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COMMITTEE OF THE WHOLE

SUMMARY RECORD OF THE 4th MEETING

Held at the Headquarters of the Food and Agriculture Organization of the United Nations
on Wednesday, 17 June 1998 , at 3 p.m.

Chairman: Mr. P. KIRSCH (Canada)

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V.98-57457 (E)

The meeting was called to order at 3.20 p.m.

CONSIDERATION OF THE QUESTION CONCERNING THE FINALIZATION AND ADOPTION OF A CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT IN ACCORDANCE WITH GENERAL ASSEMBLY RESOLUTIONS 51/207 OF 17 DECEMBER 1996 AND 52/160 OF 15 DECEMBER 1997 (*continued*) (A/CONF.183/2/Add.1)

Part 2 of the draft Statute (*continued*)

Article 5 (*continued*)

1. **The CHAIRMAN** invited the Committee to resume its discussion on crimes against humanity.

2. **Mr. PIRAGOFF** (Canada) expressed concern at the suggestion that there needed to be a nexus between crimes against humanity and armed conflict. Canada's position was that no such nexus was required under modern international law, a view supported by the Convention on the Prevention and Punishment of the Crime of Genocide, Allied Control Council Law Number 10 (1945), the Statute of the International Criminal Tribunal for Rwanda and the draft Code of Crimes against the Peace and Security of Mankind. The decision of the Yugoslavia Tribunal Appeals Chamber in the Tadić case had confirmed that customary international law did not require such a nexus. It would be retrogressive to reintroduce a nexus requirement, which would hamper the Court's ability to deal with crimes against humanity in contexts similar to that of Rwanda.

3. With regard to the *chapeau* of paragraph 1 in the section on crimes against humanity, the wording "widespread or systematic" was clearly established in customary international law, as affirmed by the International Criminal Tribunal for the Former Yugoslavia and the Rwanda Tribunal. With regard to the wording in square brackets concerning grounds for an attack against a population, Canada's view was that such grounds were not part of the definition of crimes against humanity under customary international law and that any requirement regarding grounds would unnecessarily complicate the task of the prosecution. Moreover, a list of prohibited grounds of discrimination might inadvertently exclude groups which could be the victims of crimes against humanity.

4. **Mr. BALDE** (Guinea) said that his delegation favoured the second alternative in the *chapeau*, subject to the deletion of the reference to armed conflict, since crimes against humanity could well be committed in circumstances other than armed conflict. With respect to the list of acts constituting crimes against humanity, it would prefer "deprivation of liberty" as the broader term in subparagraph (e). It was in favour of retaining paragraph 2 as providing clarification of the acts listed.

5. **Mr. PANIN** (Russian Federation) said that his delegation was very much in favour of extending the jurisdiction of the Court to crimes against humanity. The *chapeau* of paragraph 1 should refer to "widespread and systematic" attacks against a civilian population. There was no doubt that crimes against humanity could be committed during both international and non-international conflicts, and the Court would have jurisdiction over crimes coming under general international law.

6. Concerning the list of acts enumerated in subparagraphs (a) to (j), his delegation would prefer the deletion of (h) and (i), which would be covered by (j). It had no strong feelings about the choice of wording in the first part of (e). He cautioned against any over-hasty deletions from paragraph 2, which had much to commend it.

7. **Mr. CAFLISCH** (Switzerland) said that his delegation shared the majority view that the definition of crimes against humanity should be applicable to times of both peace and armed conflict, whether international or internal. In the *chapeau* of paragraph 1, it preferred the first alternative, with the wording "widespread or systematic". It agreed with the list of crimes enumerated in subparagraphs (a) to (j). Maintaining paragraph 2 might complicate matters and the paragraph might be better deleted, unless it could be simplified.

8. **Ms. SUNDBERG** (Sweden) said that her delegation did not wish to see any mention of a nexus between crimes against humanity and armed conflict and believed that the former should also cover crimes committed in peacetime and during internal conflicts. It would not favour creating a new threshold for the prosecution of those crimes and would prefer the wording "systematic or widespread" in paragraph 1. It supported the retention of all the crimes listed in subparagraphs (a) to (j), and would reserve its comments on the specifics for the relevant working group. It supported the deletion of paragraph 2.

9. **Mr. KROKHMAL** (Ukraine) said his delegation had no set position about the link word between "widespread" and "systematic" in the *chapeau* of paragraph 1. The definition of crimes against humanity should not be restricted to international conflicts. The enumeration of acts constituting crimes against humanity was acceptable. Since general international law did not provide a very clear definition of the acts listed in paragraph 1, paragraph 2 merited some examination. If there was not sufficient support for maintaining the whole of the paragraph, the matter might be considered further in the working group.

