THE ADVOCACY PROJECT
SUPPORTING ADVOCATES FOR PEACE

On the Record for a Criminal Court

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Court in the Balance

The next four days will decide the fate of the international criminal court. There are only two possibilities. Either the court will be granted substantial authority to prosecute criminals and deter atrocities – regardless of government opposition. Or this conference will place the court firmly under the control of governments and the UN Security Council. The chairman will prepare a draft text for submission to governments this weekend. Today and tomorrow in On the Record, we identify some of the compromises being made, and the causes that are in jeopardy. You can help by contacting your government and demanding support for the court. Share your concerns with us, and send us your comments. We will happily pass them on to governments at this conference. They need to know that the world is watching.

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From the AP Editorial Desk

Don't Undermine The Geneva Conventions, Pleads Red Cross

Compromises on definitions could weaken protection of civilians in internal armed conflict

In an extraordinary appeal to the Rome conference, the International Committee of the Red Cross (ICRC) has warned delegations that compromising on definitions in the ICC statute could pose a major threat to humanitarian law and weaken the protection of noncombatants in war.

The ICRC warning came at the end of a long debate on Wednesday, during which government delegations responded to a list of six questions put to them by Philippe Kirsch, chairman of the conference negotiating committee and bureau. One of the questions concerns whether internal armed conflicts should be included in the ICC statute.

Two different provisions in the current draft statute would allow the ICC to prosecute crimes committed in internal armed conflict. But these have been criticized by a group of mainly Arab countries over the last four weeks. Now, with the conference in its final stages, there are growing fears that this opposition will firm up, and that internal armed conflict might be drawn into the compromising on the court's jurisdiction.

The prospect is deeply alarming to NGO advocates. "If the ICC is to save lives, this [internal armed conflicts] simply has to be in," said Bill Pace, CICC coordinator. "This goes to the heart of civil society, and its interest in the court. It could affect the court well into the next century."

Red Cross officials, for their part, fear that any retreat by the ICC on internal armed conflict would seriously undercut their efforts to protect civilians in today's war, and promote humanitarian law with governments.

At this stage of the conference, it is hard to get a clear sense of the possible trade-offs. One possibility is that references to internal armed conflict be dropped altogether. Based on Wednesday's debate, this would seem almost inconceivable given that the vast majority spoke in favor of inclusion. Among the first 30 statements, only India, China, Iran, Egypt, and the Arab states favored dropping one or both of the provisions.

More relevant, several governments that have themselves suffered from internal wars spoke in favor of inclusion. They clearly feel that allowing the ICC to prosecute internal wars might deter some of the atrocities regularly committed by rebels. They included Afghanistan, Slovenia, Bosnia, Croatia, and Sierra Leone. Echoing comments by the assistant UN High Commissioner for Refugees earlier in the conference, the delegate from Sierra Leone spoke of mutilation and other atrocities committed by rebels in his country. This discussion, he said, is not theoretical, but a matter of life and death.

But if these states would oppose the total exclusion of internal armed conflict altogether, there is a growing fear that the Arab bloc in particular might demand that specific crimes be omitted from the definitions. To the Red Cross, this would be almost as dangerous as omission, because already this conference has whittled away the list, in the interests of compromise. (For example, the text has dropped starvation as a method of warfare, and attacks against nuclear power plants, dams, and dikes.)

The existing text still contains a long list of crimes, but these too may become increasingly vulnerable in the interests of reaching a compromise. The ICRC's task is to remind delegations that every trade-off can translate into a real, hands-on crisis for women, children, and aid workers in the middle of an emergency.

Thus far, the ICRC's strategy has been to proceed on two parallel tracks. On the one hand, the agency is warning that any slippage could weaken the second additional protocol to the Geneva Conventions, which extends protection to noncombatants in internal wars and has been ratified by 142 governments. The Red Cross is engaged in a broad international campaign to help governments incorporate the protocol into national laws. There is little doubt that this would be much harder if the world's international criminal court were to contain weaker provisions than the protocol. Moreover, the backlash could begin immediately as soon as the statute is drafted.

In an effort to prevent this from happening, Red Cross officials find themselves reinventing the wheel and reminding delegates that internal armed conflict requires "armed confrontation of a military nature." It does not cover civil disturbances or riots.

