

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

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8th plenary meeting

Thursday, 18 June 1998, at 3.10 p.m.

President: Mr. Conso (Italy)

A/CONF.183/SR.8

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. Jensen (Denmark) said that the Conference was a historic opportunity to create an effective, independent and fair international criminal court that would act as a deterrent and bring to justice persons responsible for the most serious crimes under international law when domestic criminal justice systems failed. Complementarity being vital, the International Criminal Court should not act when national systems were able and willing to do so, but should have the authority to determine when national systems were unable or unwilling to act.
2. The Court's jurisdiction should be limited to the so-called core crimes under general international law, including genocide, crimes against humanity, war crimes and aggression. Without the inclusion of aggression, the Statute of the Court would be incomplete, although a balance would have to be struck between the need of the Court to be free from political influence and the need to take the Security Council's responsibilities into account.
3. The Statute should make provision for a review mechanism to allow the addition of other crimes in the future. The Court must also have jurisdiction over crimes committed in internal armed conflicts. Rape and other crimes of sexual violence committed in armed conflicts should be properly defined and explicitly listed as war crimes in the Statute. The recruitment of children under 18 years of age into armed forces or groups should also be included as a war crime.
4. States acceding to the treaty must accept the Court's jurisdiction over all the crimes listed in the Statute and must cooperate with it. States' consent should not be required before individual prosecutions or investigations could proceed. All States parties to the Statute should be able to trigger action by the Court. In addition, the Security Council must be able to refer situations to the Court under Chapter VII of the Charter of the United Nations. The Prosecutor should have the power to start investigations *ex officio* on the basis of information obtained from any reliable source, including non-governmental organizations. The Statute must provide for a fair trial and due process at all stages of the proceedings. There should be no capital punishment, but a maximum sentence of life imprisonment.
5. The Court should have a close relationship to the United Nations and should be financed from the regular budget of the United Nations.
6. Mr. Sadi (Jordan) said that the goal was to create a credible juridical deterrent to those who intended to commit grave breaches of international humanitarian law. If that deterrent failed, those believed guilty could be prosecuted by the International Criminal Court, not only to establish the truth but also to afford some measure of justice to the victims. Grave crimes should be prosecuted, whether they occurred in internal or external conflicts, and whoever committed them.
7. One basic requirement for an effective and independent international criminal court was the *ex officio* power of the Prosecutor to initiate investigations, which would be all the more critical in the light of the State consent regime that was under consideration.
8. There was an inherent risk that the lowest common denominator approach would produce a weak legal institution rather than one enjoying worldwide respect. If the principle of reservations were endorsed by consensus, it should be applied very conservatively. On the vexed issue of the death penalty, he noted that, while international human rights instruments called for the phasing out of capital punishment, they did not yet prohibit it altogether.
9. The attempts by some delegations to pick and choose from the Geneva Conventions of 1949 those elements that should or should not be included in the definition of war crimes were totally unacceptable. The Commission on Human Rights should have the same power as the Security Council to refer cases of gross human rights violations to the Court. While the Council had the primary responsibility for the security-related aspects of aggression, the Court could have concurrent jurisdiction over those aspects that fell within its scope.
10. Mr. Chkheidze (Georgia) said that the establishment of a permanent international criminal court would significantly contribute to strengthening the rule of law. Despite the achievements of civilization, atrocities still remained invariable concomitants of modern warfare and were even more brutal when committed in non-international armed conflicts.
11. The International Criminal Court should have jurisdiction over genocide, aggression, war crimes committed in both internal and international conflicts and crimes against humanity. While he supported the principle of complementarity, he emphasized that the Court should not be reduced to a residual mechanism for dispensing justice. Unless it were truly

empowered to step in where national systems proved incapable or unwilling to punish the perpetrators of serious crimes, and were competent to determine that national systems had failed, it would be of limited value.

12. He agreed that the Security Council should have the power to bring matters before the Court, but the independent Prosecutor should also be able to trigger proceedings at the request of a State party.

13. The Court should be established by treaty, its relationship with the United Nations being dealt with in a special cooperation agreement.

