



General Assembly

Fifty-sixth session

Official Records

Distr.: General
23 November 2001

Original: English

Sixth Committee

Summary record of the 25th meeting

Held at Headquarters, New York, on Monday, 12 November 2001, at 3 p.m.

Chairman: Mr. Lelong (Haiti)

Contents

Agenda item 164: Establishment of the International Criminal Court

Tribute to the memory of those killed in the crash of American Airlines flight 587
from New York to Santo Domingo

This record is subject to correction. Corrections should be sent under the signature of a member of the delegation concerned *within one week of the date of publication* to the Chief of the Official Records Editing Section, room DC2-750, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate corrigendum for each Committee.

01-63254 (E)



The meeting was called to order at 3.20 p.m.

Agenda item 164: Establishment of the International Criminal Court (PCNICC/2001/L.3/Rev.1 and Add.1)

1. **Mr. Corell** (Under-Secretary-General for Legal Affairs, The Legal Counsel) said that, in accordance with General Assembly resolution 55/155, the Preparatory Commission for the International Criminal Court had held two 2-week sessions in 2001, which had been attended by representatives of States which had signed the Final Act of the United Nations Diplomatic Conference of Plenipotentiaries and of other States, of organizations with observer status and of interested regional intergovernmental organizations and other bodies, including the International Tribunals for the Former Yugoslavia and Rwanda. Non-governmental organizations had attended plenary and other open meetings, in accordance with the Commission's rules of procedure. The Secretariat had provided assistance to the Commission and interpretation services, as well as translations of working papers prepared by delegations, coordinators or the Commission itself. The proceedings of the seventh session appeared in all languages under the symbol PCNICC/2001/L.1/Rev.1 and Add.1, 2 and 3 and of the eighth under the symbol PCNICC/2001/L.3/Rev.1 and Add.1.

2. With regard to the two trust funds for facilitating the participation of the least developed countries and other developing countries in the work of the Commission, he drew the Committee's attention to the circular letter by the Secretary-General encouraging States to contribute. Denmark, the United Kingdom and the European Commission had contributed to the fund supporting the participation of the least developed countries, enabling it to provide 34 delegates from the least developed countries with return tickets to the seventh and eighth sessions of the Commission. No contributions had been received for the trust fund that supported the participation of other developing countries.

3. **Mr. Kirsch** (Chairman of the Preparatory Commission for the International Criminal Court) said that much had been achieved over the past year. A total of 139 countries had signed the Rome Statute of the International Criminal Court by the deadline of 31 December 2000 and the number of countries ratifying had doubled: Peru, Nauru and Poland were the latest of the 46 States to have ratified the Statute, which was

now only 14 ratifications short of the 60 required for it to enter into force. There were several other States whose internal ratification processes were at an advanced stage.

4. By the end of its second 2-week session in October 2001 the Commission had completed another significant portion of its work, adopting the following draft texts: the Relationship Agreement between the Court and the United Nations; the Financial Regulations of the Court, together with several draft resolutions to be considered by the Assembly of States Parties; the Agreement on the Privileges and Immunities of the Court; and the Rules of Procedure of the Assembly of States Parties. Out of the eight tasks assigned by the Diplomatic Conference in the area of proposals for practical arrangements for the establishment and coming into operation of the Court, six had been completed. Although some issues had been technically complicated, a constructive atmosphere had prevailed and the instruments had been adopted by general agreement. The inclusive approach adopted had facilitated the ratification of the Statute and increased its acceptability.

5. Although much had been accomplished, much remained to be done; for example practical, immediate issues relating to the establishment of the Court must be dealt with. In that connection, he paid tribute to the work done independently by non-governmental organizations to identify issues that should be dealt with in preparation for the entry into force of the Statute and beyond. He also expressed appreciation of the commitment shown by the Government of the Netherlands, whose Minister for Foreign Affairs had addressed the Commission.

6. The road map prepared by the Bureau of the Commission had identified three areas where provisional rules were needed: human resources and administration; budget and finance issues; and operational issues. Focal points had been appointed for each area and a four-member subcommittee of the Bureau, established to act as intermediary between the Commission and the host Government, would meet before the end of the year. It was also expected that open-ended inter-sessional meetings would continue to take place.

