It is against this backdrop, that the General Assembly recommended the establishment of a Preparatory Committee,[28] to discuss further the major substantive and administrative issues arising out of the draft Statute, taking into account the dilferent views expressed, the report of the Ad Hoc Committee, written comments by States with a view to prepare a universally acceptable, consolidated text of a convention for an ICC, which would be a next step towards the consideration by a conference of diplomatic plenipotentiaries.

Preparatory Committee on the Establishment of the International Criminal Court

The concern of the international legal community with the issue of the proposed establishment of an ICC for the prosecution of persons responsible for 'dangerous violations of international laws' (defined as international crimes or offences) has been a unique international development. The Preparatory Committee on the Establishment of an ICC met at the United Nations Headquarters in New York from 25 March to 12 April, 1996, from 12 to 30 August, 1996

In paragraph 368 of its report to the General Assembly the Preparatory Committee had sought directions "to meet three or four times upto a total of nine weeks before the diplomatic conference. To organise its work so that it will be finalized in April 1998 and so as to allow widest possible participation of States. The work should be done in open-ended working groups, concentrating on the negotiation of proposals with a view to producing a draft consolidated text of a convention to be submitted to the diplomatic conference. No simultaneous meetings of

[28] General Assembly Resolution 50/46 of 11 December, 1995. (It should be noted that the Sixth Committee changed the name of the Ad Hoc Committee to Preparatory Committee.)

Preparatory Committee will meet from 11 to 21 Febuary from 4 to 15 August and from 1 to 12 December, 1997, and from 16 March to 3 April 1998, in order to complete the drafting of a convention, to be submitted to the diplomatic Conference, and requests the Secretary General to provide the Preparatory Committee with the necessary facilities for the performance of its work.

working groups shall be held. The working methods should be fully transparent and should be by general agreement in order to secure the universal of the convention submission of reports on its debates win not be required.

The mandate to the Preparatory Committee, as expressed in paragraph 368 of its report[29] is to deal with the following namely:

(i) Definition and elements of crimes,
(ii) Principles of criminal law and penalties;
(iii) Organization of the court;
(iv) Procedures,
(v) Complementarity and trigger mechanism;
(vi) Co-operation with the States;
(vii) Establishment of the ICC and its relationship with the United Nations;
(viii) Final clauses and financial matters;
(ix) Other matters.

March-April 1996 Session of Preparatory Committee

During its March-April 1996 session, the Preparatory Committee focussed on the following questions:

(i) scope of jursdiction and definition of crimes,
(ii) general principles of criminal law,
(iii) complementarity,
(iv) trigger mechanism and
(v) cooperation between the Court and national jurisdiction.

For this purpose, the Preparatory Committee had before it, in addition to the draft statute for an international criminal court adopted by the IILC at its forty-sixth session, the report of the Ad Hoc Committee on the Establishment of an International Criminal Court,, the comments received pursuant to paragraph 4 of General Assembly resolution 49/53 of

[29] A/51/22 Vol I.

9 December, 1994, on the establishment of ICC[51] and a preliminary report submitted by the Secretary General pursuant to paragraph 5 of that resolution, on provisional estimates of the staffing, structure and costs of the establishment and operation of an ICC[52]. Also before it was the Draft Code of Crimes against the Peace and Security of Mankind adopted by the International Law Commission at its forth-eighth session, the Basle Principles of, Justice for Victims of Crimes and Abuse of Power, and Principle Guaranteeing the Rights and Interests of Victims in the Proceedings of the proposed ICC

Dermition of Crimes

There was general agreement that the crimes within the jurisdiction of the Court should be defined with clarity, precision and specificity required for criminal law in accordance with the principle nullum crimen sine lege Some delegations, however, pointed out that as the draft statute was a procedural instrument , any possibility of duplication of or interference with the work of the ILC on the draft code of crimes against the peace and security of mankind should be avoided.