14. **Mr. Agius** (Malta) said that it was vital to establish an international criminal court which must be truly effective and free from political interference and whose Prosecutor would be independent and able to investigate cases and initiate indictments *proprio motu*, without the prior consent of States parties. The International Criminal Court should have inherent jurisdiction over genocide, crimes against humanity and war crimes. Furthermore, subject to finding a proper formula, the crime of aggression should also be included within its jurisdiction.

15. While the principle of complementarity should remain a pivotal point with regard to jurisdiction, the Court must be judge of its own competence on questions of admissibility. Furthermore, despite the role and obligations of the Security Council in maintaining international peace and security, the Court must be able to operate without undue influence on the part of the Council. The duty of States parties to cooperate fully with the Court should be clearly spelled out. Finally, he concurred with the proposals by several countries and by the European Union that the Statute should ensure respect for the rights of victims, the accused and witnesses at all phases of the proceedings.

16. **Mr. Prlić** (Bosnia and Herzegovina) said that the establishment of the International Criminal Court would create a strong instrument for preventing and punishing the perpetrators of serious crimes. He hoped that the Court's independence, its complementarity with national courts and its jurisdiction over the most serious crimes would put an end to slaughter, brutal torture, rape and other crimes against humanity.

17. Despite many obstacles encountered by the International Tribunal for the Former Yugoslavia in apprehending all those indicted for or suspected of war crimes, the overall conclusion was that such tribunals were indispensable.

18. The Court should be a just, fair and effective institution and its Statute should reflect the fundamental principles and expectations of mankind embodied in human rights and other international instruments. The universal jurisdiction of the Court, its effective complementarity to national laws, the independence of its Prosecutor, the cooperation of States parties to the Statute and its independence would ensure its credibility, independence and impartiality.

19. **Mr. Ushakov** (Russian Federation) said that the task was to create a permanent international criminal court to strengthen peace and justice. It was time to put into effect the principle of individual responsibility for the most serious crimes affecting the international community and to take steps to deter such crimes.

20. The International Criminal Court must be perceived as an effective, independent, authoritative body, a guarantor for the proper exercise of justice. It must in no circumstances become an instrument of political manipulation. It must be universal, the participation of all States being an undoubted priority. Its jurisdiction should extend to genocide, aggression, war crimes, crimes against humanity and the most serious terrorist crimes. It would be a major achievement to extend the Court's jurisdiction to serious violations of the Geneva Conventions of 1949 committed during non-international conflicts. The Court should certainly be competent to try sexual crimes in that context.

21. The Court's jurisdiction should complement that of national courts when the latter were ineffective in prosecuting such crimes or failed to act in good faith. Its action should be triggered by a complaint from a State or the Security Council. The Prosecutor should be fully independent in carrying out investigations.

22. To be fully effective, the Court should be incorporated in the existing system of support for international peace and stability, and its Statute should take into account the current status of international law so as to secure universal acceptance; a court not working in close combination with the Security Council would be doomed to failure. The Court should have compulsory jurisdiction in cases referred to it by the Council and with regard to genocide. With respect to aggression, the Council would first have to determine that such an act had occurred. In other cases, the Court would have jurisdiction with the consent of the State on whose territory the crime was committed and of the custodial State. Such consent, in principle, could be given by States when they ratified the Statute.

23. The Statute should provide for full cooperation by States with the Court, without infringing national security. The Statute should unconditionally include fundamental progressive principles of criminal justice such as the presumption of innocence and *ne bis in idem*. The death penalty should not be allowed, in order to ensure the broadest accession by States to the Statute. Likewise, reservations should be permitted to individual provisions of the Statute not relating to points of principle.

24. He supported the proposal to locate the headquarters of the Court at The Hague.

25. **Mr. Opetti** (Uruguay) said that the creation of an international criminal court was of the greatest significance with regard to the development of international law and indeed the international community itself. The concept of individual criminal responsibility for infringements of humanitarian law marked a qualitative change from the traditional view that only States were subjects of international law.

26. The permanent nature of the International Criminal Court did not mean that historic precedents need not be taken into account. However, the Conference must define in abstract terms those forms of conduct that could be criminalized, without abandoning established principles of liberal criminal law, such as the non-retroactivity of criminal legislation, *nullum crimen sine lege* and *nulla poena sine lege*.