7. The Bureau of the Commission considered that two sessions of two weeks would be required in 2002 in order to finalize work on all the necessary

documents. A draft programme of work had been developed for the first session. The existing working groups — on the first-year budget and on the principles of the headquarters agreement — would continue their work, while one of the two others established at the end of the previous session would start work on such issues as the Bureau of the Assembly of States Parties; the Secretariat of the Assembly; the nomination and election procedure for judges and the Prosecutor; and an agenda. The second session would deal with remaining financial issues, such as remuneration of judges, the Prosecutor and the Registrar, and the victims' fund. The Commission would also continue to prepare proposals for a provision on aggression, as well as discussing ways to enhance the effectiveness and acceptability of the Court.

8. Since the Commission's work had progressed fast, it was increasingly likely that the Statute would enter into force in 2002. That would require the first Assembly of States Parties to be held in the same year, and it was to be hoped that the Committee, in deciding the timing of the Commission's sessions in 2002, would take into account the possibility of the Statute's early entry into force.

9. The tragic events of 11 September 2001 had been on the minds of all delegates to the latest session of the Commission and had put its work into perspective. There was a pressing need to create a permanent international criminal court with jurisdiction over the most serious international crimes. The Commission's work must continue so that the Court was ready to end impunity and bring real justice to victims as soon as it had been established.

10. **Mr. Kanu** (Sierra Leone), recalling that at the time of the Diplomatic Conference the democratically elected President of Sierra Leone had just been reinstated after a coup, said that its experience of atrocious crimes had led his delegation to accord special importance to the need for an international criminal court, so that crimes such as those committed in Sierra Leone should not go unpunished. The international community's greater awareness of the principles of international criminal justice and the significant role of accountability mechanisms in consolidating peace had, indeed, motivated the current negotiations for establishing a Special Court for Sierra Leone, which he urged all delegations to support both politically and financially.

11. His delegation welcomed the progress made with the establishment of the International Criminal Court and the numerous ratifications of the Rome Statute. He paid tribute to the initiatives which had promoted the ratification process in various regions of the world and which offered States practical assistance in drafting their implementing legislation. The Preparatory Commission had achieved much, with its development of the draft Relationship Agreement between the Court and the United Nations, the draft Agreement on Privileges and Immunities, the draft Rules of Procedure of the Assembly of States Parties and the draft Financial Regulations. Provisions that allowed for both rigour and flexibility — such as the decision to provide for an additional appropriation line for unforeseen expenditures, or the recommendation that a contingency mechanism should be introduced — were particularly welcome. Flexibility should also be the watchword of the most recently established working groups. Moreover, particular attention should be paid to the experience of the two existing International Tribunals; lessons should be drawn from a careful analysis of their shortcomings in order to avoid repeating their mistakes.

12. While much had been achieved, no one should underestimate the magnitude of the task ahead. For example, consensus was far from being reached on a definition of the crime of aggression, which was of particular interest to his delegation. Although the recent proposal by the delegations of Bosnia and Herzegovina and of Romania had allowed some progress, several concerns still needed to be addressed. For example, the relationship between the Court and the International Court of Justice should be carefully examined. In no way should the independence of the former be undermined.

13. Following the events of 11 September 2001, some had called for terrorism to be made a crime within the jurisdiction of the International Criminal Court. It could, however, be said that the crimes committed on that day could constitute genocide, crimes against humanity or war crimes, which were already under the Court's jurisdiction. Lastly, he urged delegations which in the past had expressed reservations as to the efficacy and impartiality of an international criminal court to assist in the final efforts to establish the Court and join the common struggle for international justice.

14. **Mr. Huston** (Liechtenstein) said that his Government had deposited its instrument of ratification in October 2001.

15. His delegation noted with satisfaction that work on important instruments had been concluded at the previous session of the Preparatory Commission. It was to be hoped that the remaining issues, including the first-year budget, would be resolved expeditiously at the next session.

16. His delegation also believed that the Committee should allocate two sessions of two weeks each to the Preparatory Commission in 2002. Liechtenstein trusted that the following year would see the first session of the Assembly of States Parties, and it urged the allocation of sufficient resources and conference services to ensure the effectiveness of the session.

17. If the Court was to be capable of meting out international justice effectively from the beginning, it was necessary to avoid a scenario in which the Statute might become legally operative, but the Court would not be able to function. His delegation commended the Bureau on its drafting of a well-considered road map leading to the early establishment of the Court.

