

30 August 1996

Press Release  
L/2813

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PREPARATORY COMMITTEE FOR INTERNATIONAL CRIMINAL COURT  
CONCLUDES SECOND SESSION

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Decides to Continue Work on Draft Statute And Aim for Adoption of Convention  
Establishing Court in 1998

Concluding its second session, the Preparatory Committee on the Establishment of an International Criminal Court this afternoon decided to continue its discussions on the draft statute of the proposed court with a view to finalizing the text by the end of April 1998, to be followed later that year by a diplomatic plenipotentiary conference to adopt a convention on the establishment of the first international criminal court.

The Committee agreed, in conclusions reached this afternoon, to meet three or four times for a total of nine more weeks in order to prepare the draft treaty for adoption in 1998. Before the adoption of the conclusions, the representative of China expressed "serious reservations" about them, stating that the setting of a date for the diplomatic conference of plenipotentiaries was "a political issue" and thus should be dealt with in the political organs of the United Nations, such as the Sixth Committee (Legal). She said that setting a specific date for the conference would also hinder the pace and the progress of the work still to be done on the draft statute, but added that China would not block the adoption of the Committee's conclusions.

The Chairman, in his closing statement, said that it was virtually impossible to summarize the hard work done in the past three weeks. He thanked the regional groups for their concepts and expressed the hope that their fruitful discussions would continue in the months to come. Finally, he reminded delegations that the results of the final sessions "must be shaped in a manner that the diplomatic conference can take the necessary political decisions" needed for the adoption of the statute and related instruments. The Committee, he recalled, had before it nine weeks to achieve that aim.

Representing their respective regional groups, the representatives of

France, Hungary, Cameroon, Jordan and Uruguay made closing remarks.

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## Draft Statute of the Proposed Court

The proposed court's draft statute was originally elaborated by the International Law Commission, and later discussed in the Ad Hoc Committee on the Establishment of an International Criminal Court and also in the Sixth Committee (Legal) of the General Assembly.

The international criminal court is envisaged as an independent permanent judicial organ, to be established by a multilateral treaty. It would not be a full-time body, but would operate when required, although the possibility that the court could remain permanently in session if its caseload so required has not been excluded.

The court would be available to States parties to its statute and, in certain situations, to the Security Council. The court is intended to complement national criminal justice systems in prosecuting crimes of international concern. Under the principle of "complementarity", the court would take action in situations in which national jurisdictions were either ineffective or incapable of undertaking prosecution for the crimes within the proposed court's jurisdiction.

The 60-article draft statute of the proposed court details the establishment of the court; its relationship to the United Nations; composition and administration of the court; jurisdiction and applicable law; investigation and commencement of prosecution; fair trial; appeal and review; international cooperation and judicial assistance and enforcement.

The draft statute provides that the court may enter into a relationship with the United Nations, either by becoming part of the structure of the Organization, or by an associative treaty. By the draft, the court could only operate effectively if brought into close relationship with the United Nations, both for administrative purposes and because part of its jurisdiction would derive from decisions of the Security Council.

The draft articulates two categories of crime: those under general international law such as genocide, aggression, serious violations of the laws and customs applicable in armed conflict (war crimes and crimes against humanity) and crimes covered by the provisions of international treaties.

## Overview of Second Session

Over the course of the second session, which began on 12 August, the

Preparatory Committee discussed major substantive and administrative issues arising out of the draft statute, with a view to preparing a widely acceptable consolidated text of a convention for the proposed court. The issues addressed included the concept of fair trial and rights of the accused; the

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establishment, composition and administration of the court; and its relationship with the United Nations.

In the discussion on fair trial and the rights of the accused, several delegations said that only States parties to the court should be allowed to lodge a complaint before the proposed court. "Trigger mechanisms" by either the prosecutor of the court or the United Nations Security Council were also debated, as well as the discretionary powers of the prosecutor.

On the relationship between State sovereignty and the investigative authority of the court, some representatives said that enquiries should be undertaken only with the permission of the States in which the alleged crimes took place, though others argued that the court's investigations did not necessarily compromise the concept of national sovereignty.

The creation of a pre-trial chamber, also called the indictment or instruction chamber, was proposed by various delegations. The powers of the prosecutor, as well as his necessarily impartial role, were examined.

Issues regarding the commencement of the prosecution were then discussed, including the powers of the presidency, which were judged excessive by some delegations. Alternative proposals included the use of a court officer who would undertake pre-trial confirmations of proposed indictments instead of the president. The draft provisions regarding the notification of the indictment, arrest, pre-trial detention or release were also discussed. In that connection, various suggestions were made concerning the cooperation of national judicial systems with the court.

Clarifications were sought concerning the provisions which would allow interested States to challenge the court's jurisdiction; some delegations indicated that a time-frame for such challenges at the commencement of a trial would be useful. Delegations also made proposals regarding the grounds for trials in absentia; many representatives proposed limiting such a possibility. Among the grounds that would justify the initiation of a trial in the absence of the accused, several delegations mentioned the deliberate

refusal of the accused person to appear before the court.

A number of participants cited the need to balance the internationally recognized right of the accused to self-defence with the exceptionally serious nature of the crimes within the court's jurisdiction. Some delegations said that definitive pronouncements of guilt or innocence should only be made upon the apprehension of the accused. The Committee also discussed the functions and powers of the trial chamber and the advisability of the provision allowing the accused to enter a plea of guilty or not guilty at the commencement of the trial and the consequences of the entering of a guilty plea. The discussion on provisions allowing the accused to enter a plea at the commencement of a trial included proposals in favour of accepting such a provision, as it would

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abbreviate court proceedings, and suggestions concerning the need to ensure that such pleas were not entered under duress or with a view to concealing other facts under consideration.

