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SUMMARY RECORD OF THE 26th MEETING

Chairman:	Mr. ESCOVAR SALOM	(Venezuela)
later:	Ms. WONG (Vice-Chairman)	(New Zealand)
later:	Mr. ESCOVAR SALOM	(Venezuela)

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The meeting was called to order at 3.15 p.m.

AGENDA ITEM 147: ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT (A/51/22, vol. I and II)

1. The CHAIRMAN drew the Committee's attention to the report of the Preparatory Committee on the Establishment of an International Criminal Court (A/51/22, vol. I and II).

2. Mr. BOS (Chairman of the Preparatory Committee) gave an outline of the report which the Preparatory Committee had drawn up pursuant to paragraph 2 of General Assembly resolution 50/46 and a brief description of the way in which it had conducted its business.

3. He was happy that it was no longer a question of deciding whether it was desirable and possible to establish an international criminal court but of determining what type of jurisdiction would secure the broadest support and best serve the interests of the international community.

4. The Preparatory Committee had reached a number of conclusions, which were set out in paragraphs 366 to 370 of the report. It had recommended that the General Assembly should reaffirm the mandate of the Preparatory Committee and provide specific instructions for it to consider the following matters: the definition and the elements of the crimes; the principles of criminal law and the penalties; the organization of the court; procedures; complementarity and the trigger mechanism; cooperation with States; establishment of the international criminal court and its relationship with the United Nations; final clauses and financial matters; and other relevant questions.

5. It was a source of satisfaction that in many respects the work of the Preparatory Committee had anticipated the outcome of the work of the International Law Commission on its draft code of crimes against the peace and security of mankind, in particular with regard to the code's scope of application, which was limited to a very select group of crimes of exceptional seriousness. The Preparatory Committee would be very well served by the finalization of the draft code by the Commission, particularly the provisions relating to the definition of crimes and individual criminal responsibility. That would also be seen as proof that the international community was now ready to take the necessary steps to bring to justice the perpetrators of serious violations of international humanitarian law. It would also be useful for the Preparatory Committee to draw a lesson from the concise manner in which the Commission had drafted the code, for it was important not to go into too many details in determining the procedures of the future international criminal court.

6. In contrast to what had happened in 1918 and 1946, the international community now had clear rules to which to refer: the draft statute for an international criminal court and the draft code of crimes against the peace and security of mankind produced by the Commission, as well as the statutes of the ad hoc tribunals for the former Yugoslavia and Rwanda.

7. While recognizing that it was for the General Assembly to decide on the definite date of the diplomatic conference of plenipotentiaries, the Preparatory Committee considered that it was realistic to envisage the holding of such a conference in 1998. That date was all the more appropriate since 1998 was the fiftieth anniversary of the adoption of the Convention on the Prevention and Punishment of the Crime of Genocide, which had envisaged the establishment of an international criminal court.

8. Mr. HAYES (Ireland), speaking on behalf of the European Union, with which Cyprus, the Czech Republic, Hungary, Iceland, Latvia, Lithuania, Malta, Romania, Slovakia and Slovenia were associated, said that for almost 50 years the international community had shown an intermittent interest in the question of the establishment of an international criminal court. It had taken the tragic events in the former Yugoslavia and Rwanda to catalyse opinion and reactivate the work on the establishment of such a jurisdiction. The European Union, which participated actively in that work, had fully supported the decisions of the Security Council in its resolutions 808 (1993), 827 (1993) and 955 (1994) to establish the ad hoc tribunals for the former Yugoslavia and Rwanda.

9. Although it had already stated its views at the two sessions of the Preparatory Committee, the European Union wished to reiterate the fundamental elements of its position. A permanent international criminal court should be established and should function as an independent institution closely linked to the United Nations. The widest possible number of States should accede to its statute, and its jurisdiction should be expressly limited to the most serious offences, which must be defined without any ambiguity. The statute of the court should also contain provisions on the principle of complementarity, the applicable general rules of criminal law, the protection of the rights of the accused, and the protection of witnesses and victims. Furthermore, the statute should impose on States parties the obligation to cooperate with the court, particularly with respect to the transfer of the accused, taking into account the existing structures of judicial cooperation. The court should play a deterrent role, ensuring that those responsible for the crimes covered by its statute, in particular serious violations of international humanitarian law, were brought to justice.

10. The European Union welcomed the progress made by the Preparatory Committee and hoped that it would be able to complete its work before April 1998. It would also like the General Assembly, at its present session, to take the necessary decisions concerning the Preparatory Committee's future work and the convening of the diplomatic conference of plenipotentiaries to adopt the convention establishing an international criminal court.