18. As efforts were being undertaken at the international level towards the establishment of the Court, national efforts to implement the Rome Statute were equally important. The Court could not function as an international organization alone, solely on the basis of an international treaty and supporting instruments. Its effectiveness relied on domestic laws that allowed unfettered cooperation with the Court, including local investigation and prosecution of the offences enumerated in the Statute. His delegation commended initiatives by Governments, non-governmental organizations and regional organizations aimed at providing assistance to States in the process of ratification and implementation.

19. One particularly commendable initiative was the one undertaken by the Council of Europe, which was acting as a clearing house for discussion and information. In its capacity as chairman of the Committee of Ministers of the Council of Europe, his Government had helped to organize a consultation meeting held in Strasbourg on 13 and 14 September on the implications of ratification of the Rome Statute. He drew attention to the outcome documents of that meeting, in particular, the declaration subsequently

adopted by the Committee of Ministers, which would be circulated to Member States.

20. The terrible events of 11 September 2001 should serve as a reminder that victims should always be the focus of international justice. While no judicial mechanism alone, whether domestic or international, could serve as a sufficient deterrent against the commission of crimes against humanity, institutions such as the International Criminal Court were essential in order to provide recourse to the victims and to delineate acceptable from unacceptable behaviour. The standards embodied in the Statute should be applicable to everyone, regardless of nationality or motive.

21. **Mr. Hønningstad** (Norway) said that the need for the rapid establishment of the International Criminal Court had been demonstrated yet again by the terrorist attacks in the United States on 11 September 2001, which had constituted a crime against humanity within the meaning of article 7 of the Statute of the International Court. A permanent global institution like the Court would not only help to deter such atrocities by reducing the reaction time of the international community, but would also make the likelihood of prosecution more predictable. Justice and legal order were prerequisites for lasting peace and stability, and the Court, by combating impunity, would improve the chances of achieving long-term peace.

22. The foundations for an independent, effective and credible Court had been laid by the Rome Statute and strengthened by significant contributions from all regions, legal systems and cultures during the negotiation process. The Statute laid down satisfactory, written rules of international law on a wide range of issues and, in addition, offered credible protection against biased or arbitrary prosecution, as well as procedural devices to safeguard the secrecy of sensitive or military information. The principle of complementarity with national courts meant that the Court would be a safety net if national investigations or prosecutions were a sham, and its existence might therefore prove to be a powerful incentive for States to display due diligence.

23. A great number of non-governmental organizations had made praiseworthy efforts to further knowledge of the Court and promote its establishment in the near future. It was gratifying to note that many essential texts had already been finalized and that ratification of the Rome Statute was proceeding apace.

All States should ratify and accede to the Statute, since the setting up of the Court would be a decisive step towards ensuring that the most serious international crimes did not go unpunished. To that end, Norway would continue to do its best to foster an atmosphere of trust and constructive dialogue in the Preparatory Commission with a view to securing universal acceptance of the Court.

24. **Mr. Valdés** (Chile), speaking on behalf of the Rio Group, said that the International Criminal Court was an extraordinary tool for combating the culture of impunity that had often favoured the perpetrators of heinous crimes. His Government believed that the Court's establishment would also be a powerful deterrent against future atrocities. It was therefore a critical instrument for strengthening the rule of law and promoting a stable peace.

25. The Preparatory Commission had acted promptly by adopting, in conformity with its mandate, the instruments necessary for the Court to begin its functions once the sixtieth instrument of ratification had been deposited and the period provided for the entry into force of the Rome Statute had elapsed. It was necessary to ensure that the Preparatory Commission had sufficient time in the following year to complete its work. In view of the remaining tasks, it might be necessary to have at least two additional sessions during 2001.

26. It was necessary to plan for the possibility that not only would final meetings of the Preparatory Commission be needed in order to finalize the instruments required for the entry into force of the Statute, but that the necessary mechanisms must be established to enable the first meeting of the Assembly of States Parties to be held. The Rio Group hoped that the resolution to be adopted by the General Assembly at the current session would authorize the Secretary-General to convene such a meeting.

27. The Rio Group also welcomed the elaboration by the Bureau of the Preparatory Commission of the road map of issues remaining to be addressed. The Group supported the establishment of a subcommittee of the Bureau to provide assistance and serve as interlocutor with the host State.

