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Press Release
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PREPARATORY COMMITTEE FOR INTERNATIONAL CRIMINAL COURT
DISCUSSES METHOD OF COURT'S ESTABLISHMENT

Also Debates Proposed Court's Funding And Number of Ratifications Needed For
Entry-Into Force

The proposed international court should be established by an international treaty and should enjoy a close working relationship with the United Nations, representatives of several States told the Preparatory Committee on the Establishment of an International Criminal Court this morning. While the new court should be independent from United Nations political and legal bodies, it should be funded by the Organization's regular budget, a number of speakers maintained.

The representative of Canada said that the court should have the closest possible links with the United Nations while protecting its independence. Even if the court was established by treaty, as opposed to an amendment of the Charter, it should enjoy close relations with the Organization, particularly given that the Security Council would likely be empowered to refer cases to it.

The representative of the United States said that the proposed court should not be established by a Charter amendment nor by votes in the General Assembly or the Security Council. It should not be a United Nations organ, nor a subsidiary body of the Council.

Italy said that if the court were to be created through an amendment of the Charter, its establishment would likely be postponed by procedural delays. The court might be established by a General Assembly or a Security Council resolution, but the former would have no basis in law, and the latter would raise difficult questions regarding the court's independence.

The Netherlands said that the treaty approach had disadvantages in the areas of universality, authority and funding, which could be overcome if the treaty text was later annexed to the United Nations Charter. Portugal

endorsed that view. Favouring the establishment of the court by treaty, the representative of Israel said that making it a United Nations subsidiary body could introduce a political element to its work.

Lesotho's representative said that ideally, the court should be given the same status as other United Nations bodies through an amendment of the Charter. But the "onerous constraints" posed by the process of amending the Charter made that option politically unfeasible. Japan also termed a treaty amendment "unrealistic". Samoa, while favouring the treaty option for the establishment of the court, suggested that the other options, such as a General Assembly resolution or a Security Council resolution, should not be totally dismissed, and recalled that the United Nations High Commissioner for Refugees had been created in such a manner "after the failure to create it by multilateral treaty". Denmark supported with the treaty option and suggested that the General Assembly might recommend its adoption by Member States.

France, while stressing the independent nature of the proposed court, suggested that its relationship with the United Nations might be similar to that of specialized agencies such as the International Atomic Energy Agency (IAEA). Finland suggested that the Charter be amended so as to give the proposed international criminal court the same status as the International Court of Justice.

Representatives urged that the number of ratifications required for the entry into force of a treaty establishing the court be sufficiently broad as to give the court a solid foundation. Italy said that the treaty establishing the court should enter into force upon its ratification by a reasonable number of signatories -- perhaps 20 or 25. Portugal also suggested some 25 signatories, whereas several delegations, including Denmark, said that 35 signatories should be sufficient. Austria indicated that some 60 signatories for the treaty to come into force "would not be too high a number".

The representative of the Russian Federation said that universality for the court treaty could best be guaranteed by 60 to 65 ratifications -- that number was consistent with international treaties such as the 1982 United Nations Convention on the Law of the Sea. The United Kingdom said that at a time when the United Nations had over 180 members and regional groups had up to 40 members, the ratification threshold should not be too low. Even half the membership of the United Nations General Assembly might be considered a low threshold, she added.

Several delegations suggested that the relationship of the proposed court

with the United Nations should be regulated by a special agreement between States parties and the Organization. Switzerland observed that the only possible relationship between the proposed court and the United Nations should be "a relationship between equals". Finland said that an agreement regulating the relationship between the court and the United Nations might be approved by the General Assembly. Lesotho indicated that the Assembly's approval of such a document would "further enhance the court's universality".

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Greece, while favouring such an agreement, stressed that it should be of a strictly technical nature; substantive matters, such as the relationship between the court and the Security Council, should be included in the statute itself.

Austria also favoured a special agreement which would regulate the court's relationship to various parts of the United Nations, including the Security Council; for other purposes, the delegate suggested that the proposed court could qualify as a specialized agency, as suggested by France.

The representative of Trinidad and Tobago said that the conclusion of an international agreement between the court and the United Nations should extend to budgetary and financial matters. While the United Nations might play an oversight role, it should not be allowed to micro-manage the court's work. The court should be financed by the United Nations regular budget, she said. Canada and the Netherlands concurred with that view.

The United States said that the court would not be fully independent if its budget and administration were closely associated with United Nations rules, procedures and practices. The court should not be a United Nations organ, nor should it be funded by the Organization's budget.

The court should be funded by States parties, other States, and by the United Nations, for cases brought by the Security Council, with no State allowed to become a predominant sponsor, he continued. States bringing cases to the court may be asked to pay a larger share; they should consult with the registrar in that regard, he added.

Portugal said that the idea of States which brought cases to the court financing their prosecution would favour those most able to pay, and would politicize the court. That country's representative also suggested that it would not be appropriate to create a "hierarchy" between the proposed

criminal court and the International Court of Justice.

The Republic of Korea said that the relationship between the proposed court and the United Nations might be modeled on that governing the Organization's relations with the IAEA and the International Tribunal for the Law of the Sea.

The Preparatory Committee will convene again at 3 p.m. to continue its discussions.

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