

ANNEX A

PUBLIC



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The ICC MONITOR
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NGO Coalition for an ICC



FAO complex in Rome, Italy

“All Roads Lead to...” Rome Treaty Conference Opens June 15

On the morning of June 15, in the Food and Agriculture Organization building in Rome, Italy, UN Secretary General Kofi Annan will open the treaty conference on the International Criminal Court. Officially titled the “United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court,” the conference will bring together hundreds of governments to negotiate this important proposal. Specifically, government representatives have a mandate to consider “the question concerning the finalization and adoption of a convention on the establishment of an international criminal court in accordance with General Assembly resolutions 51/207 of 17 December 1996 and 52/160 of 15 December 1997.” If the negotiations are successful, at the close of the conference, delegates will adopt and sign a convention to establish the International Criminal Court.

Government representatives will be joined by observers from 236 non-governmental organizations, as well as representatives of intergovernmental regional bodies, international organizations and media from around the world.

Government negotiations will be based on the consolidated, 116-article Draft Statute for the International Criminal Court (UN symbol A/CONF.183/2/Add.1). With twenty-four working days to negotiate, the challenge facing government negotiators can not be overemphasized. (See draft programme on page 5.) But with years of negotiations at the United Nations leading up to this conference, there is significant political pressure for a successful

outcome of the conference. A draft “Final Act” follows the draft statute, which if accepted would adopt a Statute for the International Criminal Court and establish a “Preparatory Commission” to “prepare proposals for practical arrangements for the establishment and coming into operation of the Court.”

In conjunction with the treaty conference, the member organizations of the Italian Coalition for an ICC are sponsoring a number of activities in Rome to highlight this historic event (see Calendar on page 9).

In order to monitor the negotiations in the plenary sessions, committee of the whole, working groups, and informal sessions at the Diplomatic Conference as effectively as possible, the CICC secretariat, in co-operation with the CICC Steering Committee, has developed 13 NGO Teams responsible for monitoring the 13 Parts of the statute, the Final Act and the Preamble.

Frequent updates on the conference will be uploaded to the “icc-info” email listserv and the Coalition’s fax network. Longer documents will be uploaded to the Coalition’s web site at <http://www.igc.apc.org/icc>. The Inter-press Service and other NGOs and media services are planning special news bulletins and broadcasts during the treaty conference.

For up-to-the-minute reporting, you can subscribe to our email network by sending an email message to <majorodomo@igc.org> with the message “subscribe icc-info” in the body of the email.

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undermine the effectiveness and independence of the court.

The Glasnost Foundation, Human Rights Watch and the Institute for International Law in Moscow are organizing a two-day seminar, followed by government meetings and a press conference on the ICC. This seminar will be held in early June, and is meant to inform Russia's NGOs of the various issues at stake, to raise

awareness among the public, and to influence Russia's official position at the diplomatic conference. Furthermore, we seek to establish a national coalition for the ICC in the Russian Federation.

For more information on regional activities on the ICC, contact the CICC secretariat. Also see page 16.

NGO Positions, continued from page 15.

jurisdictions. At the same time, all NGOs discussing the issue insist that authority to determine whether national procedures are "unavailable or ineffective" —that is, whether the ICC should take jurisdiction— must lie with the Court, not with the nation(s) in question. NGOs agree in essence that the ICC should take jurisdiction where it determines that national legal systems are unwilling to prosecute, ineffective, or lacking in independence or impartiality. The Women's Caucus points out that a proper framing of this principle is essential to ensure diligent prosecution and adequate punishment of gender-based crimes.

Power of any political body, including the Security Council, to stop or delay an investigation or prosecution. AI maintains that, as all states are under an obligation to repress the core crimes, no national amnesty or pardon which has prevented justice can be allowed to hinder the process of the ICC. Like other NGOs, the FIDH rejects the ILC Draft Statute conception (in Art. 23) that the Court could commence no proceedings with respect to situations with which the Security Council is dealing under its Chapter VII powers. AI, HRW, the LCHR and the Women's Caucus also call for deletion of this provision, which could simply facilitate the loss or destruction of evidence through delay. An independent Prosecutor could thus begin investigations even where the Council is seized of a situation.

Victim and witness protection programs. AI, HRW and the Women's Caucus support the development of programs, compatible with the rights of suspects and the accused, aimed at protecting victims and witnesses from intimidation and reprisals, and including special measures to protect women victims and their families. These NGOs would see the establishment of a Victim Support Unit within the Court. AI and the Women's Caucus agree that effective and well-tailored procedures will be necessary if the ICC is to be effective in prosecuting sexual violence.

Sentencing provisions. All NGOs object strongly to any proposal to give the ICC the power to impose a death penalty. To meet the requirements of the principle of

legality, AI, HRW and the ICJ support expressly codified penalties, and would list in the Statute factors to be considered in aggravation or mitigation of sentence. NGOs agree that impact on victims should be one such factor. AI, HRW and the ICJ emphasize that the Court should ensure that international standards are met in the treatment of prisoners. To provide consistency and to prevent undermining the intentions of the Court, AI and HRW suggest that the Court exercise supervisory functions over national decisions regarding pardon, parole or commutation of sentence.

