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UNITED STATES MISSION TO THE UNITED NATIONS

STATEMENT BY AMBASSADOR BILL RICHARDSON, UNITED STATES
REPRESENTATIVE TO THE UNITED NATIONS, BEFORE THE SIXTH COMMITTEE
OF THE 52ND GENERAL ASSEMBLY, REGARDING AGENDA ITEM 150:
ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT

NEW YORK – 23 OCTOBER, 1997

(Check against delivery)

Mr. Chairman,

I am pleased to address the Sixth Committee on a subject of great importance to the United States and the international community. In this connection, I would like to recall today the remarks of the President of the United States to the General Assembly almost exactly a month ago. Speaking before the General Assembly on September 22, he said:

To punish those responsible for crimes against humanity and to promote justice so that peace endures, we must maintain our strong support for the United Nations' war crime tribunals and truth commissions. And before the century ends, we should establish a permanent international court to prosecute the most serious violations of humanitarian law.

This reflects, of course, the fundamental position of support for a fair, efficient and effective court which we have expressed before, but with a particular emphasis on the timing which we now envision based on the road we see before us and developments and progress which have already occurred.

As we approach the 21st Century, individuals--of whatever rank in society—who participate in serious and widespread violations of international humanitarian law must no longer act with impunity. The time has come to create an international criminal court that is fair, efficient, and effective, and that serves as a deterrent and a mechanism of accountability in the years to come.

We therefore strongly support the decision to hold a diplomatic conference to finish and adopt the statute of a Court in the summer of next year. In order to meet that objective, however, we must redouble our efforts to resolve the necessary preparatory issues in the weeks and months ahead, so that the conference will be fully successful and its work complete.

During the past year, the Preparatory Committee on the Establishment of an International Criminal Court has made important progress in its work. We commend Adriaan Bos for his skillful chairmanship of the Preparatory Committee and the tireless work of the Secretariat in support of the Committee's work. We also want to recognize the invaluable contributions of the non-governmental organizations to the work of the Preparatory Committee this year.

We also particularly applaud the efforts of those delegations who have taken a leadership role in seeking to facilitate our work, simplifying the myriad proposals, illuminating the important underlying issues, and helping to find solutions that are effective and acceptable to all. We pledge our continued support of such efforts, and call upon other countries as well to do the same.

Much remains, however, to be done. We must strive now to reach agreement, to overcome the differences in our legal systems and approaches, to fashion a coherent legal and procedural framework for the court.

Some indeed have questioned whether this is too ambitious, whether it is necessary or feasible to complete what we set out to do. We strongly believe that this is exactly our task. It is in our view essential, between now and the end of the diplomatic conference next year, to reach agreement on the basic rules and principles that will guide the court.

These will be critical to its effective functioning, and it is our mandate and responsibility to ensure that it does function effectively. Our Congresses and Parliaments, and our publics, will want to know that we have accomplished this task and they will want to know that we have done it well. To fail in this task would be to throw away the precious and critical opportunity that we face at this moment, to create a truly viable and widely-acceptable, effective court.

These basic rules and procedures must necessarily include the fundamentals of the criminal law procedures of the court. Certainly we cannot expect to agree on, nor do we need to elaborate, every single rule. At the same time, however, we cannot leave the court as it stands now, totally formless and uncertain, torn between civil and common law. The fundamental outlines of procedure, including the important subject of defendants' rights, must be clear before any State is asked or expected to sign on to the court.

We must also finish the very considerable work that has already been done on general principles of criminal law. Further, we must clarify and elaborate the rules on the cooperation of States with the Tribunal, the powers of the Tribunal to compel and enforce cooperation, and the powers of the Tribunal to investigate on its own. Experience with the International Criminal Tribunals for the Former Yugoslavia and Rwanda, for example, demonstrates that effective rules in this area are a sine qua non for the future of an international criminal court.

It is neither prudent nor wise to leave such supposed "details" unresolved, as there may be surprising controversy and difference of opinion, and a total absence of shared assumptions, about even very simple, albeit essential, procedures and rules.

We must also still reach a common designation and better definition of crimes. It is in our view important that jurisdiction be confined initially to the truly "hard core" crimes of genocide, war crimes and crimes against humanity. These crimes and the court's jurisdiction should, moreover, be further and more precisely defined so as to focus clearly on those well-established crimes of serious international concern.

This court should not concern itself with incidental or common crimes, nor should it be in the business of deciding what even is a crime. This is not the place for progressive development of the law into uncertain areas, or for the elaboration of new and unprecedented criminal law. The court must concern itself with those atrocities which are universally recognized as wrongful and condemned. This court's foundation is just now being established, and it is important that it be built on wide acceptability and on solid ground. If all goes well, the international community can and will build on our initial efforts and the court will grow and evolve. At this stage, however, we should not allow an overly ambitious approach to jeopardize the prospects for success.

