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Chairman: Mr. Prandler (Hungary)

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

Agenda item 158: Establishment of the International Criminal Court (*continued*) (A/57/208 and A/57/403)

1. **Mr. Biato** (Brazil) said that the first session of the Assembly of States Parties to the Rome Statute of the International Criminal Court had marked the achievement of the goal set at the 1998 Rome Conference, namely, the establishment of a permanent, independent tribunal to ensure that the gravest international crimes did not go unpunished.

2. It was a tribute to the international community's determination to create a universal court that solutions had been found on the basis of consensus to all the demanding questions placed before the Preparatory Commission.

3. Four years earlier, few could have imagined the speed and number of ratifications of the Statute to date. The Statute's entry into force reflected a sense of urgency that his delegation shared. The inter-agency task force charged with proposing the changes to the Brazilian legal system required for the implementation of the Rome Statute would shortly issue its report. It was by fostering the adoption of national legislation to curb heinous crimes that the Court could most meaningfully combat the sense of impunity that was at the root of such acts.

4. The ultimate effectiveness of the judicial machinery being established at The Hague would require the Court always to be even-handed in its judgements. That responsibility would fall largely to the prosecutor and the judges. It would be up to them to strike a balance between the demands for justice and retribution and the exigencies of international relations. It was on that understanding that his Government had submitted a candidature for judge at the Court.

5. His delegation was convinced that the elaborate system of checks and balances built into the Statute provided the necessary safeguards against politically motivated misuse of the Court's jurisdiction.

6. Ultimately, the efficiency and credibility of the Court were directly proportional to its universality. His delegation therefore invited all States which had not yet done so to sign or ratify the Statute at the earliest opportunity.

7. **Mr. Rostow** (United States of America) said that his Government did not seek to undermine the International Criminal Court. It respected the right of States to become parties to the Statute; at the same time, his Government's decision not to become a party should also be respected.

8. There were three main reasons for his Government's opposition to the Statute.

9. First, it was concerned about the danger of politically motivated prosecutions. In a democratic system of checks and balances, a prosecutor's office, housed in a branch of government, would be politically accountable; that situation would not exist in the Court.

10. Second, while sovereign States had the right to try non-citizens who committed offences against their citizens or in their territory, his Government had never recognized the right of an international organization to do so without its consent, or without a Security Council mandate and oversight by the Council. Indeed, the Court was not part of the system established by the Charter of the United Nations.

11. In addition, the Statute raised due process concerns, including issues of multiple jeopardy, definitions of crimes and problems of evidence and testimony that might arise when the Court had to harmonize different legal systems and languages.

12. Lastly, the Assembly of States Parties was wrestling with the definition of aggression, a matter left to the Council by the Charter.

13. For those and other reasons, his Government could not join the consensus.

14. **Mr. Pinto Basutco** (Peru) said that since ratifying the Statute in the previous year, his Government had studied the Statute's provisions, and had disseminated them in conjunction with civil society organizations. On the basis of those activities, his Government had recently established a committee to review the Criminal Code and its amending regulations in order to harmonize them with the Statute and other international instruments. Those steps would enable Peruvian legislators to include in the legal system some international crimes not contained in the Rome Statute and to improve the definition of others.

15. The forthcoming elections of judges to the Court would have a major impact on the international community's real capacity to administer justice. His

delegation underscored the agreement reached at the First Assembly of States Parties on the system for electing judges, which would help to maintain an adequate geographical and gender balance on the Court.

16. While significant progress had been made in bringing the Court into being, a crucial item remained on the agenda, namely, defining the crime of aggression. Agreement on such a definition would put an end to impunity in relation to that crime and would help to preserve peace between States.

17. His Government called for cooperation on the part of all States in bringing to justice the perpetrators of serious crimes, especially those who occupied high political office. His Government would spare no effort, in accordance with international law, to obtain the extradition of a former Head of State, currently a refugee in an Asian country, who was wanted on charges of crimes against humanity.

18. Notwithstanding the loftiness of the cause of international justice, it might at times be misunderstood and viewed with suspicion. His delegation reaffirmed the importance of assessing the Court in its true humanitarian dimension and maintaining the integrity of the Statute through the good-faith interpretation and application of its provisions.

19. **Ms. Gillard** (Observer for the International Committee of the Red Cross) welcomed the Statute's entry into force. The Court reflected an established international consensus that war crimes, crimes against humanity and genocide were of concern to all States and to the international community as a whole.

20. Gustave Moynier, a founder of her organization, had first proposed the establishment of such a court nearly 140 years earlier. It had taken 80 years for the proposal to be placed on the agenda of the then newly created United Nations, and another 50 years for the court to be established. That was an indication not only of the challenges that had been overcome, but of those that remained if a credible and effective court was to be achieved.

21. One task was to provide the Court with the broadest possible political and financial support. In that regard, it was important to elect a prosecutor and judges possessing the highest levels of competence and

integrity, while representing a broad spectrum of States, cultures and legal systems.

22. A second task was to ensure that States parties to the Statute reviewed their national laws and procedures to enable them to cooperate with the Court.

23. A third task derived from the Court's intentionally limited mandate, which was to complement, rather than replace, national criminal jurisdictions. That could only be achieved if States ensured that their domestic legal systems punished the crimes within the jurisdiction of the Court and then enforced those prohibitions. In that regard, her organization 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 and the nationality of the alleged perpetrator.

24. States should be aware that adopting legislation to criminalize the offences defined in the Statute might not be sufficient to discharge their obligations under other treaties. For instance, States parties to the four Geneva Conventions of 1949 and their two Additional Protocols of 1977, the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two Protocols, the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects and its four Protocols, the 1993 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction and the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction would need to consider what additional obligations in the way of prevention and punishment were imposed by those treaties.

25. Lastly, she welcomed the recent adoption by States parties to the Statute of the Elements of Crimes and the Rules of Procedure and Evidence, and expressed appreciation to States for having recognized her organization's specific mandate in Rule 73.

The meeting rose at 3.35 p.m.