But Red Cross officials are also trying to distinguish the protocol from the practice, and point out that the crimes and provisions currently being discussed in the ICC statute are outlawed by customary international law, and that this must be recognized independently of Protocol 2. These include the prohibition against recruiting children under 15 into armed forces. Speaking after governments in Wednesday's debate, the ICRC even described the protocol as "irrelevant." What matters, they said, was that the behavior be considered criminal, and that atrocities be prevented.

This reflects the ICRC's fear that the wheeling and dealing that is the essence of this conference is focusing too narrowly on Protocol 2, which has become a kind of political lightening rod for the Arab states, and not enough on the broader humanitarian picture.

"The crimes referred to happen in war, full stop," said one observer. "The fact that most wars are internal is really not the point. The point is to save lives."

The United States Shows its Hand

Some see a blink, most see an ultimatum

The United States delegation pledged Thursday to recommend that the US government ratify the treaty setting up an international criminal court – but only if the Rome conference agrees to an American package that would, in the view of many, result in a weak and passive court with a very limited mandate.

The US vision of the court's jurisdiction was outlined in a statement to the conference by David Scheffer, head of the US delegation. As expected, it would allow the court to prosecute only the most widespread and heinous acts, and require the consent of the US before Americans are prosecuted.

Scheffer also expressed support for a series of provisions that would allow states to delay and even to reject the admissibility of a case, and a prosecutor who would have to wait for cases to be referred by governments or the UN Security Council.

The nearest thing to a concession appears to be a willingness to discuss a proposal that would limit the ability of the UN Security Council to withhold cases from the court that it is examining. At the other extreme, observers expressed surprise and shock that the US would allow states parties to opt-in to the jurisdiction of the court over crimes against humanity and war crimes. This would effectively allow the US to pick and choose the cases on which the court could act.

Taken together with the other concessions that the United States has either won or are still under discussion, this evidently amounts to a package that the Administration feels it could put to the US Senate.

David Scheffer, head of the US delegation, told the conference today that time was now very short, and the need for a court was great. "If the approaches I have discussed emerge as an acceptable package for the statute, then the United States delegation could seriously consider favorably recommending to the United States government that it sign the ICC treaty at an appropriate time in the future."

The nongovernmental reaction to Scheffer's speech was swift and loud. At a press conference, officials from five leading human rights groups roundly condemned the US for a lack of flexibility and promised to oppose the US as energetically as possible.

A statement by the New York-based Lawyers Committee for Human Rights described the US statement as a "step backwards" and warned that the US risked being left behind by the conference. "President Clinton has called for the creation of this court numerous times," said Jelena Pejic, from the Committee. "Now that it is crunch time, his government is among the biggest obstacles to achieving that goal."

If there was a surprise in Scheffer's statement, it was his announcement that the Clinton Administration is prepared to recommend signature of the ICC treaty this early in the conference. This may represent something of a gamble, since the Republican-controlled Congress has given no sign that it would accept any kind of a court, no matter how restrictive. The spokesman for Senator Jesse Helms visited the conference last week, and

showed little enthusiasm for the proceedings. With the US owing over a billion dollars to the UN system, the Senate Foreign Relations Committee seems even less likely to release funds for a criminal court.

On the other hand, the Clinton Administration is desperate not to be sidelined and appear to oppose the Court outright. Scheffer's remarks are seen as an attempt to seize the initiative, and appeal directly to governments that feel that a weak court with the United States will be better than a strong court without US participation.

Throughout his remarks, Scheffer stressed the importance of bringing in as many governments as possible. At one point he warned that "limited participation" would result in an "ineffective court." This will resonate with the French, who agree with the Americans on state consent and are said to be desperate to bring the United States in at almost any cost. It may also appeal to the Scandinavian delegations, which seem increasingly alarmed at the prospect of a US boycott.

Britain Opposes Inclusion of Landmines as War Crime to Defend UK Nuclear Program

Position contradicts British plan to ratify Ottawa ban on landmines

In a move that is likely to alarm the international campaign against landmines, Britain is opposing any inclusion of landmines in the list of war crimes that would be prosecutable by the ICC. Britain is also arguing that states which use landmines might have to be given the right to opt out, if the ICC's member states decide to bring in landmines at some future stage under the ICC statute.

