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SUMMARY RECORD OF THE 14TH MEETING

Chairman: Mr. DANIELL (South Africa)
(Vice-Chairman)

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In the absence of Mr. Tomka (Slovakia), Mr. Daniell (South Africa), Vice-Chairman, took the Chair.

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

AGENDA ITEM 150: ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT (continued) (A/AC.249/1997/L.5 and L.8/Rev.1)

1. Mr. ENKHSAIKHAN (Mongolia) said that while his delegation was gratified with the broad agreement on the texts on genocide and crimes against humanity to be included in the draft consolidated text, it remained concerned about continuing efforts to exclude the crime of aggression from the jurisdiction of the court. Failure to include the crime of aggression would be a retreat from the principles laid down by the Nuremberg Tribunal, while justice would not be served if acts of aggression and breaches of peace were not dealt with properly. The majority of the members of the Committee believed that the crime of aggression should be included within the court's jurisdiction, strengthening its deterrence value and credibility. His delegation believed that aggression could be included without subjecting the court to the will of the Security Council, and appreciated the efforts of the German delegation on a workable definition of that crime.

2. The jurisdiction of the court would not be complete without the inclusion of a broadly accepted and clearly defined notion of serious threats to the environment, which should also be reflected in the statute of the court. In the absence of international conventions and other regulations relating to crimes causing widespread, long-term and severe damage to the environment, the inclusion of a relevant provision in the statute would give effect to the principle sic utere tuo ut alienum non laedas and to the principle that States must not produce harmful effects in zones outside their natural jurisdiction.

3. His delegation supported endowing the court with inherent jurisdiction over all core crimes and remained opposed to a regime of State consent based on a "pick and choose" approach. A well thought out general approach was required to provide the court with the flexibility it needed to decide whether or not national courts had proven effective in dealing with core crimes. There should also be a mechanism for ongoing reviews to allow for changes in the scope of the court's jurisdiction and to enable the court to respond better to current realities. The court's inherent jurisdiction should be extended and broader powers should be granted to the prosecutor, while the role of the Security Council in court proceedings should be limited. Moreover, his delegation did not rule out the possibility of providing the court with the jurisdiction to deal with grave crimes related to drugs and terrorism which could not be dealt with by small and weak States.

4. His country continued to support the convening in 1998 of a diplomatic conference to adopt a convention on the establishment of an international criminal court, as well as the ongoing participation of non-governmental organizations.

5. Ms. ORTAKOVA (The Former Yugoslav Republic of Macedonia) said that recent grave breaches of international humanitarian law and serious human rights violations had underscored the need for a permanent, independent court that would bring to justice the perpetrators of such crimes, act as a deterrent in the future, and contribute to the maintenance of international peace and security. Considerable progress had been made in the Preparatory Committee on such issues as the definition of crimes, general principles of international law, complementarity and the trigger mechanism, and procedural matters. Her delegation looked forward to the adoption of a widely acceptable consolidated text at the diplomatic conference in Rome and welcomed the participation of relevant non-governmental organizations and other observers in that effort.

6. Mr. LORAS (France) said that his delegation, which attached great importance to the successful completion of the endeavour under discussion, fully supported the statement made on behalf of the European Union.

7. Real progress had been made at the Preparatory Committee's most recent session, and negotiations on the establishment of a permanent international criminal court had now entered a decisive phase. The requirement of effectiveness must guide delegations in their future negotiations; it would thus be possible to avoid the imposition of certain legal traditions at the expense of others, and instead seek the most appropriate solutions so as to ensure that the court operated effectively. The experience gained from the ad hoc tribunals for the former Yugoslavia and Rwanda demonstrated that an international criminal court could not simply replicate national courts.

8. Realism should lead delegations to reject the illusion of a court evolving on the sidelines of the international political order and the institutions that were its principal players. France believed that the court should carry on a dialogue with States and should also operate in harmony with United Nations bodies, with strict, mutual observance of each other's purposes and jurisdictions: criminal justice was not a forum for ventilating the quarrels some parties might have with the institutions established by the Charter of the United Nations, and the court's dispassionate ability to hand down law would be compromised if it became such a forum.

9. France supported the principle that the court should have jurisdiction over a core of exceptionally serious crimes: genocide; crimes against humanity; and war crimes. The court would be the more credible and widely accepted the more restrictively defined its jurisdiction was. However, aggression could not be admissible except where the Security Council, acting in accordance with its responsibilities under the Charter, had established that aggression had been committed.

10. In the light of the experience of the ad hoc tribunal for the former Yugoslavia, France believed that the statute of the court would have to set out in precise terms what were to be the guiding principles of the court's procedure and the principal ways in which it could progress. Also, the legality of the prosecutor's actions should be monitored and there should be an examination chamber, an essential safeguard for the rights of the defence. Also, it was vital for the court to be able to try a defendant who eluded justice deliberately, even with the complicity of the State in whose territory he was

present. Conversely, some methods were unacceptable for a court judging the most atrocious crimes, such as there being no real trial when the defendant pleaded guilty: only the confrontation between defendants and witnesses should be accepted in evidence.

11. The principle of complementarity in the court's jurisdiction was essential: the court should act only in the event of involuntary or voluntary weakness on the part of national courts. States must be able to contest the court's admitting a case by showing that they had not attempted to shield perpetrators from justice, that an inquiry was under way or a trial was in progress, although any such mechanism must be precisely defined to avoid States using delaying tactics; perhaps ways to contest admissibility should be increasingly restricted as the court proceedings advanced, as his country had proposed.

12. France believed that the court should not exercise its jurisdiction without consent from the States where the acts had been committed, the States of nationality of the victims and the States of nationality of the perpetrators, with a view to deterring wrongly motivated submissions to the court and increasing its universality.

13. The rules of procedure for the diplomatic conference of plenipotentiaries should be agreed beforehand, and there was no time to lose: the Secretary-General should make recommendations on the basis of previous experience of plenipotentiary conferences. Non-governmental organizations that had played a useful role in the work of the Preparatory Committee should participate in the conference, in accordance with the provisions of Economic and Social Council resolution 1996/31.

