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

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2nd plenary meeting

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)*

Agenda item 7
Election of the Chairman of the Drafting Committee

39. **The President** said that Mr. Cherif Bassiouni (Egypt) had been nominated as Chairman of the Drafting Committee.

40. *Mr. Cherif Bassiouni (Egypt) was elected Chairman of the Drafting Committee by acclamation.*

Agenda item 8
Appointment of the Credentials Committee

41. **The President** said that, in accordance with rule 4 of the rules of procedure, a Credentials Committee would be set up, composed of nine members. It was his understanding that the membership would be the same as that of the Credentials Committee of the fifty-second session of the General Assembly and he therefore suggested that the Credentials Committee should be made up of the representatives of Argentina, Barbados, Bhutan, China, Côte d'Ivoire, Norway, Russian Federation, United States of America and Zambia.

42. *It was so decided.*

The meeting rose at 11.20 a.m.

2nd plenary meeting

Monday, 15 June 1998, at 3.10 p.m.

President: Mr. Conso (Italy)

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Agenda item 9
Appointment of the other members of the Drafting Committee

1. **The President** drew attention to rule 49 of the rules of procedure of the Conference concerning the composition of the Drafting Committee. Since Mr. Cherif Bassiouni had been elected Chairman of the Drafting Committee at the first meeting, it merely remained to appoint the 24 other members.

2. He had received the following nominations: Cameroon, China, Dominican Republic, France, Germany, Ghana, India, Jamaica, Lebanon, Mexico, Morocco, Philippines, Poland, Republic of Korea, Russian Federation, Slovenia, South Africa, Spain, Sudan, Switzerland, Syrian Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America and Venezuela.

3. He suggested that the Conference might wish to appoint the representatives of those countries as members of the Drafting Committee.

4. *It was so decided.*

Agenda item 10
Organization of work (A/CONF.183/2 and A/CONF.183/3 and Corr.1)

5. **The President** drew the attention of the Conference to document A/CONF.183/2 containing the report of the Preparatory Committee on the Establishment of an International Criminal Court and document A/CONF.183/3 and Corr.1 concerning the organization of work. The Conference and its bodies had the necessary latitude to adapt the procedures recommended in those documents to their needs. He invited the Conference to adopt the draft organization of work as outlined.

6. *The draft organization of work was adopted.*

Agenda item 11
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)

7. **Mr. Downer** (Australia) said that great achievements had been made in the twentieth century but that acts of almost unimaginable inhumanity had also been committed. Against that background, the Conference offered the opportunity to establish a practical, permanent framework to deal with the most serious crimes of concern to the international community.

8. The international community had not acted earlier to see justice done because it had had neither the will nor the mechanism to carry out such a task. However, the Security Council had indeed established ad hoc tribunals to investigate and prosecute crimes committed in Rwanda and the former Yugoslavia, and a draft statute for an international criminal court had also been produced.

9. To make the International Criminal Court a reality, some fundamental issues needed to be resolved. A balance must be struck between the jurisdiction of the Court and that of national justice systems. Australia strongly supported the view that, if national jurisdiction was able and willing to deal effectively with alleged crimes, it should take precedence. However, the

Court must also be able to determine whether a national jurisdiction could effectively investigate and prosecute. Sham investigations or proceedings at the national level could not remain unchallenged.

10. There must be agreement on mechanisms that would trigger the Court's jurisdiction. Australia had long considered that the Court's jurisdiction should be initiated through a complaint by a State party to the Statute of the Court or by the Security Council under its powers concerning the maintenance of international peace and security. He was also prepared to support empowering the Prosecutor to initiate investigations directly. However, the Prosecutor's right to act must be subject to appropriate safeguards, to avoid politically motivated complaints.

11. There must also be a workable relationship between the Court and the Security Council, recognizing the Council's primacy in matters relating to international peace and security.

12. Finally, agreement must be reached on the specific crimes that should fall within the Court's jurisdiction. Clearly, the Statute of the Court must encompass genocide, crimes against humanity and war crimes, but, while there was broad agreement on the definition of genocide, questions of the definition of crimes against humanity and war crimes still had to be resolved. Ethnic cleansing and systematic rape and torture were of such gravity that they must be included in the ambit of the Court's jurisdiction. Discussion and negotiation on those problems would be necessary, but the Conference must not be diverted from its central task of establishing a court that would honour past generations and protect future generations.

