THE ADVOCACY PROJECT
SUPPORTING ADVOCATES FOR PEACE

On the Record for a Criminal Court

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From the AP Editorial Desk

India And US Broadsides Threaten Consensus, Raise Prospect of Votes on Nuclear Weapons and Jurisdiction

Confusion following Nonaligned meeting, NAM resolution on aggression

The United States and India have thrown down the gauntlet to the Rome Conference, with last-minute proposals on nuclear power, the role of the UN Security Council, and jurisdiction.

The two governments were among several that tabled formal proposals late on Tuesday, in an attempt to influence the latest (and final) draft of part 2 of the ICC statute. This covers the highly sensitive question of the court's jurisdiction and the definition of crimes, and it was due to be presented to the conference by the chairman on behalf of the conference bureau Wednesday evening or Thursday morning.

India has proposed that the use of nuclear weapons be declared a war crime, and ruled out any role for the UN Security Council in referring cases to the ICC. The US, meanwhile, has proposed that the court should only investigate a case if the state of the accused's nationality and the (territorial) state where the crime was committed have both accepted the court's jurisdiction over the crime.

Among other proposals tabled Wednesday:

- The nonaligned countries have thrown their weight behind a proposal that aggression be reintroduced.
- Indonesia, the Philippines, Thailand and Vietnam are insisting that internal armed conflicts not be covered by the court if there is an element of "foreign interference."
- India and Turkey have joined several Caribbean governments in proposing that terrorism and drug trafficking be reintroduced. Both had been dropped by the chairman.
  Guatemala has proposed reopening the entire debate on applicable law.
- The United States has insisted that "elements of crimes" should be further defined in detail by a preparatory commission and annexed to the ICC statute before the prosecutor could take up a case, brushing aside concerns that this would reopen and prolong the entire debate about definitions.

Out of these, the Indian proposal was described bluntly by one delegate as a "conference-wrecker." It would make the use (as opposed to testing) of nuclear weapons a war crime, and prohibit the UN Security Council from referring cases to the ICC or withholding cases that are under consideration by the Council.

Both would be totally unacceptable to the five permanent members of the Council, as well as to the majority of delegations. But this is well known to the Indians – and may even be the intention. To the great sadness of Indian observers here, the Indian delegation has tried to use this conference to vent its spleen on the UN Security Council, advance its nuclear agenda (which seems totally hypocritical to many after India's recent tests) and get Pakistan's claims to Kashmir rejected. India evidently believes that whatever the court's potential role in promoting justice and international law, it has been sacrificed to this narrow, resentful domestic agenda.

Many feel the same about the United States, which also turned up the heat Wednesday. Talking to journalists, David Scheffer, head of the US delegation, warned that the conference would fail if it did not accommodate the US position, particularly as no court could function without the support of the United States. "There can be no question in anyone's mind how significant such [US] support could be [for the ICC]," he said.

The United States has worked hard to build a range of checks and curbs into the draft statute. But the ultimate line of defense has always been jurisdiction. On several occasions now, Scheffer has argued that the court should only investigate a case if the state of the accused's nationality and the (territorial) state where the crime was committed

have both accepted the court's jurisdiction over the crime. The US is oblivious to the response that this would allow Iraq to veto the ICC prosecution of Saddam Hussein, or that it would have allowed Cambodia to prevent any prosecution of Pol Pot. Like India, the US is resolved to impose its concerns on this statute, or ignore it.

This combined assault creates extraordinary pressure on Philippe Kirsch, the conference chairman. Kirsch had been hoping to nudge the conference towards a consensus agreement by Friday by refining a series of drafts on part 2 of the statute, while the rest of the provisions were going through working groups.

This strategy is now in ruins thanks to the American and Indian drafts, and Kirsch's best hope of holding the package together would appear to lie with the 59 "like-minded" delegations who support a strong court and the larger group of nonaligned nations.

There was more confusion following a meeting of the nonaligned on Wednesday. The nonaligned met in Cartagena at the end of May and issued an uncompromising communique on the ICC that bore the stamp of India, Indonesia, and Mexico. But several African governments, which strongly support a court, took issue with the tone of the meeting. According to reports, the same divisions appeared at Wednesday's meeting of the nonaligned in Rome.

