

**International Criminal Court: Statement to the Dáil by the Minister for Foreign Affairs, Mr. Brian Cowen T.D., on the 23rd Amendment to the Constitution Bill, 2001 April 2001**

**11 April 2001**

I am pleased to have the opportunity to open the debate on the Second Stage of the Twenty-third Amendment of the Constitution Bill, 2001. The purpose of the Bill is to enable Ireland to ratify the Rome Statute of the International Criminal Court done at Rome on the 17th day of July, 1998. The Statute provides for the establishment of a permanent International Criminal Court, in relationship with the United Nations system, with jurisdiction over persons in respect of genocide, crimes against humanity, war crimes and the crime of aggression. The Statute of the Court is an international agreement which will enter into force approximately two months after 60 states have become party to it. Ireland signed the Statute on 7 October 1998. To date 139 states have signed the Statute and 29 have ratified it or acceded to it.

The establishment of a permanent International Criminal Court is something which Ireland has advocated for many years and the Government took an active part in the United Nations Diplomatic Conference of Plenipotentiaries in Rome at which the Statute was adopted. The Government has also participated and continues to participate in the Preparatory Commission, whose task it is to prepare proposals for practical arrangements for the establishment and coming into operation of the Court.

The European Union is a strong supporter of the early establishment of the International Criminal Court. In pursuit of this objective, it led international efforts to encourage as many States as possible to sign the Rome Statute before the 31 December 2000 deadline for signature and has undertaken to assist countries associated with the Union to ratify or accede to the Statute. By ratifying the Statute, we will again signal Ireland's ongoing commitment to the Court.

Over the past one hundred years, great progress has been made in the fields of human rights and international humanitarian law. The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and, in Europe, the European Convention on Human Rights all provide guarantees of respect for human rights, including during time of armed conflict. There have also been significant developments in international humanitarian law, that is, the rules specifically intended to protect persons in time of armed conflict. The four Geneva Conventions of 1947 deal with the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, the Treatment of Prisoners of War and the Protection of Civilian Persons in Time of War, while the two Protocols thereto, adopted in 1977, relate to the Protection of Victims of International Armed Conflicts and of Non-International Armed Conflicts respectively. It is clearly accepted that even in a time of war, there are basic rules that must be observed. However, repeated violations of these rules highlight a significant flaw in their operation: the lack of an adequate enforcement mechanism.

This may be appropriately illustrated by the Convention on the Prevention and Punishment of the Crime of Genocide which was adopted in 1948. Article 6 of the Convention allows for trial by the courts of the State where an act of genocide occurs or by "such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction." When the UN General Assembly adopted this Convention in 1948, it also invited the International Law Commission to "study the desirability and possibility of establishing a judicial organ for the trial of persons charged with genocide." This was found to be both desirable and possible and a draft Statute was prepared in 1951 and revised in 1953. However it was not until 1989, in response to a request by Trinidad and Tobago, that the General Assembly asked the International Law Commission to resume work on a Statute for an international criminal court. In 1994 the International Law Commission submitted its draft Statute to the General Assembly. From then on swift progress was made. The General Assembly established the Ad Hoc Committee on the Establishment of an International Criminal Court to consider major substantive issues arising from the draft and this Committee met twice in 1995. After considering the Committee's Report, the General Assembly created the Preparatory Committee on the Establishment of an International Criminal Court to draw up a draft text for submission to a diplomatic conference. The Preparatory Committee held its final session and completed the drafting of the text in March and April of 1998. The United Nations Diplomatic Conference on the Establishment of an International Criminal Court was held in Rome from 15 June to 17 July 1998, and the result was the Statute which we now seek to ratify.

The Rome Statute of the International Criminal Court is the culmination of fifty years of work on the matter. During this period genocide, crimes against humanity, war crimes and the crime of aggression have repeatedly been perpetrated in various parts of the world, despite the existence of instruments of international law outlawing such acts. The existence of international agreements for the prevention and punishment of such crimes provides little comfort for the victims if the perpetrators of such acts never face trial. However, it has often been difficult to bring such persons to trial. They may enjoy immunity as a result of their official capacity. Furthermore, the political will may not exist to bring them to trial or the institutions of the state may have collapsed completely. The establishment of the International Criminal Court is an attempt to solve these problems.