13. **Mr. Omar** (South Africa), speaking on behalf of the Southern African Development Community (SADC), said that the Conference was taking place at a time when most brutal and shocking conflicts had occurred throughout the world, highlighting the need to establish an international system of justice under which those responsible for atrocities would be prosecuted and punished.

14. The establishment of an international criminal court would not only strengthen the arsenal of measures to combat gross human rights violations but would ultimately contribute to the attainment of international peace. In view of the crimes committed under the apartheid system, the International Criminal Court should send a clear message that the international community was resolved that the perpetrators of such gross human rights violations would not go unpunished.

15. The Ministers of Justice and Attorneys-General of the SADC region had held discussions on the draft Statute for the establishment of the Court and had affirmed their commitment to its early establishment as an independent and impartial body. It should be an effective complement to national criminal justice systems, operating within the highest standards of international justice. He reiterated the basic principle that the Court should contribute to furthering the integrity of States generally, as well as the equality of States within the general principles of international law. The Court was a necessary element for peace and security in the world and must therefore have inherent jurisdiction over the crimes of genocide, crimes against humanity, war crimes in international and non-international armed conflicts and aggression. It should also have competence in the event of the inability, unwillingness or unavailability of national criminal justice systems to prosecute those responsible for grave crimes under the Statute, while respecting the complementary nature of its relationships with such national systems.

16. The SADC States believed that the Prosecutor should be independent and have authority to initiate investigations and prosecutions on his or her own initiative without interference from States or the Security Council, subject to appropriate judicial scrutiny. The independence of the Court must not be prejudiced by political considerations.

17. **Ms. Johnson** (Norway) said that two world wars and numerous armed conflicts had brought untold sorrow to mankind. The tide of international opinion was turning against impunity for the worst international crimes. Justice and legal order were increasingly perceived as prerequisites for lasting peace.

18. Ad hoc tribunals might not be an option for prosecuting crimes such as genocide, which made it essential to establish a permanent court. In her opinion, its seat should be in The Hague.

19. A permanent court with unquestionable legitimacy might be more conducive to peace-making than an ad hoc tribunal because no warring party could reasonably portray such a court as being politicized and mass murderers could not expect impunity.

20. Though there was no doubting the magnitude of the Conference's task, no State had contested the need for an international criminal court. The issue was what kind of court it should be. It would have to be strong, with the broadest possible support for its Statute, focusing on a limited list of crimes. Pragmatic concentration at that stage on international crimes which were almost universally recognized would promote wide acceptance of the International Criminal Court. It must also be made clear that adequate rules were needed on sexual violence. On the other hand, attempts to enlarge the list of crimes prematurely might prove a stumbling block. A revision clause could be included to provide an avenue for re-evaluation of the list in the future.

21. She favoured complementarity between the Court and national jurisdictions. Both States and the Security Council must be able to refer situations to the Court, as opposed to complaints about individuals. The threshold requirements must not be too high. Once a situation had been referred, it must be entirely up to the Court to investigate and prosecute individuals on the basis of a truly independent mandate.

22. She advocated giving ex officio powers to the Prosecutor to trigger the Court's intervention, a question that must be fully explored. Confidence-building checks and balances were necessary to establish the independence of the Prosecutor. Protection against prosecutorial bias followed from a number of provisions. Norway perceived the proposal for a pre-trial chamber as a particularly significant step forward compared to the statutes of the existing ad hoc tribunals. Moreover, it must be recognized that States, as well as international organizations, might have legitimate reasons for wishing to protect sensitive information or sources. Adequate procedural safeguards to that effect would be an important improvement.

23. The Court must have the financial resources necessary for its work.

24. Lastly, she rejected the inclusion of the death penalty in the Statute and considered a reservations clause to be totally unacceptable, since the mere possibility of such a clause would significantly diminish the rationale for compromise in negotiations.

25. In the Conference's work, it would be necessary to show pragmatism, compromise and sober realism on some issues, but boundless ambition on others.

26. Norway was committed to the establishment of a strong and independent court. All participants should seize the historic opportunity offered.

27. **Mr. Maharaj** (Trinidad and Tobago) said that his Government had long supported the establishment of a permanent international criminal court that would be independent and have effective jurisdiction to deal with the most serious crimes of international concern. In the light of recent events, he supported the extension of the jurisdiction of the International Criminal Court to internal armed conflicts. The activities of drug traffickers and their armed supporters ought also to be regarded as most serious crimes of international concern.

28. The consensus had been reached during the discussions held at a recent Caribbean and Latin American regional workshop that the Court must be impartial and free from political interference.