11. Mr. FERRARIN (Italy) said that his delegation fully concurred with the statement made by the representative of Ireland on behalf of the European Community, but wished to add some remarks to reaffirm the importance which the Italian Government attached to the establishment of a permanent international criminal court.

12. He reviewed the progress made by the Preparatory Committee and welcomed the fact that many States, including developing countries, had taken part in the preparatory work, during which the universality of the court had emerged as an element of crucial importance.

13. Two other issues also warranted the closest attention: the scope of the court's jurisdiction, and the mechanisms for activating the court. For example, the principle of complementarity should not impose exorbitant limits on the court's jurisdiction. The definition of the crimes of exceptional seriousness should duly reflect the evolution of State practice, and the crime of aggression should be included in the statute. Moreover, the inherent jurisdiction of the court should be expanded to include other crimes in addition to genocide, and the prosecutor should be allowed to initiate investigations and prosecutions ex officio. It was essential to preserve the independence of the court in relation to the Security Council and guarantee due process, protection of the rights of the accused, and full respect for the principle of nulla poena sine lege. The statute should exclude capital punishment from the sentences which the court was authorized to impose.

14. The Italian Government fully endorsed the conclusions of the Preparatory Committee. It reiterated its offer to host the diplomatic conference to adopt the statute and was ready to do everything necessary to make it a success; it hoped that the month in which the conference would be held could be decided at the present session. It proposed that the conference should open in June 1998, for that would leave sufficient time for reflection on the conclusions reached by the Preparatory Committee, which was due to complete its work in April 1998, without overlapping with the fifty-third session of the General Assembly.

15. Mr. HAFNER (Austria) stressed the urgency of establishing the planned international criminal court and expressed satisfaction at the progress made in drafting a widely acceptable consolidated text. It was unrealistic to expect that all major issues would be resolved before the opening of the conference. Indeed, States would only make the necessary concessions at the very last moment, within the framework of a package deal. Moreover, postponing the conference because the final text had not been drafted could be misinterpreted by public opinion as an attempt to obstruct the establishment of the court. The conference should therefore be held as soon as possible after the Preparatory Committee completed its work. He welcomed the Italian Government's offer to host the conference.

16. Since his delegation had already explained its position many times in the past, he now simply wished to stress the need to adopt a statute which would show a certain flexibility concerning the crimes falling within the jurisdiction of the court, as well as the importance of the court's inherent jurisdiction and the principle of complementarity.

17. He also wished to address two other issues: the powers of the prosecutor and the obligation of States parties to cooperate with the court. The prosecutor must have the right to initiate proceedings without waiting for a complaint by a State or a referral from the Security Council. To reassure those

States which were reluctant to grant the prosecutor such powers, he suggested creating an indictment chamber, which would balance the independence of the prosecutor and be called on if a State or individual challenged the prosecutor's actions.

18. There should be no exceptions to the obligation to cooperate with the court. Existing systems of judicial cooperation were inadequate, since they allowed for exceptions involving the political nature of the crimes and the notion of "ordre public". Clearly, those two grounds for denial of cooperation could not be accepted, since all the crimes dealt with by the court could be described as political by one or the other party and the definition of "ordre public" varied from one State to another. If States were allowed to use those two arguments, the obligation to cooperate would become a mere recommendation, and that would be unacceptable.

19. Mr. KRUGER (South Africa) welcomed the substantial progress that had been made thanks to the establishment of open-ended working groups. In future it would be prudent to plan and schedule the work of those groups better so that all delegations could make a useful contribution. The results obtained would provide the basis for future work. In any case, an international consensus had emerged that a permanent criminal court was worthwhile, and South Africa was committed to the idea of establishing such a court.

20. Noting the spirit of cooperation which had dominated the discussions in the Preparatory Committee, he was in favour of holding three or four further sessions for a total of nine weeks - preferably three more sessions, given the costs involved. It was essential that the preparatory work should be completed by April 1998 at the latest. Any resolution adopted by the General Assembly at the current session should clearly indicate the dates of the Preparatory Committee's future sessions. The working groups should focus on negotiating a widely acceptable draft consolidated text for submission to the diplomatic conference. The subjects to be dealt with, as set out in the Preparatory Committee's recommendation (A/51/22, vol. I, para. 368), were acceptable to his delegation.

