would prefer a threshold of two thirds of States parties for any amendment to the Statute, and would

support deletion of paragraph 6, since the issue of withdrawal was well covered by article 115. Australia's position on article 111 was in line with that of the Danish delegation. It was vital that a review conference be held five years after entry into force. Generally speaking, a balance should be struck between binding States to amendments that they might not support and preventing a small number of States from vetoing much-needed amendments.

50. He supported retention of article 112 and of article 115 with the bracketed text included. Lastly, he supported the views expressed by Norway in favour of retention of article 113, but would suggest that it include a reference to article 18 of the Vienna Convention on the Law of Treaties, and that in the title the words "objects and purposes" should be substituted for "principles and rules".

51. **Mr. da Costa Lobo** (Portugal) favoured inclusion of article 113. The bracketed text in article 115 contained important elements, but note should be taken of the comments made by the representative of the United Kingdom.

52. **Mr. Kawamura** (Japan) thought that, while it should be for the Court to decide on disputes concerning its own judicial functions, in the case of other disputes, for instance relating to administrative or budgetary questions, the Assembly of States Parties would be better able to resolve the issues. For article 108, therefore, he favoured option 2. Concerning article 110, paragraph 3, he would prefer option 2, since consensus on an amendment might be difficult to achieve, although a merger of the two options might be a good compromise solution. He noted that option 2 for article 111 provided for a simplified procedure for entry into force of amendments to the list of crimes within the jurisdiction of the Court contained in article 5. In his delegation's view, the list of crimes was a core part of the Statute, and the entry into force of amendments to it should be subject to the procedure provided for in article 110. He proposed that, in the first sentence of paragraph 1 of option 2 for article 111, the words "in order to consider additions to the list" should be deleted. Lastly, he could support the first sentence of article 113, but considered that the second sentence would be better placed in the preamble to the Statute.

53. **Mr. Politi** (Italy) said that his delegation was also prepared to accept option 2 for article 108. He considered that, at the current stage, articles 110 and 111 would be best kept separate. Concerning article 110, it was important that the adoption and entry into force of amendments should have the support of an adequate majority, and he therefore favoured a reference to two thirds or three fourths of "all the States Parties", rather than of those present and voting. For article 111, he would prefer option 2.

54. Regarding article 112, the Italian Government was in fact proposing that the Statute should be opened for signature on 18 July 1998. He endorsed the comments made by Sweden regarding the signature and entry into force of the Statute. In regard to article 113, he supported the views expressed by the representative of Australia, and in article 115 he supported inclusion of the bracketed text, though consistency with paragraph 2 must be ensured.

55. **Mr. P. S. Rao** (India) said that for article 108 he would prefer option 4. Since articles 110 and 111 served different purposes, they would be best kept separate. Procedures for amendment should be such that they attracted the widest possible consensus, and voting should be a last resort. For article 111, he preferred option 1. Any review carried out should consider not only additions to the list of crimes within the jurisdiction of the Court but also deletions from that list, as circumstances required. He had doubts as to the legal validity of the second sentence of article 113, and would prefer that the whole article be deleted.

56. **Mr. Mahmood** (Pakistan) said that for article 110, paragraph 3, he supported the idea that a three-fourths majority of all States parties should be required for adoption of amendments. For article 111, he favoured option 1 and the alternative "States Parties", rather than "those present and voting", in paragraph 1.

57. **Mr. Ahmed** (Iraq) said that he preferred option 4 for article 108 and also for article 109. There would be good grounds for combining articles 110 and 111. For paragraph 3 of article 110, he favoured option 2, and in paragraph 5 would prefer "three fourths". For article 111, review of the Statute after the expiry of a five-year period from entry into force would be acceptable to his delegation. Lastly, he considered that article 113 could be deleted since the general principles it contained were already reflected in article 18 of the Vienna Convention on the Law of Treaties.

58. **Mr. Büchli** (Netherlands), referring to article 108, said that he was flexible as to whether there was need to make separate provision for two types of dispute which might come before the Court. He was generally favourable to combining articles 110 and 111, but appreciated the argument that any review of the Statute was a major step calling for a special procedure. Regarding what had been said by the representative of the former Yugoslav Republic of Macedonia on article 112, he thought that the final clauses of the Statute were not the place to debate political issues. It would probably be better to keep to the traditional wording.

59. He favoured retention of article 113 for the reasons outlined by the delegation of Norway: a mere reference to the Vienna Convention on the Law of Treaties would not be sufficient. He strongly urged delegations to consider the inclusion of such wording either there or elsewhere in the Statute. Regarding article 115, he would like to see elements of all three paragraphs incorporated in the text.

