



On the Record for a Criminal Court

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From the AP Editorial Desk

The Chairman's Text at a Glance

On Friday, the chairman of the Bureau of the Committee of the Whole presented his third draft on part 2 of the ICC statute. On the Record shows how the draft has changed, and which options have been narrowed down or decided.

Aggression and treaty crimes have been dropped from the list of crimes to be prosecuted by the ICC unless acceptable proposals can be developed by Monday evening. These crimes could be developed in a separate protocol, or handled by a follow up (review) conference.

Crimes against Humanity (Article 5, ter)

Crimes against Humanity are defined as widespread or systematic. (See article below)

Crimes of Sexual Violence are still pending.

Terrorism and economic embargoes (proposed by Cuba) are still pending.

Apartheid is included as a crime.

Enforced Disappearances are included. But the definition requires an intention to remove the persons from the protection of the law for a prolonged period of time.

War Crimes: (Article 5 quater)

A threshold will ensure that war crimes are party of a policy or "large-scale," and so cannot be isolated acts. The wording is still under discussion: one version would make the threshold even higher.

Attacks against aid workers and UN peacekeepers are included. (See story below)

Nuclear weapons, landmines, and blinding lasers are dropped. The only weapons systems prosecutable under the ICC are those proscribed by existing law, although the word "indiscriminate" has been added to the chapeau. The ICC Assembly could decide to add new weapons systems.

Internal Armed Conflict is included, although the chapeau introduces a serious limitation in the definition of such a conflict (See related story, below).

Attacks on aid personnel and peacekeepers in internal armed conflict are included. (See below).

"Conscripting or enlisting children under the age of 15 years into armed forces, or using them to participate actively in hostilities" is forbidden in internal conflict. In international armed conflict, conscription is banned for "national armed forces." In addition, conscription into groups has been dropped.

A new provision says that nothing shall affect a government's responsibility to maintain law and order, or defend the territorial integrity of the State. This is a concession to states that had wanted internal armed conflict omitted.

An American proposal to define the "elements of crimes" has been postponed for discussion by the ICC Assembly of states, but will have to be adopted before the prosecutor begins an investigation (See story below).

Referrals by Ex Officio Prosecutor: (Article 6, 12)

The draft does not give states the option of rejecting an ex officio prosecutor, which represents stronger support for the idea than in the last draft. But this may still be revised, says the draft.

Jurisdiction: (Article 7, 7 bis)

Non states' parties can give consent for the court to exercise jurisdiction over all the core crimes.

Genocide:

The ICC can exercise automatic jurisdiction over genocide when it comes to acts of genocide committed in states' parties. One of the four categories of states must have ratified (territorial, custodial, nationality of accused, or nationality of victim).

War Crimes and Crimes against Humanity:

There are still two options for war crimes and crimes against humanity. Either the court will exercise automatic jurisdiction or states will have the possibility to opt in for limited periods or on a case by case basis.

There are still three options on which states would be required to give their consent for the court to take up a crime against humanity, or war crime. These are a Korean proposal (state of territory, custodial, nationality of victim, and nationality of accused); a British proposal (custodial and territorial); and an American (nationality).

Security Council (Article 10):

The Council can withhold a case from the court for a period of 12 months, and can renew its consideration of the case. Another option would allow the Council to suspend an ICC investigation for a "specified period of time." A third option would prevent the Council from blocking any Court case. The question of preserving evidence during a suspension by the Council is still being discussed.

Pre-Trial Chamber to Scrutinise Ex Officio Prosecutor (Article 12);

If an ex officio prosecutor is established, this article would provide a pre-trial chamber to take an active part in his/her work, as a safeguard. There is also an option to build in "additional safeguards" before the prosecutor can act.

Admissibility (Article 15):

In principle, the ICC will only take up a case when a state is unwilling or unable to do so itself. This article is unchanged.

Preliminary Rulings Regarding Admissibility (Article 16):

The draft has accepted an American demand that the states can challenge a case before the prosecutor has even started to investigate. The prosecutor must notify all states that may have jurisdiction, including non parties, before he or she starts an investigation. The state has to take up the case within a month. In return for this concession to the United States, the draft would allow the prosecutor to be more proactive while the state is considering the case, and receive periodic updates on the progress of a case.