29. It was generally agreed that the Court would exercise its jurisdiction only when domestic courts, which had primary responsibility, were unwilling or unable to prosecute. On the question of the trigger mechanism, care should be exercised to ensure that the Court would not have to await a decision by the Security Council before it could launch its investigations. However, the Council had a role to play in relation to the Court.

30. He was satisfied that the rights of suspects and accused persons, and the level of protection to be accorded to victims and witnesses, had been appropriately addressed in the draft Statute. It was vital to set up a Victims and Witnesses Unit within the Registry of the Court. He also supported proposals seeking to ensure that violence against women and children and the use of children in armed conflicts were punishable. He was convinced that, though the Court would not solve all problems, it would promote the rule of law and help to maintain peace.

31. **Mr. Lloyd** (United Kingdom of Great Britain and Northern Ireland), speaking on behalf of the European Union, the Central and Eastern European countries associated with the European Union, the associated country of Cyprus and the European Free Trade Association countries of Iceland and Norway, said that the year marking the fiftieth anniversary of the adoption of the Universal Declaration of Human Rights and of the Convention on the Prevention and Punishment of the Crime of Genocide was auspicious for the equally historic task of negotiating a statute for a permanent international criminal court. The establishment of such a court had long been debated and the Security Council had set up ad hoc tribunals to bring to justice those responsible for atrocities in Rwanda and the former Yugoslavia. While those tribunals were doing valuable and difficult work, there was no doubt that a truly effective, permanent court would make the world a more just, safer and more peaceful place.

32. The member States of the European Union were firmly committed to certain key principles. The International Criminal Court had to be universal, effective and based on sound legal principles. It must meet the requirements of justice; it must be lasting and it must inspire confidence. It should be an independent institution in relationship with the United Nations, with a sound financial base.

33. The Court should have jurisdiction over genocide, crimes against humanity and war crimes. He shared the widespread desire to include the crime of aggression, properly defined, within the jurisdiction of the Court. That should not, however, detract from the role of the Security Council in maintaining international peace and security.

34. It would be necessary to achieve a generally acceptable definition of war crimes. War crimes within the Court's jurisdiction should include those committed in internal as well as international armed conflicts. Gender-related crimes and the use of children in armed conflict should be explicitly included in the definition of war crimes.

35. The Court would be complementary to national processes, acting only where national systems were unable or unwilling to investigate a crime or to prosecute. Particular attention should be paid to the election of highly qualified judges, whose independence would be best secured by providing for a long tenure of office. The Court should have a strong, effective and highly qualified Prosecutor, independent of Governments.

36. The Court would be dependent on an effective system of State cooperation. States parties should have a solemn obligation to comply with requests for assistance by the Court, which should be given priority over requests from other States. Grounds for refusal based upon national extradition legislation should not be admitted.

37. The Court should have power to award reparations to victims. Its final judgement should be immediately enforceable and a sentence of imprisonment should be implemented without change by States parties which were willing to accept sentenced persons. There must be no provision for a death penalty.

38. The Security Council should be able to refer to the Court situations in which crimes might have been committed, thus obviating the need for further ad hoc tribunals. The Court's procedures should be adapted from the principal legal traditions to ensure fair and effective operation, safeguard the rights of the accused and provide adequate protection and assistance to victims in giving evidence. He supported the establishment of a pre-trial chamber.

39. Those rules of procedure of the Court that were not appropriate for inclusion in the Statute itself should be negotiated by States after the Statute was opened for signature. The Conference should consider favourably the offer of the Government of the Netherlands to host the Court in The Hague.

40. **Mr. Owada** (Japan) said that his Government fully supported the establishment of an international criminal court, which had long been an aspiration of the international community. It was convinced that the International Criminal Court would play a crucial role in bringing to justice those who committed the most heinous crimes against the international community.

41. The Court should be a strictly independent and impartial judicial organ of the international community, independent of any political influence, and its judgements should be given exclusively on the basis of law. It should be formed as an international organization and must therefore have the cooperation of all countries concerned.

42. The guiding principle of operation should be complementarity, in that the Court should have jurisdiction only when national systems of criminal justice were not operational or effective. The Court should be established on the basis of universal participation.

43. The establishment of the Court raised a number of major points of legal significance that required rigorous scrutiny. His Government firmly believed that the scope of the Court should include genocide, war crimes, crimes against humanity and the crime of aggression. It was of the utmost importance to define the constituent elements of those crimes in a precise manner, in view of the cardinal importance, inter alia, of the principle of *nullum crimen sine lege*.

