

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

Rome, Italy
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27th 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)*

123. She would have preferred option 3 in the war crimes chapeau. However, she could accept option 2 if that met with general agreement. On the list of weapons in section B, subparagraph (o), she favoured option 1. The inclusion of sections C and D was crucial to the relevance of the Statute and the Court.

124. Further reflection on the elements of crimes was clearly needed. The issue could certainly be addressed by the Preparatory Commission after the Conference, provided that the entry into force of the Statute was not delayed.

125. **Mr. Kamto** (Cameroon) said that he fully supported the inclusion of aggression in the Statute, and option 1 under the war crimes chapeau. He would welcome any improved draft that would achieve consensus. He was open-minded as to the inclusion of treaty crimes. As to war crimes, he preferred option 3 for reasons of principle and for technical reasons, although, for the sake of consensus, he could accept option 2. For section B, subparagraph (o), he could accept option 1, although he would prefer the inclusion of elements from the other options.

126. Sections C and D should be included. Consideration of the elements of crimes could be kept under review, either by referring to them in the Final Act or by introducing an explicit clause in the Statute that would give the Preparatory Commission a mandate to produce a paper on the subject.

127. **Mr. Tomka** (Slovakia) said that he had strongly supported the inclusion of aggression but that a generally acceptable definition would probably not be found. He therefore believed

that option 2 should be adopted, as that would enable the Conference to complete its work. That did not preclude the inclusion of aggression in the future, when the Statute was reviewed, once an agreement on a definition had been reached.

128. Treaty crimes differed in nature from crimes against humanity, war crimes and genocide, and should not be included in the Statute at the current stage.

129. As he saw it, the war crimes threshold was not an element in the definition of such crimes, but rather a condition for establishing the jurisdiction of the Court. He would prefer option 3, but option 2 seemed to offer a basis for compromise.

130. With regard to section B, subparagraph (o), he said that option 2, which had the most support, did not reflect the current state of international law. Option 1 could serve as a basis for compromise, especially as subparagraph (vi) would make it possible to take into account future developments in the area of armed conflicts and international humanitarian law.

131. Sections C and D should be included, as the majority of the conflicts in the world were non-international in nature.

132. There was no need to include the elements of crimes, as the Statute should be sufficient for the functioning of the Court. He had no objection to discussion of the issue by the Preparatory Commission, but questioned the legal force of any document produced by the Commission and its relevance to decisions of the Court's judges.

The meeting rose at 6 p.m.

27th meeting

Wednesday, 8 July 1998, at 6 p.m.

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

A/CONF.183/C.1/SR.27

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.53)

DRAFT STATUTE

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

Discussion paper prepared by the Bureau (continued)
(A/CONF.183/C.1/L.53)

Article 5. Crimes within the jurisdiction of the Court (*continued*)

1. **The Chairman** invited the Committee of the Whole to continue its consideration of document A/CONF.183/C.1/L.53,

and referred to the six questions to which the President of the Conference had requested replies.

2. **Mr. Mahmoud** (Iraq) said that the jurisdiction of the International Criminal Court should cover genocide, crimes against humanity and war crimes. In the chapeau on war crimes, he supported option 3. In section B, subparagraph (o), concerning weapons, option 2 should be taken up, with the addition of a new subparagraph (vii) on weapons which contained enriched uranium. On aggression, he confirmed his support for the option contained in document A/CONF.183/C.1/L.37 and Corr.1. If that option did not find general acceptance, the crime should not be included. Economic embargoes should be regarded as crimes against humanity. Sections C and D, concerning non-international armed conflicts, should not be included in the Statute.

3. **Mr. Bouguetaia** (Algeria) said that aggression had been defined by the General Assembly as a crime against international peace and should therefore be within the purview of the

Court. He favoured the inclusion of treaty crimes, especially terrorism. However, a global and unified approach to such crimes was needed.

4. With regard to thresholds for war crimes, he agreed that the introduction to article 5 was rather restrictive. He would prefer option 2, because option 1, taken in the light of the introduction, might remove certain war crimes from the jurisdiction of the Court. On the question of weapons, he preferred option 2 for section B, subparagraph (o). The objection that the principle of *nullum crimen sine lege* might preclude listing some weapons because they were not prohibited under customary international law was not cogent. Moreover, the purpose of the Conference was, surely, to harmonize ethics, morality and law.