60. **Mr. Güney** (Turkey), referring to article 108, said that, while option 2 could accommodate his concerns, he would prefer the Mexican proposal, which made provision for referral of disputes to the International Court of Justice. He urged that agreement on article 109 be reached as soon as possible, since the subject of reservations was closely related to a number of substantive issues on which there were still differences of

opinion. In regard to article 111, provision for automatic review was essential if the future treaty was to remain viable. His delegation had difficulty in supporting article 113 as currently worded, and would prefer that the issue be covered by the relevant provisions of the Vienna Convention on the Law of Treaties. Lastly, he considered that the bracketed paragraph in article 115 was unnecessary and should be deleted.

61. *Mr. Kirsch (Canada) resumed the Chair.*

62. **Mr. Ndjalandjoko** (Democratic Republic of the Congo) said that for article 108 he favoured option 2, which would cover both disputes relating to the internal activities of the International Criminal Court and disputes between States parties. The text would not necessarily have to make reference to referral to the International Court of Justice. He could support the proposal that articles 110 and 111 be combined in a text which might perhaps be entitled "Modifications to the Statute".

63. His delegation found the overall content of article 112 acceptable, provided that the bracketed words "without any kind of discrimination" in lines 1 and 2 were deleted. He favoured deletion of article 113 for the reasons already advanced by previous speakers, and in article 115 would propose that paragraph 2 be replaced by the bracketed paragraph.

64. **Mr. Al Hafiz** (Saudi Arabia) supported the view expressed by the representative of the Syrian Arab Republic that there should be no article on settlement of disputes; that issue was already covered by general principles of international law and more specifically by the Vienna Convention on the Law of Treaties. Nor should the Statute include any article on reservations. For article 110, paragraph 3, he would prefer option 2 with reference to a three-fourths majority, and he would favour a corresponding wording for paragraph 5.

65. **Ms. Wyrozumska** (Poland) said that for article 108 her delegation would prefer option 3, although, in the light of concerns expressed by other delegations, it would be ready to discuss option 2. Concerning article 110, paragraph 3, her delegation did not consider that consensus was the proper procedure for adoption of amendments, and she would therefore prefer option 2 with provision for a two-thirds majority. However, she saw some merit in the Swiss proposal. Concerning article 111, she believed that provision for review of the Statute was necessary for the reasons outlined by Sweden, and would prefer option 2. Lastly, she shared Sweden's view that the Statute should stand on its own; the Rules of Procedure and Evidence should not necessarily have to be ratified, accepted or approved at the same time as the Statute itself. While she fully supported the intentions behind article 113, she agreed with Australia that its title should be reformulated.

66. **Mr. Ly** (Senegal) said that, with regard to article 108, he supported the position of the representative of Australia. For article 110, paragraph 3, he favoured option 2, but was waiting to see the French text of the Swiss proposal for articles 110 and 111, which he hoped would provide a solution. Concerning article 113, he could support the idea behind the second sentence, but considered that it might give rise to confusion and would be better redrafted and placed elsewhere in the Statute. Lastly, he could agree to the inclusion of the bracketed text in article 115, with some rewording of paragraph 2.

67. **Ms. Rwamo** (Burundi) favoured option 2 for article 108. She supported those delegations that had argued for the retention of article 113 on the grounds that it was vitally important not to allow crimes committed before the entry into force of the Statute to go unpunished. However, the wording of the last part of the second sentence might perhaps be improved.

68. **Mr. Mikulka** (Czech Republic) said that for article 108 he preferred option 3, which contained all that needed to be said on the subject. Its purpose was to prevent a situation in which the International Criminal Court might be paralysed by an artificial dispute which it was not competent to settle. He had no major problems with option 2, but thought that it should be stipulated that any recommendations made by the Assembly of States Parties should take due account of the obligations of the States involved under Article 36 of the Statute of the International Court of Justice.

69. For article 110, paragraph 3, he had a preference for option 2. In that regard, whatever majority was required for the adoption of amendments should be a majority of all States parties, not merely of States parties present and voting. He saw no reason why the article on amendments should not be combined with the article on review of the Statute. He was still not convinced of the usefulness of article 113: the first sentence was already covered by the law of treaties, and the second sentence might give rise to confusion because it did not constitute a legal obligation and did not make clear what was the goal of the action being requested of States. He saw no need for including such a provision in the final clauses, and believed that, if a political message was intended, it should more properly be placed in the preamble to the Statute.

70. **Mr. Onkelinx** (Belgium) said that, for article 108, option 1 was attractive, but it might be necessary to provide for other means of settlement for some disputes. He would support a merger of articles 110 and 111, and for article 110, paragraph 3, would suggest that options 1 and 2 be combined. He endorsed the views expressed by Norway on article 113: its contents might duplicate articles 18 and 25 of the Vienna Convention on the Law of Treaties, but its inclusion could still be useful. In his view the provision was correctly placed where it was, but he would be glad to accept its being placed elsewhere if that would give it greater prominence.

71. **Ms. Shahen** (Libyan Arab Jamahiriya) said that for article 108 she preferred option 4; for article 110, paragraph 3, she preferred option 2. For article 111 she would favour option 1 with a requirement for a five-year period from entry into force; that would give ample time for the issues to be considered.

The meeting rose at 6.05 p.m.