10. **Mr. CHUKRI** (Syrian Arab Republic) noted that the basis for the Tokyo and Nuremberg Tribunals had been the commission of crimes against humanity in the context of armed conflicts. There was also clearly some overlap between crimes coming under the heading of genocide, crimes against humanity and violations of human rights. It was not enough to engage in rhetoric; the intention was to establish an international criminal court, and the draft Statute must not be jeopardized. There might be some loopholes, but there would be no point in a convention that did not command enough support to secure its implementation.

11. **Mr. LOURENÇO** (Portugal) said that his delegation, like others, rejected any link between crimes against humanity and armed conflict, whether international or internal. It favoured the wording "widespread or systematic".

12. **Mr. ASSHAIBANI** (Yemen) said that crimes against humanity were committed in time of both war and peace; their specificity was that they were committed on a large scale.

13. **Mr. PHAM TRUONG GIANG** (Viet Nam) said that crimes against humanity should come within the jurisdiction of the Court. They could be committed both in peacetime and in time of armed conflict, both internal and international. Concerning paragraph 1, his delegation favoured the wording "widespread or systematic". It was flexible as to whether paragraph 2 should be retained or deleted.

14. **Mr. van der WIND** (Netherlands), referring to the *chapeau* of paragraph 1, said that his delegation was in favour of the first alternative, under which there would be no nexus between crimes against humanity and armed conflict of whatever nature, and of the wording "widespread or systematic", which adequately met the requirement for a threshold. It had serious doubts about the inclusion of motives where crimes against humanity were concerned, important though they were as an element with regard to genocide. It had no difficulty in accepting the acts listed and fully supported the observation made by the Italian delegation at the previous meeting concerning subparagraph (j). With respect to paragraph 2, it saw no need for any further elaboration of concepts in the Statute itself.

15. **Mr. Khalid Bin Ali Abdullah AL-KHALIFA** (Bahrain) said that crimes against humanity should include crimes committed in times of peace. However, the Court must concentrate on the most heinous crimes and refrain from interfering in the internal affairs of States, in line with the principle of complementarity. In principle, the concept "widespread and systematic" should be connected with armed conflicts. His delegation would engage in further discussion with an open mind.

16. **Mr. FAYOMI** (Benin) agreed with others that a crime against humanity remained such whether or not it was committed during armed conflict. A link with armed conflict should therefore be discarded as being too restrictive. His delegation was in favour of maintaining paragraph 2, which very usefully defined crimes and their constituent elements; that would be important in bringing charges. Such definitions were regrettably missing in the Statute of the Rwanda Tribunal.

17. **Mr. NAGAMINE** (Japan) said his delegation supported the inclusion in the Court's Statute of crimes against humanity. In the *chapeau* of paragraph 1, he favoured the wording "widespread and systematic", and considered that conduct in time of peace as well as war should be covered. With regard to the list of acts, the principle *nullum crimen sine lege* required a clear description of elements of crimes. He wondered whether it was appropriate to disassociate extermination from murder or genocide. Some qualifier was needed for "deportation" to indicate that it did not refer, for example, to transfers of populations in such situations as large-scale natural disasters. Similarly, a qualifier such as "unlawful" was needed before "imprisonment". More precise wording was also required in connection with the enforced disappearance of persons. Paragraph 2 would be helpful in clarifying the acts listed.

18. **Ms. TASNEEM** (Bangladesh) agreed that the Court should have inherent jurisdiction over crimes against humanity, including those committed in times of peace. It had been rightly observed that the key to a broad consensus lay in an agreed *chapeau* for paragraph 1. Her delegation did not believe that a link should be established between crimes against humanity and armed conflict, and supported the proposal to remove the enumeration of grounds for attacks on populations. It preferred the wording "widespread or systematic". It agreed with the list in subparagraphs (a) to (j), subject to more precise drafting, and supported the Mexican proposal to include apartheid, which was proscribed as a crime against humanity under the Constitution of Bangladesh. It commended the suggestion to include the use of obnoxious weapons in the list of crimes against humanity.

19. **Mr. TANKOANO** (Niger) said that crimes against humanity should fall within the jurisdiction of the Court, whether they were committed in times of peace or war and whatever their grounds. Since the cold war period, most crimes against humanity had been committed in internal conflicts; it should not be forgotten, either, that apartheid had been applied in peacetime. His delegation endorsed the comment made by the delegation of Benin on the constituent elements of crimes. No provisions in the Statute should be open to varying interpretations.