5. He was somewhat concerned about the inclusion of sections C and D, since that might lead to interference in the internal affairs of countries. It would be difficult to draw a line between a genuine armed internal conflict and internal disturbances.

6. The elements of crimes must be included, because the Court could not deal with crimes without knowing what their constituent elements were.

7. **Mr. Hafner** (Austria) said that he was in favour of including aggression, provided that it was possible to agree on a definition. While he shared the concerns of those who had proposed the inclusion of treaty crimes, he found it difficult to support their views at the current juncture. He would like to include a text on attacks against United Nations personnel, but that should be dealt with in the framework of war crimes. With regard to the war crimes threshold, he could, with hesitation, accept option 2 as a compromise. Similarly, on the question concerning weapons, he could accept option 1 for section B, subparagraph (o), provided that subparagraph (iii) included a reference to exploding bullets and particular emphasis was laid in subparagraph (vi) on the possibility of introducing flexibility in the course of review conferences. That had to be harmonized with negotiations on articles 110 and 111.

8. The reference to internal conflicts was a *sine qua non* for his delegation. However, he saw no need to deal with the elements of crimes but would not refrain from cooperating on that issue, provided that the elements of crimes were not incorporated in the Statute but were addressed afterwards by the Preparatory Commission for the International Criminal Court.

9. **Mr. Pérez Otermin** (Uruguay) said that, if the Court was to judge the most serious crimes affecting the international community as a whole, it was relevant to include genocide, crimes against humanity and war crimes. Aggression must also be included. On the other hand, it was difficult to accept the intervention of a political organ such as the Security Council in defining the existence or non-existence of a crime.

10. Owing to time constraints, it might be advisable not to consider the inclusion of terrorism, drug trafficking and crimes against United Nations personnel until a later stage.

11. His position on crimes against humanity was that attack must be defined as both systematic and generalized. As to war crimes thresholds, he preferred option 1. Most of the crimes within the purview of the Court arose in the course of internal conflicts. However, bearing in mind the concerns of some countries, the scope of those crimes in sections C and D should be more precisely defined to make it perfectly clear that there was no intention to interfere in the internal affairs of States with fully established democratic regimes.

12. It was essential to include the elements of crimes in the Statute.

13. **Mr. Gaitán Mahecha** (Colombia) said that he preferred option 3 on the threshold for war crimes but, for the sake of general agreement, could accept option 2. He supported the inclusion of sections C and D on internal conflicts.

14. The elements of crimes should be established in a precise manner by the Preparatory Commission to ensure strict compliance with the principle of *nullum crimen sine lege* contained in article 21 of the draft Statute. Although there were definitions in international law for certain crimes such as genocide and forced disappearance, those definitions had to be formulated very carefully for adoption in the Statute.

15. **Ms. Lehto** (Finland) said that she endorsed the statement made by the representative of Austria on behalf of the European Union. It would be quite appropriate and timely for the Court to have jurisdiction over aggression, the definition of which contained in option 1 under the relevant heading of the discussion paper was acceptable. The inclusion of treaty crimes would not be advisable, and the jurisdiction of the Court should be limited to the core crimes, at least initially. The reasons were that its resources should be focused on the most serious international crimes and that there were still considerable problems of defining treaty crimes in some cases. Crimes against United Nations personnel could be included under war crimes.

16. Her clear preference on war crimes thresholds would be for option 3. However, as a compromise, she could accept option 2, which seemed to enjoy broad support. Concerning weapons, option 1 would be an acceptable compromise, in view of the support it had received. However, the chapeau and subparagraphs (iii) and (vi) might still need some revision.

17. On internal conflicts, she strongly supported the inclusion of both section C and section D, as otherwise the Court would be left toothless with respect to most current armed conflicts. In her view, no further elaboration of elements of crimes under the Court's jurisdiction was necessary, but she was prepared to be flexible if the general view of the Conference was that a paper on the subject should be drafted by the Preparatory Commission, provided that the entry into force of the Statute was not delayed.

18. **Mr. Castellón Duarte** (Nicaragua) said that he agreed with the presentation of the crimes set out in article 5. With regard to war crimes, he supported the reference to both international and internal conflicts, and consequently the inclusion

of sections C and D. Aggression should be included, subject to achieving a consensus on its definition. However, the role of the Security Council should be as limited as possible and should not undermine the independence of the Court.

