



On the Record for a Criminal Court

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From the AP Editorial Desk

Limbs Are Severed in Brutal Attacks on Civilians in War

Senior refugee agency official says that a court would deter atrocities, urges the inclusion of landmines and attacks on aid workers in the definition of war crimes

The Assistant UN High Commissioner for Refugees told the Rome conference Tuesday that an international criminal court would not only provide "crucial" support for the work of humanitarian relief agencies, but also help to prevent future atrocities and even promote reconciliation after conflict.

The remarks, by Soren Jessen-Petersen, underscored the intense concern felt by agencies like the UNHCR, which often finds itself on the frontlines of war and disaster. UNHCR was established in 1950 to protect refugees who flee their countries. But it has also assumed the task of assisting internally displaced, most notably in Bosnia and Rwanda.

Mr Jessen-Petersen painted a grim picture of humanitarian relief under siege. Civilians have been deliberately starved and expelled, he said. Landmines are used to prevent refugees from returning home. Aid workers have been attacked and taken hostage. Over the last six years 140 UN civilian staff have been killed in the course of duty, and a similar number taken hostage. One UNHCR official in North Ossetia, Vincent Cochetel, has been missing for 138 days.

Most worrying, said Mr Jessen-Petersen, is the blatant nature of armed attacks on civilians. He recounted how he had met Samuel, a victim in Sierra Leone, shortly before coming to the Rome Conference. Samuel and other refugees fled into the bush from a rebel attack. Soon afterwards

they were discovered by the rebels, who executed a pregnant women and two elderly men with machetes.

"They then ordered Samuel to place his hand on a nearby tree stump. One of the soldiers then took three blows which almost severed Samuel's entire forearm. ... The rebels instructed Samuel to warn other civilians what to expect."

This grim encounter was echoed in a speech by Sierre Leone's delegate, Mr Fode Dabor, who said that if an ICC existed such atrocities would be less likely go unpunished. It was graphic testimony that many governments actively want a court that will cover internal armed conflicts, even though they may be at war themselves.

In spite of this, UNHCR's plea to expand the jurisdiction of the court and the definition of war crimes, is sharply at odds with the views of many governments—even those that provide UNHCR with funds. Many are opposed to the inclusion of landmines.

Mr Jessen-Petersen almost made it clear that the ICC's relations with aid agencies might not run entirely smoothly. He noted that UNHCR officials are often witness to horrors, and provide important information. But, he said, this had to be balanced against the need to protect UNHCR staff and safeguard operations. This is assumed to refer to the increasing number of UNHCR officials who have been called to testify before the Rwanda and Yugoslav tribunals as the pace of trials accelerates. UNHCR is worried that this could jeopardize their impartiality as relief workers.

Fears of "Politicized" ICC Prosecutors Ridiculed by a Former Hague Prosecutor

"Shallow argument" for wanting to retain political control, says Goldstone

US fears that an independent prosecutor would run amok and launch "politicized" prosecutions were dismissed as "shallow" and politically motivated by Richard Goldstone, the first prosecutor of the Hague and Arusha tribunals.

Addressing a meeting of NGO groups in Rome Tuesday, Goldstone said that no government would suggest that he had acted in a "wild and woolly" manner during his term as prosecutor, and that US fears were a "shallow argument for wanting to keep control of the ICC." The US opposes a prosecutor who would be able to launch ex officio prosecutions and take evidence from NGOs, on the grounds that it could lead to frivolous and politicized prosecutions.

Goldstone, a former South African Justice, is credited with having revived the fortunes of the two tribunals after taking over as their joint prosecutor in 1994. By the time he returned to South Africa, well over 60 war criminals from the former Yugoslavia had been indicted, including the Bosnian Serb leaders.

Goldstone said that he had spent the first year travelling to capitals in an effort to establish personal relationships and allay fears about errant prosecutions. Besides, he said, the ICC

prosecutor would be held strictly accountable, and could be answerable to judges and governments. "The responsibility lies with governments."

