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**U.S. Policy and the Proposed Permanent International Criminal Court**

I am honored to address such a distinguished audience on a subject of great importance to the United States and to the international community. President Carter's personal interest in the establishment of a permanent international criminal court is yet another testament to his vision for the global protection of human rights. We are grateful, once again, for his activism and for his assistance in addressing the major challenges of our times.

Let me start by drawing your attention to President Clinton's speech on September 22 at the U.N. General Assembly. President Clinton said, "before the century ends, we should establish a permanent international criminal court to prosecute the most serious violations of humanitarian law." The President's vision reflects our long-standing fundamental position of support for a fair, effective, and efficient court, and now emphasizes a rapid timetable for its establishment. As we approach the 21st Century, individuals--of whatever rank in society--who participate in serious and widespread violations of international humanitarian law must no longer act with impunity. The time has come to move with determination towards the establishment of an international court that serves as a deterrent and as a mechanism of accountability in the years to come.

The United States will continue to play a major role in the negotiations and in Rome next summer. The participation of the United States in an established permanent court will be essential to its effectiveness. History has shown that when new international institutions are started without full United States participation--like the League of Nations--they can fail. When they start with United States leadership--like the United Nations, the war crimes tribunals for the former Yugoslavia and Rwanda, and the new Organization for the Prohibition of Chemical Weapons--they can succeed. There are no shortcuts to getting to "yes" in this process. Creating a fair, effective, and efficient permanent court is within reach, but all governments and all NGO's engaged in this historic endeavor will need to proceed with realistic expectations about the functions and structure of the court.

We look forward in the coming weeks to working very closely with other delegations on issues of state cooperation, definitions of war crimes, rules of procedure, and applicable general principles of criminal law.

I wish to use my brief intervention this morning to discuss some elements of the U.S. position which most concern non-governmental organizations and other governments.

There are many provisions of the draft statute for the permanent court which are being negotiated in a very collaborative and productive manner, and considerable progress is being made. The U.S. delegation has been a leading influence in drafting the general principles of criminal law and the procedures of the court. This is no small task, as we try to resolve differences between common law and civil law systems.

There also has been much progress on the definitions of the crimes which will constitute the jurisdiction of the court. Those definitions must reflect well accepted principles of criminal law as it applies to individuals. There is a tendency in the negotiations occasionally to seek to transform human rights principles and prohibitions on state practice into new criminal law principles. But this treaty-making exercise cannot become a law-making exercise. The treaty must reflect what is currently international criminal law, not what we hope or even confidently predict may one day become criminal law. Our national legislatures will have to be convinced that individuals prosecuted by the permanent court are being prosecuted for well-established crimes, not for violations of principles which, as well-intentioned and important as they are, are prohibitions rather than crimes.

The permanent court should not take the place of national courts in handling every-day cases. Rather, the permanent court should be a significant and powerful international mechanism to deal with whole situations of exceptional seriousness and magnitude. It is reasonable, therefore, to consider that there should be some overall threshold of seriousness and magnitude to meet before one sets in motion the considerable and expensive machinery of the court. This is not a court that can or should realistically be called upon to deal with every crime that goes unpunished, however desirable in the abstract that might be.

The trigger mechanism, or how cases are initiated by the permanent court, remains controversial. While the "like-minded" group of governments and many NGO's argue for an independent Prosecutor with the unfettered authority to investigate and prosecute any individual anywhere in the world, another important group of governments argues just as strongly that multiple state consents must be required before the Prosecutor can act against any individual. There needs to be a middle ground. A third viewpoint, advanced by the United States and a number of others, is that the Security Council should have an essential role to play in a trigger mechanism where the Prosecutor would exercise considerable independence. Unfortunately, the U.S. position is sometimes misunderstood and misrepresented. So I want to lay it out very clearly before this expert audience:

The United States Government believes that the Prosecutor should initiate investigations and prosecutions of individuals provided the court

is seized with an overall situation or matter (meaning, conflict or atrocity) for adjudication. We have emphasized in this regard that the State Party should have to refer a situation or matter; the State Party would not lodge a complaint against one or more named individuals as is currently envisioned in the International Law Commission draft statute and as seems often to be taken for granted in the debate. An individual State should not be able to pick and choose whom to investigate and then dictate this to the Prosecutor by filing a selective complaint. Individual complaints by States Parties can only lead to highly politicized behavior by governments as they target individual suspects following cursory investigations or no investigations at all. Our proposed procedure for State Parties would be similar to the referral procedure for the Security Council, which is acceptable to a wide range of governments.