21. South Africa felt that the diplomatic conference should be held in the second half of 1998, before the beginning of the fifty-third session of the General Assembly, and welcomed the invitation from Italy.

22. He expressed concern at the lack of participation in the preparatory process by certain geographical regions. South Africa had held a national workshop on the establishment of the international criminal court to which it had also invited representatives of other Member States in southern Africa. He called on all countries to participate actively in the process so that the new international court being created would be truly universal.

23. Mrs. ESCARAMEIA (Portugal) said that she endorsed the statement made by Ireland on behalf of the European Union. She wished to add that it was crucial to establish the criminal court as early as possible, with effective powers to determine the international responsibility of individuals guilty of serious violations of international law and to punish them.

24. The court must have its own jurisdiction independent of national courts. That characteristic was linked to the idea of complementarity. Although most national legislations and the Geneva Conventions of 1949 and the Convention of 1948 on the Prevention and Punishment of the Crime of Genocide already provided for the punishment of individuals guilty of the serious crimes which would fall within the jurisdiction of the court, those responsible were in fact rarely punished. A notion of complementarity that would give precedence to national courts in determining jurisdiction would make the court ineffective by undermining its authority. The court itself must therefore decide whether the national legislation in question provided sufficient guarantees that the alleged criminals would be duly tried by the national courts.

25. The prosecutor must also be able to initiate investigations ex officio, as provided for in article 18 of the Statute of the Tribunal for the former Yugoslavia and in article 17 of the Statute of the International Tribunal for Rwanda, which would not only expedite legal proceedings and increase the judicial independence of the court, but also promote stable relations among States.

26. The relationship between the Security Council and the court must not compromise the court's judicial independence. Article 39 of the Charter granted certain powers to the Security Council in determining the existence of acts of aggression. Such acts should also be included in the jurisdiction of the court. Some harmonization was therefore necessary because the court must be able to independently indict and convict individuals guilty of such acts.

27. The draft Code of Crimes against the Peace and Security of Mankind was of great importance for the elaboration of the statute of the international criminal court. To date, very little had been done to deter potential criminals and the international criminal court would play a fundamental preventive role. The court must not however be subject to any political pressure, so that all the guilty parties, including the most influential, would be punished.

28. The Ad Hoc and Preparatory Committees had made great progress and a diplomatic conference of plenipotentiaries should be convened immediately following the completion of the Preparatory Committee's work, in April 1998.

29. Ms. Wong (New Zealand), Vice-Chairman, took the Chair.

30. Ms. ISMAIL (Malaysia) reaffirmed her delegation's support for the establishment of an international criminal court. In order for the court to be effective, however, it must be universally acceptable from the standpoint of all the major legal systems and geographical regions in the world.

31. The Malaysian delegation had reservations concerning certain provisions of the draft statute. With regard to the definition of crimes and the jurisdiction of the court, her delegation believed that such jurisdiction should be limited to the most serious crimes, which, in accordance with the principle of legality, should be defined carefully by their constituent elements, so as to ensure that an accused person would be able to mount an adequate defence. Lastly, the prosecutor should be empowered to file an indictment ex officio.

32. Malaysia subscribed fully to the principle of complementarity between an international criminal court and national judicial systems in accordance with the principle of State sovereignty embodied in the Charter of the United Nations. It was therefore imperative for the draft statute to stipulate clearly that national judicial systems must be invoked before a matter could be referred to an international criminal court.

33. The Malaysian delegation had serious reservations concerning the notion of inherent jurisdiction, which would conflict with the principle of complementarity. The acceptance of inherent jurisdiction in respect of the crime of genocide would result in different treatment being accorded to that crime than to other serious crimes falling within the jurisdiction of the court, for which there would be no justification, since offences to be tried by the court should include the most serious crimes of concern to the international community as a whole.

34. With regard to the trigger mechanism, her delegation maintained its support for the "opt-in" approach, whereby a State party to the statute of the court could accept the court's jurisdiction.

35. Malaysia also had serious reservations concerning the provisions of the draft statute which empowered the Security Council to refer matters to the court. It was of utmost importance that the independence of the court in its investigative, prosecutorial and judicial functions should not be undermined or hampered by any other organ.

36. The death penalty should be available, as the punishment should be commensurate with the gravity of the crime. The death penalty was provided for in many national criminal justice systems and, in view of the principle of complementarity, serious difficulties could arise if the draft statute did not make that option available.

