

**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.28

28th 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)*

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.

5. **Mr. Bacye** (Burkina Faso) said that he associated himself with the remarks made by Lesotho on behalf of the Group of African States, as well as with the remarks made by South Africa and others. The Statute of the Court should include genocide, crimes against humanity, war crimes and aggression, although aggression was difficult to define.
6. He had reservations concerning the inclusion of treaty crimes but would be flexible if a majority emerged in favour of their inclusion.
7. He agreed to the definitions of genocide and crimes against humanity, preferred option 2 for section B, subparagraph (o), and supported the inclusion of sections C and D. His preference on aggression was for option 1, but a definition should be presented and the proposal by Cameroon should be examined.
8. **Mr. Mahmood** (Pakistan) said that, in a spirit of compromise, he supported the inclusion of genocide as a crime against humanity, although crimes against humanity occurred only in armed conflict.
9. He supported option 1 for the threshold for war crimes, since the Court would deal with exceptional situations. He could not accept the inclusion of sections C and D on internal armed conflicts.
10. Aggression should in principle be included in the Statute, but a proper definition was needed, and the inclusion of that crime should not be used to justify a role for the Security Council in the operation of the Court. He was prepared to examine the question of elements of crimes, provided that they served only as guidelines and that the entry into force of the Statute was not delayed by any discussion on that subject.
11. **Mr. Al Ansari** (Kuwait) said that he supported the proposal by the Syrian Arab Republic with regard to the chapeau of article 5.
12. The Court's jurisdiction should be confined to crimes, including crimes against humanity, that were committed in armed conflicts. He noted that paragraph 1 (g) under crimes against humanity mentioned the need for further discussion. There should also be references to other forms of forced sex, pregnancy and other related matters.
13. Paragraph 1 (h) did not take into account the reference in document A/CONF.183/C.1/L.44 and Corr.1 indicating that the word "gender" referred to both male and female. That aspect should be highlighted.
14. He did not favour the minimum standpoint in the chapeau on war crimes and preferred option 2. Aggression should be included, taking into account the definition of such crimes in General Assembly resolution 3314 (XXIX) of 14 December 1974.
15. If it were the general view that treaty crimes should be included, they should be defined clearly and unequivocally, particularly terrorism. His country was a party to a recent international convention on combating terrorism that contained a definition of the crime. That definition and other positive elements of the convention should be taken into account.
16. **Mr. Kuzmenkov** (Russian Federation) said that his delegation had always been in favour of including aggression within the jurisdiction of the Court and hoped that it would be possible to agree on a definition. It should be understood that the Security Council would take the preliminary decision regarding the determination of aggression.
17. He was in favour of including the most serious and dangerous acts of terrorism in the Statute of the Court but would not insist. Consideration of that issue might be left to a future review conference.
18. Since the Court was to focus on the most serious crimes that represented a threat to peace and security, option 1 was the only choice regarding jurisdiction. He agreed with some delegations that there was no substantial difference between options 2 and 3, so that a compromise based on option 2 would not be easy.
19. As to weapons, he preferred option 1 for section B, subparagraph (o), given a development of subparagraph (vi) to include weapons which would be subject to an overall prohibition in the relevant international agreement. The text would have to be adopted by consensus by the overwhelming majority of members of the General Assembly or by a diplomatic conference convened under United Nations auspices. The parties to the resultant treaty should at least all be parties to the Statute.
20. In view of the polarization of views on the inclusion of conflicts of a non-international character, it would be a great achievement if section C could be included. He understood the efforts of a number of delegations to include section D, but saw little justification for that. Extending standards applied in international armed conflicts to internal conflicts could be discussed at future international humanitarian law forums. The Conference should make use of normal conventional and customary laws relating to internal conflicts, and discussion should not go beyond the framework of Additional Protocol II to the Geneva Conventions of 1949 in that respect.
21. Although his country followed the continental legal system, it did not see any obstacle to developing definitions of elements of crimes for inclusion in the Statute, provided that such elements were an essential constituent.
22. **Ms. Kamaluddin** (Brunei Darussalam) said that she supported option 2 for the chapeau on war crimes. She also supported option 2 for section B, subparagraph (o), but was flexible on that point. She was willing to work towards a solution of the problem regarding differences on sections C and D and shared the majority view for the inclusion of the elements of crimes.
23. She would not object to the inclusion of drug crimes in the Statute and had an open mind on subparagraph (p bis) with regard to rape and other sexual offences.