44. War crimes should be those established as crimes against the laws of war that were covered by existing international instruments, as well as those considered to have become part of customary international law. However, crimes that had not become part of customary international law should be excluded, without excluding the development of the law in that area.

45. The crime of aggression should be included, but it should be borne in mind that determination of the act of aggression by a State must lie within the exclusive competence of the Security Council. While the determination of aggression perpetrated by a State was separate from the question of the criminal responsibility of an individual, he considered that determination of an act of aggression by the Council was nevertheless a prior condition to the exercise of jurisdiction by the Court in relation to an individual.

46. The Court should not deprive national courts of their jurisdiction, and the right to refer a case to the Court should be limited to States parties to the Statute and to the Security Council. The Court's power was so great that a proper balance between its power and the legitimate interests of the States parties should be maintained with regard to the mechanism to trigger its activities. He therefore considered it inappropriate to give the Prosecutor the right to initiate an investigation *proprio motu*.

47. The effective functioning of the Court would depend on international cooperation and judicial assistance by States parties, which required a clear definition of the grounds on which a request by the Court for cooperation could be declined by States.

48. The Court should be independent of the United Nations, since it would be advisable to avoid the need for amendment to the Charter of the United Nations. Being independent of the United Nations, the Court should be financed by States parties to its Statute.

49. **Mr. Escovar Salom** (Venezuela) said that the examination of individual international criminal responsibility was a major step forward for international law and for the international community.

50. Though it would be difficult to reflect the various legal systems in the Statute in a balanced way, the Conference must show flexibility and a spirit of compromise.

51. His country had from the outset supported the establishment of a new international criminal court and had played an active and constructive role in the preparatory process.

52. The International Criminal Court should be independent in order to have moral strength and practical value. It would have to decide on its own competence and jurisdiction, exercising the power established under international law. It must have not only jurisdictional but also functional and procedural, and therefore also budgetary, autonomy.

53. The Court would have to be permanent, unlike the ad hoc tribunals. In order to meet future needs, international law must be strengthened so as to forge and consolidate an effective institution.

54. **Ms. Freivalds** (Sweden) associated herself with the statement made by the representative of the United Kingdom on

behalf of the European Union and said that prosecution before an international criminal court should be readily possible when it was clear that national legal systems had failed to bring to justice those suspected of serious crimes under international law. A consent regime, other than for non-party States, would seriously obstruct justice. Action by the International Criminal Court should be possible when the State where the crime occurred, the State with custody over the suspect, or the State of nationality of the suspect or the victim was a party to the Statute.

55. The Security Council, under Chapter VII of the Charter of the United Nations, should indeed be able to refer to the Court situations in which crimes under the Court's jurisdiction appeared to have been committed but not punished. That would obviate the need to create new ad hoc tribunals. However, referral of a case to the Council should not stop its being brought before the Court, and the Council should be able to delay proceedings before the Court only by a specific decision. States parties should also be able to refer situations to the Court.

56. If the Court was to be effective, the Prosecutor must be able to initiate prosecution of crimes under the Court's jurisdiction that were not being genuinely investigated or prosecuted. After judicial review, an investigation should then be allowed to proceed. The Prosecutor should safeguard the rights of the suspect, and in this context a pre-trial chamber would have a role to play.

57. It should be mandatory for States to comply with the Court's requests for assistance, which must take precedence over mutual assistance requests from States. The system of cooperation with the Court could not be built on national extradition and assistance provisions, and traditional grounds for refusal could not be accepted.

58. Effective measures to protect witnesses and victims were needed and appropriate ways of making reparation to victims must be found.

59. The Court's final judgements must be immediately enforceable and a sentence of imprisonment should be implemented without change in a State party willing to accept convicts. Sweden was emphatically opposed to the death penalty.

60. General agreement was emerging that the Court's jurisdiction should apply only to the core crimes of genocide, crimes against humanity and war crimes, but she also favoured the inclusion of aggression, provided that it was properly defined and treated in a way that respected the role of the Security Council. She also suggested that crimes against United Nations and associated personnel should be added to the list. By becoming a party to the Statute, a State must accept the Court's jurisdiction over all those types of crimes.

61. In view of the constant development of international law, the list of crimes might be reviewed after the Statute's entry into force. The Statute should be flexible to allow for emerging prohibitions on such means of warfare as anti-personnel landmines. The definition of war crimes should reflect the fact that most modern conflicts were non-international. Gender-related crimes and the issue of child soldiers must be given due attention. She rejected any attempt to impose an arbitrary threshold on the Court's competence to deal with war crimes.