14. Mr. HOLMES (Canada), speaking on behalf of Australia and New Zealand as well as his own country, said that the work done by the Preparatory Committee should enable the diplomatic conference to conclude the statute of the international criminal court without needing a lengthy session. The non-governmental organizations' contributions to the Preparatory Committee's work had been beneficial, and they should therefore participate in the diplomatic conference. His delegation was grateful to Italy for offering to host the conference and to the Netherlands for offering to host the international criminal court once it was established.

15. The momentum in favour of the early establishment of an international criminal court was building, but it was important that delegations should not impede progress by focusing excessively on details: the statute of the court should be a basic structure of fundamental principles and procedures, to be fleshed out at a later date; the experience of the tribunals for the former Yugoslavia and Rwanda showed that to be the right approach as it facilitated negotiations and retained the flexibility needed to develop a workable and acceptable procedure for a new international criminal jurisdiction.

16. As many delegations as possible should participate in the negotiations, particularly the least developed countries, as all voices must be heard if the court was to be truly universal.

17. A crucial outstanding issue of importance was that of inherent jurisdiction. Canada believed that in principle the court could be effective only if it had such jurisdiction over the core crimes of genocide, war crimes and crimes against humanity, and believed that there should be a common objective of avoiding a regime that would enable States to ratify the convention establishing the court without ever accepting the court's jurisdiction with respect to a particular crime: the sovereign act of ratifying the convention should signify acceptance of the court's jurisdiction, as the principle of complementarity offered sufficient safeguards of sovereign interests. Any State that was wary of inherent jurisdiction needed only to investigate and prosecute genuinely the relevant serious crimes to ensure no interference from the court.

18. The court too should be free of interference from the Security Council. Although United Nations bodies should have some role, the court must not be paralysed by the Council and must be able to act even if a particular matter was on the Council's agenda. However, a temporary suspension of the court's activities might be needed in situations such as delicate peace negotiations. A tightly constrained provision permitting the Council to delay prosecutions while Chapter VII measures were under way could be therefore considered; such a power should be exercisable only by affirmative decision of the Council and be limited in duration.

19. An international court was needed to demonstrate the international community's abhorrence of atrocities, would be an important victory in the battle against impunity and should be permanent to avoid the expense of establishing ad hoc bodies for each situation. It should be set up before the end of the century and before there was another catastrophe.

20. Mr. CHOWDHURY (Bangladesh) said that the most important outstanding issues were those of the court's independence from the Security Council, and its jurisdiction. His Government believed that Security Council involvement should be minimal, although it was flexible on allowing the Council to bring situations to the court. It was particularly concerned about draft paragraph 3 of article 23; preventing the court from prosecuting where the Council had been seized under Chapter VII of the Charter would be tantamount to making the court subservient to the Council, as the core crimes were most likely to occur in Chapter VII situations. Therefore, a careful balance must be struck between the effectiveness of the court and the role of the Security Council.

21. There was so far no consensus on the court's jurisdiction. In that connection, he recalled that aggression had been one of the crimes around which the United Nations had initially conceived the idea of an international criminal court, in the context of the adoption in 1948 of the Convention on the Prevention and Punishment of the Crime of Genocide. The Nuremberg Tribunal had described aggression as the supreme international crime and had tried war criminals without a universally accepted definition. If the international criminal court was to have jurisdiction over the most serious international crimes, aggression must be included.

22. It would undermine the independence and effectiveness of the court if its inherent jurisdiction were weakened by opt-in and opt-out provisions, the more so since for many of the core crimes and even some treaty crimes State

connivance or even involvement could not be ruled out. However, there was apprehension about the court's absolute use of its inherent jurisdiction, so it should be balanced by a strong complementarity regime.

23. Enforcement was a fundamental issue, and the draft text from the International Law Commission had made no provision for it. He expressed the hope that the Preparatory Committee would be able to fill that lacuna by incorporating explicit provisions on responsibility and related mechanisms for apprehending criminals indicted by the court, so that the court would not be handicapped as the tribunals for the former Yugoslavia and Rwanda had been.

24. He expressed his Government's gratitude to the Government of Italy for offering to host the diplomatic conference in 1997, and, on behalf of the 48 least developed countries, the gratitude of their Governments to contributors to the trust fund facilitating their participation.

25. Non-governmental organizations and members of civil society had played an important role in the process of establishing an international criminal court, and their active involvement should continue to be encouraged.

26. Ms. DICKSON (United Kingdom) said that her delegation fully endorsed the statement made by the representative of the Netherlands on behalf of the European Union. Her Government was strongly committed to the early establishment of the international criminal court; a fully effective institution was required to bring to justice those persons accused of the most serious crimes of international concern.

27. The two sessions of the Preparatory Committee held in 1997 had been of key importance to the outcome of the diplomatic conference, and the same would be true of the two remaining sessions. It was very important that the Preparatory Committee should complete its work on the general principles of criminal law, and try to reach agreement on the definition of crimes against humanity and war crimes. The text on complementarity was a good compromise text. Further progress must be made on procedures, an area which was crucial to the effective working of the court. The general acceptance of the idea of a pre-trial chamber, a concept which did not exist in common law, was an example of the spirit of cooperation which was essential to the successful outcome of the discussions. Delegations could not adhere rigidly to their own legal systems, but must take what was best and most appropriate from each. Further informal discussion was needed on the question of trigger mechanisms so as to achieve a greater convergence of views.

28. Her delegation believed that if the diplomatic conference was to be manageable, real attempts would have to be made to draw up negotiated texts at the Preparatory Committee's remaining sessions so that only major issues of difficulty were left to be resolved at the conference. At the remaining sessions, delegations would have to avoid the temptation of engaging in lengthy repetitions of well-known positions.

29. Her delegation welcomed the participation of non-governmental organizations at Preparatory Committee meetings.

30. Mr. DHUNGANA (Nepal) said that his delegation favoured the early establishment of an international criminal court. It welcomed the establishment of the trust fund to facilitate the participation of the least developed countries in meetings of the Preparatory Committee.