24. **Mr. Huaraka** (Namibia) said that he associated himself with the remarks made by the representative of South Africa on behalf of the member States of the Southern African Development Community. He hoped that it would be possible to develop an acceptable definition of aggression so that the crime could be included in the Statute.
25. Some treaty crimes should be included, though definitions were not yet clear enough. After having heard the comments of other delegations, he preferred option 2 under the war crimes chapeau. He also preferred option 2 on weapons for section B, subparagraph (o), because that would allow the addition of weapons as yet undeveloped.
26. In common with several African delegations, he believed that the question of internal conflicts must be addressed, since in one case the entire Government had been involved in genocide and the judicial system in situ had not been effective.
27. Efforts to develop certain elements such as jurisprudence should not delay efforts to adopt the Statute and establish the Court.
28. **Mr. Schembri** (Malta) said that he supported the inclusion of aggression and that option 1 under that heading could serve as a reference point for further discussion in order to establish individual criminal responsibility.
29. For paragraph 1 of article 10 on the role of the Security Council, he supported option 1.
30. In article 5 he favoured the inclusion of sections C and D, since international law had developed to a point where individuals could be held criminally responsible for serious violations of humanitarian law in non-international conflicts.
31. He strongly disagreed with the limitation of the Court's jurisdiction embodied in option 1 for the war crimes chapeau, and said that the Prosecutor should be able to prioritize and choose the more serious crimes and that it was the duty of the Court to take into account the gravity of a crime in determining a sentence. The words "shall have jurisdiction in particular when committed as a part of a plan or policy" in option 2 were ambiguous: either the Court had jurisdiction or it did not. In a spirit of compromise, however, he would be prepared to be flexible.
32. He was also ready to compromise on treaty crimes, which might be dealt with in a review conference.
33. **Mr. Florian** (Romania) said that aggression must be included if a generally agreed definition could be obtained and if there were clear provisions regarding the role of the Security Council.
34. His delegation had no strong views on treaty crimes but preferred that the Court deal only with the core crimes. He supported the inclusion of sections C and D. On the question of weaponry in section B, subparagraph (o), he preferred option 1, though further discussion was still needed on subparagraph (vi).
35. Consideration of elements of crimes could be deferred to a future meeting of the Preparatory Commission for the International Criminal Court. Although he did not believe it necessary to have a threshold for war crimes, he could accept option 2 as a compromise.
36. **Mr. Balde** (Guinea) was in favour of including genocide, crimes against humanity and war crimes within the Court's jurisdiction. However, there were difficulties regarding the definition of aggression and the preponderant role of the Security Council in that context. He associated himself with the statement made by the delegation of Lesotho on behalf of the Group of African States.
37. He preferred option 3 regarding a threshold for war crimes, as it seemed more appropriate to deal with the full range of such crimes. It would be premature to include nuclear weapons under section B, subparagraph (o), as there was no treaty banning them, so that he preferred option 1.
38. In view of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction, anti-personnel mines should be included under subparagraph (vi) of option 1 for section B, subparagraph (o).
39. **Mr. Morshed** (Bangladesh) said that he opposed option 2 on aggression but supported option 1. Treaty crimes should be included, but his delegation was flexible regarding the relevant procedure. Since his country's law had no provision for a threshold for war crimes, he favoured option 3 but could accept option 2.
40. He supported option 2 for section B, subparagraph (o), as a basis for continued discussion. For section C, he supported option 1 but believed that a broader agreement could be achieved by stipulating a higher threshold. For section D, option 2 would facilitate consensus.
41. There were so many substantive and procedural implications regarding elements of crimes that it would probably be impossible to find an ad hoc answer to their inclusion.
42. **Ms. Vega Pérez** (Peru) said that she supported the inclusion of genocide as defined in the Convention on the Prevention and Punishment of the Crime of Genocide of 1948, and of the category of mass or heinous crimes. She hoped that an acceptable definition of aggression would be worked out, particularly as to the role of the Security Council. For the chapeau on war crimes, she preferred option 3. With regard to sections A and B, it was most important to classify the elements of crimes so that the Court could properly deal with offences. She agreed with Mexico that there should be further endeavours to round out the offences aspect. Although the matter was complex and various international instruments already existed on treaty crimes, her delegation was flexible with regard to their inclusion.