62. **Mr. Axworthy** (Canada) said that the need for an international criminal court was clear and acute. Most conflicts were non-international and most of the victims were civilians. The most pressing priority of international relations was not the security of States but that of individual citizens.

63. An independent and effective international criminal court would help to deter some of the most serious violations of international humanitarian law. By isolating and stigmatizing those who committed war crimes or genocide, it would help to end cycles of impunity and retribution. The International Criminal Court must have jurisdiction over the core crimes of genocide, crimes against humanity and war crimes, and a situation should not be created in which States ratified the Statute without accepting the Court's jurisdiction over a particular crime.

64. The Court would need to have a constructive relationship with the United Nations, while preserving its independence and impartiality. The Security Council could play a useful role in referring matters to the Court, which, however, should not be paralysed simply because a matter was on the Council's agenda. Financing the Court from the regular budget of the United Nations, in the same manner as the human rights monitoring bodies, would ensure broad international support and avoid any financial disincentive to ratification by States parties.

65. The Court should have an independent, highly professional Prosecutor who could initiate proceedings ex officio without awaiting a State complaint or Security Council referral. Rape, sexual slavery and other forms of sexual violence must be recognized as war crimes in the Statute, reflecting the landmark decision made at the United Nations Conference on Women. Children were often doubly victimized, as civilian victims of war and as child soldiers. The Court should have a mandate to prosecute those who recruited children under the age of 15 into armies.

66. Finally, the mandate of the Court should deal not only with war crimes committed in conflicts between States but also within States.

67. According to the principle of complementarity, the Court would exercise jurisdiction only where national systems were unable or unwilling to prosecute transgressors. In other words, it would be a court of last resort.

68. Negotiations towards establishing the Court should be as open and inclusive as possible, for which reason Canada had contributed $125,000 to enable delegations from the least developed countries to participate in all phases of the process. It had also funded the attendance of six representatives of non-

governmental organizations (NGOs), and the Canadian delegation included two NGO advisers. The international community could not wait for another catastrophe before establishing a permanent body to respond to the atrocities that so often accompanied armed conflicts. As one century drew to a close, the creation of an international criminal court would be a fitting legacy for the next century.

69. **Mr. Raditapole** (Lesotho) associated himself with the statement made on behalf of the members of the Southern African Development Community and said that his Government had actively participated in efforts to establish an international criminal court. The need for a permanent court was beyond doubt. In addition to strengthening the rule of law by providing certainty and consistency in international investigations and prosecutions, a permanent court would be a bedrock for the emerging system of international criminal justice.

70. Despite progress, a number of unresolved issues remained. His delegation advocated that the International Criminal Court should be endowed with automatic jurisdiction over the crimes defined in the Statute, without the need for additional State consent. He remained opposed to the so-called opt-in/opt-out approach, which would hamper the effectiveness and independence of the Court. According to the principle of complementarity, the Court would be able to intervene only where a national court was unwilling, unable or unavailable to carry out investigations or prosecutions. The assessment of whether a State was "unwilling, unable or unavailable" to prosecute should be left to the Court itself. However, complementarity should not be invoked with the aim of obstructing justice.

71. The Prosecutor's power to initiate proceedings without awaiting referrals by the Security Council or States would help to assure the Court's independence and ensure that justice was served in cases where the Council or States failed to act. There were many procedural safeguards against the unlikely eventuality that the Prosecutor would "run wild".

72. The relationship between the Security Council and the Court raised difficult questions. Although, in theory, no conflict should exist, the Council's maintenance of peace and security might either complement or frustrate the work of the Court in bringing war criminals to justice and advancing the international rule of law. He opposed any political interference by the Council or States in the affairs of the Court.

73. Finally, the Court would need sufficiently broad powers to ensure that it could request full and timely cooperation from States at every stage of the process.

74. The objective should be to establish a just, fair and effective court that would help to replace the rule of force with the rule of law and foster democracy at the international level.

75. **Mr. El Maraghy** (Egypt) said that the draft Statute was an important step forward.

76. The International Criminal Court should be independent and should not be influenced by political considerations, and precise limits must be set in its relationship with the Security Council. The role of the Council in referring matters to the Court must be clearly defined, but it was for the Court to decide whether to commence prosecution proceedings or not.

77. The Court should not be burdened with cumbersome procedures. The Prosecutor should have the power to commence proceedings ex officio, although not as an absolute and unrestricted right. There would have to be some form of recourse against the Prosecutor's decisions.