However, if the situation referred by the State Party to the court concerns a dispute or situation pertaining to international peace and security that is being dealt with by the Security Council, then the Security Council should approve the referral of the entire situation to the court. This procedure would recognize the Charter responsibilities of the Security Council. In most cases the Council's decision likely would affect the timing of the referral and not permanently deny the referral. Once such a referral of a situation goes forward to the Court, individual cases brought by the Prosecutor would not be reviewed by the Security Council.

Our proposal mirrors the practice of the International Criminal Tribunals for Rwanda and the former Yugoslavia. The Prosecutor would have wide discretion within the parameters of the situation or matter he or she is charged to investigate by either the Security Council or a State Party, just as Justice Arbour now exercises with respect to the Yugoslav and Rwanda War Crimes Tribunals established by the Security Council. Many have pointed to these as a model for the kind of independent functioning prosecutor which we want to see for the permanent court.

The United States has reserved on the issue of state consent for individual cases until we see how the debate on the role of the Security Council and on complementarity settles. Complementarity, or appropriate deferral to national jurisdiction, is of great importance to our government. The negotiations on complementarity are proceeding well. But if the U.S. position on the role of the Security Council does not attract more support, then it will be only logical to assume that our government will need to look more seriously at other procedures to provide appropriate safeguards for U.S. interests.

What are those interests? First, we want to make sure that anyone who would commit war crimes against the U.S. military is investigated and prosecuted. We want to make sure the protections of an international criminal court also protect our forces. The benefit of a properly structured permanent international criminal court will be its potential for helping to protect our own military from war crimes by deterrence and enforcement of the law.

Second, the permanent court must be effective and credible. The argument that somehow the court would be ineffective if the Security Council has an important role in the court's work is extremely shortsighted and oblivious to what the court will require to function effectively.

Third, the court must not become a political weapon, used perhaps with the best of intentions, to interfere with important efforts by the Security Council to strengthen international peace and security.

Fourth, the United States has an important international responsibility as a permanent member of the Security Council to engage in efforts to maintain or restore international peace and security. In the post-Cold War world, the U.S. military is called upon to undertake missions under U.N. authority, to carry out mandates from the Security Council, to fulfill our commitments to NATO, to help defend our allies and friends, to achieve humanitarian objectives (including the protection of human rights), to combat international terrorism, to rescue Americans and others in danger, and to prevent the proliferation or use of weapons of mass destruction. No other government shoulders the burden of international security as does the United States.

Fifth, many other governments do participate in our military alliances, such as NATO, and a much larger number of governments participate in U.N. and other multinational peacekeeping operations, such as SFOR in Bosnia. It is in the interests of all of these governments that the personnel of their militaries and civilian commands be able to fulfill their many legitimate responsibilities without unjustified exposure to criminal legal proceedings. There is legitimate concern that a completely independent Prosecutor would have free rein to probe into any and all decision-making processes and military actions anywhere, anytime, under any circumstances. It would be profoundly mistaken to assume that such concern should inhibit the establishment of a permanent court. Rather, it needs to be an essential factor in determining the jurisdiction and functioning of such a court.

In sum, the Security Council and a permanent international criminal court are both mechanisms for helping to establish and maintain international peace and security. Just as the United States has an interest in an effective and credible international criminal court, the United States also has an interest in an effective and credible Security Council. We see both as essential as we move into the Twenty-first century.

Two final points:

The interest of some governments and NGO's to include a crime of aggression in the jurisdiction of the permanent court is understandable, particularly in light of the Nuremberg precedent. But it is not realistic at this time. There is no broadly acceptable definition of a crime of aggression for purposes of individual criminal culpability. Advocates for

the inclusion of this undefined crime also should consider seriously whether its inclusion will impose unnecessary risks on, and thus inhibit the use of, those military forces that the international community calls upon to undertake tough assignments. The establishment of the court will only be delayed if efforts continue to include this crime, and the number of countries joining the treaty will only decrease.

Finally, we cannot lose sight of the considerable assets that the Security Council can bring to the work of the permanent international criminal court. Not only has the Security Council already shown its willingness to delegate to an independent Prosecutor wholesale conflicts and atrocities to investigate and prosecute, the Council doubtless will be looked to by the permanent court to enforce its orders in some circumstances. There will be times when the court will want the power of the Security Council to enforce the court's orders. If the world is seeking to establish a truly effective, and busy, permanent international criminal court, then the Security Council's role is vital.

This is not "Mission: Impossible." Nor is it simply a matter of ignoring reality and creating a theoretically independent court. We are confident that, with an acceptable outcome to the negotiations and ultimately with the support of the U.S. Senate, we will see a permanent international criminal court with strong U.S. participation by the end of this century.

Thank you.