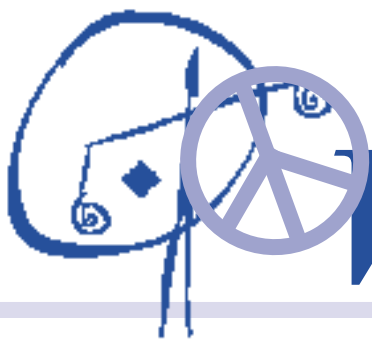


ANNEX 1

**NO PEACE WITHOUT JUSTICE,
Issue No. 2, 4 June 2000**



No Peace Without Justice

Non c'è pace senza giustizia periodico quadrimestrale - Direttore Responsabile Gaetano Dentamaro - Numero 2 del 4/06/2000
 Direzione e Amministrazione: V. di Torre Argentina, 76 00186 Roma - Stampa: XPRESS - Aut. Trib. Roma 580/98 del 14/12/98
 Spediz. in abb. postale art. 2 c.20/c 1.662/96 filiale di Roma Spedizione per l'estero TAXE PERÇUE - TASSA RISCOSSA ROMA ITALY

TAJIKISTAN, MAY 5, 2000
ICELAND, MAY 25, 2000



This is how Tajiks receive their guests. Bread and sumarak - grown wheat. <http://www.unesco.org>
 Right: Map of Tajikistan

Above top: Reykjavík: National Day
 Reykjavík 20th century in Photos,
 by Brynjúlfur Jónsson,
<http://icestory.com/reykjavk.htm>

WHO'S NEXT?

"It is my fervent hope that by 31 December 2000 a large majority of United Nations Member States will have signed and ratified the Statute, so that the Court will have unquestioned authority and the widest possible jurisdiction".

With these words the UN Secretary General, Kofi Annan, concluded his speech on 18 July 1998 at the ceremony held at Campidoglio, in Rome, celebrating the adoption of the Statute of the International Criminal Court.

After two years, ten States have ratified the ICC Rome Statute and only a few more have triggered their ratification process, which means that much work remains to be done.

Right after the historic adoption of the founding document of the first permanent institution with jurisdiction over War Crimes, Crimes Against Humanity and Genocide, No Peace Without Justice (NPWJ) launched a world-wide campaign to promote the prompt ratification of the Statute. In the framework of our "Ratification Now!" campaign, we launched a project of legal assistance to smaller delegations and, in a fruitful collaboration with the Government of Trinidad and Tobago and its President, we convened an intergovernmental conference for the Caribbean region which was instrumental in the ratification of the ICC Statute by the hosting country.

See **EDITORIAL** page 23

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96 SIGNATORIES TO THE ICC IN MAY 2000
page 2

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pages 12 - 13



This document has been produced with the financial assistance of the European Community. The views expressed herein are those of NPWJ and can therefore in no way be taken to reflect the official opinion of the European Community

96 SIGNATORIES TO THE ICC ROME STATUTE IN MAY, 2000

ALBANIA 18 JULY 1998	ERITREA 7 OCTOBER 1998	MONACO 18 JULY 1998
ANDORRA 18 JULY 1998	ESTONIA 27 DECEMBER 1999	NAMIBIA 27 OCTOBER 1998
ANGOLA 7 OCTOBER 1998	FIJI 29 NOVEMBER 1999	NETHERLANDS 18 JULY 1998
ANTIGUA AND BARBUDA 23 OCTOBER 1998	FINLAND 7 OCTOBER 1998	NEW ZEALAND 7 OCTOBER 1998
ARGENTINA 8 JANUARY 1999	FRANCE 18 JULY 1998	NIGER 17 JULY 1998
ARMENIA 1 OCTOBER 1999	GABON 22 DECEMBER 1998	NORWAY 28 AUGUST 1998
AUSTRALIA 9 DECEMBER 1998	GAMBIA 7 DECEMBER 1998	PANAMA 18 JULY 1998
AUSTRIA 7 OCTOBER 1998	GERMANY 10 DECEMBER 1998	PARAGUAY 7 OCTOBER 1998
BANGLADESH 16 SEPTEMBER 1999	GEORGIA 18 JULY 1998	PORTUGAL 7 OCTOBER 1998
BELGIUM 10 SEPTEMBER 1998	GHANA 18 JULY 1998	POLAND 9 APRIL 1999
BELIZE 5 APRIL 2000	GREECE 18 JULY 1998	REPUBLIC OF KOREA 8 MARCH 2000
BENIN 24 SEPTEMBER 1999	HAITI 26 FEBRUARY 1999	ROMANIA 7 JULY 1999
BOLIVIA 17 JULY 1998	HONDURAS 7 OCTOBER 1998	SAMOA 17 JULY 1998
BRAZIL 7 FEBRUARY 2000	HUNGARY 15 DECEMBER 1998	SAN MARINO 18 JULY 1998
BULGARIA 11 FEBRUARY 1999	ICELAND 26 AUGUST 1998	SENEGAL 18 JULY 1998
BURKINA FASO 30 NOVEMBER 1998	IRELAND 7 OCTOBER 1998	SIERRA LEONE 17 OCTOBER 1998
BURUNDI 13 JANUARY 1999	ITALY 18 JULY 1998	SLOVAKIA 23 DECEMBER 1998
CAMEROON 17 JULY 1998	JORDAN 7 OCTOBER 1998	SLOVENIA 7 OCTOBER 1998
CANADA 18 DECEMBER 1998	KENYA 11 AUGUST 1999	SOLOMON ISLANDS 3 DECEMBER 1998
C.AFRICAN REPUBLIC 7 DECEMBER 1999	KYRGYZSTAN 8 DECEMBER 1998	SOUTH AFRICA 17 JULY 1998
CHAD 20 OCTOBER 1999	LATVIA 22 APRIL 1999	SPAIN 18 JULY 1998
CHILE 11 SEPTEMBER 1998	LESOTHO 30 NOVEMBER 1998	ST. LUCIA 27 AUGUST 1999
COLOMBIA 10 DECEMBER 1998	LIBERIA 17 JULY 1998	SWEDEN 7 OCTOBER 1998
CONGO (BRAZZAVILLE) 17 JULY 1998	LICHTENSTEIN 18 JULY 1998	SWITZERLAND 18 JULY 1998
COSTA RICA 7 OCTOBER 1998	LITHUANIA 10 DECEMBER 1998	TAJIKISTAN 30 NOVEMBER 1998
COTE D'IVOIRE 30 NOVEMBER 1998	LUXEMBOURG 13 OCTOBER 1998	TRINIDAD AND TOBAGO 23 MARCH 1999
CROATIA 12 OCTOBER 1998	MACEDONIA 7 OCTOBER 1998	UGANDA 17 MARCH 1999
CYPRUS 15 OCTOBER 1998	MADAGASCAR 18 JULY 1998	UKRAINE 20 JANUARY 2000
CZECH REPUBLIC 13 APRIL 1999	MALAWI 3 MARCH 1999	UNITED KINGDOM 30 NOVEMBER 1998
DENMARK 25 SEPTEMBER 1998	MALI 17 JULY 1998	VENEZUELA 14 OCTOBER 1998
DJIBOUTI 7 OCTOBER 1998	MALTA 17 JULY 1998	ZAMBIA 17 JULY 1998
ECUADOR 7 OCTOBER 1998	MAURITIUS 11 NOVEMBER 1998	ZIMBABWE 17 JULY 1998

States That Have Ratified the Statute:

BELIZE

5 APRIL 2000

FIJI

29 NOV 1999

GHANA

20 DEC 1999

ICELAND

25 MAY2000

ITALY

26 JULY 1999

NORWAY

16 FEBRUARY 2000

SAN MARINO

13 MAY 1999

SENEGAL

2 FEBRUARY 1999

TADJIKISTAN

5 MAY 2000

TRINIDAD&TOBAGO

6 APRIL 1999

PREPARATORY COMMISSION REPORT

Summary on the proceedings of the 4th session (13-31 March 2000) of the UN Preparatory Commission for the International Criminal Court

The Preparatory Commission (PrepComm) for the International Criminal Court met at the United Nations Headquarters from 13 to 31 March 2000, holding its fourth and penultimate session.

No Peace Without Justice participated, as in the previous sessions, with its representatives and a number of pro-bono legal advisers provided to a number of State delegations. The session focussed on the two essential instruments necessary for the functioning of the Court: the Rules of Procedure and Evidence and the Elements of Crimes. The PrepComm also held a number of meetings and consultations with respect to the crime of aggression.

As regards the **Rules of Procedure and Evidence**, the PrepComm focussed on rules pertaining to: Part 2 (Jurisdiction, Admissibility and Applicable Law); Part 4 (Composition an Administration of the Court), Part 5 (Investigation an Prosecution); Part 6 (The Trial), Part 8 (Appeal and Revision); Part 9 (International Cooperation and Judicial Assistance); and Part 10 (Enforcement).

Concerning the Elements of Crimes, the PrepComm examined the elements of the crime of genocide and of war crimes.

As regards the crime of aggression, the debate concentrated on two main issues: the definition of the crime of aggression as such and the jurisdiction of the Court over this crime.

RULES OF PROCEDURE AND EVIDENCE

PART 2 JURISDICTION, ADMISSIBILITY AND APPLICABLE LAW

Rules relating to article 17 (Issues of admissibility), article 18 (Preliminary rulings regarding admissibility) and article 19 (Challenges to the jurisdiction of the Court or the

admissibility of a case)

2.8 Notification provided for in article 18, paragraph 1

Paragraph a) concerns the notification, pursuant to art. 18.1, which the prosecutor has to provide to all the States that would normally exercise jurisdiction in order to inform them that there would be a reasonable basis to commence an investigation. It was already a well-agreed rule so not much discussion took place about it. In the end, no final decision was made on this point, and the chair asked whether it was better to have a rule that reflects closely what happens in other Parts of the Statute, or one which reflects the singularity of art. 18 through a special rule.

Paragraph b) is the result of a compromise: it provides an opportunity for States to request further information, without affecting deadlines or the reserved nature of that info on the part of the prosecutor.

2.9 Deferral provided for in article 18, paragraph 2

Rule 2.9 regards the request of deferral dealt with in Art. 18 para. 2, which is done when a State, after having received the information from the Prosecutor, informs the Court of having investigated or is investigating on the person: in such case, unless the Pre-Trial Chamber decides otherwise, the investigation should defer to the State's investigations.

2.10 Application by the Prosecutor

under article 18, paragraph 2

Rule 2.10 concerns the application of the Prosecutor that, despite the request of deferral, applies to the Pre-Trial Chamber to get the authorization to investigate. The rule is quite simple and there were not many controversies.

2.11 Proceedings concerning article 18, paragraph 2

It concerns the Pre-Trial Chamber proceedings on the request of deferral and the prosecutor's counter-application.

