



On the Record for a Criminal Court

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From the AP Editorial Desk

UN Secretary-General Champions Victims of Brutality

Urges support for "strong and independent" court

UN Secretary General Kofi Annan urged delegates to the Rome Conference, as they struggle to reach compromise over the shape and mandate of a new international court, to remember the needs of victims.

After a decade, which has seen acts of staggering brutality in Rwanda and Bosnia, "the overriding interest" [in creating a court] "must be that of the victims. I trust you will not flinch from creating a court strong and independent enough to carry out its task."

In the opening speech of the conference, Mr. Annan said that great strides had been made during the 1990s, which have created a "political climate" for reviving the idea of a court. In particular, he said, the two tribunals on Rwanda and the former Yugoslavia have shown that "there is such a thing as international criminal justice, and that it can have teeth."

"But ad hoc tribunals are not enough," he said. "People want to know that humanity can strike back—that wherever and whenever genocide, war crimes and other such violations are committed,

there is a court before which the criminal can be held to account; a court that puts an end to a global culture of impunity; a court where "acting under orders" is no defense; a court where all individuals in a government hierarchy or military chain of command, without exception, from rulers to private soldiers, must answer for their actions."

The Secretary-General's reference to victims was welcomed by members of the NGO groups, which have formed several caucuses to promote the interests of those who would gain most from a court. They include representatives of victims/survivors. (See the accompanying story.) Mr. Annan was reminded of the intensity of the victims' feelings during his recent trip to Rwanda, where he was loudly criticized for the failure of the UN to prevent the 1994 outbreak of genocide in Rwanda.

Mr. Annan also paid tribute to the importance of civil society in promoting the rule of law. "It is world opinion that has brought us here today, stimulated by the hard work of the Red Cross, or many other non-governmental organizations and of the humanitarian community—the relief workers and other personnel who are often on the front lines of conflict. The whole world is watching this conference and expecting concrete results."

Later, in a press conference, Mr. Annan returned to the theme: "We have the eyes of the victims of past crimes, and of the potential victims of future ones, fixed upon us ... they will not forgive us if we fail'.

Asked if a court would make a difference in Kosovo, Mr. Annan replied: "Attempts by the international community show that we no longer tolerate these and other crimes. Perpetrators will be made accountable, and put in the dock." In fact, attempts by Louise Arbour, the prosecutor of the ICTY, to investigate recent massacres have been thwarted by the Serbian refusal to admit UN forensic scientists.

Mr. Annan made it clear he still trusts diplomacy to resolve the Kosovo crisis. He said that the leadership of Russia (which is due to meet this week with Serbia's President Slobodan Milosevic) has assured the UN that they will do whatever they can to help. "We all know what happened in Bosnia; the international community cannot sit back and watch."

Human Rights Commissioner Supports Creation of International Criminal Court

The creation of an International Criminal Court has won the backing of Mary Robinson, the United Nations High Commissioner for Human Rights. "We must safe-guard the hard-won gains in international human rights law and protect the right of defendants to the highest standards of criminal justice," said Robinson in a speech to the conference Monday.

On June 15, 1998, in front of a UN delegation, Robinson spoke passionately of the necessity for an international criminal court. A permanent international criminal court, she argued, would send a message of deterrence to those in positions of power and leadership that they cannot use terror tactics, systematic rape, ethnic cleansing, mutilation, and indiscriminate killing of non-combatants as weapons of war.

Individuals must be held accountable for their actions regardless of rank. "They are legally bound to refrain from committing such horrific crimes as genocide, war crimes, and crimes against humanity. This principle is rooted in the ancient laws and customs of almost all cultures," she said.

The lack of accountability for these crimes encourages perpetrators, fuels resentment, and perpetuates violence. An international criminal court "would fight impunity. I can think of no greater contribution to the promotion or the protection of fundamental human rights."

Robinson admonished delegates to remain diligent in their quest to create an international criminal court with international and national power. "The court's role must not be restricted to international incidents. That would be a recipe for irrelevance and impotence in the face of the worst atrocities which nowadays take place in internal conflicts."