Having determined that the situations in the former Yugoslavia and Rwanda in the early 1990s constituted a threat to international peace and security, the United Nations Security Council, acting under Chapter VII of the UN Charter, set up two tribunals to ensure that the perpetrators of the atrocities committed at that time should not escape punishment. The International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda have made great progress, but their jurisdiction is limited to the particular geographical areas concerned and is subject to certain time constraints. The International Criminal Court, once established, will have much broader jurisdiction. In addition, the creation of ad hoc tribunals is always open to criticism. The setting up of tribunals for some circumstances and not for others will always be questioned. Those standing trial will question the independence of the tribunal and claim to be the victims of "victors' justice." Ad hoc tribunals can have little deterrent effect because nobody can ever be certain that such a tribunal will in fact be established. Furthermore, there is invariably a delay between the commission

of the crimes and the establishment of the tribunal. All of these difficulties inherent in ad hoc tribunals are addressed by the establishment of a permanent international criminal court. The Rome Statute of the International Criminal Court provides for a permanent independent institution within the United Nations system. It should not be possible for any State to interfere with the Court in the execution of its function and it will be difficult for those who will still cry "victors' justice" to claim any legitimacy.

The Statute adopted at the Conference of Plenipotentiaries in Rome is a comprehensive document consisting of 13 Parts and 128 Articles. The Statute deals with the establishment of the Court, its jurisdiction and the general principles of criminal law to be applied. It sets out the composition of the Court and its administration, the procedures for investigation, prosecution and trial, the penalties which can be imposed on conviction, and provides for appeals. There is an obligation on the States Parties to cooperate with the Court, and provision is also made for the enforcement of the judgements of the Court and for the carrying out of sentences. The Statute furthermore provides for an Assembly of States Parties and for the financing of the Court.

Article 5 of the Statute sets out that "the most serious crimes of concern to the international community" namely, the crime of genocide, crimes against humanity, war crimes and the crime of aggression are within the jurisdiction of the Court. The Court will exercise jurisdiction over genocide, crimes against humanity and war crimes committed after the date on which Statute enters into force. The Court will, however, not exercise jurisdiction over the crime of aggression until a provision is adopted by the States Parties defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. A review conference is to be held seven years after the entry into force of the Statute and a provision governing the crime of aggression may be adopted at this Conference.

The definitions of genocide, crimes against humanity and war crimes contained in the Statute codify existing international law.

The definition of genocide is identical to that contained in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. It involves the following acts when committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group: killing or causing serious bodily or mental harm to members of the group, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, imposing measures to prevent birth within the group or forcibly transferring children of the group to another group.

The concept of crimes against humanity also embraces particularly serious violations of human rights - violations such as murder, extermination, slavery, forcible transfer of population, unlawful imprisonment, torture, sexual violence, persecution of a group, enforced disappearance and apartheid - when committed as part of a widespread or systematic attack directed against the civilian population. Crimes against humanity can be committed both in time of war and of peace.

War crimes include grave breaches of the Geneva Conventions of 1949. Further examples of war crimes, for the purpose of the Rome Statute, include attacks during armed conflict against civilians, and against humanitarian and peacekeeping missions,

attacks which will cause widespread, long-term and severe damage to the environment, attacks directed against religious, educational and cultural buildings, pillaging, rape, sexual slavery and enforced prostitution and the use of child soldiers.

I think all will agree that it is not pleasant to think and speak about such crimes. For those of us lucky enough not to have experienced such horrific circumstances, it is difficult to imagine what it must be like for the victims of such crimes. Yet, over the last ten years we have witnessed the commission of these crimes in different parts of the world with shocking frequency. It is our duty to do all within our power to ensure that such crimes are not committed again and that when they are, those responsible are punished. It would be unrealistic to believe that the creation of a Court would entirely prevent the occurrence of such events in the future. The Court will undoubtedly have a deterrent effect, but there will always be individuals and governments who will carry out such horrific crimes. The difference will be that they can no longer confidently expect to escape punishment.

Once established, the Court will sit at The Hague in the Netherlands. In addition to the Court, an Assembly of States Parties will be established when the Statute comes into force. This Assembly will consist of one representative from each State Party. The Assembly will elect 18 full-time judges who will be "persons of high moral character, impartiality and integrity" and possess the qualifications required in their respective States for appointment to the highest judicial offices. As is to be expected, the judges will be independent in the performance of their functions. There may not be more than one judge of the same nationality, and in selecting judges, the States Parties will take into account the need for the membership of the Court to represent the principal legal systems of the world, equitable geographical representation and a fair representation of female and male judges.

There will also be an independent Office of the Prosecutor and the Prosecutor, like the judges, will be elected by the Assembly of States Parties by secret ballot.