27. No international crime such as genocide, war crimes or others of similar gravity could remain unpunished or be concealed by a kind of diplomatic composition of differences that diluted responsibility and ultimately spared the offender from legitimate prosecution. States and individuals must recognize the Court as an inescapable, independent, impartial and effective authority. The greatest problems to be discussed were probably related to achieving the necessary harmony between national courts and the new Court on the basis of complementarity. The appropriate functioning of the internal and international judicial spheres would largely determine the support for and recognition of the activities of the Court as the highest judicial authority of the international community.

28. Another sensitive point was the relationship of the Court to the United Nations system as a whole and particularly to the Security Council. The issue, once again, was complementarity and coordination. The Council, whose competence to preserve peace and security was based on the Charter of the United Nations, acted from a political and institutional perspective, and the relationship between the Court and the Security Council should not be one of dependence or subordination but rather of mutual respect.

29. Finally, in view of the collegiate nature of the Court to be created, a similar structure should be set up with regard to the Prosecutor's ex officio competence to initiate proceedings.

30. **Mr. Dorneval** (Haiti) supported the statement made on behalf of the Caribbean Community by the representative of Trinidad and Tobago, and said that his Government had a very special interest in the establishment of the International Criminal Court and resolutely supported its establishment, in view of his country's experience of slavery and more recent crimes whose perpetrators had gone unpunished.

31. The Court should be independent and impartial, which meant not only that the judges should have freedom of action but also that the institution should be protected against any external influence. It should be impartial in rendering justice to all without distinction or exclusion. To find the support it deserved, the Court must be complementary to national criminal courts, intervening where local courts were unable or unwilling to act.

32. Action by the Court should be triggered by States parties, the Security Council and the Prosecutor, the latter being subject to control by a pre-trial chamber. Cases should be referred to the Court strictly in accordance with Article 39 of the Charter of the United Nations.

33. **Mr. Al-Adhami** (Iraq) said that security and peace could prevail only in a regime of justice; therefore, the Statute of the International Criminal Court should contain clear principles that confirmed its neutrality and objectivity, its independent role and freedom from the political influences of States and international organizations. The Office of the Prosecutor should enjoy the same guarantees of neutrality and independence.

34. In order to strengthen the confidence of the international community, the Statute should strike an acceptable balance between the jurisdiction of the Court and that of national courts. The principle of complementarity of jurisdiction did not imply any reduction of the sovereignty of national courts. That should be stated more clearly by placing emphasis on the principles of criminal law as rooted in all contemporary national legal systems. It was important to specify that both the use and the threat of use of weapons of mass destruction, including nuclear weapons, constituted war crimes. The Court should be financed by States parties, thus reinforcing its independence.

35. **Mr. Al Badri** (Yemen) said that the sufferings that had been inflicted upon mankind had prompted the international community to set up ad hoc criminal tribunals and in turn to recognize the need to create an international criminal court.

36. A court that would prosecute the most serious crimes against humanity must be independent and effective and must be created on the basis of complementarity; it must be a court of last resort that would take action when national courts proved unable to do so. Only States parties should be entitled to refer cases to the International Criminal Court and the penalties should include deterrents consistent with the crimes, even including capital punishment. The Prosecutor should be independent, but his decisions must be subject to review by the Court. The Court's role was strictly judicial, and the Security Council, as a political organ, should not exert any influence over it. The Court must remain free from political considerations but, equally, must not interfere in the internal affairs of States.

37. Action by the Court must not conflict with international instruments, in particular the Charter of the United Nations. States should be allowed to define the crimes to be included in the Statute. The Statute should respect the sovereignty of States and their constitutional rules so as to avoid difficulties in ratification.

38. **Ms. Drozd** (Belarus) said that the establishment of an international criminal court to try aggression, genocide, war crimes and crimes against humanity would be a global response to horrific events such as those in Cambodia or Rwanda. Accession to the Statute should logically imply recognition of the jurisdiction of the International Criminal Court over those crimes. However, the Court should have competence with regard to other crimes listed in the initial draft Statute, under a regime of optional jurisdiction. She favoured the principle of complementarity as a means of ensuring a close tie between the Court and national justice systems.

