

**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.37**

**37th 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)*

47. Concerning article xx, elements of crimes should not be binding on the Court but should simply serve as guidelines. The International Tribunals for the Former Yugoslavia and for Rwanda had been able to function effectively without any provisions relating to the elements of crimes. Similarly, the Court would be able to function perfectly well on the basis of the Statute. Article xx, paragraph 4, should be deleted.

48. The order of articles 7 and 7 bis should be reversed. His delegation favoured automatic jurisdiction, and considered that an opt-in formula for crimes against humanity and war crimes would be the worst possible solution because it would discourage States from accepting obligations. There was no reason to make a distinction between preconditions to the exercise of jurisdiction over genocide and over crimes against humanity and war crimes: the paragraph on preconditions for genocide should be applicable to the two other categories of crimes. Regarding article 7 ter, the introductory phrase "If the acceptance of a State that is not a Party to this Statute is required under article 7" should be replaced by the words "If the acceptance of a State that is not a Party to the Statute is a precondition to the exercise of its jurisdiction under article 7", as acceptance by a non-party State could not be required under article 7.

49. Slovakia had a slight preference for option 1 for article 10 on the role of the Security Council but could also accept option 2, provided that a provision concerning preservation of evidence, along the lines proposed by Belgium in document A/CONF.183/C.1/L.7, was included. Article 10 could form part of a package deal on jurisdictional issues, as could article 12, for which his delegation preferred option 1.

50. **Ms. Dobrája** (Latvia) expressed support for the statement made by the representative of Austria on behalf of the European Union. With regard to article 5, she said that, like the overwhelming majority of delegations, Latvia was disappointed at the fact that the crime of aggression was not to be covered by the Statute. A resolution or clause in the Final Act should be drafted to reflect the views of the majority in that regard. Concerning jurisdiction, her delegation favoured option 1 for article 7 and option I for article 7 bis. On article xx, Latvia

supported the views expressed by the representative of Canada. On the role of the Security Council, it supported option 1 for article 10. As for the role of the Prosecutor, Latvia favoured option 1 for article 12.

51. **Ms. Doswald-Beck** (Observer for the International Committee of the Red Cross) said that acceptance of jurisdiction was a fundamental issue. Would-be war criminals must realize that, if they were not tried at the national level, the likelihood was that they would be tried at the international level. The Court must thus have automatic jurisdiction over war crimes and crimes against humanity, not just over genocide. Her organization was particularly concerned at the suggestion that there should be no universal jurisdiction for war crimes, given that all the States present were parties to the Geneva Conventions of 1949, which provided for compulsory universal jurisdiction over grave breaches. Following the Second World War, war criminals had been tried on the basis of such universal jurisdiction. Suggestions that universal jurisdiction was a utopian dream were thus the opposite of the truth. Under international law, every State had the right, and most had the duty, to prosecute or extradite suspected war criminals. Any form of additional consent, such as an opt-in precondition to the exercise of the Court's jurisdiction, might give the impression that States could lawfully protect war criminals from prosecution. That would be a retrograde step for international law and would severely limit the Court's effectiveness.

52. With regard to armed conflicts not of an international character, she pointed out that, under the new threshold added to section D, many conflicts, and indeed most internal armed conflicts, would not be covered, and that many atrocities would thus not be triable under the Statute. Furthermore, many of the acts listed in section D were recognized as crimes by customary law. It was therefore most important that section D should not be omitted.

53. **The Chairman** said that the Committee of the Whole had thus concluded its consideration of the Bureau proposal contained in document A/CONF.183/C.1/L.59 and Corr.1.

*The meeting rose at 10.50 p.m.*

### 37th meeting

Tuesday, 14 July 1998, at 3.10 p.m.

*Chairman:* Mr. Kirsch (Canada)

A/CONF.183/C.1/SR.37

#### Statement by the Minister for Foreign Affairs of Italy

1. **Mr. Dini** (Minister for Foreign Affairs of Italy) said that not since the adoption of the Charter of the United Nations in San Francisco had the United Nations set itself such an

ambitious goal as the drafting of the Statute of the International Criminal Court. He was sure that all present were conscious of their own personal responsibility to history and to the world. None could fail to sense that what was at stake was the legitimacy of the United Nations itself as a body capable of

establishing rules and principles that were consonant with the times. All must be aware of their responsibility to future generations. He trusted that the United Nations Secretary-General would participate personally in the concluding phase of the Conference, given his personal standing and the contribution that he could make to ensuring a successful conclusion.