Conference Concession to the US on Elements of Crimes Could Block the Prosecutor

The chairman's text has made a major concession to the United States by agreeing that the "elements of crimes" shall be drafted, and adopted by the Assembly of states parties to the ICC before the prosecutor can commence an investigation. The elements would be added to the ICC statute as an annex.

The elements of crimes are a lengthy definition of terms in the statute which the United States finds unacceptably vague. The US maintains that these terms have to be made more precise, and the crimes more tightly defined, if they are to form the basis for a criminal charge.

The problem is that the US only drafted these elements earlier this year, which has left virtually no time for them to be discussed. There has been overwhelming opposition to their inclusion in the statute at this late stage.

In spite of this, the chairman's text basically surrenders to the US. It means that the elements will have to be defined by a meeting of the preparatory commission before being adopted by the Assembly of states.

So desperate are countries that the US remain involved, that some way will have to be found to keep the US involved in the drafting even if they do not ratify. But this could open the process up to other states as well. Under one idea, the commission could include states parties and others invited by the UN Secretary-General.

If this turns into a lengthy drafting session, as it certainly will, it will block the prosecutor, who cannot start investigating until the elements are agreed.

Gender Dispute Haunts Rome Conference to the End

NGOs expelled from discussion as Arabs oppose discrimination based on gender, race, and religion

In a dramatic example of the way in which gender has raised passions at the Rome Conference to the very last, nongovernmental participants were expelled from a meeting

of the committee of the whole Saturday afternoon after a delegate protested at their presence to the committee chairman.

NGOs were stunned when Per Saland, the Swedish chairman, peremptorily ordered all non-delegates to leave the working group. Several minutes passed before he declared the meeting to be informal, at which point the NGOs left the room.

The women's groups have been among the most active of the caucuses lobbying for a criminal court. In the broader context of this conference, they are strongly supportive of a court which would have an independent prosecutor with the power to draw information from nongovernmental sources, and also launch proprio motu investigations.

On a narrower level, however, the women's groups are increasingly alarmed that this conference may set the clock back on the Beijing Declaration and several major UN treaties, which have come out strongly against gender-based violence. The combination of strong state consent and a weak prosecutor, they feel, would make it almost impossible for the ICC to prosecute cases of gender violence. "It's difficult enough now," said one activist. "With a weak court it could be impossible."

The current wrangle concerns a provision that would allow the ICC judges to invoke international human rights treaties prohibiting gender discrimination in the event that the ICC statute needs interpretation. (Article 20).

The article states that in interpreting the applicable law, ICC judges must make sure that their decisions are consistent with "internationally recognized human rights, which include the prohibition of any adverse distinction founded on 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."

To many this seems like a reaffirmation of international law in familiar language. But according to one NGO official, the Arab bloc, in an effort to expunge any reference to "gender," has insisted that everything after "human rights" be omitted. This, says the women's caucus, would not only remove the notion of gender, but also the other examples of discrimination as well. While some lawyers feel that discrimination is already prohibited by international law, the women's groups feel that the specific references might be very useful to the prosecutor in the early stages of an investigation, and to the judges throughout the process.

As the Rome conference heads into its final week, the women's groups see this drafting dispute as merely one more setback. At this late stage of the conference, some feel that their main achievement has been to forge an agreement that the ICC's judges (18 in total) will reflect a "fair representation of men and women." But even this represents defeat of a kind, because the women's groups wanted recognition of gender to maintain consistency with the language of the Beijing declaration and other recent UN instruments and meetings.

Against this, the women's caucus feels they could end up losing on several important issues.

The definition of crimes against humanity agreed on by this conference requires that the crimes be part of a "widespread or systematic attack directed against any civilian population." This represents a victory of sorts, because "widespread and systematic" would have put virtually every crime beyond the scope of the court.

But the women's groups still feel that it will exclude the kind of sexual violence that has been a consistent feature of the fighting in Bosnia and Rwanda, because the article also requires that the attack be "in furtherance of a state of organizational policy to commit such attack." Rape and other acts of sexual violence in war are often isolated events. It could be almost impossible to show that they are part of a wider policy.