Scope of Jurisdiction

On the question of the scope of jurisdiction of the ICC there was general agreement, as indicated in the second paragraph of the Preamble, that the jurisdiction of the court should be limited to the most serious crimes of concern to the international community to avoid trivializing the role and functions of the court and interfering with the jurisdiction of the national courts. The second paragraph of the preamble to the draft statute emphasizes that "such a court is intended to exercise jurisdiction only over the most serious crimes of concern to the international community as a whole." Proposed Article 20 dealing with crimes within the jurisdiction of the ICC provides thus:

"The Court has jurisdiction in accordance with the Statute with respect to the following crimes:

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[51] (A/AC.244/a and Add. 1-4).

[52] (A/AC/244/1.2).

(a) the crime of genocide;

(b) crimes against humanity

(c) the crime of aggression;

(d) serious violations of the laws and customs applicable in armed conflicts;

(e) grave breaches of the four Geneva Conventions of 12 August 1949, and grave breaches of article 3 common to the four Geneva Conventions of 12 August 1949"

There was general agreement that genocide met the jurisdictional standard referred to in the second paragraph of the preamble.

As regards the inclusion of the crime of aggression, there were different views. Some delegations were of the view that aggression should be included to avoid a significant gap in the jurisdiction of the court since aggression was one of the most serious crimes of concern to the entire international community. Others oppposed its inclusion because of the lack of a generally accepted definition of aggression for the purpose of determining individual criminal responsibility. Some others expressed support for providing a review mechanism under which aggression might be added at a later stage to avoid delaying the establishment of the court pending the completion of a generally accepted definition.

There was general agreement that serious violations of the laws and customs applicable in armed conflict could qualify for inclusion under the jurisdictional standard referred to in the second paragraph of the Preamble. There were different views, however, as to whether this category of crime should include violations committed in international or non-international armed conflicts. Different views were also expressed concerning the direct applicability of the law of armed conflict to individuals in contrast to states.

Mention must be made of the view expressed by several delegations that grave breaches of the Geneva Conventions had attained the status of customary law and should be combined with other serious violations of the laws and customs applicable in armed conflict under sub-paragraph (d), with attention being drawn to the new definition proposed for the draft code in contrast to the Yugoslav Tribunal Statute and a proposal being made to amend the title of this category of crime accordingly.

There was general agreement that crimes against humanity met the jurisdictional standard referred to in the second paragraph of the preamble. It was stated that the definition of this category of crime should include a list of exceptionally serious, grave or inhumane acts which shocked the conscience of humanity, as for example, murder ' extermination; enslavement; deportation; imprisonment; torture; rape; persecution on political racial or religious grounds;and other inhumane acts, etc.

Support was expressed for including various treaty-based crimes which, having regard to the conduct alleged, constitute exceptionally serious crimes of international concern as envisaged in article 20, paragraph (e). The importance of the principle of complementarity was emphasized with respect to these crimes.

While a number of delegations were of the view that international terrorism qualified or inclusion under the jurisdictional standard referred to in the second paragraph of the preamble, a number of other delegations expressed the view that international terrorism did not deserve to be so included because there was no general definition of the crime and elaborating such a definition would substantially delay the establishment of the court.

Some delegations supported the inclusion of apartheid and other forms of racial discrimination as defined in the relevant conventions. Some others supported inclusion of torture, taking of hostages, serious drug trafficking offences which involved an international dimension, and of serious threats to environment.

There was broad agreement that the fundamental principles of criminal law to be applied to the crimes punishable under the statute should be clearly laid down in the statute in accordance with the principles of nullum crimen sine lege and nulla poena sine lege. The articulation of the fundamental principles of criminal law in the statute was considered consistent with the prerogative of legislative competence of sovereign States. It would give the potential States Parties a clear understanding of the obligations entailed. It would also provide clear guidance to the Court and promote consistent jurisprudence. Furthermore, it would ensure predictability and certainty in the application of law, which would be essential for the protection of the rights of the accused.

