United Nations A/C.6/53/SR.12

# General Assembly
Fifty-third session

Official Records

Distr.: General
19 December 1998
English
Original: French

**Sixth Committee**

**Summary record of the 12th meeting**
Held at Headquarters, New York, on Thursday, 22 October 1998, at 3 p.m.

*Chairman*: Mr. Enkhsaikhan ..... (Mongolia)
*later*: Mr. Verweij (Vice-Chairman) ..... (Netherlands)

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98-81838 (E)

*The meeting was called to order at 3.10 p.m.*

**Agenda item 153: Establishment of an international criminal court** (*continued*) (A/53/189 and 387)

1. **Mr. Tchatchouwo** (Cameroon) said that the elimination of impunity had marked a turning point in international relations. His Government was pleased that that point had been reached during the year which marked the fiftieth anniversary of the Universal Declaration of Human Rights.

2. His Government also welcomed the broad consensus on complex, difficult questions such as the inclusion of the crime of aggression, the principle of complementarity and the independence of the prosecutor. However, other unquestionably important issues had been left undecided. Resolution E, which appeared in the Final Act of the Conference (A/CONF.183/10*, annex I) recognized that crimes defined by treaty and, in particular, terrorist and drug-related acts, were serious crimes which might have fallen within the Court's competence had consensus been achieved. In view of the consequences and the frequency of those problems, his delegation strongly supported the recommendation that the Review Conference called for in article 123 of the Rome Statute (A/CONF.183/9*) should establish an acceptable definition of those crimes and add them to the list of those which fell within the Court's competence.

3. The Preparatory Commission mentioned in resolution F of the Final Act of the Conference would be responsible for drafting a provision on aggression, defining that crime and its elements and establishing the conditions under which the Court would exercise its jurisdiction. The General Assembly should convene the Commission quickly in order to implement the provisions of the Statute which concerned the court's jurisdiction over aggression. His Government had accepted that solution in a spirit of compromise, since it considered that aggression had already been defined by the General Assembly in its resolution 3314 (XXIX) of 14 December 1974, which had been adopted unanimously. The problem was that of the relationship between the new Court and the Security Council. There was great fear that the latter would be stripped of the powers granted it under Article 39 of the Charter. At the Rome Conference, his delegation had submitted a proposal (A/CONF.183/C.1/L.39), which included numerous clarifications of the definition of aggression and shed light on the conditions under which the Criminal Court would have jurisdiction.

4. He reiterated that the relationship between the International Criminal Court and the Security Council should be one of cooperation and complementarity insofar as the Court's purpose was to reinforce the Security Council's action in fulfilment of its mandate to maintain peace and international security under Chapter VII of the Charter. On the other hand, the Council's cooperation would be necessary to many of the Court's tasks. With respect to aggression, he knew of situations which had pitted States against each other, since aggression could be committed only by one State or group of States against another State. However, the Court would prosecute individuals, not States. The distinction was a fundamental one, since it allowed each body to act within its own sphere and its own competence. The fact that article 25, paragraph 4, of the Statute stipulated that no provision of the Statute would effect the responsibility of States under international law made it even less likely that any of the Court's decisions would take precedence over those of the Security Council.

5. The Security Council had the primary responsibility for maintaining international peace and security. However, while primary, that responsibility was not exclusive. The Court would have a complementary function in prosecuting and punishing individuals who, conveniently shielded by the State, prepared, ordered or launched aggression. In the past, the international community had dealt with such cases through the ad hoc international tribunals, as in the case of Rwanda and the former Yugoslavia.

6. The establishment of the International Criminal Court had brought about profound changes in the international order and had demonstrated the international community's abhorrence of atrocities. However, the road was a long one, and only 58 countries had signed the Rome Statute thus far. His Government was pleased to have been among the first to do so.

7. **Mr. Berteling** (Netherlands) said that he fully associated himself with the previous day's statement by the representative of Austria on behalf of the European Union. Mankind had made a great leap forward in the progressive development of international law, and his Government sincerely hoped that the establishment of the Court would help to deter potential perpetrators of crimes against humanity and genocide. As the end of the millennium and of the Decade of International Law approached, there was hope of an end to crimes such as those committed in Rwanda, Yugoslavia and Cambodia.

8. The Statute of the Court did not quite reflect the high expectations with which his delegation had gone to Rome. Nevertheless, it represented an acceptable compromise. Many

concessions had had to be made in the hope of achieving a consensus which, regrettably, had not materialized. Only a few countries, however, had voted against the Statute. His Government hoped that those States, whose position, moreover, was quite respectable, would nevertheless continue to contribute their valuable input to the discussions.

9. Three elements were of particular interest to his delegation. Firstly, the Statute was a carefully negotiated legal instrument which met the requirements and hopes of many representatives and experts from all the world's legal systems. Secondly, it provided balance between the provisions concerning complementarity and the principle of the supremacy of national jurisdictions. The Court had jurisdiction only if a State was unwilling or unable to exercise its own national jurisdiction. Thirdly, the prosecutor was to play a prominent, independent role.

10. The Netherlands was conscious of the honour that it had received in becoming the host State of the International Criminal Court and would do its best to ensure that the Court became a strong, well-respected body. His Government hoped that the Preparatory Commission, which was to be convened by the General Assembly, would have sufficient time and resources to finalize, as a matter of priority, the Rules of Procedure and Evidence and the Elements of Crimes in 1999 and 2000 by the target date of June 2000.

