

TERRA VIVA

ROME, JUNE 25, 1998

U.N. CONFERENCE ON THE ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT

Nº 9

Cuba: Economic Blockades are Crimes against Humanity

The Cuban delegation has introduced a proposal to make "inhuman acts" like economic blockades among the crimes against humanity that an International Criminal Court (ICC) would be able to act on.

Specifically, the Cuban government wants to add the phrase "...inhuman acts such as the economic, financial and commercial blockades intentionally causing great suffering or serious injury to body or to mental, physical health" to Article 5 of the ICC statute being debated in Rome.

Cuba's chief delegate José Peraza Chapeau told Terra Viva that - in spite of widespread ironic comments on the odd coincidences between Havana and Washington's positions vis a vis a strong ICC - his country remains most interested in having a Court where the US could be tried and sentenced for crimes against humanity and aggression. Chief among these crimes is the US' 38 year-old economic embargo against the Caribbean island.

Unhappy with sharing - in the public eye - a common stand with Cuba's arch rival, Peraza recalled that in his speech to the Plenary on July 17, he had

spoken "on behalf of a people victim of injustice, who has for almost 40 years faced a genocidal economic war," waged by the U.S. against the government of President Fidel Castro.

He said the U.S. could also be brought to trial for biological warfare against Cuba, through spreading animal and plant diseases in attempts to destroy Cuban agriculture. This is a subject Havana has denounced in other international fora as well.

Independence

Beyond political bias, however, what emerged at the interview with Peraza, a law professor and director of juridical affairs at the Cuban Foreign Ministry, and Caridad Cueto, a counsellor at the U.N. Cuban mission in New York, is



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CICC Monitor

their belief that a fair, truly independent Court is just a dream in a world of economic and military imbalances.

Ironically, this view would also probably coincide with Washington's.

After all, the Court - even the watered-down version of it that is likely to come out of negotiations here - stands slim chances of approval by the Republican-controlled Congress.

As if to reassure Cubans that they have gained no sympathies among the U.S. Congress Right, the UN Court Watch, a faxed newsletter produced by the Senate Committee on Foreign Relations (Chairman, Jesse Helms) included Peraza's speech in its report on the "The Worst Things Said at Start of the Rome ICC Conference". The report highlighted the exact paragraph that Peraza is proudest of.

Critics say that Helms and his followers want a Court in which United States citizens cannot be tried, or no Court at all.

But Peraza argued that so far, "the International Law is the law of the powerful and the principle of sovereign equality among states is a system in which we are all equal but some are more equal than others."

Giving control over the Court or its Prosecutor to the UN Security

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Publisher

Roberto Savio

Managing Editor

Alejandro Kirk

Editor

Johanna Son

Senior Reporter

Farhan Haq

Reporters

Alison Dickens

Jorge Piña

Stefano Palumbo

Art

Winnie Dobbs

Photographer

Mihai Romanciuc

Chief, Technical Services

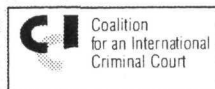
Mauro Teodori

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UN Trouble-Shooters Headed for South Asia

UNITED NATIONS

The United Nations plans to send a team of trouble-shooters to South Asia to defuse the growing political and military tension in the region, after the May underground nuclear tests by India and Pakistan.

The proposal to send the team to the subcontinent is being welcomed by the Pakistanis but resisted by the Indians, according to sources here.

Although the U.N. mission will be mandated to assess the political and military fallout from the nuclear tests, India fears that this may be the first step toward international mediation of a long-festering dispute between the two neighbours over the predominantly Muslim territory of Kashmir, sources say.

Traditionally, India has stalled all attempts to "internationalise" the Kashmir issue. The Indians have always argued that Kashmir was essentially a bilateral issue in which outsiders have no role.

India this week implicitly - and diplomatically - told the United Nations that "it is not the appropriate time" for a U.N. team to visit New Delhi.

On the other hand, the Pakistani Ambassador to the United Nations, Ahmad Kamal has told Secretary-General Kofi Annan that his country is looking forward to the U.N. mission.

The mission, which is to be headed by Assistant-Secretary-General Alvaro de Soto, will also visit Bangladesh and Sri Lanka to assess the political mood in the region. The team is expected to arrive in Bangladesh June 26 in the first leg of the tour.

"The visit is still in the balance," one U.N. source told IPS. "it is possible the visit could be called off if India remains adamant. What good is it for the team to visit Pakistan without visiting New Delhi?"

In a letter to Annan, Kamal has said that Pakistan "deeply appreciates your efforts at encouraging a substantive and serious peace process between Pakistan and India, which would address all issues, including the core issue of Jammu and Kashmir, in a just and equitable manner."

India and Pakistan have fought three wars, two of them over Kashmir. India conducted its nuclear tests May 11 and 13 and Pakistan on May 28 and 30. Following the tests the U.N. Security Council held a meeting in early June to condemn both countries and demanded that India and Pakistan refrain from any further tests. *Thalif Deen/IPS*

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Cuba: Economic Blockades are...

Council is equivalent to canceling every hope for the ICC's independence and impartiality: "Here there are no coincidences nor alliances" with the US, Peraza added.

Prosecutor and NGOs

Peraza denied that Cuba is against a powerful prosecutor, but insisted on having state consent as a requisite for the Court to act in a country.

He questioned the very possibility of a truly independent prosecutor's office: "Who will guarantee that the Prosecutor will be free from interference, pressure, or even corruption?"

Could it be civil society?

"Yes, civil society could be an element of control and non-governmental organisations have played an important role so far. But not all of them are here, at least not those like many of the landless and indigenous groups of Latin America, which we know of and who could not afford to make it here."

"It is interesting to see that to these meetings arrive almost exclusively those NGOs with resources and (financial) support, while others have to stay home. For the NGOs apply the same rules as for states: there are some more equal than others" Peraza said. *Alejandro Kirk/IPS*

Opportunity or Trap?