Britain's position on landmines is being closely watched at the Rome conference, both by campaigners for a ban on landmines, and by supporters of a criminal court.

On the campaign front, Britain's Labour government has broken with the United States and decided to ratify the Ottawa treaty, which bans the production, use, stockpiling, and trade of landmines. The British government plans to ratify the Ottawa treaty tomorrow (Friday) in commemoration of the birthday of Princess Diana, who campaigned against the use of mines.

Here in Rome, however, Britain has been on the other side of the fence. The conference is still divided over whether weapons systems should be listed as crimes. There are, at present, three proposals on the table.

One, supported by Britain, would prohibit the use of weapons that are already forbidden under international law, such as biological weapons, poisonous gas, and dumdum bullets. Peace groups oppose this because the list is exhaustive and there is no mention of prohibiting indiscriminate weapons – a cardinal principle of international law since the time of the Hague conventions.

The second proposal, supported by peace groups, would add nuclear weapons, landmines, and blinding lasers to the weapons already prohibited and declares them all crimes on the grounds that they are "inherently indiscriminate." A third proposal would reaffirm existing international standards.

The British argument for excluding landmines from the ICC is legal and practical. Britain is one of many governments which insists that the ICC should not be a vehicle for making new international law, and until the use of landmines can be demonstrated to be illegal under customary international law, Britain believes they have no place in the ICC. In spite of growing support for the Ottawa treaty, Britain feels this is unlikely to change as long as landmines are still used by China, Russia, and the United States.

On a more practical level, Britain also feels that states that use landmines will be deterred from joining the ICC, if the use of landmines is declared a war crime. This could extend to South Korea and Finland, two strong supporters of the ICC. So adamant are the British on this that they would also support the right of states which use landmines to opt out, in the event that the ICC Assembly were to vote prematurely to include landmines in the future.

Campaigners feel that this completely undercuts Britain's claim to be a moral leader in the global campaign against landmines. It may be years before the ICC comes into force. Declaring landmines as a war crime, they feel, might give wavering governments – like the United States – another incentive to seek alternative forms of weaponry.

In addition to this specific debate on landmines, Britain has also been drawn into the discussion about nuclear weapons, which is also on the Conference agenda. All the nuclear powers have made it clear that any attempt to declare nuclear weapons a war crime would be rejected out of hand – and they include Britain.

It would be doubly ironic if this conference – on protecting civilians in war – were to reaffirm Britain's position as a member of the select nuclear club.

States Fight For Control Over Pre-Trial Investigations

Governments that fear an independent court are fighting an intense and rugged battle to ensure that the ICC prosecutor will be limited in his or her ability to conduct any pre-trial investigation without the consent and support of the government involved.

This has emerged as one of the key issues still eluding agreement as the Rome conference reaches its final stages. Some see it as even more important than the question of whether or not the prosecutor could initiate investigations (proprio motu). The prosecutor's ability to prepare a case will be directly affected by the degree to which he or she is given a free hand in investigations.

Last week, alarmed at the direction of the debate, Human Rights Watch issued a statement warning that the prosecutor could be "impotent." Many feel that if states are

allowed to dictate and control the prosecutor's ability to investigate, the ICC could turn into a "permanent ad hoc tribunal."

Under the current formula, a distinction is made between the kind of investigations which would require compulsory measures, such as the exhumation of mass graves or the search of a home, and those which could be conducted on a voluntary basis. These could include taking evidence from witnesses, or consulting public documents or libraries.

The experience of the two ad hoc tribunals has been that this kind of voluntary evidence is critically important in the early stages of an investigation. Many feel that it is best done without the presence of government officials, and even without the knowledge of governments, to avoid any intimidation of witnesses.

Canada, which is trying to broker a compromise, has suggested that exhumations and the like, which involve compulsory measures, would require the cooperation of the state involved. But investigations involving voluntary witnesses could take place "outside the presence of national authorities if that is essential for the request to be successfully executed."

This has now been watered down significantly. The current text allows that "when circumstances so require" the prosecutor can "as appropriate" take evidence or visit a site that is "usually accessible to the public," but that this has to "follow consultations with the authorities of the requested state."