28. Lastly, the Rio Group repeated its invitation to all States that had not yet ratified the Statute to consider becoming parties to it, since the success of the Court would depend to a large extent on the degree of

participation of the international community. It was also important for States to continue to review their domestic procedures for implementation of the Statute, including, in particular, fulfilment of the obligation to cooperate broadly with the Court.

29. **Mr. De Loecker** (Belgium) speaking on behalf of the European Union, the associated countries Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia and Slovenia, as well as Iceland and Ukraine, said that recent events had again demonstrated the urgent need for the International Criminal Court in order to prevent and punish the most serious crimes of concern to the international community, as listed in the Rome Statute. The international community could not remain idle when essential values were attacked and international law, humanitarian law and human rights were violated. The Court would play a leading role in securing respect for those rights and punishing any infringements of them. By ending impunity, the Court would strengthen the primacy of law, crime prevention and international humanitarian law and human rights, while at the same time contributing to the maintenance of peace and international security.

30. The European Union fully supported the establishment of the International Criminal Court and the entry into force of the Rome Statute in the near future. It was taking steps to encourage third States to accede to the Statute. It was ready to share its expertise in the field of incorporating international instruments in national legal systems and already provided assistance, including financial backing, for the action being taken by civil society and non-governmental organizations to promote the setting up of the Court.

31. The European Union was pleased with the growing number of ratifications and called on all States which had not yet done so, to accede to the Rome Statute as soon as possible. Efforts should also be stepped up to enable the Court to begin to function soon after the entry into force of the Rome Statute. While the Preparatory Commission had made considerable headway and its road map was most welcome, the amount of work still to be done should not be underestimated. For that reason, sufficient resources should be allocated to the Commission so that it could fulfil its mission. Two sessions, each lasting two weeks, should be scheduled for the following year.

32. The steps taken by the future host State to facilitate the founding of the Court and the close dialogue between the Preparatory Commission and the host State to resolve practical difficulties were commendable. The European Union was determined to make the Court an effective, universal institution and would cooperate constructively to solve outstanding issues. The international community had long yearned for the ending of impunity for the worst crimes affecting humanity. The adoption of the Rome Statute and the prospect of the establishment of the Court had made that a realistic goal which could be achieved in the very near future if everyone pulled together.

33. **Mr. Tarabrin** (Russian Federation) said that the establishment of the International Criminal Court would be of the utmost importance, and the imminent entry into force of the Rome Statute would open a new chapter in the development of international law. The work of the Court would strengthen justice, the observance of human rights and the primacy of law and would provide States with an effective means of cooperation to avert the most serious and inhuman crimes. The Court itself would guarantee the administration of justice and represent a warning to potential criminals, while the Rome Statute would contribute significantly towards the realization of the aims and principles of the United Nations.

34. The achievements of the Preparatory Commission were exemplary. The documents adopted at its last session reflected the letter and spirit of the Rome Statute, as well as the practice followed when agreements establishing other international organizations had been concluded, and would enable the Court to function as an independent international judicial organ without let or hindrance.

35. The determination of the crime of aggression was of particular importance and inseparably bound up with the conditions required for the exercise of the Court's jurisdiction. A Security Council decision was vital in both respects. In order to establish the criminal responsibility of an individual, it was essential to ascertain whether an act of aggression had been committed by a State. That meant that the Court could not deal with the crime of aggression until the Security Council had determined the existence of an act of aggression. His delegation did not, however, agree that the Court would have jurisdiction over a crime of aggression if no such decision had been reached within a specified time limit, since the Charter of the United

Nations did not make the prerogative of the Security Council under Chapter VII conditional upon any time factor. Moreover, the fact that the Court could ask the Security Council to qualify the act of a State as aggression was hardly consonant with the Charter, because Articles 10, 35 and 99 thereof contained an exhaustive list of the legal or natural persons who could refer a matter to the Security Council and that list could not be extended by any other treaty.

36. Similarly his Government did not support the proposal that, in the absence of a decision by the Security Council, the International Court of Justice should be made the trigger mechanism for the exercise of jurisdiction by the International Criminal Court in respect of the crime of aggression, or that the International Criminal Court should be authorized to request an advisory opinion from the International Court of Justice, because it was improper even to contemplate the possibility of the International Court of Justice handing down an advisory opinion about the existence of an act of aggression since, according to its Statute, it was competent to establish facts only when examining disputes between States and could give an advisory opinion solely on points of law. Moreover it was also the prerogative of the Security Council to give due consideration to any situations linked to threats to peace and breaches of peace.