37. Only States parties to the statute having a direct interest in a case should be empowered to lodge a complaint with the prosecutor. Malaysia was not in favour of extending such a right to States which had no direct interest in a case (irrespective of whether they were parties to the statute), or to the crime victims, their relatives or non-governmental organizations, as it wished to ensure that complaints were not lodged solely for political ends. In accordance with the principle of complementarity, the prosecutor should not be empowered to initiate investigations, and the prosecutor's right to carry out on-site investigations should be subject to the consent of the States concerned.

38. The Malaysian delegation supported the proposal for the convening of further meetings of the Preparatory Committee so that delegations could undertake the discussions necessary for work on the draft statute to proceed.

39. Mr. JOSEPH (Singapore) said that his delegation endorsed the balanced recommendations contained in the report of the Preparatory Committee (A/51/22, para. 368), and called upon the Sixth Committee to accept them as the basis for the directions to be given by the General Assembly to the Preparatory Committee concerning its future work. Moreover, the Preparatory Committee should hold further meetings in order to address unresolved technical issues, such as the

rules of procedure and evidence, the protection of the rights of accused persons and the general principles of criminal law. Such issues could be resolved more rapidly by legal experts in the framework of the Preparatory Committee than at a diplomatic conference, which would have a politically charged atmosphere.

40. Singapore had no objections to the holding of three or four meetings of the Preparatory Committee up to a total of nine weeks. It would be preferable, however, to hold three sessions of two weeks' duration each, two of which should be held in the spring and summer of 1997, thus making it possible to submit an interim report to the General Assembly at its fifty-second session. The third session could take place in March or April 1998, prior to the convening of a diplomatic conference. There should be an interval of three or four months between the final session of the Preparatory Committee and the convening of the conference to allow for the circulation of the consolidated text of the draft convention and for the finalizing of positions. If the final session of the Preparatory Committee was held in March or April 1998, the conference could be convened in July, August or September of that year.

41. Lastly, his delegation wished to make a general point which could not be overemphasized. It was necessary to find a middle ground between the real powers to be conferred on the court and respect for the principle of State sovereignty. His delegation remained confident that differences could be bridged so long as there was a willingness to cooperate on the part of all concerned.

42. Mr. OWADA (Japan) said that, as a matter of principle, his Government firmly supported the establishment of an international criminal court. The whole system of international criminal justice must be based on such fundamental principles as nullum crimen sine lege, nulla poena sine lege, due process of law and respect for individual rights.

43. His delegation supported the Preparatory Committee's recommendation that working groups should be convened for an additional nine weeks in order to study, with the widest possible participation of States, such basic issues as the definition and constituent elements of crimes, the general principles of criminal law and the rules of procedure. The Preparatory Committee had reached a consensus on the method of establishing the court, the incorporation of the general principles of criminal law into the draft statute, and the need to stipulate detailed procedures to ensure due respect for the principle of legality (nullum crimen sine lege).

44. On the other hand, major differences persisted with regard to such issues as the principle of complementarity, the trigger mechanism, the role of the Security Council, States' cooperation with the court and the financing of the system, all of which required thorough examination. His delegation, which had expressed views on each of those issues in meetings of the working groups, would confine itself to preliminary comments on the jurisdiction of the court and the definition of crimes, the principle of complementarity and the trigger mechanism, and cooperation and judicial assistance.

45. In the first place, the court's jurisdiction should be limited, at least initially, to three core crimes, namely, genocide, war crimes and crimes against humanity. It would be preferable not to include the crime of aggression, since to do so might create a conflict between the judicial functions of the court and the political functions of the Security Council. Moreover, each of the core crimes must be defined in the light of the principle of legality, taking into account the draft Code of Crimes against the Peace and Security of Mankind submitted to the General Assembly in the report of the International Law Commission (A/51/10).

46. Secondly, the principle of complementarity mentioned in the third paragraph of the preamble to the draft statute should also be reflected in the provisions relating to admissibility, the non bis in idem rule, cooperation and judicial assistance and transfer of an accused to the court. The right to lodge a complaint with the prosecutor should be limited to States or to the Security Council. Moreover, while the Council should be empowered to refer a matter to the court, the latter's independence should be preserved.

47. Thirdly, States' cooperation with the court must be based on the principle of complementarity and respect for existing laws; exceptions should be standardized and clarified in the statute.

48. Lastly, his delegation supported the proposal to convene a diplomatic conference in 1998, if, by that date, the working groups had been able to reach a consensus on the issues mentioned.

