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Chairman: Mr. LEHMANN (Denmark)

CONTENTS





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The meeting was called to order at 3.25 p.m.

AGENDA ITEM 142: ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT (continued) (A/50/22)

1. Mr. WENAWESER (Liechtenstein) said that the statute for an international criminal court should be based on the principle of complementarity, since as a rule, criminal prosecution must remain under the competence of States. Accordingly, the court should intervene only when national procedures were ineffective or unavailable. Application of that fundamental principle, however, must not weaken the functions of the international court and of its prosecutor.

2. One of the most crucial questions regarding the statute concerned the crimes to be considered within the court's jurisdiction. The court should have jurisdiction only over the most serious crimes of concern to the international community as a whole. The combination of those two elements - the principle of complementarity and of limiting jurisdiction to the most serious crimes - led to the conclusion that the jurisdiction of the court should be inherent. The criterion of clear definition, which was indispensable, raised some questions concerning the "core crimes" as contained in the statute in its current form. The inclusion of the crime of aggression was obviously problematic and should be reconsidered. The definition given by the General Assembly in 1974 was political rather than legal, and did not meet the requirements of the statute of an international criminal court. Moreover, aggression was an act perpetrated by a State against another State, whereas the international criminal court would have competence only to judge individuals. Another sensitive point in that context concerned the role of the Security Council, which would have to decide whether or not aggression had taken place; that could affect the independence of the court. Treaty-based crimes were also a contentious issue, and needed to be discussed further.

3. Liechtenstein was of the view that the draft statute, at an initial stage, should be limited to a set of core crimes and contain a provision allowing the competence of the court to be extended to other crimes as needed.

4. His delegation supported the proposal to establish a preparatory committee and to schedule three sessions of that committee in 1996; it believed that the resolution to be adopted should specify that an international conference of plenipotentiaries should, if possible, take place in 1997.

5. Ms. ESCARAMEIA (Portugal) said that her delegation fully endorsed the statement of the representative of Spain on behalf of the European Union, but would like to add some comments.

6. It believed that the jurisdiction of the court should be restricted, at least initially, to the most serious crimes. However, taking into account the constant and often unpredictable changes that occurred in the international scene, a mechanism should be established for periodic review of the list of crimes over which the court had jurisdiction. As for the penalties to be applied, they should be confined to imprisonment, since the gravity of the crimes would exclude the imposition of a simple fine and Portugal, as the first

country in the world to have abolished the death penalty, would not accept its application by an international jurisdiction. The court should be complementary to national criminal courts, but it was the court itself which must decide if a national system was unavailable or ineffective.

7. In the view of her delegation, conditions were ripe for the establishment of a preparatory committee with the power to draft the text of a convention based on the draft of the International Law Commission, with a view to convening a diplomatic conference as soon as possible.

8. Mr. LAMAMRA (Algeria) said that an independent and effective international jurisdiction must be established which would enjoy unquestioned moral authority and whose actions would be guided solely by the rule of law, far removed from the political influences that could pervert it. The establishment of such a court would help to avoid the difficulties inherent in the establishment of ad hoc tribunals, which procedure raised objections of both political and legal principle.

9. Concerning the jurisdiction ratione materiae of the future court, the list of crimes covered should be limited to offences which were indisputably crimes against the peace and security of mankind. An overly restrictive approach, however, would meet neither the objectives of the court, nor the principle of legality of the offence and the punishment, that required that both the crime and the penalty must be clearly defined. In that regard, he referred to the progress made by the International Law Commission in the examination of the draft Code of Crimes against the Peace and Security of Mankind. Genocide, aggression, systematic or mass violations of human rights, exceptionally serious war crimes, international terrorism and illicit traffic in narcotic drugs were covered in the draft; those crimes represented the most serious breaches of the peace and security of mankind. The list contained in the draft statute was clearly too restrictive because it excluded, without a convincing legal argument, the heinous crimes of international terrorism and drug trafficking. His delegation, therefore, favoured extending the court's jurisdiction to some crimes listed in the annex to the draft statute drawn up by the International Law Commission. With regard to the ratione personae jurisdiction of the future court, it should be limited to individuals acting in their personal capacity or for an organ or agent of a State.