11. **Mr. Ogonowski** (Poland) said that he associated himself with the statement made under item 153 by the representative of Austria on behalf of the European Union. Poland had supported the idea of establishing an international criminal court from the beginning and welcomed the successful outcome of the Diplomatic Conference held in Rome. The establishment of the Court was an important step in the development of international law and in the promotion of respect for human rights. Among other things, it would enhance the role of justice, emphasize the primacy of the rule of law, strengthen international peace and security and discourage acts contrary to the basic principles of international law. The primary responsibility for prosecuting those responsible for the crimes falling within the Court's jurisdiction would remain with States. However, a lack of political will or inability to react to gross violations of international law would no longer mean impunity for the perpetrators of the most egregious crimes.

12. It was true that the Rome Statute did not fulfil all the hopes associated with the creation of the new Court. It was the result of a long, difficult process of negotiation and of many compromises. Some of its provisions limited the Court's powers, whereas Poland would have preferred an even stronger Court. However, his Government was convinced that wide adherence to the Rome Statute would allow the new institution to become a pillar of international justice. The broad consensus on giving the prosecutor the authority to initiate investigations *proprio motu*, the agreement to include the crime of aggression and crimes committed during non-international conflicts, the establishment of the inherent jurisdiction of the Court, the confirmation of the principles of international law related to individual criminal responsibility, including the provisions on the irrelevance of official capacity and of the orders of a superior, and the taking into account of gender concerns would give the Court the instruments necessary to the effective discharge of its mandate.

13. His delegation also wished to underline the importance for the process of justice of guarantees for the accused, provisions on the protection of witnesses and victims, mechanisms for compensation and rehabilitation of victims and provisions on State cooperation and enforcement of sentences. It also welcomed the fact that the statute made provision for the principal legal systems of the world and for equitable geographical representation in the selection of judges. That could only enhance the authority of the Court's decisions.

14. Internal procedures for the signature of the Statute by Poland had already begun and they were expected to be finalized in the near future. In any case, the Preparatory Commission responsible for preparing draft texts on the Rules of Procedure and Evidence and of Elements of Crimes was yet to be convened. In order for it to complete those tasks before the end of June 2000, the work of the Commission should be considered a priority issue. His delegation intended to contribute to that work in the hope that the Court would start functioning before the target date.

15. **Mr. Ba** (Guinea) said that the establishment of the International Criminal Court by the international community on 17 July 1998 was an accomplishment of historic proportions. In future, any person who committed genocide, crimes against humanity or war crimes, would be brought before that Court, which filled a void in international criminal law.

16. Although the text of the Statute was not perfect, the States Parties would refine it over time. His delegation strongly supported the establishment of the Court, as was demonstrated by the fact that it had taken part in the deliberations of the Preparatory Committee at United Nations Headquarters and those of the Committee established in February 1998 in Dakar, Senegal, with a view to harmonizing the position of the African States with respect to the Rome Diplomatic Conference. Guinea had signed the Final Act of

Rome and would soon sign the Statute in New York. His Government would begin the ratification procedure when all the necessary formalities had been completed.

17. His delegation hoped that the Preparatory Commission provided for in the Final Act of the Rome Conference could meet as soon as possible so that the Court could start functioning and become a reality.

18. **Mr. Pérez-Otermin** (Uruguay) said that he supported the statement made by the representative of Panama on behalf of the member countries of the Rio Group, but wished to make some additional comments to underline the importance that his country accorded to the establishment of the Court.

19. His delegation had repeatedly indicated its support for the establishment of an international criminal court and had voted in Rome in favour of the Statute. Its primary aim — an aim that had unfortunately not always been well understood — had been to secure the broadest possible international support for the establishment and functioning of the new Court, because it had been and remained convinced that the Court could not be effective without universal support, especially the support of the major countries.

20. However, his delegation had some reservations with respect to the way in which the negotiations had been conducted. It endorsed the statement made the previous day by the Chinese representative, who had noted that the manner in which the Conference's deliberations had been conducted had not been the best way of guaranteeing the full participation of all countries in accordance with the principles of equality, democracy and transparency. The majority of countries had not been consulted on certain key articles. Some draft texts had not even been discussed and had been distributed to delegations just before the vote; that had not allowed many of them to review in detail what they had to vote on.

21. Quality could not be sacrificed for the sake of urgency. In Rome, his delegation had submitted several proposals, including a proposal on the principle of complementarity, which was one of the basic tenets of the Court's jurisdiction. As such, that principle should have been defined with greater precision in order to avoid a situation whereby its imperfection sowed doubts in the minds of the judges who would be responsible for applying it. The principle meant that there was no hierarchical relationship; in other words, the International Criminal Court was neither superior nor inferior to the national courts that it was supposed to complement. A proper balance had to be found between the new authority, the International Criminal Court, and national judicial authorities and all the legitimately constituted authorities of States, including parliaments, to which the draft that had just been adopted would have to be submitted.

22. National parliaments would ultimately have to consider the Statute and adopt it in order for it to become a reality. The Court should therefore not make decisions in the place of the authorities of States governed by the rule of law. Otherwise, it would be acting on the basis of political criteria and would be substituting itself for national authorities; that would be far from complementarity. The principle should have been defined more clearly and his delegation was prepared to contribute to efforts towards that end.

23. **Ms. Kalema** (Uganda) said that the adoption of the Statute was a major step forward in the progressive development of international law. Her country remained committed to the establishment of the Court and had participated in the work of the Preparatory Committee and of the Conference and had signed the Final Act. It was in the process of studying the Statute with a view to signing it in the near future and hoped that the States which had not yet signed it would complete their internal procedures and ratify it.