As regards the crime of aggression, the debate concentrated on two main issues: the definition of the crime of aggression as such and the jurisdiction of the Court over this crime

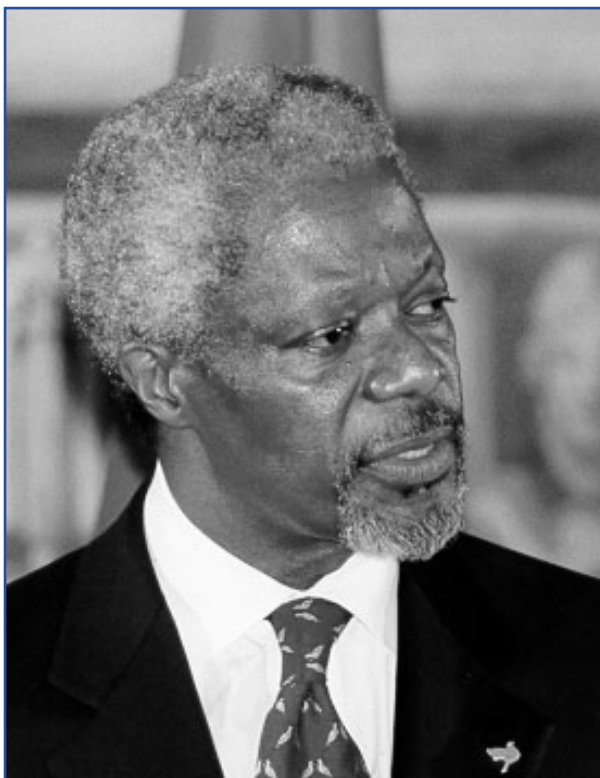
2.12 Application by the Prosecutor following review under article 18, paragraph 3

Rule 2.12 concerns the review by the Prosecutor of the proceedings taking place at the domestic level after a State's request for deferral.

2.13 Provisional measures

The rule concerns provisional measures requested by the Prosecutor pending a ruling by the Pre-Trial Chamber to

preserve evidence, or gather evidence which may not be subsequently available. The core of the debate on this point revolved around whether or not it was necessary to give a clear deadline for the decision of the Pre-Trial Chamber. The majority of States considered it sufficient to leave the "expedited basis" formula. This avoided to straitjacket the Pre-Trial Chamber in cases where a little more was necessary, and it was clearly a



*Your Excellency,
Ladies and
Gentlemen,
This is indeed a
historic moment.
Two millennia
ago one of this
city's most
famous sons
Marcus Tullius
Cicero, declared
that "in the midst
of arms, law
stands mute".
As a result of
what we are
doing here today,
there is real hope
that that bleak
statement will be*

request for fast decision.

Rule Q. Definition of victims

Rule X, contained in footnote 8 on page 13 of Document PCNICC/1999/L.5/Rev.1/Add.1, derived from a French proposal for the 1999 Paris inter-sessional seminar on victims, provided the starting point for discussion on definitions. Most delegates considered the wording of Rule X(a), defining victims on the basis of harm suffered "directly or indirectly", overly vague. The 1985 General Assembly Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (GA/RES/40/34) was distributed for information, and a number of States spoke in favour of the need to remain consistent with the current international definition, which itself had formed the basis of the later Sub-commission definition in the 1996 UN Basic Principles and Guidelines (E/CN.4/Sub.2/1996/17) and an ongoing 2000 draft, the Bassiouni Principles (E/CN.4/2000/62). As

such, the final text reflects closely the 1985 Declaration. While some considered the distinction between mental injury and emotional suffering as unclear and also vague, this was left unchanged according to the existing 1985 definition. Also debated was the 1985 reference to those who suffer while intervening to assist others. This was included because the situation where the victim is not the direct target of a crime listed, i.e. a victim of discriminatory intent under genocide is covered, but nonetheless becomes targeting as a consequence of assisting others, and should therefore also be considered as a victim of that crime. A number of States also questioned the inclusion of organisations or institutions in the category of victims, which was felt to be an issue of reparations rather than harm suffered as victims. It was noted, however, that this referred not to a right to reparation, but of compensation, for which identification as a targeted victim was apposite. The rule now appears in Document PCNICC/2000/L.1/Rev. 1/Add. 1, as Rule Q.

PART 4 COMPOSITION AND ADMINISTRATION OF THE COURT

Discussions on Part 4 have focussed on two main themes: 1) issues relating to breach of duty by officers of the Court, and 2) rules relating to the organization of the Court.

4.1 Rules relating to situations

that may affect the functioning of the Court

4.1.4 Procedure

Procedure in the event of a request for disciplinary measures

During the course of the final week, Spain proposed a new provision to be inserted in Rule 4.1.4. The provision, entitled "Procedure in the event of a request for disciplinary measures," covers an issue that had to date been left out of the Rules of Procedure and Evidence. The Rules did address the issue of suspension from duty but did not provide a procedure for disciplinary action. The Spanish proposal bridged this gap by providing that in the case of a judge, the Registrar, or Deputy Registrar, the Presidency will have the discretion to impose disciplinary measures. In the case of the Prosecutor, authority will ultimately rest with an absolute majority of the Bureau of the Assembly of States Parties to impose disciplinary measures. In the case of a Deputy Prosecutor, the Prosecutor may give reprimand, however, only an absolute majority of the Bureau of the Assembly of States Parties may impose a pecuniary sanction on such an individual. Reprimands shall be recorded in writing and will be transmitted to the President of the Bureau of the Assembly of States Parties. This proposal was met with a favourable response from a number of delegations.

Suspension from duty

Also raised in conjunction with Rule 4.1.4 were issues relating to suspension from duty. Some delegations were of the opinion that the Rules should leave open the possibility that persons may be suspended from duty without remuneration. Others were concerned that by excluding a provision to the contrary, there would be a danger of suspension without a proper hearing that could be conceived as a



human rights violation. In compromise, a footnote was ultimately retained to explain that one delegation expressed the view that the words "without loss of remuneration" should not be included in the text.

4.1.6 Disqualification of a judge, of the Prosecutor or of a Deputy Prosecutor

A footnote was also added to Rule 4.1.6 "Disqualification of a judge, of the Prosecutor or of a Deputy Prosecutor", that was retained in the rolling text and will thus, be carried over in June. This footnote was the subject of a good deal of controversy as it reads: "It was generally understood that, under certain circumstances, nationality could be taken into consideration as a ground on which the person's impartiality might reasonably be doubted". Many delegations expressed the view that nationality should not be highlighted as a basis for disqualification. Others wanted nationality to be mentioned as a possible basis. The footnote was the compromise reached by the delegates.

Rules relating to the organization of the Court

This section of the Rules of Procedure and Evidence was discussed

at great lengths over the course of the three-week session. In particular, delegations focussed on Rules relating to the defence counsel as well as those relating to victims and witnesses.

Italy was particularly interested in ensuring that the rights of children, the elderly, and persons with disabilities are adequately protected under the Rules of Procedure and Evidence. Concern for child victims in particular, was one of the central outcomes of the Intersessional Meeting in Siracusa (31 January-6 February 2000). Italy successfully introduced a provision that establishes, within the Registry, a child protection program. A Court-appointed advocate will, with the permission of the child's parent or guardian, aid the child witness during all stages of the proceedings.

Another proposal introduced by Italy, Poland, and the Holy See, did not receive a great deal of support from delegations. This proposal aimed at setting out a Bureau within the Registry that would act, in effect, as a "public defenders office". Thus, if a defendant so desired, or could not afford his or her own counsel, he or she could choose to have an attorney from the Registry Bureau appointed on his or her behalf. The Registry would, therefore, under this proposal appoint and retain a permanent staff of well-

less true in the future than it has been in the past.

Until now, when powerful men committed crimes against humanity, they knew that as long as they remained powerful no earthly court could judge them.

Even when they were judged - as happily some of the worst criminals were in 1945 - they could claim that this is happening only because others have proved more powerful, and so are able to sit in judgement over them. Verdicts intended to uphold the rights of the weak and helpless can be impugned as "victors' justice". Such accusations can



also be made, however unjustly, when courts are set up only ad hoc, like the Tribunals in the Hague and in Arusha, to deal with crimes committed in specific conflicts or by specific regimes. Such procedures seem to imply that the same crimes, committed by different people, or at different times and places, will go unpunished.

Now at last, thanks to the hard work of the States that participated in the United Nations Conference over the last five weeks - and indeed for many more months before that - we shall

trained defence attorneys. Concerns were raised in the debate, however, as to the cost of such a program. Additionally, some delegations were concerned that such a “pool” of appointed defence attorneys (likely predominantly representing countries with the resources to train and nominate candidates) may impact (or at least be seen as impacting) the Court’s ability to act with impartiality. For these reasons the provision was not included in the text of Part 4.

Rules relating to article 50 (Official and working languages)

Publication of decisions of the Court

The Rule entitled, “Publication of decisions of the Court” provides a list of fundamental documents. Debate at this session was on whether or not this list should be expanded to include other documents. Proponents of expansion advocated giving the Presidency discretion to add to the list as appropriate while detractors maintained that the cost of translating additional documents into six languages would be exorbitant. A compromise was eventually reached and can be found in paragraph (3) of this provision.

Working languages of the Court

Finally arising under Part 4, was the issue of the official working languages of the Court. As provided in Article 50 of the Statute, the official languages of the Court are Arabic, Chinese, English, French, Russian, and Spanish. All judgements will be published in the 6 official languages, as well as any other document the Presidency deems to be “fundamental.” Article 50 states that the Rules of Procedure and Evidence shall provide the criteria by which the Presidency can make this “fundamental” determination.

PART 5 INVESTIGATION AND PROSECUTION

Regarding Part 5, at its fourth session, the PrepComm considered only the footnotes.

PART 6 THE TRIAL

The discussion on Part 6 focussed mainly on victims-related issues. In particular on Rule 6.5 on evidence in case of sexual violence; on Rule 6.30 on participation of victims in the proceedings; on Rule 6.31 on reparations to victims and on a number of minor proposals.

6.5 Principles of evidence in cases of sexual violence

As regards Rule 6.5, the main debate was on whether or not consideration should be given to prior sexual conduct. In this respect it was

thought to reflect the Statutes of the two ad hoc International Criminal Tribunals for former Yugoslavia (ICTY) and Rwanda (ICTR) and the developments of their case law which goes against the possibility of admitting evidence of prior sexual conduct.

Despite in the previous PrepComm the views on this issue were split, at the fourth session the overwhelming majority of States was against the admissibility of evidence of prior sexual conduct. The reasons given in favour of this stance were numerous. Firstly, the sexual crime is such regardless of the prior sexual conduct, as the material element in such crimes is the use of force implied in a sexual conduct against the will of the victim; so the only relevant element is the forced nature of the sexual conduct. The irrelevance is especially strong considering that these are war crimes committed on a widespread basis and so it does not matter what the prior sexual conduct of an individual victim was. Moreover, in order to preserve the internal consistency of Rules of Procedure and Evidence’s structure it is not possible to give any relevance to prior sexual conduct. Another reason not admit evidence on prior sexual conduct of the victim, is that it would go against Art. 69.7 of the Statute, which prohibits the taking of evidence obtained in violation of the Statute and of internationally recognised human rights.

Few delegations seemed open to a compromise on this point and in any event the compromise would have limited in a very strong way the possibilities that prior sexual conduct could be admitted, also under a procedural point of view. However, due to the great support for the exclusion of prior sexual conduct and without upsetting the concerns of those few delegations, the chairman proposed that he would draft a text which contains an exclusion of the prior sexual conduct along the lines of the ad hoc Tribunals’ Statutes and also a reference to Art. 69.4.

Another issue in discussion regarded the procedural aspects of the consideration of sexual evidence. It was agreed that some kind of filter should be created for the submission of that kind of evidence. The debate was aimed at determining how to establish the existence or absence of consent on the part of the victim. Several drafts were introduced by the Chair in order to facilitate the discussion, taking into account the previous comments.

On consent, delegations expressed concern towards what seemed the implicit introduction of a presumption of rape whenever a context of violence would exist. The final draft reads

'coercive environment' and 'undermined' voluntary and genuine consent.

A compromise was found in the careful re-draft of rule 6.5 (c).