Forget the Square Brackets, Go Back to Square One, Urges Trinidad and Tobago

Caribbean plea for Drug Trafficking to be counted a crime against humanity

The Attorney-General of Trinidad and Tobago made an eloquent plea to reintroduce drug trafficking into the jurisdiction of the International Court during a speech Monday.

Traffickers use the island as a drop-off for drugs that are being sent north, to the United States, and south to Latin America. The government feels that such trafficking has an international dimension that puts it well outside the capacity of Trinidad to deal with.

"The illicit traffic in narcotic drugs has, and continues to have, devastating effects in our region," said Attorney General Ramesh Lawrence Maharaj. "Drug traffickers have adversely affected the fabric of Caribbean societies. They poison our children; and the transboundary activities of drug traffickers and that of their armed supporters pose a grave threat to humanity. Their actions ought to be regarded as a most serious crime of international concern."

Trinidad's position is a throwback to 1989, when the country's president, Arthur Robinson, called on the UN General Assembly to consider "International criminal responsibility of individuals and entities engaged in illicit trafficking in narcotic drugs across frontiers and other transnational criminal activities."

At the time, few believed that this would lead to the establishment of an international criminal court. Yet, there is little celebration among the Trinidad delegation at the fact that the Rome conference is finally happening. Most governments (and many of the NGO supporters) believe that the ICC's jurisdiction should be limited to the three core crimes of genocide, crimes against humanity, and war crimes. The broader the Court's jurisdiction, they feel, the greater the chance of disagreement. In addition, they argue that drug trafficking is best handled by national courts.

In spite of this, the problem of drugs has begun to acquire a truly international character, as was demonstrated by a recent special session of the UN General Assembly. In addition, US government agents have infuriated the Mexican authorities by operating clandestinely and even

making arrests on Mexican territory. This strikes many as strange, coming from a country that cries sovereignty. It also shows how drug trafficking can damage international relations. All of which reinforces Trinidad's position.

Campaigners Launch a Broadside

Eleven principles comprise the NGO negotiating position

Ten leading NGOs organizations have joined forces and launched a strong common position paper in support of a criminal court.

The move came on the opening day of the Rome conference, and represents something of a triumph for compromise and firmness. Several of the organizations are famous for their prickly determination not to be absorbed by alien agendas. Signatories included Amnesty International, the Lawyers Committee for Human Rights, the Women's Caucus and Human Rights Watch.

Yet the NGO position has been evolving over three years and many long negotiating sessions, and there is now near consensus on what the Court will need if it is to be effective. This starts with the Court having the "broadest possible jurisdiction over the most serious crimes under international law."

Interestingly, this does not, however, include the crime of aggression, even though some NGOs feel aggression should be included (as it was at Nuremberg). On this, the NGOs are more conservative than many governments, which favor including aggression. Speaking Monday for the European Union, British Minister Tony Lloyd said that the Court should cover "crimes of aggression, properly defined."

Among the other NGO principles are support for an independent prosecutor, who would be empowered to "initiate proceedings of his or her own motion." This would mean taking up a case on the basis of information received from victims and NGO sources, as well as governments.

The NGO statement also demands that the Court should be able to perform its mission without being shackled to the Security Council. The Court should ensure justice for all victims, and take into account gender concerns. To ensure the longevity and efficacy of the court, it should be adequately funded with "long-term goals in mind."

Even though the NGOs agree on these eleven core principles, this does not limit their lobbying on specific objectives. NGO officials also stress that the statement does not diminish the importance of the wide and diverse membership of the NGO Coalition.

In a speech that was applauded in the NGO conference offices, CICC convenor Bill Pace pointed out that the CICC comprises over 800 organizations. Pace called for pressure to break down the resistance of governments that are blocking the acceptance of mandatory national and international enforcement of violations of international humanitarian law. He warned that a weak and powerless court that is subject to the control or veto of the most powerful nations would be "unacceptable to global civil society, to NGOs."