39. While realizing the need to ensure the independence of the Court, she advocated a strong link with the Security Council in initiating proceedings on aggression. The Court could prosecute individuals suspected of committing aggression after a corresponding decision had been taken by the Council or if such a decision had been put to the vote in the Council but not adopted. With respect to other crimes within the jurisdiction of the Court, it would be acceptable if the Council had the power to decide on a temporary suspension of proceedings in the Court. An essential preliminary condition for the Court's exercise of its jurisdiction was acknowledgement of its competence by the State with jurisdiction over the suspect. However, that should not apply to cases referred to the Court by the Council.

40. The Prosecutor could be given powers to initiate proceedings *proprio motu*, subject to the provisions of the Statute as a whole and based on the principle of complementarity and the absence of any exclusive jurisdiction by the Court with respect to any category of crimes. She therefore proposed the possibility of reservations to that provision of the Statute. However, reservations should refer only to the trigger mechanism and the substantive jurisdiction of the Court, and their number should be strictly limited.

41. She was convinced that the effectiveness, stability and universality of the Court could be attained only if its activities were financed from the regular budget of the United Nations.

42. **Ms. Kleopas** (Cyprus) said that the establishment of a permanent international criminal court was an absolute necessity. She aligned herself with the statement made by the European Union Presidency.

43. If the International Criminal Court was to be effective and able to dispense justice, it must have an independent Prosecutor empowered to act *proprio motu*.

44. The list of crimes over which the Court should have jurisdiction should include all crimes of international concern: genocide, aggression, war crimes and crimes against humanity. Failure to include aggression would deprive the Court of one of its primary functions and would also discriminate against victims. War crimes should be defined as including the establishment of settlers in an occupied territory, changes to the demographic composition of an occupied territory and the deportation or transfer of all or parts of the population of the occupied territory within or outside that territory. The destruction of cultural sites should also be considered a war crime.

45. **Mr. Abdullah Bin Khalid Al-Khalifa** (Bahrain) said that the purpose of establishing an international criminal court was to act as a deterrent against the commission of war crimes during armed conflict. The ad hoc tribunals had provided models for such a criminal justice regime.

46. In order to respect national sovereignty, the jurisdiction of a permanent and independent international criminal court

should be complementary to national jurisdiction and should encompass genocide, aggression, war crimes and crimes against humanity. The elements of those crimes should be defined very precisely to satisfy the principle of *nullum crimen sine lege*.

47. The International Criminal Court should be independent and free from any political interference that would affect its impartiality or hamper its work. For the exercise of his or her mandate, the Prosecutor, whose action should be subject to precise legal rules, should be empowered to initiate proceedings on the basis of complaints by States or a decision of the Security Council. The Court should have the power to award compensation to victims as well as to pass sentence on those convicted. The word "extradition" should be retained, rather than "transfer" or "remand", because it had an established legal sense in international customary law and was accepted by all national constitutions and laws.

48. Reservations to the Statute should not be permitted. It should be left to the general rules of the law of treaties to guarantee the greatest possible number of accessions to the Statute.

49. **Mr. Nze** (Congo) said that, in view of large-scale human rights violations, it was necessary to establish an international criminal court so that those who committed such crimes would not go unpunished. The jurisdiction of the International Criminal Court should also extend to acts such as terrorism.

50. The Court should be available to States parties and the Security Council. It should also be empowered to act on its own initiative, but only if it was independent of political influence.

51. The independence of the Court should be guaranteed in its Statute and must be respected by the Security Council and States, in order that the judges could perform their duties in complete impartiality while ensuring due respect for the rights of the defence. To avoid the delays characteristic of international courts, the Court should enjoy financial autonomy. It should also provide compensation to victims.

52. **Mr. Abreu** (Angola) said that, in keeping with the statement made on behalf of the Southern African Development Community, he supported the establishment of an international criminal court to prosecute grave crimes of concern to the international community.

53. An international criminal court should not have fewer guarantees of independence and impartiality than a national court in determining what crimes and criminals it would try. In no case, therefore, should the initiation of judicial action be subject to a veto or a decision of the Security Council or to the will or interests of States where the crimes were committed or whose nationals were the accused.