49. Mr. RODRIGUEZ-CEDEÑO (Venezuela) said that the establishment of an international criminal court was, without any doubt, one of the most important matters now before the United Nations. There was an urgent need to establish a body to prosecute the perpetrators of crimes such as genocide and other exceptionally serious crimes against the peace and security of mankind. The court's jurisdiction should be based on the principle of complementarity. It should have the characteristics of both an international organization and an international jurisdictional body. Therefore, apart from the usual technical and legal provisions regarding, for example, the settlement of disputes, the signature of the document, its ratification and its entry into force, the court's statute should include provisions for the participation of all the States parties in its operations, and provisions governing administrative, financial and personnel matters.

50. To ensure the court's effectiveness, the statute should keep a certain balance in different respects. There should be a balance between regard for the principle of complementarity, the need to prosecute the alleged perpetrators of the crimes defined by the applicable positive law, and the obligation of States to cooperate. The latter obligation should be explicit in the statute, without prejudice to the sovereignty of the States. The norms of public international law should also be respected, and national legislations should be taken into consideration.

51. His delegation believed that it was essential to preserve the autonomy of the court and therefore questioned the role that the International Law Commission's draft granted to the Security Council. The latter should not be

entitled either to refer a case to the court or to decide on its jurisdiction. While the court's jurisdiction should be confined to the most serious crimes, a certain flexibility should be maintained so that the court could adapt to changes in the international situation.

52. The statute could not be drawn up without reference to the draft Code of Crimes against the Peace and Security of Mankind, in particular, with regard to the positive law applicable. The draft Code referred to the establishment of a body along the lines of the international criminal court, and, conversely, the draft statute used the same categorization of crimes as the draft Code. Consequently, the Preparatory Committee should find a way to link the two initiatives, either by referring to the Code, or by using some of the definitions which appeared in it, in order to avoid contradictions and duplication.

53. An international criminal court should be established as a matter of urgency. The work of the Preparatory Committee during 1996 had been useful but insufficient. The Committee's mandate should therefore be extended to give it the time to draw up a consolidated text, to be submitted to the 1998 diplomatic conference.

54. Mrs. des ILES (Trinidad and Tobago), speaking on behalf of the 13 States members of the Caribbean Community (CARICOM) which were also Members of the United Nations, said that CARICOM was aware that many States had concerns about the effects on their sovereignty of an international criminal court. CARICOM believed that the court should be a permanent, independent institution closely linked to the United Nations. On becoming parties to the court's statute, States should commit themselves to recognizing its jurisdiction, but the court should only intervene in cases where national trial procedures were not available. The court's jurisdiction should be restricted to the most serious crimes of concern to the international community as a whole.

55. It should be recalled, however, that transboundary crimes posed an economic and social threat to the Caribbean States, and a coherent and effective international legal regime was needed to deal with such crimes.

56. CARICOM strongly recommended that the General Assembly, during the current session, should extend the mandate of the Preparatory Committee. It would prefer the diplomatic conference to be held in 1997, but had noted the conclusions of the Preparatory Committee, which was planning to finalize a consolidated text in April 1998. While discussions and presentations of additional texts were indispensable, a date for the diplomatic conference should be fixed before the end of the session, otherwise discussions could continue interminably. It was unfortunate that a number of States had been unable to take part in the first two sessions of the Preparatory Committee. A subregional approach could be adopted, following the example of the Caribbean Community. All regions would thus be represented, ensuring universality.

57. Mr. LEGAL (France) said that the experience of the International Tribunals for the former Yugoslavia and for Rwanda should be made use of, with regard to both the basic rules and those governing procedure. Nonetheless, the scope of the project for the establishment of an international criminal court, the

permanent nature of such an institution and the extent of its jurisdiction required the preparation of a more comprehensive and more precise statute.

58. With regard to the rules of jurisdiction and referral, the court should concentrate on a small number of exceptionally serious crimes. The Security Council should be entitled to refer cases to the court, and such a mechanism could be counterbalanced by respect for the principle of complementarity.

59. With regard to the rules of procedure, the court should take into account the general principles of criminal law of the main legal systems in order to take maximum advantage of the experience of each country. In that context, his delegation had made certain suggestions. For example, the prosecutor should act under the judicial supervision of a chamber established for that purpose. The president of the trial judges should play an active role in conducting the trial and in organizing the legal debate, a point which did not stand out clearly in the Commission's draft. The accused should not be able to avoid a full trial, including confrontation with witnesses and victims, and his refusal to appear before the court should not totally block its action.