78. An appropriate financing mechanism for the Court must be found to allow it to pursue its work in an effective and stable manner. According to the principle of complementarity, the Court should commence proceedings only if national courts were unable or unwilling to act.

79. The crime of aggression, the worst crime against humanity, and war crimes should be punishable under the Statute.

80. He attached great importance to the universality of the Convention to be adopted. The possibility of entering reservations might encourage many countries to accede to the Convention. He drew attention to the many options and alternatives contained in the text. Rules of procedure and evidence should be discussed subsequently by a committee to be set up for that purpose.

81. **Mr. Chung Tae-ik** (Republic of Korea) said that a spate of conflicts had led to heinous crimes against humanity, so that the promotion of individual security was becoming as important as the traditional concept of national security. Bringing to justice the perpetrators of crimes of international concern would serve as an effective deterrent. The adoption of the draft Statute would lead to the achievement of that goal. However, the establishment of the International Criminal Court should not conflict with but reinforce the judicial sovereignty of States.

82. The Court should be based on independence, effectiveness, fairness and financial soundness and must have automatic jurisdiction over genocide, war crimes, crimes against humanity, and, particularly, the crime of aggression. The definition of war crimes should also cover internal conflicts.

83. The Prosecutor should be given ex officio authority to initiate investigations. Otherwise, the effectiveness of the Court would be seriously eroded and the Security Council might not be able to raise cases owing to the exercise of the veto. Any risk of abuse by the Prosecutor could be countered by introducing effective checks.

84. Although the Security Council should be given the right to refer to the Court a situation in which crimes under the Statute had been committed, that should not compromise the Court's independence. All States parties should also be entitled to enter complaints. The Court must be granted jurisdiction to determine whether the requirement of complementarity with national jurisdiction was met in a specific case. The State party that

raised the question of complementarity should bear the burden of proof before the Court.

85. The rights of the accused must also be protected fully in accordance with international standards. The Statute should provide for special treatment of gender-related violence and for the protection of children, witnesses and victims.

86. The cooperation of States parties in the area of enforcement was also a prerequisite to an effective court. Lastly, the importance of adequate financing should not be underestimated. Initially, the Court's expenses should be met from the regular budget of the United Nations, and subsequently through a system of contributions by States parties.

87. **Mr. Frlec** (Slovenia) said that his Government was deeply convinced of the need for a fair, efficient and independent court. The perpetrators of genocide, war crimes and crimes against humanity must be brought to justice and the rehabilitation of individual victims and war-torn societies should be made possible.

88. The International Criminal Court must be an independent and strong judicial institution, but it was important to bear in mind the primacy of States in investigating and prosecuting crimes committed under international law. When they failed to do so, an international mechanism must be available. The Court would thus be complementary to national courts.

89. The Court should have inherent jurisdiction over genocide, war crimes and crimes against humanity. States should therefore accept its jurisdiction by ratifying the Statute, without the need for a later opt-in/opt-out system. He favoured the inclusion of the crime of aggression within the Court's jurisdiction.

90. Proceedings before the Court should be triggered by States, the Security Council or an independent Prosecutor, who should be able to use information from any source – from victims as well as from governmental and non-governmental sources.

91. Contemporary armed conflict disproportionately affected civilians, especially women and children, who required adequate protection, both in international and internal conflicts. The Court should, therefore, also have jurisdiction over war crimes committed in non-international conflicts.

92. Victims and witnesses, as well as suspects or accused persons, needed effective protection based on internationally recognized safeguards. Women and children should be afforded special protection so that the Court could deal effectively with gender-related and sexual crimes. He hoped that States would recognize that 18 was the minimum acceptable age for participation in hostilities.

93. The Court's work would be seriously undermined if States were allowed to submit reservations to the Statute. The examples of ad hoc tribunals clearly showed that close, genuine and effective cooperation between States and the Court was essential if perpetrators of crimes were to be brought to justice.

94. The Court should be financed from the regular budget of the United Nations, which would not pose a threat to the Court's independence.

95. **Mr. Cassan** (Observer for the Agence de coopération culturelle et technique) said that the French-speaking countries had long attached great importance to the question of international justice and to defending the rule of law, democracy and peace. Although the member States of his organization had different legal systems, they shared the same legal values and were therefore particularly concerned that the future International Criminal Court should respect the diversity of legal systems and cultures, particularly with regard to procedures.

