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SUMMARY RECORD OF THE 31st MEETING

Chairman: Mr. LEHMANN (Denmark)

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The meeting was called to order at 10.30 a.m.

TRIBUTE TO THE MEMORY OF YITZHAK RABIN, PRIME MINISTER OF ISRAEL

1. The CHAIRMAN paid tribute to the memory of Yitzhak Rabin, Prime Minister of Israel, and requested the representative of Israel to convey the Committee's condolences to the Government and people of Israel.

2. At the invitation of the Chairman, the members of the Committee observed a minute of silence.

AGENDA ITEM 142: ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT (continued) (A/50/22)

3. Mr. AMIRBEKOV (Azerbaijan) reiterated his delegation's strong commitment to the establishment of a permanent international criminal court, which would strengthen international cooperation in the prosecution and suppression of the most serious crimes that threatened international peace and security. The early establishment of the court would obviate the need to set up ad hoc tribunals for particular crimes and would ensure consistency in international criminal jurisdiction. The need to expedite the establishment of the court was even more evident at a time when the security and stability of the world community were being jeopardized by such phenomena as genocide, separatism, ethnic cleansing and xenophobia.

4. His delegation supported the idea of establishing the court by means of a multilateral treaty, as recommended by the International Law Commission; that would be consistent with the principle of State sovereignty while ensuring the legal authority of the court. The principle of complementarity was of paramount importance because it recognized the primacy of national criminal jurisdiction; however, that principle needed to be defined more clearly. His delegation agreed that only core crimes should be included in the court's jurisdiction and felt that the crime of aggression must be included, since the principle of the non-use of force by Member States against the territorial integrity or political independence of other States was enshrined in the Charter.

5. It was possible to strike a balance between the requirements of the independence of the court and the need to respect the primary role of the Security Council in the maintenance of international peace and security. The recent crisis in the Balkans and the aggression perpetrated by a neighbouring State against Azerbaijan had shown that acts or wars of aggression should be nipped in the bud and that their perpetrators must not go unpunished.

6. His delegation welcomed the idea of establishing a preparatory committee to prepare a consolidated text of a convention for an international criminal court and to set a date for the holding of a conference of plenipotentiaries.

7. Mr. VILCHEZ ASHER (Nicaragua) said that a permanent international criminal court would fill a gap in international law. The ad hoc tribunals established for the former Yugoslavia and Rwanda confirmed the need for a permanent court, based on a multilateral treaty, to which States could submit cases of

atrocities. Since primary responsibility for the protection of persons fell to States, the court should complement national courts and international judicial cooperation procedures. A balance should be sought when formulating that principle, however, so that the court's jurisdiction would not simply be residual to national jurisdictions. Nor should the court become an appeals court for the review of national verdicts.

8. The crimes to be taken up by the court should be limited to those of greatest concern to the international community as a whole, such as the crimes listed in article 20 of the draft statute. However, the draft statute should not contain definitions of those crimes, which were defined in other international treaties. The crime of aggression should not be excluded, in view of the precedent of the Nürnberg trial; the definition in General Assembly resolution 3314 (XXIX) could be used as a basis. Moreover, a link should be established between the future Code of Crimes against the Peace and Security of Mankind and the draft statute.

9. The draft statute should include a mechanism that would make it possible to take into account the development of international criminal law and increase the number of crimes over which the court would have jurisdiction. The principles of legality, nullum crimen sine lege and nulla poena sine lege, must be respected by the court.

10. His delegation felt that it would be contradictory to the principle of complementarity to give the court inherent jurisdiction over the crime of genocide. The court should have jurisdiction only when a case had been submitted to it by States parties to the statute, or by the Security Council under Chapter VII of the Charter. That would avoid the establishment of new ad hoc tribunals such as those for Rwanda and the former Yugoslavia.

11. His delegation agreed that a preparatory committee should be established with a broader mandate than that of the Ad Hoc Committee with a view to the convening of a conference of plenipotentiaries in 1997.

12. Mrs. ONANGA (Gabon) said that the establishment of an international criminal court would fill the gaps in the international criminal system and make it possible to prosecute the perpetrators of crimes and secure reparation for the victims.

13. Her delegation was not satisfied with the approach of transposing domestic legal systems to the international level. It was also concerned about the competence of the Security Council to refer matters to the court under article 23, paragraph 2, of the draft statute, for the reasons for set out in paragraph 123 of the Ad Hoc Committee's report.

14. The competence ratione materiae of the court should be limited to the most serious, or core, crimes. Her delegation welcomed the proposal to hold an international conference of plenipotentiaries in 1997 to sign a convention establishing the international criminal court.

15. Mr. HABIYAREMYE (Rwanda) said that an international criminal tribunal had been established for Rwanda because it had been the scene of genocide and crimes

against humanity so shocking as to convince even the most cynical that the international community could not remain indifferent. In the face of the inability of the United Nations to deal with the situation, and the withdrawal of the Blue Helmets, a tribunal had, after many delays, been established under Security Council resolution 955 (1994), although it had yet to begin its work.

16. The purpose of an international criminal court would be to prevent and deter international crimes, in accordance with the principle that criminal law should be in existence before the situations it was called upon to regulate occurred so as to avoid trials intuitu personae.