19. Treaty crimes should be included, and he therefore supported option 1, but, in view of conflicting opinions, it might be advisable to refer the issue to a review conference. The definition of crimes against humanity was acceptable to his delegation. Genocide, as defined in the draft Statute, should be included. He hoped that consideration of the elements of crimes would not delay the entry into force of the Statute and that subsequently those elements would be included in an annex to the Statute.

20. **Mr. Khalid Bin Ali Abdullah Al-Khalifa** (Bahrain) said that aggression should be included, taking account of the definition in General Assembly resolution 3314 (XXIX) of 14 December 1974. He endorsed what had been said by the representatives of the Syrian Arab Republic and Egypt. At that stage, treaty crimes should not be included because they required further consideration. Although he supported option 3 on war crimes thresholds, he could accept option 2. There should be an exhaustive list of weapons which caused superfluous injury and unnecessary suffering or were inherently indiscriminate.

21. He found the thresholds in sections C and D difficult to accept because there was no positive definition of non-international conflicts. An exact definition of internal conflicts would be required, along the lines of Additional Protocol II to the Geneva Conventions of 1949, and great care must be taken not to interfere in the internal affairs of States. The definition must take into account situations of peace and of armed conflict, as well as situations of violence which did not amount to armed conflict.

22. There was no link between crimes against humanity and terrorism. With regard to gender-based crimes, he pointed out that the word "gender" was not defined in the discussion paper, although document A/CONF.183/C.1/L.44 and Corr.1 contained a definition. Crimes against humanity should be considered as consisting of acts committed in a systematic and widespread way during armed conflict or, indeed, before such armed conflict.

23. **Ms. Tomič** (Slovenia) said that she favoured the inclusion of aggression within the Court's jurisdiction, and thus supported option 1. The reasons for the inclusion of treaty crimes, such as crimes related to drug trafficking, were quite understandable, but that question would be more appropriately dealt with later, perhaps through an early review of the Statute. There should be no threshold provision for war crimes, so that she preferred option 3, but could support option 2 as a compromise. Since she considered that jurisdiction over war crimes committed in internal armed conflicts was a necessary prerogative of the Court, she supported the inclusion of sections C and D. Section B, subparagraph (*p* bis), and subparagraph (*r* bis) on United Nations personnel, should be included.

24. For section B, subparagraph (*o*), on weapons, she preferred option 3 but would be willing to work on the basis of option 1 if the words "inherently indiscriminate" were added in the chapeau and if the wording from the draft Statute itself were incorporated in subparagraph (*vi*).

25. She was flexible about the elements of crimes, even though she remained doubtful as to the necessity of including them. However, that should in no way delay the entry into force of the Statute.

26. **Mr. Prandler** (Hungary) said that he associated himself with the position taken by the European Union on document A/CONF.183/C.1/L.53. He was still in favour of including aggression if general agreement could be reached on a definition. The formulation contained in the discussion paper, although minimal, did refer to the most important elements and acts which might constitute aggression. However, in defining aggression, the prerogatives of the Security Council in determining any act of aggression must not be prejudiced.

27. Treaty crimes need not be included. As to thresholds for war crimes, option 2 was the right approach. He supported the retention of sections C and D on non-international armed conflicts and regretted that several delegations were opposed to their inclusion. A great majority of the armed conflicts in the world over the past 50 years had been of a non-international character.

28. **Mr. Robinson** (Jamaica) said that the question of elements of crimes was perhaps the most important question to be considered. He was not entirely convinced of the need to include them at all. Other courts managed without the benefit of any detailed statement of such elements, and there was an abundance of case law. If, however, the issue was to be addressed, the proper forum was the Conference. It was not a matter for a preparatory commission. If the elements were to be an integral part of the Statute, they would be binding on the Court, as distinct from being merely recommendatory, and would have to be formulated before the Statute entered into force.

29. As matters stood, he would not support the inclusion of treaty crimes in the Statute, though he was open to considering any fair and reasonable resolution of the issue.

30. **Mr. Nathan** (Israel) said that the first essential precondition for the inclusion of aggression in the jurisdiction of the Court was a precise and generally accepted definition. The second was to safeguard the position of the Security Council under Article 39 of the Charter of the United Nations. Although option 1 spoke of attack by the armed forces of a State on the territory of another State, it completely disregarded other grave acts of aggression.

31. It would not be appropriate to include treaty crimes in the Statute. The Conventions of The Hague and Montreal provided for universal jurisdiction on treaty crimes.