Release of Prisoners Fires East Timor's Hopes

JAKARTA/DARWIN

President Bacharuddin Jusuf Habibie's recent decision to release 15 East Timorese political prisoners is being seen as a sign that Indonesia is easing its tight grip on that territory, but sceptics remain doubtful of Jakarta's real motives.

For now, many East Timorese see it as a window of opportunity to press for more political concessions.

Habibie, who was handed power by President Suharto on May 21, later hinted he might release resistance leader Xanana Gusmao and pull out Indonesian troops from the troubled territory while offering to grant "special status" to East Timor.

"Should he (Gusmao) be released," Foreign Minister Ali Alatas told reporters last week, "it will not be because of his status, but because his release would be significant part of comprehensive settlement on East Timor."

But there was a catch somewhere, and activists slammed the offer because of what they claim is its precondition: that the United Nations recognise East Timor's integration into Indonesia.

Rob Wesley-Smith, spokesman for the Darwin-based Australians for a Free East Timor, claimed Habibie's offer was an attempt at blackmail. "To release Xanana from an Indonesian jail, to withdraw troops from East Timor and to grant 'special status' is a dishonourable attempt at blackmail and should be rejected as such by world governments, Timorese leaders and their supporters," he argued.

East Timorese are pushing the limits and are pressing for a referendum to decide their fate as a nation, a demand Jakarta has flatly rejected. The government is against any step that may lead to disintegration and has ruled out any possibility of independence for East Timor.

"East Timorese have decided the territory's status long time ago," Alatas said, referring to the Bilbao Declaration which attested to that island's desire for integration with Indonesia. "Holding a referendum is a setback and it will not solve the problem."

But Xanana Gusmao, six years into a 20-year jail term for armed rebellion, said only a referendum on self-determination would settle the issue. "I think the problem of autonomy is not a relevant problem because autonomy is just a consequence of the integration and it is not an alternative solution," he told Indonesian journalists who interviewed him in jail Saturday.

"There won't be a solution without a referendum. This is something the Indonesian government must understand. Only a referendum will guarantee a solution that is just, as well as stable and lasting."

Indonesia invaded East Timor in December 1975 after the Portuguese left the poverty-stricken territory, and internal fighting — which many blame on Indonesia's interference — had broken out.

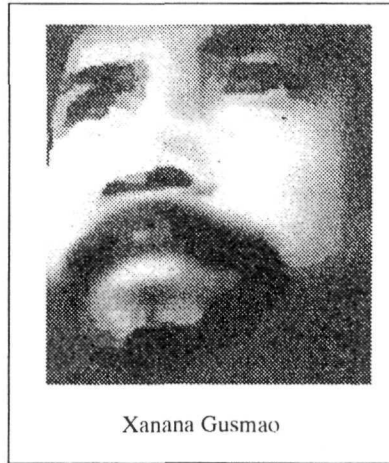
As a result of the invasion, human rights groups say some 200,000 East Timorese perished from either fighting the Indonesians or from disease or starvation.

Indonesia annexed the former Portuguese colony as its 27th province in July 1976, a move the United Nations still does not recognise to this day.

In its latest annual report, Amnesty International said detentions and abductions continue to occur in East Timor and that people have been killed by security forces in "suspect circumstances".

But just as there are East Timorese longing for genuine freedom, there are those who view separation from Indonesia as a frightening prospect.

"Unless we're willing to see a civil war down there, integration with Indonesia remains the best course for the territory's advancement and future," said Domingos Soares, chairman of the Centre for Development Studies in East Timor.



Xanana Gusmao

Mario Vegas Carrascalao, former East Timor governor, said those keen on a referendum should consider the consequences for East Timor if it splits from Indonesia. "It's suicidal. East Timor does not have the capacity to stand on its own," he asserted.

On June 12, about 1,000 East Timorese students converged on the Ministry of Foreign Affairs in Jakarta to press for a referendum. A similar demonstration was held in the East Timor capital of Dili.

It is easy to see why the Timorese want to be free from Indonesian control, Carrascalao said. "Indonesia has failed to win East Timorese heart," he said, "because it only gives economic and political opportunities to a certain faction and people whose loyalty to the central government has been assured. It's a sort of paranoid approach."

He says Indonesia should start all over again with a completely new approach: equal opportunities for everyone, and education, economic and political rights for the Timorese. "If the Indonesian government does these things, I am sure those who are now hiding in the mountains and forests will gradually come down and mingle with their brothers to shape their future together." *Kafil Yanin and Sonny Inbaraj/IPS*

Gender Concerns Drowned Out in Men's Club

Wednesday's launching in Sweden of a handbook on women in Parliament coincides with the quiet but determined struggle taking place in the negotiating table of the Conference on the inclusion of a gender perspective in the ICC statute.

The themes explored by 'Women in Parliament: Beyond Numbers', about the male-dominated gender roles in democratic systems, are the same that apply to the current debates here.

"The deep rooted perception is that the public domain is reserved for men and that the social contract is about the relationship between men and government and not citizens and government," said Frene Ginwala, Speaker of the South African Parliament, in her foreword to the book published by the Stockholm-based Institute for Democracy and Electoral Assistance.

Indeed, one could argue this may well be contributing to why, despite the lobbying by activists, the gender perspective in the Court's statute, approach and composition has not yet made the headlines.

The subject has so far been dwarfed by the complex technical and political discussions regarding the definition of crimes, complementarity, the role of the Security Council, the Prosecutor, and other topics.

The direction that the debate is taking is not right, says Ana Elena Obando of Costa Rica, who represents the Interamerican Coalition of Activist Women. She laments that most delegates still do not understand the difference between gender and women's issues, and how important this is ought to be shaping the Court's characteristics:

"The gender language has been discussed for some 10 years in the United Nations and it is still mixed up with the issue of women," Obando said. This means that the gender perspective tends to be treated as a separate matter, much like that of minorities, and not as an integral part of the negotiations.