An intense discussion took place on the content of rule 6.5 bis, on "Evidence of other sexual conduct". Some delegations supported the approach of the ICTY and the total inadmissibility of evidence on prior or subsequent sexual conduct in cases of sexual violence. The ICTY examined the issue twice. In the Decision on the "Prosecutor's Motion requesting Protective Measures for the Victims and Witnesses" of August 1995, Trial Chamber II clearly stated that "the victim's prior conduct is inadmissible". In the Decision on the Prosecution's Motion for the Redaction of the Public Record rendered by Trial Chamber II in *Delalic et al.* Case (Celebici) no waiver is accepted of the right not to have one's prior sexual conduct admitted as evidence.

In the final draft, the majority view is reflected in the subordination of the principle in rule 6.5 bis to article 69 (4) of the Statute and in ambiguous language introduced in rule 6.5.

Rule 6.30 Rules relating to participation of victims in the proceedings

As regards the issue of participation of victims in the proceedings, during the last week of the PrepComm the delegations addressed the content and appropriate placing of a footnote making reference to the procedure to be adopted for the assignment of counsel to indigent persons. The final decision was to retain the footnote and a cross reference to Part 4, which specifies that Part 4 and, in particular, rule 5.2 (Assignment of legal assistance) should apply also in this case.

Rule 6.31 Rules relating to reparations to victims

The text on Rules relating to reparations to victims was an attempt to: clarify who should be the recipient of a request for reparation even at an early stage of the proceedings - the Registrar, rule A (a); address the concern that victims may want to oppose any reparation, as far as considered 'blood money', rule B (b), ii; allow both individual and collective reparations, rule D (a); guarantee the rights of the victims to approach the Court also at a late stage in the proceedings, rule F, and to accommodate for Italy's proposal in favour of the possibility of communications other than in writing for disable or illiterate persons. It was however decided not to mention this

possibility in every relevant rule, but to insert a unique general provision to that effect under Rule 6.X.

PART 8 APPEAL AND REVISION

Rolling text

PCNICC/2000/WGRPE(8)/RT.1 was the basis for discussion on Part 8, on appeal and revision.

Section 1 General provisions

Rule 8.1 Rules governing proceedings in the Appeals Chamber

During the negotiations there was the concern that things should be said only once, and that they are said broadly enough to be all-inclusive. The question was whether it should be in rule 8.1 or in 8.3(c), but there was agreement that it would be best to have a single rule to deal with this issue. Placing the rule at the beginning would have the effect of indicating that the application of these rules applies to all proceedings before the Appeals Chamber, unless otherwise indicated.

Section 2 Appeals against convictions, acquittals, sentences and reparation orders

Rule 8.2 Appeal

There was general agreement on increasing the fifteen-day period for an appeal against a decision of conviction or acquittal, a sentence or a reparation order to be filed, to thirty days.

Rule 8.3 Procedure for the appeal

The only comment on this rule was the reference to "notice of appeal," which was replaced by "appeal". It was noted that a decision had not been made on how to conclude the discussion on the placement of rule 8.1 or 8.3(c).

Rule 8.4 Discontinuance of the appeal

On Rule 8.4 some debate took place with an aim to clarify the procedure in case of discontinuance of the appeal. Two were the main issues raised on the point. First, it was stressed that, should the Prosecutor who has filed an appeal on behalf of the convicted person decide to file a notice of discontinuance, the convicted person should have the possibility to continue the same appeal and not to file a new one, as term for appealing might have been already expired. The Chair specified that was indeed to be considered the intent in the present wording of rule 8.4 (b). The other issue was the role of the Appeals Chamber, in case a notice of discontinuance will be filed. Should the discontinuance be automatic or should the Appeals Chamber have a final say, as Chamber responsible for the all matters related

have a permanent court to judge the most serious crimes of concern to the international community as a whole: genocide, crimes against humanity and war crimes.

Other crimes, wherever and whenever they may be committed, may be included in the future. The crime of aggression is already mentioned in the Statute.

For the United Nations, this decision has special significance. We never forget that our Organization has its origins in a global struggle against régimes which were guilty of mass murder on a horrendous

scale. And unhappily we have had to deal all too recently, in Rwanda and the Former Yugoslavia, with new crimes of the same appalling nature, if not quite of the same magnitude.

By adopting this Statute, participants in the Conference have overcome many legal and political problems, which kept this question on the United Nations agenda almost throughout the Organization's history.

No doubt, many of us would have liked a Court vested with even more far-reaching powers, but that should not lead us to minimize

to appeals procedures? No agreement was reached on the matter and no mention of any such competence for the Appeals Chamber is now in the rules.

Section 3 Appeals against other decisions

Rule 8.7 Appeals that require leave of the Court

On 8.7(a) there was a general feeling that the time limit should be very short to avoid any delays in the procedure and ensure expedited procedures.

Rule 8.8 Procedure for Appeal

On 8.8(c) there was a convergence of views to have a procedure by which a hearing would be set. The rule, as agreed during this PrepComm session, allows the procedure to take place in writing and does not require an additional hearing.

Section 4 Revision of conviction or sentence

Rule 8.11 Application for revision

On paragraph (a), some delegations wanted to require supporting material and others thought it shouldn't have to accompany the application. A compromise was to introduce some flexibility, and there was some support for that. In (b), there were suggestions that it be replaced by using wording from art. 83(4). In Rules 8.12 and 8.14 there is the same issue. In 8.11, it was indicated that maybe this would not be appropriate here and the Appeals Chamber should decide if the

application is meritorious.

In (c), there are

the same problems as with other provisions with the term "parties" to the proceedings. It was at last agreed the inclusion of the formula "all parties who participated in the initial decision proceedings".

Section 5 – Compensation to an arrested or convicted person

Rule 8.13

The drafting of paragraph b) was left as it was agreed during the December session. There was also the fact that a decision was needed under (b) determining that the arrest or detention was unlawful, which meant that the terminology using "decision" would not need to be changed. On (c), a proposal, made by Australia, to simplify the paragraph, reads as follows: "The request shall contain the grounds and the amount of compensation requested."

Rule 8.14

The majority of delegates did not think there was a right to appeal decisions on compensation, as articles 81 and 82 contain no reference to compensation as a basis for an appeal. It was therefore considered that the proper reference would be to article 83(4).

Rule 8.15

It was proposed to include the word "any", so as to read: "In establishing the amount of any compensation in conformity with article 85 paragraph 3, the Chamber designated under rule 8.13 (a) shall take into consideration the consequences which the grave and manifest



miscarriage of justice has had for the personal, family, social and professional situation of the person filing the request". There was discussion on whether to refer to article 83 (in general) or article 85(3) (in particular), with the majority of views preferring to keep the specific reference to article 85(3), as 85(3) refers to unusual circumstances and is the only paragraph directly on point.

PART 9 INTERNATIONAL COOPERATION AND JUDICIAL ASSISTANCE

The debate on Part 9 was initially referred to a Colombian document, containing a series of improvements to the existing text.

Rules relating to article 89 (Surrender of persons to the Court) 9.6 Admissibility of a case before a national court

The Colombian text was aimed at simplifying the existing rule. The proposal had the merit to eliminate a flaw of the existing rule: such rule, in fact, referred to the "procedures applicable to challenges to the jurisdiction or admissibility of a case", but Art. 89.2 of the Statute indeed only speaks of challenges to the admissibility.

Rules relating to article 93 (Other forms of cooperation) 9.14 Instruction on self-

incrimination accompanying request for witness

The opposition by some delegations to the possibility of self-incrimination was raised also during this PrepComm session. Other delegations noted that there was a need to cross-reference this rule to rule 6.9, so that whatever this rule will establish, it will also bear an influence on the content of rule 9.14.

9.17 Cooperation requested from the Court

The Colombian proposal was aimed at changing the formula "working languages" into "official languages". However other States preferred the current formula because it is part 4 that deals with language questions and it is necessary to maintain consistency with it.

ELEMENTS OF CRIMES

The Elements of Crime working group was nearing the end of its task with second reading completed for genocide and crimes against humanity.

On Monday 27 March a Discussion Paper proposed by the Coordinator (PCNICC/2000/WGEC/RT.2) was distributed for discussion during the week. That text and the Chapeau formed the subject matter of the discussions.

WAR CRIMES

The Working Group finished its discussion of Article 8(2)(b) on "other

continues on page 14

*the breakthrough
you have
achieved. The
establishment of
the Court is still a
gift of hope to
future
generations, and
a giant step
forward in the
march towards
universal human
rights and the
rule of law.*

*It is an
achievement
which, only a few
years ago, nobody
would have
thought possible.*

*It therefore
gives me great
pleasure to be
here in person; to
place in your
custody the Final
Act of the
Conference; and
to transmit to you
the Rome Statute
of the
International
Criminal Court
adopted
yesterday. From*

RULES NEED TO BE CLEAR, THEY ALSO NEED TO BE FLEXIBLE

Judge Richard May addresses the Fourth Session of the Prepcomm to present the paper on Rules of Procedure and Evidence prepared by ICTY Judges

New York, 20 March 2000 – UN Headquarter - (...) My principal purpose in speaking to you today is to present a paper that the Judges of the Tribunal have prepared, which we hope will be of use to you in your remaining work. The President of the Tribunal, Judge Jorda, had intended to present this paper to you himself. Unfortunately, he is unable to come to New York at this time, and has asked me to speak on his behalf. He has also asked me to stress the Tribunal's willingness to be of assistance to you in your work and to provide you with information regarding the Tribunal's experience. In this connection I would note that representatives of the Tribunal are here attending the current session. Please feel free to call on them.

Before I discuss the paper which we submit today, I would like to remind you that the Judges of the Tribunal prepared a report which was submitted to the Commission at its session last July by President McDonald. The Judges believe that a number of the points raised in that report are still relevant and would draw your attention to it, particularly the sections regarding trial management. As Judge McDonald noted in her speech, the problems arising from the length and complexity of the proceedings have been among the most difficult which the Tribunal has faced. So it bears emphasising again that in drafting Rules of Procedure and Evidence, care must be taken to give Judges the tools to expedite proceedings. Our experience has been that every aspect of the proceedings must be examined scrupulously to ensure that all parts of the process are carried out efficiently and fairly. This aspect of the work may be of importance to the International Criminal Court, as it is to be anticipated that its proceedings will be every bit as complicated as those which confront the Tribunal.

As Chair of the Tribunal's Rules Committee I know firsthand how difficult it is to draft, (or in our case) amend, Rules. If I may make one general comment, it would be this: while it is important for Rules to be clear, they also need to be flexible enough to allow Judges to deal with the different sets of circumstances which arise daily in the courtroom, many of which cannot be anticipated.

Let me now turn to the paper which we are submitting today. In thinking about how we could usefully contribute to your work, we have tried to take into account the current stage of the process. Provisional Rules of Procedure and Evidence have been drafted and many important issues

resolved. Thus, the Judges thought it might be most useful to focus on some unresolved areas and to provide you with a description of the Tribunal's practice and experience in them. Our paper, and by extension my address today, concentrates on technical issues and on practical realities rather than on general principles or broad overviews. I would emphasise that the intention is to share our experience with you, in the hope that it will be of assistance. The paper offers contributions on four specific areas:

- (i) evidence in cases of sexual violence;
- (ii) the role of the Victims and Witnesses Unit;
- (iii) issues arising with respect to defence counsel; and
- (iv) matters relating to the enforcement of sentences.

These topics are fully discussed in the paper and I intend only briefly to cover them here; then, Mr. Chairman, if time permits, I would be glad to answer any questions.

