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Press Release
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PREPARATORY COMMITTEE ON ESTABLISHMENT OF INTERNATIONAL
CRIMINAL COURT EXAMINES ISSUES OF CHALLENGES TO COURT
JURISDICTION

Provisions of the draft statute of an international criminal court allowing interested States to challenge the court's jurisdiction required greater clarity, several delegates told the Preparatory Committee for the establishment of the court this morning.

Remarks centred on what precisely constituted an interested State -- be it the State in which the alleged crime was committed, the State of nationality of the accused, the State in which the accused had been arrested or the State of nationality of the victim of alleged crimes. The Preparatory Committee this morning also discussed the articles of the draft statute dealing with trial in the presence of the accused.

The idea of establishing a specific time frame for challenges prior to the beginning of court proceedings was put forward by a number of delegations. Mexico said that the lack of a time frame could be "confusing". The Russian Federation noted that the International Criminal Tribunal for the Former Yugoslavia had specified a 60-day period for challenges.

The representative of Italy said that challenges to the court's jurisdiction during trial should be allowed only in exceptional circumstances, such as following the introduction of new evidence. India stated that it would be unfair to eliminate new evidence related to the jurisdictional phase. The United States called for the establishment of a mechanism by which the court prosecutor could inquire regarding the consent to court jurisdiction by interested States.

The representative of Germany said that jurisdiction and admissibility were complicated regions of a "legal jungle" and full of hidden implications. Accused persons should be guaranteed a right to challenge the admissibility of a prosecution, he said. France added that the court statute should grant victims the right to be heard, and to demand restitution.

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Several delegations regarded draft statute provisions establishing the right of interested States to challenge the court's jurisdiction as "too wide and too ambiguous", in the words of Malaysia. The Russian Federation said that the State where the crime was committed, the State where the accused was being detained and the State of nationality of the accused should be allowed to challenge, provided they were parties to the court statute.

The right to challenge, according to South Africa, should be limited to States that had exercised jurisdiction or intended to do so. Israel added that the State of the victim should also be entitled to challenge. Canada, Singapore and China put forth the view that the right to challenge the jurisdiction of the court should not be limited to States party to the court statute.

Several delegations expressed concern over draft statute provisions for trial in the absence of accused persons. Lesotho, Mexico and Israel said that such trials should be prohibited. The representative of Singapore stated that the presence of the accused was "a fundamental aspect of due process".

If the accused was disrupting proceedings, the representative of the United Kingdom suggested that practical alternatives could be found, such as a "secure area" within the court, video links and other options. The representative of Ireland said that his delegation was open to "limited" possibilities of trials in absentia, as long as proper safeguards for the accused's right to a fair trial were spelled out, rather than left to the discretion of the court.

France took the position that when an accused person refused to be present at trial, the international court should be able to proceed, under prescribed safeguards, with any verdict rendered as a "moral condemnation", rather than an actual conviction. Once that person was placed under arrest, he should be entitled to a retrial.

Endorsing that view, the Netherlands said that the proposed international court would render judgement on uniquely international crimes and possess penal enforcement power of its own. The court should be able to render judgements in absentia with accused persons being represented by a duly appointed proxy representative. The Nuremburg Tribunal had undertaken proceedings against the fugitive Nazi Martin Bormann in absentia so as to protect evidence, he noted.

The Preparatory Committee will continue its discussion of the draft statute of the international criminal court at a time to be announced.

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