31. The issue of complementarity was instrumental in determining the cooperative relationship between the court and national courts. The principle of primacy of national jurisdiction must be upheld; the court should not supplant national courts or become an appellate court. A clear jurisdictional boundary between national courts and the international criminal court was also necessary to avoid overlapping in the administration of justice.

32. At first, the court should have jurisdiction over certain core crimes of international concern, which must be properly defined. The issue of treaty-related crimes could be taken up at the review stage after the court became operational, to avoid unnecessarily prolonging the debate and delaying the establishment of the court. His delegation welcomed the broad agreement among delegations on the definition of genocide and crimes against humanity, and hoped that the difficulty in defining the crime of aggression and war crimes would be overcome in an atmosphere of cooperation.

33. His delegation felt that the primary role of the Security Council in the maintenance of international peace and security must remain paramount; at the same time, the effectiveness and independence of the court must be ensured. Article 23 of the draft statute needed to be more precisely defined so as to establish a balanced relationship between the court and the Security Council. Much depended on the political will of Member States; however, a court without jurisdiction over the crime of aggression would fall far short of the expectations of the international community.

34. His delegation welcomed the contribution of non-governmental organizations to the meetings of the Preparatory Committee.

35. Mr. AL SAIDI (Kuwait) said that his country welcomed the progress that had been made thus far in efforts to establish an international criminal court and a legal instrument which would seek to establish justice for and equality of all individuals and States. His delegation wished to stress the importance of the widest possible participation in that effort, in order to ensure plurality of representation and support for the court itself.

36. The inherent jurisdiction of the court should be limited to a small number of core crimes, namely, the crime of aggression, crimes against humanity, war crimes and the crime of genocide, whose elements and definitions should be clearly identified. If that was achieved, a decisive blow would be delivered to the perpetrators of the most heinous crimes.

37. Regarding the issues on which agreement was yet to be reached, he said that his delegation believed that the focus should shift away from the rights of the accused to consideration of the right of the victim to fair and just compensation for injuries sustained. The court should also have the power to impose a death sentence, particularly for very grave crimes against

international peace and security, taking account also of the scale of the crime, the number of victims and the extent of damage done.

38. His delegation's concern and support for the prompt establishment of an international criminal court was motivated by its experiences during the Iraqi invasion and occupation of Kuwait, when the leadership of the Iraqi regime had committed a series of war crimes and serious violations of international law. It was not appropriate to list the crimes and violations that had been committed, and to which the people of Iraq continued to be subjected; however, Kuwait looked forward to the day when the perpetrators would be brought to justice and would receive the punishment they deserved.

39. His delegation supported the preparation of a consolidated text and looked forward to the diplomatic conference in Rome, which, with the broad participation of States, non-governmental organizations and other bodies, would ensure the universality of the court and its statute.

40. Mr. GALICKI (Poland) said that his delegation welcomed the progress made by the Preparatory Committee. Poland felt that, at least in the initial stage, the court's jurisdiction should be limited to the most serious crimes of international concern, so as to facilitate and accelerate the establishment of the court. Crimes under the jurisdiction of the court must be precisely defined in the statute to avoid legal uncertainty. There seemed to be overwhelming support for the inclusion of three core crimes, and the court should have inherent jurisdiction over those crimes. Treaty crimes, some of which were especially dangerous for the safety and stability of the international community, as reflected in the international instruments on those crimes, should be included in the court's jurisdiction. Since the catalogue of those crimes was constantly being expanded, a review mechanism should be included in the statute of the court to enable States parties to supplement the list of treaty crimes.

41. The inclusion of a crime of aggression in the inherent jurisdiction of the court required careful consideration, primarily from the legal point of view. A satisfactory legal definition must be worked out, and a clear differentiation must be made between acts of States and acts of individuals. The role of the Security Council in determining the existence of an act of aggression must be borne in mind, and every effort must be made to avoid possible interference between the fields of competence of the Security Council and the court.

42. The principle of complementarity was crucial to the operation of the court; the court would assist national judicial systems and complement them when necessary. The document adopted by the Preparatory Committee was too complex, and that could adversely affect its acceptability.

43. The trigger mechanism should include the power of the prosecutor to initiate investigations ex officio, since that would substantially strengthen the position of the court. His delegation welcomed the idea of a pre-trial chamber with the power of checking on the lawfulness of the prosecutor's conduct. The powers of the Security Council as a trigger mechanism should be limited to the possibility of referring a matter, but not a case, to the court,

without prejudice to the role of the Security Council in maintaining and restoring international peace and security in accordance with the Charter.

44. The statute of the court should contain provisions on the general rules of criminal law, including the principles nullum crimen sine lege and nulla poena sine lege, along with the principle of non-retroactivity. With regard to penalties, his Government would have great difficulty in supporting any proposal for the inclusion of the death penalty, which had recently been eliminated in Poland.

45. His delegation supported the view of the European Union that the concepts of the universality of the court and its effective powers must be properly harmonized. The court must have effective competence in the field of criminal jurisdiction, and must be accepted by States as widely as possible.

46. Mr. WELBERTS (Germany) said that his delegation fully shared the views expressed by the representative of the Netherlands on behalf of the European Union.

47. For the court to be effective, there were four requirements: the principle of complementarity, which meant that the court would be able to act only when national courts were unable or unwilling to prosecute; limitation of the court's jurisdiction to four universally punishable core crimes, namely, genocide, crimes against humanity, war crimes and the crime of aggression; the power of the court's prosecutor to initiate investigations ex officio; and protection of the court's independence against political influence, by States or by the Security Council, while fully respecting the Security Council's responsibilities under the Charter.

48. Germany was encouraged by the broad support for its initiative for the inclusion of the crime of aggression in the statute, and would pursue its efforts in that direction. It recognized the Preparatory Committee's concerns about achieving a balance between the need for the court to be unimpaired by political influence and the responsibilities of the Security Council.

49. On the issue of war crimes, his delegation hoped that a precise legal definition could be worked out as soon as possible, in accordance with current international law and existing legal instruments. It hoped that the inclusion of crimes committed in internal armed conflicts could be agreed on to the extent possible under established customary international law.