54. Similarly, the Prosecutor's freedom to investigate crimes or institute prosecutions should not be limited. States must cooperate with the Prosecutor and not impede his work.

55. It should be possible, despite the concerns expressed by certain countries, to find ways of guaranteeing respect for the rights of the accused to defence, avoiding abuses and ensuring that unfounded accusations did not reach the trial stage.

56. He supported the inclusion of aggression within the Court's jurisdiction.

57. Since his country's Constitution prohibited capital punishment, he could not agree to the inclusion of the death penalty in the Statute.

58. **Mr. Nyabenda** (Burundi) said that his country had suffered for almost five years from genocide and attacks by bands of terrorists against innocent people; he requested that an ad hoc international criminal tribunal be set up for Burundi in order to help in national reconciliation efforts.

59. He welcomed the plan to establish a permanent international criminal court, which should be independent, strong and impartial, and linked with the United Nations through a special agreement to guarantee its universality and authority. It should be created by means of a treaty. Burundi favoured complementarity between the International Criminal Court and national courts, which should retain the primary responsibility for investigating and prosecuting crimes.

60. The Court should be competent to deal with the crimes specified in article 5 of the draft Statute. No State should be entitled to refuse recognition of the Court's competence. The Court itself should determine its power of intervention.

61. **Mr. Larrea Dávila** (Ecuador) said that the International Criminal Court should be established in accordance with the purposes and principles of the United Nations and international law. Its independence, effectiveness, universality, impartiality and permanence should be guaranteed in order to protect the basic values of the civilized world community.

62. The Court should have broad jurisdiction over crimes such as genocide, war crimes, crimes against humanity, violations of human rights and the crime of aggression, if consensus could be reached on a definition of aggression, and also over crimes committed during internal armed conflicts and crimes against humanity committed in times of peace. The Statute should be open to the future inclusion of other crimes of universal concern. The Court should have universal jurisdiction, and signature of the Statute should imply acceptance of its jurisdiction, which would be complementary to that of national legal systems. The Court should be empowered to intervene when it was determined that national legal systems had not been able to carry out their primary responsibility.

63. The Court should be free from interference by any political body, thus guaranteeing impartiality in prosecution and adjudication. It should also have a strong and independent Prosecutor empowered to initiate judicial proceedings *ex officio*. All Member States should undertake to fulfil the

provisions and orders of the Court at all stages of the process without delay.

64. The Court would enjoy greater legitimacy if it could not impose the death penalty. It should fully observe the principles of international criminal law, including non-retroactivity, *in dubio pro reo*, *nullum crimen sine lege*, *nulla poena sine lege*, *ne bis in idem*, and, finally, the guarantee of due process.

65. **Mr. Nkgowe** (Botswana) said that the establishment of an international criminal court was long overdue. It should be the purpose of the International Criminal Court to deter all those who harboured the intention of committing genocide, war crimes and crimes against humanity, or to hold those who committed such crimes individually accountable for their deeds. The plea of acting under superior orders could no longer be accepted.

66. There was agreement that the Court should be independent, impartial, fair, just and effective and that it should complement national courts; nevertheless, some questions remained, for instance, regarding the role of the Security Council. The Council was the first port of call in international crises and should be allowed to refer cases to the Court. Any State or member of the Council should also be able to refer cases before it to the Court, and the veto should not be applicable. By the same token, the Prosecutor should have a mandate to initiate action, for example, where the national courts were not in a position to bring the perpetrators of serious crimes to justice.

67. **Mr. Novella** (Monaco) said that, in keeping with his country's long-standing involvement in international humanitarian efforts, including the establishment of a precursor to the League of Nations and groundwork for international Red Cross conventions, his delegation wished to participate in the establishment of the International Criminal Court and to work for the punishment of international crimes.

68. **Mr. Kirabokya Maria** (Uganda) said that a permanent, independent, transparent and effective international criminal court should be established, with unfettered jurisdiction over crimes such as genocide, war crimes, crimes against humanity and aggression, without any distinction between war crimes committed in international and internal conflicts.