24. Her delegation attached great importance to the following principles: the principle of complementarity, whereby the Court would exercise its jurisdiction only where national legal systems were unavailable or ineffective; the independence of the prosecutor; and automatic jurisdiction over the crimes covered by the Statute. However, it had a reservation with respect to the provision which stipulated that a State, on becoming a party to the Statute, might declare that, for a period of seven years after the entry into force of the Statute for the State concerned, it did not accept the jurisdiction of the Court with respect to war crimes. Her delegation hoped that the review process would take into consideration those other crimes which, in its view, should also be included in the Statute, such as illicit trafficking in drugs and terrorism.

25. The Preparatory Commission which had been given a mandate by the Final Act to prepare draft texts on the Rules of Procedure and Evidence and on the Elements of Crimes, and to define the crime of aggression should be established as soon as possible. That was the final phase before the Court could be established and become operational. It was therefore essential to give sufficient time and adequate resources to the Preparatory Commission so that it could carry out its work. In that connection, her delegation wished to thank those countries which had contributed to the Trust Fund and had thereby enabled the least developed countries, including her own, to participate in the work of the Preparatory Commission and the Conference, thus guaranteeing universal participation.

26. At the previous meeting, one delegation had made defamatory, false and extremely regrettable accusations against Uganda and its Government. Those who wished to know the truth about the internal conflict which was tearing the country concerned apart and which also affected peace and security in Uganda and in the subregion, could refer to the statement made by the Ugandan Minister for Foreign Affairs in the plenary Assembly on 2 October 1998. Uganda's presence on the eastern borders of the country concerned was the result of an agreement concluded between the two Governments to put an end to rebel activities. The Ugandan Government fully respected the spirit and letter of the Universal Declaration of Human Rights, especially insofar as women and children were concerned. It wished to reaffirm its determination to cooperate closely with all States of the region, with the Organization of African Unity and the United Nations, and with all the parties concerned in order to find a peaceful and lasting solution to the conflict.

27. **Mr. Troyjo** (Brazil) said that the Rome Conference had been a milestone in the history of the international multilateral system. Fifty years had gone by before the international community had been able to arrive at a statute containing the necessary elements for the establishment of an efficient, independent and impartial court.

28. The impact of the Court would be felt well beyond the realm of international law, for it would contribute to the strengthening of peace and security throughout the world. For that reason, during the preparatory activities that had led up to the Rome Conference, his delegation had repeatedly expressed its firm support for the creation of the new jurisdiction. At the Conference, it had coordinated two informal negotiating groups on issues of relevance to the functioning of the Court. One of those groups had concentrated on the powers of the Prosecutor, particularly the *ex officio* powers. The other group had examined the key issue of the arms listed in the definition of war crimes.

29. His Government had voted for the adoption of the Statute. It believed that the Statute offered sufficient guarantees to ensure adequate complementarity between the Court and national jurisdictions. At the Conference, his delegation had stated its concerns with respect to the mandatory "surrender" of persons to the Court, which might be incompatible with certain provisions of the Brazilian Federal Constitution prohibiting the extradition of nationals. As far as the application of sentences was concerned, the Brazilian Constitution also prohibited life imprisonment, which could also be seen as incompatible with the provisions of the Statute. Nevertheless, the provision relating to the revision of sentences after 25 years (art. 110) might mitigate that problem to a ceratin extent.

30. His delegation, too, was of the view that efforts should be made to repair the technical errors in article 121 of the Statute (Amendments). That was needed in order to protect the integrity of the Statute, which resulted from the efforts of many delegations and reflected a number of delicate compromises.

31. After signing the Final Act of the Rome Conference, his Government had undertaken a broad process of internal consultations with a view to taking a final decision on the ratification of the Statute. To that end, it needed to review the Statute in all its aspects and ensure that it was genuinely compatible with Brazilian domestic law. The process was being carried out in a transparent manner, with the participation of the legislative, executive and judicial branches, as well as representatives of civil society, especially from universities and law schools.

32. His delegation welcomed the establishment of the Preparatory Commission, which would pave the way for a fully operational International Criminal Court at the earliest possible date. His delegation attached particular importance to the rules of procedure and evidence, and was willing to participate actively in the work of the Preparatory Commission in order to contribute to the early and successful outcome of its deliberations.

33. **Mr. Bacye** (Burkina Faso) said that public opinion had heralded the establishment of the International Criminal Court as a diplomatic success whose importance was matched only by the founding of the United Nations. The Court was the outcome of a long and difficult process that had begun in 1946 with the establishment of the Nuremberg and Tokyo tribunals. It was the result of a compromise between different legal systems, which made it possible to punish the most heinous crimes against humanity. On the basis of its jurisdiction, its permanence and its universal character, the Court would provide an appropriate legal framework for the punishment of all grave breaches of fundamental rights; it would serve as a deterrent and eliminate the need for recourse to ad hoc tribunals, which were often sharply criticized and even suspected of giving preference to the winners of armed conflicts.

34. The Statute of the Court was compatible with the laws of Burkina Faso relating to human rights guarantees and the recognition of human rights. It would also provide support for his country's peacekeeping efforts in Africa.

35. During the previous 10 years, his Government had endeavoured to guarantee the exercise by all citizens of Burkina Faso of human rights and fundamental freedoms, to settle disputes and to establish preventive mechanisms. Many had interpreted the absence of an international criminal court

as reflecting a lack of will on the part of the international community to punish crimes considered as peculiar to developing countries. The events in the former Yugoslavia, in the heart of "civilized" Europe, had been a reminder to all that the crimes in question were of no specific colour or socio-political character.