Reparations to victims and their families, including restitution, compensation and rehabilitation. AI, HRW, Redress, and the Women's Caucus emphatically promote the right of victims and their families to reparations. Redress and HRW believe that fines collected by the Court should be transferred to a fund for the benefit of victims of crime as a first priority, ahead of any payments made to states or to the tribunal itself (AI believes simply that payments to the tribunal from such funds would be inconsistent with requirement that the court be seen to be impartial). HRW and Redress would include within 'reparations' compensation, restitution, apologies, rehabilitation and guarantees of non-repetition (HRW also adds 'satisfaction').

Cooperation with the Court by states parties. All NGOs discussing compliance and cooperation agree that the relevant provisions of the Statute must be drafted with the utmost care, given the need to compel the presence of defendants and to secure the production of evidence, and in light of the contradiction that will inevitably arise between the interests of state agents and state obligations under the Statute. AI, the FIDH, HRW, the LCHR and the Women's Caucus find the cornerstone of this effort in an unambiguous requirement that states cooperate fully and promptly with the Court. The Court must also have power to issue binding orders to states parties, their officials, and individuals under their control. Moreover, states must not refuse to cooperate on any of the traditional grounds for refusal in state-to-state cooperation, and it must be the Court—not states—which has the

PrepCom, continued from page 3.

Confidential Information

This was certainly the most politically sensitive article for discussion. Understandably the chair avoided a thorough discussion of the issue. The final text is made up of three options respectively introduced by France, the United States, and the United Kingdom. The UK proposal seemed to receive broader support than the others, since it leaves it up to the

Court to decide on the absence of good faith of the states putting forward national security interest. France on the other hand simply leaves it to the states to put forward the national security "excuse". The US provides for a complex procedure which eventually leaves it to the Security Council to decide, after the Court referred the matter to it.

Prepared by Fanny Benedetti of the CICC secretariat.

Canada, continued from page 7.

within states. This century has seen a dramatic escalation in the prevalence and brutality of internal armed conflicts, of which civilians increasingly bear the brunt. It would be short-sighted to create a Court that does not reflect this reality.

War has taken on new forms, forms that exact a severe human toll. In response, we must turn our old approaches to peace and security on their heads. Our primary aim must become the preservation of human lives and human dignity. We cannot allow ourselves, as we lay the foundations of the ICC, to forget our ultimate goal: not the Court as an end in itself, but peace, reconciliation and justice for the victims. That is why building in the needs and rights of women and of children is so important. It is also why the voice of civil society, of those who most often bear the brunt of conflict and of reconstruction in its aftermath, should be heard.

Conclusion

I am following the progress of your negotiations closely, and would encourage my colleagues in other member states to give their attention to this very important exercise. To succeed, we need clear-headed resolve to cleave to certain fundamental principles; we cannot allow ourselves to get bogged down in details. Above all, we need political will at the highest levels. We must show our determination to agree soon on a set of tools and institutions with which to respond to the challenges of a new era.

The ICC will have pride of place among these. The international community must not wait for another catastrophe before establishing a permanent body that is mandated to respond to the atrocities that so often occur in armed conflict. As the century draws to a close, the creation of the Court would be an important and fitting accomplishment. The world of the next century deserves no less.

Thank you.

H.E. Mr. Lloyd Axworthy is the Foreign Minister for the Government of Canada.

power to determine whether full cooperation has been given or not. These NGOs propose in camera proceedings to adjudicate any national security objections to cooperation.

Financing the court. AI, the FIDH, HRW, the ICJ, the LCHR and the Women's Caucus all believe that an effective, independent Court could best be assured by financing through the regular UN budget, and not by states parties (either collectively, or through linking funding to complaints). Given adequate safeguards for independence, Amnesty, FIDH, the LCHR and the Women's Caucus do not object to a supplementary voluntary fund.

Establishment by treaty, ratifications, reservations, withdrawal. AI, the FIDH, HRW, the ICJ, the LCHR and the Women's Caucus would all ideally prefer establishment of an ICC through amendment of the UN Charter. Recognizing, however, the practical problems this entails, the FIDH, HRW and the ICJ support the figure of 20-25 ratifications for the treaty to enter into force. AI supports a 'relatively low' (and the Women's Caucus a 'low to moderate') but unspecified number, while the LCHR suggest one-third of the number of countries participating in the Rome conference. NGOs expressing a view would prohibit all reservations to the Statute, both to prevent a tangle of obligations varying from state to state, and to ensure that the effectiveness of the Court. They would also make any right of withdrawal from the Statute arise only after its first several years of operation, and then be effective only after expiry of a specified, substantial notice period, provided that it not affect the Court's powers with respect to acts occurring before the submission of notice.

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1 My overview is based on documents issued by the American Bar Association, Amnesty International, the European Law Students' Association, Human Rights Watch, the International Commission of Jurists, the International Federation of Human Rights Leagues, the Lawyers' Committee for Human Rights, Redress, the Women's Caucus for Gender Justice in the ICC and the World Federalist Movement.