

EMBARGOED UNTIL DELIVERY

STATEMENT

BY

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UNITED STATES AMBASSADOR

TO THE UNITED NATIONS

AT THE

UNITED NATIONS

PLENIPOTENTIARIES CONFERENCE

ON THE ESTABLISHMENT OF

AN INTERNATIONAL CRIMINAL COURT

JUNE 17, 1998

Thank you, Mr. President. On behalf of the United States I would like to say what a great pleasure it is to see you presiding over this historic conference. I also would like to extend my country's thanks to the Government of Italy for hosting this important event. We join the many other delegations here today in expressing our thanks for the extraordinary work of Adriaan Bos, without which this conference would not have been possible. We owe him a debt of gratitude and wish him a speedy recovery.

Mr. President, as the world stands at the cusp of a new millenium, we should reflect on what has been a century of remarkable contrasts. Humanity has reached great heights and plumbed the depths of its own potential for evil. For all the progress we have made, today there are men, women and children from Kosovo to the Kagera River who must confront the horror of the very crimes we have gathered here to address.

Over the next five weeks, we have a unique opportunity. The nations of the world are gathered to complete an important piece of unfinished business: the creation of an International Criminal Court. It is time that we make real the aspirations of the past fifty years: the establishment of a Court to ensure that the perpetrators of the worst criminal assaults on humankind – genocide, serious war crimes, and crimes against humanity – do not escape from justice. That is why President Clinton has repeatedly called for the establishment of a permanent International Criminal Court by the end of this century. Today, we are within reach of that goal.

The world must not underestimate the importance of our collective efforts here today. The creation of a permanent International Criminal Court must represent a singular statement of consensus: genocide, crimes against humanity, and the most serious war crimes are never acceptable. Such a decision would send a clear and unmistakable warning to would-be tyrants and mass murderers: the international community will hold you responsible for your actions.

But it must be the world community that creates the Court. The Court cannot be the creation of only a single group of nations. The Court must be built on the firm ground of international consensus, and enjoy international support. Only then will it be a truly powerful and effective Court.

As we gather to establish a permanent Court, we also must recognize the reality of the international system today. As we craft a Court that reflects our ideals, we must remember that it will not operate in a political vacuum. Experience teaches us that we must carefully distinguish between what looks good on paper and what works in the real world.

The United States has a deep and unwavering commitment to the cause of international justice. Where national legal systems cannot or will not do the job, we have joined with other governments to create *ad hoc* international criminal tribunals, such as those for the former Yugoslavia and Rwanda. These courts demonstrate that the world can confront evil, secure justice, and ensure international peace and security through the application of international law. That is why we seek a tribunal to prosecute the leading perpetrators of the atrocities in Cambodia under the regime of Pol Pot.

A permanent Court cannot stand alone. It must be part of the international order, and supported by the international community. The United Nations Security Council remains a vital part of that world order. Because of the Security Council's legal responsibilities for maintaining international peace and security, the United States believes that the Council must play an important role in the work of a permanent Court, including the Court's trigger mechanism. The Council must be able to pursue the aims of peace. The Council must be able to refer critical situations to the Court for investigation, and must be able to instruct countries to cooperate with the Court if necessary and appropriate within its powers. The Council's mandatory Chapter VII powers will be absolutely essential to the workings of the Court – not only for enforcement but also to ensure the true universality of its jurisdiction and powers. From the point of view not only of law but of vital policy, the Court must operate in coordination – not in conflict – with the Security Council and its role and powers under the U.N. Charter.

Another essential aspect of a successful Court is the support of the international community. The Court must work in coordination, not in conflict, with states. The Court must complement national jurisdiction, and encourage national action wherever possible. It must also depend, necessarily and fundamentally, on the support of the international community to ensure the effective exercise of its powers.

With the best intentions of international justice in mind, some have proposed granting a prosecutor the right to initiate investigations and seek indictments against anyone in any place. Although we respect the views of those who advocate this proposal, we believe that it is unrealistic and unwise. It will overload the limits of the Court's design, leading to greater confusion and controversy. It will, in fact, weaken rather than strengthen the Court. This Court cannot and should not address every crime that goes unpunished, no matter how horrific or atrocious it may be.

To be sure, the United States regards all violations of human rights and international humanitarian law as reprehensible. But we must not turn an International Criminal Court – or its prosecutor – into a human rights ombudsman open to, and responsible for responding to, any and all complaints from any source. If we do, the Court will be flooded with every imaginable complaint, hindering its investigation into the most serious crimes and undermining its scope and relevance. The only way the office of the prosecutor could manage such an onrush would be by making decisions that inevitably will be regarded as political.

At best, the proposal for a self-initiating prosecutor is premature. We should first give the Court the opportunity to establish its credibility. If we move too quickly, we may create a Court that will appear sound on paper but collapse under the weight of its own mandate.

At the same time however, we support giving maximum independence and discretion to the prosecutor in his or her proper sphere. When a State Party to the treaty or the Security Council refers a situation to the jurisdiction of the Court, the prosecutor should be free to investigate the situation within the context of the overall referral. This would ensure that the prosecutor has the necessary backing to get the job done and the necessary independence to do it.

Another essential building block of a successful Court is the scope and definition of crimes. The scope of jurisdiction must be adequate to embrace the kinds of atrocities that tragically continue to recur. For this reason, international community must extend the Court's jurisdiction to internal armed conflicts and to crimes against humanity. Crimes of rape and other grave sexual violence similarly should be included.

The Court must operate with a clear, precise and well-established understanding of what conduct constitutes a crime. We have long agreed that the Court must focus on the most serious violations of international humanitarian law that are of concern to the international community— genocide, large-scale war crimes and crimes against humanity. In order to ensure this, however, the United States strongly believes that the scope and definition of crimes and their elements need to be sufficiently elaborated.

At the same time, we should avoid defining crimes that are not yet clearly criminalized under international law. Neither we nor the Court should seek to legislate new crimes that are not already established. For that reason, we believe it remains premature to attempt to define a crime of aggression for purposes of individual criminal responsibility – a task that even the International Law Commission ultimately left undone. We also cannot use vague formulas that leave the Court to decide on the fundamental parameters of crimes.

We also must not ignore the very legitimate question of how we administer the Court. The United States believes, along with many others, that the goals of this conference would be best served by the creation of a Court fiscally and administratively independent from the United Nations.

Many countries shoulder the burden of international security. The United States participates with other governments in military alliances and in the United Nations or other multinational peacekeeping operations. Soldiers deployed far from home need to do their jobs without exposure to politicized proceedings. More generally, we are not here to create a Court that exists to sit in judgment on national systems, to second-guess

each action and intervene if it disagrees. We are here to create a Court that focuses on recognized atrocities of significant magnitude, and thus enjoys near-universal support.

The United States believes that these concerns can be addressed without weakening the Court or undermining its effectiveness. Indeed, we believe that the Court can be truly effective only if these concerns are well- and wisely-resolved.

An International Criminal Court will succeed only if governments draft a treaty that melds effectively the proper roles of individual states, their national judicial systems, the Security Council, and the Court itself. The United States, which has been so instrumental in establishing international tribunals from Nuremberg to Arusha, will continue to seek actively the achievement of this important objective.

The United States remains cautiously optimistic. We look forward to working with our friends and allies to find common ground on the fundamental issues still open to debate. Five weeks from now, the common purpose that binds us all must prevail – namely, to bring to justice those responsible for genocide, crimes against humanity, and war crimes and to prevent the recurrence of such unspeakable acts in the future. Anything less, Mr. President, will allow the world's war criminals to dictate our destiny in the next century.