36. While the adoption of the Statute had enabled humanity to become reconciled with itself, the victory was not complete. His Government would have preferred for all States to adopt the Statute in Rome. Nevertheless, it continued to cherish the firm hope that those States which had voted against the Statute would eventually join with others in supporting it. For its part, Burkina Faso, which had participated actively in the Conference, would soon sign the Statute; it had been unable to do so up to then owing to legislative requirements.

37. **Mr. Hanson-Hall** (Ghana) recalled that during the recent general debate in the General Assembly, the President of his country had stated that the Rome Conference marked an important stage in the efforts of the international community to establish a legal and institutional framework for prosecuting perpetrators of genocide, crimes against humanity, war crimes and serious violations of international humanitarian law. It was to be hoped that the goodwill shown by the overwhelming number of States which had voted for the adoption of the Statute would also be reflected in the work of the Preparatory Commission, so that the court could be fully effective and functional.

38. With the adoption of the Rome Statute, the international community had scored a historic victory. The participation of 160 States, 31 organizations and a large number of non-governmental organizations attested to the seriousness with which the international community viewed the issue. His country was happy and proud to have been one of the first States to sign the Statute and the Final Act. It had initiated the domestic formalities for its ratification. It was regrettable, however, that the Conference had not reached a consensus and had had to resort to a vote. His delegation acknowledged that the Statute had defects and that it might not take into account sufficiently the legitimate interests and concerns of certain States. Nevertheless, his Government appealed to those States to take a more comprehensive view of the objectives of the Statute. International security was currently challenged by the barbaric conduct of a few individuals who believed that they could commit heinous crimes with impunity. The international community had warned them that it would no longer tolerate such a situation.

39. The Rome Conference had decided to set up and convene a Preparatory Commission as soon as possible and to have the draft texts of the Rules of Procedure and Evidence and of the Elements of Crimes finalized before 30 June 2000. It was therefore necessary to proceed expeditiously. Moreover, the Commission should be provided with sufficient resources and enough time to fulfil its mandate. For that reason, his delegation called for the convening of the Preparatory Commission by the beginning of the second quarter of 1999 and for it to have three sessions during the year.

40. His delegation welcomed the fact that non-governmental organizations had participated actively in the Rome Conference, and proposed that they should be allowed to contribute to the deliberations of the Preparatory Commission. It also invited the Secretary-General to provide technical assistance to such States as might require it in drafting their implementing legislation. His delegation joined other delegations in calling for the establishment by the Secretary-General of a trust fund to enable developing countries to send their experts to participate in the Commission.

41. **Mr. Berman** (United Kingdom of Great Britain and Northern Ireland) fully associated himself with the statement made by the Austrian representative on behalf of the European Union and said that the United Kingdom had put sustained effort into the task of elaborating the Statute of the Court, as well as into the negotiations in Rome. The international community would not have achieved the satisfactory outcome in Rome without the truly remarkable groundwork done by the International Law Commission. As the United Kingdom Secretary of State for Foreign and Commonwealth Affairs had noted as the Rome Conference began: "The Court would also help countries recover from the trauma of war. Justice is an essential part of reconciliation. And the Court would give more strength to the rule of law, the foundation of our security and prosperity."

42. The United Kingdom would shortly be signing the Statute. His delegation took particular satisfaction at two of its aspects. One was the key part played by his delegation in securing definitions of war crimes and crimes against humanity. The inclusion of internal armed conflicts in the definition of war crimes was very welcome, as most of the violence in recent years had arisen in that context. Moreover, the Statute of the Court gave the Court power, under article 75 to order the payment of reparations to victims. Accordingly, the Court would serve not just the interests of society in repressing crime, but also those of the victims of crime. The provision would also bolster the Court's role in deterrence.

43. The second aspect in which he took satisfaction was the set of provisions governing the nomination and election of judges to the Court, his delegation having long regarded that phase as fundamental. A claim to create a judicial institution in which some of the highest hopes of humanity resided could not be made without taking the same care over its membership as that taken with regard to national institutions. It was also a question of confidence: States could not be expected to subject high political interests to judicial decision without some guarantee of the highest judicial standards of integrity and impartiality. Lastly, it was a question of efficiency, namely, making sure that the Court demonstrated the highest degree of competence. In Rome, his delegation had put enormous effort into ensuring that the Statute contained three major elements: proper formulas for the qualifications and experience required of judges; a satisfactory system for the nomination of candidates; and appropriate rules governing the elections themselves. Although he had been surprised by the resistance which those efforts had encountered, it was important to confront such issues and arrive at an agreed solution. The result ensured that, from the pre-trial level until the end of the appeals process, the judges on the Court would have the necessary competence and experience and would demonstrate their integrity, which should serve to enhance the Court's authority.

44. The Sixth Committee would undoubtedly express the satisfaction of the delegations as a whole, even if it were cast in the more neutral terms required by diplomatic practice. His delegation's satisfaction was marred only by the fact that the Rome Conference was unable to achieve one of the objectives set out in its Rules, namely, to adopt the Statute by general agreement, particularly as it had worked so strenuously to that end. He hoped, however, that the matter would not end there and that considered reflection, away from the fevered heat of the Conference, would enable the dissenting States to rethink their conclusions thus turning widespread international support for the Statute into universal support.

45. Meanwhile, much remained to be done, as the creation of the International Criminal Court had not been achieved with the mere adoption of its Statute. The tasks ahead were to gather signatures, turn signatures into ratifications, rally the necessary political and financial support; and prepare for the election of judges and the Prosecutor. In addition, the Conference had assigned certain tasks to the Preparatory Commission. In brief, those processes needed to be taken forward purposefully, but not rushed.