Turning to the first topic, evidence in cases of sexual violence. By way of background, it should be noted that the Tribunal's Rules of Procedure and Evidence were devised with a specific purpose in mind, i.e. to enable the Judges to adjudicate war crimes, crimes against humanity and genocide committed within the context of the conflict in the former Yugoslavia. Thus, the Tribunal's Rules take into account patterns of conduct specific to these crimes and this context. As has been widely recognised, this conflict saw the mass perpetration of gender-based crimes. In addition to the reports of widespread rape and other forms of sexual violence prevalent in all wars, the conflict also evinced organised and systematic rape of women, particularly in detention facilities. The Tribunal's Rules, particularly Rule 96 which governs the admission of evidence in cases of sexual assault, were consciously adapted to take these factors into account. In drafting

Rule 96, the Judges intentionally rejected many of the evidentiary rules applied to rape trials in national jurisdictions. Instead, they adopted a policy precluding evidence of consent to sexual contact when certain oppressive or coercive conditions are present. Therefore, consent cannot be used as a defence when the victim has been subjected to violence, duress, detention or psychological oppression. Moreover, the Rules preclude, altogether, any effort by the defence to introduce evidence concerning the prior sexual conduct of the victim, as such evidence is deemed irrelevant in these situations and can only serve as a pretext to intimidate or undermine the credibility of the victim.

Given the nature of modern conflicts, the Court certainly will face issues relating to sexual violence committed within the context of war crimes, crimes against humanity, or genocide. It will thus have to grapple with the

I would urge the delegates of this Preparatory Commission to make every effort to ensure that the Rules of Procedure and Evidence will assist in creating a Court that can effectively deliver justice

same issues faced by the Tribunal. The Judges believe that the approach taken in its Rules and in its subsequent jurisprudence represent a progressive development of the law which has been instrumental in protecting victims of sexual violence without infringing on the right of an accused to a fair trial.

Dealing with the next topic, the role and protection of victims and witnesses; the first matter to be noted is that the ICC Statute contains provisions relating to the participation of victims in the proceedings. Such provisions do not exist in the Tribunal's Statute. We are thus not in a position to provide guidance on these subjects.

However, for most individual victims their primary contact with the Court will be as witnesses; and the Tribunal has considerable experience in this area. Thus in the past two years, the Tribunal's Victims and Witnesses Section has worked with almost 800 witnesses, almost all of whom have travelled to The Hague from the former Yugoslavia or other countries. The Tribunal's experience may be of assistance to the Court. One example is the problems faced by the Victims and Witnesses Section in trying to carry out its unique role, in the context of UN financial and administrative rules. The Section must, where necessary, protect the confidentiality of witnesses and make complicated logistical arrangements for them while complying with UN travel, procurement and financial accountability rules. Accountability is, of course, important; however the Preparatory Commission may want to allow a certain amount of financial and administrative flexibility to the Court's Victims and Witnesses Unit in its Rules or in the Court's financial regulations.

The Judges recognise the valuable expertise the Tribunal's Victims and Witness Section has acquired regarding witness protection issues. We have amended the Rules to allow the Section, on its own initiative, to request a Chamber to take appropriate measures to ensure the privacy and protection of individual victims and witnesses. This provision allows the Section to intervene in cases where additional steps need to be taken to protect vulnerable witnesses and is an important way of ensuring the protection of witnesses. It is a development that we would commend to the Preparatory Commission.

I would make a final point. It is also important to clarify the responsibility of the Victims and Witnesses Unit during the investigative stage, i.e. to be clear when the Office of the Prosecutor's primary accountability for victims and witnesses ends and the responsibility of the Unit begins. While Article 43 of the ICC Statute indicates generally where that line should be drawn, it is important for the Rules of Procedure and Evidence to be clear on this point. Moreover, the Rules must give sufficient authority to the organ responsible for witnesses or potential witnesses to take the measures necessary to protect them.

I move now to discuss the accused and his or her defence. All will agree that the right of the accused to a fair trial depends, in part, on access to an adequate defence. However, the provision of legal aid to the accused and administrative support to defence counsel is a complex matter. At the Tribunal we have taken the view that, as a neutral party, the Registrar is the appropriate official to handle it. There are serious issues of financial and administrative accountability that arise in relation to the administration of a legal aid system. Millions of dollars have been spent in providing defence counsel to accused before the Tribunal, and we must remember that these are public funds. Thus, the Tribunal's Rules have placed the responsibility for defence counsel with the Registrar, who is the only official who meets the necessary criteria. Given the Tribunal's experience, any other administrative structure

for defence counsel and legal aid would need to take these matters into account.

In the Tribunal's experience there are other practical issues regarding defence counsel which have arisen. For instance, there is a general lack of familiarity with the Tribunal and its procedures. While this is certainly understandable in view of the unique nature of the Tribunal, the problem is that defence counsel who are new to our procedures may cause delay. Given our large docket such delays can be serious. For this reason, we are now taking steps to implement training courses for defence counsel. I believe that such training needs to be as extensive as possible, but that it is well worth the investment. As a consequence of training the proceedings will run more smoothly and the quality of the defence can only be improved. The Preparatory Commission may want to build on the Tribunal's experience in this area and require mandatory training for defence counsel.

Another issue that arises in relation to defence counsel is in the area of ethics and discipline. It will be difficult for any of the organs of the Court to monitor ethical issues. We face a similar difficulty at the Tribunal, as we have defence counsel from a number of different countries. Presumably the Court will have defence counsel appearing before it from many parts of the globe. The root problem is that generally in domestic jurisdictions ethical issues are monitored and dealt with by professional associations of lawyers or bar associations. In the international context there is no comparable body. In order to fill this lacuna, the Tribunal has adopted a Code of Professional Conduct. While the Code does address the problem of establishing standards, the problems of effective monitoring and appropriate enforcement mechanisms remain. Misconduct in court can, of course, be dealt with by the Judges, but the more general ethical requirements expected of counsel cannot be monitored by the Judges or the Registrar. Thus, it may be appropriate for the ICC Rules to provide for an association of defence counsel, which would have responsibility for bringing ethical violations to the attention of the Judges or the Registrar. Such an association could also play a role in the training of defence counsel. However, it bears repeating that the primary responsibility for providing support to defence counsel and, most importantly, for the legal aid system must reside in an accountable official of the Court, such as the Registrar.

The final substantive area addressed by our paper relates to the enforcement of the sentences of the Court. In the case of the Tribunal, we have a detention unit in which to confine the accused prior to and during trial and appeal proceedings. However, the Tribunal has no permanent facilities to imprison convicted persons and is dependent on the voluntary co-operation of States to enforce its sentences. At this stage the Tribunal has relevant agreements with only six States to enforce its sentences. One of the difficulties that we have experienced with some States is that the State's domestic law prevents it from entering into such an agreement without time consuming amendments to current legislation. In the case of the Court, almost all States will require implementing legislation, and this would be the perfect opportunity to make the amendments necessary to domestic legislation.

That is a brief summary of some of the topics developed more fully in the paper. I would mention only one other aspect of the Tribunal's experience. It holds its sessions in The Hague, many miles from the region in which the events with which we are concerned occurred. We work in

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Mr Rolf Fife, of the delegation of Norway to the ICC PrepComm

NORWAY'S RATIFICATION PROCESS

During the last session of the Preparatory Commission, Mr Rolf Fife, of the delegation of Norway, gave an overview on the Norwegian ratification process. Here follows a transcript of the debate in the Plenary of the Storting (The Norwegian Parliament) on 27 January 2000

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languages and use procedures which are foreign to the peoples of the region. There is, thus, the danger that the Tribunal's work, which is intended to assist in the process of reconciliation, will be misunderstood. In order to combat this danger the Tribunal has now created an Outreach Programme. (It has done so with the generous voluntary contributions from a number of States.) The purpose of the Programme is to find creative ways of communicating the work of the Tribunal to the peoples of the former Yugoslavia.

The Court will face similar problems since it will also be rendering justice from afar. If its work is to be meaningful it too must find ways of communicating that work effectively to an international public: its judgments need to be communicated throughout the world.

In conclusion, I would urge the delegates of this Preparatory Commission to make every effort to ensure that the Rules of Procedure and Evidence will assist in creating a Court that can effectively deliver justice. While in theory the International Criminal Court can be a vital tool in providing redress for heinous crimes, in practice it will not be able to do so unless it has the tools and the flexibility to carry out its task. I hope, on behalf of the President Jorda and the other Judges of the Tribunal, that our contribution will be of use in assisting you towards this end.

The debate was based on the Recommendation from the Standing Committee on Foreign Affairs concerning consent to the ratification of the Rome Statute of the International Criminal Court - Recommendation S. No. 94 (1999-2000). The recommendation of the Committee was based on the Government's bill, Proposition No. 24 (1999-2000).

Kjell Engebretsen (Labour Party, spokesman): The recommendation in this matter has the support of a unanimous Committee. The idea of establishing an international criminal court to deal with what are known as "international crimes" was first launched as long ago as 1947, but for various reasons it has been difficult to realise until now.

Norway has throughout been at the forefront of the efforts to establish the court, and if the Storting approves the Committee's recommendation, Norway will be one of the first countries to ratify the treaty. The (...) Statute has been signed by 92 States and has so far been ratified by six States. Ratification by 60 States is

required before the court can be established.

This kind of court has been established earlier by the Security Council in relation to Rwanda and the former Yugoslavia. Tribunals were in these cases set up to try those involved in crimes committed in a specific context, and this is within the Security Council's mandate. However, a permanent international criminal court must be founded on a treaty-based Statute.

The International Criminal Court will not take precedence over national criminal jurisdictions in cases that come within the scope of the Court, such as war crimes, genocide, etc. It will only exercise its functions of investigation, prosecution, trial and conviction

when the State concerned does not have the will or the ability to exercise these functions efficiently itself.

However, the committee would also expect that the Court, by its work and precedence, will have a positive effect on national legislation and jurisprudence in a number of areas (...)

"The decision to establish a permanent, global Criminal Court is in the Government's view a breakthrough in international law"

*Knut Vollebæk
Foreign Minister*

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According to the Statute, the Court may not pass a death sentence, but in exceptional cases a term of life imprisonment may be imposed. Questions have been raised in certain quarters as to what extent Norway, where the maximum penalty is 21 years, may encounter problems because of its participation in a treaty that provides for life imprisonment.

This issue has been considered and it has been concluded that participation in the agreement will not lead to any problems of this kind. The conclusion is based on the following: The Court's maximum penalty is normally a term of 30 years, and life imprisonment may only be imposed under specific circumstances. We must take into account the kind of crimes involved here, and that it can be assumed that sentences of this kind would be related to particularly serious war crimes, genocide, etc. (. . .)

The Court is neutral in relation to the legislation of the individual country, so that Norway will not be obliged to amend its penal provisions. If life imprisonment has been imposed (by the Court), the case in question is required to be reviewed by the Court after 25 years to determine whether the term of imprisonment should be reduced.

And finally, Norway currently has no reservations as regards life imprisonment in its extradition law - only as regards the death penalty.

Beyond this, I refer you to the committee's comments and to the recommendation.

Harald Hove ("Venstre" - Liberal Party): The Storting is being invited to consent to the ratification of an important international treaty today. Establishing the kind of permanent court described in the treaty is a major step forward in the development of the international legal order. We can only hope that this treaty will be ratified as soon as possible by the required number of States so that it can enter into force.

