

Having considered the sub-item entitled "Draft guiding principles for international negotiations",

1. Underlines the importance of conducting effective negotiations in managing international relations and the peaceful settlement of disputes and in the creation of new international norms of conduct of States;

2. Takes note of the "Draft guiding principles for international negotiations" contained in document A/52/141 and the comments and proposals made during the consideration of the sub-item, including the need for its further consideration;

3. Decides to continue the consideration of this sub-item in the Working Group on the United Nations Decade of International Law during the fifty-third session of the General Assembly;

4. Invites all States and relevant international organizations to submit in writing to the Secretary-General, before 1 August 1998, comments and proposals on the content of the "Draft guiding principles for international negotiations";

5. Requests the Secretary-General to transmit the comments and proposals mentioned in paragraphs 2 and 4 above to the Working Group for its consideration,

6. Decides to include in the provisional agenda of its fifty-third session under the item entitled "United Nations Decade of International Law" the sub-item entitled "Draft guiding principles for international negotiations".

DRAFT GUIDING PRINCIPLES FOR INTERNATIONAL NEGOTIATIONS⁹

(Draft resolution)

Guiding principles for international negotiations

The General Assembly.

Recalling the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of cooperation among States,

Bearing in mind that, according to its Charter, the United Nations is to serve as the centre for harmonizing the actions of nations in attaining its purposes,

Reaffirming the provisions of the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations,

Recalling Article 13, paragraph 1 (a), of the Charter of the United Nations, in which the General Assembly is called upon to initiate studies and make recommendations for the purpose of promoting international cooperation in the political field and encouraging the progressive development of international law and its codification,

Proceeding from the fact that in their negotiations States are guided in general by the principles of contemporary international law,

Bearing in mind the increasing role that constructive and effective negotiations are playing in attaining the noble purposes of the Charter of the United Nations by contributing to the management of international relations,

⁹ Reproduced from *Request For the Inclusion of an item in the Provisional Agenda of the Fifty Second Session, Letter dated 12 June 1997 from the Permanent representative of Mongolia to the United Nations addressed to the Secretary General A/52/141* dated 18 June 1997.

the peaceful settlement of disputes and the creation of new international norms of conduct of States,

Convinced that identification and harmonization of guiding principles of international negotiations would contribute to enhancing predictability for negotiating to conducting effective negotiations irrespective of their level, field or form, as well as setting general criteria against which the conduct of parties at the negotiations could be assessed,

Convinced also that setting a minimum standard of conduct for negotiating parties would induce them to act in accordance therewith, as well as offer them some leverage for requiring other parties to act likewise,

1. Declares the following as guiding principles for the conduct of international negotiations:

(a) The sovereign equality of States, irrespective of their size, level of development, political or military power and their economic or political systems;

(b) Non-interference in the internal or external affairs of States in any form whatsoever;

(c) The right of States to initiate or call for negotiations;

(d) Displaying the necessary political will to attain the intended purpose of negotiations;

(e) The duty of States to negotiate in good faith and to strive for a just, equitable and early conclusion of negotiations and to reach mutually acceptable agreement or solution;

(f) Non-discrimination and the right of States to participate in negotiations affecting their vital interests or those of the international community as a whole;

(g) Compatibility of the purpose and object of negotiations with

the principles and norms of contemporary international law, including the Charter of the United Nations;

(h) The duty of States to adhere strictly to the agreed principles and rules of conducting given negotiations;

(i) The duty of States to refrain from direct or indirect recourse to military, political, economic or any other types of coercion or force aimed at impeding the exercise of their sovereign rights by other States;

(j) The duty of States to cooperate in the various spheres of international relations in order to maintain international peace and security, and to promote mutually beneficial cooperation, social progress and the general welfare of nations.,

(k) The duty of States to refrain from any action that might jeopardize the negotiations themselves or the general atmosphere at or around the negotiations;

(l) The duty of States to refrain from impeding negotiations by imposing irrelevant preconditions for the commencement, pursuit or conclusion of such negotiations, including raising issues unrelated to the actual object of the negotiations;

(m) The duty of States to continue to exert determined efforts aimed at arriving at negotiated solutions even in the event of failure of negotiations at some point;

(n) Any negotiations conducted under the use or threat of use of force are neither just nor lawful and the results of such negotiations shall be considered null and void;

2. Also declares that the above guiding principles are interrelated and their interpretation and application each principle should be construed in the context of the other principles;

3. Further declares that strict observance of the above mentioned principles is of paramount importance in the conduct of genuine negotiations, and consequently appeals to all States to be guided by these principles in their negotiations.