10. Concerning the submission of cases to the court, Algeria believed that only States directly involved in a matter should have the ability to lodge a complaint with the court. The role of the Security Council as envisaged in article 23 of the draft statute would reduce the credibility and moral authority of the court, restrict its role and compromise its independence and impartiality. Moreover, that new competence would undoubtedly expand the Security Council's powers, which was tantamount to secretly revising the Charter. The issue should be carefully considered so that all its legal and political implications could be carefully weighed. On the other hand, it might be useful to consider making the Security Council a type of secular arm that would execute the decisions of the court as needed.

11. As specified in the preamble to the draft statute, the reason for establishing the court was to promote cooperation in criminal justice matters.

When a State found itself unable to try or prosecute the perpetrators of crimes under international law, the mechanism of cooperation between the States and the court should be put into motion, in according with the principle of complementarity. Care should be taken to ensure its compatibility with some provisions of the draft statute, especially those granting the court its own jurisdiction and those regarding State consent.

12. His delegation believed that work should continue on a realistic and flexible schedule that would allow the broadest possible participation of States. It was, however, aware, that developing countries had limited resources, and did not favour the establishment of more than two working groups.

13. Mr. HORÁK (Czech Republic) said that his delegation fully agreed with the basic idea that the international criminal court should be complementary to national criminal justice systems in cases where necessary trial procedures might not be available or might be ineffective. The complementary character of the court's jurisdiction did not mean, however, that it should be merely residual to national jurisdiction.

14. The issues raised by the application of the principle of complementarity could not be separated from the discussion of the list of crimes which would fall under the jurisdiction of the court. His delegation believed that, during the first phase of the court's existence, its jurisdiction should be limited to a few hard-core crimes, namely genocide, war crimes, crimes against humanity and, under a specific regime, aggression. For all those crimes, the court should have an inherent jurisdiction. Limiting the court's jurisdiction would have several advantages, particularly with regard to the relationship between the court and national courts, the enhancement of the court's credibility and moral authority, not to mention the alleviation of the financial burden imposed on States parties to the statute. Furthermore, such a restrictive approach would be consistent with the orientation of the work of the International Law Commission on the draft Code of Crimes against the Peace and Security of Mankind.

15. The role envisaged in the draft statute for the Security Council was entirely in accordance with its primary responsibility for the maintenance of international peace and security and with its existing powers under the Charter. As the Council would merely refer a general matter or situation to the court, but would not bring before the court any case against a specific individual, the independence and autonomy of the court in the exercise of its investigative, prosecutorial and judicial functions would be preserved.

16. His delegation subscribed to the conclusions of the Ad Hoc Committee contained in paragraph 257 of its report and believed that its future work should be organized with a view to the drafting of a consolidated text which would then be submitted to a conference of plenipotentiaries, to be convened preferably in 1997.

17. Mr. AYEWAH (Nigeria) welcomed the manner in which the report of the Ad Hoc Committee on the Establishment of an International Criminal Court had planned to address the core issues pertaining to the substantive principles of criminal law and the rules of procedure of the court. It was essential to define clearly the

principles and standards which would be applied by the court, and in particular to specify the defences that would be available to the accused. For that reason, article 33 on applicable law could be viewed in the context of the draft Code of Crimes against the Peace and Security of Mankind; a link needed to be established between the draft Code and the draft statute of the court. It would also be useful to consider the question of general principles of criminal law contained in annex II to the report.

18. In order for the court to attract the support of various legal systems, it was vital that the principles of complementarity and nullum crimen sine lege should be strictly observed and respected and that the issues relating to jurisdiction and judicial cooperation should be resolved. The principle of complementarity, as embodied in the preambular part of the statute, must be understood to mean that the court would supplement but not displace national jurisdiction. That principle must be clearly specified and incorporated in the draft statute to avoid undermining the primacy of national jurisdiction. Similarly, the jurisdiction of the court should be restricted to offences of a genuinely international character covered by the principle of nullum crimen sine lege, and in particular the most serious of those crimes as specified in article 20.