It was suggested that, in order to satisfy the requirements of fairness, transparency, consistency and equality in criminal proceedings, both the fundamental principles of criminal law as well as the general and most important rules of procedure and evidence should be provided in the statute. It was also proposed that the principle of procedural legality and its legal consequences should be firmly established in the statute itself.

The principle of non-retroactivity was considered fundamental to any criminal legal system and, therefore, having regard to be substantive link between this concept and article 39 of the statute nullum crimen sine lege , this principle was sought to be clearly and concisely set out in the statute, even though some of the crimes referred to in the statute were recognized as crimes under customary international law. It was also noted that the principle of nulla poena sine lege required that the principle of non-retroactivity be clearly spelled out in the statute and that the temporal jurisdiction of the court should be limited to those crimes committed after the entry into force of the statute.

A general view was that since there could be no criminal responsibility unless mens rea was proved, an explicit provision setting out all the elements involved should be included in the statute. The need for including a provision setting out an age limit at which an individual could be regarded as not having the requisite mens rea was widely supported.

Complementarity

The third paragraph of the preamble emphasizes that the ICC is intended to be complementary to national criminal justice systems in cases where such trial procedures may not be available or may be ineffective. A view was, therefore, expressed that complementarity should reflect the jurisdictional relationship between the ICC and national authorities including national courts. It was generally agreed that a proper balance between the two was crucial in drafting a statute that would be acceptable to a large number of States. Different views were expressed on how, where, to what extent and with what emphasis complements should be reflected in the statute.

It was suggested that the principle of complements be defined as an element of the competence of the court and that the conditions, timing and procedure for invoking this principle be clearly indicated. It was proposed in this regard that the person named in the submission to the court or the State party invoking this principle should provide supporting information. It was further suggested that consideration be given to how the complements regime would take account of national reconciliation initiatives entailing legitimate offers of amnesty or internationally structured peace processes.

It was noted that besides the third preambular paragraph the principle of complementarity involved a number of articles of the statute central among which was article 35 on accessibility. It was said that the principle of non bis in idem (rule against double jeopardy),set out in article 42, was closely linked with the issue of complementarity and that, therefore, this article should apply only to res judicata and not to proceedings discontinued for technical reasons. It was argued that the principle of non bis in idem should not be construed in such a way as to permit criminals to escape any procedure. A view was expressed that provisions of articles 26 and 27 adequately reflected the issue of complementarity and avoided the risk of 'double jeopardy.'

Trigger Mechanism

The trigger mechanism touches upon two main clusters of issues: acceptance of the Court's jurisdiction, State consent requirements and the conditions for the exercise of jurisdiction (article 21 and 22), and who can trigger the system and the role of the prosecutor (article 23 and 25).

As regards the acceptance of the Court's jurisdiction the view was expressed that the inherent jurisdiction of the court should not be limited to genocide but should extend to all the core crimes as well. It was noted that the question of acceptance of the Court's jurisdiction was inextricably linked to the question of precondition for the exercise of that jurisdiction, or consent, as well as to the question of who might bring complaints. So as regards the requirement of consent of the State where the crime was committed,it was suggested that article 21(1)(b)(ii) be modified to cover situations where the crime might have been committed outside the territory of any State, such as on the high seas. It was also noted that the Court could not exercise jurisdiction in relation to States not party to the statute.This,it was agreed could become a particularly difficult issue when the State party was the custodial State or its cooperation was indispensable to the prosecution.

On the question of the trigger mechanism it was generally agreed that the statute would not affect the role of the Security Council as prescribed in the Charter of the United Nations. The Council would, therefore, continue to exercise primary authority to determine and respond to threats to and breaches of the peace and to acts of aggression and the obligation of Member States to accept and carry out the decision of the Council under Article 25 of the Charter would remain unchanged. However, the following three concerns were voiced, namely:

(i) that it was important, in the design of the statute, to ensure that the international system of dispute resolution - and in particular the role of the Security Council - would not be undermined;

(ii) that the statute should not confer any more authority on the Security Council than already assigned to it by the Charter, and

(iii) that the relationship between the Court and the Council should not undermine the judicial independence and integrity of the Court or the sovereign equality of States.