The current draft would outlaw trafficking in women and children for purposes of sexual exploitation. Both the women's caucus and children's caucus feel this is far too narrow, and that the crime of trafficking is much wider than prostitution.

Another major concern is that Arab governments are still pushing hard for "forced pregnancy" to be omitted from the list of war crimes and crimes against humanity. This has turned into one of the most contentious issues at the conference, causing anger and bitterness at every turn. Several constitutions in Latin America and the Arab world forbid abortion, and right to life groups have preyed on their fears that such a provision could open the way to the ICC prosecuting doctors who refuse to provide abortions. They have found more ammunition in the decision to define crimes against humanity as occurring in peacetime as well as conflict.

In practical terms it is almost inconceivable that such a provision could be used to undermine abortion laws. In the first place, international customary law does not prohibit abortion. Second, so many curbs will be built into the ICC that the court could never take this kind of action. But the concern has been kept alive by some assiduous – and some would say malevolent – lobbying.

Amazingly, however, at least some of the confusion may have been caused by poor translation. It appears as though there is not an exact translation for the word "gender" in Arabic. Whereas the French and Spanish translation for gender is "male and female," the Arab translation reportedly comes out as a "type of sex." Given this, it is hardly surprising that the scaremongers are having a field day.

Build a Strong Court, and Hope the US Will Follow, Says ABA President

Governments should push for a strong and independent court with or without the United States, according to the president of the American Bar Association (ABA).

Speaking to journalists in Rome on Friday, Jerome Shestack said that the ABA is in favour of the ICC exercising universal jurisdiction over genocide, war crimes, and crimes

against humanity without any additional consent needed from States parties. The ABA also supports the idea of an independent prosecutor, with the added safeguard of a pretrial chamber. The number of ratifications needed for the ICC to come into being should be in the "low 20s," he said.

This strong endorsement comes from a prestigious organisation which has 400,000 members and wields considerable influence in Washington. Opposition from the ABA helped to kill the idea of an international criminal court in 1948, and Shestack was clearly concerned that the ABA reverse this 50 years later. An ABA resolution expressing support for the ICC has been endorsed by the Canadian and Guatemalan bar associations.

Shestack himself is a prominent lawyer from Philadelphia who was the US delegate to the UN Human Rights Commission in 1980 and has served as president of the International League for Human Rights. He was recently elected to the International Commission of Jurists.

At the same time as he expressed strong support for the ICC, however, Shestack warned journalists against reading too much into the tone of the American statement to the conference, delivered Thursday. Much can change in the final stage of a negotiation he said, and he noted that the US delegation is under considerable pressure. President Clinton is strongly supportive of a court, he said.

As the Rome conference heads into its final week, there is much speculation about whether the US will bend on any of the key issues. The White House is reviewing the text this weekend, and a new American position is expected by Monday.

As expected, Shestack was asked about the procedures for trial and arrest that are beginning to emerge from the negotiations. He stressed the importance of ensuring that accused persons are treated in accordance with the internationally-recognized standards of fairness and due process.

Asked about the absence of a trial by jury – an American constitutional right – Shestack said that the US could not impose its ways on the ICC, and would not need to as long as basic rights were protected.

Theo Van Boven, the head of the Dutch delegation, joined Shestack at the press briefing. Van Boven told a Dutch newspaper last week that the international community should create a strong court, and if necessary proceed without the United States. Shestack said he agreed – and noted that the US record in joining international treaties is not good.

French Position on War Crimes Sours French Support for Prosecutor, Reparations

France's 1994 military adventure in Rwanda cited

To the incredulity of many human rights groups, the French government has insisted that a state should be able to block the prosecution of its nationals for war crimes, even if the government ratifies the ICC and joins the treaty.

The French position was made clear during the debate on the chairman's proposals on definitions and jurisdiction, which lasted most of this last week, and many feel that it has soured an otherwise positive French contribution to this conference. France has broken with the United States, Russia, and China by its support for an independent prosecutor and a balanced relationship between the ICC and UN Security Council. Together with Britain, the French have taken the lead on the argument for victim's reparations.