50. It was to be hoped that the largest possible number of States would participate in the diplomatic conference, which should last no less than five weeks with the aim of adopting a simple, clear text containing basic elements of procedure and fundamental principles of law. His delegation agreed that the Secretariat should be requested to prepare draft rules of procedure to be considered by the Preparatory Committee and adopted by the diplomatic conference. It looked forward to meaningful participation by non-governmental organizations and by members and staff of the ad hoc tribunals for the former Yugoslavia and Rwanda.

51. Mr. CHKHEIDZE (Georgia) said that the progress achieved should in no way slow down the momentum or lead to a slackening of efforts. The establishment of an international criminal court was one of the most important developments of the post-war era, as repeatedly stressed by the President of Georgia in his statements in different international forums. The establishment of the court would significantly contribute to the strengthening of the rule of law as a fundamental principle of every international system of justice. The experience gained from the work of the ad hoc tribunals established for the former Yugoslavia and Rwanda must be taken into consideration.

52. His delegation supported the idea that the court should be established under a multilateral treaty. The court's relationship with the United Nations would be based on the conclusion of a relationship agreement between the United Nations and the court. His delegation also agreed that the court should be established as a permanent institution that would sit only when cases were submitted to it. It welcomed the broad agreement on the definitions of genocide and crimes against humanity, and the progress made towards defining the crime of aggression. The court should have jurisdiction over the most serious crimes posing a threat to the international community, regardless of whether those crimes were provided for under treaties specified in the statute or in general international law. His delegation supported the principle of complementarity.

53. The establishment of the Trust Fund, to facilitate the participation of the developing countries in the Preparatory Committee and at the diplomatic conference, was to be welcomed.

54. Mr. SYARGEEU (Belarus) said that his country firmly supported the establishment of an international criminal court. It strongly believed that the court should be established as an independent institution and should be fair, efficient and effective. Belarus was in favour of a close interconnection between the court and national judicial organs; the court should be impartial, free of political interference, and should complement national criminal justice systems when they were not effective. However, the principle of complementarity should not result in imposing unnecessary limits on the court's jurisdiction.

55. His delegation supported the tendency to limit the court's jurisdiction to core crimes, and agreed that the court should have inherent jurisdiction over genocide. It felt that crimes against humanity should not be linked with the existence of an armed conflict; the only element to be taken into account should be their widespread and systematic character. His delegation supported the inclusion of the crime of aggression, which, in view of its particularly serious character, should be within the court's inherent jurisdiction. The list of crimes referred to in article 20, subparagraph (e), (A/49/10, chap. II) was incomplete and should be extended by including Protocol II additional to the Geneva Conventions of 12 August 1949. Recent events had shown that most serious violations of international humanitarian law now occurred in armed conflicts of a non-international character.

56. His delegation supported the provision of article 23 enabling the Security Council to make use of the court on a permanent basis; however, the court should be bound by Security Council decisions only when an act of aggression had been committed, as stipulated in paragraph 2; paragraph 3 should be deleted.

57. Belarus welcomed the detailed provisions dealing with investigation and prosecution, but felt that the category of parties which could request the court to review a decision of the prosecutor should be broader; any State party to the statute which accepted the court's jurisdiction with respect to a crime constituting the substance of a case, as well as the Security Council in all circumstances, should be entitled to request the court to review such a decision.

58. The court should be established as an independent organ closely linked to the United Nations. Its relationship to the United Nations could be established through the adoption of a resolution by the General Assembly and the Security Council and by conclusion of an agreement, which would be subject to approval by the States parties to the statute. The draft agreement should be reviewed at the conference of States parties, and the United Nations should ensure the court's financing on the basis thereof. The covering treaty should stipulate a fairly inflexible procedure for amendment of the statute, thus guaranteeing the stability of its provisions.

59. The Preparatory Committee should now focus on substantial and procedural issues, and should draw up the rules of procedure for the diplomatic conference on the basis of inter-sessional informal consultations. The issues of the role of the Security Council and the inclusion of the crime of aggression were political matters which should be dealt with at the diplomatic conference.

60. His delegation welcomed the establishment of a trust fund to support the participation of the least developed countries in the preparation and holding of the conference.

61. Mr. BENITEZ SAENZ (Uruguay) said that, following the statement by the representative of Paraguay on behalf of the Rio Group, he wished to summarize his country's position with regard to the proposed international criminal court. His country was in favour of establishing such a court, which could undertake the prosecution of grave crimes meriting the condemnation of the international community. It would replace the ad hoc tribunals set up in response to every new crisis and would even be beneficial from the budgetary point of view, although the economic aspect was not a decisive factor. It was crucial that such a court should be independent of all States and organizations; independence was a basic pillar of democracy. With regard to complementarity, the definitive balance required had not yet been struck. The principles of criminal law should be incorporated in the court's statute for substantive and procedural matters alike and there must be safeguards for both States and accused. It was important that account should be taken of the laws in the State concerned, in the State of nationality of the accused and the State where he had his domicile or locus standi. The court's jurisdiction should not be retroactive: it was in fact impossible to conceive how the court could have retroactive jurisdiction. As to the list of crimes covered by the court's jurisdiction, he considered that it should include the grave crime of international terrorism. He trusted that a satisfactory text would be adopted; priority must be given to the quality of the text in order to ensure that it gained widespread support.

62. Mr. HASSAN (Pakistan) said that, given the need for an international criminal court, it was regrettable that there remained so many square brackets

in the draft text of the statute. He wished, however, to make a general policy statement on some of the issues of fundamental importance.

63. On the principle of complementarity, he said that his delegation's position was based on the universally accepted concept of the sovereignty of States. National laws should have primacy and his delegation was pleased to note that that principle had been included in the draft statute, although it needed further improvement. It was the responsibility of the State to prosecute and punish criminals. An international criminal court should operate only when national laws or procedures were found to be either non-existent or inadequate. The jurisdiction of the court should therefore be limited to the core crimes and even then the court should exercise jurisdiction only if the State concerned decided that it was unable to do so. In other words, his delegation supported the concept of a consensual regime rather than that of inherent jurisdiction. National courts were better suited to deal with most cases.