I agree with the spokesman that this matter is very important and that it is therefore appropriate to devote a certain amount of attention to it in the Storting (i.e. in the plenary).

In addition to the spokesman's remarks about following up the special tribunals that were set up as a result of the conflicts in Rwanda and Yugoslavia, it should also be emphasised that this court is in many ways an extension of the process of establishing a legal order that began with the Nuremberg war trials after the Second World War. This historical connection is also important.

Otherwise, I agree with the

spokesman as regards the fact that the Court may impose a term of life imprisonment and whether this would constitute a problem for Norway because we have a maximum penalty of 21 years in our domestic legislation. I am in complete agreement with the arguments presented by the spokesman.

Finally, I would like to mention another important question, i.e. whether the King's status under the Norwegian Constitution might be an obstacle to ratification. As stated in the proposition, the (Foreign Affairs) Committee concluded that this would not be the case.

Foreign Minister Knut Vollebæk: Member of the Storting, Mr. Harald Hove referred to the Nuremberg process as a forerunner - at least in theoretical and ideological terms - to the subject of our discussion today, the International Criminal Court.

I would like to add that it is 55 years ago today since the liberation of Auschwitz. The fact that the Norwegian Storting is, on this very day, debating a matter that is so important to the international community as regards human rights and international criminal justice is, I feel, of major significance. The decision to establish a permanent, global criminal court is in the Government's view a breakthrough in international law. This issue has been on the agenda of the United Nations for half a century. The Court will enable the international community to reduce its reaction time when confronted with the most serious international crimes. This will constitute a great improvement as compared to establishing new international criminal tribunals by means of a decision of the Security Council in each particular case, as noted by the spokesman, Member of the Storting Engebretsen. We hope this may also enhance the deterrent effect of the Court.

At the same time, we are of course fully aware that the Court's actual efficiency and effect in practice will depend on the adherence of the various states to the Statute and on their political will to support the Court. Nevertheless, a very important step has been taken as regards the principles involved in this issue. It is fully in keeping with the commitment demonstrated by Norway in the negotiations on the establishment of the Court that we now propose ratification.

The Parliament thereafter unanimously approved the ratification of the Statute.



*An ICC will not
be a panacea
for all ills, but it
will be good for
the United S-
tates and all
nations. It
marks the next
essential step
on the road to a
more just,
peaceful world,
and the United
States must
lead the way*

**Jimmy Carter, NPWJ
International Conference,
Atlanta, 13 November 1997**

now on, the Statute will bear the name of this Eternal City, in fitting tribute to the people of Rome and of Italy who have hosted this Conference, and to their Government which worked tirelessly for its successful conclusion.

The Statute was opened yesterday for signature. Some States have already signed it, and more will do so during this ceremony. It will remain in your hands until 17 October 1998. After that it will be deposited with me, as Secretary-General of the United Nations, and will stay open for signature in New York until 31

continues from page 9

serious violations of the laws and customs applicable in international armed conflict". This section contains 26 crimes. Since these had been examined in detail previously, there were many areas of broad agreement and much of the debate centered on proposed linguistic changes rather than substantive ones.

One area of disagreement however arose over Article 8(2)(b)(iv), the war crime of excessive incidental death, injury or damage. It was agreed to include a footnote to that provision, relating to and attempting to define "direct overall military advantage".

Turning to Article 8(2)(b)(vi), the war crime of killing or wounding a person *hors de combat*, there were some submissions that the person's protected status under the Geneva Conventions should be spelled out, as it had been for Article 8(2)(a), but it was decided that the term *hors de combat* implied that status and that it was therefore unnecessary to spell it out.

In Articles 8(2)(b)(vii)-2 and (vii)-3 the war crimes of improper use of a flag, insignia or uniform of the hostile party and of the United Nations respectively, some delegations considered the use of the expression "under the law of armed conflict" in element 2 to be meaningless. It was however left in order to assist in clarifying the word "improper". There was general agreement that no examples could be found to illustrate "improper use of the United Nations flag" but that since this was in the Statute, it would remain.

One delegation suggested in Article 8(2)(b)(x)-1, the war crime of mutilation, that element 1 be amended to read "the accused subjected on or more persons to mutilation" to be consistent with the following provision where element 1 was phrased in that way. This proposal was discussed and accepted.

There was a lengthy examination of the two somewhat similar crimes set out in Articles 8(2)(b)(xiii) (destroying or seizing the enemy's property) and 8(2)(b)(xvi) (pillaging). It was pointed out that pillaging is a very old concept along with "war booty". There could never be a defence of "military necessity" as pillaging *de facto* implied that there was no military necessity (or it could not be pillaging).

It was pointed out that Article 8(2)(b)(xix), the war crime of employing prohibited bullets was inconsistent with the two previous war crimes of employing poison or poisoned weapons, and of employing prohibited gases, liquids, materials or devices in that Article 8(2)(b)(xix) had a reference in element 2 to "the international law of

armed conflict", such reference being absent from the other two war crimes. The inconsistency was commented upon but accepted in the Rolling Text, which appeared on 29 March.

Turning now to the sexual crimes set out in Article 8(2)(b), paragraph (xxii)-4, the war crime of forced pregnancy had been highly controversial throughout owing to the involvement of an anti-abortion lobby and the religious connotations. The text was changed the previous week after an intervention from the Holy See to remove the words "[the accused] intended to keep the woman or women pregnant".

A footnote to the war crime of enforced sterilization was changed from "The deprivation is not intended to include short-term birth-control measures" to "The deprivation is not intended to include birth-control measures with short-term effect" to make it clear that contraception *per se* was not affected by the provision.

The remaining interventions were to ascertain consistency between the similar crimes covered by Articles 8(2)(b), as outlined above and Article 8(2)(a) (grave breaches of the Geneva Conventions, which were discussed in detail during the second week of the PrepComm, and Article 8(2)(c) and 8(2)(e) both of which cover similar crimes in a situation of an armed conflict not of an international character.

On Wednesday 29 March a Chapeau text was agreed and on Thursday 30 March the second reading of the Elements document as a whole was completed.

The Chapeau

A text had been drafted at the intersessional meeting in Siracusa but had not been finally agreed. The Swedish Ambassador, Per Saland, was appointed as special coordinator for the Chapeau. On Tuesday, Ambassador Saland presented the Siracusa text (set out in document PCNICC/2000/WGEC/INF/1). Most delegates were in favour of the title "general introduction" (for the so-called super Chapeau) and that it be placed at the start of the Elements document, with each crime having a few sentences of introduction.

There were proposals to redraft the text slightly for the sake of elegance. The proposals were well received and debated at length but in the final analysis it was decided to retain the Siracusa wording in order not to pose any great problems to any delegations.

There had been a suggestion earlier that a paragraph be added on value judgements applying to the use of such terms as "severe" and "inhumane". This proposal received considerable

support throughout the discussion on the Chapeau, and has been taken up in the final text specifying that "it is not necessary that the accused personally completed a particular value judgement, unless otherwise indicated".

In the two following paragraphs, the word "addressed" was changed to "specified" suggestion.

The last paragraph is intended as a "reading direction" based on the corresponding paragraph of the Siracusa report.

The text was distributed as document PCNICC/2000/WGEC/RT.4 on Thursday 30 March and met with general approval.

CRIME OF AGGRESSION

Three Working Group sessions and one informal session ensured the opportunity for delegations to address the issues arising under the crime of aggression. The initial debate centred around two procedural proposals. The Italian delegation suggested to discuss all issues separately, starting with the definition of the crime of aggression. A number of delegations, among them the Syrian delegation, called for informal consultations on this issue. At the end, delegations were granted one informal session on the last day of the PrepComm and the Coordinator issued a "Preliminary list of possible issues relating to the crime of aggression" (PCNICC/2000/WGCA/RT.1). The list is expected to serve as a roadmap rather than a clear-cut separation of issues because many delegations noted that the question of the definition and the question of the trigger mechanism for the crime are inextricably linked. It seems that once the trigger mechanism is established delegations could discuss the definition separately.

A number of delegations took substantive positions relating to the definition. It is not yet possible to discern any trend, delegations range from endorsing a more general definition to including a specific list of acts which could constitute the crime of aggression, or a mixture of the two.

The German delegation announced a larger working paper on this issue for the next PrepComm in June. The delegations of New Zealand and Bosnia and Herzegovina proposed to involve the International Court of Justice in the trigger mechanism for the crime of aggression. In conclusion, the discussion is still in its dawning stage and a large number of protracted issues will have to be addressed in the future.



UPDATES & ARCHIVE

The ICC Preparatory Commission will hold its last session from 12 to 30 June in order to complete the annexes of the Court's Statute.

The negotiations will focus on the following issues: Elements of Crimes:

Genocide (Article 6); Crimes Against Humanity (Article 7); War Crimes (Article 8); Note about the "super chapeau" or coordinator's paper on the general introduction for all three crimes (such as

comments on sexual crimes). Rules of Procedure and Evidence: Part 2 (Jurisdiction, Admissibility, and Applicable law); Part 4 (Composition and

Administration of the Court); Part 5, 6 and 8 (victims' issues); Part 7 (penalties); Part 9 (rule YY regarding surrender) and Part 10 (harmonisation of these rules with those under Part 7). Victims' issues, i.e. definition of victims under

Part 2; notification to victims under Part 6 (Rule 6.30 D); Functions of the Registrar. Following each plenary session, working groups will be dedicated to the discussion on crime of aggression.

You can find previous PrepComm reports on the NPWJ Newsletters issued respectively on 28 September 1999, n.2/3 (2nd Session) and on 28 February 2000, n. 1 (3rd Session).

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December 2000.

It is my fervent hope that by then a large majority of United Nations Member States will have signed and ratified it, so that the Court will have unquestioned authority and the widest possible jurisdiction.

(Statement by the United Nations Secretary-General Kofi Annan at the ceremony held at Campidoglio, celebrating the adoption of the Statute of the International Criminal Court, Rome, July 18, 1998)



PRESS REVIEW PRESS REVIEW

THE ECONOMIST

WAR CRIMES

THE TRUTH ABOUT NO GUN RI

Finding out what happened in a corner of South Korea 50 years ago will help America to clear its mind about the rules of future wars

19-Feb-00 PRINCETON, NEW JERSEY - IT HAPPENED almost half a century ago, in a war that most Americans barely recall. But the inquiry now going on into the killing in 1950 of a large number of people at an obscure hamlet in South Korea promises to bring a murky subject into the uncomfortable daylight of modern ideas about war. Last month a blue-ribbon panel of American investigators returned to South Korea to continue their inquiries into the incident at No Gun Ri. The story came to light in September, when the Associated Press ran a starkly detailed account of American soldiers who said they had gunned down scores, maybe hundreds, of South Korean civilians in three days in late July 1950.

It is painful for Americans to think of American soldiers committing war crimes, not least because the allegation about No Gun Ri comes at a time when an attempt is being made to set up an international system of war-crimes tribunals that might one day point a finger at the American troops to whom much of the world looks for its security. At first, American army officials had shrugged off the No Gun Ri accusation. But, once the AP had published its story, the government moved smartly. William Cohen, the secretary of defence, ordered Louis Caldera, the army secretary, to lead that team of investigators. A patently independent-minded bunch, these include a former Washington Post reporter, Don Oberdorfer, and a Harvard history professor, Ernest May, as well as General Robert Ricassi, a former commander of American forces in Korea.