46. **Mr. Korzachenko** (Ukraine) said that the Statute adopted in Rome settled a number of controversial legal problems and successfully reconciled widely differing positions. Although the Court might not resolve all the problems of the contemporary world, it would remain the foundation of an independent, impartial and effective international system of criminal justice.

47. His delegation shared the view that the Preparatory Commission should begin meeting in April 1999 at the latest and meet as often as necessary; it must therefore be allocated sufficient financial resources. Ukraine attached substantial importance to the work assigned to the Preparatory Commission, which included elaboration of the Rules of Procedure and Evidence and the definition and Elements of Crimes of aggression, and the conditions under which the Court should exercise its jurisdiction. He concluded by saying that non-governmental organizations, whose contribution had been most useful throughout the negotiations, should be closely involved in the work of the Preparatory Commission.

48. **Mr. Gutierrez-Navas** (Honduras), speaking on behalf of Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua and Panama, said that the end of the cold war had brought international change of various kinds and created new hopes. The tragic acts of violence committed during the many internal and international conflicts which had erupted in different parts of the world had reopened the debate on the need to establish an international criminal court. Together with the Dominican Republic, the countries of Central America had supported the process of establishing such a court throughout all the stages involved: first, the resolution calling upon the International Law Commission to elaborate a draft statute, followed by the work conducted in the various sessions of the Preparatory Committee and finally by the Rome Conference itself, which had adopted the final text of the Statute. Both in the Preparatory Committee and in Rome, they had associated themselves with the many States wishing to establish a court that was characterized by legitimacy, efficiency, impartiality, transparency and moral authority and supported by the fundamental principles of complementarity, independence, competence and universality.

49. Although the Statute had not been adopted by consensus, the collective sentiment which finally prevailed was that the establishment of the Court met the aspirations of the majority of peoples of the United Nations, as attested by the fact that 120 States had voted in favour of the Statute. She believed that the establishment of the Court would fill an institutional gap and mark a highly significant stage in the development of international law. It could even be said that, as the first judicial organ of such scope, the Court would introduce a new concept of the administration of international justice. It was the first time in the history of nations that the human aspiration for peace and justice had been so strongly expressed. The countries of Central America and the

Dominican Republic would therefore participate in the work of the Preparatory Commission with the vigour and enthusiasm which they had shown in the Preparatory Committee and in Rome.

50. **Mr. Hamdan** (Lebanon) said that the number of speakers on the subject under discussion demonstrated the importance which the international community attached to the establishment of the International Criminal Court. The Statute adopted at Rome, however, still contained gaps. His delegation was therefore surprised that, in order to ensure diversity in the Office of the Prosecutor, one of the most important bodies of the Court, the criterion of nationality had been retained over that of legal systems. The Statute should be binding on all States, moreover, regardless of whether or not they were party to it.

51. The adoption of the Statute nevertheless ushered in a new era in international relations, which was to be welcomed. As indicated by Mr. Kirsch, Chairman of the Committee of the Whole in Rome, the Statute should not be regarded as a fixed text. On the contrary, it should evolve through refinement and adaptation on the basis of need.

52. His delegation believed that the Preparatory Commission should commence its work as soon as possible and that non-governmental organizations should be involved in the negotiations. Lastly, it supported the proposal to establish a trust fund for the participation in the work of the Preparatory Commission of the developing countries and the least developed countries.

53. **Mr. Sheimat** (Jordan) said that his country had signed the Statute on 7 October 1998. He trusted that the Preparatory Commission would begin its work as early as possible, since the world had need of an international court to try the authors of the abominable crimes wronging mankind.

54. He reiterated the position of the countries of the Non-Aligned Movement, as contained in the Durban Declaration, which he fully endorsed.

55. *Mr. Verweij (Netherlands), Vice-Chairman took the Chair.*

56. **Mr. Chkheidze** (Georgia) said that his country had known the horror of armed conflict since attaining independence. That was why it had been among the first to support the establishment of an international criminal court. Such an institution would make coexistence among States more secure and more peaceful. It will also lead the international community to a higher plane, since responsibility for arresting and prosecuting authors of the most odious crimes would become a collective responsibility.

57. Georgia had signed the Final Act of the Rome Conference because extension of the definition of war crimes to internal armed conflict represented a step forward. All that remained was to define aggression and the Elements of Crimes, and to establish Rules of Procedure and Evidence. Time was short, and the task should be completed immediately, in New York. In 1999 the Preparatory Commission was to hold an eight-week session, and a few weeks more in 2000 should suffice if sufficient resources were provided. In that regard he was of the view that non-governmental organizations should be invited to participate in the work, as they had at Rome. It would also be useful to have the cooperation of those States which had remained aloof from the Statute.

58. **Mr. Bello** (Nigeria) said that his delegation was convinced that the establishment of an international criminal court would contribute towards the maintenance of international peace and security. The international community should take all possible measures to ensure that the Court came into operation without undue delay. His delegation therefore supported the proposal in resolution F. Nevertheless he shared the reservations expressed by numerous delegations, in particular the Greek delegation, regarding the failure to unequivocally include the crime of aggression, the definition of which was to have been left to the Preparatory Commission. On that point there was something of a contradiction between the provisions of the Statute and resolution F regarding which body was responsible for that task. The Preparatory Commission should begin its work in the first quarter of 1999 and be provided with all the resources and services required to enable it to discharge its mandate efficiently.