64. With regard to the list of specified crimes, his delegation supported the inclusion of the most heinous, such as genocide, crimes relating to the violation of the laws and customs of war and crimes against humanity. It was not, however, in favour of including the crime of aggression; the United Nations definition of aggression was of a recommendatory nature only, based more on political than legal considerations. A further problem was that the crime of aggression was traditionally considered a crime of States, whereas Pakistan favoured the principle that the jurisdiction of the court should be limited to individuals. Further definition of such crimes as serious violations of laws and customs of war and crimes against humanity was also required. In addition, Pakistan believed that the court need not have jurisdiction over treaty crimes, since a State itself could prosecute for offenses committed under treaties.

65. His delegation reaffirmed its fullest support for the early establishment of an independent international criminal court whose integrity was fully guaranteed. For the statute to attract universal support, the widest possible participation of States should be ensured. He was therefore glad that a trust fund had been established to enable developing countries to participate in future meetings.

66. Mr. GOCO (Philippines) said that although the Preparatory Committee had made immense progress in formulating a draft consolidated text on the statute of an international criminal court, there remained substantial issues to resolve. Of paramount importance was the issue of the court's jurisdiction. If the right balance was not struck, the court could fail even before the first complaint reached it, as the Working Group on Complementarity and Trigger Mechanism understood all too well. Whatever happened, it was important not to regress; that would be an ominous closing for the United Nations Decade of International Law.

67. War crimes, crimes against humanity and genocide - the core crimes - should be under the inherent jurisdiction of the court, as should the crime of aggression, if a proper legal definition could be attained. Nothing in the concept of inherent jurisdiction excluded criminal jurisdiction in accordance with national law. The complementarity envisaged in article 35 provided for

situations where the court would have jurisdiction when national systems were unavailable, unwilling or simply shielding a suspect.

68. The two existing ad hoc international tribunals and the draft statute by the International Law Commission had attempted to combine the essential aspects of the adversarial/common law system and the inquisitorial/civil system. Attention had to be paid to the subtleties, however, since institutions of different systems were not easily transplanted and concepts, functions and procedures could vary widely. The Charter of the International Military Tribunal at Nuremberg had summarized the pertinent general rules of procedure and evidence in only five pages of text. Substantive law had since been developed and codified, with the Convention on the Prevention and Punishment of the Crime of Genocide, the Geneva Conventions and Additional Protocol I to the Geneva Conventions; but no comparable advance had occurred with regard to the rules of evidence and procedure, even if the unparalleled development of international human rights standards provided guidance for the conduct of a fair trial and due process in criminal proceedings.

69. The Working Group on Procedural Matters should continue to elaborate articles embodying general principles with enough flexibility to withstand the test of time and various environments. A balance should be found between the rights and protection afforded to the accused, victims and witnesses. Innovative solutions to technical issues, such as that relating to a pre-trial chamber, had been put forward; it was encouraging that an overemphasis on national laws could be avoided. On a solid foundation, an adequate complaint, investigatory and procedural mechanism could be built that would not be burdened with a request for consent at every step. Safeguards existed, but the new provisions would ensure that the court did not merely offer justice à la carte or for convenience. The establishment of a real and effective international criminal court should not be clouded by political formulations of what the law was. That would be to trivialize the world legal order and its promise for the sovereign equality of States.

70. Mr. CASTELLON DUARTE (Nicaragua) said that numerous legal and political difficulties had arisen during the negotiations over the establishment of an international criminal court, although such a court was a necessity in a century that had seen the most terrible crimes that humanity had ever suffered. The draft statute was littered with square brackets, which would increase still more in the forthcoming meetings of the Preparatory Committee. His delegation called on all participants to act in a spirit of cooperation and compromise, so that with more flexibility a text satisfactory to all could be achieved.

71. The court should be an efficient, independent and impartial judicial body, like any court, and should be established under a multilateral treaty. It should be permanent and the judges should represent the various legal systems and the various geographical regions. As the vast majority of delegations had stated, its jurisdiction should be complementary; it should therefore act only when a national jurisdiction was non-existent or not functioning. Any other course of action would be a denial of justice. The independence of the prosecutor should be assured under the statute and he or she should have the power to carry out the relevant investigations and procedures, with cooperation from all States, without any compromise of impartiality.

72. The court should have jurisdiction only over the most serious crimes, those of most concern to the international community, such as genocide, war crimes, crimes against humanity and the crime of aggression. His delegation also considered that the list should include the crimes of terrorism and drug trafficking.

73. The statute should contain safeguards for the human rights of the accused; and his country could not accept that the death penalty should be available, since it did not exist in Nicaragua's national legislation and the country was bound by such international treaties as the International Covenant on Civil and Political Rights and the San José Pact.

74. With regard to the difficulties that many delegations had concerning the proper role of the Security Council, given its highly political nature, his delegation was of the view that the Security Council should have a limited role: the initiation of proceedings and the submission of accusations, accompanied by the necessary documentation. That much was due to it as a body made up of States, but otherwise proceedings should be initiated by States or by the prosecutor.

75. Ms. EUGENE (Haiti) said that she wished to add some remarks to the statement - which her delegation fully supported - made by the representative of Trinidad and Tobago on behalf of the Caribbean Community. Haiti was strongly in favour of the establishment of an international criminal court, the need for which grew ever more urgent. The court should be independent and impartial, since on that rested its credibility. Its aim should be to dissuade the perpetrators of terrible crimes, but the death penalty should not form part of its statute. Significant progress had been made, on drafting the Statute and outstanding questions would undoubtedly be dealt with during the forthcoming meetings of the Preparatory Committee.

76. It was most important for the court to be universal, but that could be achieved only if all States participated in the diplomatic conference to be held in Italy in 1998. She encouraged industrialized countries to contribute generously to the Trust Fund that enabled countries with fewer resources to take part.