At the time, the American army in Korea was no juggernaut. The

Americans who stumbled into action at the beginning of July 1950 to help South Korea repel the invading North Korean communists were an ill-prepared lot, pulled away from the relatively cushy job of occupying Japan. They were driven ignominiously and bloodily into a southern corner of the Korean peninsula by the ferocity of the Soviet-equipped North Korean People's Army. It was not until well after the No Gun Ri killings that they began to push their way back northwards.

According to the AP's account, the Americans at No Gun Ri had been at the front for only three days. They were worried that North Korean soldiers were hiding themselves among South Korean refugees, and they had orders not to let refugees cross their lines. But some of the soldiers told the AP that they knew there were women and children in the crowd hiding under a bridge at No Gun Ri; one soldier says he shot over their heads rather than kill civilians. Mr Caldera's panel will have to weigh all these things.

The last time America took a serious look at a war crime of its own, it botched the job. In March 1968 an American infantry company killed several hundred civilians, including children, at two hamlets in Vietnam, one of them the now infamous My Lai 4. The killing was led by Lieutenant William Calley.

A commission under a lieutenant-general recommended charging 30 people for covering up the massacre, but only one, a colonel, was eventually court-martialled, and he was acquitted. Lieutenant Calley's superior officer, Captain Ernest Medina, was also court-martialled but acquitted. A few soldiers were charged, but were either acquitted or had the charges against them dismissed. In the end, Lieutenant Calley himself was sentenced in 1971 to life with hard labour for killing or causing the deaths of over 100 Vietnamese. But President Nixon stepped in: the young killer served only three years, mostly under house arrest in Fort Benning.

The Clinton administration has backed the creation of two United Nations war-crimes tribunals; they will look into the slaughter of civilians that took place in Rwanda and ex-Yugoslavia in the 1990s. Then, in June 1998, a UN conference in

Rome agreed to set up a permanent International Criminal Court (ICC) to prosecute people accused of war crimes and crimes against humanity anywhere in the world.

But what is a war crime

The United States is not happy about the ICC. The definition of a war crime is still far from clear. To kill civilians deliberately and unnecessarily is clearly a crime. To kill them when they are inextricably mixed up with armed enemies who are trying to kill you is probably not. The Defence Department worries that its soldiers, trying to help some future Kosovo, may be accused by people whose chief interest is tripping America up of doing the first when in fact they weren't.

That anxiety has been heightened by the ex-Yugoslavia war-crimes

Photos in these pages are a homage to Iceland and Tajikistan, the last two countries to have ratified the ICC Statute to date.

Below: Marta, Fanna, Gunnhildur, Gumundur and Oliver, 1927. Photographer: Skafti Gujónsson. © Ljósmyndasafn Reykjavíkur. From: "Hjón á Íslandi í 100 ár", a collection of black-and-white photographs of people in an urban setting, from 1906 to 1940.

<http://www.mmmedia.is/~ifhk/100ar/index.htm>

Opposite page: a Tajik beauty (<http://www.unesco.org>)



PRESS REVIEW PRESS REVIEW

tribunal, which was created in 1993. Late last year, the tribunal's chief prosecutor, Carla Del Ponte, revealed that she was studying a preliminary report assembled for her predecessor of complaints about possible war crimes committed during NATO's bombing of Yugoslavia, which liberated Kosovo from Slobodan Milosevic's repression.

Furore. NATO officials, who had relished the tribunal's indictment of Mr Milosevic last May as a vindication of NATO's fight, were horrified. The tribunal is in a delicate position. It has no police force of its own, and relies on NATO countries to carry out war-crimes arrests in Bosnia. It also relies on NATO countries, principally the United States, for much of the intelligence data needed for evidence against the most egregious offenders. And yet it cannot refuse, without endangering its claim to impartiality, to investigate complaints made by Serbia, Russia and some human-rights lawyers that certain aspects of NATO's bombing breached the Geneva conventions on what can be done in a war. Ms Del Ponte says she is studying documents presented by NATO's accusers, but makes it clear that she has taken no decision whether to open a "formal inquiry".

America's generals, not noticeably keen on humanitarian wars of intervention in the first place, are going to be doubly resentful if human-rights-minded liberals get them into a humanitarian war and then expose American soldiers to prosecution for what they do in that war. The generals, and their government, are therefore squirming. And anti-Americans abroad, whether of the hard-core Serb variety or the soft-core French sort, enjoy watching America squirm.

No country relishes talking about its failures. Americans are roughly as unhappy about My Lai or the B-52 bombing of Vietnam—or the dropping of atomic bombs on Hiroshima and Nagasaki—as Britons are with the fire-bombing of Dresden or Frenchmen with the bloody war they fought to try to keep Algeria French. Yet it is to a country's credit if it is prepared to stare hard at its own past.

That is the basic case for Mr Caldera and his team doing a thorough job at No Gun Ri. Although the proposed new ICC would have the power to look only into alleged war crimes committed after its creation, and so would have no jurisdiction in this case, how the No Gun Ri investigation is conducted will be seen

as a test of America's resolve on the subject.

The ICC's rules say that any country can have first go at prosecuting its own war-crimes suspects; the ICC can step in only if it rules that the country concerned has fluffed it, either through malice or incompetence. Had an ICC been around when Nixon gave his helping hand to Lieutenant Calley, it might have been tempted to intervene. But if America shows about No Gun Ri the dedication to the rule of law that it prides itself on, agonisingly difficult though it may be to decide exactly what happened there, it will demonstrate to the rest of the world that it obeys the rules it expects others to honour. The world's policeman can police itself.

THE WASHINGTON POST

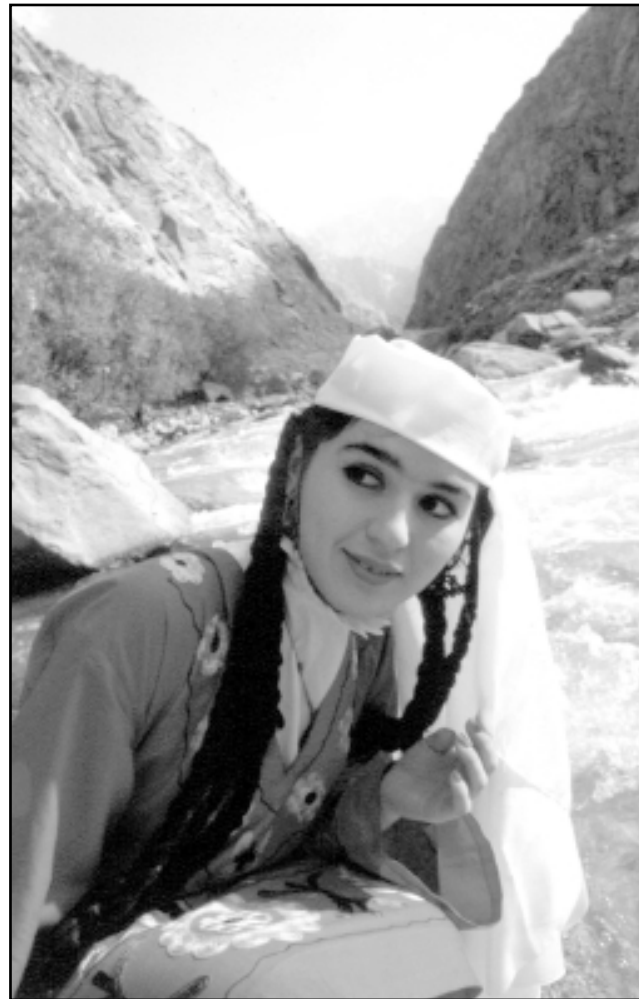
NO PASS FOR THE KHMER ROUGE

By Brad Adams - Tuesday, April 18, 2000 - Think of Cambodia, and the first image that comes to mind is death and misery. The term "killing fields" was coined to describe the slaughter of Cambodians by the Khmer Rouge during its reign from 1975 to 1979.

Now Cambodia has the opportunity to be known as a place where it is never too late for justice. With Pol Pot dead, the recent collapse of the Khmer Rouge and the relegation of Cambodia to the geopolitically irrelevant, bringing remaining Khmer Rouge leaders to justice should be straightforward.

Unfortunately, it is not. While in 1997 Cambodian Prime Minister Hun Sen asked the United Nations to create an ad hoc international tribunal similar to the ones in the former Yugoslavia and Rwanda, he now rejects this as an infringement on Cambodian "sovereignty." Having cut deals in the interim with Khmer Rouge political and military leaders--and under pressure from China, a longtime Khmer Rouge supporter--Hun Sen has instead suggested that Cambodians "dig a hole and bury the past."

Cambodians disagree. When Hun Sen publicly embraced former Pol Pot



deputies Khieu Samphan and Nuon Chea a year ago, tens of thousands of normally cowed Cambodians signed petitions for an international tribunal. Under pressure, Hun Sen then proposed a "mixed tribunal" in which a majority of Cambodian judges would sit beside a minority of foreign judges appointed by the United Nations. A Cambodian prosecutor would have veto power over any indictments.

In response, the United Nations has insisted on adherence to basic principles as the price for its participation and the legitimacy this would confer. Most important is "an independent, international prosecutor" and "a majority of international judges" to ensure that it is evidence--and not politics--that determines who is indicted, arrested and convicted.

Curiously, the United States has pressured the United Nations to compromise these principles--principles it insisted on in the tribunals for the former Yugoslavia and Rwanda. Eager to persuade Congress to fully restore aid suspended after Hun Sen's

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1997 coup d'etat, the administration has essentially embraced Hun Sen's proposal.

To placate the United Nations and human rights groups, it has suggested a complicated and unworkable system in which verdicts would be reached by a "supermajority" of judges and a "review board" would resolve deadlocks when the co-prosecutors are unable to agree whether to indict a suspect.

Given his control over Cambodia's judiciary, which has presided over a series of show trials of political opponents in recent years, Hun Sen would be the de facto prosecutor, judge and jury. As if to emphasize the point, he recently ruled out the prosecution of Ieng Sary, Pol Pot's former deputy and now a political ally, and stated that a mixed tribunal would take up the

cases of only four to five suspects. Hardly a recipe for justice.

Not only is the United States proposing second-class justice for Cambodians, it appears to be oblivious or indifferent to the consequences this new and lower "Cambodia standard" may have on efforts to create a uniform and credible system of international justice for cases of genocide, war crimes and crimes against humanity. One can easily imagine regimes with dubious human rights records demanding the "Cambodia precedent" instead of the standard created by the International Criminal Court now under discussion.

While the U.S. position is baffling, equally curious is the silence of the same European countries that recently pushed so hard to bring the Chilean dictator Augusto Pinochet to trial.

While Pinochet's crimes were grave, they pale in comparison with the deaths of almost 2 million in Cambodia. Where are the demands to the Cambodian authorities to arrest Nuon Chea, Khieu Samphan and Ieng Sary, who each day mock Cambodians as they live as free men in comfortable retirement?

Instead of providing Hun Sen with the shovels to "bury the past," the world should insist that Cambodia cooperate in the creation of a tribunal that meets international standards. There is no lack of leverage, as more than 50 percent of Cambodia's budget comes from international aid. Anything less would be a grave injustice to the victims of one of the most horrific regimes the world has ever known--a regime that the United States, China and others had no small part in bringing to power through their disastrous policies in Cambodia in the 1960s and 1970s.

Brad Adams worked in Cambodia as a human rights lawyer from 1993-98 and is now writing a book on Cambodia with a grant from the Individual Project Fellowship Program of the Open Society Institute.