96. His organization had identified crimes falling within the competence of the Court, namely, genocide, war crimes and crimes against humanity. It also believed that war crimes should include crimes committed in non-international conflicts. The relationship between the Court and the Security Council was also a matter of concern.

97. The international community as a whole could be confident that the French-speaking world supported the establishment of an international criminal court able to defend international law.

98. **Ms. Robinson** (United Nations High Commissioner for Human Rights) said that an international criminal court would fight impunity and would make it clear that all those in positions of power and leadership could no longer use terror tactics, systematic rape, ethnic cleansing, mutilation and indiscriminate killing of non-combatants as weapons of war. All individuals, regardless of official rank, were legally bound to refrain from committing genocide, war crimes and crimes against humanity.

99. It had to be admitted that the international community, through the United Nations, had had a poor record in preventing violations of human rights. The means, the political will and an effective weapon against the culture of impunity had all been lacking. To break with the past required the establishment of a court which would be truly fair and compellingly effective and would earn universal respect. The Statute should define with clarity and precision the scope of crimes to come under the jurisdiction of the International Criminal Court. The Court's role must not be restricted to international conflicts, since the worst atrocities took place in internal conflicts. In particular, rape should be included as a crime.

100. She welcomed the proposal to require the Prosecutor to appoint advisers with legal expertise on specific issues, including sexual and gender violence and violence against children, to ensure that those crimes could be addressed without adding to the suffering of the victims. She strongly urged that the Court be directed to ensure that its interpretation and application of law and principles conformed fully to

internationally recognized human rights. The hard-won gains in international human rights law must be safeguarded. Likewise, she looked for provision for the rehabilitation of those convicted by the Court. The aim was to deter and protect, not merely to punish. The Statute should also provide for reparations for victims or their families.

101. She expressed the hope that the Conference would make its own special contribution to the protection of human rights.

102. **Mr. Crawford** (Observer for the International Law Commission) said that the draft Statute for an international criminal court prepared by the International Law Commission set forth six main characteristics of the International Criminal Court.

103. First, it was to be a permanent court, sitting as required.

104. Secondly, it would be created by treaty, under the control of the States parties to that treaty but in close relationship with the United Nations. It would therefore obviate the need for further ad hoc tribunals.

105. Thirdly, it would have defined jurisdiction over grave crimes of an international character under existing international law and treaties. It was, however, recognized that, in certain areas, the law was only partially existent.

106. Fourthly, the Court's jurisdiction, except in the case of genocide, would depend on the acceptance of its jurisdiction by States or on triggering by the Security Council under Chapter VII of the Charter of the United Nations.

107. Fifthly, the Court would be integrated with the existing system of international criminal cooperation. It was not intended to displace existing national systems that were capable of working properly; hence the principle of complementarity.

108. Lastly, it should offer full guarantees of due process.

109. Since the International Law Commission had drafted those six principles, there had been some significant changes. In particular, the revised draft Statute constituted a major effort to consolidate, expand and develop substantive international law, relying only to a very limited extent on *droit acquis*. It was encouraging that the international community, in creating a permanent court for the trial of the worst crimes under international law, was prepared to develop and improve upon the law that the Court was to apply. However, praiseworthy efforts to develop the law ought not to stand in the way of creating a viable and effective court. If necessary, new developments in substantive law, and even new crimes, could be brought within the jurisdiction of the Court as the law progressed.

110. The Commission had always thought that links with the Security Council would be required, in view of the latter's responsibilities under the Charter. There was some conflict between the need for the independence of the Court and the need to prosecute, arrest and punish the guilty effectively. The Commission's draft article 23 was a conscientious attempt to strike a balance, allowing Security Council reference to the Court but avoiding a veto by the Council except in cases where it was already taking action under Chapter VII of the Charter.

111. The original concept of the Court would inevitably have to be developed and refined at the political level. He hoped that the international community was ready for such substantive advances and that they would not obscure the need for effective international procedures for the investigation of crimes and the prosecution and trial of the accused.

112. **Mr. Pace** (Observer for the NGO Coalition for an International Criminal Court) said that the Coalition was a global network of more than 800 organizations working for the establishment of a just, fair, effective, independent and permanent international criminal court. As the Secretary-General had stated in his opening address, the world had come to realize that relying on each State or army to punish its own transgressors was not enough. The issue was whether it could be ensured that those who committed heinous violations of international law and universal moral principles could be brought to justice.

113. Some Governments were still not ready to accept mandatory national and international action against violations of international humanitarian law. It was up to the majority of nations to mobilize the political will to ensure that a strong treaty and a strong court were created.