37. The broad support for the Rome Statute and the growing number of ratifications were grounds for optimism and for hoping that the future Court would enjoy universal recognition as a body designed to strengthen the international legal order in accordance with the aims and principles of the Charter of the United Nations.

38. **Mr. Jalidi** (Libyan Arab Jamahiriya) said that the absence of effective mechanisms able to administer justice within an independent and transparent framework was a recognized major gap in the field of international law. His country remained one of the staunchest advocates of the creation of such a mechanism that could be relied upon to overcome situations such as political conflict and imbalances of power in the international arena. To that end, it was essential that international instruments should be implemented on the basis of justice, equality and impartiality, with due regard for cultural diversity and respect for the legitimate interests and recognized rights of peoples, and without selectivity, politicization or the application of double standards.

39. Given his country's firm support for the establishment of an international body of justice that would instil the rule of law and punish those who perpetrated abominable crimes against international law that posed a danger to international peace and security, it had actively participated in the preparatory work for the establishment of the International Criminal Court. Insofar as it was a negotiated compromise, however, the Statute of the Court failed to fulfil all hopes and aspirations, weakened as it was by political motives which impeded justice and equality. Moreover, he felt sceptical regarding the credibility and independence of a Court that was subject to decisions made by a political body such as the Security Council. In addition, the jurisdiction of the Court excluded a number of crimes more serious than those which it included, inter alia, attacks on international forces, drug trafficking, the use or threat of use of nuclear weapons and terrorism in all its forms and manifestations, in particular State terrorism. Another shortcoming was the ongoing failure to define the crime of aggression in specific terms. Only when justice prevailed in its long-standing conflict with politics would it acquire the independence necessary to enable the enjoyment of equality, peace and security, as well as respect for the law and justice.

40. **Mr. Asencio** (Mexico) said that his delegation endorsed the statement made by the representative of Chile on behalf of the Rio Group.

41. As a signatory to the Rome Statute, his Government was making efforts to become a party to that instrument. The constitutional reform initiative that would allow his Government to accede to the Statute had been completed and its approval was pending in accordance with Mexican law. If that reform was adopted during 2001, his Government would be in a position to submit a request for ratification of the Statute to the Senate for its consideration during the first half of 2002.

42. All States which were in a similar situation, or which had ratified the Statute following constitutional reforms, would be aware of the difficulties involved in amending any constitution. His Government had conducted and was continuing to conduct intensive internal consultations in order to determine the most effective way of incorporating the Statute into domestic law.

43. Like many other countries, Mexico wished to participate as a full member in the Assembly of States Parties and to contribute to the effective functioning of the Court. His delegation was convinced that the greater the number of countries participating in meetings of the Assembly, particularly those that would lay the groundwork for the functioning of the Court and would elect its officials, the more universal and representative the Statute, and thus the Court, would be.

44. His delegation noted, however, the provision in article 126, paragraph 2, of the Statute that for each State which ratifying, accepting or approving or acceding to the Statute after the deposit of the sixtieth instrument of ratification, acceptance, approval or accession, the Statute would enter into force on the first day of the month after the sixtieth day following the deposit by such State of its instrument of ratification, acceptance, approval or accession. That meant that a State which had deposited its respective instrument prior to the holding of an Assembly of States Parties, but outside the period fixed by article 126, would be prevented from participating as a full member in meetings at which important decisions would be taken.

45. His delegation was aware that the provisions of article 126 must be applied in full. Nevertheless, it believed that in the establishment of the calendar of meetings of the Assembly of States Parties to be held following the entry into force of the Statute, consideration should be given to the need to allow countries which were making genuine efforts to become parties to the Statute adequate time to complete their domestic procedures. That would redound to the benefit of the Court and its representativeness.

46. **Mr. Hoffmann** (South Africa) said that on 30 June 2000, another milestone had been reached in the coming into operation of the Court when the Preparatory Commission had adopted by consensus the Rules of Procedure and Evidence and the Elements of Crimes.

47. Since then, the Preparatory Commission had been engaged in the consideration of other important documents, as set out in document PCNICC/2001/L.3/Rev.1, paragraph 10. Some of those documents had not been finalized. There were also immediate, practical issues relating to the entry into

force of the Statute that required the Preparatory Commission's attention. It was therefore necessary to give the Preparatory Commission adequate time and facilities in 2002 to enable it to accomplish its mandate.