On the critical issue of war crimes, however, the French are now getting very bad press. France has said that it would not permit the ICC to have automatic jurisdiction over war crimes, but states should opt-in on a case-by-case basis. This would apply in international as well as internal armed conflicts. The reason, say French human rights campaigners, is that France has yet to ratify the first additional protocol to the Geneva Conventions, which expands the protection of civilians in international wars. The protocol forbids attacks that are likely to have a broad and damaging impact on the environment, and the French are said to be concerned that this could apply to their nuclear program.

But the French government also shares the concern of the United States; that French soldiers could get prosecuted as a result of peacekeeping activities or other foreign military adventures.

The French Foreign Legion has found itself in many of Africa's trouble spots, and the French army played a controversial role in the aftermath of the Rwandan genocide in 1994 when it intervened in the southwest to establish a "safe haven" for fleeing Hutu refugees. Operation Turquoise allowed the Hutu war criminals to regroup and flee into Zaire, where they were effectively shielded from justice. Radio Milles Collines, the notorious Hutu radio station that transmitted poisonous anti-Tutsi propaganda, continued to operate inside the zone Turquoise.

France's position on war crimes has been criticized by NGOs here, and this criticism has been picked up by the French press. There is little doubt that it has marred the generally high marks that France has earned here for its support of an independent prosecutor and for keeping its distance from the United States. "It is time for France to move beyond its restrictive position and allow this court to tackle war crimes head-on" said Richard Dicker from Human Rights Watch.

The question now is whether France is sufficiently committed to the court to challenge the United States and ignore the possibility that the US may disassociate itself from the outcome of the Rome conference. According to reports from Paris, France's President Chirac and Prime Minister Lionel Jospin finalized the French position on Thursday.

One delegate said that the French will "stop at nothing" to ensure American participation. However strongly the French may feel about issues like reparations, trials in absentia, and

even the prosecutor, the achievements on these issues are ultimately outweighed by the fear of a court that might prosecute French soldiers. On that basic issue, they agree with the United States.

Definitions

Crimes Against Humanity Compromise

The Rome conference has agreed on a definition of crimes against humanity, which would mean that the crime could be committed in peacetime as well as in war.

The Canadians, who brokered the compromise after several days of intense negotiations, have hailed this as a major achievement. Delegations have split between those wanting a high threshold and a link to armed conflict, which would greatly limit the court's ability to prosecute crimes against humanity, and those who want the court to be able to intervene as broadly as possible.

The current text reads: "a crime against humanity means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack." It then goes on to list individual crimes. To the relief of human rights groups, these include disappearances.

A subsequent paragraph states that "an attack against any civilian population" means a course of conduct involving the multiple commission of acts pursuant to or in furtherance of a state of organizational policy to commit such attack."

As was noted last week in *On the Record*, the requirement that such attacks should be carried out "knowingly" had caused alarm among NGOs because it appeared to require that the perpetrator know that his or her action is part of a wider policy – something that would be very difficult to prove and might rule out isolated massacres.

Canadian delegates say that this concern has been recognized and addressed by the text. The current reference to knowledge, they say, simply means that the mens rea (intention) corresponds to the actus reus (action) – which is the essence of a criminal act. They also say that the phrase "systematic or widespread" lowers the threshold considerably. In a real-life situation, they say, such wording could even allow the ICC to prosecute a hate radio that urges mass killing. Others are not so sure. Women's groups have been particularly critical of the definition, arguing that it appears to rule out the kind of savage, but isolated, acts that may not fit into a policy, but must be prosecuted and prevented.

Humanitarian Aid Workers and Peacekeepers to Be Protected

The Rome conference has decided that attacks against humanitarian aid workers should be prosecuted by the court as a war crime, both in international and in internal armed conflict.

The full text of the article reads: "Intentionally directing attacks against personnel, installations, material, units or vehicles involved in humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the law of armed conflict."

This wording eluded delegates until the very last minute. Although there was broad sympathy for the aim of protecting relief workers some had argued that they are already covered under the broad provisions protecting civilians, and that listing specific categories could jeopardize those groups not listed.

Whatever the risk, it is evidently outweighed by the need to deter attacks on aid workers. By referring to humanitarian assistance in accordance with the UN Charter, as opposed to UN personnel, it will also cover nongovernmental organizations. Finally, the definition manages to cover UN peacekeepers, which are serving in their armed forces even though they may be unarmed during their UN secondment.