The Women's Caucus in Rome seeks to have the ICC have jurisdiction over all abuses committed against women's rights in conflict and a solid gender balance in the Court's composition, including the Prosecutor's office - which Obando sees as the only guarantee that crimes against women are identified as such in the first place.

"It is common that male prosecutors and lawyers tend to diminish abuses against women in cases of war, for example, on the ground that such atrocities are always committed by soldiers," she added.

Likewise, politics is often understood as a males' sphere. This means that women are viewed as a minority to be protected, rather than the under-represented half of human society that they in fact are.

It is not by chance, the book 'Women in Parliament' says, that only 11 percent of the world's 40,822 parliamentarians are women, less than 11 percent of political leaders are women and only 18 of the 240 houses of parliaments are presided over by women.

Yet, women's rights are recognised in almost all constitutions and legal systems around the world.

"In common with women in other countries we found that the existence of rights in law does not automatically mean that women are able to claim and exercise these rights. Patriarchy and the subordination of women that is structured into society, as well as cultural and religious practice remain with us," Ginwala says.

Egypt's Azza Karam, editor of 'Women in Parliament', says in the book's introduction that "translating the powers of numbers into the power of action for women, by women,

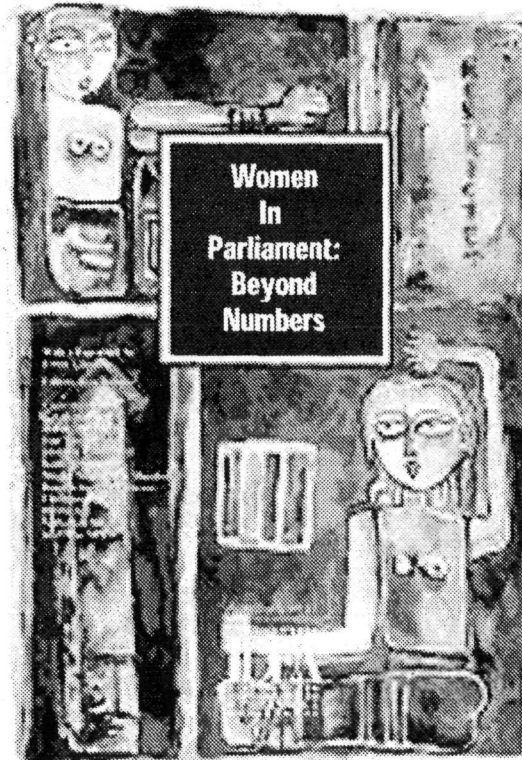
and in partnership with men, is what the next millenium will be about."

Of the 157 delegations attending this Conference, only 13 are led by women, of which four (Ireland, Spain, Sweden and Ukraine) are ministers and therefore do not participate at the actual bargaining table.

In any case, the overwhelming majority of delegates and advisors of all delegations are male, with the sole exception of Finland.

Still, women's advances so far in parliaments around the world may prove a useful strategy at the ICC negotiations.

As Karam says: "It is a fact that a concerted strategy by women parliamentarians to influence agendas by consistently introducing issues such as child care, breast cancer screening, or sexual harassment into debates can and does have an impact over time."





CICC Address: c/o WFM, 777 UN Plaza - New York, New York 10017 USA

email cicc@igc.org Web Address <http://www.igc.org/icc> William R. Pace *Convenor* Rik Panganiban *Editor*

Address during the Rome Conference: c/o Movimondo, Piazza Albania 10, Roma - Tel. 5783202 - 5783179 Fax 5783251

**Statement to the Plenary Session
by Ms Elena Poptodorova,
Parliamentarians for Global Action**

"A Strong, Independent and Effective ICC"

Mr. President, Distinguished Participants, I feel privileged to speak on behalf of an organization of Parliamentarians who believe in the global mission of politics and of politicians, a mission that sees beyond political expediency or the inevitable limitations of a single party domestic policy.

Parliamentarians for Global Action has made a priority of its program on International law and human rights to encourage state cooperation with the Ad Hoc Tribunals with a view to the establishment of a fair, effective and permanent International Criminal Court. I am pleased to be the convenor of the law program with a network of 1300 parliamentarians from 99 different national legislatures.

We are almost at the end of the general debate. The statements made so far have already outlined the approaches, the issues of convergence and of divergence among participating states. I will, therefore, limit myself to a few matters of principle from PGA's perspective.

Firstly, all statements have practically re-affirmed the view that the ICC must not be a political instrument or politically motivated. But we should recognize the fact that this debate and the issues involved are highly political. Each country is now preparing its human rights and justice record of the 21st century. Rep-

resenting an organization of politicians and being a politician myself, I would like to emphasize that this is a challenge to both majority and opposition parties. Given the dynamics of politics and of public mood, they should realize that regardless of the logical differences they manifest on other issues, they are in the same boat as regards the painful and long suffered issue of Genocide, War Crimes and Crimes Against Humanity.

Secondly, PGA shares the broadly expressed view of a strong, independent and effective ICC. Life has proved that the excellence is the enemy of the good. We therefore, believe that this conference should not be over-ambitious to stretch the ICC jurisdiction to a broader range of crimes than it can actually cope with, and should rather focus on the three "core crimes." PGA believes that the conference should step on the consensus already achieved and build on it. It must be remembered that the courts credibility is crucial—it can make it or break it.

Thirdly, it is understandable that the issue of ratification is of special interest for Parliamentarians for Global Action. This conference will have to determine the number of ratifications necessary for the entry into force of the treaty. We do not think that this number should be prohibitively high. It must though, be enough to demonstrate genuine

international support for the ICC.