On the question of the role of the Prosecutor, some delegations found that the role of the Prosecutor, under article 25, was too restricted and that States or the Security Council, for a variety of political reasons, would be unlikely to lodge a conplaint. It was therefore urged that the Prosecutor should be empowered to initiate investigations ex officio or on the basis of information obtained from any source.

In order to prevent any abuse of the process by any of the triggering parties it was proposed that in the event of a complaint being lodged by a State or an individual or initiated by the Prosecutor, the Prosecutor would first have to satisfy himself or herself that a prima facie case against an individual obtained and that the requirements of admissibility had been satisfied. Some delegations did not however agree with the notion of an independent power for the Prosecutor to institute a proceedings before the court as, in their view, such an independent power would lead to politicisation of the Court and allegations that the Prosecutor had acted for political motives.

Cooperation between the Court and National Jurisdiction

On the question of cooperation between the court and national jurisdiction, it was widely agreed that since the proposed ICC would not have its own investigative or enforcement agencies, the effectiveness of the Court would depend largely upon the cooperation of national jurisdiction in obtaining evidence and securing the presence of accused persons before it. It was considered essential therefore, that the statute provide the Court with a sound, workable and predictable framework to secure the cooperation of States. It was proposed in this respect that the legal framework governing cooperation between the States and the Court should be broadly similar to that existing between the State on the basis

of extradition and legal assistance agreements. This approach would ensure that the framework of cooperation would be set forth explicitly and the procedure in which each State would meet its obligations would be controlled by its national law, although there would be instances in which a State must amend its national law in order to be able to meet those obligations. There was also the position, however, that the statute should provide for an entirely new regime which would not draw upon existing extradition and legal assistance conventions, since the system of cooperation between the court and the States was fundamentally different from that between States, and extradition existed only between sovereign States. The obligation of cooperation imposed by the statute on State parties would not prevent the application of national laws in implementing such cooperation.

The principle of complementarity was considered particularly important in defining the relationship and cooperation between the Court and the States. It was suggested that the principle called for the establishment of a flexible system of cooperation which would allow for special constitutional requirements of States, as well as their obligations under existing treaties.

There was general support for the view that all basic elements of the required cooperation between the court and States should be laid down expect in the statute itself, while the list of such elements need not be exhaustive.

August 1996 Session of Preparatory Committee

During its August 1996 Session, the PREPCOM considered the following main topics, namely:

(i) procedural questions, fair trial and rights of the accused;
(ii) organizational questions (composition and administration of the Court); and the
(iii) establishment of the Court and its relationship with the United Nations.

Procedural questions, fair trial and rights of the accused

The draft statute on ICC outlines the requirements for a fair trial For this purpose the applicable law, as outlined in article 33, relates to (a) the statute itself, (b) the relevant applicable treaties and the principles and rules of general international law; and (c) to the extent applicable, any rule of nationality law. In the circumstance, though it is difficult to outline the elements of a fair trial, there was general agreement on the importance of matters concerning procedural questions and fair trial and rights of the accused but divergent views were expressed on how best that need could be different penal systems met. It was stated that the procedural rules should maintain a balance between States and draw from their positive elements. It was emphasized that an ICC should draw upon the practice of any system that could assist it in the performance of its functions and not be used as a standard to test the credibility of penal systems of individual States.

There was an overwhelming view, at least among some Asian - African countries, that in the interest of economy, extensive pre-trial investigations should be left to the charge of the complainant State and not be taken over or initiated suo moto by the prosecutor's office. This, it was believed, would facilitate in keeping the prosecutors office as a professional body, and not merely an investigating agency, without in any manner interfering in the sovereign and domestic jurisdiction of a State.