ANNEX V

UNITED NATIONS DECADE OF INTERNATIONAL LAW: ACTION TO BE TAKEN IN 1999 DEDICATED TO THE CENTENNIAL OF THE FIRST INTERNATIONAL PEACE CONFERENCE AND TO THE CLOSING OF THE UNITED NATIONS DECADE OF INTERNATIONAL LAW

Netherlands and Russian Federation: Draft Resolution

Action to be taken dedicated to the 1999 centennial of the First International Peace Conference and to the closing of the United Nations Decade of International Law

The General Assembly

Reaffirming once again the commitment of the United Nations and its Member States, as well as the States party to the Statute of the International Court of Justice, to the goals and aspirations of the United Nations Decade of International Law, expressed by the General Assembly in subsequent resolutions under that item of its agenda,

Mindful of the long and well-established tradition of progressive development and codification of international law, marked by the first and the second International Peace Conference, held at The Hague in 1899 and 1907 respectively,

Recalling that the third International Peace Conference, which was meant to be held at The Hague in 1915, did not take place,

Recalling also the proposal by the Russian Federation for a third international peace conference with a view to considering international law and order in the post-cold-war world at the threshold of the twenty-first century, referred to in resolution 51/159 of 16 December 1996, and the initiatives undertaken by the Kingdom of the Netherlands with regard to the commemoration of the first International Peace Conference,

Recalling further that in the same resolution, the General Assembly invited the Government of the Russian Federation and the Netherlands to arrange, as a matter of urgency, a preliminary discussion with other interested Member States on the substantive content of action to be taken in 1999 and to seek, in this respect, the cooperation of the International Court of Justice, the Permanent Court of Arbitration, relevant intergovernmental organizations as well as other relevant organizations,

Noting in this respect, that a meeting of the "Friends of 1999" took place on 22 April 1997 at the Peace Palace, The Hague, to which representatives of 20 States from all regions of the world, the International Court of Justice, the Permanent Court of Arbitration, the International Committee of the Red Cross and the coalition of non-government organizations Hague Appeal for Peace were invited for consultations on proposals for a draft of Action for the centennial of the first International Peace Conference,

Noting with satisfaction that the realization of all those proposals in the Programme of Action dedicated to the centennial of the first International Peace Conference, presented by the Netherlands and the Russian Federation, is consistent with the goals and aspirations of the United Nations Decade of International Law,

Noting also that the Programme of Action does not entail budgetary implications for the United Nations,

1. Welcome the Programme of Action dedicated to the centennial of the first International Peace Conference, presented by the Governments of the Kingdom of the Netherlands and of the Russian Federation, which aim at contributing to the further development of the themes of the first and the second International Peace Conference and could be regarded as a third International Peace Conference;

2. Invites :

(a) The Governments of the Kingdom of the Netherlands and of the Russian Federation to proceed with the implementation of the Programme

of Action;

(b) All States to participate in the activities set out in the Programme of Action, as well as to initiate such activities and to coordinate their efforts in this respect at the global level, as well as at the regional and national levels;

(c.) All States to take appropriate measures to ensure universal participation in the activities pursuant to the Programme of Action, with special consideration for the participation of representatives of the least developed countries;

3. Calls upon the competent United Nations organs, subsidiary organs, programmes and specialized agencies, including the International Court of Justice, the International Law Commission and the Secretariat, within their respective mandates, competencies and budgets, as well as upon other international organizations:

(a) To cooperate in the implementation of the Programme of Action and to coordinate their efforts in this respect;

(b) To consider participation in the activities envisaged in the Programme of Action;

4. Requests the Secretary-General to ensure consistency of the Organization's activities relating to the closing of the Decade of International Law with the Programme of Action and to direct his efforts accordingly;

5. Decides to include in the provisional agenda of its fifty-third session, under the item entitled "United Nations Decade of International Law", a sub-item entitled "Progress in the action dedicated to the 1999 centennial of the first International Peace Conference and to the closing of the United Nations Decade of International Law".