Compromise on Internal Armed Conflict Could Exclude Crimes by Dissidents and Rebels, Warns Red Cross

The International Committee of the Red Cross (ICRC) has warned that in accepting a compromise on internal armed conflict, the Rome Conference could prevent the ICC from prosecuting crimes that are committed by "dissident armed forces fighting against one another."

Even where the statute does cover dissident groups – for example rebel movements fighting against a government – they will still have to be under responsible command, exercise control of a part of the state territory, be able to carry out a "sustained and concerted military operation," and be able to implement international humanitarian law.

The chairman has introduced these requirements in an apparent attempt to satisfy governments that are opposed to the court having jurisdiction over internal armed conflict. The latest chairman's text, released late Friday, proposes to retain internal armed conflict.

This has caused general relief because virtually all of today's wars are internal in nature. Nonetheless, the ICRC is alarmed at the price that has been paid: the introduction of a definition of internal armed conflict that could exclude many of the worst and most violent examples.

The ICRC points in particular to dissident groups fighting each other (one example might be Liberia); or armed rebel groups that don't have a proper chain of command or control sufficient territory. A Red Cross note warns: "[Such] a threshold would represent not only a step back from existing law, but would also be so restrictive that it would prevent the Court from dealing with the type of atrocities in conflicts which the world has witnessed over the past years."

"Historic" Agreement on Reparations Jeopardized by Last-Minute US Amendment

A complicated last-minute proposal by the United States has held up agreement on an article that would authorize the international court to order reparations for victims of war crimes, crimes against humanity and genocide.

The US amendment concerns the way in which reparations would be handled by the court. But it was introduced at 7:00 PM on Friday just as the discussion on reparations was about to conclude. It was immediately challenged by a Syrian amendment, and the entire discussion was postponed for Monday raising the possibility that reparations could be tossed back into the bargaining.

NGO campaigners who have struggled for four weeks to include reparations were furious that the US waited until the very last minute to introduce their text. For many, it confirms that the US will stop at nothing to insert its ideas into the statute, however unlikely it is that it will ratify.

The case for including reparations has been eloquently made here by torture victims and their representatives. They came to the Rome conference with several different objectives. The first was to ensure that the Court be allowed to decide to make reparations on its own initiative, and not solely at the request of victims (who are often too traumatized to volunteer).

Secondly, the victims argued for the establishment of a trust fund that would channel money directly and quickly to victims. Third, they wanted the court to be able to issue protective measures that would allow the court to trace, freeze and even seize the assets of suspected war criminals in advance of a verdict, for use in any eventual award. Fourth, they have stressed that reparations are broader than compensation, and that victims must be allowed to participate in the trial and see justice done.

Finally, many wanted the court to be authorized to order governments to pay damages for the crimes committed by their nationals.

The consensus makes no mention of protective measures, and does not make any demands on governments. But it does allow the court to set up a trust fund and make an order for reparations against a convicted person. Moreover, this can take the form of rehabilitation and restitution as well as monetary compensation. The article also provides that victims or their representatives can make "representations" before the award is made.

This was enough for ELSA, the European Law Students Association, to describe the package as "historic." It would represent the first time ever that an international court has authorized reparations, said David Donat-Cottin of ELSA.

Support for victims has been championed by Britain and France, but vigorously opposed by Japan. Japanese delegates insist that they accept the principle of reparations, but have legal difficulties with the idea of reparations because under the common law system, damages are given in civil rather than criminal proceedings. Behind this, many see a fear that the ICC could indirectly bolster the claims of those who suffered at the hands of Japanese troops in the Second World War (See the article below on the Comfort Women).

Others, including the United States, have expressed concern at the court turning into a "social service" institution. First reaction to the late US amendment on Friday is that it could be trying to narrow down the scope of reparations. Looked at more closely, it appears to concern procedural rules such as whether the trial chamber can consider individual claims. It is generally agreed that procedure will be left for a follow-up meeting. This has left many looking for an ulterior motive in the American amendment.

Penalties

Death Penalty Shadow over Life in Prison Agreement

There are growing fears that Arab governments and other states that retain the death penalty may push for a vote on the inclusion of the death penalty in the ICC statute.