43. **Mr. Rochereau** (France) said that his country had always supported the inclusion of aggression and was in favour of the option which provided a strict definition and preserved the prerogatives of the Security Council.
44. His country had a very reserved position on the inclusion of treaty crimes, since they were of quite a different nature from the core crimes. Although other international instruments were already in force with regard to treaty crimes, he did not rule out an imaginative solution.
45. His country joined the emerging consensus on option 2 with regard to the war crimes threshold and was prepared to accept the drafting proposed by the Chair for section B, subparagraphs (a bis) and (b). However, he considered that the provisions taken from Additional Protocol I to the Geneva Conventions of 1949 should be read in the light of the declarations by States parties to that Protocol.
46. His delegation preferred option 1 for section B, subparagraph (o), and supported the comments made by the United Kingdom delegation on subparagraph (vi). He agreed with the comments made by the Austrian representative on behalf of the European Union with regard to sections C and D.
47. In a spirit of compromise, he was prepared to help ensure that the adoption of the text on elements of crimes did not delay the establishment of the Statute.
48. **Mr. Niyomrerks** (Thailand) supported the inclusion of aggression in the Statute and preferred the relevant option 1. However, the role of the Security Council should be mentioned, as well as that of the General Assembly, as in Assembly resolution 377 A (V) of 3 November 1950 entitled "Uniting for peace". The text of option 1 would have to be improved to reflect those elements.
49. Treaty crimes should also be included but, in view of time constraints, it might be preferable to consider them at a review conference, if a provision to that effect were reflected in the documents of the Conference.
50. His delegation supported option 1 for the chapeau on war crimes but would be prepared to accept option 2 if a consensus emerged. With regard to section B, subparagraph (o), he supported the explicit inclusion of nuclear weapons contained in subparagraph (vi) of option 2. However, he would be prepared to join in a general consensus on option 1 if a reference to the use of nuclear weapons could be included as explicitly as possible.
51. He could not accept sections C and D but supported the inclusion of elements of crimes, provided that there was consistency with the Statute and the relevant conventions.
52. **Mr. Zaballa Gómez** (Spain) said that he associated himself with the remarks by the representative of Austria on behalf of the European Union.
53. He supported option 1 on aggression which, though rather restrictive, addressed the concerns of various countries.
54. Since no consensus seemed to be emerging on treaty crimes, they should not be included in the Statute, though a subsequent review might be possible. Crimes against United Nations personnel were not treaty crimes in the strict sense but were being discussed in the context of war crimes. On that understanding, he supported their inclusion. In the chapeau on war crimes, he supported option 2, which used the words "in particular", as it might command consensus. He supported option 1 for section B, subparagraph (o), on prohibited weapons, which had been substantially improved, particularly with regard to the role of the Assembly of States Parties in determining what weapons should be prohibited.
55. War crimes committed in conflicts of a non-international character should also be dealt with; he therefore supported the inclusion of sections C and D. A consensus seemed to be emerging on that point.
56. There were some positive aspects in the list of elements of crimes but difficulties might arise in seeking to obtain consensus, which might impede the entry into force of the Statute. He therefore welcomed the efforts made by the United States delegation to avoid any such eventuality.
57. **Mr. Padilla** (Guatemala) said that he would welcome a solution for including the crime of aggression, along the lines of the Mexican suggestion. If that were impossible, he could agree to option 1 for the reasons expressed by France, among others.
58. Since his country had ratified the Additional Protocols I and II to the Geneva Conventions of 1949, he was prepared to accept the inclusion of sections C and D. However, if, as mentioned by the Mexican delegation, common article 3 could be used to resolve the difficulties of countries that had not signed Additional Protocol II, that would also be acceptable to him.
59. He did not favour the mention of thresholds for war crimes, but if that concept had to be included in order to reach a consensus, he would prefer option 2.
60. As the depositary of the Treaty of Tlatelolco of 1967, he favoured option 2 for section B, subparagraph (o), on prohibited weapons, since it included both nuclear weapons and anti-personnel mines. The difficulties of some delegations might be met if it were considered that nuclear weapons were regarded as essentially prohibited for use in attack but not in defence. However, for the sake of a compromise, he could accept option 1.
61. If necessary in order to arrive at a consensus, terrorism and attacks against United Nations personnel could be left aside for the time being.
62. Correct definition of the elements of crimes was absolutely essential.
63. **Mr. Fadl** (Sudan) said that he supported the inclusion of section B, subparagraph (f). For reasons he had already mentioned, he thought that section D should be deleted.