114. The Coalition had agreed on a statement of basic principles for an international criminal court, including issues of jurisdiction, complementarity, State cooperation and the independence of the Prosecutor. If the Conference were successful in establishing such a court, it would prevent the slaughter, rape and murder of millions of people during the next century. Global civil society and the non-governmental organizations present would work tirelessly with Governments and international organizations to achieve such a great, historic result.

115. **Mr. Klich** (Observer for the Movimento Nacional de Direitos Humanos) said that the poor, women, children and indigenous peoples of Latin America were the main victims of systematic violations of human rights and had no real access to justice. All too often, amnesties hindered the establishment of the truth. Political pacts on impunity showed the weakness of judicial systems.

116. A permanent body with global jurisdiction, an international criminal court, was therefore needed to complement domestic systems. It would be a serious error if the relations of the International Criminal Court with the Security Council echoed those of many judicial systems vis-à-vis interventionist political powers. Neither should the Court depend on the specific consent of different States before commencing its investigations.

117. The Court would make a great contribution to the cause of peace and reconciliation of humanity because it would establish

the truth. In order to pardon an offender, the nature of the offence had to be known, to forget the past, paradoxically it had to be remembered dispassionately, and to bring reconciliation, individual responsibility had to be established.

118. **Ms. Boenders** (Observer for the Children's Caucus International) said that gross acts of violence against children should be brought within the jurisdiction of the International Criminal Court, which must have expertise in the protection of children, both as witnesses and victims. They were also victims when manipulated by adults to commit acts of war.

119. Despite the Geneva Conventions of 1949 and the Additional Protocols of 1977 and the Convention on the Rights of the Child of 1989, children under the age of 15 were found in national armies and, more commonly, in armed rebel groups. They might also be sexually abused. The definition of war crimes must consider the full range of children's participation and not be limited by the words "direct" or "active". She strongly recommended the inclusion in the Statute of a ban on recruiting and allowing children under the age of 15 to take part in hostilities.

120. The Court would not be an appropriate forum for the trial of children who committed crimes against others. It should have no jurisdiction over persons who were under the age of 18 at the time of committing crimes which would otherwise have come within the jurisdiction of the Court. With its punitive purpose, the Court was fundamentally at odds with the rehabilitative purpose of international standards on juvenile justice. That did not mean that crimes carried out by children would go unpunished. The Court could impose accountability on adults who used children to commit crimes. Where adults deliberately used children to commit crimes within the jurisdiction of the Court, or targeted them as victims, that should be considered an aggravating factor in passing sentence.

121. The protection of children in armed conflict would be achieved only through a strong and effective court, with an independent Prosecutor and universal and inherent jurisdiction over core crimes.

The meeting rose at 6.10 p.m.

3rd plenary meeting

Tuesday, 16 June 1998, at 10.10 a.m.

President: Mr. Conso (Italy)

A/CONF.183/SR.3

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)

1. **Mr. Rogov** (Kazakhstan) said that his country, which had attained its independence with the collapse of the Soviet empire, was extremely concerned to maintain and consolidate its sovereignty. Because it desired independent protection for its fundamental institutions, Kazakhstan supported the creation of an international criminal court.

2. The representative of the United Kingdom had expressed concern about extradition proceedings in connection with the establishment of such a court. Kazakhstan's Constitution did not entirely rule out the extradition of Kazakh citizens. However, Kazakhstan believed that maximum account must be taken of universal human rights and also of the sovereignty and independence of each State.

3. Kazakhstan supported the creation of an international criminal court as an independent judicial body, with clearly defined jurisdiction and mechanisms for criminal prosecution. It also supported the proposals for the Statute. The International Criminal Court should be an independent international organization in relationship with the United Nations through agreements adopted by the States parties.

4. The crimes falling within the Court's jurisdiction should be clearly defined and genocide, crimes against humanity and military crimes and aggression should unquestionably be included, but only on the basis of such a clear definition.

5. Kazakhstan considered that extending the Court's jurisdiction to drug trafficking did not accord with the principle of complementarity, since it was not always possible for national judicial systems to punish such crimes. As far as genocide and military crimes were concerned, the Court should take action at the initiative of States and the Security Council. For other crimes, the consent of the State on whose territory or against whose interests the crime was committed would be necessary.

6. The Court should be funded by contributions from States. But, since not all States were able to make such contributions, such costs should be covered in the first stage from the budget of the United Nations with the approval of the General Assembly. Kazakhstan considered it the sovereign right of every State to enter reservations in signing and ratifying the