19. His delegation saw a close link between complementarity, the court's jurisdiction and judicial cooperation, on which the effective operation of the court depended. Measures needed to be taken in order to resolve possible conflicts of interest that might arise between a State in whose territory a crime had been committed, the State that had custody of the accused, the State whose nationals were victims of the crime and the State of which the accused was a national, especially since article 52 represented a departure from the traditional regime of cooperation between States established under existing extradition treaties. The transfer scheme envisaged, which bypassed national courts, continued to cause concern. His delegation believed that States should apply one single regime based on mechanisms established by existing treaties to which they were parties.

20. Current circumstances were conducive to the establishment of a permanent international criminal court which would obviate the need to set up ad hoc tribunals such as those for the former Yugoslavia and Rwanda. However, a hasty decision on the matter was not advisable if the court was to secure the broadest possible consensus. His delegation favoured expanding the mandate of the Ad Hoc Committee to include the drafting of texts. It proposed that the Committee should meet twice in 1996 for sessions of no more than two weeks in order to continue its work and to submit the results thereof to the General Assembly at its fifty-first session. Only after that would it be possible to set a date for the conference of plenipotentiaries.

21. Mr. SRIWIDJAJA (Indonesia) said it was vital that the jurisdiction of the international criminal court should be universally accepted, and he concurred with the view that the court should be established as an independent judicial organ by means of a multilateral treaty, as recommended by the International Law Commission. Such an approach would be consonant with the principle of State sovereignty while ensuring the moral authority of the court.

22. Regarding the principle of complementarity, which had some bearing on the relationship between the international criminal court and national judicial systems, the statute prescribed that the court should complement national criminal justice systems in cases where national trial proceedings had proved ineffective. That principle created a presumption in favour of national jurisdiction for the reasons contained in the report of the Ad Hoc Committee, namely that the parties concerned would work within existing bilateral and multilateral arrangements, applicable law would be more certain, criminal actions would be less costly and the penalties involved would be clearly defined and easy to enforce.

23. The court's jurisdiction should be established by consensus and States should be able to resort to the court without undermining the authority of national bodies. A close relationship between the court and the United Nations would also enhance the authority of the new institution while at the same time resolving many of the procedural and technical difficulties. The court should be established as a permanent body and meet the requirements of flexibility and cost-effectiveness in its operation.

24. On the question of the appointment of judges and the prosecutor, it was important to take account of the diverse legal systems of the world in order to ensure equitable representation. Given the political nature of many international crimes, the independence and impartiality of the judges would appear to be two essential preconditions. The rules of the court should be incorporated into the statute to the extent that they contained provisions relevant to procedural matters, pre-trial investigations and the production of evidence.

25. It was important to achieve consensus among States in order to ensure the effective operation of the court. He also believed that it would be premature to establish a timetable at the present time and, in particular, to set a date for an international conference.

26. Mr. CHIRANOND (Thailand) said that the court should be established as a principal organ of the United Nations, since that would ensure its universality, moral authority and financial viability.

27. His delegation supported the proposal that article 6, paragraph 5, concerning the election of judges, should be amended to provide for equitable geographical representation as well as the representation of the principal legal systems of the world. With regard to the qualification of judges, it believed that the criterion of recognized competence would be likely to disqualify candidates from a great number of third world countries and should therefore be excluded.

28. The international criminal court was intended to be complementary to national criminal justice systems in cases where such trial procedures might not be available or might be ineffective. In order to apply that principle, it would be necessary to draw a clear borderline between national jurisdiction and that of the court. Furthermore, the list of crimes should be limited to only the most serious crimes of concern to the international community as a whole. Many delegations had rejected the provisions of articles 19 and 33 of the draft

statute, preferring that the laws to be applied by the court should be clearly determined by the statute or its annexes rather than through reliance on applicable treaties and the principles and rules of general international law or national laws. His delegation shared that point of view and hoped that the statute would be amended accordingly in order to achieve greater precision and clarity.

29. With regard to the continuing work of the Ad Hoc Committee, his delegation hoped that two sessions would be held in 1996, each lasting no longer than two weeks. No arrangements should be made at the current stage for an international conference of plenipotentiaries.