2. Difficulties had understandably emerged. The aim was to consolidate an international community underpinned by the primacy of the individual. The institution of the Court would prevent national sovereignty from being used as a convenient shield behind which violence and outrage were committed. Human rights would henceforth be protected by an international jurisdiction superimposed on national jurisdiction. The vital balance to be struck between national prerogatives and international demands could not be at the expense of the independence, authority and effectiveness of the institution that was about to be brought into existence.

3. There was manifest public concern that the Conference should bring its work to fruition. Intense emotions had been generated by recent conflicts which ignored the traditional rules of war and were revealing undreamed-of reserves of ferocity and brutality.

4. Crucial decisions were about to be taken. In the negotiations, Italy had aimed high from the start, taking into account the expectations of the public, but had also borne in mind the need to seek acceptable compromises on the various issues involved.

5. The Statute of the new Court was to be signed in Rome on 18 July by the representatives of all participating countries. The opportunity to make a fundamental stride forward in the history of the United Nations must not be allowed to slip away.

#### 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/WGIC/L.11/Add.2 and Corr.1 and Add.3 and Corr.1 and 2 and A/CONF.183/C.1/WGIC/L.15 and Corr.1)**

#### DRAFT STATUTE

##### PART 9. INTERNATIONAL COOPERATION AND JUDICIAL ASSISTANCE (*continued*)

##### *Report of the Working Group on International Cooperation and Judicial Assistance (continued)* (A/CONF.183/C.1/WGIC/L.11/Add.2 and Corr.1 and Add.3 and Corr.1 and 2)

6. **Mr. Mochochoko** (Lesotho), Chairman of the Working Group on International Cooperation and Judicial Assistance, introduced the reports of the Working Group contained in documents A/CONF.183/C.1/WGIC/L.11/Add.2

and Corr.1 and Add.3 and Corr.1 and 2. Document A/CONF.183/C.1/WGIC/L.11/Add.2 and Corr.1 contained a number of proposed provisions for the consideration of the Committee of the Whole. In connection with additional paragraph 2 for article 90 quater, he pointed out that article 90 quater itself had been forwarded to the Committee in the Group's previous report and was to be found in document A/CONF.183/C.1/WGIC/L.15 and Corr.1.

7. Regarding document A/CONF.183/C.1/WGIC/L.11/Add.3 and Corr.1 and 2, the attention of the Committee was drawn in particular to paragraph 2 of the introduction, indicating amendments proposed to provisions previously transmitted to the Committee.

8. He commended the provisions contained in the reports to the Committee of the Whole with the recommendation that they should be forwarded to the Drafting Committee.

9. **Mr. Al Awadi** (United Arab Emirates), supported by **Mr. Khalid Bin Ali Abdullah Al-Khalifa** (Bahrain), said that article 91, paragraph 4, as it appeared in document A/CONF.183/C.1/WGIC/L.11/Add.3 and Corr.1 and 2 would give the Prosecutor the right to take certain measures without the approval of the State concerned, which was incompatible with the principle of complementarity. The Prosecutor should have the agreement of the State party which he or she wished to visit. The paragraph should be redrafted in order to take into account the right of the State party concerned to approve the Prosecutor's opening an investigation or travelling to its territory.

10. **Mr. Mochochoko** (Lesotho), Chairman of the Working Group on International Cooperation and Judicial Assistance, said that the proposed text represented a balanced compromise between competing views on the issue. It had been realized that the Prosecutor could not travel to any State without that State's consent, but it would have made the provision too cumbersome to spell out all the mechanisms that could be used in such circumstances.

11. **Mr. Madani** (Saudi Arabia) expressed his delegation's reservations in respect of article 91 as it stood.

12. **Mr. S. R. Rao** (India), referring to paragraph 2 of document A/CONF.183/C.1/WGIC/L.11/Add.2/Corr.1, said that he wished to reiterate his delegation's position that the phrase which had been placed in brackets should be deleted.

13. **Mr. Al-Baker** (Qatar) fully endorsed the views expressed by the representatives of the United Arab Emirates, Bahrain and Saudi Arabia.

14. **The Chairman** suggested that article 91 should be considered further by the Working Group. The remaining provisions could be submitted to the Drafting Committee.