Many progressive ("like-minded") delegations accept that this represents a major concession. But they feel that they have succeeded in preserving the essence of the idea – that the prosecutor can conduct these kinds of investigations without state authorities being present. Moreover, the text also recognizes the need to protect victims and witnesses. This, say the like-minded, represents their last offer: there can be no more concessions.

Meanwhile, the conference was due to discuss a further line of defense for states later today (Thursday). Many states have argued that any investigations should be conducted in accordance with national law. This is deeply unsatisfactory, given that many judiciaries are either hopelessly corrupt or non-existent; indeed, the ICC would only intervene to take up a case if a state were "unwilling or unable" to assume the case itself.

The like-minded will accept this, provided that a state has a satisfactory judicial system in place. It is not yet clear whether or not this will be accepted – and whether it will be seen as another surrender to states that have no wish for an ICC.

Perspective

Defendant's Rights: Finding a Balance Between Common Law and Civil Law
A strong and independent defense can serve as a watchdog against the power of a

prosecutor
by Elise Groulx and Andrew J. Amigo

The purpose of the International Criminal Court is to bring accused war criminals to justice. This reflects the desire of the international community to end impunity in war-torn countries and help to end the cycle of war, genocide, and retaliation by helping to re-establish the rule of law.

But this has to be done in a fair manner. The international "rule of law" sought by the ICC includes two key elements. First, there is the objective – bringing suspected war criminals to justice. Second, there is the process by which this is achieved. This must ensure that alleged war criminals are granted the right to a fair trial. It is easy to forget that both are equally important.

Trying to achieve convictions at any cost without observing high international standards of due process would run contrary to the requirements of justice. The ICC has to create a model of fair trial procedure that all nations will respect. It cannot be seen to favor the victors in any given conflict. It cannot serve as a model of retaliation against the vanquished. It must serve the process of reconciliation and the return of peace

One immediate practical problem is that the ICC statute is trying to find a balance between the two systems of common and civil law. The statute makes an effort in the right direction, and this is reflected in the debate. The ICC trial procedure will be essentially adversarial in nature, as in the two ad hoc tribunals. This pits two independent parties against each other in court, with the judge(s) acting as the supreme arbiter of the debate. This is the fairest procedure for defendants.

The rights of the defence are articulated in various parts of the statute and, generally speaking, they follow the minimum standard contained in article 14 of the International Covenant on Civil and Political Rights (ICCPR). These include the right to be represented by a counsel without undue delay, in a language understood by the defendant; the right to an appeal; the right to be informed of the reason for arrest; the right against self-incrimination; and the right to cross examine at trial. All this is found in the ICC statute.

In some respects, the statute even improves on Article 14 of the ICCPR. For example, it allows the accused to communicate freely with a counsel of his/her own choosing and in full confidentiality. It states that the accused may remain silent and his silence cannot be used against him. These are small but important steps in the right direction, in favor of the rights of the accused.

The inherent tension between civil and common law is most apparent in the area of reparations. In the common law criminal system the victim is represented by the Prosecutor, while in the continental system the victim is represented by a separate lawyer and forms the civil party (partie civile) within the criminal trial. This difference is well illustrated in the negotiations surrounding Article 68 paragraph 3. A lot of delegations

from civil law countries would like to allow victims to participate, in accordance with their system. This is alien to common law, where victims may appear as witnesses, but not participate directly. Yet it would be a mistake to exaggerate the difference. Increasingly, victim impact statements are permitted in North America. These are a move towards allowing victims to participate. Article 68 may yet strike the right balance.

The real problem is that the ICC Statute is completely silent on how the rights of the accused will be implemented. The proposed structure of the court would include an Office of the Prosecutor, the Chambers, and the Registrar and the Presidency. The Registrar is charged with the non-judicial functions, which would include a victims and witnesses unit. But there is no such unit or office for the defence. There must be.

The two ad hoc tribunals reveal the limitations in entrusting the rights of defendants to the registrar. It is recognized that the accused should be assisted by a lawyer and should have adequate time and facilities for the preparation of his or her defense. But the fact is that placing these facilities under the registrars has infringed the independence of the defense.

