

## SPEECHES/STATEMENTS

18 June 1998

### **STATEMENT BY H.E. MR. RAMANATHAN VENGADESAN, AMBASSADOR OF MALAYSIA TO ITALY**



Mr. President,

I would like to associate myself with the delegations before me in expressing our gratitude to the Government and people of Italy for hosting this historic Conference, for the excellent arrangements made and for the warm hospitality extended.

The Malaysian delegation also extends its warmest congratulations to Professor Giovanni Gonso and the Bureau upon their respective elections. We would also like to place on record our gratitude to Mr. Adrian Bos of The Netherlands for the able chairmanship displayed by him during the Preparatory Committee Meetings and our wish for his speedy recovery.

Mr. President,

In principle, Malaysia supports the establishment of an International Criminal Court. Consistent with our previous interventions, made at the various Preparatory Committee Meetings, I would like to reiterate Malaysia's views on some key issues governing the principles underpinning the statute.

1. With respect to the complementarity principle, my delegation supports the view that the ICC should complement and not replace the national courts. We consider that this should be the foremost and very basic vital principle to be clearly provided in the Statute because while we strive hard to set up the ICC to adjudicate those who had committed very serious crimes abhorred by the international community, we must always bear in mind that the national sovereign of all nations must be upheld.

2. It is of paramount importance for the ICC to be truly independent, fair, effective and efficient to enable it to dispense justice in accordance with the principles of justice acceptable to the international community. This is no easy task considering the diverse legal systems, cultures and backgrounds that we come from. Nevertheless we must persevere lest we be accused of not doing justice to the international community.

3. On the question of core crimes, Malaysia would like to reiterate her view that "core crimes" namely the crimes of genocide war crimes and crimes against humanity be included in the Statute subject to certain reservations which Malaysia had expressed during the Preparatory Committee Meetings. Malaysia however is not inclined to support the inclusion of the so-called treaty crimes i.e. crimes of terrorism, crimes against U N personnel and drug trafficking because we believe that these crimes should be best left to

the national courts to with. Moreover, having these crimes within the ambit of the jurisdiction of the ICC would only overtax the Court in terms of finance, manpower and other resources.

4. Malaysia takes note that the question of "trigger mechanism" which is inevitably related to the question of acceptance of the jurisdiction of the Court, has implications on the criminal jurisdiction of the national court and hence the question of sovereignty which we have emphasised should always be upheld. We believe that the principle should not be one which would hinder the successful invocation of the jurisdiction of the ICC and thus undermine the intended effectiveness of the ICC. With that principle in mind, we can consider supporting the "opt-in" mechanism as it is more consonant with reality and pragmatism and indeed the "case by-case" approach may provide the necessary flexibility to both State Parties and the ICC. We are also not inclined to support the consent requirement to be extended to the State of nationality of the victim and the state of nationality of the accused.

5. Concerning the office of the Prosecutor, we concur that the role of the Prosecutor is important. However, whilst it is important for the Prosecutor to act independently in discharging his duties, it is equally important for the Prosecutor not to be empowered to investigate on his own initiative for the following reasons:

(a) the view is consistent with the complementarity principle in favour of the precedence of the State's national criminal justice system;

(b) to allow the Prosecutor to initiate an investigation on his own motion may adversely affect his integrity and credibility because he may be perceived to have pursued his own personal agenda and may thereby be seen to be likely to be biased; and

(c) the Prosecutor's investigatory functions can only be effectively fulfilled with the full co-operation of States especially those States which have a direct interest in the irrelevant case. If the Prosecutor commences an investigation on his own accord without any complaint from any directly interested State, he may not be able to investigate effectively without the full co-operation of the State concerned.

I thank you, Mr President and the delegates for your kind attention. I also take this opportunity to express my best wishes for the success of the Conference.

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