We also need ultimately to bridge the quite divergent views on the question of the trigger mechanism. There are those who argue that the independence of the court is assured only if the Prosecutor has unfettered authority to initiate cases, without any role for the Security Council or the consent of interested states. Others insist on the consent of a range of states before any case can be prosecuted before the International Criminal Court. Curiously, some in both groups seek to deny the prosecutor's independent judgment, so as to make him or her the mere instrument of a Security Council referral or individual State complaint.

The United States has proposed an alternative procedure that we believe best ensures both the independence of the ICC and the practical use of the court. This builds upon and strengthens the core concept established by the International Law Commission. In our view, no case should be initiated by the Prosecutor unless the overall situation pertaining to that case has been referred to the court. Once there has been a referral, however, the Prosecutor should have full discretion to determine what and whom to investigate and prosecute, and indeed not prosecute.

It seems important to bear in mind that this court is not an every-day court of appeal but, rather a significant and powerful international mechanism to deal with whole situations of exceptional seriousness and magnitude. It is reasonable, therefore, to consider that there should be some overall threshold of seriousness and magnitude to meet before one sets in motion the considerable machinery of the court. This is not a court that can or should realistically be called upon to deal with every crime that goes unpunished, however desirable in the abstract that might be.

The overall situation could be referred by the Security Council or by an appropriate

State, but it should be a question of referring a matter or situation. "An individual State should not be able to pick and choose who to investigate and to dictate this to the Prosecutor, by filing a selective complaint. We have emphasized in particular that the State Party should have to refer a situation or matter; the State Party would not lodge a complaint 'against one or more named individuals as is currently envisioned in the ILC draft and as seems often to be taken for granted in the debate. This procedure would mirror the referral procedure for the Security Council, which is acceptable to a wide range of governments.

However, if the situation referred by the State Party to the International Criminal Court concerns a dispute or situation pertaining to international peace and security which is being dealt with by the Security Council, then the Security Council should approve the referral of the entire situation to the International Criminal Court. In our view, the U.N. Charter responsibilities of the Security Council for the maintenance and restoration of international peace and security permit no alternative to that procedure.

This proposal mirrors the practice with the International Criminal Tribunals for Rwanda and Former Yugoslavia. Many have pointed to these as a model of the kind of independent functioning prosecutor which we want to see for the permanent court.

Another important area which remains to be resolved is that of the structure and administration of the Court, including the question of oversight and funding. As has also been shown by experience with the ad hoc tribunals, there are potential pitfalls in these areas as well, which can make the difference between the success and failure of a permanent court.

Based on our consideration of the question over the past years, we have come to the conclusion that the Court should not be a direct part of, or administratively dependent on, the United Nations. Obviously, a linkage with the Security Council is essential, because of the Security Council's central role in the maintenance of international peace and security and its mandatory and enforcement powers. At the same time, however, the court needs to function independently - not only from the Security Council, but even more critically from the vast bureaucracy, structure and unrelated, operations of the United Nations.

The United Nations has, in general, a different kind of objective and mission, its machinery is not designed for a criminal justice institution and its other priorities could easily dwarf the relatively smaller operations and concerns of the court. To tie the two too closely together would not help the United Nations, nor would it best promote the functioning of the court.

At the same time, the court will need some mechanisms of oversight by States parties. These would not be the large and relatively cumbersome mechanisms of the United Nations, nor should they be in any way intrusive of the independent functioning of the court.

Such a mechanism can be important, however, to ensure a necessary measure of oversight and, accountability, especially as concerns fiscal matters, to guard against irreconcilable issues arising between the different and, to varying degrees, independent components of the Court, and to provide a mechanism for the approval of necessary adjustments which might be made from time to time, for example, in the rules of procedure.

In addition, as a corollary of the above and also as an independent matter, we believe that it is essential for there to be a treaty-based funding scheme. While it is reasonable for the United Nations to make a very significant contribution when a situation or matter is referred by the Security Council, it is not acceptable to expect the United Nations to bear the entire cost of the Court.

To do so risks dooming the ICC to a permanently underfunded status, on the one hand, while also jeopardizing the overall necessary budgetary constraints of the United Nations. There should not be a trade-off between U.N. programs and prosecutorial priorities, nor should the other operations of the United Nations wax and wane depending on the incidence of serious international crime. Moreover, independence from United Nations mechanisms entails fiscal independence as well.

These are only some of the more important issues which lie ahead of us. It is important to bring our best efforts, wisest judgment, and maximum flexibility to bear to see that they are resolved as quickly as possible in a way that best promotes the future authority, integrity, and effectiveness of the court.

In conclusion, Mr. Chairman, the United States is committed to the establishment of a fair, effective and efficient court before the next millennium. To do this, we can and must complete our work on the statute, including the essential outline of governing law, rules, and procedures, over the next months of preparatory work and during the conference next year. We also firmly believe that a court with the necessary power and independence can best be created as an independent institution, with the necessary assistance of the Security Council's role and powers, that focuses on the solid ground of wide international consensus and support.

Mr. Chairman,

We look forward to supporting a resolution that will confirm and settle our plans for the further work of the Preparatory Committee in December and next spring, and for a diplomatic conference in Rome next year, to complete all the necessary work on the establishment of an international criminal court.

Thank you, Mr. Chairman.