We stand today on the brink of history. Active support from elected lawmakers will be essential for the acceptance by governments and International legal Institutions of the permanent International Criminal Court.

It is Parliamentarians who must ensure both ratification by their parliaments and implementation by their governments. They are crucial players and could be a useful instrument for political persuasion and when necessary pressure.

PGA members will be on the forefront of the coming struggle for Ratification and Implementation. Last month in Port of Spain, at a conference held in cooperation with Trinidad and Tobago, Parliamentarians from the Latin American and Caribbean region agreed by consensus outlying principles for a permanent, impartial, independent and effective body associated with the United Nations to operate within the highest standards of international justice.

The resolution contained the importance that the actions of the Court must not be stopped by the veto of the Security Council and supported an independent prosecutor, empowered to initiate investigations on his or her own initiative.

This resolution has been circulated to our network of parliamentarians and signatures of support have been pouring into the secretariat in New York from all regions of the world. On behalf of PGA, I would like to express our appreciation to the Government of Italy, the UN secretariat, especially Mr. Hans Corell, Under-Secretary General for legal affairs, and to the Coalition for the establishment of a permanent International Criminal Court. I wish solid and substantial and not just propaganda success to the Conference. You have us at your side.

CICC

On the Record

OPINION

ICC Dream Factory?

BY WILLEM OFFENBERG*

Could the Rome Conference produce a lame duck? Will the Hague find itself host to yet another bloodless UN-organization? Are governments serious about establishing a criminal court?

Listening to rhetoric during the first week of the Rome Conference, one could assume that everyone is in favor of a competent and independent criminal court. From China to Indonesia to Iran — all have expressed support. But outside the assembly, UN-watchers are skeptical. Doomsday scenarios are played out over the cappuccinos: What if the United States opts out? What if delegates agree not to include an independent prosecutor? What if the Security Council gets to dictate to the ICC, as it does with the rest of the UN system? One NGO describes the ICC as the “last war victim of this century.” Others daydream about a shining new court that will prevent war crimes from ever happening again. Nunca Mas! No more Auschwitz!

There will be a court, but once the dust has settled it will probably seem underwhelming in its impact. This will disappoint the daydreamers, and doomsters, but it could well provide judges, prosecutors and counselors with tools they can use — even though the process of building the jurisprudence could take years. Even then, only time will tell to what extent member states are inclined to cooperate. And herein lies the crux of the matter: on paper an ICC may look effective, competent, and strong, with universal jurisdiction, but this may result in only a few countries ratifying the statute, fearful of interference in their domestic affairs.

This will be more likely if the NGOs (dubbed the “new superpower” by Canada) win their argument. They want the ICC to have an independent prosecutor who

will launch prosecutions on his or her own initiative, as well as acting on state complaints, or taking up suggested cases from the UN Security Council. The alternative is that the ICC will not be given the means to pursue war criminals. This would encourage states to ratify, but produce an empty shell.

Rome will probably produce something in between. But however strong or weak the court, its success will depend on the cooperation it gets from member states. Recent history warns against expecting miracles. Although the tribunal in Arusha has arrested a former Rwandan Prime Minister and acting Defense Minister, the two tribunals have netted relatively few big fish. Other UN mechanisms have not produced much, either: in the past 15 years the UN has set up a fantastic human rights machinery with dozens of investigators. (rapporteurs). But when it comes to access, these investigators are often disappointed. China, Sudan, Iran, Cuba, and Indonesia, have all refused them access. Senior American government officials snubbed the UN’s special rapporteur on Summary Executions when he visited the United States recently to inquire about the death penalty.

If these and other countries already hesitate — or outright refuse — to let these rapporteurs do their job as international civil servants, how will they react if a prosecutor comes to their country to start proceedings against their own nationals? UN Secretary General Kofi Annan, both mild and pragmatic, told governments this week that they simply cannot afford to let down victims of past and future war crimes committed during international and internal conflicts. But the UN can do nothing to force governments to comply. Even binding Security Council resolutions are ignored. Until UN member states show more respect towards international standards, there is little hope for an international judicial order, with or without an international court.

**Willem Offenbergh, former Dutch television correspondent and journalist, currently edits Amnesty International’s monthly magazine. He has been part of On the Record’s editorial team during the first week of the Rome conference. The views in the article are those of the author.*

PROFILE: RICHARD GOLDSTONE

Golden Advice for a Former Prosecutor

BY ROCHELLE JACKSON

As the debate over an independent prosecutor grows more contentious, the first Chief Prosecutor of the Yugoslavia and Rwanda tribunals came to Rome to speak from experience. Richard Goldstone delivered a grave message to the Rome Conference: “If the International Criminal Court or its prosecutor are made subject to the control of political bodies... it will have no credibility and international justice will be seriously compromised.”

Goldstone has acquired considerable stature in his native South Africa, where he served as chairman of a commission on police violence during the waning years of the apartheid era. He is currently a judge on South Africa’s Constitutional Court

But it is as the first chief prosecutor of the International Criminal Tribunal for the former Yugoslavia that Richard Goldstone made his mark internationally. He arrived at The Hague in July 1994, when spirits at the tribunal were at low ebb and skepticism was rife. A full year had passed while the UN Security Council squabbled over the choice of a prosecutor, until South Africa’s president Nelson Mandela was asked to Goldstone. Such was Mandela’s own prestige that not even the permanent five members felt able to disagree.

After taking up his post, Goldstone spent the first year on the road, trying to establish the Tribunal and reassure governments that he was not a loose cannon. He accepts that there are many parallels between his work there

and the controversy over the proposed

How does he fears of a prosecutor? He finds the But this does not n ector would not b “No one should l able. Judges are presidents, prime cabinet ministers able and can be impeached in any country. There’s provision for kicking out incompetent dishonest and insane people. No matter how high their office.”