Representatives also discussed the possibility of closed sessions of the court, for the purpose of protecting confidential or sensitive information.

The creation of a special unit concerned with the protection of victims and witnesses, similar to the unit established by the International Criminal Tribunal for the former Yugoslavia, was also proposed. The Committee discussed the issue of perjury, and whether the court should be allowed to sanction it or leave it to the national jurisdiction concerned according to the principle of complementarity, as well as the provisions for the exclusion of evidence.

Regarding the structure of the court and the conduct of trials, representatives were divided as to whether court judgements should be rendered by unanimous verdict, or by a majority of judges. Several speakers said that if judges in the trial chamber could not reach a verdict, the accused should be acquitted. Some delegations said that a minimum of four judges could constitute a quorum if they attended every stage of the trial; others said that all judges should attend every session.

The court's composition should reflect the principles of equitable geographical representation, several representatives stated. Judges should also be drawn from different legal systems and should include both genders. It was generally agreed that judges should have substantial experience in

criminal law, with expertise in international humanitarian law an added benefit. Some stated that judges should be elected from among States parties, while others said that, consistent with its universal mandate, the court could include judges from other States.

Regarding court administration, it was generally agreed that the registry of court, with responsibility for its overall management, should be subject to careful oversight mechanisms, particularly over matters such as salaries and expenditures. It was stated that judges might be disqualified from service due to illness, threats against their families or conflicts of interest. Many stated that judges should be free to undertake other professional activities such as teaching or publishing, provided that they did not conflict with their judicial duties.

The court statute should contain clearly defined penalties consistent with the principle of *nullum crimen sine lege* (no crime without law), several representatives stated. Many insisted that the court should not provide for the death penalty, while others noted that if the statute was to be considered representative of all the legal systems of the world, it should allow capital punishment. Delegates were divided as to whether the court should be

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empowered to levy fines. Several stated that as the court would only be empowered to prosecute serious violations of customary international law, misdemeanours and their punishment should be left to national jurisdictions.

Several delegations said that the court should be able to demand compensation for damages and the restitution of property. One delegation said that the court should be able to mandate restitution to survivors, their heirs, or, failing that, to the State of the victim's nationality. Other speakers called for the court to be empowered to render the penalty of disenfranchisement (the denial of certain citizenship rights such as the right to hold public office).

Funding for the court drew differing views; many stated that the court should be financed out of the United Nations regular budget, while others said that the court should be underwritten by States parties to the statute, complainants or the United Nations in situations in which the Security Council has referred matters to the court. Others stated that interested parties -- particularly complainants -- should play no role in the financing of prosecutions.

Several speakers emphasized that the court should enjoy a close working relationship with the United Nations without sacrificing its independence. Most said that the court should not under any circumstances be considered an organ of the United Nations.

Regarding formation of the court, delegations generally agreed that it should be constituted by a international treaty. Several said that it would be preferable to create the court through an amendment of the United Nations Charter, but conceded that the resulting political complications might delay the creation of the court. It was also stated that the disadvantages of the treaty -- as regards universality, authority and funding -- could be overcome if the text of the treaty was later annexed to the Charter.

#### Upcoming Session of Preparatory Committee

In subsequent sessions, the Preparatory Committee will continue its consideration of various issues, including the definition and elements of crimes, the principles of criminal law and penalties, the organization of the court, procedural matters, the principle of complementarity and the "trigger" mechanism, cooperation with States, the mechanisms for the establishment of the court and its relationship with the United Nations, and final clauses and financial matters.

For its deliberations, the next session of the Preparatory Committee will have before it a compilation of written proposals for amendments to the draft statutes submitted by delegations or prepared by the Chairman, which will be annexed to the report on the work of the current session. Those

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annexes will also contain consolidated texts prepared by informal working groups, without prejudice to the national positions of delegations, and will deal with the composition and administration of the court; general principles of international law; penalties; procedural questions; and judicial cooperation and enforcement.

#### Background

The Preparatory Committee was set up by General Assembly resolution 50/46 of 11 December 1995 and is charged with preparing a widely acceptable consolidated text of a convention for a permanent international criminal court; the text would then be considered by a conference of

plenipotentiaries.

The process which led to the establishment of the Preparatory Committee dates from 25 November 1992 when the Assembly, by its resolution 47/33, requested the International Law Commission to undertake the elaboration of a draft statute for the court. On 9 December 1994, by its resolution 49/53, the Assembly decided to establish an open-ended ad hoc committee to review the major substantive and administrative issues arising out of the draft statute. After meeting for four weeks in two sessions in 1995, the ad hoc committee recommended to the fiftieth session of the Assembly that it organize future work towards an early completion of a draft convention.

By the terms of the resolution setting up the Preparatory Committee, its work would be based on the draft statute prepared by the Commission, but should take into account the report of the ad hoc committee on the establishment of the court. It should also take into account the written comments submitted by States to the Secretary-General on the draft statute, as well as contributions of relevant organizations.

#### Membership; Officers

The Committee is open to all Member States of the United Nations, members of specialized agencies and members of the International Atomic Energy Agency (IAEA). The Chairman of the Preparatory Committee on the Establishment of an International Criminal Court is Adriaan Bos (Netherlands). Its Vice-Chairmen are Cherif Bassiouni (Egypt), Silvia A. Fernandez de Gurmendi (Argentina) and Marek Madej (Poland). Jun Yoshida (Japan) is Committee Rapporteur.

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