20. **Mr. CEDE** (Austria) said that, in the *chapeau* of paragraph 1, his delegation preferred the first alternative, without any reference to armed conflict, and the wording "widespread or systematic". It also saw some merit in maintaining paragraph 2 in view of the need for a precise definition of the crimes concerned, in accordance with the principle *nullum crimen sine lege*.

21. **Mr. PEREZ OTERMIN** (Uruguay) expressed support for the inclusion in the Statute of crimes against humanity. The reference to armed conflict under crimes against humanity was inappropriate in the light of recent events, and should be deleted. The use of the word "systematic" was not sufficient to distinguish crimes against humanity from ordinary crimes covered by domestic law. He therefore suggested the wording "systematic and widespread".

22. His delegation agreed with the list of acts in subparagraphs (a) to (j), except that, for the reasons given by Mexico, subparagraph (j) should either be deleted or made clearer. In principle he would be in favour of retaining paragraph 2, which was helpful in defining the crimes concerned, but he remained flexible on that point.

23. **Ms. FAIRWEATHER** (Sierra Leone) said that, in the *chapeau* of paragraph 1, her delegation favoured the first alternative and the wording "widespread or systematic", and wished to see no nexus with armed conflict, whether international or internal. It agreed with the inclusion of the acts listed in subparagraphs (a) to (i), but considered, like Mexico, that (j) might violate the principle *nullum crimen sine lege*. It was flexible on the inclusion or otherwise of paragraph 2.

24. **Mr. NATHAN** (Israel), referring to the text on genocide, expressed agreement with the suggestion that the enumeration of punishable acts could be included in Part 3, since the principle involved affected all crimes within the jurisdiction of the Court, not just the crime of genocide.

25. The concept of crimes against humanity should be differentiated from that of war crimes by specifying that they were crimes committed on a massive scale against any civilian population on political, racial or other grounds to be defined. Under existing customary international law there was no necessary nexus between armed conflict and crimes against humanity, the relevant documents being the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, Control Council Law Number 10 and the finding of the International Tribunal for the Former Yugoslavia in the Tadić case.

26. With respect to the enumeration of the acts constituting crimes against humanity, the word "unlawful" should precede "deportation" in paragraph 1 (d) because there might be deportations that were lawful under the fourth Geneva Convention of 1949. The words "of comparable gravity" in subparagraph (g) might be dropped and the words "or other similar" before "grounds" in (h) were also too vague. Also in (h), the final bracketed phrase should be deleted if it was agreed that there should not be a nexus between crimes against humanity, war crimes and other crimes within the jurisdiction of the Court. The words "or gender" could be maintained in that subparagraph. There was no need for all the detailed definitions given in paragraph 2, with the exception of terms needing such a definition, such as extermination and persecution. A distinction should be made between crimes against humanity and war crimes, although a certain measure of overlapping could not be avoided.

27. **Mr. SALINAS** (Chile) said that, in paragraph 1, his delegation favoured the first alternative and the reference to the "widespread or systematic" commission of the acts in question. There was no nexus between the existence of an armed conflict and the commission of crimes against humanity, and any introduction of such an element would be retrograde in the light of the development of international law in the previous 50 years. Regarding the enumeration of acts in subparagraphs (a) to (j), greater precision was needed, in particular, in the wording of (e) regarding detention or imprisonment as a crime against humanity. Enforced disappearance of persons should be included as a crime against humanity, as it was still used as a means of repression by authoritarian regimes. Greater legal precision was required for subparagraph (g). The definition of certain types of crimes contained in paragraph 2 was helpful and that paragraph should be retained.

28. **Mr. MANSOUR** (Tunisia) said that paragraph 2 of the section on crimes against humanity was a crucial component of the Statute. It was important to define offences; indeed, the wording of the paragraph needed to be more specific and he thought that it should be elaborated upon rather than deleted.

29. **Mr. ONWONGA** (Kenya) said that there should be no link between crimes against humanity and the existence of armed conflict, whether internal or external. It endorsed the view expressed by the delegation of Austria that paragraph 2 served a useful legal purpose in providing precise definitions.