30. Mr. CHA (Democratic People's Republic of Korea) said that no consensus had been reached on matters pertaining to the crimes to be covered by the court, the jurisdiction of the court, investigations and prosecutions, extradition of the accused, trials, the law to be applied and the relationship between the international criminal court, national courts and the Security Council of the United Nations. It was therefore important to reconcile the different points of view of States Members in order to ensure the universality and effectiveness of the court rather than to be hasty in setting a timetable.

31. His delegation hoped that the draft statute for an international criminal court would place greater emphasis on the principles of respect for the sovereignty of States, non-interference and impartiality. In that respect, it was particularly important that the relationship between the court and national courts should be clearly defined. Furthermore, the jurisdiction of the court should be exercised only with the prior consent of a State party to the statute, and should be limited to the most serious crimes of concern to the international community.

32. Ms. WILMSHURST (United Kingdom) said that her delegation associated itself with the statement made by the representative of Spain on behalf of the European Union. The Ad Hoc Committee on the Establishment of an International Criminal Court had had an extremely useful year, and as a result of its work, it now seemed that it would be possible to establish an effective, efficient and universally acceptable court. In the view of her delegation, such a court should meet certain criteria.

33. First, it should be established by treaty and have a strong link with the United Nations. In order to ensure that it had sufficiently widespread support, a relatively high number of ratifications and accessions to the treaty would be required before it came into force. It would be a permanent institution, but in order to give it the necessary flexibility and cost-effectiveness, the judges would act only when they were required to consider a case.

34. The court would be composed of judges with the highest qualifications, who should have judicial and criminal law experience. The choice of the prosecutor would also be of the utmost importance. One of the fundamental characteristics of the court would be that it was complementary to national criminal justice systems: resort would be made to it only where national systems were not available, or were ineffective. The statute should include provisions on the

complementarity principle, and should lay down procedures for the court to decide whether the complementarity conditions had been met.

35. The Ad Hoc Committee had had a very useful discussion on the crimes which should be within the jurisdiction of the court. There was growing support in favour of limiting the jurisdiction to three or four categories of crimes which represented the most serious crimes of concern to the international community as a whole. Those had become known as the "core crimes", which should be the only crimes to come within the jurisdiction of the court. Furthermore, the offences within its jurisdiction would need to be clearly defined in the statute, and the rules of international criminal law which the court would apply would need to be spelled out.

36. In order to obviate the need for new tribunals to be created by the Security Council, it might be desirable to give the Council itself the power to refer a situation to the court. That was a difficult matter, and care must be taken not to submit the judicial process to political influence. It should, however, be possible to secure acceptable provisions in that area.

37. Finally, if the court were to be acceptable, it would have to protect the rights of the accused by having proper standards of due process. Satisfactory arrangements for cooperation between States parties and the court in respect of investigations and the speedy transfer of individuals must be made, taking account of existing structures of judicial cooperation. Furthermore, the jurisdiction of the court should not be made retroactive.

38. Her delegation would support the establishment of a court which met those conditions if the convention setting it up could be satisfactorily drafted. However, a great deal remained to be done before the adoption of such a convention, as was made clear by even a cursory reading of the report of the Ad Hoc Committee. Major policy decisions, as well as technical input, were still required. The work would involve amendments to the draft statute prepared by the International Law Commission, particularly to the list of crimes falling within the jurisdiction of the court. It would also require the addition of definitions of crimes, provisions on complementarity, and additional provisions on substantive and procedural matters. The Ad Hoc Committee should have three sessions of two weeks each. It was no longer enough to identify the problems; work must begin on the drafting of texts so that, when the time came, a draft convention could be submitted to a diplomatic conference.

39. Mr. SYARGEEU (Belarus), welcoming the conclusions of the Ad Hoc Committee, said that the preamble of the draft statute for an international criminal court should reflect the close interconnection between that court and national judicial organs. The principle of complementarity was of great importance and should be reflected in the appropriate provisions of the draft, although it was not advisable to define it in a separate clause of the statute.