60. It was important that the greatest possible number of States should take part in the discussions so that the convention establishing the court could be widely ratified. To that end, each delegation should be able to take part in the work, in the official language of its choice.

61. Mr. ESCOVAR-SALOM (Venezuela) resumed the Chair.

62. Mr. PATRIOTA (Brazil) recalled his country's position regarding the establishment of an international criminal court (A/47/922-S/25540) and said that Brazil welcomed the wide support given to the draft statute submitted by the International Law Commission. Working groups should examine the major issues raised by the Preparatory Committee in order to harmonize different national positions and reconcile legal, political and moral considerations.

63. With regard to the definition and elements of crimes, Brazil fully supported the view that the crimes within the court's jurisdiction must be defined with the utmost clarity and precision. The work of the International Law Commission and the draft Code of Crimes against the Peace and Security of Mankind were very pertinent in that regard.

64. Although there seemed to be consensus on the inclusion of certain crimes such as genocide, serious violations of the laws and customs applicable in armed conflict and crimes against humanity, the inclusion of the crime of aggression raised questions which exposed the difficulty of defining the relationship between the international criminal court and the Security Council, and of guaranteeing the court's impartiality. Past experience pointed to the need for a neutral court, but his delegation believed that the issue could be analysed separately.

65. With respect to the question of complementarity, Brazil shared the view of the International Law Commission. After referring to the role an international criminal court might play vis-à-vis national legal systems, he said his Government believed that universal participation would be encouraged if the

"opt-in" mechanism and the requirement calling for the consent of both the custodial State and the State where the crime had been committed were retained. For the court to function adequately, the convention should oblige all States to cooperate with the court without exception.

66. On the question of the court's independence, Brazil believed that a close relationship between the court and the United Nations would guarantee its universality, protect its moral authority and ensure its administrative and financial viability. Its judges should be elected by the General Assembly, on the basis of equitable geographical representation. His delegation was satisfied with the relationship between the court and the security council as defined in article 23 of the draft statute, on the understanding that the necessary care must be taken to shield the court from political influence. A central objective must remain the creation of an operative, multilaterally negotiated system.

67. Brazil welcomed the conclusions of the Preparatory Committee's report (A/51/22, paras. 368-370) and was ready to support the measures taken to hasten the achievement of concrete results. Although the challenges ahead should not be underestimated, developments indicated that the General Assembly should endorse the Preparatory Committee's recommendations and agree on a time-frame for concluding preparations for a diplomatic conference to be held in 1998.

68. Ms. LIND (Norway) reaffirmed Norway's interest in establishing an international criminal court and emphasized three core elements of the court. First, the court's legitimacy and effectiveness depended on Member States, whose support was essential. Second, the court must focus on the most serious crimes (particularly genocide, crimes against humanity and serious war crimes) if it was to be a truly operational tribunal with a clear mandate and effective powers. Other categories of crimes might be brought within its jurisdiction at a later date. Lastly, the court should have inherent jurisdiction over the most serious crimes, but States should not thereby be absolved from the duty to prosecute violators of international humanitarian law in their own courts.

69. In conclusion, she said it was essential that a strict time schedule should be set for the completion of the work that would enable the diplomatic conference to be convened in 1998, as proposed by Italy.

70. Mr. MANGOAELA (Lesotho) said that his country continued to regard the establishment of a permanent international criminal court, independent and free from political influence, as a major priority. He recalled the issues dealt with by the Preparatory Committee and noted the problems arising from the political aspects of certain questions, such as the nature of the crimes falling within the court's jurisdiction, complementarity, the role of the Security Council and the court's jurisdiction over treaty-based crimes. Those questions could be resolved only by a diplomatic conference of plenipotentiaries, which would be convened if there was sufficient political will to move the negotiations forward.

71. Serious efforts must be made to overcome the unresolved difficulties; accordingly, Lesotho endorsed the Preparatory Committee's recommendation requesting the General Assembly to make its mandate more specific.

72. His delegation commended the work of the Preparatory Committee, which had faithfully carried out the mandate entrusted to it in General Assembly resolution 50/46, as well as other delegations' efforts to ensure the establishment of an effective international criminal court, and, not least, the contributions from various non-governmental organizations. It was, however, disturbing to note that many Member States had not participated in the work of the Preparatory Committee; his delegation therefore urged all delegations to participate in future sessions. It strongly supported the renewal and broadening of the mandate of the Preparatory Committee, which should be given specific guidelines to enable it to produce its final report by April 1998.