77. Mr. KITTIKHOUN (Lao People's Democratic Republic) said that, while the Preparatory Committee had made much progress, differences of position still existed on many major issues. It was essential that they should be resolved as soon as possible, so that the future international criminal court could secure the widest acceptance by the international community.

78. States had the primary responsibility for the prevention and punishment of international crimes, as well as other crimes, through their own judicial systems. An international criminal court should not supersede national courts. To avoid unnecessary jurisdictional conflicts, a clear provision should be formulated, and accepted by all, defining the respective jurisdiction of national courts and the international criminal court.

79. His country attached the highest importance to the principle of State sovereignty in the conduct of affairs in international relations. A State,

large or small, had the right to choose its own path. The jurisdiction of an international criminal court should therefore be based on the consent of States. His country had great difficulty in accepting the idea of inherent jurisdiction for the court without the consent of States in respect of some crimes, because that ran counter to the two great principles of State sovereignty and complementarity.

80. His country would spare no effort in contributing actively to the difficult work that lay ahead in resolving the remaining differences on major issues, so that an international criminal court universally accepted by States could be established.

81. Mr. ZMEEVSKI (Russian Federation) said that the Preparatory Committee had made some progress in reconciling positions on a number of issues, particularly on the rules of procedure based on different legal systems. The need to establish a pre-trial chamber to supervise the prosecutor's conduct and to decide on questions of law arising at the investigation stage had been practically agreed upon. The text of articles relating to the presumption of innocence and the protection of the rights of the accused had been improved. Remarkable progress had been made on the issue of complementarity, with the result that draft article 35, on issues of admissibility, appeared to be acceptable to most delegations. The court should not be a substitute for national systems but should complement them in strictly defined cases; the new draft article 35 succeeded in minimizing any possible subjective approach.

82. Many key articles of the statute, such as those concerning jurisdiction, the relationship with the Security Council, the role of the prosecutor and the trigger mechanism, contained a large number of square brackets. There was still a wide divergence of views on those issues, constituting a stumbling block to further progress.

83. His delegation believed that the jurisdiction of the court should cover acts threatening the maintenance of international peace and security, including the planning, preparation and initiation of a war of aggression, genocide, war crimes, crimes against humanity and serious terrorist acts affecting the entire international community. While supporting the establishment of an autonomous and independent court, the Russian delegation believed that it should be closely connected to the United Nations. One element of such a connection might be a provision enabling the Security Council to refer relevant situations to the court, primarily those covered by Chapter VII of the Charter of the United Nations. With regard to jurisdiction and the trigger mechanism, the court should have inherent jurisdiction regarding the crime of genocide and regarding cases referred to it by the Security Council. Its jurisdiction with respect to other crimes would be optional. At the same time, there should be no infringement on the Security Council prerogative to act in situations threatening international peace and security. In any event, if a case was referred by the Security Council, that was a reliable guarantee that the crime concerned was a serious one under general international law.

84. The prosecutor, who would inevitably be subjective, as previous experience had shown, should not be able to initiate proceedings ex officio. The world was diverse, with room for various views and interests. That must be taken into

account if a court truly having the support of the international community was to be established. The universality of the court was of paramount importance.

85. Although much had already been done, a few key issues still lacked mutually acceptable solutions; his delegation therefore welcomed efforts to intensify work in the Preparatory Committee. At its forthcoming session, in December 1997, the Preparatory Committee should discuss certain issues relating to the general principles of international law and rules of procedure, although his delegation thought that it was unlikely that discussing the definition of crimes again would be productive, which was not to say that it should not be discussed at the diplomatic conference.

86. With only two sessions remaining before the diplomatic conference, the Preparatory Committee should focus on reaching the greatest possible degree of agreement on the outstanding issues involved in preparing a consolidated draft text of the convention establishing an international criminal court with the widest possible support.

87. The preparation of the rules of procedure of the conference and the question of the participation of non-governmental organizations would best be dealt with in informal, inter-sessional consultations between Preparatory Committee members.

88. His Government saw no serious problems with holding the diplomatic conference in 1998, believing that any remaining differences could best be resolved there, and believing also that it was normal practice and no contradiction of the Preparatory Committee's mandate to submit an unfinalized text.

89. Mr. SERGIWA (Libyan Arab Jamahiriya) said that in supporting the establishment of an international criminal court with jurisdiction over core crimes that jeopardized the interests of States and the values of society, his delegation hoped that the court would have the power to take all measures which the international community had avoided taking to prevent crises which were damaging to all people. In the case of the Lockerbie crisis, the provisions of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation had been ignored, in order to allow certain permanent members of the Security Council to inflict damage on the people of the Libyan Arab Jamahiriya through a regime of sanctions lasting over five years. The international criminal court should be established on the basis of the principle of universality, with a clearly defined jurisdiction, accepted by the largest possible number of States, thus ensuring an end to violations of international law and principles.

90. The court should enjoy full independence and should exercise impartiality and objectivity in its selection of judges and prosecutors, ensuring that the main legal systems of the world were fully represented and the principle of geographical distribution was applied. However, that did not mean that States should be required only to nominate their own nationals. The court should act as a complement to, not a substitute for national courts and should have limited jurisdiction over cases which national courts were unable or unwilling to deal with.

91. His delegation supported the text of article 20 of the International Law Commission's draft statute for an international criminal court (A/49/10, chap. II) with regard to the crimes within the jurisdiction of the court, particularly the crime of aggression, and believed that that crime should be further defined and included in the statute as a matter of priority. The crime of aggression should be broadly defined to include violations of laws and principles of war, the use of weapons of mass destruction, aggression against civilians, the looting of property and military attacks against civilians by any State. The concept should also include inhumane practices against civilians, such as murder, torture, biological testing, displacement of persons and changes to the demographics of a population. If the crime of terrorism was to be included under the jurisdiction of the court, his delegation would like to see that crime defined taking into consideration the distinction between terrorism and the rights of people to self-determination, to freedom and to oppose occupation.