30. **Ms. VEGA** (Peru) agreed that the crime of genocide should be included as the first crime within the jurisdiction of the Court, drawing attention to articles 2 and 3, in particular, of the Convention on the Prevention and Punishment of the Crime of Genocide. With respect to crimes against humanity, her delegation concurred with the delegation of Uruguay that the order of the words "widespread" and "systematic" should be reversed in the *chapeau* of paragraph 1, and favoured the deletion of paragraph 2; the conceptual definitions contained therein could perhaps be transferred to a concluding provision broadened to include other such definitions.

31. **The CHAIRMAN** recalled the conclusions he had drawn at the previous meeting with respect to crimes against humanity. Clearly, a working group would have to consider the matter in greater detail and submit draft revised provisions. With regard to genocide, he thought that it was agreed that the unbracketed part of the provision should be referred to the Drafting Committee; the comments made on some parts of the text would be debated in the context of the broader discussion of crimes against humanity. Discussion of the second, bracketed part of the text would be suspended pending further consideration of the issues in the context of Part 3 of the Statute.

32. He invited comments on the provisions concerning war crimes.

33. **Mr. van der WIND** (Netherlands), acting as Coordinator of Part 2 of the draft Statute, said that the definition of war crimes was divided into four sections, of which sections A and B concerned norms applicable in international armed conflict and sections C and D those applicable in internal armed conflict. The opening clause of section A took account of the fact that under the four Geneva Conventions the list of grave breaches was not always the same, which meant that protected persons were covered by different grave breach provisions depending on the Geneva Convention applicable to them. The wording of subparagraphs (a) to (h) was that of the Geneva Conventions, and it seemed from the Preparatory Committee discussions that there was general support for the inclusion of that section and for its current wording; further discussion might therefore not be required.

34. Section B contained a long list of norms. Of the two options presented under (a), the majority view seemed to favour the first, namely the inclusion of such a text. Views were more divided on (a *bis*) and further consultations might be needed.

35. Of the four options enumerated under section B (b), the first three differed in their approach to the proportionality principle, with option 3 omitting that principle. Positions were less clear on (b *bis*) and further consultations would be needed. The two options under (c) came from different sources and were worded differently, but were aimed at providing similar protection; an informal exchange of views might resolve the question. Subparagraphs (d) and (e) seemed to be generally acceptable.

36. The difference between the first and second options presented under (f) was that the second, whose wording was drawn from that of the Additional Protocol, referred both to the transfer of population and deportation, whereas the first referred only to the former, the reason being that a reference to deportation was already contained in section A. The only difference between the two options under (g) was the inclusion of buildings dedicated to education in option 2. Judging from discussions in the Preparatory Committee, subparagraphs (h) to (n) seemed to be generally acceptable.

37. There were several differences between the four options under subparagraph (o) concerning prohibited weapons. One was the reference in the *chapeau* to weapons which were "calculated" to cause superfluous injury or unnecessary suffering as opposed to those which were "of a nature" to do so. Another difference was reference or otherwise to the weapons as being "inherently indiscriminate". On the question of the list of weapons, option 3 proposed no such list, whereas the others contained either an exhaustive or a non-exhaustive list. Then there was the question, if there was a list of weapons, of which should be mentioned. Options 1, 2 and 4 contained an identical list of weapons in subparagraphs (i) to (v), but option 4 provided for three additional types of weapons.

38. The difference between the two options under (p) was that the second referred also to apartheid and other inhuman and degrading practices. Although there had seemed to be wide support for the inclusion of subparagraph (p *bis*), it now emerged that further consultations would be needed, and the suggestion was to engage in such consultations without a debate in the Committee. Subparagraphs (q), (r) and (s) appeared to be generally acceptable and might need no further discussion in the Committee.

39. With regard to the four options under (t), the fourth option proposed that there should be no paragraph relating to children, but that did not appear to be the majority view. The difference between the other three lay in the degree of protection and hence the extent of States' obligations.

40. With regard to section C, the first of the two sections on norms applicable in internal armed conflict, the only issue was whether the whole section should in fact be included in the definition of war crimes; there had been little discussion on the actual wording, which was taken almost literally from article 3 common to the four Geneva Conventions.

41. Under section D, subparagraph (f), the options were very similar to those proposed in section B, subparagraph (t), the differences in wording stemming from the fact that the norms applicable to international armed conflict and the sources used were somewhat different, as could be seen, for example, in options 2 and 3 which referred to armed forces or groups, and in the reference to allowing children to take part. Then there was an option II relating to section D and proposing the addition of certain provisions to the section, most of them taken from section B on international armed conflict. As to whether sections C and D should be included at all, most, but not all, delegations in the Preparatory Committee had favoured their inclusion.