Following the meeting, the nonaligned endorsed a proposal calling for aggression to be reintroduced into the crimes that will be prosecuted by the court. The Bureau has tried to sideline the issue of aggression, which would be hard to define, hard to apply to individuals, and sure to provoke the UN Security Council.

Given this, the nonaligned proposal will have been desperately unhelpful. On the other hand, it does suggest that the preparatory commission should propose a definition, for transmittal to the ICC Assembly. This is unlikely to happen for five or ten years.

There is, however, considerable confusion about the status of the resolution and indeed of the meeting. According to reports, only India, Pakistan, Namibia, and South Africa spoke at the meeting. No vote was taken, and there appeared to be no consensus. Pakistan's delegation said they would have to await instructions from Islamabad. As a result, many nonaligned delegations feel they have been railroaded yet again.

The "likeminded" states immediately spotted the twin threat from India and the United States, and met in an emergency session Wednesday to try and head off the two proposals.

So intransigent has India been throughout, that many feel the US holds the key to a compromise. The US has stamped its mark on virtually every aspect of this draft, from redefining the "recruitment" of child soldiers, to insisting on how the ICC would provide reparations to victims. Delegations have accommodated the US on many points, in the hope that the US would come on board. Following Scheffer's comments Wednesday, this hope seems to be fading fast.

UN Refugee Chief Insists on Inclusion of Internal Armed Conflicts in ICC Statute

Ethnic cleansing and denial of relief supplies must be prosecuted, says Sadako Ogata

Sadako Ogata, the UN High Commissioner for Refugees (UNHCR), has urged the Rome conference not to omit internal armed conflict from the scope of the ICC.

In a strongly worded letter sent Wednesday to Hans Corell, Under-Secretary General for Legal Affairs, Mrs. Ogata said she was "apprehensive" about reports that the conference may decide to omit or restrict reference to internal armed conflict.

"As you know, most conflicts today are internal in character," she wrote. "It would certainly be an anomaly of justice if victims of atrocities committed in internal armed conflict are not able to seek redress from an international criminal court only because the conflict in which the atrocities are committed is not international in character. One could also point out that at that time, the character of an armed conflict may not be so clear-cut."

Mrs. Ogata is widely respected throughout the international system, and the International Committee of the Red Cross will be relieved to have her on its side in what has turned into a rugged fight to defend humanitarian law.

Both the Red Cross and UNHCR have been shaken by the extent of opposition from the nonaligned, and, in particular, the Arab states. This opposition continued Wednesday when four large Asian governments – Vietnam, Thailand, Indonesia, and the Philippines – proposed a resolution that would exclude internal armed conflicts which involve "foreign interference." This, too, could be construed as applying to most internal wars, and so would have the effect of restricting the definition. It has not escaped attention that all four governments benefited enormously from UNHCR's decade-long efforts to assist refugees in Southeast Asia.

Sierra Leone, on the other hand, is pushing the conference in the opposite direction with a new proposal that would extend the definition of internal armed conflicts to "protracted armed conflict between governmental authorities and organized armed groups or between such groups." This proposal has been welcomed by many.

Mrs. Ogata's letter insists that the ICC would have to prosecute ethnic cleansing and the "wilful impeding of relief supplies" as crimes committed in internal conflict – two provisions that many feel may be dropped as part of a deal.

"In UNHCR's view, the deliberate displacement of civilians as the object of the conflict constitutes a particularly deplorable and heinous crime; it amounts to Ôethnic cleansing,' an act which has been internationally condemned. Again drawing on UNHCR's experience, I would stress that the willful impeding of relief supplies to civilian populations is also a heinous act; it amounts to intentional starvation of civilians, and, therefore, ought to be criminalized as well."

"The future court will be greatly diminished in the eyes of millions of refugees and displaced persons if these two acts of atrocity are not included in its Statute."

Trials in Absentia Dropped

The Rome Conference has decided not to allow trials in absentia, thus abandoning a proposal that France has spent over two years developing.

Disappointed French delegates conceded defeat after it became clear that persisting would have extended the entire debate. If trials in absentia had been permitted, it would have required a special new provision for appeals and even a new trial (de novo). There is no time to elaborate such procedures in Rome.

The debate over trials in absentia has revealed differences between legal systems, and also created something of a tension between the rights of victims and the accused.