48. With regard to the implementation of the Rome Statute in South Africa, his Government had signed the Statute on 18 July 1998 and had ratified it on 27 November 2000. His Government was currently finalizing a bill on the implementation of the Statute which contemplated universal jurisdiction for perpetrators of the crimes enumerated in the Statute. The bill was currently being debated in the Parliament. It was expected that the Statute would be enacted into law under the implementing legislation before its entry into force.

49. His delegation urged States that had not ratified the Statute to do so as soon as possible. It was encouraging that the Statute had been signed by almost the entire membership of the United Nations, signifying universal agreement with the principles embodied in the Statute.

50. **Mr. Prandler** (Hungary) agreed with the views expressed by the representative of Belgium. Hungary had been among the 120 States represented at the 1998 Preparatory Conference in Rome. The adoption of the Statute of the Court signalled both the international will to put an end to impunity, and the recognition that the most serious crimes could be suppressed only through international cooperation. The international coalition now rallying behind the Statute was seeking to ensure that those who committed genocide, war crimes and crimes against humanity would be held accountable at all times. The Court would guard effectively against such crimes, not only by providing justice and acting as a deterrent, but also by facilitating the worldwide development of appropriate domestic legislation to deal with those crimes. The Hungarian Parliament had decided on 6 November, by an almost unanimous vote, to ratify the Statute of the Court, and its instrument of ratification would be deposited with the Secretary-General by the end of November.

51. The Preparatory Commission had made remarkable progress during its two most recent sessions, in which Hungary had participated. With the adoption of the road map setting out the issues still to be addressed, the Commission would soon have completed the practical arrangements for the Court to

come into being once the Statute was in force. With the accelerated pace of ratifications, the Commission would be working under pressure and must keep its goals in mind, working in cooperation with the future host country. He therefore favoured the holding of two sessions of the Commission in 2002. For its part, Hungary had hosted a second international workshop on practical steps in preparation for ratification of the Statute of the Court. The workshop, held in Budapest in October 2001, had been organized by the Constitutional and Legal Policy Institute of Budapest, together with the Ministry of Foreign Affairs and the Ministry of Justice. It had been attended by experts from most of the States associated with the European Union, and from Croatia, Canada and Germany, and also by representatives of the Secretariat of the Council of Europe, the International Committee of the Red Cross, and non-governmental organizations. Similar regional conferences would be held in the near future in the Czech Republic and in Croatia, and would help to develop a more uniform approach to the implementation of the Statute.

52. Universal acceptance of its Statute would render the Court fully effective. He was glad to note that all States which had participated in the Diplomatic Conference in Rome had also played an active part in the work of the Preparatory Commission. The international community needed the Court in order to provide justice and to protect and promote the values and principles of the Charter of the United Nations.

53. **Mr. Mirzaee-Yengejeh** (Islamic Republic of Iran) said that the Statute of the Court would probably enter into force during 2002. The third phase of the work of the Preparatory Commission would therefore be shorter than the first two, but the Commission would have to complete all its remaining tasks under resolution F of the Conference during that phase, as well as taking the necessary steps to convene the first Assembly of States Parties. He was confident that the Commission would be able to discharge most of its tasks during the two sessions proposed for 2002. He was anxious, however, that it should make every effort to accomplish its mandate in respect of the definition of the crime of aggression. If it did not succeed in doing so, the appropriate working group should prepare a comprehensive report on the progress achieved, with recommendations for the continuation of the work by the Assembly of States Parties. Given that approach, the first conference to review the Statute would be able

to approve the definition of the crime of aggression, and the Court would then be able to exercise its jurisdiction in that respect.

54. The Commission must be given sufficient time and resources during its second session to prepare a report on matters within its mandate, to be submitted to the first meeting of the Assembly of States Parties.

55. The resolution on the matter to be adopted by the General Assembly should invite the Secretary-General to convene the first session of the Assembly of States Parties following the entry into force of the Statute. That session should be held at Headquarters, and the Secretariat should be requested to provide conference services.