64. The phrase “not military objectives” in section B, subparagraph (c), was not satisfactory and the original draft was preferable. He would elaborate further on that point in consultations with other delegations. He supported the Egyptian delegation’s statement concerning Additional Protocol II to the Geneva Conventions of 1949. If the language contained in those Conventions were not included, it would complicate the problems with regard to sections C and D. The Court would be impartial if internal conflicts were subject to the criterion of admissibility and the powers of the Prosecutor and States parties were also subject to that criterion.
65. He supported inclusion of the crime of aggression but said that, if there were no definition of the crime, perpetrators would not be prosecuted.
66. **Mr. Ballacillo** (Philippines) said that he favoured the inclusion of aggression in the Statute, subject to a clear definition. Treaty crimes should also be included, though he would be willing to consider the views of other delegations.
67. No qualification or conditions should be required with regard to a threshold for war crimes. He therefore supported option 3. With respect to weapons of a nature to cause superfluous injury and unnecessary suffering, he supported option 2 for section B, subparagraph (o).
68. He was in favour of retaining sections C and D on armed conflict of a non-international character.
69. He supported automatic jurisdiction of the Court over core crimes and an opt-in or State-consent regime for other crimes. Accordingly, he also advocated according *proprio motu* power to the Prosecutor over core crimes, subject to adequate safeguards.
70. **Mr. Larrea Dávila** (Ecuador) said that the Court should have universal jurisdiction over the core crimes. Aggression should be included in the Statute, with proper regard for legality and international jurisdiction and law. A clear statement should be made about the role of the Security Council in order to guarantee the independence of the Court in applying the principle of complementarity. With regard to the question of thresholds, his delegation thought that option 3 was the most acceptable. As to the use of weapons and methods causing superfluous injury or unnecessary suffering specified in section B, subparagraph (o), his delegation considered that option 3 was best; however, if option 1 could command consensus, he could support it, but in that case more work would have to be done on subparagraph (vi).
71. His delegation supported the inclusion of sections C and D.
72. **Mr. Doudech** (Tunisia) said that he associated himself with the statements made by the representative of Lesotho on behalf of the Group of African States in reply to the questions posed by the Chair. He also supported the inclusion of terrorism in the Statute as a crime against humanity and would like to see the adoption of a generally agreed text. Similarly, he supported the inclusion of other treaty crimes and the crime of aggression. On that, as on other issues, a consensual approach would be necessary, taking into account the viewpoints of various delegations and ensuring the adoption of a Statute that would find broad support.
73. **Ms. Peralba García** (Andorra) said that aggression should be included but must be properly defined, taking into account the role of the Security Council. She supported the Belgian proposal that treaty crimes be mentioned in the Final Act as a subject for a later conference.
74. Her original view on thresholds was that they were not needed, but, after listening to the arguments put forward by the United States, she considered that option 2 would be an acceptable compromise. For section B, subparagraph (o), on weapons, she supported option 1. Sections C and D should be included in the Statute.
75. She recognized that some delegations needed a provision on elements of crimes but thought that the matter should be considered later in order not to hinder the work of the Conference.
76. **Mr. Da Gama** (Guinea-Bissau) said that he supported the statements by Lesotho on behalf of the Group of African States in favour of including the core crimes within the jurisdiction of the Court. A satisfactory definition of aggression was also needed.
77. Since it seemed difficult to arrive at general agreement on treaty crimes, he preferred option 2 for article 9 of the draft Statute. On the question of thresholds for war crimes, he preferred option 3 but could accept option 2. For section B, subparagraph (o), he could agree to option 1. Elements of crimes could be established after the Conference, provided that the entry into force of the treaty establishing the Court would not be hampered thereby. He attached prime importance to the inclusion of sections C and D, since his country continued to suffer from non-international armed conflicts.
78. **Mr. Monagas** (Venezuela) said that he supported the inclusion of aggression on the basis of a clear and specific definition and considered that the definition contained in document A/CONF.183/C.1/L.53 under option 1 was acceptable.
79. Since the Court was to be a new body, its initial jurisdiction should cover core crimes. He supported the idea of a future review mechanism for including such offences as treaty crimes.
80. For section B, subparagraph (o), he preferred option 2, which included nuclear weapons and anti-personnel mines. He understood the difficulties of some delegations on that issue and could join in a consensus based on a definition that would make some reference to that category of weapons. He supported the inclusion of sections C and D.