69. The International Criminal Court could not and should not replace the various national judicial systems. It should play only a complementary role. On the other hand, the role of the Security Council under Chapter VII of the Charter of the United Nations should not be allowed to influence the acceptability and independence of the Court.

70. He agreed with those delegations and non-governmental organizations that advocated adequate and effective provisions in the Statute for safeguarding children. The prosecution of abduction, rape, enslavement and other forms of child abuse should be prominently reflected in the Statute. Gender concerns should also be taken into account.

71. Any individual, State, non-governmental organization or the Prosecutor, acting *ex officio*, should be allowed to initiate action without undue pre-qualifications. He strongly opposed the admissibility of reservations to the Statute and did not support the opt-in/opt-out approach.

72. In the past, arch-criminals had enjoyed impunity as a result of the lack of international criminal jurisdiction. He hoped that, through the Court's work, there would be no place where such criminals could hide.

73. He welcomed the offer by the Netherlands to host the headquarters of the Court at The Hague.

74. **Ms. Garavaglia** (Observer for the International Federation of Red Cross and Red Crescent Societies) said that, in November 1997, the 175 national societies of the Red Cross and the Red Crescent, the International Federation and the International Committee of the Red Cross had adopted a resolution calling on national societies to promote the establishment of an effective and impartial international criminal court. The 120 million volunteers of the Red Cross and Red Crescent were waiting for a strong political message on the prevention and punishment of violations of international humanitarian law. They should not be disappointed. The establishment of a court meeting the legitimate demands of international justice was within reach.

75. **Mr. Suarez Gil** (Observer for the Latin American Institute of Alternative Legal Services) welcomed the opportunity to engage in a dialogue with a view to establishing an independent, impartial and permanent international criminal court. The murders of colleagues, which had taken place in internal political conflicts, were often not recognized by Governments or were recognized only belatedly. According to a report of the Office of the United Nations High Commissioner for Human Rights, activity by paramilitary groups, displacement of thousands of people and persecution of defenders of human rights were on the increase. Punishing such crimes in cases where domestic judicial systems had no capacity to do so called for a court that had inherent jurisdiction over violations that occurred in internal armed conflicts.

76. The Statute should clearly state that the enforced disappearance of persons should fall within the jurisdiction of the International Criminal Court. Some countries had attempted to modernize criminal justice by establishing non-adversarial proceedings, which were marred by the use of such devices as so-called anonymous judges, who did not respect guarantees of impartiality or due process. In many cases, witnesses, victims, family members and their representatives at trials were persecuted. The future Court should provide protection for such persons.

77. **Mr. Dorsen** (Observer for the Lawyers Committee for Human Rights) said that his Committee had worked for many years to end impunity for the most heinous international crimes. The Conference had the opportunity to create a court that would

prosecute international crimes when national systems were unable or unwilling to do so. An effective court would deter gross human rights violators by confronting them with the real risk of punishment. When national courts could not provide it, the International Criminal Court could offer redress to victims and protection for women, children and witnesses of international crimes. It would strengthen peace by offering justice through law and would contribute to the process of reconciliation.

78. The community of nations had a fundamental interest in contributing to a more stable world by creating an international criminal court that was independent, effective and fair. Indeed, a court without those features would have no deterrent effect. An independent, effective and fair court must be perceived to be a judicial body guided by legal rather than political considerations. Its jurisdiction should be limited to the three core crimes of genocide, crimes against humanity and serious war crimes, unless agreement on the definition of other crimes could be reached.

79. The Security Council should not be able to control the proceedings of the Court; accordingly, the Prosecutor must be permitted, subject to appropriate safeguards, to initiate investigations *proprio motu*. The Court must be empowered to exercise its jurisdiction without the need to obtain State consent before it could proceed. It must adhere to the highest international standards of fair trial and due process. States parties must be obliged to cooperate fully with the Court and to comply with its orders and decisions. The Court should be financed from the regular budget of the United Nations.

80. Judicial independence and judicial oversight of the Prosecutor and judges, who would be of the highest impartiality, integrity and professional competence, would safeguard against the danger that an independent court could become a forum for politically motivated prosecutions. Perhaps the most important safeguard was the basic principle of complementarity. The Court would act only when there was no national judicial system willing and able to prosecute and investigate.