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LIBÉRATION

REBONDS FRANCE MUST ADHERE TO THE INTERNATIONAL CRIMINAL COURT WITHOUT RESTRICTION

By JEAN FOLLANA* - Tuesday April 25, 2000 - France soon will ratify the Treaty establishing the International Criminal Court (ICC), the Parliament has just authorised it. This news is not a surprise, even if it is necessary to be pleased to see our country joining the very restricted group of those - they are only eight - which confirmed that they wish the creation of a permanent jurisdiction to judge the future authors of genocide, crimes against humanity and of war crimes. The quasi-unanimous vote of the deputies and the senators in favour of the ratification is not a surprise. The new fact on the other hand, which justifies this letter, is that, both at the National Assembly as well as at the Senate, most of the debate was devoted to the intention expressed by the executive power to make a use of article 124 of the Statute of the Court. This provision authorises the State which ratifies the Statute to refuse the competence of the Court for the war crimes which would be committed on its territory or by its nationals throughout seven years.

And the innovation is more precisely that, in the two Chambers, a vast majority which transcended the political parties asked the government to renounce to make use of this provision. Certainly this vast majority could not express itself for a vote since the Constitution prohibits it in a debate of ratification of a treaty. It does not remain less than the national representation, institutional expression of the French people, that wanted to address to the executive power a strong message.

This message is more exactly that expressed by our associations, the number and diversity of which offer a complete panorama of the sensitivities and actions of the civil society. Such a democratic expression must lead you, Mr. President of the Republic, Mr Prime Minister, to proceed, in this ultimate phase of the ratification process, with the cold confrontation of the "reasoning" of the French position



Navruz in Dushanbe. Navruz is the Tajik New Year. It has been celebrated by the people of Central Asia for almost 27 centuries. The translation of the word Navruz from the Persian language means "A New Day". <http://www.unesco.org>

Opposite page: The Emigration from Iceland to North America
Emigrants onboard S/S Camoens leaving Vopnafjörur. Spinning, carding and knitting: no generation gap. Indoors and after dark: "The women worked at knitting, spinning, preshrinking, and stretching the wool. Farmers then sold these items to the merchant toward the end of the year in order to clear up any debt. There was also a great deal of work in producing mittens and socks for members of the household, and yarn had to be spun for weaving." (Nelson S. Gerrard's *The Icelandic River Saga*: Translation from an article by K. Ásg. Benediktsson in several issues of *HEIMSKRINGLA* in 1907) <http://nyherji.is/~halfdan/westward/album.htm>

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on article 124 of the ICC Statute with the following obviousness: Article 124 does not provide any additional protection against the abusive complaints with respect to the guarantees provided under the ICC Statute. Article 124 does not make it possible to avoid a political-media campaign started by such a complaint, on the contrary it risks to make it more virulent. Article 124 can only harm the reputation and the credibility of the military forces of a country strongly engaged in the operations of maintenance of peace. None of the 8 countries which already ratified made the article 124 statement, none of the 95 countries which, in addition to France, signed the treaty expressed the intention to make it. If France makes this statement it will be pointed both as the one who opened the way with countries democratically not very reliable, and to have been the only one to have made it. The ratification will be one of the strong acts of the accession of France to the presidency of the European Union. The declaration of article 124 could only weaken it. The announcement made by the Foreign Affairs Minister, at the time of the parliamentary debate, that France could renounce to this declaration without waiting the expiry of the 7 years period, as soon as it checks the effectiveness of the guarantees of the Statute of the Court, does not remove anything to this obviousness. In front of it, the conclusion is essential, Mr. President of the Republic, Mr. Prime Minister, that to make the statement of article 124 would be worse than a fault, it would be an error. To avoid this error, one needs certainly courage, but, above all, clearness.

**Jean Follana is president of the French Coalition for the International Criminal Court which gathers 38 associations, trade unions and professional activists for the ratification without restriction of the ICC Statute.*

THE GUARDIAN

WE ARE RIGHT TO BE THERE

It is hazardous, but the British are needed

Saturday May 13, 2000 - First things first. The government was right to intervene militarily in Sierra Leone. The deployment of British troops has

already helped stave off another UN peacekeeping disaster. It has been welcomed by the Sierra Leone government and its people, who want Britain to do even more, and by neighbouring West African states. The intervention followed stated Labour policy, as set out last January by foreign secretary Robin Cook: "When faced with an overwhelming humanitarian catastrophe and a government that has demonstrated itself unwilling or unable to prevent it, the international community should act."

The deployment serves Britain's national interest, in upholding the authority of the UN and democratic values. It fulfils Britain's responsibility as the former colonial power, largest aid donor, and joint mediator of last year's Sierra Leone peace accord. Most of all, the intervention is the duty owed by a wealthy and powerful nation to, in this case, one of the world's poorest countries. The hazardous nature of this undertaking is not in dispute. Nor is it, or can it, be clear how long and how deep Britain's involvement in such a chaotic situation will go: those demanding timetables and watertight guarantees understand neither war nor politics. It may ultimately cost blood as well as money. It may hurt. But it is the right thing to do.

Britain's action once again begs a much broader question - about the principle of intervention in the affairs of another state and "global governance" through the agency of the UN. These issues pose a problem for the political left with its visceral dislike of big, rich countries apparently telling smaller, weaker ones what to do. In Africa, this dilemma is exacerbated by the legacy of European colonisation and misrule. On the political right, UN intervention is opposed for ideological reasons. This tendency has gained fullest expression most recently in the US, where a conservative congress and a president who lacks strong convictions have often combined, as now, to give a distinctly disengaged flavour to American foreign policy.

Interventions like that in West Africa also raise issues of consistency which trouble people right across the

political spectrum. If in Sierra Leone, then why not in Sri Lanka, another former British colony where an appalling civil war rages unchecked? Or Chechnya or Tibet? In the case of Sri Lanka, there is no obvious or satisfactory answer. When it comes to territory controlled by nuclear-armed states which also have UN security council vetoes, like Russia and China, brute political and military reality trumps any amount of humanitarian concern.

Intervention, both in theory and practice, is plainly an imperfect science. But progress is discernible. The self-serving opposition of Moscow and Beijing to any infringement of sovereign borders gives solace to a few undemocratic, renegade regimes, such as Serbia and Iraq. Increasingly, however, the principle of UN-approved



intervention is accepted, as shown by the speech of Kofi Annan, the UN secretary-general, to the UN general assembly last autumn and, for example, positions taken by the last Organisation of African Unity summit. But if the end is largely agreed, the means remain controversial and fiendishly difficult.

The UN-sanctioned intervention in East Timor last year worked because one regional power, Australia, was prepared to show a lead and commit ground troops. Kosovo remains much more problematical because it lacked the UN's prior blessing. The US-led air war did not by itself bring the Serbs to heel and Kosovo, too, ultimately required a (British-led) ground occupation and UN follow-up to secure its objectives. Likewise, the Bosnian war ended only after an Anglo-French rapid reaction force came to

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the aid of the UN and forced the Bosnian Serbs to come to terms. In contrast, other UN interventions, in Angola and Rwanda to name but two, failed miserably for lack of international support and, crucially, because no regional or western power was able or prepared to get involved physically as the designated international military trouble-shooter.

There is a pattern here which looks like being repeated in Sierra Leone. Britain, like it or not, is already spearheading the military effort and the British commander is expected in effect to assume overall direction of Nigerian and other troops officially under UN command. As this stabilising force extends its influence, the aim will be to persuade the RUF rebels, the Sierra Leone army, and the militias that a return to the Togo peace process is

the rackets which rob Africa of its precious natural resources, like the trade in uncut diamonds which funds the RUF, would be halted; and political mavericks like the rulers of Libya and Liberia would stop using conflicts like Sierra Leone to further their pseudo-ideological and material interests. Ideally, the international criminal court would be ready to prosecute those responsible for Sierra Leone's agony. It is not.

XINHUA NEWS SERVICE

BANGLADESH TO RATIFY ROME STATUTE FOR FORMING ICC

Dhaka, 16 May 2000-Bangladeshi Chief Justice Latifur Rahman said here Tuesday that Bangladesh would ratify the Rome Statute to set up an International Criminal Court (ICC) for establishing international rule of law in the global perspective.

"The International Court will be established after 60 member states of the United Nations ratify the proposal for setting up of a permanent International Criminal Court," the chief justice said while inaugurating a national conference on "International Criminal Court and Ratification by Bangladesh." Rahman said that in the past a good number of atrocities took place in Vietnam, Cambodia and other places where neither the national system nor the world community was able to bring to justice those responsible for crimes of genocide, crimes against humanity and serious violations of humanitarian law.

He said it is "indeed gratifying" to note that at last the international community has recognized the importance of setting up of a permanent international criminal court to bring those criminals to justice.

The ICC would be an independent tribunal at Hague in the Netherlands with the jurisdiction of genocide, aggression war crimes and crimes against humanity, the chief justice said.

The International Law Commission adopted the Rome Statute for establishing the ICC on July 17, 1998. A total of 96 countries have already signed the treaty for setting up the ICC, while only nine countries have so far ratified it.

THE NEW YORK TIMES

PROSECUTING FODAY SANKOH

The New York Times - May 19, 2000 - Foday Sankoh's Revolutionary United Front have pursued a decade long orgy of murder, mutilation and rape on a horrifying scale. Following his arrest last week, it is essential that Mr. Sankoh now be brought to trial for war crimes in an international court. Last year's Lome peace agreement granted the RUF carte-blanche amnesty, and served to perpetuate the cycle of violence and impunity which continues to grip Sierra Leone. Regardless of whether or not this amnesty should now be upheld, Mr. Sankoh must be prosecuted for the innumerable crimes committed by RUF forces since Lome. With the new International Criminal Court not yet up and running, the UN should establish tribunal along the same lines as those created for the former Yugoslavia and Rwanda, and equip it with a mandate to try not only Foday Sankoh, but the leaders of all factions responsible for war crimes in Sierra Leone.

(Abstracted from: The New York Times Copyright Financial Times Information)

SECRETARY-GENERAL SHOCKED BY REPORTS FROM SIERRA LEONE OF MUTILATED BODIES FOUND WEARING UN UNIFORMS

05 22 2000 - The following statement was issued today by the Spokesman for Secretary- General Kofi Annan: The Secretary-General is shocked by reports from Sierra Leone that several mutilated bodies have been found wearing United Nations uniforms. At this time, it is by no means certain that the bodies belong to United Nations peacekeepers. However, the Secretary-General is appalled by the culture of violence and cruelty which pervades the conflict in Sierra Leone.

He calls on all involved parties to respect fully international humanitarian law and recognized standards of human rights. The



Above: Emigrants onboard S/S Camoens leaving Vopnafjörur. The Emigration from Iceland to North America, <http://nyherji.is/~halfdan/westward/album.htm>

Opposite page: Buzkashi ("Catch the goat"). A traditional game in all Central Asia (<http://www.unesco.org>)

their best bet. The UN mission should then be able to revert to the business of peacekeeping.

In an ideal world, Sierra Leone would have been able to sort out its problems by itself. But in nine years of war, it has become the archetypal "failed state". Ideally, the Nigerian-led, West African force which preceded the UN would have been better supported and funded by the west; and UN peacekeeping missions would generally be better trained and financed. In an ideal world, as Mr Cook said this week, the underlying causes of such conflicts - poverty, debt, ignorance - would be more energetically and selflessly addressed;

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Secretary-General hopes that the continuing efforts by regional leaders will lead to the expeditious and unconditional release of all United Nations personnel detained by the Revolutionary United Front. (www.un.org)

THE EDMONTON SUN

OFFICER FACES HIS ACCUSED TORMENTOR

By RICHARD ROIK, SUN MEDIA
OTTAWA - Wednesday, May 24, 2000 - An Edmonton man and the Canadian military captain he's accused of using as a human shield during the 1995 NATO bombings of Bosnia were brought face to face again in an Ottawa courtroom yesterday.