According to Goldstone, the prosecutor should not be allowed to launch an investigation on his or her own initiative based solely on information received from NGOs and other sources. Instead, he suggests that once the publishes a prima fac termines that it w tigation, this de then pass for re panel of judges. T come from the IC appointed by state latter form a wo question compr ming from judges view a case that th sequently rule on.

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feels that this separate panel of judges could be called upon to address complaints and charges of misconduct against tribunal judges or the prosecutor.

Goldstone has plenty of other advice for the ICC as a result of his Hague experience. Much of it has to do with money. His own investigations were hamstrung by a shortage of funds in the early days, and the cost of investigations, he says, was "huge." He also feels that the International Criminal Court should be financed by states that ratify the statute. "I can't see any basis for UN funding because it would be grossly unfair on those members who don't ratify the treaty... Why should China have to pay for a court which they want nothing to do with?"

He has strong views about the value of NGOs, and admits that they alerted him to the importance of rape and other gender-

between national and international jurisdiction. In 1991, he burst into prominence as head of a new commission on police brutality in South Africa. Even though a national peace accord was in the making, the country was on the brink of a blood bath. President De Klerk suggested the commission as part of the Accord.

The African National Congress as well as other liberation organizations said they would agree if all the parties unanimously chose the judge and commission members. "They were not prepared to have De Klerk appoint a commission which would be just another apartheid government commission."

It took two months to find five names that were acceptable. Initially, Goldstone was unwilling to accept, but he was told that it would take months to find another acceptable candidate. "So

I felt I had a sort of duty and responsibility. I'm glad now that I did." He began with a staff of 5 commissioners, 15 police investigators and a staff of about ten people. The Commission grew to 150 in 1994 when the Chairman of the Independent Electorate Commission requested its assistance in investigating pre-election violence.

The Commission gave Goldstone unique insights into the structural nature of violence under

apartheid. For years, Third World governments argued that apartheid was a crime against humanity. Does he think an ICC should have launched prosecutions if it had existed at the time? "It's a difficult issue. Some of the things done during the apartheid years, when looking at it from an international perspective, deserved a trial and punishment. And I say that from an international perspective because deter-

rence is an important issue. The world should know that if you do those sorts of things to your own people you're going to get punished for it by the international community."

The ICC and its prosecutor should have decided this, on its merits. The work of his own (Goldstone) commission was irrelevant, because it was "not a criminal body and hence not a substitute for any form of justice." But South Africa's Truth and Reconciliation Commission, which has been established under Archbishop Desmond Tutu, has a very different role. The TRC is offering amnesty to those who confess and apologise to their victims. The question is whether this exercise – which is part of a much wider political effort to heal the wounds of apartheid – would satisfy an international court or be viewed as an inadequate response, triggering an ICC prosecution.

Goldstone would have felt happy either way. He feels the ICC should make such decisions, but that they should depend on a wide range of factors – including the gravity of the crimes, the adequacy of the investigation, and the national guidelines. In such a situation, he feels, the ICC should also be guided by whether the national body is established by a democratic government, and by the views of victims.

"A sensible prosecutor and sensible judges would feel that if they (the national authorities) were dealing with the situation as the victims wanted, then (the ICC) should not start getting involved." On the other hand, he would not criticise an ICC prosecutor who decided, notwithstanding the Truth Commission, that he had a duty to indict and to put on trial the leaders who are responsible for terrible crimes against humanity. "I would feel comfortable both ways."



"The NGOs played and are playing a very vital role"

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related war crimes. He also stresses the importance NGOs have played in the provision of witnesses and information to the prosecution, as well as to the psychological and medical assistance provided to witnesses. "The NGOs played and are playing a very vital role."

Goldstone's work in South Africa, combined with his time at the Hague, has given him a unique perspective on the link

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To: Leaders of 54 Liberal Parties Worldwide

June, 15, 1998

The United Nations Conference of Plenipotentiaries on the International Criminal Court (ICC) takes place in Rome, Italy from June 15 to July 17, 1998. Liberal International takes an unambiguous view of the establishment of such a Court. As recently as November 1997, the LI Congress agreed that "the member parties of Liberal International expedite the foundation of an international court in order to bring those suspected of international crimes to justice" and called "on all governments to join in the initiative to establish an international criminal court with jurisdiction over war criminals". We are part of the Coalition for an International Criminal Court, an association of more than 600 international and domestic NGOs advocating an effective and independent Court. The ICC is intended to complement national criminal justice systems in cases where such trial procedures are unavailable or ineffective. The principle of complementarity ensures that the ICC does not become a substitute for national courts which have the primary responsibility for bringing the accused to justice.

There is growing concern that some fundamental problems remain unresolved. I believe that Liberal Leaders should take an active interest in the position that their government takes at the Rome Conference.

There are many important issues, such as the inclusion of rape as a war crime, the position of child soldiers and the issue of reparations to victims. However, I am particularly concerned that the ICC should be able to exercise jurisdiction without a further requirement of states to acquiesce, for example to particular crimes or cases. An "opt-in, opt out" model and other elaborate requirements of state consent or state ratification will, at best, result in the selective application of justice, or, at worst, paralyse the Court altogether. In addition, there should be no opportunity for political interference by Permanent Members of the Security Council, who wish to maintain a situation whereby they could use their veto power to protect potential defendants.

Most importantly, the prosecutor should be able to initiate an investigation based on information received from victims and other sources. The current Draft Statute limits the prosecutor, who can initiate an investigation only when the Security Council refers a situation or when a State Party that has accepted the jurisdiction of the Court files a complaint. Much preferable is the proposal that before proceeding with an investigation, the prosecutor must first obtain authorisation from the Pre-Trial Chamber by showing that there is a "reasonable basis" to investigate. This is an appropriate standard of judicial review at such an early phase. These matters are crucial to the proper functioning of an ICC.