42. Under the heading "Elsewhere in the Statute", there were three options, the third being that there should be no provision on threshold for the Court's jurisdiction in respect of the crimes in question, the second that it should have jurisdiction "only" when such crimes were committed as part of a plan or policy or of a large-scale commission of such crimes, and the third using the words "in particular" rather than the word "only". Lastly, there was a proposed article Y, which was considered by some delegations to require further clarification.

43. **The CHAIRMAN** suggested that the Committee should initially focus its discussion on sections A and B.

44. **Mr. CHUKRI** (Syrian Arab Republic) said that his Government's concern was with international and not internal armed conflict. He suggested that reference should be made to Additional Protocol I of 1977 to the Geneva Conventions in the *chapeau* of section A. He noted in that connection that some States did not consider the provisions of the four Geneva Conventions to be rules of customary international law. Regarding the various options and paragraphs, he said that, under section A, his delegation accepted all the subparagraphs. In section B, under subparagraph (a), it favoured option 1; under (a *bis*), it favoured option 1; under (b), it favoured option 3; under (b *bis*), it favoured option 2; under (c), it favoured option 1; under (f), it favoured option 3; under (g), it favoured option 2. It had no problems with (h),

(i), (j) and (k), except that the Arabic version of (j) should be brought into line with the English version. It had no problem with (n), (p *bis*) or (q), but favoured option 4 under (o), option 2 under (p) and option 1 under (t).

45. **Mr. SADI** (Jordan) said that there seemed to be a selective approach to the Geneva Conventions. His delegation would, as a matter of principle, oppose any attempts to marginalize one part of the Geneva Conventions, and appealed to all delegations to adopt a holistic approach to the Conventions.

46. Turning to section B, he said that his delegation favoured option 1 under (a). The wording "civilian objects which are not military objectives" in option 1 under (a *bis*) seemed to involve a contradiction, and he sought clarification. Under (b), the qualification of the damage caused by an attack on civilian targets as being "excessive" in relation to the military advantage anticipated raised serious problems as it implied a subjective standard. Who would determine whether or not the damage was excessive? In any case, attacks on civilian targets should not be justified by military objectives. It would be safer to have no qualification of the type proposed. The same comment applied to the language used in option 1 under (b *bis*).

47. With regard to (f), the wording "the transfer by the Occupying Power of parts of its own civilian population into the territory it occupies" was acceptable as being consistent with the fourth Geneva Convention, although ideally his delegation would like to see an extension of that principle, encompassing some kind of prohibition against deportation, which might have an ethnic cleansing dimension.

48. **Mr. HAMDAN** (Lebanon) endorsed the appeal of the representative of Jordan for a holistic approach to the Geneva Conventions, and expressed support for the options favoured by the Syrian delegation.

49. **Mr. SCHEFFER** (United States of America) stressed the importance of the principle of *nullum crimen sine lege*. There must be a clear understanding of what conduct was prohibited, especially in the area of war crimes, where the conduct itself might not be obviously unlawful. The crimes subject to the jurisdiction of the Court should be those clearly recognized as crimes under customary international law and should be precisely defined so as to protect the rights of the accused. Offences which were not universally or widely recognized should not be covered in the Statute. The definitions war crimes under article 5 were insufficiently precise. They were defined in terms that derived from their law-of-war treaty antecedents. To a certain extent, the substantive offences were duplicative and the definitions traditional and, to the uninitiated, ambiguous. Thus, article 5 did not provide the necessary guidance usually found in a criminal statute, nor even a clear enough statement of the law for practitioners and judges, unless they were experts in the laws of war, which judges and practitioners before the Court might not be. In an environment of legal vagueness, individuals had no clear guide to behaviour and the rights of the accused would be jeopardized.

50. In the Preparatory Committee, the United States delegation had proposed an annex to the Statute on definitional elements for crimes covered in article 5, and intended to submit a revised version of that text to the Conference. Detailed elements of crimes must be established as legally binding requirements with respect to judicial determinations of guilt.

51. His delegation was willing to continue to work with others to identify widely recognized and universally accepted provisions and to ensure that the Statute reflected those crimes that were well established under customary international law. Such crimes included grave breaches of the 1949 Geneva Conventions, as well as the offences involving the "means and methods of warfare" largely codified in the 1907 Hague Regulations respecting the Laws and Customs of War on Land.