92. His delegation rejected the provisions of paragraphs 1, 2 and 3 of article 23 of the International Law Commission's draft statute, concerning action by the Security Council, since it believed that the relationship between the Security Council, which was a political body, and the proposed international criminal court, which was a judicial body, should be based on neutrality and impartiality; otherwise the credibility and independence of the court would be fatally undermined. That was particularly important because experience had shown that certain members of the Security Council which enjoyed the veto had been able to impose resolutions reflecting their own particular interests.

93. The Libyan Arab Jamahiriya supported the provisions contained in the articles in part 4 of the Commission's draft statute, relating to investigation and prosecution, since they provided guarantees that the accused would receive a fair trial, would be provided with representation if he or she was unable to afford it, would not be forced to testify against himself or herself or to confess guilt and would be protected by measures which would ensure that information provided was not publicly disclosed and thereby subject to the pressures of the world media. With regard to article 42, paragraph 2 (b), of the draft statute, his delegation believed that that provision opened the door to unregulated challenges to the judicial systems of other countries and that if there was a need to retain it, the wording should be amended to the effect that the measure was exceptional and was predicated upon allegations that the first court had been a sham.

94. Ms. FERNANDEZ DE GURMENDI (Argentina) stated her Government's full support for the position expressed by the representative of Paraguay speaking on behalf of the Rio Group, of which her country was a member.

95. Provisions characteristic of a penal code, a code of criminal procedure and a judicial cooperation agreement had been worked out, which would have been a significant achievement within a single national justice system that did not need to take into account so many concerns and at the same time combine different criminal justice systems. That being the case, it was obvious that the text being developed was not and could not be an agreed one; rather, it was a basic text for the negotiations at the diplomatic conference, which was the only appropriate forum for turning a widely supported, major initiative into the

reality of an international criminal court. She welcomed in particular the support for the initiative in Latin America and the Caribbean, which demonstrated the region's commitment to the cause of justice and peace.

96. The draft text offered alternatives and possible compromises that would allow negotiations at the conference to succeed within its proposed five-week duration. The text on complementarity in particular should help solve, rapidly, a number of crucial, related questions that affected the very nature of the court.

97. In terms of procedure, the outline for a pre-trial chamber opened the way for future agreement; it was an innovative step that not only achieved a compromise between different legal systems but was also suited to resolving the specific problems involved in trying crimes internationally.

98. The proposal that the prosecutor should initiate proceedings ex officio could also make agreement on other fundamental issues easier, and could be more easily accepted if the proposals to allow participation by another organ of the court in the prosecutor's decision were taken into account. In that connection, the proposal to amend the content of accusations by States to allow them to submit to the court situations rather than individual cases was of interest.

99. There had been a trend towards too much detail in the discussions on procedural issues, and her delegation believed that the statute of the court should contain only the fundamental principles needed to uphold legality and due process: the detail should come later. Otherwise, the preparatory work would be useless in that it would have introduced elements of rigidity into the statute that could militate in future against the effective operation of the court.

100. The impetus and technical support supplied by non-governmental organizations had been a constant reminder that an international criminal court to punish crimes by individuals against individuals was essentially a desire on the part of civil society that went far beyond the area of concern of national Governments. Participation by non-governmental organizations should therefore be guaranteed and extended during the diplomatic conference, which she thanked the Government of Italy for offering to host.

101. Ms. WONG (New Zealand) said that her delegation fully supported the position stated on its behalf earlier in the meeting by the representative of Canada.

102. Her delegation had hosted a meeting of non-governmental organizations during the sessions of the Preparatory Committee and continued to assist them with the provision of conference services as they had made the Committee's work dynamic by bringing ideas and commitment to the process of establishing an international criminal court.

103. She drew attention to the work of the Women's Caucus for Gender Justice, which had raised the question of the definition of war crimes and the prominence that women expected to be given to rape, sexual violence and enforced prostitution in that definition: the experience in Bosnia and Herzegovina and

in Rwanda had shown clearly that rape, sexual violence and enforced prostitution were instruments of warfare, not a subset of degrading and inhumane treatment, the traditional way of looking at such crimes under international humanitarian law. Also, there was a problem to do with the defence of consent in rape, sexual violence and enforced prostitution that should be examined by the Preparatory Committee.

104. Forcing children to serve in military forces and the starvation of children were also issues of particular concern to women, as was the release of information that resulted in the identification of witnesses and victims to perpetrators, a problem identified in Rwanda and the former Yugoslavia.

105. The terms under which perjury could be committed before the court needed examination: to encourage the widest possible opportunity for witnesses to make statements to the court, witnesses should not be held responsible for perjury if statements had been taken in situations far removed from the court.

106. The question of compensation from defendants was also one of concern to women. Her Government strongly supported those concerns, and welcomed in that connection the efforts of non-governmental organizations to organize global conferences in the run-up to the diplomatic conference, in particular the efforts of the No Peace Without Justice organization.

107. Flexibility would be needed in determining the rules of procedure for the diplomatic conference in order to enable non-governmental organizations to continue with their consultative role in the negotiations for the international criminal court.

108. The role of the General Assembly as it related to the court would need to be further explored, especially if there was to be a role for the Security Council: a role for the Council possibly needed to be balanced by a role for the Assembly that would confirm that of the Council. Despite widely held opinions to the contrary, the Charter did not provide for the Council to have exclusive competence in matters of international peace and security.

109. Her delegation remained open on the issue of terrorism as a crime falling under the jurisdiction of an international criminal court.

110. Her delegation had consistently expressed its concerns about the issue of transparency in open-ended groups: whether the drafting committee at the conference should be open or limited in its membership would have to be discussed.

111. When the conference had concluded its work, there must be a mechanism to bring the negotiations to an end even if unanimity had not been reached; as in the process leading to a ban on landmines, it was unacceptable for negotiations to be protracted unnecessarily through insistence on consensus, as the result was an alternative process. If there was unfinished business, New Zealand would not be in favour of any procedural documents that held up the adoption and signature of the statute at the conference, which it hoped would become a reality in Rome in 1998. In that connection, she commended the efforts of the Italian delegation.