It also helped, he said, that the Hague tribunal had an international staff of 180 professionals from 32 countries, many of them seconded by their governments. They would have instantly informed governments of any mischief.

In fact the real politicization, suggested Goldstone, comes from the fact that the tribunals are ad hoc—and deal with just two situations. During his first trip to Belgrade, Goldstone was asked why there was no tribunal for Cambodia, Iraq, Mozambique. "I had to concede the validity of their arguments."

The best way to ensure the ICC's credibility would be to provide it with an effective prosecution. The quickest way to politicize it would be to place it under governments. Many African governments are already skeptical.

Goldstone paid tribute to the role of NGOs in providing the tribunals with information, addressing the needs of victims, and ensuring that gender-related crimes be taken up by the prosecutor. He personally had received hundreds of submissions urging that gender-related crimes be given special priority.

Regarding aggression, he said that he was glad that the crime had not been included in the jurisdiction of the Yugoslav Tribunal. "Aggression is a highly political issue which is much more difficult to prosecute than the crimes they are used to prosecuting—like killings and rapes."

China and France Shut the Door on Victims' Parents

Chinese pediatrician, French AIDS parents are barred from UN press briefing; China protests CICC press briefing

The governments of China and France have been accused of preventing the parents of victims from talking with the press in a UN conference room.

According to information that has reached On the Record, the family members were scheduled to hold a press conference in the Iran Room on Tuesday. UN representatives informed press conference organizers that due to government protests, the Iran room briefing had been cancelled.

The group had come to Rome under the auspices of Terre des Hommes. It included Mrs Shu-Yun Zang, a pediatrician from Shanghai who was exiled from China after denouncing the policy of abandoning "undesirable" children; and Mr. and Mrs. Patrice Gaudin, from France, whose two sons died after being infected by the AIDS virus.

The Gaudins have maintained that their sons, who were hemophiliacs, could have been saved if the French authorities had used a US-made test for the virus instead of waiting to develop a

French version. They argue that putting economic gain before the needs of children should be prosecutable by the proposed ICC.

Meanwhile, an Italian newspaper has reported that China has tried to pressure the UN into curbing NGO activities at the Rome conference. China is reported to have tried to prevent the NGO coalition from using the Iran Room to address the press at a Monday briefing. The list of speakers included Pierre Sane, Secretary-General of Amnesty International.

The Preparatory Committee of the Rome Conference has accredited 260 NGOs for the plenary. Twenty are allowed to address the session. NGO representatives have free access to UN-documentation and the FAO has set aside the Sudan room for NGO use. A UN-spokeswoman said that NGOs could use UN-facilities provided they did not directly insult their governments.

Other countries that have protested are said to include Iran and Sudan, which is ironic because these two governments have provided the FAO rooms under discussion. Congo and Indonesia are also alleged to have expressed misgivings. Significantly, these same countries are forever trying to limit outside interference in their domestic affairs by the international community. China has repeatedly barred UN human rights monitors from entering their country.

In the plenary session Tuesday, the Chinese delegation emphasised that the ICC should be free from political influence, by which it apparently means that the ICC "should not be used to interfere in other countries affairs." He appealed for a "cautious attitude" on the trigger mechanisms, and warned against setting up an independent prosecutor with ex officio power to investigate and prosecute war criminals. This would be "irresponsible", he said.

Doctors Without Borders Call for Witness Protection

Doctors Without Borders, the renowned humanitarian relief agency, has called on the Rome conference to guarantee independent and effective protection for ICC witnesses.

Doctors Without Borders, which is often known as Medecins Sans Frontieres (MSF), has been working for 25 years in conflict zones, and is presently providing emergency medical assistance in 80 different countries.

In a press briefing that concentrated primarily on lessons learned in Bosnia and Rwanda, representatives from the agency argued that the two ad hoc tribunals in Arusha and the Hague have failed to provide proper protection for witnesses.