IV. ESTABLISHMENT OF THE INTERNATIONAL CRIMINAL COURT

(i) Introduction

The efforts to evolve a legal mechanism for the exercise of an international criminal jurisdiction with regard to 'dangerous' crimes defined as 'International crimes or offences' began soon after the 2nd World War. The UN very much aware of and concerned by the atrocity of crimes perpetrated during this war had directed the International Law Commission (ILC) in November, 1947, *inter alia*, 'to prepare a draft code of offences against the peace and Security of Mankind', a Mandate which was achieved in 1954. But due to 'conflicting positions' concerning the definition of 'aggression', the General Assembly (GA) decided to postpone consideration of this draft code. It was only in 1981 that the ILC resumed its work in the draft code and adopted the first reading of the draft Articles on the Code of Crimes in 1991.

This was the first phase in the evolution of an 'International Criminal Jurisdiction'. The second phase started in 1991 during the 46th Session. The GA, (on the initiative of Trinidad and Tobago in the context of transnational crimes such as Drug Trafficking) 'invited the ILC to consider and analyse the establishment of an International Criminal Court (ICC) or other trial mechanism' taking into consideration the proposals made in the GA while discussing the question of an 'International Criminal Jurisdiction'.

The ILC had constituted in 1992 a Special Working Group and then 3 sub-groups each one dealing with a specific 'topic'. The three sub-groups established dealt with (i) Jurisdiction and Applicable Law; (ii) Investigation and Prosecution; and (iii) Cooperation and Judicial Assistance. After 3 years of intensive work, it submitted in 1994 the Draft Statute to GA.

During the 49th session (1994) the General Assembly considered the Draft statute and many delegations pointed out that the draft statute needed deeper consideration to 'fill the gaps'. Accordingly the sixth committee constituted an Ad hoc committee which met in April and August 1995 (GA resolution 49/53 of 9 December, 1994) with a mandate 'review the major sub-

arrangements for convening an International Conference of Plenipotentiaries. Despite the fact that the Ad Hoc Committee made considerable progress during its two sessions it was noted that 'States still had different views on major substantive and administrative issues.

The General Assembly in its resolution 50/46 of 11 December 1995, decided to establish a "preparatory Committee" for the establishment of an international criminal court to discuss the major substantive and administrative issues arising out of the draft Statute prepared by the International Law Commission in 1994 and to draft texts with a view to preparing a widely acceptable consolidated text of a convention for an international criminal court as a next step towards consideration by a conference of plenipotentiaries.

The Preparatory Committee on the Establishment of an International Court met from 25 March to 12 April and from 12 to 30 August 1996, during which time it discussed further the issues arising out of the draft Statute and began preparing a widely acceptable consolidated text of a convention for an international criminal court. The Prepcom during these meetings had made a lot of progress on vital issues and a broad areas of consensus emerged on the other hand these were areas which called for further harmonization. (The details of which are set out in the secretariat study). In its resolution 51/207 of 17 December 1996, the General Assembly decided that the Preparatory Committee would meet in 1997 and 1998 in order to complete the drafting of a text for submission to the diplomatic conference of plenipotentiaries.

The Preparatory Committee met from 11 to 21 February, from 4 to 15 August and from 1 to 12 December 1997, during which time it continued to prepare a widely acceptable consolidated text of the convention.

In its resolution 52/160 of 15 December 1997, the General Assembly accepted with deep appreciation the generous offer of the Government of Italy to act as host to the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an ICC and decided to hold the conference in Rome from 15 June to 17 July 1998. In the same resolution the Prepcom was requested by the GA to continue its work in accordance with resolution 51/207 and at the end of its sessions to transmit to the conference the text of a draft convention on the establishment of an ICC.

Thirty Seventh Session : Discussion

The Deputy Secretary General Ambassador Dr. Wafiq Zaher Kamil while introducing the subject gave an overview of the activities of the PREPCOM and its predecessor the Ad hoc Committee on the Establishment of an International Criminal Court, as also the role of the AALCC.

He stated that the Diplomatic Conference of Plenipotentiaries, would be held just after two months. The process itself had taken about eight years i.e. from 1990 to 1998. The idea for the establishment of an ICC came into being after the world witnessed the horrors of World War II. It, however, gained momentum after the atrocities were committed in former Yugoslavia and Rwanda.