The Registrar is the primary organ of the court charged with, "the administration and servicing of the International Tribunal." The servicing of the two tribunals includes security of the tribunals, press and information, legal support to the Chambers, administrative services, personnel, travel arrangements, inventory, document reproduction services, translation and interpretive services, victim/witness units, and detention facilities. Although not expressly granted in the Statute of the tribunals, the registrar's functions have expanded to include servicing the defense, including the appointment of counsel and the promulgation of rules of ethics for defense counsel. This however, has happened by default, rather than statutory design: it has evolved through the rules of procedure. The problem is that the rules of procedure cannot create a new organ of the court. That explains why so many functions end up under the registrar.

It also explains why the registrar's decisions regarding the implementation of the rights of the accused are based, in part, upon factors that are not directly relevant to the interest of a full and fair defense of the accused. Understandably, the Registrar must balance many interests, including witness and victim protection, limited financial resources as well as broader interests to favor tribunal efficiency. But this creates a situation whereby decisions concerning the rights of the accused are subservient to administrative and budgetary concerns of the tribunal. This, in turn, creates an impediment to an independent defense. Critical defense decisions on funding for investigation and appointment of counsel, are taken by the registrar. This can restrict the defense counsel's ability to pursue a full and fair defense.

In adversarial legal systems, the Defense acts as a watchdog. It can – and must – challenge the prosecution. It can criticize the court on issues of jurisdiction and application of the law. It can criticize the Registrar on the handling of witnesses. And much more. This independence gives defense attorneys the freedom to conduct an unencumbered investigation, choose litigation tactics and determine trial strategy. In

other words, independence of the defense is a key element of the adversarial system. It certainly should be asserted in a stronger form than in the ad hoc tribunals. It should not be omitted from the ICC.

As currently framed, the ICC consists of three main organs: the Justices Chambers, the Office of the Prosecutor, and the Registrar. Many States do not approve of an independent, ex officio Prosecutor for fear that unchecked power would result in abuses. The best way to address these concerns, and offset the power of the prosecutor, would be to create a truly independent defense. Well-prepared, well-supported defense lawyers can serve as a counter-balance to the prosecutor's ex-officio power. The Defense can play a useful role in helping create such an institutional check.

The decisions of the ICC will advance international criminal law. It is imperative that each ICC decision be the subject of intense scrutiny and debate during the trial process. A strong, independent defense counsel can help. The International Criminal Defence Attorneys Association (ICDAA) recommends the establishment of a strong, highly qualified and independent defense body to meet these crucial challenges.

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Profile

A Fresh African Perspective on the Western Powers and the ICC
by Anna Bliss

"I'm public spirited," says Professor Daniel Ntanda Nsereko, expert consultant for the Coalition in Rome. Nsereko is a graduate of New York University where, on scholarship, he earned his doctorate in international law and wrote his dissertation on the international protection of refugees. He has been a professor of law at the University of Botswana since 1984 and written extensively on human rights and public international law.

Originally a native of Uganda, Nsereko was a human rights activist during the violent period of Idi Amin, and was later an advocate for the Ugandan Supreme Court. His greatest role model, he recalls, was Chief Justice Ben Kiwanuka, "a bold judge and jurist" and a "little bit with the opposition party." Although appointed Chief Justice by Idi Amin, Kiwanuka did not hesitate to hand down verdicts that were unpopular with the government. Before long, this man whose integrity and values the young Nsereko so greatly admired suddenly disappeared. Nsereko knows what it is to live under a dictatorship, in perpetual fear.

Nsereko warns, however, that "no country, as history shows, is immune from producing monsters....I've seen many governments enthusiastic about the two ad hoc tribunals for Rwanda and the former Yugoslavia, but about the ICC they are lukewarm. There is some element of arrogance there. They don't want their own people tried by foreigners."

He further observed that many of the most atrocious leaders have been in Western Europe – Hitler, Mussolini, and Franco, to name an obvious few. "Even countries with the best constitutional systems, long traditions of civil liberties, are capable of creating terrible dictators," he said. Nsereko warns that people must not be complacent and place too much faith in the checks and balances of their governments.

There is an African proverb that Nsereko finds particularly applicable to the International Criminal Court: "A monkey can never be a judge in the affairs of the jungle." This essentially means that one cannot be a judge of one's own cause. It is in light of this basic insight that Nsereko offers a fresh non-western perspective on western policies, and their possible implications for the ICC.