Anxious that the ICC not make the same mistake, MSF urged delegates to ensure that the new court contains a range of safeguards. One priority is to ensure that witnesses are not intimidated before, during and after trials. Several actual or potential Rwandan witnesses have died violently, although the link with the tribunal has not been proven.

In light of this, MSF officials insisted that witnesses need more protection. During trials, they should be guaranteed anonymity. In one case, involving the defendant Jean-Paul Akayesu, a witness who had requested anonymity was asked to state her profession. Given the small size and

controlled structure of the Rwandan society, such a disclosure may well have threatened her personal security.

Witnesses are particularly vulnerable when they are away from the court, before and after trials. Yet the two tribunals only guarantee protection to witnesses while they are being transferred and during trial.

MSF presented two different options for the ICC. In the first, witnesses would be guaranteed asylum for themselves and their families if they wanted. This could include getting a green card for the United States. In the event that a witness dies before he or she is able to testify, their recorded testimony should be used as evidence during the actual trial. The implication is that this would provide less of an incentive to kill the witness.

The second option is to guarantee complete anonymity for the witness or victim. This could include the admission of written testimonies/statements, which would be a violation of the rights of the accused. (Written testimony is permitted by the European Court of Human Rights in Strasbourg under specific circumstances.)

The MSF officials also expressed concern that vulnerable locals are expected to testify, often at great personal risk, while UN peacekeepers are allowed to plead diplomatic immunity, or even prevented from appearing by their superiors. Not only is this unfair, but peacekeepers are often the best-informed witnesses to the worst crimes, and their evidence can prove decisive. The MSF officials said that governments should not be permitted to withhold classified material.

MSF also believes that the threat of a prison sentence may be insufficient to deter warlords, who are likely to be living under the constant threat of violence. They are more likely to be deterred by the prospect of losing their property, or assets that they have salted away in a foreign country. Given this, says MSF, the ICC should have the power to confiscate and seize assets. These should be made available as compensation for victims.

Albania Accuses Serbia of Institutionalized Genocide in Kosovo

Underscores the relevance of an independent ICC prosecutor dangers of delay

The Albanian government has accused Serbia of committing institutionalized genocide by its crackdown on ethnic Albanians in the Serbian province of Kosovo.

The unusually strong charge was made on Tuesday at the plenary session of the Rome conference by the Albanian Minister of Foreign Affairs, Paskal Milo. It comes at a time of mounting crisis over the unrest in Kosovo, which has claimed over a hundred lives and resulted in the flight of 70,000 Albanian refugees into Albania. Last week, NATO planes flew over Kosovo in an attempt to deter further violence.

The crisis in the Balkans has raised fears of another Bosnia, and given the Rome conference a dramatic example of how a strong permanent court could deter war crimes and head off an international conflict.

Mr Milo linked the crisis to the fact that the prosecutor of the Hague tribunal, who has an open-ended mandate to cover events throughout the former Yugoslavia, waited for the Security Council to recommend an investigation into events in Kosovo. This, he said, had allowed the Serbian authorities to win time before "beginning a large-scale action of ethnic cleansing against the Albanian people of Kosovo."

This is exceptionally relevant to the debate in Rome, where the role of the ICC prosecutor is causing extraordinary controversy. Some feel that the prosecutor should only embark on investigations at the request of the Security Council.

Referring to the role of the Serbian security forces in Kosovo, Mr Milo said that "state terrorism" constitutes a much greater danger than "blind ethnic or racist violence." When these state crimes are unpunished, they are most likely to be repeated, which is why Kosovo looks ominously like Bosnia. This is when the ICC could be most effective - but only if it acts quickly and decisively.

Targeting of Schools and Playgrounds is a War Crime, Says UN Children's Czar

The international court should prosecute attacks against schools, playgrounds, hospitals, and other sites where children are normally to be found, according to Ambassador Olara Otunnu, the UN's Special Representative on Children and Armed Conflict.