32. His delegation reserved its position on section B, subparagraph (*f*), relating to the transfer of population. In particular,

the references to "transfer, directly or indirectly" and the "population of the occupied territory within or outside this territory" should be deleted.

33. With regard to the war crimes threshold, he would support option 1. Article 20 of the 1996 draft Code of Crimes against the Peace and Security of Mankind contained a similar threshold clause. Such a clause would certainly be appropriate for inclusion in the Statute. Section B, subparagraph (o), should include a specific enumeration of the prohibited weapons because of the need for clear definitions as a matter of legal principle. Further consideration should be given to the wording of subparagraph (o) (vi) on future prohibitions under conventional and customary law, in order to formulate an adequate and precise definition.

34. As many atrocities during recent decades had been committed in internal conflicts, it was essential that they be subject to international law, and sections C and D should therefore be included.

35. It would certainly be necessary to define the elements of crimes under the jurisdiction of the Court, to assist it in interpreting the Statute. The definitions should be contained in an annex which should form an integral part of the Statute. The drafting of such an annex should not delay the entry into force of the Statute.

36. **Ms. Aguiar** (Dominican Republic) said that article 5 had no need of a chapeau, which could only undermine the strength of the Court. A listing of the crimes within the jurisdiction of the Court would be sufficient. She could agree to including aggression, so long as a clear and mutually acceptable definition could be established. The definition should stipulate the role of the Security Council. General Assembly resolution 3314 (XXIX) could serve as a basis for finding common understanding because it had been adopted by a large majority of Member States.

37. In view of the state of customary law, it was perhaps not the opportune moment to include treaty crimes in the jurisdiction of the Court. However, the issue should be left open for review.

38. Both option 1 and option 2 on war crimes thresholds were unsatisfactory. To kill intentionally was equally serious, whether or not it was part of a plan or general policy. She therefore favoured option 3, perhaps together with the chapeau of option 2.

39. She advocated including a list of weapons, materials and methods of war that caused damage or unnecessary suffering or had indiscriminate effects, the latter being the key factor. She favoured option 1 for section B, subparagraph (o), which included a potentially open list, especially in subparagraph (vi), which would make it possible to take into account technological progress in the arms industry.

40. Supporting the principle of legality expressed by *nullum crimen sine lege, nulla poena sine lege*, she said that the elements

of crimes must not be left to a later stage. States parties must be sure of the commitments that they were undertaking. The core crimes, however, were well defined by reference to existing instruments, thus satisfying the requirement of legality. Lastly, she was concerned that some types of crimes used as methods of war, for instance, sex abuse against women and children, were not contained in the document.

41. **Mr. R. P. Domingos** (Angola) said that he strongly supported the statements made by South Africa on behalf of the Southern African Development Community and Lesotho on behalf of the Group of African States. Genocide, crimes against humanity and war crimes should be included in the Statute. With regard to war crimes, both section A and section B were acceptable. In section B, subparagraph (o), he supported option 2, although he could accept option 1, with the addition of nuclear weapons and of anti-personnel mines from option 2. He supported option 1 for both section C and section D.

42. He was not yet decided whether aggression should be included in the Statute. A clear definition was needed so as to take account of General Assembly resolution 3314 (XXIX) and, particularly, the role of the Security Council. Acts committed by mercenaries should also be of concern to the international community, and as such should be included in the Court's jurisdiction.

43. **Ms. La Haye** (Bosnia and Herzegovina) said that she favoured the inclusion of aggression, provided that a wider definition was adopted, perhaps on the lines of the amended German proposal. However, if the issue continued to divide the Conference, it might be better to defer consideration. As to treaty crimes, she would favour the inclusion of crimes against United Nations personnel. On war crimes, she had a strong preference for option 3, but, in a spirit of compromise, could accept option 2. Regarding weapons, she favoured option 3, which seemed to represent the best reflection of customary international humanitarian law. However, for the sake of consensus, she could accept option 1, which contained a restricted list of prohibited weapons.

44. On internal armed conflicts, she strongly favoured the inclusion of sections C and D. She was in total agreement with Switzerland regarding the definition under customary international law of the crimes listed in section D. There was no need for a threshold, but, if one were adopted, it should apply to war crimes committed both in international and in non-international armed conflicts.

45. Most elements of crimes were already established in treaty and customary international law. In defining the scope of the jurisdiction of the Court, it would be appropriate to refer to existing law.