In stressing the universality of human rights and by tackling the growing indifference towards this issue, we should back to the hilt the attempt to set up an effective permanent International Criminal Court.

Liberal International watches closely the developments at the Rome Conference. If you require further information please contact the headquarters in London.

Sincerely,

Frits Bolkestein, MP
President of Liberal International

For more information, contact: Liberal International, world headquarters 1, Whitehall Place, London SW1A 2HD, Fax +44 171 925 2685, web: www.worldlib.org

Yes, Size Does Matter

Smaller delegations to the Conference on the Establishment of an International Criminal Court (ICC) are finding that, as meetings grind on, the arduous pace of negotiations is favouring their larger counterparts.

The size of delegations has always affected how well they can negotiate at international conferences. But because of the current three-week span of intensive work on the ICC statute while the plenary is suspended, this time size matters even more.

"I can't keep up," one representative from a developing country says. "I have to be everywhere at once, and I can't convince my government that they have to pay more attention now."

A delegate from a smaller European nation concurs. "To be successful at this meeting, you really need at least 10 people to attend all the committees and working groups," he argues. "And then you still need faxes, computers, an entire arrangement that most smaller delegations simply don't have here."

The relative size of some delegations has a clear political consequence, as well. The United States, for example, boasts an official delegation that comprises 40 people, compared to Uzbekistan, whose sole listed representative is the first secretary to Italy, Sergey Ivanchenko.

In addition, Washington also has considerable political and legal resources backing up its team in Rome. What that means, one analyst says, is that the US delegation can constantly offer "an endless supply of clauses and amendments" which smaller delegations must then spend a considerable amount of time reviewing.

But the United States is not the largest delegation. Italy, the host country, boasts 58 members, while other European nations often exceed 30. Unsurprisingly, those nations have rivalled the United States in issuing proposals that require a considerable amount of study and legal review.

That flood of paper is adding to the grueling pace that the smaller delegations must maintain simply to keep up with negotiations. "Remember, this is only the second week," the European delegate cautions. "By the fourth week, I don't know what many countries are going to do."

Some countries have already buckled under the weight of keeping up with vastly larger delegations, to the point where, one ambassador claims, many informal consultations are being conducted only among Western states. "It's quite intentional," he says. "As the negotiations continue, the amount of input from the developing countries declines."

US Digs in on Prosecutor

The United States, intent on not giving up any ground in its battle against an independent International Criminal Court (ICC) prosecutor, is continuing to push nations against that goal following its release this week of formal objections to what it calls a 'proprio motu' prosecutor.

Several delegations dismissed a US briefing paper, released Tuesday, against the authority of an ICC prosecutor to initiate independent investigations as nothing new. "This is basically the same thing on paper as the speeches the US representatives have been giving for months," one European official said.

At the same time, the briefing paper has helped to crystallise the debate, and even attract a few supporters to Washington's side. "Actually, the US objections are quite reasonable," one Asian diplomat said. "I think it might slow down some of the momentum, although I doubt that it will prevent the 'like-minded group' from pushing through an independent prosecutor."

In essence, the US argument consists of two separate but related contentions. The first is that a prosecutor empowered to conduct independent investigations will be subject to more, not less, political pressure than one who requires state or UN Security Council recommendations to act. The second is that the prosecutor would be flooded with cases to hear, in a process which

would ultimately cost considerable time and money.

The US paper argues that "there is no basis in experience to say that states act only on the basis of partisanship and self interest, while individuals and organisations - those authorised to bring allegations to the proprio motu prosecutor - are per se beyond such motives." Instead, it contends, the prosecutor's office could easily become flooded with superficially credible complaints which it must then sift through.

"One need only look at the volume of complaints lodged with human rights organisations to understand how debilitating it will be to make the prosecutor responsive to all possible allegations of conduct coming within the framework of the statute," the US paper says. This spring, for example, the European Commission on Human Rights had to deal with 1,500 applications concerning potential abuses, it notes.

As a result, Washington argues, the prosecutor's office could well cost more if it operates independently in initiating investigations. This is a claim that has sparked concern among some delegations that worry that even if an ICC is created, it could be grossly under-funded.

"Ultimately, what you're going to get is a new bureaucracy, which may not have the funds to carry out its work effectively," one ambassador from the developing world says. "Then what good will it be?"

FROM THE IPS WIRE

Closing the North-South AIDS Gap

GENEVA

The HIV/AIDS epidemic is far more brutal in poor countries than in rich nations, according to a new United Nations report released Tuesday in Geneva, which highlights the North-South gap in AIDS.

The study released by the Joint United Nations Programme on HIV/AIDS (UNAIDS) and the World Health Organisation (WHO), the first country-by-country analysis of the epidemic, says the gap is mainly the result of differences in prevention efforts and uneven access to the latest therapies.

While the spread of HIV has begun to level off or even decline due to prevention efforts in most industrialised countries and a handful of developing nations, the infection rate has hit alarming new highs in much of the developing world, said Peter Piot, UNAIDS executive director.

The report was drawn up for the 12th World AIDS Conference, to run from Jun. 28 to Jul. 3 with the theme "Bridging the Gap".

Piot pointed out that an average of 16,000 people a day were infected with HIV worldwide. Since the epidemic first broke out, more than 42 million people have contracted HIV, more than 11 million have died of AIDS, and the overwhelming majority of the 30 million people now living with HIV will not be alive 10 years from now.

Marcos Issue Back from the Dead

MANILA

The planned burial of the remains of ex-president Ferdinand Marcos at the Heroes' Cemetery in the Philippine capital has reopened old wounds, polarising the nation at a time when energies could be better used to solve economic problems.

The debate over the burial of the former strongman in a military

cemetery exploded this month after President-elect Joseph Ejercito Estrada, who assumes office on June 30, agreed to the Marcos family's request that he be interred there.