40. Like other States, Belarus considered that the jurisdiction of the court should be limited to "hard-core crimes", including aggression. He welcomed the fact that acceptance of the court's jurisdiction with regard to the crime of genocide was inherent in participation in the statute. That had, however, been based on the 1948 Genocide Convention, and the provisions of that Convention

clearly did not apply to States which were not parties to it. A State which was not a party would not be bound by the provisions regarding the "inherent jurisdiction" of the court in the event that it failed to comply with the statute. Those provisions were designed to ensure that all States parties were placed under such an obligation by the mere fact of becoming parties to the statute. The basis for the court's jurisdiction in respect of genocide should therefore be the statute itself rather than the 1948 Convention.

41. In order to establish the court's jurisdiction in relation to crimes under general international law, all such crimes, including genocide, should be defined in the statute itself. A clear definition was essential in efforts to curb criminal activity. From that perspective, it would be appropriate to follow the example of the statutes of ad hoc tribunals, and to refer to a treaty source or to a non-exhaustive list of offences falling within the category in question. In that regard, the list referred to in article 20, paragraph (e), seemed incomplete: Additional Protocol II of 1977 should also be included. Recent events had shown that the most serious violations of international humanitarian law occurred in armed conflicts of a non-international character. In that connection, his delegation supported the idea introduced by Denmark of setting up a review mechanism.

42. Article 21, paragraph 1 (b), was noteworthy in that it established a category of States which must accept the jurisdiction of the court in order for it to exercise that jurisdiction. However, that category should not be made excessively wide. Article 23, paragraph 1, which enabled the Security Council to make use of the court as an alternative to establishing ad hoc tribunals, deserved support. Paragraph 3 of that article, however, established a strict interrelationship between the actions of political and judicial organs in all situations involving a threat to or breach of the peace or an act of aggression under Chapter VII of the Charter. That category of acts was not limited to acts of aggression alone, and the court should only be bound by Security Council decisions when an act of aggression had been committed, as stipulated in paragraph 2; it would therefore be advisable to delete paragraph 3 of article 23.

43. The idea that the judges should have either criminal trial experience or competence in international law was an interesting one. Nevertheless, difficulties might arise in connection with the constitution of chambers; it might also be difficult to ensure a balance between criminal law experts and international lawyers, especially if certain judges were disqualified. The matter required further discussion, and the decision set out in article 13 of the statute of the International Tribunal for the Former Yugoslavia seemed more promising. Judges of an international criminal court should satisfy both requirements: they should possess experience in both criminal and international law, especially in international humanitarian law and human rights law. Also, article 6 should include a mandatory provision stipulating that judges should be appointed in such a way as to ensure the representation on the court of the principal legal systems of the world.

44. According to article 26, paragraph 5, the category of parties which could request the court to review a decision of the Prosecutor not to initiate an investigation or not to file an indictment would be restricted to complainant

States and the Security Council. His delegation believed that any State party to the statute which had accepted the jurisdiction of the court, as well as the Security Council in all circumstances, even if it had not brought the case before the court, should be entitled to request the court to review such a decision. The criminal justice system should not simply satisfy the interests of one member of a community, but should restore peace and justice in the relations between all members of the community.

45. As for article 29, there might be some doubt as to the advisability of including a provision concerning the possible release on bail of accused persons, particularly in the light of the gravity of the crimes falling within the jurisdiction of the court. Also, article 34, paragraph (a), merited close attention. It would be preferable to avoid any reference to the poorly defined category of "interested States". The right of all States having jurisdiction with respect to a particular crime to challenge jurisdiction should be recognized. It would be logical to establish a link between States which were entitled to initiate proceedings in the court and States which were entitled to challenge the court's jurisdiction. With regard to the applicable penalties and taking account once again of the magnitude of the crimes in question, a fine would not be sufficient. It would be more appropriate to provide for confiscation of the property of those convicted, and that should be stipulated in article 47.

46. Regarding the conclusion of an agreement between the court and the United Nations, the wording of article 2 should be tightened up: the president of the court should have not only a right but an obligation to conclude an agreement with the United Nations on behalf of the court. The same comment applied to article 3.

47. His delegation considered that financial questions arising out of the establishment of the court should be considered immediately. The court should be an independent organ with close ties to the United Nations. Its relationship to the United Nations could be established in resolutions of the General Assembly and the Security Council; that would allow the court to be financed by the United Nations.