State consent, for instance becomes crucial in matters relating to arrest and 'surrender'. Arrest of a ,suspect will always be carried out by a State pursuant to the judicial assistance which it renders to the Court. In the case of pre-trial detention as enunciated in article 29, the predominant view was that it should only be confined to situations in which the accused is being detained by the court pending trial and not by the State party pending a transfer to the court. At this stage, matters concerning the grant of bail, the legality of detention and the conditions of detention should be wholly left to the purview of the detaining State and should not be subject to the control of the Court.

Although the complexities involved in surrendering the accused by a State to the Court were addressed, this subject deserves further

consideration There would be internal legal impediments or a constitutional bar against surrender of nationals to any foreign forum. The question of extradition or dual criminality, i. e. the conduct alleged to be a crime, must be regarded as a crime by the requested State also needs further consideration. Apart from the legal or constitutional bar, the other grounds for refusal to surrender need examination. For these reasons, it would be necessary to take into account national laws and procedures and harmonize them to the extent possible. The procedures incorporated in the national laws become particularly important while evolving the rules of evidence.

The procedural laws which would be adapted from the national laws could also be identified. 'There are for instance, notification of indictment; establishment of prima facie case; right of legal assistance for the suspect; scope for objections of jurisdictional as well as merits phase; fair and expeditions trial (with full respect to the rights of the accused trials should generally be open to public); presumption of innocence until proven guilty; non bis in idem (rule against double jeopardy); consideration of aggravating or mitigating factors in award of punishment, appeal and review for material error of law or miscarriage of justice or manifest disproportion in sentencing; revision, rule of specially (prohibition of trial for any offence other than that for which accused was surrendered); and pardon and parole or commutation of sentence under appropriate circumstances.

Organizational questions (composition and administration of the Court)

With regard to article 5 dealing with organs of the court, the view was expressed that an indictment or an investigations chamber for pre-trial procedures should be added and 'that it should be composed of three judges with the necessary authority to monitor preliminary investigation matters. It was pointed out that in addition to the qualificafions already mentioned in the draft article adopted by the ILC the persons to be elected should possess experience in humanitarian law and the law of human rights, and that all judges should have criminal trial experience. Other attributes, should include high moral character, impartiality, personal integrity and independence. It was stressed that the reference to 'criminal trial experience' should be clearly defined.

It was pointed out that since the Court to be established should be universal in character, representing all sysems of the world, there was the need for balance and diversity in its composition. Therefore, judges should be elected on the basis of equitable geographical representation.

Support was expressed for the idea that the election of judges should be carried out by the States parties to the Statute of the Court. It was however suggested that elections should be conducted either by the General Assembly, or by the Assembly together with the Security Council, as in the case of the International Court of Justice.

Establishment of the Court and its relationship with the United Nations

A close relationship between the Court and the United Nations was considered an essential and necessary link to the universality and standing of the Court, though such a relationship should in no way jeopardise tle independence of the Court. A special agreement, either elaborated simultaneously wi th the statute(as an annex thereto) or at a later stage, to be concluded between the two institutions would be appropriate for the establishment of such a relationship. The agreement should, however, be approved by the States parties to the statute. Reference in this context was made to the agreement between the United Nations and the International Tribunal for the Law of the Seas and that between the United Naions and the International Atomic Energy Agency.

The Sixth Committee at its Fifty first session recommended to the General Assembly[33] that the mandate of the Preparatory Committee be reaffirmed and it be directed to proceed in accordance with paragraph 368 of its report. The Sixth Committee also recommended that the Preparatory Committee " meet from 11 to 21 February, from 4 to 15 August and from 1 to 12 December, 1997, and from 16 March to 3 April 1998, in order to complete the drafting of a widely acceptable consolidated text of a convention, to be submitted to the diplomatic conference". At its recently concluded Fifty-first session the General Assembly

[33] See report A/51/627, dated 3 December, 1996.

accordingly requested the Secretary-General to provide the Preparatory Committee with the necessary facilities for the performance of its work and also decided that "a diplomatic conference of plenipotentiaries will be held in 1998, with a view to finalising and adopting a convention on the establfishment of an ICC".