Nsereko is a long-standing advocate of victim's rights. He noted that justice systems have long emphasized fair treatment of the accused, "but traditionally, nothing is said to the victim or to the family and loved ones." He said, "victims of atrocities should receive sympathy. [For example,] they often can't afford a lawyer, or they are ignorant of their rights, or they are too traumatized to testify."

Many pre-colonial African justice systems, he points out, centered on the rights of victims, not the accused. These were "not so concerned with punishing the offender but with bringing justice to victims. . . securing compensation. Even in cases of murder, if the accused is willing and able to offer compensation to the family of the deceased, it's okay because then there is restoration of harmony. Execution generally does not help – except for vengeance. But this attitude was overtaken by western concepts." At the same time, Nsereko notes with some optimism that many western systems are beginning to require the redress of victim's rights. "I am happy to see these elements (emerging) in the ICC," he said.

He is adamant that the Prosecutor of the ICC be independent. He is opposed to state consent on two grounds: "First, it is not the state who is being accused, but the individual. Second, to insist on state consent is to run the risk of individual perpetrators escaping from international justice....National sovereignty mustn't be used as a mask behind which international crimes can be committed with impunity."

Nsereko is a distinguished presence around the Rome conference. Initially one might find his reserved demeanor and exceptional height rather intimidating, but it is well worth sitting down with him and listening to his views on the ICC. You will find that he speaks with impressive clarity and conviction, and with the firmest commitment to the welfare of all civil society.

CICC Reports

from Rik Panganiban, Editor, CICC Monitor

Show the Governments in Rome That the World is Watching

Email to us in Rome your messages for your government or for all governments, and we will try to publish as many as we can in the CICC Monitor, the daily NGO publication distributed here at the ICC treaty conference. Tell the government delegates that we must have a successful conclusion of this conference and we must have a strong and effective ICC. And send it soon, because we only have a few more days of the conference till its all over on July 17. Be sure and tell us your complete name and where you are from in the email.

Let's show the governments that the world is watching.

Team Reports

Twelve NGO Teams of the NGO Coalition for an International Criminal Court (CICC) have been monitoring the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, which opened on June 15, 1998 in Rome, Italy. For more detailed information on the teams and the negotiations, please refer to the reports written by the CICC Teams which have been following the conference in detail. Additionally, a copy of the Bureau's discussion paper distributed two days ago has also been uploaded. They can be found on the CICC website:

1. A Few Words from William Pace, Convenor of the CICC

In regards to the first 30 governmental speakers on the "package deal" discussion paper put forth by the Bureau of the Committee of the Whole, the commitment to strong principles have been much higher than one would have expected at the end of the fourth week of negotiations. The United States, Syria, India, and other countries which have advocated the establishment of a minimalist court must feel a mounting trepidation since the ongoing development of a much larger majority in favor of stronger definitions of crimes and internal conflicts extends beyond the limits that they had found acceptable. The response by governments to the Chairman's text has been overwhelming, leading to expectations of at least an additional day of debate.

Tomorrow, we hope to see further positive debates on jurisdiction and admissibility. However, in spite of today's events, we continue to fight for the restoration of some principles such as inherent jurisdiction that has been compromised.

2. The Bureau's Discussion Paper

On Wednesday, July 8, the Committee of the Whole discussed the definition of crimes, based on the paper issued by the Bureau on Part 2 (A/ CONF. 183/C. 1/ L.53). The Chair asked the delegations to speak on the following six questions:

1) An approach to the crime of aggression which could form the basis of a general agreement,

2) An approach to treaty crimes which could form the basis of general agreement,

3) The need for a threshold for war crimes and any considerations that could affect positions on this issue,

4) An approach to weapons which are of a nature to cause superfluous injury or unnecessary suffering which could be generally accepted,

5) Sections C and D on armed conflicts in non-international conflicts, including the needs for those sections and if they are included, the threshold of those provisions, and

6) The need for an appropriate provision on the elements of the crimes to be elaborated at the Rome Conference.

The debate lasted until 11:45 p.m. and almost all states intervened. Today's debate in the Committee of the Whole concerns the other articles in Part 2 (the question of the trigger mechanisms of the Court, state consent, admissibility, and applicable law).