In an unprecedented Canadian prosecution for alleged war crimes committed abroad, the preliminary hearing of Nicholas Ribich opened with Capt. Patrick Rechner called as the first witness. Details of the hearing are covered by a publication ban, but Rechner said outside the courtroom that he was glad to finally have his day in court.

"I'm happy because this is a stage in coming to closure with my experience in Bosnia," he said. Ribich, a 26-year-old Edmontonian of Serb descent, is charged with four counts of international hostage-taking. Among his alleged hostages was Rechner, whose image was broadcast around the world handcuffed to a lightning rod at an ammunition dump near the Bosnian Serb capital of Pale in May 1995.

The federal Crown alleges Ribich, who was joined in court yesterday by his father, had enlisted with the Serb army. The Crown alleges he and several compatriots abducted Rechner and three other UN military observers during the second day of NATO bombings. The charges read in court suggest the kidnappings were part of a military strategy to stop NATO from bombing key Serb targets in Bosnia. While Canada has conducted trials for war crimes dating back to the Second World War, Ribich is the first to be charged under a relatively new section of the Criminal Code of Canada for alleged crimes abroad. The preliminary hearing is expected to last a week. (The Edmonton Sun)

THE INDEPENDENT

DHAKA ASKED TO BRING CHARGES AGAINST '71 WAR CRIMINALS AT WORLD COURT

May 18, 2000, Thursday - William R. Pace, Convenor of the Coalition for International Criminal Courts yesterday suggested Bangladesh to produce evidences and testimonies of the atrocities of Pakistani occupation forces in 1971 before the international court of law and bring official charges there to try the war criminals who killed three million people of the soil. In an exclusive interviews with BSS Pace, now on a visit here in connection with a national seminar, termed the atrocities barbaric and a heinous act against humanity and opined that the war criminals, both in Bangladesh and Pakistan should be involved in genocide should be tried even after a long period. "Yes, I do believe that the persons involved in genocide should be tried," he said.

Pace, who is at present campaigning to create public opinion in favour of ratification of Rome Statute being adopted to forge the International Criminal Court (ICC), said countries and individuals believing in establishment rule of law and democracy should sign the Rome Statute and ratify the treaty as soon as possible.

Unlike the International Court of Justice, ICC is a proposed international permanent court that will investigate and bring to justice individuals who commit most serious violations of international humanitarian law, namely war crimes, crimes against humanity and genocide.

"Rome Statute" has already been approved by 120 countries and signed countries, nine countries including Norway and Senegal having already ratified it. Seven countries, including the USA, China and Sri Lanka voted against Rome Statute while it has adopted in Italy on July 17, 1998.

Pace lauded the role of Bangladesh and Prime Minister Sheikh Hasina for efforts to uphold the democratic norms and values and to establish rule of law globally. He referred Bangladesh's role

to become the first among the Asian countries to sign the Rome Statute and expressed the hope that by September this year it would be ratified by Bangladesh. He said another 20 to 40 countries are on pipeline to ratify the treaty and said "I do hope that the ICC would start functioning by the year 2003."

Earlier, Pace met newsmen at the National Press Club here yesterday noon. Addressing the press conference to brief objectives of a two-day national seminar on ICC that concluded today in the capital he said Rome Statute and ICC are the most important latest documentation to protect human rights.

He also briefed newsmen about the ICC's activities and jurisdiction. When asked about the US stand on ICC he smiled saying "USA has favored the



ICC concept but said No' to impose ICC's role within it (US)." He, however, said once the ICC comes into effect none involved in heinous crimes and atrocities living even countries unwilling to ratify the Rome Statute would be spared.

When asked about critics who believed that ICC might hamper the sovereignty of an individual state, Pace said "ICC would not contradict with sovereignty of state but deal with governments and individuals believed they were above rule of law."

NO PEACE WITHOUT JUSTICE RATIFICATION NOW!



INTERNATIONAL CAMPAIGN FOR THE RATIFICATION OF THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT

Intergovernmental Conferences

No Peace Without Justice (NPWJ), during the year 2000, will organise a series of Intergovernmental Conferences in four key Regions: Africa, Europe, the Mediterranean and the Asia-Pacific. Each Conference will be co-hosted by key Governments in each Region, and will explore the avenues for the earliest possible coming into force of the Rome Statute.

Africa

The African region is key to the universality of the ICC mandate and jurisdiction. Senegal was the first country to ratify the Rome Statute, Ghana was the sixth. Many other African countries are now willing to take on a leading role in the ratification process and have expressed their interest in exposing their members of Government and key legislators to expert advice on the ICC Statute mechanisms, ratification requirements and any subsequent necessary implementing legislation.

Asia-Pacific

Pacific and Small Island States, thanks to the similarities in their legal systems and to the existing co-operative arrangements in international fora, are a strategic geo-political area that can be successfully mobilised for the ICC Statute Ratification campaign. In addition, the leadership role played at the UN

negotiations by Australia and New Zealand – the “like-minded” group – and the positive work developed in the former years by the appointment of pro bono assistants in the delegation of a number of Small Island States, have demonstrated they could be an important and appropriate group to work with in the immediate future.

Europe

EU Member States have been at the forefront of the international efforts for the establishment of an effective, fair and independent ICC. They all have already undertaken all necessary steps to finalise their ratification procedures and Italy, the host of the Diplomatic Conference in 1998, has already ratified the Rome Statute. In this positive framework the maintenance of EU leadership in the Ratification process may well encourage other European Countries Members of the Council of Europe to sign and ratify the Statute as soon as possible.

The Mediterranean

The Mediterranean Region includes countries with very different approaches to international criminal justice e.g. France, Algeria, Israel, Lebanon and Albania. For the success of the Statute campaign it would be helpful to encourage a dialogue between countries that have actively participated in the establishment of the ICC and those that have remained sceptical about the Court. Precedent experiences have demonstrated that bringing together different positions in a constructive dialogue can facilitate consensus on issues that currently divide the Arab world from like-minded positions at the UN ICC negotiations. In addition, the involvement of Balkan States such as Bosnia Herzegovina, Croatia, Macedonia and Slovenia, currently under the jurisdiction of the ICTY, can eventually provide important and direct insights on the practical working of international justice.

NPWJ Publications

The publications planned by NPWJ are designed to inform and educate the different target groups in support of the ratification campaign.

A Ratification Manual will

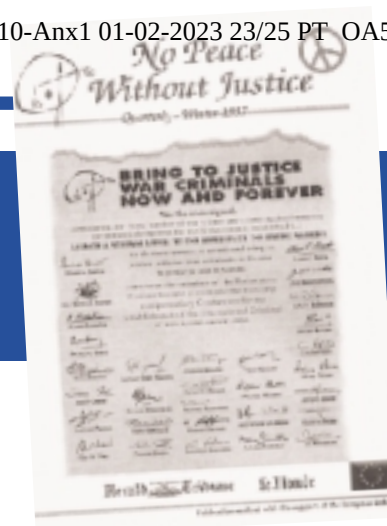
provide Legislators with a step by step guide to ratification, including draft parliamentary motions and models of implementing legislation as well as examples of constitutional amendments. Updates of the Manual will be published as necessary during the UN negotiations, while a final version will be issued once the PrepCom is concluded.

Reports on the PrepCom will inform and update legislators and decision-makers on UN official documents, the state of the play of the negotiations, the progress of the ratification campaign.

The Conference proceedings will be used to inform and educate Governments and Legislators of the substantive issues covered by the events, and record any specific commitment undertaken by Government representatives on those occasions.

Website and Electronic Bulletins

A Website will ensure universal access to all the NPSG/NPWJ ICC documentation - available wherever possible in English, French, Spanish and Italian - and serve as a forum for discussion and joint planning. The website will be linked to other relevant sites such as those of the UN, the ICTs, the EU as well as other concerned IGOs and NGOs. Moreover, a fortnightly bulletin will be distributed through the Internet to a number of individuals to update them on the progress of the world-wide ratification campaign.



continued from first page

Throughout the year 2000, NPWJ will organise a series of Intergovernmental Conferences in four key Regions of the world: Europe, Africa, Asia-Pacific and the Mediterranean. Each Conference will be co-hosted by a Government and will explore the avenues for the earliest possible coming into force of the Rome Statute and its implication at national level.

The decision to ratify the Rome Statute is a purely political one. If national governments do not succeed in putting the establishment of the Court among their top political priorities, there is the concrete risk that the entry into force of the ICC will be postponed sine die.

Despite the end of the Cold War, throughout the 1990s, the world has witnessed the killing of millions of people, from Asia to Africa, passing through the Balkans. International as well as internal conflicts have destroyed human lives regardless of race, age and sex, creating a new international context in which there seems to be no hope for the international rule of law. With all its limits, the ICC Statute may be instrumental in reversing this course of events. Its provisions set some basic general principles of individual responsibility that could be the creation of a new "Cosmopolitan Citizenship."

Putting an end to impunity for the most serious violations of international humanitarian law means more than the "simple" advancement of international law, it means the starting of a new era. A new community that will build international institutions capable of punishing violations of human rights, which, if adequately equipped, may also act as powerful deterrent of future conflicts. The adoption of the Statute by 120 countries was a pivotal achievement of the international community, but a legal document is not enough to change bellicose situations. As after the adoption of the Rome Statute, conflicts have spurred all over the world killing civilians, destroying entire villages and creating great political instability in many "hot spots" of the world, the slow pace of the ratification of the Statute must radically change.

If in the next couple of years the Court will not become operational this delay may become a serious political problem. The international community cannot assist to new Kosovos, East Timors, or Sierra Leones, without an effective tool to achieve justice, because it is only through justice that a durable peace can be reached.

Sergio Stanzani
President, No Peace Without Justice



EUROPEAN CONFERENCE ON THE ROME TREATY ON THE INTERNATIONAL CRIMINAL COURT

Rome, 16-18 July, 2000

APPLICATION FORM

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Government /Organization _____

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Date of arrival _____

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☐ **I am interested in receiving information about the Conference**

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“No peace without justice - international committee of parliamentarians, mayors and citizens” was created after the success obtained by the Transnational Radical Party regarding the U.N. Security Council creation of the ad hoc Tribunals on crimes committed in former Yugoslavia and Rwanda and the action towards the institution of a permanent International Criminal Court.



GOALS OF THE COMMITTEE

- 1) The creation of a new international system of guarantee and jurisdiction;
- 2) The reform and development of international organizations at both the regional and global level;
- 3) The institution, by the U.N. General Assembly, of a Permanent International Court for crimes against humanity, and the calling of a international plenipotentiary conference sponsored by the United Nations to finalize a treaty for such a court;
- 4) Promoting public support for financing and adopting of national legislations for the ad hoc Tribunals in the ex-Yugoslavia

and Rwanda;
5) Controlling the application of Human Rights within the national legislation of Member States to the UN Charter.

In order to pursue its objectives, the Committee organizes conferences, educational projects, media campaigns, parliamentary actions and other types of ac-

No Peace Without Justice is member of the Steering Committee of the “NGO Coalition for an International Criminal Court”, with:

Asociación Pro Derechos Humanos
Amnesty International
Elsa
FIDH
Human Rights Watch
ICHURDD
International Commission of Jurists
Lawyers Committee for Human Rights
Parliamentarians for Global Action
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