



UNITED STATES MISSION TO THE UNITED NATIONS

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U.S. Statement Before the U.N. General Assembly Sixth Committee

The Rome Treaty on the International Criminal Court

October 21, 1999

Mr. Chairman,

Last year at this time, The United States delivered a statement before the Sixth Committee that expressed the U.S. Government's views regarding the Rome Treaty and the challenges that confront the international community with respect to it. Today, we reaffirm the position of the U.S. Government as expressed in our statement of October 21, 1998. Our concerns remain as serious today as they have been throughout the negotiating history of the Rome Treaty.

We believe a serious gap continues to exist between implementing the noble aims of international justice embodied in the Rome Treaty—aims we have long supported—and the responsibility shared by so many in the United Nations to maintain international peace and security. As we have said, the U.S. supports the establishment of a properly constituted court that would bring to justice perpetrators of the most serious criminal violations of international law, but we believe the current Statute is flawed and risks undermining the goals it purports to advance. The Court's inadequate jurisdictional safeguards—especially as applied to nationals of states that have not joined the Treaty—risk inhibiting responsible international military efforts in support of humanitarian or peacekeeping objectives and, for this reason, the U.S. cannot sign the Treaty. The challenges of humanitarian crises so eloquently presented by Secretary-General Kofi Annan at the opening of this General Assembly, and which President Clinton and other world leaders joined in addressing in recent weeks, are emblematic of this gap in the Rome Treaty that the United States wants to close. The Rome Treaty risks becoming only a rhetorical milestone in international relations unless it confronts the reality of how the international system must function if peace, security, and human rights are to have a lasting chance.

During the first two sessions of the Prepcom, the U.S. Government had frank and useful discussions on these issues with the leadership of the Prepcom and with many delegations, and we look forward to the third session and the progress that we hope can be made there. Only with resolution of the fundamental jurisdictional problems we have identified could the U.S. sign the Treaty. Let me be clear, our objective is to strengthen the Treaty, so as to develop a regime that we can embrace, and so that the U.S. could provide strong diplomatic, investigative, and enforcement support which will strengthen the work of the International Criminal Court.

We cannot recognize the Court's competence in bringing prosecutions against U.S. personnel engaged in official actions when the U.S. Government is not a party. At the same time, we are optimists, and are hopeful that our fundamental concerns will be addressed. Thus, we have continued to engage in the discussion of Treaty elements. With that in mind, we offer the following comments about a range of Treaty issues.

The Preparatory Commission remains seized with intensive negotiations of the Elements of Crimes and the Rules of Procedure and Evidence. The U.S. delegation has participated actively in these negotiations and, in our opinion, the seven groupings of war crimes that have been incorporated in the rolling text of the Elements of Crimes (PCNICC/1999/WGEC/RT.4 through RT.10) are satisfactory and merit the support of all delegations. We also look forward to any international work that may still be arranged with respect to the elements of crimes against humanity set forth in the Rome Treaty.

As the U.S. delegation explained in great detail at the end of the second session of the Preparatory Commission, we believe there is a basis to resolve differences over the war crime set forth in Article 8(2)(b)(viii), namely the transfer by an occupying power of parts of its own population into the territory it occupies. The elements for this war crime, which no one is seeking to amend, should reflect customary international law and the common sense of governments engaged in critical negotiations for lasting peace in the Middle East. Otherwise, ill-conceived elements will become another obstacle not only to the viability of the Treaty, but also to the peace process. History will condemn any strategy designed to project a political agenda for this war crime. The only credible course of action is to incorporate into the elements well known principles of international law and then articulate exceptions that are common sensical and recognized in the Geneva Conventions and elsewhere.

The negotiations for the Rules of Procedure and Evidence have advanced considerably under the chairmanship of Silvia Fernandez of Argentina, and there is ample experience with the International Criminal Tribunals for the Former Yugoslavia and for Rwanda that can inform those talks.

In Part 5 of the Statute, namely investigation and prosecution, we continue to have concerns regarding the rules pertaining to confirmation of charges. The function of the confirmation hearing is to determine whether there is sufficient evidence to have a trial. It is not appropriate for the Pretrial Chamber at that preliminary hearing to review all of the evidence and hear extensive witness testimony. Such a procedure could render the actual trial under Part 6 largely superfluous. The rules should require greater precision with respect to how the confirmation hearing will function and the parameters for introduction of evidence by the parties.

Regarding Part 6 of the Statute, we hope all delegations will work hard in the next session to resolve outstanding differences regarding the rule for evidence in cases of sexual violence. We also hope that the draft privilege provision will gain the support of all delegations. On victim-related provisions, we encourage all delegations to approach the important needs and rights of victims with common sense and with the recognition that the intended purpose of the International Criminal Court is to dispense justice. We are concerned that expanded rights of standing to victims to intervene in the proceedings will adversely burden or slow down the proceedings. Victims should not become co-prosecutors and their participation should not hamper the ability of the court to effectively and speedily adjudicate guilt or innocence.

The crime of aggression must also be satisfactorily resolved. We firmly believe that there are critical issues under the U.N. Charter that must be examined by governments. The easier path towards an acceptable definition of aggression will have to recognize limitations imposed by the U.N. Charter, as well as practical limitations that reflect the need for the international community to respond to humanitarian and other crises without being harassed and, much worse, charged with violations of the Statute.

Mr. Chairman,

The United States is engaged with other governments on issues of great importance that must be resolved before we can consider signing the Rome Treaty. There is much at stake here, and we solicit your support in resolving the substantial problems of the Treaty.