

13 August 1996

Press Release  
L/2795

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BALANCE OF INVESTIGATIVE AUTHORITY AND STATE SOVEREIGNTY FOCUS  
OF DISCUSSION IN PREPARATORY COMMITTEE ON ESTABLISHMENT OF  
INTERNATIONAL CRIMINAL COURT

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Investigations carried out by the proposed international criminal court should be undertaken solely with the permission of States in which they were being conducted, several delegations stated this morning as the Preparatory Committee on the Establishment of an International Criminal Court continued its discussion of procedural questions, fair trial and the rights of the accused. Today's discussion focused on articles of the proposed court's draft statute dealing with complaints brought to the court and the investigation of alleged crimes.

Examining the relationship of State sovereignty with the court's investigative authority, a number of speakers held the view that the proposed court should respect the sovereignty of States. The representative of Japan voiced concern regarding any direct investigation in the country named in a complaint. This position was supported by several other delegations, including China, Germany, India, Israel, Russian Federation, Singapore and Thailand.

Singapore stressed that court investigations should only be carried out by national investigative authorities; their membership in the court should carry an obligation to carry out such investigations. The representative of China said that the prosecutor's impartiality and right to investigate "should not prevail over the right of the State [concerned] to investigate"; however, the delegate noted that in "exceptional cases", which should be specified, the prosecutor might be allowed to conduct such on-site investigations.

Several delegations, however, noted that the court's investigations did not necessarily compromise national sovereignty. The representative of Iran said that it should be possible for the prosecutor to collect evidence and conduct on-site investigation "without compromising the sovereignty of the State concerned". Ireland noted that while the prosecutor could not "have

carte blanche or pluck ideas from the air", it could not be left to States to decide when the prosecutor should act. Since no country affected would actually admit that its own legal system had broken down, as had happened in the former Yugoslavia and in Rwanda, the court should be in a position to move in precisely when the national judicial system had broken down.

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The independence, competence and integrity of the prosecutor was also stressed by several delegates at this morning's meeting. The representative of Germany indicated that article 26 was the proper place to define the "impartial" role of the prosecutor, whose role was not only to collect incriminating evidence but also to investigate in favour of the defendant.

In the view of the Russian Federation, the prosecutor should not be allowed to initiate an investigation of alleged crimes. In certain cases, however, he might be enabled to investigate core crimes when national investigations were being conducted in an inappropriate manner. Stressing the importance of supporting evidence, India said that the court prosecutor should not be made to engage in a "wild-goose chase" for political purposes.

According to the United States, the draft statute required more clarity regarding the need for the prosecutor to proceed with an indictment only when a sufficient basis for such an indictment existed. The prosecutor should be empowered to make determinations as to the admissibility of cases.

The representative of France proposed the creation of an investigative chamber, composed of three judges, to monitor both the pre-trial functions of the court and the work of the prosecutor. Several delegations, including Austria, Iran, Germany and Mexico, supported the idea of "an indictment chamber", in the words of Austria, to oversee the initial phase of the inquiry. The representative of Germany said that such a chamber would be particularly important in cases where the prosecutor refused to initiate an investigation.

An alternative was proposed by the representative of Egypt, who said that the statute should establish, as part of the prosecution, a "group" that would work discreetly and establish the seriousness of a complaint, so that the prosecutor could decide whether or not to initiate an investigation.

The representative of Malaysia suggested that the prosecutor should have "wide discretionary powers" to investigate and added that the president of the proposed criminal court should be able to ask the prosecutor to

reconsider a decision, whether or not he had decided to investigate.

While acknowledging that the powers granted the prosecutor in the draft statute appeared to be sufficiently broad to incorporate the necessary investigative flexibility, the representative of South Africa cautioned that "those powers should be balanced by the rights of the suspect". Lesotho pointed out that several internationally-recognized rights of suspects had been inadequately represented in the draft statute, including the right to be represented by counsel and the right to equal treatment under the law.

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Also this morning the delegate from Malaysia, in a reference to yesterday's discussion of article 25, said that the rules on procedure and evidence should be "entrenched" in the statute, while other rules could be included in an annex. The representative of Algeria reiterated his opposition to provisions in that article by which a complaint to the court would not be required when the Security Council brings a matter to the court.

When it meets again at 3 p.m. this afternoon the Committee will continue its discussion of procedural questions, fair trial and the rights of the accused.

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