Commenting on the work of ILC he stated that, the ILC resumed work on the question of an international criminal jurisdiction in 1990, the real push for proceeding rapidly with the idea of a permanent court came in 1992. Having adopted the draft Statute in 1994, the ILC decided to recommend to the General Assembly that it convene a Conference of Plenipotentiaries to study the Draft Statute and to conclude a Convention on the Establishment of an International Criminal Court.

He observed that the General Assembly decided to establish an Ad hoc Committee to review the major substantive and administrative issues arising out of the Draft Statute. The Ad hoc Committee met twice for two weeks each in 1995. Despite tremendous work done in the Ad hoc Committee, the deliberations reflected enormous gaps between the positions of the UN Member States. It was then that the General Assembly decided to establish a Preparatory Committee (PREPCOM), to discuss further the issues arising out of the draft statute and preparing the text of a convention on the establishment of an ICC. The PREPCOM met twice in 1996 and discussed the major issues involved in the establishment of the court i.e. jurisdiction, organisational and procedural matters, complementarity, relationship of the ICC with the Security Council.

He further stated that PREPCOM convened four more meetings, the last one was held in March - April 1998. He noted that the PREPCOM

made significant progress under the able direction of the Chairman Mr. Adrian Bos. The most important development before the last PREPCOM was the Inter-sessional meeting in January 1998 held in Zutphen, Netherlands. In this meeting a consolidated text of the draft statute was prepared which was the basis of the last PREPCOM.

He recalled that the AALCC had closely followed the work of the PREPCOM and had held two Special Meetings, one each in Manila (35th Session) and Tehran (36th Session) which had provided very useful inputs to the Member States. The meeting held in Manila had been attended by the Chairman of the PREPCOM, Mr. Adrian Bos.

He observed that on the eve of the Diplomatic Conference there was still a lot of work to be accomplished before a consolidated text could be produced. A number of square brackets still and these political and legal issues were to be dealt with at the highest levels. He noted that the participation of Member States in the PREPCOM was not upto the level needed, and it was of utmost importance that the AALCC States fully participated in the Plenipotentiary Conference, to ensure the creation of an effective, independent and impartial ICC.

The Deputy Secretary General concluded with the remark that the AALCC fully supported the creation of an ICC., as this could put an end to the kind of horrors the world had suffered over the past eighty years. The international community, he stated, owed-such an institution to its future generations for whom there was need to build, develop and find the ways and means to face the enormous problems of our planet, like hunger, desertification, natural disasters, terrorism, the ascendant graph of crimes, drug trafficking etc.

Dr. Rama Rao speaking on behalf of the Chairman of the PREPCOM gave an overview of the development relating to the drafting of the statute for ICC since 1992 and on the work of the PREPCOM in March-April 1998. He recalled that an intersessional meeting was convened in January 1998, in Zutphen and the recent meeting of the PREPCOM held in March April 1998 was aimed at advancing the consensus arrived at that intersessional meeting.

He said that the March April meeting of PREPCOM dealt with the composition and administration of the Court, relationship between the ICC and the United Nations and the part relating to final clauses. While speaking on substantive issues, he dealt with the issue of core crimes, treaty related crimes of drug trafficking and terrorism and crimes against humanity. He said that the Diplomatic Conference was to decide on the number of ratifications required for the Convention to come into force. Proposals put forward call for 20-65 ratifications.

As regards the financing of the court, monies could be drawn from the regular budget of the U.N, exclusively by states appearing before the court., voluntary contributions and initial funding by UN and later on by States. He called upon Member States of AALCC to actively participate at the Diplomatic Plenipotentiary Conference in Rome in June 1998.

The Delecate of Egypt expressed appreciation for the initiative taken by Dr. M. Javad Zarif, while he was the President of the Sixth Committee in mobilising support towards the idea of the establishment of an ICC.

As regards crime of aggression, he was of the view that the Security Council with its main function as maintenance of international peace and security could intervene without compromising the independence of the Court. Supporting the principle of complementarity he expressed the opinion that priority should be given to national jurisdiction without taking away the jurisdiction of the ICC if the national legal system is ineffective or unavailable. He was of the view that the prosecutor of the proposed court should only proceed with cases brought by States and not by other non governmental organizations.