The Chair has asked delegations to address the following questions:

1) Acceptance of jurisdiction: automatic jurisdiction, opt-in, or state consent for one or more of the core crimes;

2) Which states should be party to the statute or have accepted the jurisdiction before the Court can exercise its jurisdiction;

3) An approach to the proprio motu powers of the Prosecutor to initiate proceedings and safeguards required; and

4) Approach for the role of the Security Council on issues other than aggression, which could form the basis of general agreement.

The CICC will be uploading Reports from these teams today and tomorrow. The Reports will contain an analysis of the various positions of the individual states, and action alert type suggestions for NGOs. The Chairman will be issuing another text based on the discussions of yesterday and today on Friday which delegations will send back to their capitols over the weekend for instructions. It is therefore crucial that NGOs lobby their governments this weekend on these issues.

3. Today's Highlights

Penalties Team

The controversy surrounding the death penalty remains unresolved. It appears to be an outstanding issue that may reappear as a political issue next week, specifically for countries such as Nigeria, Iran and members of CARICOM. An estimated 25 to 30% of states allegedly continue to support this option. States such as Jamaica, Barbados, and Singapore have rescinded their support for the death penalty.

Finance Team

A new text on the ongoing question concerning the funding of the Court should be issued during the morning of July 9. The debate over UN funding versus state funding continues to ensue. P5 countries appear to favor the option of state funding, with the United Kingdom and Japan more flexible on the source of Court funding. Furthermore, whether the Security Council should pay for its referrals or not has also arisen.

Trigger Mechanism and Admissibility Team

The specification of internationally recognized human rights to include "gender, age, race, color, language, religion or belief, political or other opinion, national, ethnic or social origin, wealth, birth or other status, or on any other similar criteria" appears to be under attack and may be dropped from the statute. Reportedly, Arab states in particular continue to argue for its exclusion, based primarily on their opposition to the inclusion of the word "gender." Furthermore, the Vatican has also advocated its exclusion, arguing that the language remains political and not legal in nature.

An attack against victims' rights has also been noted. There has been a call for victims to be increasingly present within the courtroom. Additionally, a growing opposition to appeals by victims has also been reported.

In regards to trials in abstentia, a compromise has apparently been reached. A trial in abstentia would prevail when the suspect has been informed of the opening of the trial and all reasonable steps have been taken in attempt to bring him/her to trial. This option appears to appease France.

4. In-depth look at the Enforcement Team

Based upon informals on Saturday, July 4, 1998 and working group meeting on Tuesday, July 7, 1998.

The working group on Enforcement will submit a report to the Committee of the Whole this afternoon. It includes several articles on which the working group has been able to reach consensus (arts. 94(3), 94 bis, 95, 96, 97, 98, 99(1), and 99(2)). It will meet again to discuss arts. 93, 94(1), 94(2), 100 and 101.

Throughout Part 10, the working group decided to have the decisions regarding enforcement of sentences made by the "Court." This will allow the Court itself to decide whether the Presidency or some other organ should make these decisions.

Article 93 General Obligation regarding recognition [and enforcement] of judgments

Still to be discussed.

Will have to determine what terminology to use when referring to the general obligation of States Parties to enforce judgments and sentences: shall, undertake to recognize, or give effect to. Will also have to determine if there should be a reference to compensation and reparation in this article.

Article 94 Role of States in enforcement [and supervision] of sentences of imprisonment

(1) Still to be discussed. The working group has already decided that the Court will pick the State of enforcement from a list of States that have volunteered. The State picked can then accept or refuse to accept the sentenced person. The State, when volunteering to be on the list, can set conditions on the acceptance, which must be accepted by the Court. If while enforcing a sentence the circumstances of detention change, the State of enforcement must notify the Court at 45 days in advance. If the Court rejects the changed circumstances, it can transfer the sentenced person.

(2) Still to be discussed. Lays out guidelines for the Court in determining the State of enforcement.

Article 99 Enforcement of fines and forfeitures measures

(3) Still to be discussed. This paragraph deals with the property, proceeds or assets obtained by a State Party when enforcing an order and what happens to it. The Japanese have a proposal that allows the State Party to dispose of the property according to national law.

Article 100 Pardon, parole, and commutation of sentence [early release]

Still to be discussed. The Chair suggested that due to confusion on terminology, it might be better just to use the term "early release."

Article 101 Escape

Still to be discussed.

End of Part 2