59. His delegation supported the proposal contained in resolution E to convene a Review Conference to consider the possibility of including terrorism, drug crimes and the use of nuclear weapons and landmines in the list of crimes within the jurisdiction of the Court. It also supported the establishment of a trust fund to help developing countries to participate in the work of the Preparatory Commission.

60. **Mr. Erwa** (Sudan) said that the Sudan's position, in principle, was to support all judicial and other forms of peaceful settlement of disputes and, in general, everything that could contribute to the maintenance of international peace and security. Sudan was among the few countries to have accepted the compulsory jurisdiction of the International Court of Justice and it was well known that it had participated actively in the Rome Conference and exerted every effort to overcome all obstacles.

61. In the recent history of the Organization, the Charter had been misinterpreted by certain States. Thus, the Security Council had constantly protected certain countries which committed terrorism and occupied territories that did not belong to them. While those countries enjoyed complete impunity, others were subjected to sanctions and embargoes on the basis of mere suspicion and political prejudice. Scarcely one month after the end of the Rome Conference, an incident had taken place that confirmed that Member States were far from equal in rights and responsibilities. The strongest military Power in the world had attacked one of the least developed countries, the Sudan, invoking self-defence, in accordance with Article 51 of the Charter, to justify an attack against a pharmaceutical factory. Yet the same article established an obligation to seek a peaceful settlement. When the Sudan had demanded dispatch of a fact-finding mission, the aggressor had refused. His Government was thus impelled to ask whether it would be possible for the International Criminal Court to indict aggressors and try them, or whether the principle of no impunity would be selectively applied to try the weak and absolve the strong.

62. There was thus nothing surprising about Sudan's insistence that the Court should be completely independent of the Security Council and that aggression should be included in the list of crimes within its jurisdiction.

63. **Mr. Bogoreh** (Djibouti) said that by adopting the Statute of the International Criminal Court by an overwhelming majority, the international community had demonstrated its wish to end impunity. Unfortunately the tragic events taking place in Kosovo seemed to indicate that it had not been heard.

64. While signature of the Statute doubtless constituted a historical development, the final goal was far from being attained. Thus, the Preparatory Commission must draft the Rules of Procedure and Evidence together with the Elements of Crimes. Consideration must also be given to the financing of the Court. The method selected under the Statute was likely to make it subject to the goodwill of States, in particular the most powerful.

65. The shortcomings of the Statute must be corrected forthwith. International opinion would not understand a failure to include the crime of aggression, which was often the root cause of all other crimes, within the Court's jurisdiction. Similarly, it was incomprehensible that nuclear weapons should not appear in the list of weapons whose use would be considered a war crime.

66. He trusted that further consideration could quickly be given to the option of allowing a State Party to exclude its nationals from the Court's jurisdiction in respect of crimes committed on its territory for seven years following the entry into force for that State of the Statute. Only when such shortcomings had been corrected would the international community have an effective court with certain authority.

67. **Mr. Effendi** (Indonesia) said that Indonesia had from the outset attached great importance to the establishment of an international criminal court and had participated actively in the achievement of that goal in the meetings of the Preparatory Committee and at the Rome Conference. His delegation had always considered that the Statute should fully comply with the principles of international law governing relations between States. It was also of the view that the Statute should be a product of mutual cooperation among all nations, irrespective of differences in political, legal or social systems, and that it should scrupulously respect the principles of State sovereignty, territorial integrity and non-interference in the internal affairs of States. His delegation had also emphasized how important it was for the Court to be impartial and devoid of political influence of any kind, including by the Security Council.

68. It was not the occasion for a detailed analysis of the Statute. His delegation, for its part, would carefully examine all the provisions in accordance with those basic precepts, in particular the elements within the Statute relating to the jurisdiction of the Court. It must be remembered in that regard that the Court was complementary to national courts.

69. At every stage of the deliberations, Indonesia had attached great importance to achieving consensus and guaranteeing the universal character of the Court. For that reason, it deplored the fact that it had been necessary to resort to voting. It was his fervent hope that a spirit of cooperation would prevail in the work of the Preparatory Commission, whose deliberations were all the more important in that it had been entrusted with heavy responsibilities.

70. **Ms. Baykal** (Turkey) said that her country had supported the establishment of the Tribunals for the former Yugoslavia and Rwanda and, in that spirit, had participated actively in the work of the Rome Conference. Her delegation, along with some others whose countries faced the scourge of terrorism on a daily basis, had proposed that terrorist crimes should be included in the Court's jurisdiction as crimes against humanity. It therefore regretted that such crimes were not covered by the Statute. However, the recommendation in the Final Act of the Conference that the crimes of terrorism and illicit trafficking of drugs should be included in the Court's jurisdiction was an encouraging prospect for the future. The Conference had also recognized that terrorist acts, by whomever and wherever perpetrated and whatever their

forms, methods or motives, were serious crimes of concern to the international community.

71. Other delegations had already drawn the Committee's attention to the fact that one deficiency of the Statute was that a non-State party could not invoke the same grounds as a State party for refusing the Court's jurisdiction. In order for the Court to be strong and efficient, States should endeavour to resolve such problems within the limits of the rules of procedure of the Preparatory Commission and the Review Conference.

72. In conclusion, she said that at the 11th meeting of the Committee, one delegation had referred to the situation in Cyprus. In order to understand that situation, it was important for the Cypriot Turks, who were the true victims, to be heard.