A situation in which a crime appears to have been committed may be referred to the Prosecutor of the Court by a State Party or by the Security Council of the United Nations acting under Chapter VII of the UN Charter or the Prosecutor may initiate an investigation. Where a State Party has referred a situation to the Prosecutor or the Prosecutor has initiated the investigation, the Court may exercise its jurisdiction if the State on the territory of which the alleged crime was committed is a Party to the Statute or if the person accused of the crime is a national of a State Party. States Parties are obliged to cooperate fully with the Court in its investigation and prosecution of crimes within its jurisdiction.

The Statute contains numerous provisions governing the conduct of a trial and the rights of an accused which will ensure that due process will be observed.

The Court will be complementary to national legal systems. The primary obligation to investigate crimes covered by the Statute and to prosecute the perpetrators will remain with the States Parties. Only where the State Party in question is unwilling or unable genuinely to investigate the crimes alleged or to prosecute the accused person may the Court exercise its jurisdiction. In this way, the Court provides an additional means of administering justice where serious international crimes are committed, without in

any way detracting from existing domestic structures which States may have already put in place.

In addition to its function in electing judges and the Prosecutor, the Assembly of States Parties will also be responsible for the budget of the Court and will provide management oversight to the President of the Court, the Prosecutor and the Registrar regarding the administration of the Court. Draft Rules of Procedure and Evidence were adopted by the Preparatory Commission for the Court in June of last year. These provide further detail on the way the Court will function. It is envisaged that the Assembly will adopt these Rules and the Financial Rules and Regulations. The Court will be funded by contributions from States Parties and by the United Nations and may also accept voluntary contributions.

As is clear from the description I have just given, the Rome Statute is an extensive document which creates a substantial new international institution with the power to administer justice where very serious crimes have been committed. Article 34.1 of our Constitution provides that "Justice shall be administered in courts established by law by judges appointed in the manner provided by this Constitution..." I have been advised by the Attorney General that the Rome Statute of the International Criminal Court provides for the administration of justice outside the terms of this constitutional provision and that, consequently, an amendment of the Constitution is needed before the State may ratify the Statute. It is therefore proposed to amend the Constitution by the addition of a new section 9 to Article 29 of the Constitution allowing the State to ratify the Rome Statute of the International Criminal Court. This provision will read as follows:

The State may ratify the Rome Statute of the International Criminal Court done at Rome on the 17th day of July, 1998.

An amendment of the Constitution must always be undertaken with care. Our Constitution is our basic law, the foundation on which our State is built: Bunreacht na hÉireann. For this reason, when amending the Constitution, the effect should be considered of the proposed amendment on the Constitution as a whole. The amendment proposed in this Bill will complement existing provisions of the Constitution. Under the heading "International Relations," Article 29 begins by affirming Ireland's "devotion to the ideal of peace and friendly co-operation amongst nations founded on international justice and morality," continues by affirming our "adherence to the principle of the pacific settlement of international disputes by international arbitration or judicial determination" and then states that "Ireland accepts the generally recognised principles of international law as its rule of conduct in its relations with other States."

By ratifying the Rome Statute and participating in the International Criminal Court we will demonstrate our belief in the principles set out at the beginning of Article 29 of the Constitution. The Rome Statute will bring into being a permanent Court based on the idea of international justice and morality and with the power to enforce generally recognised principles of international law in the furtherance of peace.

We adopted our Constitution, containing as it does, this devotion to peace and justice only a few years before one of the most destructive wars the world has ever seen.

During that war genocide, crimes against humanity, war crimes and the crime of aggression were all carried out. The efforts made in the intervening period were not sufficient to prevent the re-occurrence of such terrible crimes. We hope that the establishment of the International Criminal Court will change this pattern. This Court will have the power to enforce the principles by which we promised to conduct our international relations over 60 years ago. I am, therefore, proposing that we amend our Constitution to enable us to ratify the Rome Statute as soon as possible.

I hope I have succeeded in demonstrating the importance of the Rome Statute of the International Criminal Court. As even recent conflicts have shown, the existence of laws prohibiting genocide, crimes against humanity and war crimes are of little use if there is no method of ensuring that persons who commit such crimes are brought to trial. The International Criminal Court will at last provide a permanent and independent enforcement mechanism. By amending our Constitution as proposed in this Bill, we will take the first and most important step towards ratification of the Rome Statute and the ultimate establishment of the International Criminal Court.