

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

Rome, Italy
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40th 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)*

40th meeting

Thursday, 16 July 1998, at 10.25 a.m.

Chairman: Mr. Kirsch (Canada)

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Organization of work (*concluded*)

1. The Chairman said that, in view of the fact that time was running out and that work remained to be done, it was the intention of the Bureau to put together in a single document the texts of the articles adopted by the Drafting Committee, the texts formulated by the Working Groups and the Coordinators and the texts that had emerged through consultations, in order to facilitate the work of the Committee of the Whole. It was suggested that the Committee should meet again the following day to take a decision on that document. At the current meeting, the Committee would consider a report of the Working Group on Procedural Matters on parts 5, 6 and 8 of the draft Statute and a report of the Coordinator for part 12.

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.78 and Corr.1 and A/CONF.183/C.1/WGPM/L.2/Add.8 and Corr.1)

DRAFT STATUTE

PART 5. INVESTIGATION AND PROSECUTION (*continued*)

PART 6. THE TRIAL (*continued*)

PART 8. APPEAL AND REVIEW (*continued*)

Report of the Working Group on Procedural Matters (*concluded*) (A/CONF.183/C.1/WGPM/L.2/Add.8 and Corr.1)

2. Ms. Fernández de Gurmendi (Argentina), Chairman of the Working Group on Procedural Matters, introducing the Working Group's last report (A/CONF.183/C.1/WGPM/L.2/Add.8 and Corr.1), said that the Group was transmitting to the Committee for consideration a series of provisions that had been left pending. She thanked all delegations which had participated in the Group for their cooperation.

3. Mr. Harris (United States of America) thought that, in order to correctly reflect what had been agreed, the words "shall hold a hearing in the absence of the accused" in article 61, paragraph 1 bis, should be amended to read: "may hold a hearing in the absence of the accused".

4. *It was so decided.*

5. Mr. Buchet (France) thought that, after the word "may", the words "upon the request of the Prosecutor or on its own motion" should be added.

6. *It was so decided.*

7. The Chairman said that he took it that, with those amendments, the Committee of the Whole agreed to refer the provisions contained in the report to the Drafting Committee.

8. *It was so decided.*

PART 12. FINANCING OF THE COURT (*continued*)

Recommendations of the Coordinator
(A/CONF.183/C.1/L.78 and Corr.1)

9. Mr. S. R. Rao (India), Coordinator, introducing document A/CONF.183/C.1/L.78 and Corr.1, said that the financing of the International Criminal Court was a question of critical importance which had been the subject of delicate and sensitive negotiations. An agreed solution had finally been arrived at.

10. Article 103 was a new provision; the original article 103 had become article 103 bis. A new element was that the provisions covered not only the expenses of the Court but also those of meetings of the Assembly of States Parties, including its Bureau and subsidiary bodies, if any. The travel costs of those attending the Assembly would not, of course, be covered.

11. The scope of article 104 had, likewise, been extended to cover the Assembly of States Parties. He also drew attention to a correction to be made in the chapeau which was contained in the corrigendum to the document.

12. Articles 105 and 106 represented a delicate compromise. The whole text submitted was the result of lengthy negotiations and he urged the Committee to accept it as it stood.

13. Mr. Al-Shaibani (Yemen) said that the Arabic version of article 105 should be brought into line with the English version.

14. The Chairman asked whether, subject to that understanding, the Committee of the Whole agreed to refer the articles recommended by the Coordinator to the Drafting Committee.

15. *It was so decided.*

16. Ms. Sundberg (Sweden) said that the text of part 12 had been painstakingly negotiated, with substantial concessions made on both sides, but she particularly regretted that no agreement had been reached on the financing of the Court in its initial phase. In her view, the wording of article 104 (b) should be interpreted as making it possible for the Court to seek funds

from the United Nations during its initial phase, should that be necessary in order to ensure its proper functioning. Concerning article 105, her delegation's view was that the expression "as additional funds" should be interpreted as meaning that voluntary contributions should not be used for meeting core expenses of the Court: those expenses should be met by assessed contributions.

17. **Ms. Chatoor** (Trinidad and Tobago) associated herself with the views expressed by the representative of Sweden. She deeply regretted that more had not been achieved, but was prepared to go along with the text proposed in order to help to achieve the objectives of the Conference.

The meeting rose at 10.55 a.m.

41st meeting

Thursday, 16 July 1998, at 3.15 p.m.

Chairman: Mr. Kirsch (Canada)

later: Mr. Mochochoko (Lesotho) (Vice-Chairman)

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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.47/Add.2, A/CONF.183/C.1/L.68/Rev.2, A/CONF.183/C.1/L.84, A/CONF.183/C.1/L.85 and A/CONF.183/C.1/WGP/L.14/Add.3/Rev.1)

DRAFT STATUTE

PART 7. PENALTIES (*continued*)

Report of the Working Group on Penalties (concluded) (A/CONF.183/C.1/WGP/L.14/Add.3/Rev.1)

1. **Mr. Fife** (Norway), Chairman of the Working Group on Penalties, introduced the report of the Working Group contained in document A/CONF.183/C.1/WGP/L.14/Add.3/Rev.1. It contained a proposed text for article 79 bis and a statement which the Group recommended that the President of the Conference make in connection with the fact that the proposed Statute would not provide for the death penalty.

2. **Mr. Villagrán Kramer** (Guatemala) said that the proposals in the report resolved a complex problem for States whose legislation included the death penalty. He urged their acceptance by the Conference.

3. **Mr. Yee** (Singapore) said that it was an important principle of criminal justice that the penalty should be commensurate with the gravity of the crime. Singapore believed that the International Criminal Court should be able to impose the most effective penalty, including the death penalty, for the crimes under its jurisdiction. That was why it had co-sponsored the proposal providing for the death penalty in document A/CONF.183/C.1/WGP/L.13. No delegation had claimed that the death penalty was prohibited under international law.

Article 6, paragraph 2, of the International Covenant on Civil and Political Rights of 1966 allowed the sentence of death to be imposed for the most serious crimes. The right to life, recognized in article 3 of the Universal Declaration of Human Rights of 1948, must not be interpreted in a way that would threaten the right of individuals and of the community, including the international community, to security.

4. Conscious of the need to advance the negotiations in order to ensure the early establishment of a strong, effective and independent court, his delegation had supported the efforts of the Chairman which had culminated in the compromise package now before the Committee of the Whole. It wished to place on record its understanding that the decision not to include the death penalty in the Statute would in no way affect the sovereign rights of States to determine the appropriate legal measures and penalties to combat serious crimes effectively, including the right to impose the death penalty in accordance with international safeguards. The debate on that issue in the Conference had clearly demonstrated that there was no international consensus on the abolition of the death penalty.

5. **Mr. Maharaj** (Trinidad and Tobago) said that his country remained committed to the establishment of an international criminal court and had played a leading role in the initiation and development of the process that had led up to the Conference.

6. The legislation of Trinidad and Tobago, like that of more than 90 other countries, provided for the death penalty for murder. His Government could not support the exclusion of the death penalty from those provided for in the Statute, and the proposals in the Working Group's report would go only some way towards meeting the position of Trinidad and Tobago and of the States of the Caribbean Community. However, his Government would not stand in the way of the finalization of the text concerning penalties.

7. **Mr. Woldwolde** (Ethiopia) said that crimes like genocide, war crimes and crimes against humanity called for penalties