Directly Affected

Court Must Fill Gender Gap in International Law, Insists Women's Caucus

Rwanda, Bosnia prosecutors should be more "gender sensitive"

Representatives from over 100 organizations have organized a strong lobbying caucus to demand that gender concerns be fully integrated into all aspects of the jurisdiction, structure, and operations of the proposed international court.

Women have been singled out for rape, torture, and murder during contemporary conflicts such as Rwanda and Bosnia. But in documents presented to the conference, the Women's Caucus complains that the international community has largely ignored gender-related issues.

Initially, the statute of the International Tribunal of the Former Yugoslavia failed even to mention rape in the paragraph detailing war crimes—a particularly shocking omission. This has been somewhat rectified: several individuals have been indicted for rape by the tribunal. Just this week, the trial began in The Hague of a Bosnian Croat, Anto Ferundzija, on the charge of rape.

But the women's caucus is anxious to build on this limited progress, and ensure that gender issues are solidly built into the work of the new criminal court. "The Court must have the capacity to ensure that crimes against women are not ignored or treated as trivial or secondary. It must take account of the disproportionate or distinct impact of the core crimes (e.g. genocide, crimes against humanity) on women. The Court should be equipped and enabled to eliminate common assumptions about and prejudices against women and their experiences. The Court must be fully accessible, through an independent prosecutor, to act on the complaints of women survivors and NGOs. It must be empowered to afford them necessary protection and participation and to award just and fair reparations to victims."

The Women's Caucus for Gender Justice in the International Criminal Court has made monumental gains since it was formed in 1997 to bring together women activists worldwide, educate women on women's rights, and lobby for a court that includes women's issues. The Caucus has championed the cause of the so-called "comfort women" who were forced into sexual slavery by Japanese soldiers during the Second World War.

Japan's efforts to ignore the issue have become a symbol of impunity. The Japanese government is attempting to settle the issue by raising money through public donations and giving the funds as "atonement money" to the surviving victims. But Japan has not admitted responsibility or offered legal compensation. In its opening statement Monday, the Japanese delegation made no mention of reparation, and insisted that war crimes which "have not crystallized into part of customary international law should be outside the scope of the court."

The caucus is also concerned that the court be empowered and educated to protect witnesses—especially women witnesses—during and after the trial. It feels that many women who were called as witnesses by the Rwanda tribunal were deprived of physical and psychological protection both during and following their testimonies. Some were killed after the trial. Whether the Court's

Victim and Witnesses Unit should remain under the office of the Registry (as stated in the statute) or under the office of the Prosecutor is up for debate.

The caucus is also calling for the appointment of a Gender Legal Advisor in the Office of the Prosecutor. This was echoed by Mary Robinson, the UN High Commissioner for Human Rights (who was known as a champion of women when she served as president of Ireland). In her speech to the Plenary, Mrs. Robinson expressed concern that this was still unresolved. "I earnestly hope the brackets around these paragraphs will disappear in the coming days."

Child Soldiering and Recruitment Attacked

Advocates warns that ICC draft could weaken the Geneva Conventions

The use of child combatants has long been an acceptable practice of war. Only recently has it become an international legal concern—turning what was once commonplace into an unacceptable abuse. In some countries, children as young as eight are forced into armed conflict.

Child soldiers are subject to a double risk. On the one hand, they are liable to be killed, imprisoned, and maimed. According to a recent press report, 300 former child soldiers recently died of cholera and dysentery in a military camp in the Democratic Republic of Congo. "Young child recruits may also be sexually abused and forced to live as sexual slaves to soldiers," said Eva Boenders, representing the Children's Caucus at the Rome conference.

But child soldiers can also turn into killers themselves—either willingly, or under duress. This was graphically demonstrated in Rwanda, where some children are in jail for having committed genocide.

The Geneva Protocols and the Convention on the Rights of the Child both ban the recruitment of children under the age of fifteen. The caucus wants that ban reconfirmed, and child soldiering prohibited. Any violation would be considered a war crime against the adults that recruited or used the children. Different formulations have been proposed. Alarming, some of the language could weaken the existing standards.