46. **Mr. Bihamiriza** (Burundi) said that he supported the inclusion of the core crimes and could also support the inclusion of aggression. Economic embargoes, which subjected the vulnerable population to great suffering, should also fall under

the jurisdiction of the Court. Regarding war crimes, he favoured option 3, provided that there was a clear and exhaustive list of such crimes. As to the list of weapons prohibited under section B, subparagraph (o), he favoured option 2 but, in a spirit of compromise, would be prepared to accept option 3, provided that the list remained open. The Court should not have competence with respect to internal conflicts. He would favour defining the elements of crimes after the Conference, provided that the entry into force of the Statute were not delayed.

47. **Mr. Lehmann** (Denmark) said that it would be a most unfortunate signal to the world public if the primary crime of aggression could not be included in the Statute. The Charter of the United Nations was based on the need to save succeeding generations from the scourge of war. To claim that aggression could not be included in the Statute because it had not been defined was unacceptable. Furthermore, the nonsensical situation could arise that, if the Security Council referred a case of aggression to the Court, the Court would not be able to try the individuals responsible.

48. He was more flexible on treaty crimes, especially if a review clause were incorporated in the Statute. As to the question of the threshold for war crimes, the Geneva Conventions of 1949 distinguished between breaches and grave breaches of international humanitarian law, the latter being war crimes. Raising the threshold to "extremely" grave breaches might undermine the whole concept behind the language of the Geneva Conventions. He could accept option 2 at the current stage of developments.

49. With regard to weapons, he could accept option 1, seen in the context of the principle of *nullum crimen sine lege*. It was essential to incorporate sections C and D. Finally, on elements of crimes, the judges and the Court needed to know exactly what was intended by the drafters. Perhaps, however, the final draft of the Statute would to some extent obviate the need for including such elements. Some might perhaps be incorporated into the Rules of Procedure and Evidence. If a third document on elements of crimes did prove necessary, it should constitute a guide to the Court. But the adoption and entry into force of the Statute should not be delayed by work on such a document.

50. **Mr. Mikulka** (Czech Republic) said that he associated himself with the statement made by Austria on behalf of the European Union. He was firmly convinced that aggression should be included in the Statute. However, as there seemed to be no consensus on the inclusion of treaty crimes, it would be better to defer consideration of that issue to a review conference.

51. It was not necessary to establish a threshold for war crimes. He therefore preferred option 3, but could accept option 2 as a compromise. The list of prohibited weapons in option 3 for section B, subparagraph (o), was acceptable, but again, as a compromise, he could accept option 1. Sections C and D on crimes committed in non-international armed conflicts should be included in the Statute. He understood the difficulties of States not parties to Additional Protocol II to the Geneva

Conventions of 1949, but, after hearing the representative of Mexico, believed that the problem could be overcome.

52. Although not convinced that it was really necessary to elaborate elements of crimes, he would not object if that were the wish of the majority. However, their legal status, their relationship with the Statute and their form should first be clarified.

53. **Ms. Dabrowiecka** (Poland) said that she fully endorsed the remarks of previous speakers, especially Denmark and the Czech Republic, on aggression, which should be included in the Statute on the basis of the definition contained in option 1.

54. Although generally in favour of including treaty crimes, she said that they should be considered at a review conference, given the complexity of the issues involved and time constraints. She would support option 2 on the threshold for war crimes, and option 1 for section B, subparagraph (o), on weaponry. She reiterated her firm support for the inclusion of sections C and D in the Statute. The formulation of a text on elements of crimes should not impede the entry into force of the Statute.

55. **Mr. Ngatse** (Congo) said that the Court should have jurisdiction over genocide, as defined in the Convention on the Prevention and Punishment of the Crime of Genocide of 1948, war crimes and crimes against humanity, and also over aggression. The proposed definition of aggression in the discussion paper was not satisfactory, but work on defining aggression could be continued after the Conference, provided that the crime was mentioned in the Statute.

56. He was not opposed to the inclusion of treaty crimes, since the role of the Court was to ensure legal protection for the international community.

57. Concerning crimes against humanity, he restated his view that, in the chapeau of paragraph 1, the term "generalized" or "systematic" might be used with reference to attacks. On war crimes, he preferred option 3, which reflected existing international law. War crimes could be committed in the context of an internal conflict and must be taken into account in article 5 of the Statute. With regard to the various options under war crimes, option 2 could be a compromise solution. He favoured option 1 for section B, subparagraph (o), as long as weapons of mass destruction were included. Elements of crimes should be included in the Statute. They could be established by the Preparatory Commission, provided that the entry into effect of the Statute was not delayed or its legal status undermined.