52. His delegation was particularly concerned about the list of prohibited weapons contained in section B, subparagraph (o) of article 5. Efforts had been made in previous discussions to confine the list to those clearly and unequivocally banned under customary international law. As the law progressed, there would be opportunities, through future review conferences, to add additional prohibited weapons, but the Statute itself should be amended only when prohibitions on the employment of additional weapons had been universally established. To include "catch-all" provisions in the list would open the door to "collateral amendment" of the Statute when weapons conventions or protocols were amended to add new weapons, prohibitions or regulations. That would, in effect, deprive States parties to the Statute from participating in its revision. To establish an automatic linkage to criminal law could also severely complicate the adoption of other treaties.

53. Specifically, the inclusion of nuclear weapons, anti-personnel mines and blinding lasers was not consistent with the current state of international law but was "legislative" in nature. That was particularly grave in matters involving individual criminal responsibility. The addition of highly contentious weapons to the list was counter-productive and unhelpful to the negotiating process.

54. While his delegation understood and shared the desire to protect children, the use of children under the age of 15 years in hostilities was not currently a crime under customary international law and was another area of legislative action outside the purview of the Conference.

55. **Mr. WESTDICKENBERG** (Germany) said that there was general agreement that those who committed violations of the laws and customs applicable in armed conflict must be pursued wherever they might be, brought to trial and punished. Where national criminal justice systems were non-existent or unable or unwilling to prosecute a given serious war crime, the International Criminal Court should exercise jurisdiction. It was not the objective of the Conference to act as a legislator and create new norms and rules of humanitarian law. War crimes should be defined on the basis and in the framework of established international humanitarian law, including customary law. Since, however, humanitarian law had as yet no penal provisions but only prohibitions to be implemented by national criminal law, it was reasonable to focus on prohibitions generally considered to form part of customary international law.

56. The objective of adopting criminal norms providing for individual criminal responsibility required a high standard of precision and clarity, so that everyone, especially soldiers, knew clearly what behaviour constituted a war crime under the Statute. The essential elements of the offences and the minimum qualitative and quantitative requirements should be identified in order to safeguard the right of the accused to due process.

57. War crimes committed in non-international armed conflicts must be included in view of their increasing frequency and the inadequacy of national criminal justice systems in addressing such violations.

58. His delegation was in favour of introducing a general disclaimer clause to ensure that existing obligations of States under customary or conventional law would not be increased or diminished by the Statute.

59. It welcomed the fact that a large number of States seemed ready to accept a compromise formula with regard to the issue of a threshold clause. The jurisdiction of the Court should be limited to exceptionally serious war crimes.

60. His delegation advocated a pragmatic and compromise-oriented approach to the issue of war crimes. Efforts by the German delegation in the Preparatory Committee to bridge the gap between various proposals from other participants were reflected in the text now before the Conference. A 1997 German paper entitled "Reference Paper on

War Crimes" with the symbol A/AC.249/1997/WG.1/DP.23/Rev.1, pointing the way to a possible compromise, had been made available informally for consultation by delegations.

61. **Mr. DIAZ PANIAGUA** (Costa Rica) said that he would like to see all State practice taken into account in the Statute, including the practice of countries which, like his own, had no army. That all the war crimes listed were indeed crimes was beyond doubt. States had a responsibility to disseminate and abide by article 47 of the first Geneva Convention, article 83 of Additional Protocol I and other relevant rules and to ensure that their soldiers were aware of their provisions. Costa Rica's position was at the opposite pole to that of the United States of America.

62. With regard to the definitions in the draft Statute, his delegation accepted the whole of section A. Under section B, it preferred option 1 under (a), option 2 under (a *bis*), option 2 under (b), option 1 under (b *bis*), option 2 under (c) and option 2 under (f), on which there was an imperative need to achieve consensus. Under (g) it preferred option 2 and under (o) option 4, although option 2 might be an acceptable consensus formula. Under (p), it preferred the broader formulation of option 1, although possibly the specific elements of option 2 should be considered separately, and under (t) it preferred option 3, although option 2 might be an acceptable consensus formula.

63. **Ms. SHAHEN** (Libyan Arab Jamahiriya) expressed support for the inclusion of war crimes within the jurisdiction of the Court. With regard to section B, her delegation preferred option 1 under (a), option 1 under (a *bis*), option 3 under (b), option 2 under (b *bis*), option 1 under (c), option 3 under (f), option 2 under (g), option 4 under (o) and option 2 under (p). Regarding (p *bis*), rape was a punishable crime under Libyan legislation. Enforced pregnancy was the result of rape and it was the act itself that should constitute a crime. Under Libyan legislation, abortion, too, was a crime. That paragraph therefore warranted further consideration. Under (t), her delegation preferred option 1.

