

## **Statement by Judge Eli Nathan Head of the Delegation of Israel**

### **United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court 9th Plenary Meeting**

**17 July 1998**

Mr. President, it is with a measure of regret, both personally as a victim of the Nazi persecution of the Jewish people, and on behalf of the Israeli Delegation which I proudly head, that I have to explain the negative vote which Israel has been unwillingly obliged to cast today with regard to the Statute of the International Criminal Court.

It is no secret that out of the embers of the Holocaust against the Jewish people - the greatest and most heinous crime to have been committed in the history of mankind, came the calls of Jews throughout the world, and leading Israeli lawyers and statesmen, as far back as the early 1950's, for the establishment of an International Criminal Court, as a vital means of ensuring that criminals who commit such heinous and terrible crimes will be duly brought to justice. This was, Mr. President, inter alia, our idea!

With this aim in mind, Mr. President, and having regard to the world renowned judiciary established in Israel, Israel has, enthusiastically and responsibly, and with a sense of acute sincerity and seriousness, actively participated in all stages of the preparation of the Statute, not imagining, in our wildest dreams that even this, of all things, would ultimately be blemished and abused as a potential tool in the political war against Israel.

Mr. President, Article 1 of the Statute clearly refers to "the most serious crimes of concern to the international community as a whole"; the preamble talks of "unimaginable atrocities", and of "grave crimes which deeply shock the conscience of the whole international community". And indeed, the core crimes listed in Article 5 were intended to meet these thresholds.

We therefore fail to comprehend why it has been considered necessary to insert into the list of the most heinous and grievous war crimes, the action of transferring population into occupied territory, as it appears in Article 8, Paragraph 2(b), sub-para. viii.

Without entering here into the question of the substantive status of any particular alleged violation of the 4th Geneva Convention, which clearly Israel does not accept, can it really be held that such an action as that listed in Article 8 above really ranks among the most heinous and serious war crimes, especially as compared to the other, genuinely heinous ones listed in Article 8? Or is it not clear that this has been inserted as a means of utilising and abusing the Statute of the international Criminal Court and the International Criminal Court itself as one more political tool in the Middle East conflict?

Despite all our entreaties, during the discussions of the Prep-Com as well as here in Rome and directly to capitals, this paragraph still remains as a symbol of politicization, sullyng the entire Statute.

Mr. President, neither the Delegation of Israel nor other delegations have been given the opportunity to vote against the inclusion in the Statute of Article 8, Paragraph 2(b) sub-para. viii.

Needless to say, Mr. President, had sub-para. viii not been included, my Delegation would have been able proudly to vote in favour of adopting the Statute. Now, we have no choice, - we have been obliged to cast our vote against the Statute as a whole, because we have been permitted no other means of formally expressing our frustration at this politicisation of the Statute and the Court. Clearly we cannot voice our approval of the Statute with such a provision forming part of it. We regret being obliged here today to vote in a way that prevents us, as victims of genocide, and as founding fathers of the concept and idea of the International Criminal Court, to vote in favour of its Statute.

Mr. President, Israel has other problems with the Statute, which we will address at the appropriate time.

Mr. President we still maintain the hope that somewhere, good sense will prevail and the International Criminal Court which is to be established as a result of all of our hard work, will not become just one more political forum to be abused for political ends by an irresponsible group of States, at their political whim. We continue to hope that the Court will indeed serve the lofty objectives for the attainment of which it is being established.

Thank you Mr. President.