As the conference moves to a close, the death penalty debate continues to defy all efforts to find a compromise. This contrasts sharply with the flexibility shown by governments in reaching agreement on life imprisonment and parole.

On the surface, the death penalty is a simple disagreement between retentionist and abolitionist states. Retentionists, including the Arab and Caribbean states, are concerned that the omission of the death penalty from this statute would undermine the practice nationally. But abolitionists will simply not accept the inclusion of the death penalty among the penalties of the ICC.

There is, on balance, far more sympathy for the abolitionists. The United States is one of over 100 delegations that have spoken against inclusion of the death penalty. Only 20 have strongly supported its inclusion.

The chairman of the working group has been struggling to find a compromise, but without success. One solution proposed has been the inclusion of a declaration to the effect that the statute will not prejudice national retention of the death penalty. But the issue has now achieved a momentum of its own, and turned into a major bargaining chip. It is not clear what the Arab states will demand in return, but they clearly intend to keep the issue on the front burner until the last.

In sharp contrast, this working group has been remarkably successful and responsible in reconciling contradictory views over life imprisonment, which is the preferred alternative

to death penalty. Progressive Latin American constitutions prohibit life imprisonment, and even terms exceeding 30 years.

The compromise is one of two possibilities: "imprisonment for a specified number of years, not exceeding a maximum of 40"; or life imprisonment "only when justified by the extreme gravity of the crime and the individual circumstances of the convicted person."

Parole has also provoked an intricate, but fascinating discussion. In an effort to set out some guidelines, some delegates suggested that cooperation with the prosecutor should be a factor. Jamaica said it should be based on the prisoner's behavior. Others recommended that a prisoner's willingness to help the survivors and identify assets, should be considered. In the end, the group has recommended that a review of the sentence be conducted after not less than two thirds of the term of imprisonment and not more than 25 years.

Enforcement

Dutch Relief that ICC Could Pay for Enforcement of Jail Terms

Sentences will be served in the territory of the host country, at the expense of the ICC, if no state is willing to offer jail space when convicted war criminals can serve out their sentence.

This decision addresses one of the concerns of the Dutch, who have grown increasingly alarmed that they might be left enforcing ICC sentences. This could be expensive and even pose a security threat if the persons convicted were prominent war leaders.

The Netherlands is the only announced candidate to host the ICC. Over the last week, however, some delegates were beginning to feel that the Dutch had made a blunder by offering the Hague before they knew whether other governments would agree to share the burden of enforcing sentences. Only Finland and the Philippines have shown any enthusiasm for helping.

In one respect the agreement is still deeply unsatisfactory. It says that the ICC will draw up a list of states that are willing to enforce sentences, and then select one when the time comes. But the state will still be able to withdraw the offer without any real explanation, within 45 days. In this event, the ICC would have no recourse whatsoever.

The Dutch delegation was so upset by this turn of events that it began to talk of reconsidering the offer to host the ICC. The delegates agreed that the "principles of equitable distribution" should be considered in choosing where prisoners should serve their sentence. But a state would still be able to back out.

In the event that no state makes an offer, the convict would be jailed in the host country – presumably the Netherlands. At least the cost will now be borne by the ICC budget, and not the Dutch.

Profile

The Comfort Women of Asia

Still Hurting from a 50 year-old War

By Rochelle Jackson

The Rome Conference has spent many hours discussing violence against women in war, and many governments feel that the court should be able to provide reparation for victims. Japan has led the fight to water down the agreement, and ensure that governments are not forced to pay compensation by the court. Yet Japan also bears a heavy responsibility for the outrages committed by Japanese troops against civilians during the Second World War. Many feel that the best way to prevent such horrors from happening again is to build a strong and effective court, able to investigate sexual and gender violence in its broadest sense.

If there was any crime committed against women in war that spans all heinous crimes, it is that of the comfort women. For every comfort woman there was more than one crime committed against her: she was a victim of military sexual slavery, rape, torture, coercion and sexual violence. Many are hoping that the legacy of the Asian comfort women will find its mark in the establishment of the International Criminal Court in Rome. In learning from the lessons of the comfort women, this court may pave the way to justice for future and present women victims of war.