A Marcos supporter, Estrada has appealed to Filipinos to "forgive" the late dictator, respect the dead and bury the past with him. This drew howls of protest from anti-Marcos forces, former President Corazon Aquino and human rights victims of the Marcos regime, who oppose "reconciliation without justice".

The body of Marcos, who died in exile in 1989, lies in a airconditioned crypt in his ancestral home in the northern province of Ilocos Norte.

"President-elect Estrada has started on the wrong foot," said former senator and human rights lawyer Rene Saguisag. "Usually, a new president tries to unite the people. So we will begin his administration divided."

60 Percent of World's Coral Reefs in Danger

WASHINGTON

Human development is threatening the future of nearly 60 percent of the world's coral reefs, says a new study by the World Resources Institute (WRI).

Coastal development, over-fishing and destructive fishing practices, and pollution resulting from both land- and marine-based activities are doing the most to destroy the reefs, the study says.

The most threatened reefs are in South-east Asia, where an estimated 82 percent are considered to be at medium or high risk, and more than half of the reefs in the Middle East, the Caribbean, and the Indian Ocean face similar degrees of threat.

"Like rainforests, reefs harbour much of the planet's wealth of species and are being rapidly degraded by humans," says the report co-author, Dirk Bryant. "Yet we know far less about the health of

reefs than we do of rainforests."

Despite their age - some living coral reefs are 2.5 million-years-old - very little was known about the extent and condition of coral reefs until an initial survey of 108 countries was completed by the Britain-based World Conservation Monitoring Centre.

US Pushes Nuke Dump Project

SIERRA BLANCA

U.S. lawmakers are pushing ahead with plans to allow construction of a low-level nuclear waste dump on the border with Mexico, despite opposition from the local community, environmentalists and Mexican officials.

The proposed Sierra Blanca dump is located at the western end of the state of Texas in one of the most economically poor regions in the country, where about two-thirds of the residents are of Latin American (mainly Mexican) origin.

"We were chosen because it is the path of least political resistance," Bill Addington, a local property owner, rancher and businessman, told IPS. "It is a classic case of environmental injustice."

Just 30 km from the Mexico border, environmentalists warn that the proposed dump site is prone to earthquakes and situated over a water aquifer - a scarce resource in this dry climate of the Chihuahuan desert.

Many Mexican congressional members say that the dump violates the 1983 La Paz Agreement between the Mexico and the United States, which prohibits the construction of such projects within 100 km from the neighbouring country's border. "We cannot permit the United States to build up garbage dumps on our border," says Norberto Corella, a Mexican senator of Baja California. "Is there any sense in entering any international agreements if they are going to be violated? We will go to what means required in order to stop this project."

Court should give damages to victims

The International Criminal Court (ICC) should have a mechanism that would allow it to seize property from convicted perpetrators of war crimes and use it to award reparations to victims, say the women's caucus and groups lobbying for victims' rights.

This will ensure that the Court would not just be giving out justice but ensuring that victims get adequate redress in the process, Tina Dolgopol, law lecturer at Flinders University in Australia and a member of the Women's Caucus, told Terra Viva.

Likewise, the ICC must protect victims and witnesses in criminal proceedings by establishing a strong and effective victims' and witnesses unit, activists say.

"In no domestic jurisdiction is it the function of the Prosecutor to be offering counselling to people. Its job is to investigate, present evidence and seek convictions," Dolgopol said. "As the ICC will not be a domestic court, it will be all the more important for victims to have adequate trauma counselling."

Dolgopol explained that the Women's Caucus wanted a victims' trauma unit created within the ICC's Registry rather than the Prosecutor's

Office, as this would enable it to be more neutral.

As important as bringing justice to victims through the Court was the issue of their rehabilitation, especially of women survivors who often bear a disproportionate part of the impact of war and internal strife.

For instance, Dolgopol said, many women survivors of war crimes have to cope with bereavement, and the social and economic difficulties that come with being single or widows.

"Many women become victims second time around if they stay in their own villages, so internal resettlement is inevitable. In Rwanda, there is evidence that some villages have been entirely obliterated in the conflict and populations have been forced to migrate," she said. "Relief organisations working in the area try to help but are not coping. They just don't have the resources."

Dolgopol also cited the example of the Asian comfort women, who were used as sex slaves by Japanese imperial army in World War II. It was clear that they have a strong need for recognition for the wrong done to them, she noted. "These and other women victims of sexual violence are victims three times over - victims of the crimes perpetrated

against them, victims of ostracism caused by the 'shameful' nature of sex crimes, and victims of their own guilt," she said.

Ensuring that the Court is able to authorise damage payments and rehabilitation of victims would help address these concerns, she added.

Similar concerns had been aired by Fiona McKay of REDRESS when she addressed the Plenary last week. McKay stated that, although the creation of an ICC is an important symbol for survivors of war crimes and its ability to bring criminals to justice would convince victims that justice has been done, punishment of criminals does not automatically give victims adequate redress.

The Court must have the capability, personnel and gender expertise to deal with women victims of sexual or gender violence, she said. Already, victims' financial and emotional needs and their right to be treated with compassion and dignity in judicial processes are increasingly being recognised at both the international and national level, McKay said.

"It is clear that the international community could do a lot more to provide services and assistance for victims to help them rebuild their lives," she said. *Alison Dickens*

Enforced Pregnancy Issue Turns into Abortion Debate

The question of whether to include enforced pregnancy as a war crime in the International Criminal Court (ICC) statute is shaping up into a classic battle between pro-abortion and anti-abortion camps, but some diplomats feel such a division is misguided.

On Wednesday, Bosnia-Herzegovina circulated a discussion paper to delegates pushing for the inclusion of enforced pregnancy as a war crime, and arguing that the real issue is providing victims with "proper legal status by explicit recognition of this crime".