112. Mr. OBEID (Syrian Arab Republic) said that his delegation welcomed the progress made towards establishing an international criminal court, which would realize the dream of generations by creating a body that would put an end to the perpetration of some of the most serious crimes against humanity. The court should be permanent and universal in nature, representing a diversity of legal systems and exercising its jurisdiction free from external influence and political pressure. In that regard, its relationship with the United Nations should be both limited and clearly defined, with the Security Council in particular being unable to exert pressure on it. Article 23 of the draft statute of the international court should make it clear that the court was in no way subordinate to or required to carry out the orders of the Security Council, but rather was a judicial body emanating from the United Nations and the General Assembly and equal in importance to its bodies and agencies, particularly judicial bodies such as the International Court of Justice. The relationship between the court and the United Nations should be strong and firm and defined through a special accord between those two institutions, to be included as an annex to the statute of the court, or defined at a later stage, subject to the agreement of the General Assembly.

113. The concept of complementarity was central to ensuring that the court would not be used to usurp the role of national judicial bodies or to interfere in the domestic affairs of States. The principle of sovereignty was inviolable, and the conditions and mechanisms by which the court would exercise its jurisdiction should be clearly defined and delineated.

114. His delegation fully supported the inclusion of the crime of aggression in the statute of the court, and hoped that, despite the difficulties in achieving a clear and detailed definition of the crime, progress would be made so that that central issue could be incorporated in the statute. The special responsibility of the Security Council for matters relating to crimes of aggression should not detract from the court's work. The Court should have the power to determine for itself whether crimes of aggression had been committed. Otherwise, it would be unable to deal with cases of crimes of aggression because they had not been described as such by the Security Council.

115. Despite a number of Security Council resolutions, there had been no effective action to put an end to crimes of aggression in the Middle East region. Populations living under occupation had been subjected to the worst types of war crimes and crimes against humanity, as well as hostile action by forces of occupation. It was through support for the establishment of an international criminal court that his delegation hoped to put an end to such crimes and to bring their perpetrators to justice.

116. While the crime of aggression was of extreme importance, however, the manner in which certain members of the Security Council used their veto suggested that the court could be hampered in fulfilling its mandate if the Security Council were to have undue influence over its power to deal with those crimes.

117. It was important to achieve consensus on the issue of determining whether a case before the court was inadmissible; his delegation thanked Canada for its efforts in that regard. The prosecutor had a very important role to play and

should be allowed to carry out his work without external influence and political pressure. However, the prosecutor should not be granted the power to initiate investigations ex officio; that should be reserved for States alone.

118. His delegation thanked the Secretary-General and States Members for their contributions to financing the participation of developing countries in the process; at the same time, it appealed for better timing of future sessions in order to avoid overlap and straining of delegations' resources. Given the number of outstanding issues to be dealt with, his delegation was also in favour of adding a few more days to the upcoming session of the Preparatory Committee. It wished to express its gratitude to the Italian Government for its offer to host the diplomatic conference in Rome. The five weeks proposed for the conference were perfectly adequate to deal with outstanding issues.

119. Mr. AL-ADHAMI (Iraq), speaking in exercise of the right of reply, recalled in connection with the statement by the representative of Kuwait the proverb that people who live in glass houses should not throw stones.

120. The representative of Kuwait had referred to a number of measures and in so doing had been reaffirming a number of untruths. The representative of Kuwait should be cautious with such inaccuracies lest, having heard so many lies, he began to believe them. The representative of Kuwait had therefore been shedding only crocodile tears.

121. To clarify the Kuwaiti Government's policy and demonstrate the degree of its attachment to international law, it was necessary to mention only that that Government financed and supported outlaw gangs that carried out terrorist bombings and the like in various parts of Iraq leading to massacres of large numbers of innocent victims, with the goal of jeopardizing security and stability there in order to change the current regime in a goal with no basis in the international law that the representative of Kuwait had said the Kuwaiti Government believed in so firmly.

122. Kuwait was also financing the two no-fly zones in Iraq, which were policed by armed forces violating Iraq's sovereignty and territorial integrity. Security Council resolutions had been adopted to that end, in contravention of the Charter of the United Nations.

123. Perhaps the representative of Kuwait was unaware that the acts of his Government were actually crimes of aggression, a concept which his delegation wished to include in the text of the draft statute; one could only be surprised that he had spoken as he had, particularly as he was a member of the Sixth Committee.

124. Mr. AL SAIDI (Kuwait), speaking in exercise of the right of reply, said that one of the problems with lying was that if you did it enough people might end up believing you. However, the international community was fully aware of Iraq's acts of aggression against Kuwait and the occupation that had followed. Iraq's presence in Kuwait had been ended only by force and by international alliance. Iraq had failed to comply with a number of Security Council resolutions, contrary to the wishes of the international community. Over 625 prisoners and missing persons were still being held by the Iraqi regime.

125. The statement by the representative of Iraq had itself been full of errors: to set the record straight, Iraq was still not implementing many Security Council resolutions, and the whole world knew and had documentary proof of the Iraqi leadership's many crimes, including crimes of aggression, crimes against humanity, torture and many other shameful acts, for which the Iraqi people bore no responsibility. He wished the representative of Iraq to be reminded that crimes such as occupation were generally recognized to be crimes of aggression, and expressed the hope that the Iraqi regime would comply with the relevant resolutions.

126. Mr. AL-ADHAMI (Iraq), speaking for the second time in exercise of the right to reply, said that the representative of Kuwait had not responded to his comments regarding Kuwaiti policies and the acts of aggression and crimes committed by Kuwait.

127. He would like to remind the representative of Kuwait about the incubator story which the Government of Kuwait and its Ambassador to the United States had concocted, using the Ambassador's daughter to tell one of a series of untruths propagated by Kuwait.

128. Mr. AL SAIDI (Kuwait), speaking for the second time in exercise of the right of reply, said that official, agreed texts existed which led him to believe that the world was witness to the crime of aggression by Iraq against Kuwait. The Sixth Committee was not an appropriate forum to list Iraq's crimes against women, the elderly and children; the list was long and familiar to everyone.

129. Kuwait was pacifist in its foreign policy and had always aimed for peace and security.

The meeting rose at 6.20 p.m.