73. Lesotho endorsed the recommendation that a diplomatic conference should be held in 1988 and called upon the General Assembly to demonstrate the international community's commitment to the establishment of the court by setting 1998 as the firm date for the conference of plenipotentiaries. In conclusion, he thanked the Government of Italy for its offer to host the conference.

74. Mr. WILMOT (Ghana) welcomed the significant progress made by the Preparatory Committee in its work and said that the Committee must complete that work by April 1998 and that a diplomatic conference should also be held in 1998. A firm date must be set for completion of the work so that the establishment of the international criminal court would cease to be a possibility and instead become a certainty.

75. For developing countries such as Ghana, it was essential to draw up a specific timetable of work, as those countries could not afford to send experts to the Preparatory Committee indefinitely, yet their absence would have an adverse effect on the universality of the negotiations.

76. The issues to which Ghana attached particular importance were: the establishment of an independent international criminal court through a multilateral treaty; a court independent of, although associated with, the United Nations; the importance of the principle of complementarity and of the court's capacity to step in where procedures at national level had been inadequate; limitation of its jurisdiction to the crimes of genocide, war crimes and other serious violations of international humanitarian law, although it could widen the scope of its jurisdiction at a later date if the court proved effective; and the need to define the crimes clearly and precisely (although there was no need to define crimes covered by other instruments, such as genocide). Inclusion of the crime of aggression might draw the court into political wrangling that would compromise its independence, and might also set it on a collision course with the Security Council.

77. The complaints procedure (articles 25 and 22) was too restrictive and needed to be revised, bearing in mind that international crimes affected not only States but also individuals. Due process and a fair trial must also be guaranteed in order to establish the authority of the court in accordance with, inter alia, article 14 of the International Covenant on Civil and Political Rights.

78. Ghana fully supported the provisions of article 23, paragraph 1, of the draft statute, on the role of the Security Council. However, vesting the Council with power to stop prosecution by the court where the Council was itself dealing with the matter jeopardized the principle of the court's judicial independence. A compromise formula should be worked out whereby the Security Council might, for example, address the political implications of violations while leaving the initiative to prosecute and settle related issues to the court.

79. The successful functioning of the court depended on mutual cooperation with States, and it was therefore necessary to set out a clearly defined legal framework, flexible enough to take account of national constitutional requirements and of States' treaty obligations.

80. Lastly, it was necessary to take advantage of the current momentum in order to establish an international criminal court as early as possible. His delegation was ready to help attain that objective.

81. Mr. PARK SOO GIL (Republic of Korea) congratulated the Preparatory Committee on the quality of its work and reiterated his Government's support for the establishment of an international criminal court. He said that the work of the International Law Commission and the establishment of tribunals for the former Yugoslavia and Rwanda represented encouraging, though insufficient, progress. The Preparatory Committee's working methods should be reviewed to see if they needed to be improved. In view of time constraints, his delegation favoured setting up several working groups to study the main issues, as long as the transparency of the Committee's work was not affected. Informal consultations among States interested in specific issues should also be encouraged, in order to help the Committee work out compromises.

82. Legitimate concerns regarding national sovereignty should not be ignored. It was indispensable to seek the broadest and strongest consensus possible and that meant preparing the draft statute patiently and carefully, otherwise the results of the plenipotentiary conference could be jeopardized.

83. The success of the Preparatory Committee's work would be confirmed if two conflicting objectives could be reconciled: the early establishment of a court and the adoption of a well-thought-out statute. The aim should be modest, and his delegation believed that the work should be divided between the Committee and the diplomatic conference. The Committee should concentrate on issues which did not require political decisions, the other issues would be covered by the diplomatic conference. Moreover, the Committee should be given a mandate corresponding to its capacities: to seek plausible alternatives to issues of political weight, which would then be submitted to the diplomatic conference.

84. With regard to the organization of the Committee's future sessions, his delegation supported the idea of organizing three nine-week sessions before April 1998. Now that the deadlines were known, intense consensus-seeking negotiations should be undertaken on the draft submitted by the International Law Commission so that specific amendments, reflecting the points of view of each Member State, could be submitted to the diplomatic conference.

85. In view of its own past experience, his country had reason to be fully committed to the early establishment of an international criminal court. It therefore wished to take an active part in the Preparatory Committee's work and welcomed the offer by Italy to host the diplomatic conference in Rome in 1998.