In a statement issued Tuesday from New York, Ambassador Otunnu deplored "the abomination we are witnessing against children in theatres of conflict around the world, where they are being deliberately targeted, brutalized, and used as instruments of warfare."

Ambassador Otunnu called on the Rome conference to adopt a definition of war crimes that includes the recruitment of child soldiers; rape and other forms of sexual violence. He also urged that the age of child victims should be reflected in sentencing. "This would send a strong message to belligerents about this abomination."

When children are themselves charged with crimes, said Mr Otunnu, the age of criminal responsibility should be the same as the age of recruitment into the armed forces. He stopped short of recommending a minimum age for recruitment, even though many child rights advocates would like this set at 18.

Ambassador Otunnu urged delegates to ensure that the ICC statute is consistent with international standards of juvenile justice, such as the Convention on the Rights of the Child. "The Conference bears an enormous responsibility to children worldwide. An effective permanent court would be a historical landmark in the struggle to restore accountability, as well as ending impunity for crimes against children," he concluded.

State Consent Could Weaken the Geneva Conventions Warns Red Cross Chief

Urges strong sanctions to help enforce ICC rulings, including possible new UN police force

Cornelio Sommeruga, the president of the International Committee of the Red Cross (ICRC), warned delegates to the Rome Conference that the Geneva Conventions could be seriously weakened if states are allowed to give consent before the ICC takes up a case.

Mr Sommeruga told the conference that under the existing principle of universal jurisdiction, any state has the right to prosecute persons alleged to have committed war crimes and no consent is needed from any other state. The principle also reaffirms the rule that war criminals are not immune from prosecution, wherever they have committed their crimes and whatever their nationality.

"To require the additional consent of states before a particular case can be submitted to the court would clearly be a retrograde step in relation to existing law. It is difficult to accept that war criminals could enjoy legal protection from prosecution."

Many humanitarian agencies fear that a compromise text at Rome could weaken existing humanitarian standards, as contained in the 1949 Geneva Conventions and the two additional protocols to the Conventions, which were drafted in the 1970s. Protocol One updates international armed conflict and has been ratified by 150 states. The Second Protocol concerns internal armed conflict and has 142 ratifications.

Given that the bloodiest conflicts tend to be internal, the ICRC is anxious to strengthen the rules covering these wars. But some are concerned that the emerging ICC statute would have the effect of qualifying Article 3, which prohibits core crimes against non combatants and is common to all the Geneva conventions. This is often described as the core of humanitarian law. There is also concern that the statute could dilute the prohibition against the recruitment of child soldiers.

Talking to journalists later, Mr Sommeruga said that the ICC's rulings must be enforced if they are to be effective. "A law that is not backed up by sanctions rapidly loses its credibility."

He implied that Red Cross officials have been discussing several options with the UN Secretary-General in recent weeks, including the possible deployment of a UN police force. "We don't want to exclude any possibility, the discussion should be open," he said. Given the ICRC's reputation for discretion, such comments are unusual.

Following up, Mr Sommeruga made a thinly veiled threat to make a public protest if governments tried to stall the conference or block the Rome negotiations.

The ICRC is in favor of an independent mandate for the prosecutor. He or she should be able to initiate proceedings, *ex officio*. "To become a credible institution the ICC should be able to act when states are unable or unwilling to try war criminals themselves," Sommeruga said.

Mr. Sommeruga's comments were made amidst growing concern at the ICRC that states are not sufficiently committed to the Geneva Conventions and the two protocols. Although states are duty bound to respect and enforce these treaties, in practice they refrain from prosecuting war crimes.

"This is due largely to an unclear situation where humanitarian law is not sufficiently incorporated in national law," said Sommaruga. For several years, the ICRC has been helping governments to apply the conventions. This, it appears, is not enough.