48. The treaty establishing the court should stipulate a fairly inflexible procedure for amendment of the statute, for obvious reasons of stability. Paragraph 3 (d) of appendix I said that the list of crimes falling within the court's jurisdiction could be revised only through a review of the statute, to take account of newly adopted conventions. An alternative method of extending the court's jurisdiction would be simply to incorporate in the text of the statute any crimes defined in such conventions and to allow States to express reservations to those provisions. The latter would take effect only if a sufficiently large number of parties to the treaty had accepted the court's jurisdiction in respect of the crime in question. It should be understood that the list contained in article 20 (e) could be supplemented by that method.

49. His delegation supported the view that the statute had been conceived as an integral whole and that any possible reservations to it and its covering treaty should be strictly limited. In addition, certain matters which had not been dealt with must be addressed, such as the question of the advisory jurisdiction

of the court and the question of giving the court jurisdiction to consider disputes between States in connection with the application of treaties in respect of matters falling within the court's jurisdiction.

50. Mr. ZAIMOF (Bulgaria) said that, in view of its commitment to the rule of law as a guiding principle in international relations, his country had always been supportive of the establishment of an efficient international judicial institution with jurisdiction over the most serious violations of international law. The establishment of an international criminal court as a permanent judicial organ would be able to ensure stability, uniformity and consistency in the application of international criminal law. He shared the opinion that the proposed court should be established as an independent permanent judicial institution by means of a treaty. Such an approach based on the express consent of States was consistent with the principle of State sovereignty and would present a solid legal basis for the exercise of the court's jurisdiction. The establishment of the court by means of a multilateral treaty would also ensure the legal authority and prestige of the court as an objective and impartial judicial institution.

51. At the same time, the international criminal court, while preserving its independence, should perform its functions in close relationship with the United Nations. The functional cooperation between the court and the United Nations, which might be governed by an agreement between the two institutions, would facilitate the wider acceptance of the court by States and its transformation into an effective judicial institution, exercising criminal jurisdiction on a global scale. The court should function as a permanent judicial institution that should not replace but rather complement national criminal justice systems in cases where such trial procedures might not be available or might be ineffective. In his delegation's view, the principle of complementarity was an essential element and that was why further elaboration was required in order for its implications for the substantive provisions of the draft statute to be fully understood. As to the scope of the subject-matter jurisdiction of the court, the discussions within the framework of the Ad Hoc Committee had demonstrated a widely shared view that that jurisdiction should be limited to a few "hard-core" crimes that were of concern to the international community as a whole. Moreover, the crimes must be clearly defined in conformity with the principle of legality. While it would not be an easy task to define the crime of aggression for the purpose of the statute of the international criminal court, that crime should be included among the crimes falling within the court's jurisdiction. The principles to be followed in defining the crime of aggression as well as the other crimes falling within the court's jurisdiction should be consistent with the approach adopted by the International Law Commission in the context of its work on the draft Code of Crimes against the Peace and Security of Mankind. At the same time, the latter should not be a reason for delaying the elaboration of the statute of the international criminal court.

52. The elaboration of the statute of an efficient international criminal court was not an easy task. In that regard, he supported the conclusion contained in the report of the Ad Hoc Committee that issues could be addressed most effectively by combining further discussions with the drafting of texts, with a view to preparing a consolidated text of a convention for an international criminal court as a next step towards consideration by a conference of

plenipotentiaries. The mandate for future work of the Ad Hoc Committee should be changed to that effect and his delegation supported the proposal made by a number of delegations, including the European Union, for the establishment of a preparatory committee.

53. Mr. BRAHA (Albania) said that incidents of genocide, crimes against humanity and serious violations of international humanitarian law committed in areas of conflict had once again demonstrated in recent years the necessity for an international criminal court. That was why his delegation welcomed the progress made by the International Law Commission in the preparation of the draft statute of an international criminal court. His delegation had participated in the proceedings of the Ad Hoc Committee which, during its two sessions, had managed to identify the major issues arising out of the draft statute and attempted to find the most acceptable formulations for complex issues.