58. **Mr. Amehou** (Benin) said that genocide, crimes against humanity, war crimes and the crime of aggression should be included in the Statute. Terrorism should also fall within the jurisdiction of the Court. He suggested that consideration of the other treaty crimes should continue in the Preparatory Commission, with a view to their inclusion at a later stage. Concerning the chapeau on war crimes, he supported option 3. The jurisdiction of the Court was already stated at the beginning of article 5. The burden of proof mentioned in options 1 and 2

would be too great for the Prosecutor. However, for the sake of compromise, he could accept option 2 if that were the majority choice.

59. On the crime of aggression, option 1 was acceptable to him. As the Court was to try individuals and not States, it would be helpful to add the phrase "of which the accused is a national" after the words "a State" in line 3 of option 1. For section B, subparagraph (o), on weapons, he supported option 2. Sections C and D should clearly be included in the Statute. Detailed consideration of the elements of crimes should be referred to the Preparatory Commission for further consideration.

60. **Mr. Effendi** (Indonesia) said that he was flexible on the issues on which he did not comment. However, crimes against humanity and war crimes, with specific reference to crimes against women, should be included in the Statute. There should be no threshold provision on war crimes. For section B, subparagraph (o), he preferred option 2, but option 3 might be preferable as a compromise solution. Failing acceptance of option 3, option 2 would provide a good basis for discussion. The perpetrators of the crimes specified in sections C and D could be punished using the provisions of crimes against humanity, so that those sections need not be included. He was open to a compromise solution, in which context due account should be taken of customary international law.

61. **Ms. Assoumany** (Comoros) said that she favoured the inclusion of aggression in the Statute. On war crimes, she preferred option 2. Further discussion was necessary on sections C and D on non-international armed conflicts. Crimes against humanity should include acts of terrorism, but further work was needed on a definition of the latter. Treaty crimes should be included in the Statute. Recalling her delegation's proposal in document A/CONF.183/C.1/L.46 and Corr.1, she said that acts committed by mercenaries should be included as crimes under the Statute because they constituted a serious threat to the stability and constitutional order of States.

62. **Mr. Al-Shaibani** (Yemen) said that aggression should be included, with an appropriate definition. He could, in a spirit of cooperation, accept the inclusion in the Statute of war crimes committed in non-international conflicts, on the understanding that the Court's jurisdiction began when the political structure of a State collapsed totally, not just partially.

63. With regard to section B, subparagraph (o), on weapons, he preferred option 2. There should not be a selective approach to treaty crimes, which should therefore not be included in the Statute. Finally, he agreed that the elements of crimes should be studied in the context of the Preparatory Commission, once the Conference had been concluded.

64. **Mr. Pham Truong Giang** (Viet Nam) said that he strongly supported the inclusion of aggression as a core crime in the Statute, and noted that the last paragraph under "Aggression" mentioned that elements from General Assembly resolution 3314 (XXIX) might be inserted in the definition. He insisted on

the retention of the words "armed conflict" in the chapeau under "Crimes against humanity". Serious consideration should be given to including economic and other blockades in paragraph 1 (j) on inhumane acts.

65. To achieve a generally acceptable solution, he supported option 1 for section B, subparagraph (o), with the inclusion of nuclear weapons. He strongly advocated excluding sections C and D.

66. Treaty crimes might be punished by the international community, but, owing to time constraints, those crimes should be left, for the time being, to the national jurisdiction of the States concerned.

67. It was important to define elements of crimes, in order to give clear practical guidance to the Court. That task should be undertaken by the Preparatory Commission.

68. **Ms. Kleopas** (Cyprus) said that she strongly supported the inclusion of aggression under the Court's jurisdiction, although she was willing to compromise on its definition and might accept option 1 as a basis for discussion.

69. She opposed the inclusion of treaty crimes for the reasons stated by the United Kingdom delegation. With regard to a threshold for war crimes, she was in favour of option 3, but could accept option 2 as a compromise solution. For section B, subparagraph (o), on weapons, she favoured option 3, but could accept option 1 as a compromise. She had no objection to the inclusion of sections C and D.

70. She saw no need to include elements of crimes in the text, and said that they could be considered at a later stage, provided that the entry into force of the Statute was not affected thereby.