With regard to children who perpetrate crimes against others, Boenders believes that the Court should not have jurisdiction over anyone under the age of 18 at the time the crime was committed. To do so would require it to adopt rehabilitative measures regarding the trial and sentencing of juveniles—which is "fundamentally at odds" with the Court's punitive purpose.

Advocates Demand Reparation For Survivors

Opposition from Japan and the US predicted

The international court should have the power to order governments to provide reparation to those who have suffered at the hands of their nationals, according to a leading NGO group attending the Rome Conference.

The proposal is being championed by REDRESS, a London-based group that was formed in 1994 to address the needs of victims. Up to now, its work has focused mainly on assisting torture victims, and in pushing for the adoption of a UN Declaration on victim's rights. Now, however, REDRESS sees an opportunity to get victims' rights firmly ensconced in the work of the proposed criminal court.

This starts with punishing the guilty—the essential first step on the road to healing. "If the Court is to be able to promote reconciliation in post-conflict situations, it must have the capacity to do justice for victims," says Karine Bonneau from REDRESS. "We should not focus only on the crime and the accused. The victims should not be forgotten."

As a result, REDRESS's first concern is to make the Court effective and independent. But its second goal is to get a reparations regime included in the statute. This, too, is an essential part of the healing process. It is also consistent with the evolution of international and, increasingly, national law. In Rwanda, for example, the survivors of the 1994 genocide have developed into a formidable political force capable of influencing a September 1996 law on genocide. Under the law, survivors of the genocide are entitled to compensation from their former tormentors.

The current ICC statute contains an article (73) on reparation. But this is entirely in square brackets, and several major governments are firmly opposed to including reparations. Even though the Court would not be retroactive, Japan is believed to be concerned that it could force Japan to compensate victims of its World War Two practices.

The United States objects because it believes that governments should not be held accountable for the actions of individuals, and that such a requirement would run counter to the principle of individual responsibility which is so central to the Court.

While many governments share this view, it appears inconsistent with the American position that the Court should only take up large-scale, systematic crimes that appear driven by policy. The American objective in this is to prevent "politicized" prosecutions against individuals, but it might weaken American opposition to the principle of reparations. Britain and France are said to be solidly in support of victim reparation.

REDRESS feels that reparation need not just be monetary. It may also include apologies, rehabilitation as well as guarantees that there will be no repetition of the crimes. This can be done through human rights education or changing the legislation.

Profile

On the trail of the dictators, in search of a missing child: Estela Barnes de Carlotto, President of the Abuelas de Plaza de Mayo

by Rochelle D. Jackson

Estela Barnes de Carlotto is the personification of peace and justice. She has devoted her life to fighting impunity and will undoubtedly continue to do so. It seems fitting to find her here in Rome.

Estela has come to Rome to speak for those who have been silenced by murder and torture—but as a survivor, not a victim. She is the president of the Abuelas de Plaza de Mayo, founded on October 22, 1977, in response to the systematic kidnapping of children under the Argentinean dictatorship. Some people never give up: one of the abuelas is over eighty years old.

Estela's eldest daughter, Laura, was seized in November 1977, together with her companion, from the University of La Plata. She was a member of a political group, twenty-two years old and two months pregnant—who was also studying to be a professor of history. On June 26, 1978 she gave birth to a baby boy while imprisoned in a concentration camp. Laura was handcuffed and hooded throughout, and she was able to spend 5 hours with her newborn son. Two months later, relatives received her lifeless body pierced by bullet wounds.

Estela has never seen or held her grandson. He could be the stranger who passes her while walking down the street or who sits next to her at a meeting. She does not know where he is or who he is. But she knows that he is still alive and that he was probably given to a military family for adoption.

Over 500 children were snatched during Argentina's dirty war that lasted from 1976 to 1981. Most were born in captivity. To date, the Abuelas have located 59, of whom 31 have been returned to their biological families. Fourteen have been adopted, and eight have been killed. The Abuelas are continuing to look for over 230 more.