54. He supported the view that the court should be a permanent institution which would act when required to consider a case submitted to it. He had taken note of the comments made by many delegations on the method of establishment of the court, as well as the view that, in defining the relationship of the court with the United Nations, problems such as the court's independence and financial questions should be borne in mind. The International Law Commission had rightly maintained that the court should be complementary to national criminal justice systems in cases where such trial procedures might not be available or might be ineffective. Nevertheless, the principle of complementarity should be reflected in other parts of the draft statute; it should in addition be defined and embodied in the operative part of the draft statute.

55. Only the most serious crimes should be included in the jurisdiction of the court. Moreover, such crimes should be clearly defined with an indication of the punishments to which they were liable, in order to observe the well-known principles of criminal law "nullum crimen sine lege" and "nulla poena sine lege".

56. His delegation supported the inclusion of the crime of genocide, war crimes and crimes against humanity in the jurisdiction of the court. It also strongly supported the inclusion of grave breaches of the four Geneva Conventions and of the First Protocol of those Conventions, of the crime of torture defined in the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, as well as the crime of apartheid. While there was some merit to the idea of including in the jurisdiction of the court crimes against humanity committed in peacetime, that matter needed careful consideration.

57. Regarding the role of the Security Council, he supported the view that the council should be authorized to refer matters to the court, as provided for in article 23, paragraph 1, of the draft statute prepared by the Commission. While he understood the concerns and reservations expressed with respect to paragraphs 2 and 3 of that article, in dealing with that issue various aspects should be taken into consideration, including the fact that one of the objectives of the establishment of the court was to prevent the proliferation of ad hoc courts, which would constitute a financial burden on the international community. At the same time, the Security Council had indispensable powers in

dealing with acts and wars of aggression, the situations in which most of the crimes the court was intended to punish were committed. The independence of the judiciary, justice and the method of functioning of the Council should also be considered.

58. The proceedings of the Ad Hoc Committee had demonstrated that a number of issues still needed to be discussed further. However, the debate should not continue indefinitely and it was in the interest of the whole of mankind that the international criminal court should be established as soon as possible. His delegation supported the establishment of a preparatory committee or a similar body to prepare a draft text which could be adopted by a conference of plenipotentiaries, to be convened preferably in 1997.

59. Mr. AKL (Lebanon) said that he would welcome the establishment, by means of a multilateral treaty, of an international criminal court as a permanent and independent judicial organ which would have relations with the United Nations system that would guarantee its authority, universality, and administrative and financial viability. The court should ensure by its composition an equitable representation of the geographical regions and different legal systems of the world.

60. With regard to the principle of complementarity, the main reason for the establishment of the court, his delegation supported the position of the European Union, which recognized that the court had the right to determine the ineffectiveness or absence of a national criminal justice system. The principle of complementarity should also be stipulated and defined in the provisions of the draft statute, which should be amended to reflect the principle of complementarity. Moreover, the court's rules as they related to the substantive rules concerning due process and the fundamental rights of the accused, should be drafted and approved by the States parties to the statute.

61. With respect to the subject-matter jurisdiction of the court, political realism dictated that it should be limited for the time being to a "hard core" of crimes, even if it was possible, with optimism, to imagine gradually increasing its scope at a later stage. In the initial stage, his delegation strongly advocated including the crime of aggression within the scope of the court's jurisdiction, even though difficulties might arise in obtaining general agreement on an appropriate definition of that crime and as a result of the Security Council's functions under the Charter of the United Nations with respect to the maintenance of peace and security.

62. His delegation endorsed the conclusions of the Ad Hoc Committee and supported the proposal to extend its mandate in order to combine further discussions with the drafting of a consolidated text of a convention for consideration by a conference of plenipotentiaries. Such a conference could be held in 1997; however, it would be better not to act hastily but to ensure that the proposed establishment of an international criminal court was based on a solid foundation. In so far as possible, it would be appropriate for the Ad Hoc Committee to consider texts relating to the definition of crimes which the International Law Commission would adopt after its second reading of the draft Code of Crimes against the Peace and Security of Mankind.

