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Mr. Chairman, thank you for the opportunity to address the Committee on the developments in Rome this summer relating to the establishment of a permanent international criminal court. As you know, I had the pleasure of being joined by a number of Committee staffers during the Rome conference and I am sure they brought back to you their own perspectives on the negotiations.

Mr. Chairman, no one can survey events of this decade without profound concern about worldwide respect for internationally recognized human rights. We live in a world where entire populations can still be terrorized and slaughtered by nationalistic butchers and undisciplined armies. We have witnessed this in Iraq, in the Balkans, and in central Africa. Internal conflicts dominate the landscape of armed struggle today, and impunity too often shields the perpetrators of the most heinous crimes against their own people and others. As the most powerful nation committed to the rule of law, we have a responsibility to confront these assaults on humankind. One response mechanism is accountability, namely to help bring the perpetrators of genocide, crimes against humanity, and war crimes to justice. If we allow them to act with impunity, then we will only be inviting a perpetuation of these crimes far into the next millennium. Our legacy must demonstrate an unyielding commitment to the pursuit of justice.

That is why, since early 1995, U.S. negotiators labored through many Ad Hoc and Preparatory Committee sessions at the United Nations in an effort to craft an acceptable statute for a permanent international criminal court using as a foundation the draft statute prepared by the International Law Commission in 1994. Our experience with the establishment and operation of the international Criminal Tribunals for the former Yugoslavia and Rwanda had convinced us of the merit of creating a permanent court that could be more quickly available for investigations and prosecutions and more cost-efficient in its operation. But we always knew how complex the exercise was, the risks that would have to be overcome, and the patience that we and others would

have to demonstrate to get the document right. We were, after all, confronted with the task of fusing the diverse criminal law systems of nations and the laws of war into one functioning courtroom in which we and others had confidence criminal justice would be rendered fairly and effectively. We also were drafting a treaty-based court in which sovereign governments would agree to be bound by its jurisdiction in accordance with the terms of its statute. How so many governments would agree with precision on the content of those provisions would prove to be a daunting challenge. When some other governments wanted to rush to conclude this monumental task -- even as early as the end of 1995 -- the United States pressed successfully for a more methodical and considered procedure for the drafting and examination of texts.

The U.S. delegation arrived in Rome on June 13th with critical objectives to accomplish in the final text of the statute. Our delegation included highly talented and experienced lawyers and other officials from the Departments of State and Justice, the Office of the Secretary of Defense, the Joint Chiefs of Staff, the U.S. Mission to the United Nations, and from the private sector. America can be proud of the tireless work and major contributions that these individuals made to the negotiations.

Among the objectives we achieved in the statute of the court were the following:

An improved regime of complementarity (meaning deferral to national jurisdictions) that provides significant protection, although not as much as we had sought.

A role preserved for the U.N. Security Council, including the affirmation of the Security Council's power to intervene to halt the court's work.

Sovereign protection of national security information that might be sought by the court.

Broad recognition of national judicial procedures as a predicate for cooperation with the court.

Coverage of internal conflicts, which comprise the vast majority of armed conflicts today.

Important due process protections for defendants and suspects.

Viable definitions of war crimes and crimes against humanity, including the incorporation in the statute of elements of offenses. We are not entirely satisfied with how the elements have been incorporated in the treaty, but at least they will be a required part of the court's work. We also were not willing to accept the wording proposed for a war crime covering the transfer of population into occupied territory.

Recognition of gender issues.

Acceptable provisions based on command responsibility and superior orders.

Rigorous qualifications for judges.

Acceptance of the basic principle of state party funding.

An Assembly of States Parties to oversee the management of the court.

Reasonable amendment procedures

A sufficient number of ratifying states before the treaty can enter into force, namely 60 governments have to ratify the treaty.

The U.S. delegation also sought to achieve other objectives in Rome that in our view are critical. I regret to report that certain of these objectives were not achieved and therefore we could not support the draft that emerged on July 17th.

First, while we successfully defeated initiatives to empower the court with universal jurisdiction, a form of jurisdiction over non-party states was adopted by the conference despite our strenuous objections. In particular, the treaty specifies that, as a precondition to the jurisdiction of the court over a crime, either the state of territory where the crime was committed or the state of nationality of the perpetrator of the crime must be a party to the treaty or have granted its voluntary consent to the jurisdiction of the court. We sought an amendment to the text that would have required both of these countries to be party to the treaties or, at a minimum, would have required that only the consent of the state of nationality of the perpetrator be obtained before the court could exercise jurisdiction. We asked for a vote on our proposal, but a motion to take no action was overwhelmingly carried by the vote of participating governments in the conference.

We are left with consequences that do not serve the cause of international justice. Since most atrocities are committed internally and most internal conflicts are between warring parties of the same nationality, the worst offenders of international humanitarian law can choose never to join the treaty and be fully insulated from its reach absent a Security Council referral. Yet multinational peacekeeping forces operating in a country that has joined the treaty can be exposed to the court's jurisdiction even if the country of the individual peacekeeper has not joined the treaty. Thus, the treaty purports to establish an arrangement whereby U.S. armed forces operating overseas could be conceivably prosecuted by the international court even if the United States has not agreed to be bound by the treaty. Not only is this contrary to the most fundamental principles of treaty law, it could inhibit the ability of the United States to use its military to meet alliance obligations and participate in multinational operations, including humanitarian interventions to save civilian lives. Other contributors to peacekeeping operations will be similarly exposed.

Mr. Chairman, the U.S. delegation certainly reduced exposure to unwarranted prosecutions by the international court through our successful efforts to build into the treaty a range of safeguards that will benefit not only us but also our friends and allies. But serious risks remain because of the document's provisions on jurisdiction.