The systematic nature of the crime, and its link to the military dictatorship, has recently been confirmed in dramatic fashion by the efforts of two courageous Argentinean judges. Three military officers (and one of their wives) are currently behind bars on a charge of kidnapping. Remarkably, they include former General Jorge Videla, Army Commander and chief of the first military junta between 1976 and 1979.

Videla is accused of masterminding the disappearance of several children, and his arrest represents a resounding victory for the Abuelas. After the dictators fell, in 1982, it was hoped that the killers would be punished: a government commission was set up to examine the extent of the disappearances. Videla was prosecuted, and sentenced to life imprisonment.

But the campaign against impunity suffered three body blows. First, the so-called *punto final* (full stop) put a stop to the submission of all evidence. Second, a law on due obedience eliminated any further chance of prosecuting those who acted on orders. Videla remained in jail—until Argentina's president pardoned him.

So how is it that Videla is back behind bars, twenty years after Estela's grandson disappeared? Because the laws made an exception for the kidnapping of children. This allowed a courageous Argentinean judge to uncover military documents, which provided explicit details on what to do

with children who were born in concentration camps—proving the deliberate, systematic nature of the crime.

The Rome Conference provides an opportunity for Estela and the other abuelas to put their own trauma to good use, and prevent future occurrences. Estela would like disappearances declared a crime against humanity, and included in the Court's jurisdiction. Her call has been echoed by Latin American NGOs (see below). Bright and sparky, she brings a ray of sunshine to Rome—in spite of her somber experience.

War Crimes from Around the World

Mexico:

The dismantling of autonomous municipality leaves eleven dead

In the early morning of June 10th, the Mexican authorities dismantled the autonomous municipality San Juan de la Libertad (headquartered in the municipal building of El Bosque) in a massive combined military and police operation. Eye witnesses in the community of Chabajeval estimated that over 3,000 members of the Public Security Forces, Judicial Police and Federal Army participated in the operation which provoked violent confrontations with Zapatista supporters and resulted in the deaths of at least 11 indigenous people and one policeman. The Mexican authorities report that 1,200 police and army were involved. One of the local people killed was a woman PRI supporter, another was a one-year-old child. One of the indigenous men killed was shot by security forces while trying to pick up his baby, local residents claim. At least nine people were injured (seven police and two indigenous) and 57 were arrested. Four members of the autonomous municipal council were also arrested when the municipal building was retaken. The authorities also claim to have uncovered an arms cache during the raid.

Kosovo

Landmines now being used in the escalation of violence in Kosovo

The New York Times reported today that Serbian forces are deploying land mines along the Yugoslav-Albanian border in "an area left vacant by the shelling of scores of villages and hamlets" in west and southwest Kosovo. Continuing their campaign of destroying Kosovo Albanian towns and villages in a widening swath of southern and western Kosovo, Belgrade-led police, military and paramilitary forces swept further south in the border region. Concentrated heavy artillery attacks pounded Djakovica, a town in southwestern Kosovo where tens of thousands of internally displaced persons have fled following earlier attacks to the north. Last weekend, Serbian forces shelled and then burned the town of Decani and its surrounding villages just north of Djakovica, leaving what local and international reports called a "wasteland." These military strikes drove at least 65,000 civilians to flee, according to today's Los Angeles Times. Tens of thousands of these displaced persons have crossed the border into Albania and several thousand more into Montenegro; others have started crossing into Macedonia, according to local media. Independent Radio 21 (Pristina) reported today that Serbian officials had stopped allowing trucks carrying food into the region; Belgrade launched a similar, two-day blockade in mid-May.

Indonesia

In a reversal of the positive moves the repression continues

After initially stating that there would be no change regarding Jakarta's claim that the illegally-annexed territory is a province of Indonesia, President Habibie backtracked and said he would consider granting a "special status" of autonomy for East Timor. He also released fifteen of the several hundred East Timorese being held in Indonesian jails, military bases and police stations. This morning, in a reversal of this positive trend, Indonesian troops violently assaulted a peaceful East Timorese demonstration in Jakarta, injuring several, arresting many, and taking hundreds away in buses.