71. **Mr. Bhattarai** (Nepal) said that he favoured the inclusion of aggression in the Statute. However, an acceptable definition of that crime, as well as consideration of the role of the Security Council, were prerequisites.

72. Concerning treaty crimes, he supported option 1 for subparagraph (e) of the chapeau of article 5, but could accept option 2 as a compromise, provided that there would be scope for the inclusion of those crimes at a later stage. Under the "War crimes" heading, he favoured option 2. For section B, subparagraph (o), he supported option 2, owing to its greater clarity. For the sake of compromise, however, he could be flexible towards option 1, with some amendments to accommodate various concerns.

73. The inclusion of sections C and D at that stage would cause difficulties for countries that were not party to Additional Protocol II to the Geneva Conventions of 1949.

74. **Mr. Palihakkara** (Sri Lanka) said that he did not object to the inclusion of genocide. He agreed with the presentation of crimes against humanity contained in the chapeau. However, the recruitment of children into the armed forces of governmental and non-governmental entities should also be covered. It should

also be made quite clear that the final words of paragraph 2 (a) under "Crimes against humanity", reading: "a State or organizational policy to commit such attack" were also intended to cover the policy of non-governmental entities.

75. He asked whether the absence of the word "war" in the text of the provisions under "War crimes" was intended to imply that some international armed conflict was not regarded as war.

76. Concerning weaponry, he could accept option 1 for section B, subparagraph (o), with the inclusion of nuclear weapons, or option 3.

77. The proposed elaboration by the Preparatory Commission of elements of war crimes would constitute a fundamental departure from the way in which general multilateral treaties were negotiated in the United Nations. He had no objection, however, to the formulation of draft Rules of Procedure and Evidence by the Commission.

78. Finding an acceptable definition of aggression was an extremely difficult task, being related to questions of Security Council vetoes or perhaps a consultative role of the General Assembly. He hoped, however, that a definition could be agreed upon and included in the Statute.

79. Further consideration should be given to the inclusion of terrorism, crimes related to drug trafficking and crimes against United Nations personnel.

80. Section C on internal armed conflict was broadly acceptable, but, unless there were a complete breakdown of the judicial and administrative structure, due regard should be paid to the principle of complementarity. He had extreme difficulty with section D, largely because of the assumption that customary international law was generally applicable.

81. **Mr. Moussavou Moussavou** (Gabon) said that he favoured the inclusion of the crime of aggression within the jurisdiction of the Court, since not to do so would be to ignore the cruel reality of such acts. Of course, both the nature of the crime and the role of the Security Council must be defined, the latter so as not to infringe upon the jurisdiction of the Court. Despite the importance of treaty crimes, the jurisdiction of a criminal court should, for the time being, be restricted to the core crimes. Under the threshold for war crimes, he favoured option 3, as options 1 and 2 appeared restrictive in their scope. However, in a spirit of compromise, he could accept option 2. On the lists of crimes, if the Court had to deal with the most serious crimes, it also had to define them, so option 3 had his full support. Option 1 would be acceptable as a compromise. Armed conflicts of a non-international character should be included in the Statute. He favoured option 1 for both section C and section D. Finally, it was not necessary to include the definition of elements of crimes because that would delay the entry into force of the Statute.

The meeting rose at 9 p.m.

28th meeting

Wednesday, 8 July 1998, at 9 p.m.

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

A/CONF.183/C.1/SR.28

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.53)

DRAFT STATUTE

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

Discussion paper prepared by the Bureau (continued)
(A/CONF.183/C.1/L.53)

Article 5. Crimes within the jurisdiction of the Court (continued)

1. **Mr. Nega** (Ethiopia) said that he strongly supported the inclusion of aggression and that, given the political will and

flexibility, a definition could be agreed upon, as a number of proposals could serve as a basis for discussion.

2. He favoured the unified approach to treaty crimes and believed that terrorism should be included. The threshold for war crimes provided in options 1 and 2 was unnecessary; he therefore preferred option 3, though he might be able to accept option 2.

3. Since it would hardly be possible to make an exhaustive listing of all weapons that caused superfluous injury or unnecessary suffering or were inherently indiscriminate, he preferred the generic approach contained in option 3 for section B, subparagraph (o), but could support option 2.

4. Non-international armed conflicts should be included, being the main causes of crimes within the jurisdiction of the International Criminal Court. Wording that would include non-international armed conflicts and would also stress the principle of complementarity could lead to a compromise.