Thereafter, he called upon co-ordination between AALCC Member States to foster commonalities so that an Asian African view is placed before the Diplomatic Plenipotentiaries conference.

The Delegate of Ghana thanked the Secretariat for- preparing comprehensive but concise documents and the addendum. Recalling the work of the ILC, he said the establishment of the ICC has reached a final stage for

concluding long standing efforts. However, he expressed his Government's reservations on certain key areas where the AALCC can play an effective role in collating views and representing an Asian African stand at the Rome Conference. Further more, he added that the jurisdiction of the proposed court should be based on crimes provided in the statute. He called for more detailed provisions in the ICC statute on relationship between ICC and states, rules of evidence, powers and responsibilities of arrest and surrender of accused persons and relationship between national laws and statute of the ICC. He also called upon a clear division between the prosecutorial and investigative role of the Prosecutor. On the financial aspect of the court, he was of the view that budgetary provisions can be drawn upon from the regular budget of the United Nations. He expressed dismay that a 'Copy of the consolidated text of the draft statute of the ICC was not available, he opined that the day long discussions during the 37th Session had helped them to sufficiently prepare for the Conference in Rome in June 1998.

The Delegate of the Islamic Republic of Iran thanked the Secretary General, his colleagues and the Secretariat for preparing an excellent study on ICC. The hard core issues, in the opinion of his Government were jurisdiction of ICC, the relationship between the ICC and national jurisdiction, and the relation between the proposed court and the Security Council. As regards the scope of jurisdiction, he said genocide, crimes against humanity and war crimes were valid inclusions. Aggression too, should be included he felt, complementarity alone should decide, the relationship between ICC jurisdiction, and national jurisdiction. Furthermore he was of the view that Security Council's role of maintenance of international peace and security was well demarcated and hence the ICC should play a judicial role adjudicating on the basis of legal principles. He expressed the view that based on the President's suggestion, AALCC Member States should meet in Rome to project a definite Afro-Asian view at the Diplomatic Plenipotentiaries conference on the establishment of an ICC.

The Delegate the People's Republic of China while thanking the President for his comments, also appreciated the introductory statement on the topic by Dr. Kamil, Deputy Secretary General, AALCC. While appreciating the statement of Dr. Rama Rao made on behalf of the Chairman

of PREPCOM, he thanked the Secretariat for the valuable report prepared for the session. Furthermore, he was of the view that China fully supported the establishment of an ICC, though the issue at hand is legally and technically complex. In this regard, he called upon Member States to bear in mind the important facets of universality, independence and impartiality of the proposed ICC. Supporting the principle of complementarity he expressed the view that ICC must deal with 'core crimes' the definition of which must be explicitly provided in the Statute.

Furthermore, on the issue of jurisdiction of the Court, a view was expressed that 'inherent jurisdiction of the ICC' should not be provided in the statute, as it contradicted the principle of complementarity. He reiterated his Governments' stand that the court's jurisdiction be optional, as provided in the ICJ statute. Commenting upon the statute having reached its final stage, he said universality of the statute was necessary which would reflect mainstream customary international law.

The Delegate of India at the outset gave a brief outline of the core issues concerning the establishment of an ICC. These were the principle of complementarity, crimes of 'serious concern' to the international community to be included in the ICC statute, as well as independence, impartiality, professional competence and, effectiveness of the Court. Furthermore, he was of the view that 'double jeopardy should not be allowed if jurisdiction of the proposed court, was to be based on the principle of complementarity. The ICC, he averred should be an independent body, supplementary to national legal systems. Jurisdiction in his governments view was to be based on respect of sovereignty and consent of states. He found no objection to the inclusion of 'international terrorism. As regards drug trafficking, there is lot of confidential information, which States may feel hesitant to share with the ICC. He expressed concern on the inclusion of 'non international armed conflicts' as war crimes in the statute as these offences are treaty based and only Parties, he felt could be bound by treaty provisions of the Geneva Conventions. In this regard, he further added that common Article 3 of the Geneva Conventions, had not yet attained the status of customary international law. He cautioned that the 'role of the Prosecutor' as provided by the draft statute of ICC should not interfere with the - mechanism provided under the statute, as States alone have right to