73. **Ms. Chibanda-Munyati** (Zimbabwe) said that her delegation fully associated itself with the statement made by the representative of South Africa on behalf of the 12 members of the Southern African Development Community (SADC). Although her delegation had been among the first to sign the Statute, it was not entirely satisfied with the result. It would have preferred an independent, impartial court with automatic jurisdiction over the core crimes, including the crime of aggression, which had yet to be defined by the Preparatory Commission; moreover, the question of inclusion of the opt-in, opt-out clause and of modalities for its implementation remained unclear. Her delegation was not convinced that such a clause would not affect the smooth functioning of the Court.

74. The Preparatory Commission should be established as soon as possible so that all practical measures could be taken to ensure that the Court began its functions. A Review Conference should also be convened in order to give States parties an opportunity to reflect on the Court's performance. Lastly, it was essential to muster the political will to achieve universal acceptance of the Court. Her Government was pleased that the number of signatories had increased to 58 and urged States which had not yet signed the Statute to do so.

75. **Ms. Mekhemar** (Egypt) said that her Government attached such importance to the creation of the International Criminal Court that it had already established a committee of specialists responsible for making preparations for Egypt's adoption of the Statute. While not perfect, the Statute had succeeded in achieving a compromise between often-contradictory interests. Egypt, for its part, would have preferred the Court to be independent of any political body, whereas, in the Statute as adopted, the Security Council had the right of veto. Thus, it could prevent the Court from acting under Chapter VII of the Charter of the United Nations. It was also unfortunate that the Statute made no mention of nuclear weapons or of the nuclear threat, which therefore did not fall within the Court's jurisdiction. That reasoning was somewhat paradoxical, as was that which had established aggression as a special case.

76. Despite all those shortcomings, Egypt had not forgotten the Statute's strengths: it would henceforth provide a mechanism for the punishment of war crimes, crimes against humanity and genocide and would also protect children in situations of armed conflict. It also had the advantage of settling the question of the transfer of authority of an occupying Power over the occupied territory and that of the establishment of colonies, thus strengthening and expanding international law.

77. With regard to resolution "F", which concerned the Preparatory Commission, she was very optimistic as to the likelihood of achieving an adequate definition of aggression. In any case, the Commission would have a great deal of work to do and must be provided with adequate resources so that it could complete its task before the year 2000.

78. **Mr. Westdickenberg** (Germany) said that his delegation associated itself with the statement made by the representative of Austria on behalf of the European Union. In the past, atrocities had gone unpunished not because of a lack of national or international norms penalizing those heinous acts, but rather because of the inability or unwillingness of national courts to act. Thus, a new chapter in public international law would be opened and a serious shortcoming redressed. The International Criminal Court, by its very existence, would deter individuals from committing crimes by enforcing accountability.

79. Various important elements made the Rome Statute a milestone. First, the Court would have jurisdiction with respect to the four most serious crimes affecting the international community. Second, that jurisdiction could be exercised if the State on whose territory the crime had been committed or of which the accused person was a national was a party to the Statute. The Court could also act if the Security Council, under Chapter VII of the Charter of the United Nations, called on the Prosecutor to investigate a situation in which one of the four crimes in question appeared to have been committed. The Prosecutor could also initiate investigations *proprio motu*. Lastly, the Court would work on the basis of the principle of complementarity: it would act only when national courts were unwilling or unable to prosecute a crime. The fact that the Statute had already been signed by an impressive number of States was proof of the importance of those elements and Germany, for its part, planned to do so by the end of the current year.

80. However, much remained to be done before the Court could begin its work. In preparing its draft resolution on the matter, the Committee should endeavour to give further momentum to the establishment of the new institution by calling for the Preparatory Commission to be convened as soon as possible and ensuring its financing. Because the Preparatory Commission would need to prepare additional legal instruments, it was important for all States to cooperate so that it could work efficiently and complete its task in 1999. If necessary, it could be reconvened in the year 2000 prior to the target date of 30 June 2000.

81. Above all, the Preparatory Commission would have to agree on a definition of aggression as stipulated in resolution "F", adopted in Rome. In his delegation's view, it should focus on the topics mentioned in that resolution, including the rules of procedure and evidence and the elements of crimes. It should not devise additional instruments since that was the task of the Review Conference. Furthermore, since the Statute had been adopted by an overwhelming majority of the States present in Rome, there was no reason to reconsider an instrument which had already been accepted by 120 States or to call in question certain issues which had already been resolved by the final compromise proposed by the Bureau of the Committee of the Whole of the Conference.

82. In preparing the instruments requested of it, the Preparatory Commission should not become entangled in details and should endeavour to work out compromises. It was clear that that work would take most of its time. It should also trust the experts on procedural matters and not spend too much time discussing the so-called "elements of crimes". The Statute itself already stated that those elements would "*assist* the court in the interpretation and application" of the relevant articles. The other instruments, such as the headquarters agreement, financial regulations and agreement on privileges and immunities could be dealt with on the basis of the precedents already established by other international institutions.

83. **Mr. Tabone** (Malta) said that his country was proud to be one of the 58 States which had already signed the Rome Statute and encouraged States which had not yet signed it to do so as soon as possible. In September 1997, Malta had hosted a regional conference on the establishment of a permanent international court, a sign of the importance which it attached to the creation of a judicial mechanism that would make it possible to try impartially individuals who had committed crimes of international scope.

84. Despite its shortcomings, the Statute signed in Rome had laid the foundation for a strong, effective Court. He associated himself with the delegations which had called for the Preparatory Commission to begin its work as soon as possible and to meet as often as needed to accomplish its task.