81. The Statute should contain some indication that the Preparatory Commission should prepare texts on elements of crimes after the closure of the Conference. His delegation agreed to the automatic jurisdiction of the Court for genocide in accordance with the Convention on the Prevention and Punishment of the Crime of Genocide but thought that the consent of States parties would be called for with regard to other crimes. He therefore supported option 1 in article 7.

82. **Mr. Al-Amery** (Qatar) said that he accepted the inclusion of aggression as one of the core crimes, but that there must be a precise definition linked to General Assembly resolution 3314 (XXIX). He favoured option 3 for the war crimes chapeau but could support option 2.

83. For section B, subparagraph (o), he preferred option 2 because it included nuclear weapons and anti-personnel mines. As far as sections C and D were concerned, the Court should not have jurisdiction if States were correctly performing their duties.

84. A provision should be included concerning elements of crimes. In his understanding, the word "gender" in paragraph 1 (g) under crimes against humanity referred to both males and females.

85. **Mr. Abdullah M. Mohammed Ibrahim Al Sheikh** (Saudi Arabia) said that aggression must be included within the jurisdiction of the Court, taking into consideration the definition contained in General Assembly resolution 3314 (XXIX).

86. For section B, subparagraph (o), he preferred option 2 because it included a number of weapons whose use should be criminalized.

87. With regard to crimes against humanity, he pointed out that paragraph 1 (g) of the discussion paper said that further discussion was needed on that point. His preference was for the corresponding paragraph 1 (g) in the draft Statute, which mentioned rape, other sexual abuse and enforced prostitution but omitted other elements that might be controversial.

88. War crimes should be included, being grave violations of the Geneva Conventions of 1949 and of Additional Protocol I thereto. However, internal conflicts should be excluded, provided that a State was correctly meeting its obligations. The intervention of the Court would prejudice State sovereignty.

89. He had no objection to the inclusion of terrorism as defined in the Arab Convention for the Suppression of Terrorism of 1998.

90. **Mr. Sayyid Said Hilal Al-Busaidy** (Oman) said that he was in favour of an effective, balanced and independent court with jurisdiction over genocide and crimes against humanity committed during armed conflicts. He favoured option 2 for the war crimes chapeau and also preferred option 2 for section B, subparagraph (o), on weapons.

91. Aggression should be included within the Court's jurisdiction, General Assembly resolution 3314 (XXIX) being

the basis for a definition, and the Security Council's role in bringing a case should also be clearly defined. On the basis of the principle of General Assembly resolution 377 A (V) entitled "Uniting for peace", the Assembly should also have jurisdiction in cases where a veto had been used.

92. Internal conflicts should not come within the Court's jurisdiction, except in the case of a non-functioning Government or central authority. However, he was flexible on that point.

93. Elements of crimes should be within the jurisdiction of the Court.

94. **Mr. Bello** (Nigeria) said that he favoured the inclusion of the core crimes in the Statute. Under crimes against humanity, he favoured the inclusion of paragraph 1 (i bis) on apartheid. His delegation favoured option 1 for the war crimes chapeau. He also favoured option 2 for section B, subparagraph (o), since it was essential to include nuclear weapons and anti-personnel mines.

95. His acceptance of subparagraphs (p bis), (r bis) and (t) would depend on the existence of acceptable definitions. He also supported the inclusion of aggression, if acceptably defined.