64. **Ms. WONG** (New Zealand) said that, under section B, subparagraph (g) concerning attacks against buildings was of particular concern to her delegation, which had been responsible for the addition of the word " education" in option 2. On the question of weapons, the New Zealand position was that the definition of war crimes must not fall short of existing, widely accepted standards of international humanitarian law as reflected in the Geneva Conventions and Additional Protocols, which, given the large number of States parties thereto, constituted customary international law. The universally accepted prohibition on using cruel weapons which by their very nature caused unnecessary suffering, going back to the 1907 Hague Regulations, must be recognized, and the advisory opinion of the International Court of Justice two years previously on the legality of the use of nuclear weapons was also relevant. New Zealand's proposal concerning subparagraph (o) appeared in option 3, which did not mention nuclear weapons but reflected the language of the Additional Protocols. An alternative would be to reflect the language of the Hague Regulations. Another issue to which New Zealand attached great importance was that of the safety of United Nations and associated personnel; that aspect of treaty-based crimes might be included in the definition of war crimes. She endorsed the suggestion that (p *bis*) might be dealt with elsewhere. Under the heading "Elsewhere in the Statute", New Zealand had proposed option 2. Her delegation was ready to discuss all those issues further at a later stage.

65. **Mr. QU Wencheng** (China) said that section A was acceptable. Under section B, his delegation preferred option 1 under (a), but proposed the addition of "and causing death or serious injury to body or health". Under (a *bis*), it also preferred option 1, subject to the addition of the same phrase. Under (b) it preferred option 2, and under (b *bis*) option 1. Under (c), it favoured option 2, with the addition of the word "intentionally" at the beginning and the same phrase concerning death or serious injury at the end. Under (f), it preferred option 2, but with the addition of the words "which is not justified by the security of the population or imperative military reasons" after "into the territories it occupies". Under (g) it preferred option 1. It favoured option 1 under (o), option 2 under (p) and option 4 under (t). It also agreed with the United States suggestion that the Statute should include some elements of crimes so as to give the Court clear

guidance in the future and to enable all countries and their soldiers to know what actions and what circumstances would constitute war crimes. By way of preliminary comment on sections C and D, he expressed reservations about the inclusion in the Statute of conflicts of a non-international character.

66. **Mr. AL AWADI** (United Arab Emirates) said his delegation favoured the inclusion of war crimes in the Statute. It had a small reservation concerning the placing of the words "not justified by military necessity" in subparagraph (d) of section A; otherwise section A was acceptable. With regard to section B, it preferred option 1 under (a), option 1 under (a *bis*), option 3 under (b), option 1 under (b *bis*), option 1 under (c), option 3 under (f) and option 2 under (g). It favoured option 4 under (o), with the second version of the *chapeau*, and under (d) preferred option 2. With respect to (p *bis*), it shared the Libyan delegation's reservations about the inclusion of enforced pregnancy. Under (t) it preferred option 2, but would not object to option 1. It considered that sections C and D should not be included in the Statute.

67. **Ms. DASKALOPOULOU-LIVADA** (Greece) said that war crimes clearly fell within the jurisdiction of the Court. Section A was acceptable as being consistent with international customary law as reflected in the Geneva Conventions. On section B, her delegation preferred option 1 under (a) and also option 1 under (a *bis*). Under (b) it preferred option 3 but could agree to option 2. It favoured option 1 under (b *bis*), option 2 under (c), option 3 under (f), option 2 under (g), option 2 under (o) and option 2 under (p). It favoured option 3 under (t), although it could see option 2 as a possible compromise. In general terms, it could accept the content of the paragraphs presenting no options. It was prepared to seek compromise solutions, without, however, departing from the basic principles underlying the whole exercise and losing sight of the fundamental purpose, which was to punish grave crimes.

68. **Mr. GARCIA LABAJO** (Spain) said that the Spanish delegation had submitted a specific proposal to expand the number of persons protected against war crimes. It stressed the importance of complying with the terms of the Geneva Conventions and with customary law as it emerged, *inter alia*, from certain provisions of Additional Protocol I. By proposing to expand the scope of protection to attacks against United Nations or associated personnel or against United Nations installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter, Spain was proposing to expand what might be described in modern humanitarian law as the "protection of protectors". Such protection should be provided in relation to both international and non-international armed conflict.