It took the comfort women more than 50 years to talk about the atrocities done to them during World War II. Their stories are painful and difficult. They evoke an image of horror where women were subjected to some of the most horrific human rights abuses imaginable. Their stories are important because they force us to remember what was done and what few seem willing to discuss.

Women are forcefully taken from their homes to work in brothels as sexual slaves. Young girls on their way to school are abducted by soldiers, others are recruited to work in factories and end up in brothels, managed by the Japanese Imperial Army. Doctors work to help revive an unconscious thirteen-year old girl who has been raped unconscious by ten to twenty men. These stories were all too common during the Second World War. What is even more disconcerting is the fact that women continue to be the targets of sexual violence today.

The Women's Caucus for Gender Justice gathered at the Rome Conference wants to change this. They do not want to see what happened over 50 years ago repeated. They are hopeful that an International Criminal Court will recognize sexual violence and gender-based persecution to deter such behavior, punish those who commit war crimes and crimes against humanity, and restore justice to survivors. Additionally, they are working for a gender sensitive court that will ensure gender balance in the Court's composition and statute.

"There has never been a more gross widespread and systematic scale of human rights violations done to women in war situations as that of the case of the Asian comfort women. Historical records show that there was systematic conscription, recruitment, abduction, and kidnapping of the women for military sexual slavery," said Indai Lourdes Sajor, Executive Director, Asian Centre for Women's Human Rights (ASCENT).

Many historians conclude that comfort houses were first established as early as 1932 in Shanghai, China. Essentially, they were brothels established by the Japanese Imperial Army. In 1938, Japanese forces adopted the policy of establishing brothels in China and "recruiting" women to work in them. Military leaders believed that the women would provide leisure for soldiers. They were often transported to front lines in army ships, army railways and trucks. "At all times the army and government was facilitating the movement of women," said Ustinia Dolgopol, Senior Lecturer at Flinders University of South Australia.

Threatened with death and torture if they refused to cooperate, comfort women were treated as disposable military commodities. In fact, many of them were killed and severely beaten after being raped. Reports estimate that over 200,000 women across Asia, as well as some women from the Netherlands, were forced to become sexual slaves for the Army. Because most information regarding comfort women was hidden or destroyed at the end of the war, it is difficult to state the exact number of women forced into sexual slavery for the Japanese Army. "No one will ever know because a lot of the women will not come forward. We're never going to get totally accurate figures," said Dolgopol.

Japanese Accountability. The surviving comfort women, their families, women's groups, and others are convinced that this issue is far from being resolved. How can it be, they ask, when the Japanese government has made a half-hearted attempt to restore justice to the victims. In response, Japan has held the position that the issue of war reparations has already been resolved. Thus, in its view, compensation for individual victims has already been settled. Recently, however, it established an Asian Women's Fund and has agreed to pay the administrative costs of running it. The proceeds of the fund would provide reparations, secured by private citizen donation, to the victims and their families. Overall, it has not been successful and the government has convinced only a few corporations to donate.

The apologies made by the current and previous Prime Ministers of Japan have been rejected by the majority of the Asian comfort women because they failed to admit legal responsibility for the crimes committed against comfort women. In effect, they argue, what the government has done is offer an atonement apology, which is unacceptable. Many women's organizations agree. "They say it was government policy, and that the government should pay," Dolgopol said.

Dolgopol offered several reasons why the Japanese government has and continues to refuse official government payment. One of which involves politics. Many may have connections to those who fought in the war. "A lot of these people who are very powerful

don't want the government to pay because they don't want the government shamed in that way," she said.

There is also the issue of the Emperor Hirohito's accountability of the war crimes committed during World War II. Having issued several royal declarations in pursuant to the aggression of the war in the Asia Pacific region, it is clear to many that the Emperor was liable for war crimes. Despite this and the insistence of the victimized countries, the Allied forces decided not to persecute Hirohito during the Tokyo Tribunals.

During the war, soldiers were considered to be the children of the emperor. Thus, implicit in reparations and apologies about the military's action, is a criticism of the emperor. "So it's a politically touchy situation in Japan. That doesn't excuse them because a lot of governments have to live through politically touchy situations," said Dolgopol.

"The international community is trying to address one of the greatest challenges facing it today. That is, reconciling past wartime atrocities as an essential step in ending the cycle of violence during war situations and in peacetime." said Sajor, who is filing a court case in Japan this year on behalf of the Filipino comfort women and survivors of mass rape during World War II.