96. He would be grateful if the options referred to by the delegation of the Syrian Arab Republic at the twenty-fifth meeting, which were not contained in the discussion paper, could be presented for further deliberation in order to reach a consensus on defining aggression and also on the role of the Security Council.

97. It was necessary to consider not only aggression by States but also by armed bands against States. His country had sponsored a motion leading to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries of 1989. That should be reflected in the final consensus.

98. Without prejudice to the powers of the Security Council under the Charter of the United Nations, the General Assembly and/or the victim of aggression should have the right to refer a matter to the Court.

99. Though he sympathized with the desire to include treaty crimes, the list proposed was selective. Treaty crimes should be left to national courts.

100. His delegation favoured the elaboration of elements of crimes; relevant provisions should be included in the Statute.

101. **Ms. Shahan** (Libyan Arab Jamahiriya) said that the discussion paper did not reflect the principle of an independent, balanced and effective court that would hand out justice to all without any political influence.

102. The definition of aggression contained in option 1 was not comprehensive, confining itself to annexation and occupation; option 2, excluding aggression, was unacceptable. Furthermore, the Court should not be prevented from exercising its jurisdiction in the event of a Security Council veto. The right of members of

the Council to refer cases to the Court was an entrenchment of domination.

103. Although her delegation said that it was necessary to include aggression, it could not accept option 1 in the discussion paper and preferred the option in document A/CONF.183/C.1/L.37 and Corr.1.

104. Embargo should be included as one of the crimes against humanity, in view of the suffering that it caused. She did not wish to see treaty crimes included and had no preference with regard to the war crimes chapeau, but preferred option 2 for section B, subparagraph (o). Sections C and D should not be included. She was ready to consider guarantees that would secure the integrity and sovereignty of States.

105. The question of elements of crimes should be considered at a later stage.

106. **Ms. Doswald-Beck** (Observer for the International Committee of the Red Cross), also speaking on behalf of the International Federation of Red Cross and Red Crescent Societies, said that war criminality did not admit a threshold provision. She recognized the desire to limit the jurisdiction of the Court to certain situations, so that option 2 did not seem to be a negative compromise. With regard to the list of crimes, she pointed out a problem with regard to the word "perfidious", mentioned in section B, subparagraph (e). Perfidy in that context could apply only to objects to which the adversary had to give special humanitarian protection, but not to the uniform of an enemy. The correct word in the context in question would be "improper" rather than "perfidious".

107. Option 3 for section B, subparagraph (o), reflected existing law on weapons. However, if States were to choose option 1

or 2, it should be ensured that existing law was protected, in which context she considered subparagraph (vi) of option 1 to be extremely important. Bullets which exploded in the body had long been prohibited and should therefore feature in subparagraph (iii) of either option 1 or 2, or must be understood as covered by the word "expand".

108. Crimes committed in non-international armed conflicts were crimes under international customary law. She appealed to States to consider each crime separately and identify what conduct should be considered as criminal. Atrocities that had occurred in recent armed conflicts should also be taken into account. The input of States that had experience of internal armed conflicts would be very meaningful.

109. Certain safeguards did exist with regard to non-international armed conflicts, namely, with regard to the lower thresholds. It was necessary to distinguish between armed conflict and internal riots, for example. The normal interpretation was that a non-international armed conflict must be an armed confrontation of a military nature, which excluded sporadic events.

110. With regard to complementarity, she noted the valid concern of many States that Governments should themselves be able to deal with crimes committed in internal armed conflicts. She therefore believed that the Court should have jurisdiction over such crimes only if the national authorities failed to do so.

111. It was extremely important to include a provision such as article Y of the draft Statute in order to protect existing humanitarian law and its development, under both treaties and custom.

The meeting rose at 10.55 p.m.

29th meeting

Thursday, 9 July 1998, at 10.15 a.m.

Chairman: Mr. Kirsch (Canada)

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

A/CONF.183/C.1/SR.29

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 6. Exercise of jurisdiction

Article 7. Acceptance of jurisdiction

Article 7 bis. Opt-in for treaty crimes and possibly for one or more core crimes

Article 7 ter. Acceptance by non-States Parties

Article 8. Temporal jurisdiction and non-retroactivity