



Republic of Armenia

**Diplomatic Conference on the establishment of
an International Criminal Court**

Rome, 16 June 1998

Statement by
Mr. Armen BAIBOURTIAN
Deputy Minister of Foreign Affairs of the Republic of Armenia

*Mr. President,
Distinguished Delegates,
Ladies and Gentlemen*

May I begin, Mr. President, by congratulating you on your election as president of this conference. I would also like to extend my congratulations to the other elected officials.

Mr. President,

We are gathered here today for this diplomatic conference in order to complete work on what may turn out to be the most significant treaty concluded in decades. The importance of the work being carried out in connection with the establishment of the International Criminal Court should not be underestimated. It brings to fruition a concept envisioned by the United Nations when the Convention on the Prevention and Punishment of the Crime of Genocide was drafted fifty years ago. Over the next five weeks we will build the final structure on a foundation laid five decades ago.

The twentieth century has witnessed the worst crimes against humanity in the history of mankind. It has been the civilian population that has suffered the most as a result of armed conflicts. History has shown us that most of the atrocities committed have gone unpunished. Now it is clear that the international community will no longer tolerate the commission of crimes against humanity and genocide without holding those individuals responsible, accountable for their actions and punishing them. Here, at this conference, we have a unique opportunity to finalize the establishment of a mechanism which not only punishes criminals, but will hopefully deter the committing of such crimes in the future.

Mr. President,

Armenia welcomes the political readiness of those states represented here to establish an effective and independent court which will serve to promote and strengthen the rule of law throughout the world. It is evident that we need a permanent and effective enforcement mechanism to enhance the prosecution of certain core crimes. In this regard, the creation of the ICC will be the most significant contribution to the current void in international law. There are several international instruments which govern the law of war, but in practice there is no real mechanism to punish individuals guilty of war crimes.

Protection of human rights will not be implemented at a national level, if gross violations remain unpunished. The recognition of the principle of individual responsibility for crimes has now made it possible to prosecute individuals for serious violations of international law. No authority, including a head of state or government, should have the power to exclude a person from his/her criminal responsibility or to intervene to reduce or reject a sentence imposed by the ICC.

Armenia supports the view that the ICC should have jurisdiction over the crime of genocide, crimes against humanity, wherever they may have been committed, war crimes, serious violations of humanitarian law in international and non-international armed conflict, crimes of aggression and crimes of terrorism. However, it is necessary that a clear definition be elaborated in the statute for each of the crimes the court will have jurisdiction over, in order to avoid misunderstandings and differing interpretations in the future.

For example, under Article 51 of the UN Charter a state has the right of self-defense, but in some cases the right of self-defense could be interpreted by a state or a group of states as an act of aggression. This could also be true when a right of self-determination is asserted within the territory of a state. A state may characterize such an assertion of self-determination as an act of aggression. A

clearer definition of what constitutes aggression will have to be drafted in order to avoid these types of problems.

With respect to the definition of acts constituting aggression, Armenia would like to see the definition of blockade expanded to include the blockade of the ports, coasts, territory and air routes of a state by the armed forces of another state.

Mr. President,

Armenia believes that the ICC should have automatic jurisdiction over the crime of genocide.

We support the view of maintaining the independence of the ICC from the political considerations of the Security Council and from states concerns. States must not refuse to provide the ICC with required information and must be obliged to comply with court orders. The court must have the power to determine if a state has fully complied with a court order. Cooperation between states parties and the court is of the utmost importance. All states parties must provide the court the same cooperation and assistance that their authorities provide to their national courts. The cooperation between the ICC and states parties should also include effective measures to provide guarantees for the protection of witnesses, victims and their families.

As past practice has shown us, states are rarely willing to hold their own citizens, responsible for the crimes they commit, especially when they hold political or military positions. In this regard, we support the provision in the draft statute which grants limited but sufficient power to the court to determine when states are unable or unwilling to act in a specific situation. This does not mean that the court must act only when a national institution fails to do so. However, if there is an appropriate judicial institution which is able to exercise jurisdiction, it will not be necessary for the ICC to intervene. The court should have the authority to determine whether there is an effective national court able to exercise jurisdiction.

Mr. President,

Armenia supports a fully independent prosecutor. The prosecutor should be able to initiate an investigation based on his/her findings or on information obtained from any other source, independent of a Security Council referral or a state complaint.

With regard to the issue of funding for the ICC and its relationship to the UN, we support the idea of establishing a court which will have an independent international personality, yet will work in close cooperation with UN institutions. We support the option that the UN will finance the setting up of the court, with states parties assuming the financial burden only after a predetermined number of states have ratified the treaty.

Mr. President,

Although many of us gathered here have different perspectives and approaches concerning the specific aspects of the establishment of the court, I am confident, that through the good will and readiness of the delegates, compromises on the main issues relating to the actual functioning, independence and effectiveness of the ICC can be reached and we will be able to achieve what we came here to do: that is to adopt the Statute.

Finally, I would like to express my appreciation to all the non-governmental organizations that contributed to the elaboration of this draft Statute.

Thank you.