85. **Ms. Cueto Milián** (Cuba) said that the Committee had heard some very different views on the Statute of the International Criminal Court. It had seen evidence of the insolent power of countries which regarded themselves as being at the centre of the universe. The falseness of their positions and their arguments was evident, as was the hollowness of the calumnies they addressed to those who still dared to call things by their real names. In Cuba one called an aggressor an aggressor, and a mercenary a mercenary.

86. Nothing that had been said in the Committee inclined Cuba to change the position it had defended in Rome. In Cuba's opinion the Statute did not meet the aspirations of the great majority of humankind, particularly the peoples of the South. The desire had been to condemn the worst crimes known to humanity, yet aggression, drug trafficking and terrorism had been passed over in silence. Were those crimes perhaps not sufficiently odious? Were the elements of a definition lacking? No. It was the political will that was lacking.

87. Certain delegations were inviting the Committee to look to the future and not to return to what had taken place in Rome. One could not draw that many lessons from the experience of Rome: the development of the concept of a crime against humanity on the one hand, and also the confusion into which many delegations had stumbled between customary law and treaty law. Furthermore, many of those delegations that were concerned about the future had had no hesitation in subordinating the Court to the will of the Security Council. It would seem that when they came face to face with justice some were more equal than others.

88. Some would like to have the international community regard the establishment of the tribunals for the former Yugoslavia and Rwanda as an act of altruism. But they were special tribunals which even those who had set them up defined as subsidiary bodies of the Security Council. It was also the other Member States that financed their budget which, it should be remembered, was five times that of the International Court of Justice.

89. In conclusion, she thanked all those delegations which, both before the Rome Conference and during it, had supported Cuba in its appeal for the embargo imposed on it to be defined as a crime of extermination, a crime of aggression and a crime against humanity.

90. **Mr. Vasquez** (Ecuador) associated his delegation with the statement made on behalf of the Rio Group. It was in response to the universal indignation provoked by the most

odious crimes that his country had participated from the very beginning in planning the establishment of an international criminal court. The negotiating process had met all its expectations, to the point where it would be possible to envisage one day justice that was without borders.

91. His delegation also wanted to highlight the considerable role played in the process by civil associations and non-governmental organizations.

92. Ecuador had ratified the Statute on 7 October 1998. It was perfectly willing to cooperate with other interested States to make the work of the Preparatory Commission a success so that the Criminal Court could become operational as quickly as possible.

93. **Mr. Dabor** (Sierra Leone) thanked all the countries which had contributed to the Trust Fund which had enabled a large number of developing countries to attend and participate in the Rome Conference, and all the non-governmental organizations which had played an important role in the process. The Statute adopted after six weeks of hard negotiations might not satisfy all delegations in all respects, but for Sierra Leone it was a great achievement. Sierra Leone had signed the Final Act in Rome, and was ready to sign the Statute in New York.

94. Much remained to be done. The crime of aggression had to be defined, and the Preparatory Commission had to be established as soon as possible. Thus far, 58 States had signed the Statute; all those which had not yet done so should sign without delay. Countries which had expressed their opposition should reconsider their position. For the Court to be truly universal in character and therefore genuinely effective, it must have the support of all nations, especially the most powerful. That was also why the door should be left open to negotiations.

95. **Ms. Eugène** (Haiti) expressed the hope that the Review Conference would be organized as soon as possible with a view to incorporating other elements that were still pending and finding an accurate definition of the term aggression. She agreed with those who were proposing that the crime of terrorism should be one of those that fell within the Court's jurisdiction. However, she did not agree with those countries which wanted to add the death penalty to the penalties that could be imposed by the Court, because the death penalty had been abolished in Haiti.

96. **Mr. Mukongo Ngay** (Democratic Republic of the Congo) said he wished to refute a statement in which a delegation had denied the reality of the aggression of which his country was a victim. It had been an attempt to delude the international community into believing that it was a question of implementing a military cooperation agreement, whereas all agreements of that kind had already been denounced by the new Congolese Government. In any event, a military agreement would not explain why Ugandan soldiers had penetrated more than 500 kilometres into Congolese territory and invested Kisangani, the country's third largest city.

97. **Ms. Kalema** (Uganda), speaking in exercise of the right of reply, said that the affair to which the representative of the Democratic Republic of the Congo had referred did not fall within the Committee's competence.

98. **Mr. Michaelides** (Cyprus), speaking in exercise of the right of reply, reminded the representative of Turkey that the Government of Cyprus was the only internationally recognized Government on the island. It represented all the citizens of the Cypriot Republic wherever they were in its territory. The Turkish Cypriot government and the presence of Turkish soldiers in Cyprus had been declared "illegal and invalid" by the Security Council, in particular in its resolutions 541 (1983) and 550 (1984).

99. **Ms. Baykal** (Turkey) said that the delegation of Cyprus was merely repeating allegations which Turkey had already denounced as false. She expressed the hope that the Turkish Cypriot community would also be able to have its voice heard.

100. **Mr. Michaelides** (Cyprus), speaking in exercise of the right of reply, repeated that the Security Council resolutions considered as "illegal and invalid" the measures taken by the Turkish Cypriot government. He read out the main passages in those resolutions.

101. **The Chairman** said that the general debate on agenda item 153 had been concluded, and summarized its main conclusions. Delegations which had taken the floor had all expressed hope and optimism. They had shown themselves to be aware of the need to give the Preparatory Commission the time and the means it needed, and of the importance of the trust fund for the participation of the least developed countries. Many States, however, had had reservations regarding the Statute as adopted in Rome. But all were agreed in believing that the Preparatory Commission must enjoy the support of all States, even those which were hesitant. It would be the very body in which it would be possible to bring all the different points of view together.

*The meeting rose at 6.45 p.m.*