Otherwise, the delegation warned, women who are raped and forced into pregnancy - and any children they may have - could be stigmatised. Children might always bear the unfair taint of being regarded as "genetically or morally flawed", argued Bosnian Ambassador Muhamed Sacirbey.

For Sacirbey, the issue is not one of abortion. "The crime in itself is so horrendous that we should not allow it to be sidetracked by any debate as to what might be the proper remedy," he argued. In any case, he said, conferring recognition to women who have suffered from enforced pregnancy or rape is not the same thing as encouraging abortion.

In Bosnia, where some 30,000 women were victimised by rape or enforced pregnancy, he said, the Sarajevo government provided "the full range of options", including abortion, to the victims; however, he added, many women chose not to terminate their pregnancies once their legal status as victims had been recognised.

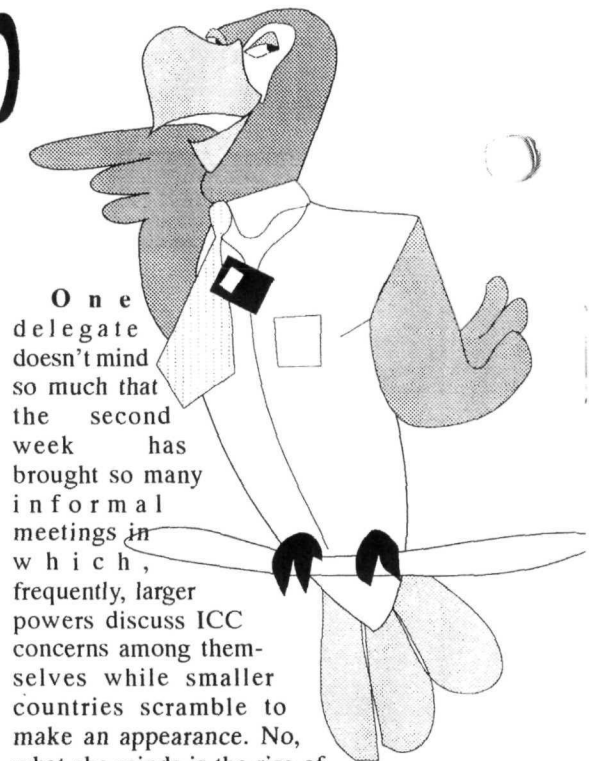
Many groups, including traditional religious movements, remain wary of the language of enforced pregnancy, which they believe could provide a back door to legitimise abortions. One African official warned that the enforced pregnancy language is in for a real fight with the Holy See and its allies. One traditionalist group, the International Right to Life Federation and Real Women of Canada, cautioned Wednesday that the ICC "was never intended to hold sway over the long-established social and religious practises that do not fall within existing, legal definitions of crimes."

It's official: the «like-minded group» of nations supporting greater ICC and prosecutorial independence has attracted seven more members. Jordan, Andorra, Sierra Leone, Swaziland, Romania, Estonia and Georgia joined the group this week, bringing the like-minded nations' total strength to roughly 57 on most issues. "It was fairly obvious Jordan was about to join, given the statements its delegation was making," one ambassador said. But the increase of the group's size by seven members, he added, showed how much momentum it has been picking up....

...
In our Department of Funny Names, we must include an NGO group which issued a fax about how the ICC statute should work "like any good contract" and how the ICC "is a criminal court designed to address crimes". The authors of this charming tract go by the name of the 'International Right to Life Federation and Real Women of Canada'. The phrase 'right to life' seems clear enough, but we're a bit confused as to who can claim credit for being 'real women', let alone those of Canada....

GOSSIP

...
At least one expert on nuclear disarmament doubts that there is any chance that the use of nuclear weapons can be included as a crime under the ICC statute. However, he believes the battle for disarmament supporters is to make sure that there is nothing in the ICC statute that can allow nuclear states to claim any new legitimacy for such weapons. "At the very least, we want the prospect that nuclear weapons can be added at a later stage on a list of prohibited weapons, so (the nuclear states) can't say, 'Oh, those others are the bad weapons, so ours must be okay'," he added....



...
One delegate doesn't mind so much that the second week has brought so many informal meetings in which, frequently, larger powers discuss ICC concerns among themselves while smaller countries scramble to make an appearance. No, what she minds is the rise of 'informal informals', which are even smaller discussions among even more secretive members, where, as she puts it, countries need to have fairly sophisticated intelligence just to know when and where such meetings are going on....

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MUSIC & FESTIVALS

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Villaggio Globale. Alternative-style Roman Summer event. Nightly discotheques provide competition for the many clubs in the area. Games are available and hungry punters can eat until late at Taverna Ottocentri. Mon-Sun 9 pm-1 am, Lungotevere Testaccio 1. Tel 06 573 0029. Until June 29.

M.P. Milani and F. Bolognesi play piano music by Mozart, Schubert, Dvorak and Rossini, 9 pm, Sala Borromini (Piazza della Chiesa Nuova). Tickets 8 000-10 000 lire.

Rome Festival, until 1 August. Tonight Rome Festival Ballet dances to the music of Albeniz, Villa Lobos, De Falla, Granados and Piazzolla, choreographed by L. Signorelli, 9.45 pm. Tel 06 397 49868.

Arturo Bonucci plays cello music by Chopin, Haydy, Shostakovic and Rachmaninov, Sala Accademica di Via dei Greci, 17.30.

Villa Celimontana Open-Air Jazz Festival. Tonight: Giovanni Tommaso Quintet, 10 pm. Tickets 9 000L

PLACES TO VISIT

The Appia Antica Park. Immediately after the archaeological park of the Imperial Forum, a series of examples of Rome's legacy punctuates the antique route of the "regina viarum". Open Sundays and Holidays. Via di Porta San Sebastiano, Via Lavinia. For information and guided tours call 06/7801017.