France argued that convicting someone in their absence might make it easier for victims to collect reparations. But many jurists think that trials in absentia gravely violate defendants' rights. They also feel that such trials risk turning into show trials that may distort the truth.

In the end, the statute follows the basic approach of the International Criminal Tribunal for the Former Yugoslavia (ICTY), which states that defendants shall be present throughout the trial. Like the ICTY, however, the new ICC provision would also allow the charges to be "confirmed" at a hearing without the accused being present. This resembles the Rule 61 procedure of the ICTY, which was invoked against Bosnian Serb leader, Radovan Karadzic.

Rule 61 allows for the charges to be presented in the absence of the suspect, and for the public to be informed. But the ICC would go further than the ICTY in allowing the absent suspect to be represented by a lawyer. (The ICTY refused Karadzic's request for a lawyer) In such a hearing, the ICC will ensure that all reasonable steps are taken not just to inform the accused, but also secure his or her appearance.

The provision also envisages a situation where an accused person might be removed from the proceedings because he or she interrupts continuously. The trial can continue without the accused. But this is not a trial in absentia because he or she can follow by electronic means, and even instruct the defense lawyer who can be present in the courtroom and participate fully.

Victims of War Crimes to Win Reparations, Participate at ICC Trials

"Historic" agreement to be further defined at Preparatory Commission

For the first time ever, victims of war crimes, genocide and crimes against humanity will be entitled to receive reparations before an international court, and participate at the trial of their tormentors in a capacity other than that of a witness.

Nongovernmental groups, which have campaigned long and hard for victims rights to be acknowledged in the ICC statute, were relieved and delighted when the package was finally agreed upon on Tuesday. The proposal on reparations survived a last-minute amendment by the United States to ensure that victims have a single representative when seeking reparations. Many had feared this would reopen the debate.

The inclusion of victims' rights in the ICC statute will be seen as a significant achievement, not just because it addresses a clear need, but because it shows what this conference has been able to achieve when freed from politics.

Both of the key issues – reparations and victim participation – challenged delegation lawyers because they are treated differently by common and civil law. Unlike civil law, common law does not allow for victims to participate at trials, except as witnesses for the prosecution or defense. Under common law, victims can only seek redress at civil trials, not criminal proceedings.

These tensions have now been reconciled, and brought together in a package of two articles (73 and 68) which have a universal feel to them. Article 73 states that the court shall provide for reparations, "including restitution, compensation and rehabilitation." These will be made directly against the individual, and can draw on a trust fund that would be created for the purpose. The court would also be able to hear from representatives of states, victims or the accused.

Victim's rights groups such as UK-based Redress had hoped that the court would be able to force states to implement orders against their nationals, but this was strongly resisted by Japan. As a result, French delegates admit that there could be difficulties further down the line when it comes to actually getting money to victims.

Some of these issues will have to be worked out at a follow-up preparatory commission meeting, which would draft rules of procedure for the court. If the US is participating, it will have plenty to say to judge from the amendment they proposed late last week. It was aimed at ensuring that victims do not swamp the court with their demands, and also providing for victims' families as well.

These are sensible proposals and the US delegation has helped this debate enormously behind the scene – for which NGOs are enormously gratified. Their main wish was that the US proposal had come earlier.

NGOs agree that the provisions on participation may also come under pressure at the preparatory commission. Article 68 states that the court shall "permit the views and concerns of the victims to be presented and considered at stages of the proceedings determined to be appropriate by the court where their personal interests are affected."

This does not specify how exactly the victims will be heard, which could allow skeptics an opportunity to throw up obstacles in the discussion over procedures. But NGOs point out that the court is told to make victim participation happen. Given sufficient pressure, they believe, this mandate can be turned into workable rules, which will reflect the historic Rome agreement.

Perspective

Learning from the Past: How Opting in Crippled the International Court Of Justice

On October 7, 1985, President Ronald Reagan announced that the United States was withdrawing from the compulsory jurisdiction of the International Court of Justice (ICJ). The ICJ had eventually found the US liable for mining the harbors of Nicaragua. This showed how opt-in regimes can undermine justice. ANDREW J. AMIGO warns the Rome Conference against making the same mistake.

The success of the Rome conference could hinge on jurisdiction. The overwhelming majority of nations have argued for automatic jurisdiction over the core crimes: genocide, war crimes, and crimes against humanity. But several countries, including the United States, have argued for a regime that would allow them to pick and choose over which crimes the court will have jurisdiction.