Broad areas of consensus and areas requiring harmonization

It may be recalled that the Special Meeting on the Establishment of an ICC convened by the AALCC with the framework of the 35th Session, held in Manila in March 1996, had requested the Secretary-General of the AALCC to transmit the report and the proceedings of the Special Meeting to the Chairman of the Preparatory Committee and directed the AALCC Secretariat to monitor the outcome of the meetings of the PREPCOM to be held in New York. In partial fullfilment of that mandate the Secretariat had forwarded the report of the Special Meeting to the Preparatory Committee in March 1996.

Pursuant to the mandate of the 35th session of the AALCC Ambassador Dr. Wafik Zaher Kamil, Deputy Secretary General, represented the AALCC Secretariat at the Meeting of the Preparatory Committee on the Establishment of the ICC held in New York from 12th to 30th August 1996. In the report[34] on his participation in that meeting the Deputy Secretary General of the AALCC had assessed that the Preparatory Committee in the course of its work made a lot of progress on vital issues and a broad area of consensus emerged at the end of the meeting. He summarised these broad areas thus:

(a) There was unanimity on the need for the establishment of the ICC.

(b) There was general support for the view that the Court should be an independent judicial institution. However, while some favoured an autonomous independent body, others preferred that the Court form part of the UN.

[34] Report presented during the 253rd Meeting of the Liaison Officers.

(c) To establish the Court by a multilateral treaty, as recommended by the IILC, seemed to enjoy general support, as the treaty could proade the necessary independence and authority for the Court. The idea of amending the Charter was put aside.

(d) A close relationship between the Court and the UN was considered essential and a necessary link to the universality and standing of the Court, though such a relationship should in no way jeopardize the independence of the Court.

(e) There was a general agreement on the importance of procedural questions, fair trial and rights of the accused and the need to elaborate further the relevant provisions. It was recognized that respect for the rights of the accused were fundamental and reflected the credibility of the Court and that there was already a large body of international law on the subject. A commonly shared view seemed to be that fundamental a substantive principles of evidence should figure in the statute itself write secondary and subsidiary rules could appear in the Rules of the Court or other instruments.

(f) As for the method of decision-taking in the trial chamber, it was generally accepted that it should be by a majority of judges, although, very few supported the unanimity rule (at least in case of a conviction).

In his report the Deputy Secretary General had also summarised the areas which called for further harmonization within the Preparatory Committee. The report of the Deputy Secretary General Ambassador Kamil pointed out:

(a) There was a divergence of views on the question of the jurisdiction of the ICC. While there is convergence on the issue of the Court exercising its competence on crimes of genocide and war crimes, opinion was split on the question of extending the jurisdiction of the Court to other crimes. It has been proposed in this regard that the Court also have jurisdiction over such crimes as aggression and drug trafficking. This is related to items (b) and (c) listed below.

(b) A proposal was made to reformulate Articles 17 - 20 which define 'crimes'. It was felt that the Article 20, in particular,

should be reformulated along the lines of the draft code with each crime being defined in a separate article identifying the essential elements of the offences and the minimum qualitative and quantitative requirements.

(c) The principle of complementarity to be defined as an element of the competence of the Court; the conditions timing and procedures for invoking this principle need to be clearly indicated.

(d) To examine the aspects relating to the effective functioning of the Court vis-a-vis the primary responsibility of the Security Council for the maintenance of international peace and security.

(e) Outlining of final clauses for the transitional arrangement for the transfer of cases from the ad hoc tribunals to the Court to avoid concurrent or parallel jurisdiction.

(f) There was no complete unanimity on the 'method for establishing the Court.' Three earlier suggestions were debated - an amendment to the charter of the UN making it the UNs principal organ; a resolution adopted by the General Assembly and or the Security Council; or the conclusion of multilateral treaty. The latter suggestion enjoyed wider support.