17. At the current stage the General Assembly should review the few questions which remained regarding the draft statute in order to define precisely the mandate for the preparatory committee, including the convening of a conference of plenipotentiaries by 1997 at the latest. If atrocities such as those which had been committed in Rwanda and were still unpunished were to be avoided, the international community must not waste time in interminable academic discussions. The limitation of the court's jurisdiction ratione materiae would make the court more effective and avoid possible conflicts of jurisdiction. His delegation agreed that genocide, war crimes and crimes against humanity as defined in the relevant international conventions should be included in the draft statute and that other crimes, including aggression and terrorism, could be added in the future, after they had been precisely defined. The court could draw on the draft Code of Crimes against the Peace and Security of Mankind, in that respect.

18. The court's effectiveness would depend on its independence from States; the concept of complementarity should not create a presumption in favour of national jurisdiction. The primacy of the international court should be preserved without preventing national courts from exercising concurrent jurisdiction. In the event of disputes as to jurisdiction, the court would relinquish jurisdiction to national courts but would be competent to retry cases where national trial procedures were unavailable or ineffective, without the possibility of invoking the principle of non bis in idem. The principle of complementarity should be defined in the preamble in order to indicate precisely the overall context in which the statute was to be interpreted.

19. The court should be linked by a convention to the United Nations system but must be independent from the political interests of Member States. The preparatory committee for the conference of plenipotentiaries should begin its work as soon as possible and should involve as many countries as possible to ensure the universality of the court.

AGENDA ITEM 145: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (A/50/33, A/50/361 and A/50/403)

20. Mr. SURIE (India), Chairman of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, introducing the report of the Special Committee (A/50/33), said that at its 1995 session, the Special Committee had had on its agenda a number of proposals relating to the maintenance of international peace and security and the peaceful

settlement of disputes between States. Those items had been on its agenda from its inception. In addition, the Special Committee had considered two other issues: the question of the deletion of the "enemy State" clauses from the Charter of the United Nations and the question of the review of the membership of the Committee.

21. In the framework of its Working Group, the Special Committee had first considered the question of the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter. While the need to assist third States thus affected had been recognized by all members, there had been no general agreement on possible remedial measures. The measures which had been suggested included resorting to international financial institutions, the establishment of a trust fund and full transparency in the proceedings of the Security Council and its sanctions committees. Since the Special Committee had not received the report of the Secretary-General requested in General Assembly resolution 49/58 in time for its session, it had deferred further consideration of the matter and invited the General Assembly to consider the establishment of an open-ended working group within the framework of the Sixth Committee to give further consideration to the matter. That working group had been established and was currently considering the report of the Secretary-General (A/50/361).

22. The Special Committee had considered two other proposals under the general topic of the maintenance of international peace and security. The first was a revised proposal by the Libyan Arab Jamahiriya aimed at enhancing the effectiveness of the Security Council in maintaining international peace and security. Some delegations had felt that the proposal deserved serious study, even if certain aspects of it were under consideration in other United Nations forums, while others felt that it could not serve as a basis for a meaningful discussion, that its provisions were controversial and unbalanced, and that the consideration of such issues in the Special Committee was inappropriate and redundant. The second proposal, a working paper submitted by Cuba under the title "Strengthening of the role of the United Nations in the maintenance of international peace and security: strengthening of the role of the Organization and enhancing its effectiveness" had been introduced by the sponsor but not discussed in the Working Group.

23. The Special Committee had successfully concluded its work on the draft United Nations Model Rules for the Conciliation of Disputes between States, which were reproduced in paragraph 55 of the report. The Model Rules constituted a flexible instrument at the disposal of States for the peaceful settlement of disputes. They consisted of 29 articles which, in accordance with article 1, States were free to apply in their entirety or in an amended form. The Model Rules, which covered each stage of the conciliation proceedings, provided for the obligation of the parties not to act in a manner which might have an adverse effect on the conciliation and for preservation of the legal position of the parties. They also dealt with the apportionment of costs. The Special Committee recommended that the General Assembly should bring the text of the Model Rules to the attention of States by annexing it to a decision or resolution to be adopted at the current session.

24. Under the same topic, the Working Group had considered the proposal submitted by Sierra Leone under the title "Establishment of a Dispute Settlement Service offering or responding with its services early in disputes". Delegations had generally welcomed the intention underlying the initiative but considered that a number of aspects required further clarification. The sponsoring delegation had therefore been requested to prepare a detailed commentary on the proposal, which had been circulated as document A/50/403.

25. On the question of the deletion of the "enemy State" clauses from the Charter of the United Nations the Special Committee, as indicated in paragraph 65 of its report, had recommended a draft resolution for adoption by the General Assembly whereby the Assembly would express its intention to initiate the procedure to amend the Charter, with prospective effect, through the deletion of the "enemy State" clauses from Articles 53, 77 and 107 at its earliest appropriate future session.

26. While the issue of review of the membership of the Special Committee had been on the agenda for some time, it had been brought to the forefront by the increasing interest shown in the Committee’s work by delegations attending the sessions as observers. That situation had led the Special Committee to recommend, in paragraph 67 of its report, that it should henceforth be open to all States Members of the United Nations and would continue to operate on the basis of consensus.

The meeting rose at 11.10 a.m.