81. **Ms. Sajor** (Observer for the Asian Centre for Women's Human Rights) said that a permanent international criminal court whose aim it was to promote universal justice effectively must incorporate gender perspectives in all aspects of its jurisdiction, structure and operations. The International Criminal Court must be fully accessible, through an independent Prosecutor, to complaints from women survivors; its creation was an essential step in ending the cycle of violence against women in war and armed conflict.

82. Though rape had been clearly listed as a war crime since the end of the First World War, women had to struggle to have the crime of rape listed in the statutes of the International Tribunals for the Former Yugoslavia and Rwanda and to have resources devoted to the investigation of such crimes when those Tribunals were created. The Conference must ensure that

the results of its deliberations would not be yet another setback for women victims of wars and crimes against humanity.

83. The Statute of the Court must reflect the present state of international law. Rape, sexual slavery, enforced prostitution, enforced pregnancy, mass rape and other forms of sexual and gender-based persecution must be specifically listed as war crimes, crimes against humanity and grave breaches of the human rights of women.

84. **Ms. Stobiecka** (Observer for the European Law Students' Association) said that the International Criminal Court must be able, without influence from any political body, to prosecute and punish perpetrators of genocide, crimes against humanity, war crimes and aggression.

85. The independent Prosecutor should be able to commence investigations *ex officio*. It would be meaningless to create a permanent international criminal court with less power than the domestic tribunals of States parties.

86. Justice for victims of gross violations of international humanitarian law and human rights could be achieved only when victims had access to justice in three areas: the right to know the truth, the right to a fair trial and the right to reparation. The underlying legal principle was that, where a wrong existed, there must be a corresponding judicial remedy, as stated in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Articles 68 and 73 of the draft Statute of the Court were central to justice for victims of atrocities occurring in times of war or times of peace.

87. **Mr. Corell** (Representative of the Secretary-General) said that the protected status of United Nations signs, emblems and military uniforms, first recognized in Additional Protocol I to the Geneva Conventions of 1949, had proved to be both justified and necessary in the practice of peacekeeping operations. The Secretariat strongly supported the idea that the Conference should take a step further in order to criminalize and qualify as a war crime the improper use of the flag, military insignia and uniform of the United Nations by any of the parties to a conflict, when such use resulted in death or serious personal injury.

88. Attacks against United Nations and associated personnel were criminalized under the 1994 Convention on the Safety of United Nations and Associated Personnel, but it was left for the national jurisdiction of each State party to prosecute or extradite. Such crimes should fall within the jurisdiction of the International Criminal Court. However, making the criminalization of attacks against United Nations personnel conditional on their systematic character and large-scale occurrence would be inconsistent with the definition of the crime established in the 1994 Convention, and hardly ever appropriate in the circumstances of peacekeeping.

89. As an organization whose peacekeeping, humanitarian and similar field operations were deployed in areas of conflict, the United Nations would almost certainly be in possession of

first-hand information which could significantly assist the Court in determining the individual criminal responsibility of accused persons. The nature, scope and modalities of United Nations cooperation with the Court in providing oral testimonies or documents would have to be agreed upon between the Organization and the Court. The United Nations, for its part, would be guided by the practice of cooperation with the two *ad hoc* International Tribunals for the Former Yugoslavia and for Rwanda.

90. Consequently, the United Nations would cooperate with any proper international criminal court, whether a tribunal of the kind established for the former Yugoslavia and Rwanda, whose orders and requests were binding under Chapter VII of the Charter of the United Nations, or a treaty-based court whose requests must be complied with by the United Nations on the basis of mutually agreed procedures.

91. The United Nations Secretariat understood that cooperation embraced all stages of the legal process, from the investigation to the trial phase, and all organs of the Court, including the defence, which, while not strictly speaking an organ of the Court, was nevertheless an indispensable element in the administration of justice.

92. An agreement between the United Nations and the Court as foreseen in the draft Statute would be subject to approval by the General Assembly. The following principles would guide the Secretariat in negotiating such an agreement.