63. Mr. MASUKU (Swaziland) said that he fully supported the establishment of an independent and stable permanent court. While the usefulness of ad hoc tribunals could not be denied, there was an obvious lack of stability, continuity and consistency inherent in the system which had a negative impact on the development of international criminal law. Furthermore, the establishment of such tribunals was a lengthy process, which might allow unscrupulous perpetrators of such crimes the time to destroy crucial evidence. Moreover, it was neither feasible nor practicable to establish tribunals in every corner of the globe.

64. His delegation subscribed to the view that the court's jurisdiction should be limited, initially, to a "hard core" of crimes. The International Law Commission's draft Code of Crimes against the Peace and Security of Mankind could also be used. In particular, a very strong case had been made for including international terrorism within the court's jurisdiction. That could be done at a later stage, once the major difficulties had been resolved.

65. The need to solve problems relating to complementarity and jurisdiction should not lead to a state of paralysis. As the experiences of Rwanda and Yugoslavia had shown, the establishment of an international criminal tribunal had been delayed too long. Preparatory meetings should therefore be organized with a view to holding a conference of plenipotentiaries in 1997.

66. Mr. YEE (Singapore) said that the principle of complementarity, which was the cornerstone of the draft statute, restricted the role of the court, which should be limited to filling lacunae in national systems rather than overriding them. Unfortunately, that principle had not been rigorously applied in the drafting of the statute. The latter dealt with a number of areas for which there already existed effective arrangements between States, such as extradition and cooperation in the taking of evidence.

67. As a result, absurd situations could arise, especially for Singapore, where murder attracted capital punishment. Thus, when a person who had committed murder in Singapore was arrested in another State with which Singapore had signed an extradition agreement, that person would be extradited to Singapore, where he would face the possibility of capital punishment. On the other hand, if a murder falling within the ambit of article II, subparagraph (a), of the Convention on the Prevention and Punishment of the Crime of Genocide was committed in Singapore, the perpetrator would have to be brought before the international criminal court, which would have no power to impose capital punishment. Hence, a common murderer would be subject to a more rigorous penalty than the perpetrator of the crime of genocide. In Singapore's view, in keeping with the principle of complementarity, the statute of the court should give precedence to existing extradition arrangements.

68. With respect to crimes falling within the court's jurisdiction, the statute should refer specifically to the treaties and provisions wherein those crimes were defined. Thus, article 20, subparagraph (a), should cite articles II and III of the Genocide Convention, while subparagraph (c) should cite the specific provisions of the Geneva Conventions of 1949 that defined serious violations of the laws applicable to armed conflict. The question of aggression and crimes against humanity should not be considered until work on the draft

Code of Crimes against the Peace and Security of Mankind was completed. A mechanism might also be put in place to review the list of crimes within the court's purview. Such an approach would mean that States would accept the court's jurisdiction only for those crimes defined in treaties to which they were parties.

69. His delegation did not feel that the court's impartiality was adequately guaranteed by the draft statute. In the first place, article 26, paragraph 5, and article 27, paragraph 2, which conferred on the president the power to review any decision of the prosecutor not to initiate an investigation and the power to confirm an indictment, were unacceptable since the president also sat on the appeals chamber, to which a case might ultimately be referred on appeal. Secondly, article 33 should address the extent to which the international criminal court should be bound by its previous decisions. While the court should not be obliged to develop its own jurisprudence, respect for the doctrine of precedents would lead to greater transparency and certainty in the decision-making process. Thirdly, he was surprised to note in article 45, subparagraph 2, that decisions in the trial chamber would be taken by a bare majority of three judges. In view of the gravity of the crimes that they would be called upon to judge, it would be perfectly reasonable to require the presence of all judges at the hearings and the concurrence of at least four of them for adoption of any decision concerning the guilt or acquittal of the accused. Lastly, his delegation believed that the rules of the court relating to the conduct of investigations, procedure and the rules of evidence should be drafted together with the statute.

70. In conclusion, his delegation endorsed the Ad Hoc Committee's proposal that further discussions should be combined with the drafting of a consolidated text of a convention, but believed that it would be premature to set a date for convening a conference of plenipotentiaries.

The meeting rose at 5.30 p.m.