86. Mr. AL-HAYEN (Kuwait) said that it was time to realize the international community's long-held dream: establishment of a criminal court to prosecute serious violations of international law. His country, which was firmly committed to upholding international law, was convinced that the new organ would have a repressive effect on those crimes and was totally in favour of the early establishment of that important and indispensable body.

87. The crimes in question should be defined and characterized as crimes under the laws of every nation as that would constitute an additional way of deterring criminal behaviour. Achievement of the objectives for which the court was being established would be delayed if too much time was allowed to pass before repressive measures were taken. That would leave criminals unpunished and would indirectly threaten international peace and security. His delegation therefore favoured pressing ahead with the work.

88. Kuwait itself had suffered very serious violations of international humanitarian law when Iraqi forces had invaded its territory. It was not the only country to have suffered in that way: the people of northern and southern Iraq had also suffered the consequences of those crimes. His delegation was therefore very much in favour of the establishment of a mechanism that would bring the perpetrators of such crimes before the courts. It was ready to provide detailed information on the crimes committed by the Iraqi authorities and to prove their guilt.

89. His delegation believed that the court's jurisdiction should be compulsory and imposed on all States, not only on the States parties to the statute. It believed that the "opt-in" approach would not allow the international criminal court to achieve its objective to protect international peace and security.

90. Mr. LAVOYER (International Committee of the Red Cross (ICRC)) recalled that his organization was neither an investigative nor a legal body, and said that the establishment of an independent and impartial international criminal court would be a way of strengthening the respect for and practice of international humanitarian law. In particular, it would guarantee respect for the principle of the individual responsibility of those who violated the most fundamental principles of mankind. It was in that context that ICRC wished to make a few remarks on the future status of the court, from the specific point of view of international humanitarian law.

91. It preferred the concept of "war crimes" to that of "serious violations of the laws and customs applicable in armed conflicts" and believed that the term should cover both the serious crimes set out in Protocol I (Protocol Additional to the Geneva Conventions) and serious violations committed during non-international armed conflicts, namely, violations of article 3 common to the aforesaid Conventions, and Protocol II (Protocol Additional to the Geneva Conventions). The majority of armed conflicts were currently of an internal nature and it was therefore important that the court should have jurisdiction

over that type of conflict. Moreover, the International Tribunals for Rwanda and the former Yugoslavia covered situations of internal conflict.

92. With regard to the concept of "crimes against humanity", it was in favour of a definition which did not require that the qualification of such a crime should be subordinate to the existence of an armed conflict. Such a link was no longer required in positive law. Moreover, crimes against humanity were equally abhorrent and unacceptable whether they were perpetrated during international armed conflict or during an internal armed conflict. In both cases, the international community had the obligation to act to repress such crimes. Lastly, with regard to the "crime of genocide", ICRC approved the definition given in the 1948 Convention which contemplated the jurisdiction of an international criminal court.

93. The court's jurisdiction should cover those three categories of crimes. The court should seek to respond to such crimes in a manner proportionate to their gravity. Its jurisdiction should be recognized as soon as a crime of that type was committed. Additional conditions (for example, obtaining the consent of the different States concerned) would hinder the operation of the court or would make it, de facto, an optional organ, which would be contrary to the desired objective. Universal jurisdiction, which already allowed any State to prosecute the perpetrators of the crimes under consideration without the agreement of another State, would be implicitly weakened. As soon as a State became a party to the court's statute, it should recognize the court's jurisdiction.

94. ICRC was very concerned that the court's trigger mechanism should offer every guarantee of independence and impartiality. According to the present draft, no prosecution could be initiated arising from a situation that was being dealt with by the Security Council in accordance with Chapter VII of the Charter. Thus, in certain cases the court would be subordinate to the Security Council or awaiting its decision. However, repression of war crimes, crimes against humanity and genocide should be independent of the nature or origin of the conflict. The prosecutor should be able, of his own initiative, to launch enquiries and initiate prosecutions. That would give the court an even greater impartiality and independence.

95. The principle of complementarity defined in the draft confirmed that States should punish those responsible for international crimes. The criminal court should not take the place of national courts, as that would weaken the obligation that States had to repress such crimes at the national level. However, in practice, States did not repress violations of humanitarian law at all, or repressed them inadequately. It was therefore highly desirable to have a permanent international jurisdiction which could guarantee that the perpetrators of such violations were brought to justice.

96. ICRC and the International Red Cross and Red Crescent Movement supported the proposal to establish an international criminal court. Much remained to be done, but ICRC was sure that the international community would find a way of setting up an independent, effective and impartial international criminal court.

The meeting rose at 6.30 p.m.