(g) On the question of financing the court it was suggested that it could be from the regular budget of the UN. On the other hand, according to some suggestions the independence of the court requires states parties to finance it through their own contributions on the basis of the scale of assessments of the UN.

(h) On the role of the Prosecutor vis-a-vis on-site investigations spectrum of views were expressed. For instance, such investigations should only be conducted with the consent of the state concerned to enswe respect for its sovereignty with the possible exception of situations in which the national criminal justice systems was not fully functional.

February 1997 Session of Prepcom: Working Group on General Principles of Criminal Law and Penalties

The Preparatory Committee met for the third time in New York from 11 th to 21st February 1997. Alongwith the Plenary an open ended Working Group was constituted on General Principles of Criminal Law and Penalties. Various proposals were submitted by the participating delegations on:

(i) the definition of 'crimes' and 'war crimes.'[35]
(ii) crime of terrorism;
(iii) crime of aggression.[36]
(iv) criminal (individual) responsibility.[37]
(v) crimes against humanity.[38]
(vi) alternative to the review mechanism.[39]
(vii) command responsibility.[40]

In particular, drafts on 'crimes of terrorism' and 'crime of aggression' were suggested, discussed and approved. This meeting was inconclusive and no substantial progress was made on any of the important issues.

In the course of the deliberations of the Working Group, it was generally believed that while the ICC should definitely be an independent Court, a careful balance between the different responsibilities of the ICC and the Security Council will have to be found. Further, the establishment ofthe ICC should not alter or diminish the competence of the Security Council one of the main organs of the United Nations.

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[35] New Zealand and Switzerland (14 February, 1997: (A/AC.249/1977/WGI/DP.2); so also United States (14 February, 1997: (A/AC.249/1997/ WGI/DP. 1).

[36] German proposal with Explanatory Notes (18/19 February, 1997) (A/AC.249/ 1997/WGI/DP3).

[37] Canada, Germany, Netherlands and the United Kingdom (14 February, 1997 (A/AC.249/1997/WGI/DP1)

[38] France (19 February, 1997: (A/AC.249/1997/WG I/DP.4)

[39] Belarus (20 February, 1997 (A/AC.249/1997/WGI. DP.5)

[40] Chairman's Text (18 February, 1997 (A/AC.249/1997/WG. 23/CRP.3).

[41] 21, February, 1997.

Role of the AALCC

The Secretariat has in the past followed the work of the International Law Commission on the Establishment of an ICC. The matter has been discussed at the 33rd and 34th Sessions of the Committee held in Kampala and Tokyo respectively. Following the adoption, by the ILC, of a draft Statute of the ICC the Secretariat organised a one day Seminar in New Delhi in January 1994. That Seminar on the proposed ICC was chaired by the then President of the Committee H.E. Dr. Najeeb Al Nauimi. The matter was last discussed at the 35th Session of the Committee.

A reference was made to the Special Meeting in the Establishment of an ICC, organised Within the framework of the 35th session of the AALCC held in Manila (Philippines)in March 1996. That Special Meeting held 3 sessions during the 5th and 6th March 1996 whereat the following countries presented their respective positions during the Special Meeting : Islamic Republic of Iran, Singapore, Japan, Ghana, Egypt, People's Republic of China, Sudan, Republic of Korea, Tanzania, India, Cyprus, Thailand, Qatar, Pakistan, Sri Lanka and the Philippines. Australia and Finland submitted their view as observers. Some countries made only oral representations.

The discussions at that Special Meeting revealed unity in diversity. Though there were some differences in perspectives, there was general unanimity in the overall purpose of promoting international progress among men and nations. The trends identified in the country positions presented by the various delegations are listed below.

Mode of Establishment

There was general agreement that there was a need for the establishment of an independent and impartial ICC free from political pressures and tendencies. However, differences were noticed on the mode of establishment of the court. The majority favoured the establishment of the Court through a treaty or by a Multilateral treaty.