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**Preparatory Committee on the Establishment
of an International Criminal Court**

16 March-3 April 1998

**Working Group on Complementarity and
Trigger Mechanism**

Proposal submitted by the United States of America

Article 11 *bis*. Preliminary rulings regarding admissibility

1. When a matter has been referred to the Court pursuant to article 6 and the Prosecutor has determined that there would be a sufficient basis to commence an investigation of the matter, the Prosecutor shall make such referral known by public announcement and by notification to all States Parties.
2. Within [] days of the public announcement of such referral, a State may inform the Court that it is investigating its nationals or others within its jurisdiction with respect to criminal acts that allegedly were committed in the context of the matter referred to the Court and that may constitute offences described in article 5. At the request of that State, the Prosecutor shall defer to the State's investigation of such persons unless the Prosecutor determines that there has been a total or partial collapse or unavailability of the State's national judicial system, or the State is unwilling or unable genuinely to carry out the investigation and prosecutions. Before the Prosecutor may commence investigation of such persons, the Prosecutor must obtain a preliminary ruling from a Pre-Trial Chamber confirming the Prosecutor's determination. The Prosecutor's deferral to the State's investigation shall be open for review by the Prosecutor [six months] [one year] after the date of deferral.
3. A preliminary ruling of the Pre-Trial Chamber confirming the Prosecutor's determination may be appealed to the Appeals Chamber by the State concerned. If the preliminary ruling is appealed by the State, [two thirds] [all] of the judges of the Appeals Chamber must confirm that ruling before the Prosecutor may commence the investigation and seek indictments.
4. When the Prosecutor has deferred an investigation pursuant to section 2, the Prosecutor may request that the State concerned report periodically on the progress of its investigations and any subsequent prosecutions. States Parties shall respond to such requests without undue delay.



5. That a State has challenged a preliminary ruling under the present article shall not prejudice its right to challenge admissibility of a case under article 12¹ [or to withhold its consent to the exercise of jurisdiction under article 7].

Notes

¹ Article 12(4) should be revised to require a vote by two thirds of the judges of the Appeals Chamber to decide that a case is admissible