93. The principles of the 1946 Convention on the Privileges and Immunities of the United Nations should also apply in relation to the Court. Accordingly, when requested to waive the immunity of any of its officials in order to enable them to appear in court, or when requested to disclose any information which had not yet been made public, the Secretary-General would balance the need to cooperate with the Court with the protection of the internationally recognized interests of the United Nations. The Secretary-General would consider the relevance and specificity of the request for information, the gravity of the charge under consideration, the confidentiality of the documents requested, the risk that their disclosure might entail for the safety of United Nations staff and the interests of the Organization, and whether, in such a case, sufficient guarantees and protective measures could be provided.

94. The notion of the confidentiality of documents and information in the United Nations context needed clarification. Where a request for disclosure of documents entailed an examination of deliberations of closed meetings of the Security Council, United Nations records of meetings with representatives of Member States, including troop-contributing States, a decision to permit such an examination of the activities of the Council and individual Member States would raise serious questions equivalent to the national security of States. Any provision in the Statute for the protection of sensitive national security information should, therefore, be made applicable to the United Nations *mutatis mutandis*.

95. In that context, he drew the attention of the Conference to the communication from the Inter-Agency Standing Committee which appeared in document A/CONF.183/INF.4. Ultimately, of course, it was for Member States to strike the appropriate balance between the competing interests.

96. In conclusion, he said that, while it was clear that there was not agreement on some issues, what was more important was the true sense of commitment towards fulfilling the mandate of the Conference, namely, to finalize and adopt a convention on the establishment of an international criminal court. The debate conveyed a message of confidence and determination and a clear sense of responsibility. The Secretariat would do its utmost to support the Conference.

Agenda item 8 (continued)

Appointment of the Credentials Committee

97. **The President** said that, since Barbados and Bhutan were unable to serve on the Credentials Committee, two new members must be elected. It was his understanding that, following informal consultations between the regional groups, Dominica and Nepal had been nominated to fill the vacancies. He asked whether the Conference wished to approve those nominations.

98. *It was so decided.*

The meeting rose at 6.20 p.m.

9th plenary meeting

Friday, 17 July 1998, at 10.35 p.m.

President: Mr. Conso (Italy)

A/CONF.183/SR.9

Report of the Credentials Committee (A/CONF.183/7 and Corr.1 and 2)

1. **Ms. Benjamin** (Dominica), speaking as Chairman of the Credentials Committee, introduced the report of the Committee contained in document A/CONF.183/7 and Corr.1 and 2, which should not require any further explanation since it was based on United Nations practice. The Committee recommended that the Conference adopt the report, including the draft resolution contained in paragraph 15.

2. **The President** asked the Conference if it wished to adopt the report of the Credentials Committee.

3. *It was so decided.*

Agenda item 11 (concluded)

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

Report of the Committee of the Whole (A/CONF.183/8 and A/CONF.183/C.1/L.92 and Corr.1)

4. **Mr. Kirsch** (Canada), speaking as Chairman of the Committee of the Whole, introduced the report of the Committee (A/CONF.183/C.1/L.92 and Corr.1) and said that the Committee had completed the mandate entrusted to it by the Conference and had adopted the draft Statute for an international criminal court. The report of the Committee was composed of four chapters. Chapter I described the proceedings

of the Committee relating to the various parts and articles referred to it by the plenary, chapter II contained the complete text of the draft Statute for the International Criminal Court, chapter III contained a list of the written proposals and working papers submitted to the Committee and its working groups, and chapter IV contained the text of the draft final act of the Conference.

5. He commended to the plenary, for consideration and adoption, the draft Statute for the Court and the draft final act of the Conference contained in the report of the Committee.

6. **The President** asked the Conference if it wished to take note of the report of the Committee of the Whole contained in document A/CONF.183/C.1/L.92 and Corr.1.

7. *It was so decided.*

Agenda item 12

Adoption of a convention and other instruments deemed appropriate and of the final act of the Conference (A/CONF.183/8)

8. **Mr. Scheffer** (United States of America) asked for a vote on the adoption of the Statute as a whole, in accordance with rule 36 of the rules of procedure. He was not asking for a recorded vote.

9. **The President** invited the Conference to vote on the adoption of the draft Statute for the International Criminal Court.

10. *The Statute was adopted by 120 votes to 7, with 21 abstentions.*