Our position is clear: Official actions of a non-party state should not be subject to the court's jurisdiction if that country does not join the treaty, except by means of Security Council action under the U.N. Charter. Otherwise, the ratification procedure would be meaningless for governments. In fact, under such a theory, two governments could join together to create a criminal court and purport to extend its jurisdiction over everyone, everywhere in the world. There will necessarily be cases where the international court cannot and should not have jurisdiction unless the Security Council decides otherwise. The United States has long supported the right of the Security Council to refer situations to the court with mandatory effect, meaning that any rogue state could not deny the court's jurisdiction under any circumstances. We believe this is the only way, under international law and the U.N. Charter, to impose the court's jurisdiction on a non-party state. In fact, the treaty reaffirms this Security Council referral power. Again, the governments that collectively adopt this treaty accept that this power would be

available to assert jurisdiction over rogue states.

Second, as a matter of policy, the United States took the position in these negotiations that states should have the opportunity to assess the effectiveness and impartiality of the court before considering whether to accept its jurisdiction. At the same time, we recognized the ideal of broad ICC jurisdiction. Thus, we were prepared to accept a treaty regime in which any state party would need to accept the automatic jurisdiction of the court over the crime of genocide, as had been recommended by the International Law Commission in 1994. We sought to facilitate U.S. participation in the treaty by proposing a 10-year transitional period following entry into force of the treaty and during which any state party could "opt-out" of the court's jurisdiction over crimes against humanity or war crimes. We were prepared to accept an arrangement whereby at the end of the 10-year period, there would be three optionsÑto accept the automatic jurisdiction of the court over all of the core crimes, to cease to be a party, or to seek an amendment to the treaty extending its "opt-out" protection. We believe such transition period is important for our government to evaluate the performance of the court and to attract a broad range of governments to join the treaty in its early years. While we achieved the agreement of the Permanent Members of the Security Council for this arrangement as well as appropriate protection for non-party states, other governments were not prepared to accept our proposal. In the end, an opt-out provision of seven years for war crimes only was adopted.

Unfortunately, because of the extraordinary way the court's jurisdiction was framed at the last moment, a country willing to commit war crimes could join the treaty and "opt out" of war crimes jurisdiction for seven years while a non-party state could deploy its soldiers abroad and be vulnerable to assertions of jurisdiction

Further, under the amendment procedures states parties to the treaty can avoid jurisdiction over acts committed by their nationals or on their territory for any new or amended crimes. This is protection we successfully sought. But as the jurisdiction provision is now framed, it purports to extend jurisdiction over non-party states for the same new or amended crimes.

The treaty also creates a proprio motu or self-initiating prosecutor who, on his or her own authority with the consent of two judges, can initiate investigations and prosecutions without referral to the court of a situation either by a government that

is party to the treaty or by the Security Council. We opposed this proposal, as we are concerned that it will encourage overwhelming the court with complaints and risk diversion of its resources, as well as embroil the court in controversy, political decision-making, and confusion.

In addition, we are disappointed with the treatment of the crime of aggression. We and others had long argued that such a crime had not been defined under customary international law for purposes of individual criminal responsibility. We also insisted, as did the International Law Commission in 1994, that there had to be a direct linkage between a prior Security Council decision that a state had committed aggression and the conduct of an individual of that state. The statute of the court now includes a crime of aggression, but leaves it to be defined by a subsequent amendment to be adopted seven years after entry into force. There is no guarantee that the vital linkage with a prior decision by the Security Council will be required by the definition that emerges, if in fact a broadly acceptable definition can be achieved. We will do all we can to ensure that such linkage survives.

We also joined with many other countries during the years of negotiation to oppose the inclusion of crimes of terrorism and drug crimes in the jurisdiction of the court on the grounds that this could undermine more effective national efforts. We had largely prevailed with this point of view only to discover on the last day of the conference that the Bureau's final text suddenly stipulated, in an annexed resolution that would be adopted by the conference, that crimes of terrorism and drug crimes should be included within the jurisdiction of the court, subject only to the question of defining the relevant crimes at a review conference in the future. This last minute insertion in the text greatly concerned us and we opposed the resolution with a public explanation. We said that while we had an open mind about future consideration of crimes of terrorism and drug crimes, we did not believe that including them will assist in the fight against these two evil crimes. To the contrary, conferring jurisdiction on the court could undermine essential national and transnational efforts, and actually hamper the effective fight against these crimes. The problem, we said, was not prosecution, but rather investigation. These crimes require an ongoing law enforcement effort against criminal organizations and patterns of crime, with police and intelligence resources. The court will not be equipped effectively to investigate and prosecute these types of crimes.

Finally, we were confronted on July 17th with a provision

stipulating that no reservations to the treaty would be allowed. We had long argued against such a prohibition and many countries had joined us in that concern. We believed that at a minimum there were certain provisions of the treaty, particularly in the field of state cooperation with the court, where domestic constitutional requirements and national judicial procedures might require a reasonable opportunity for reservations that did not defeat the intent or purpose of the treaty

Mr. Chairman, the Administration hopes that in the years ahead other governments will recognize the benefits of potential American participation in the Rome treaty and correct the flawed provisions in the treaty.

In the meantime, the challenge of international justice remains. The United States will continue as a leader in supporting the common duty of all law-abiding governments to bring to justice those who commit heinous crimes in our own time and in the future. The hard reality is that the international court will have no jurisdiction over crimes committed prior to its actual operation. So more ad hoc judicial mechanisms will need to be considered. We trust our friends and allies will show as much resolve to pursue the challenges of today as they have to create the future international court.

Thank you, Mr. Chairman.