56. **Mr. Qi Dahai** (China) said his country had always supported the idea of establishing the International Criminal Court, and was satisfied with the results so far achieved by the Preparatory Commission. It also hoped to contribute to the establishment of an independent, just and efficient court with universal jurisdiction. The issue of defining the crime of aggression was of great concern to all States. An appropriate threshold should be set, engaging individual criminal responsibility, and the basis for doing so should be customary international law. The definition should also take account of international realities, and should be as precise as criminal law required. An in-depth study should be made of the rules in part 3 of the Statute, and on that basis the elements of crimes should be clearly set out, within the definition of the crime of aggression.

57. As a precondition for determining individual criminal responsibility, the International Criminal Court must first decide whether there was an act of aggression by a State. According to the relevant provisions of the Charter of the United Nations, it was the responsibility of the Security Council to make such a determination. Therefore, the definition of the crime of aggression and the conditions governing the jurisdiction of the Court for that crime were interrelated and indivisible. However, some current proposals treated them as separate items, and made the act of aggression by a State part of the definition. That was inappropriate, because the Preparatory Commission had not been mandated to define acts of aggression, and if it attempted to do so it would spark off a political debate which would impede its progress.

58. As to the conditions governing the jurisdiction of the Court, his delegation took the view that if, as some countries were proposing, the Court was left to determine whether a State had committed an act of aggression after the Security Council had failed to do so within a given period of time, the Court would run a high risk of being politicized. His delegation also doubted whether the advisory opinions or judgements of the International Court of Justice should be used as the basis for the Court's jurisdiction, as proposed by some countries. According to the Charter of the United Nations and the Statute of the International Court of Justice, the latter's advisory role was limited to giving its opinions on any legal question; it had no mandate to make findings of fact. Moreover, it took a long time to give an advisory opinion, and that ran counter to the requirements of criminal justice.

59. He hoped the working group on the crime of aggression would make progress. However, all the proposals made on the subject should be fully discussed, in order to find a solution acceptable to all.

60. **Mr. Helle** (International Committee of the Red Cross) said that the pace of ratification of and accession to the Rome Statute had exceeded the predictions made in Rome in 1998.

61. By adopting appropriate national legislation and judicial procedures, States had acted in furtherance of their commitment, reflected in the Plan of Action adopted by the twenty-seventh International Conference of the Red Cross and Red Crescent, to vigorously repress war crimes. In so doing, States also fulfilled the Statute's objective to complement rather than replace national jurisdiction and to enable full cooperation with the Court when the exercise of national jurisdiction was not feasible. Thus, the early entry into force and universal ratification of the Rome Statute, together with the adoption of all necessary implementation measures, should remain among the international community's highest priorities.

62. To that end, the International Committee of the Red Cross (ICRC) Advisory Service on International Humanitarian Law provided advice and technical assistance to States on ratification and implementation of the Statute. The Advisory Service had been established in 1995 to assist and advise on a wide range of measures relating to the national implementation of humanitarian law. The questions most frequently addressed by the Advisory Service in connection with

the Court included possible constitutional barriers to ratification of the Statute, the need for comprehensive implementing legislation which would permit States parties to cooperate with the Court, and the importance of States carrying out a thorough review of their national criminal law to ensure that the crimes within the Court's jurisdiction could be prosecuted in national courts.

63. In its work to promote the Statute, the Advisory Service encouraged States to create domestic offences of genocide, crimes against humanity and war crimes if those did not already exist. The Advisory Service further encouraged States to exercise jurisdiction over those crimes on the basis of universal jurisdiction, in other words, regardless of the place where the offence was committed or the nationality of the alleged perpetrator.

64. Lastly, ICRC wished to remind all States that complying with the requirements of the Statute might not be sufficient to satisfy all the obligations incumbent upon them by virtue of existing humanitarian law instruments. That did not, however, detract from the need for the international community to possess a credible and effective institution to respond to crimes of an international dimension when States were unwilling or unable to act. Such an institution was essential not only to express the universality of opprobrium, but also to lend credibility to the consistent administration of justice. Given sufficient support, the Court would be that institution.

Tribute to the memory of those killed in the crash of American Airlines flight 587 from New York to Santo Domingo

65. *At the invitation of the Chairman, the members of the Committee observed a minute of silence.*

66. **Mr. Sandage** (United States of America) thanked delegations for the many expressions of sympathy to his country for the tragic aeroplane crash in New York earlier that day, the cause of which was still unknown. He offered the condolences of his Government to the Government and people of the Dominican Republic. The United States would continue working with its allies and with the United Nations to rid the world of terrorism.

The meeting rose at 5.25 p.m.