15. *It was so decided.*

**Agenda item 12 (continued)**

**Adoption of a convention and other instruments deemed appropriate and of the final act of the Conference**

(A/CONF.183/2/Add.1 and Corr.1 and

A/CONF.183/C.1/L.49/Rev.1/Add.1)

*Recommendations of the Coordinator (continued)*

(A/CONF.183/C.1/L.49/Rev.1/Add.1)

16. **Mr. S. R. Rao** (India), speaking as Coordinator, introduced document A/CONF.183/C.1/L.49/Rev.1/Add.1. It contained recommendations, based on informal consultations, concerning two subparagraphs of paragraph 4 of the draft resolution on the establishment of the proposed Preparatory Commission for the International Criminal Court, to be annexed to the Final Act. For paragraph 4 (a), agreement had been reached on a text on the understanding that there would be a footnote to take into account the views of certain delegations. With regard to paragraph 4 (f), it had been agreed that the brackets could be removed. The Committee of the Whole might wish to refer the two subparagraphs to the Drafting Committee.

17. *It was so decided.*

**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.64, A/CONF.183/C.1/L.65/Rev.1, A/CONF.183/C.1/L.66 and Add.1, A/CONF.183/C.1/L.67/Rev.1, A/CONF.183/C.1/L.68/Rev.2 and A/CONF.183/C.1/WGPM/L.2/Add.7 and Corr.1)

**DRAFT STATUTE**

PART 1. ESTABLISHMENT OF THE COURT (*continued*)

PART 3. GENERAL PRINCIPLES OF CRIMINAL LAW (*continued*)

PART 4. COMPOSITION AND ADMINISTRATION OF THE COURT (*continued*)

PART 9. INTERNATIONAL COOPERATION AND JUDICIAL ASSISTANCE (*continued*)

PART 11. ASSEMBLY OF STATES PARTIES (*continued*)

*Report of the Drafting Committee*

(A/CONF.183/C.1/L.64, A/CONF.183/C.1/L.65/Rev.1, A/CONF.183/C.1/L.66 and Add.1, A/CONF.183/C.1/L.67/Rev.1 and A/CONF.183/C.1/L.68/Rev.2)

18. **The Chairman** invited the Chairman of the Drafting Committee to introduce that Committee's report on parts 1, 3, 4, 9 and 11 of the draft Statute (A/CONF.183/C.1/L.64,

A/CONF.183/C.1/L.65/Rev.1, A/CONF.183/C.1/L.66 and Add.1, A/CONF.183/C.1/L.67/Rev.1 and A/CONF.183/C.1/L.68/Rev.2).

19. **Mr. Bassiouni** (Egypt), Chairman of the Drafting Committee, said that the Committee consisted of 25 delegations representing all the geographic areas and various legal systems of the world. Under the established rules, it did not deal with matters of substance but was responsible for ensuring that the text as a whole was a homogeneous and cohesive one which avoided ambiguities and matters which were not clear. A great deal of time had been spent ensuring consistency of expression and clarity throughout the text.

20. **The Chairman** thanked the Chairman of the Drafting Committee and its members for their efforts.

21. **Mr. Güney** (Turkey) said that the proposed text for article 22 raised a substantive issue. The proposed draft did not reflect the agreement reached during the discussions that had taken place on the proposal to combine the original articles 8 and 22. In that connection, he drew attention to what he had said at the thirtieth meeting of the Committee of the Whole.

22. **Mr. Yáñez-Barnuevo** (Spain), supported by **Mr. Hamdan** (Lebanon) and **Mr. Baker** (Israel), suggested that article 22 should be considered along with article 8 in the context of part 2.

23. **The Chairman** said that the matter would be considered further at the next meeting.

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 (continued)* (A/CONF.183/C.1/WGPM/L.2/Add.7 and Corr.1)

24. **Ms. Fernández de Gurmendi** (Argentina), Chairman of the Working Group on Procedural Matters, introduced the latest report of the Working Group (A/CONF.183/C.1/WGPM/L.2/Add.7 and Corr.1), submitting a number of proposed provisions for parts 5, 6 and 8 of the draft Statute.

25. **The Chairman** asked whether he could take it that the Committee of the Whole agreed to refer the text of the articles contained in the report of the Working Group to the Drafting Committee.

26. *It was so decided.*

*The meeting rose at 4.05 p.m.*