69. **Mr. PHAM TRUONG GIANG** (Viet Nam) expressed support for the inclusion of war crimes within the jurisdiction of the Court. Section A was acceptable. With regard to section B, his delegation favoured option 1 under (a), option 1 under (a *bis*), option 3 under (b), option 1 under (b *bis*), option 2 under (c), option 2 under (f), option 2 under (g), option 2 under (o), option 2 under (p) and option 1 under (t).

70. **Mr. Khalid Bin Ali Abdullah AL-KHALIFA** (Bahrain) agreed that war crimes should come within the scope of the Court. His delegation agreed with all the options chosen by the representative of the United Arab Emirates and with his comments on sections A, C and D. It also agreed with the Libyan delegation's reservations about subparagraph (p *bis*) in section B and the comment of the United Arab Emirates delegation on that point.

71. **Mr. DAIHIM** (Islamic Republic of Iran) said that the two questions to be asked in connection with the use of nuclear weapons were whether or not such weapons were covered by humanitarian law and what responsibility States had in that regard. Taking into account developments in regard to chemical weapons, for example, nuclear weapons, which were the most devastating weapons of mass destruction, should be considered for inclusion in the draft Statute.

The recent advisory opinion of the International Court of Justice made it clear that nuclear weapons were covered by humanitarian law, and States must respect such law.

72. **Mr. SKIBSTED** (Denmark) expressed the view that the definitions of the various elements of war crimes in the Statute should be based on the 1949 Geneva Conventions and on both 1977 Additional Protocols. For the Court to be relevant, it must have jurisdiction over crimes committed not only in international armed conflicts but also in internal armed conflicts, which were the theatre of most war crimes committed today.

73. Section A could be directly referred to the Drafting Committee. With regard to section B, his delegation would prefer option 1 under (a), option 1 under (a *bis*), option 3 under (b), option 1 under (b *bis*), option 1 under (c), option 2 under (f) and option 1 under (g). Under (o), the difficult issue of prohibited weapons, Denmark preferred option 1 as being consistent with the principle of *nullum crimen sine lege* and with the need for a potential perpetrator to know in advance which acts or omissions would constitute war crimes. It would be preferable to have an exhaustive list of prohibited weapons. It sympathized with the generic approach for political reasons, but defining prohibited weapons should be left to Governments. Agreement on an enumerative list would be difficult to achieve at the Conference, but the appropriate remedy would be an effective review clause allowing for an automatic review of the list of crimes by the Assembly of States Parties, perhaps five years after the entry into force of the Statute. His delegation would like to see anti-personnel mines and blinding laser weapons included in the list contained in option 1. Under (p) it preferred option 2, and under (t) it was flexible as between option 2 and option 3, but wished to see "fifteen years" replaced by "eighteen years".

74. **Ms. SUNDBERG** (Sweden) endorsed the comments of the representative of Denmark. In order for the Court to be politically relevant, it must have jurisdiction over war crimes as defined in the Geneva Conventions and both Additional Protocols. Section D should therefore be more or less a mirror of section B. As to the effect of using chemical weapons, there was no difference between international and internal conflicts. It was also of great importance to provide for existing prohibitions on weapons or methods of warfare which were of a nature to cause injury or unnecessary suffering or which were inherently indiscriminate. Future prohibitions of conventional weapons should also be included, as should attacks against United Nations personnel.

75. Her delegation was in favour of referring section A to the Drafting Committee. With regard to section B, it favoured option 1 under (a), option 1 under (a *bis*), option 2 under (b), option 1 under (b *bis*), option 2 under (f) and option 1 under (g). Under (o) it favoured option 4 but could accept option 2. Under (p) it preferred option 1, and under (t) option 2, but, like Denmark, thought that the prohibition should apply to persons under the age of 18. It supported the inclusion of a review clause for the list of crimes concerned.

76. **Mr. FADL** (Sudan) said that, as the four 1949 Geneva Conventions, to which there had been near-universal accession, were now an integral part of international law, it was appropriate that they should be reflected in the section of the Statute concerning war crimes. His delegation also supported the inclusion of nuclear weapons and anti-personnel mines. Additional Protocols I and II had been ratified by fewer States than the Conventions themselves and Additional Protocol II did not enjoy the status of established international law; it also provided a loophole for interference in the internal affairs of States. His delegation therefore had reservations about the inclusion of provisions based on Additional Protocol II. It favoured option 3—that there should be no provision on threshold—under the section entitled "Elsewhere in the Statute". Given the divergence of views on Additional Protocols I and II, he proposed that the matter be considered further in a working group.

The meeting rose at 6 p.m.