Thus, even as the ICC is being established and debated here in Rome, women's organizations continue to file cases of war crimes committed against women in national courts and international war crimes tribunals. The ICC, could provide victims, whose national system refuses to address the issue, legal recourse as well as assist in the restoration of justice to victims.

Malaya Lola: One Comfort Woman's Story

On the Record has been contacted through our Internet outreach service by a former "Comfort Woman," Malaya Lola, from her home in the Philippines. Malaya described her ordeal to OTR's Rochelle Jackson.

In 1942, Malaya Lola was 24 years old, and married with two young children, aged three and two. It was also the year she was forced into sexual slavery for the Japanese Imperial Army in the Philippines province of Albay. She spent the next two years of her life as a comfort woman. When she returned home, she was denied by her husband, a civil engineer. Despite this, she explained, she continued to live with him, but not as husband and wife. Her husband, ashamed of what had happened in those two years, refused to share a room with her, but continued to treat her like a comfort woman -- using her for sex. He described herself as "a leftover of the Japanese." She later gave birth to two more children. Eventually her husband left taking along with him their four children. Since then, she has neither seen nor spoke with any of her children. In our conversation, she spoke of the importance of establishing an International Criminal Court and how it could help to heal the wounds of war crimes, and crimes against humanity.

OTR: Based on your experience during the Second World War, how did the Tokyo War Crimes Tribunal fail to address the issues of the comfort women survivors?

ML: The Tokyo War Crimes Tribunal made light of the atrocities committed by the Japanese Imperial Forces in their efforts to satisfy the sexual needs of their soldiers. After the War, on the reason that Japan has paid its war debts through the San Francisco Peace Treaty, its government stress many ignoble acts to sidestep the comfort women issue and more recently formed the Asian Women's Fund burdening Japan's Civil citizenry into paying for the sexual shortcomings of the military forces of Japan.

OTR: How important is the creation of an International Criminal Court for you, which is now being discussed and created in Rome? If this Court had existed during the Second World War, do you think it would have been able to address war crimes against women such as your experience as a comfort woman?

ML: The creation of the International Criminal Court is a very important step towards the solution of a myriad of unsolved sexual crimes committed by the Japanese Imperial forces during World War II. If this Court existed then, it would have addressed war crimes against women and, in particular, my case in which I lost all the dearest things and people in my life: my honor, my future as a prospective lawyer, my two brothers, killed by Japanese soldiers tortured in Fort Santiago, my family – four children, an engineer husband, my parents, could anything that Japan can give now make up for my losses? The International Criminal Court can be an assurance not only to me but also to other countless victims that their cases can be addressed at last, and this Court can be instrument to avoid further crimes against women in future wars.

OTR: As a survivor, if you had received legal compensation and reparation after the War, how would your life be different today?

ML: Had I received legal compensation and reparations from the Japanese government after the war, I know that my life would be different today. First I could have had a very much needed medical treatment of the injuries I suffered in the hands of my Japanese captors, these injuries were aggravated by my inability to seek treatment due to my financial incapacity. I have to suffer pain and physical incapacities, like being unable to walk without aid, and being unable to do house chores. I could have continued my studies which would have taken only one more year and some months to be a full-pledged lawyer. I could have taken steps to reclaim my four children if I had the financial means. I could have had a better house to live in.

OTR: Would you like to see the court address issues of reparations, compensation, and rehabilitation on behalf of the victims? As a comfort woman survivor, what is your message to the governments gathered in Rome as they establish an international criminal court that will hear war crimes and crimes against humanity?

ML: Indeed, I would like to see the Court address issues of reparations, compensation, and rehabilitation on behalf of the victims. This would at least restore in a small way

what they lost and most important of all, make them realize that what they underwent did not go in vain. As a survivor, I would urge the governments gathered in Rome to waste no effort in the establishment of the International Criminal Court. This will be a very important step in the hearing of war crimes and crimes against humanity and for all we know it may lead to peace and prosperity for humanity. The International Criminal Court can be an assurance not only to me but to other countless victims that their cases can be addressed at last, and this Court can be instrument to avoid further crimes against women in future wars.