This is reminiscent of the regime adopted for the International Court of Justice. There are important differences between the ICJ, and the ICC. For example, the ICJ is a primary organ of the United Nations, which means that it has equal footing with the UN Security Council in its authority. Its function is to decide disputes between States. The ICC in contrast, will not be an organ of the UN. Moreover, it will establish the criminal responsibility of individuals and prosecute them.

On the other hand the ICC and the ICJ have something important in common. This lies in the way they were created – by the consensual treaty process. This will give the ICC its jurisdictional authority. In other words, it will have authority over those states that ratify. Leaving aside the question of whether core crimes like genocide are subject to universal jurisdiction – a critical and unresolved issue at Rome – it is important to look at the consent regime that could emerge for the ICC. Here the parallel with the ICJ leads to some alarming conclusions.

Creation of the ICJ. In 1945 China, the United Kingdom, the USSR and the US and France convened a conference in San Francisco to create the United Nations. The basic design of the United Nations comprises six primary organs, including the Security Council and the ICJ. At the San Francisco Conference, the issue of compulsory jurisdiction was a source of heated debate. Many delegates maintained that compulsory jurisdiction of the new international court would represent a great advance toward the supremacy of law in international relations. However many states, including the United States and the Soviet Union, opposed relinquishing sovereignty to an independent organ of the UN. As a result, the negotiators agreed upon the language now found at Article 36

of the Statute of the International Court of Justice, which clearly is rooted in compromise. Article 36 grants full discretion to states as to whether to accede to the jurisdictional authority of the ICJ.

United States and the ICJ. The United States took a leadership role when it accepted the compulsory jurisdiction of the ICJ. On August 2, 1946, the United States issued the Truman Declaration accepting compulsory jurisdiction of the ICJ over the US. However, in ratifying the Declaration, the US Senate overruled its own Committee on Foreign Relations and adopted an Amendment to the Truman Declaration. Penned by Senator Tom Connally, the so-called Connally Reservation sought to circumscribe the authority of the Court to intervene upon matters deemed to fall within US domestic jurisdiction. "The United States does not accept compulsory jurisdiction over any disputes with regard to matters which are essentially within the domestic jurisdiction of the United States of America, as determined by the United States of America."

The Connally Reservation not only preempts action before the ICJ on matters within US domestic jurisdiction. It also leaves the ultimate determination of jurisdiction within the subjective determination of US policymakers. The US made a non-binding pledge not to use the Connally Reservation in bad faith, but the fact was that the amendment allowed the US to escape jurisdiction of the ICJ at will.

US Withdrawal from the ICJ. The ICJ Statute allowed for nations to opt-in opt-out of the compulsory jurisdiction of the court. The United State's acceptance of compulsory jurisdiction of the ICJ was terminated by President Reagan on October 7, 1985, with effect six months from that date. The termination was linked to the decision of the ICJ in November 1984 in the case brought by Nicaragua versus the United States for its alleged military and paramilitary activities in Nicaragua. In April, 1984 the government of Nicaragua brought an action at the ICJ against the United States, alleging the US had been using military force against Nicaragua; intervening in Nicaragua's internal affairs, and violating Nicaragua's sovereignty.

The US responded by diplomatic letter stating that the allegations involved a complex set of political, social, economic and security matters, and that the diplomatic process underway was the appropriate course of action. The State Department argued against the Court's jurisdiction by asserting that the US – along with El Salvador, Honduras and Costa RicaÑwere involved in a collective defense against Nicaragua. The US contended that under Article 51 of the UN Charter, self-defense and collective defense is exempt from the purview of the Court. The ICJ, over the protests of the US, found itself to have competent jurisdiction. The US withdrew from the compulsory jurisdiction of the Court. In 1986 a trial on the merits was held in absentia, and the US was found to have violated customary law by its actions in Nicaragua. The US thereafter declared the decision a nullity.

The Explanation for Opting Out. In explaining the motives for the decision to terminate acceptance of ICJ compulsory jurisdiction, the Legal Advisor of the State Department, Abraham Sofaer, observed that the United States had never successfully brought another

State before the Court under compulsory jurisdiction – although it had tried several times to do so. Given this it was unreasonable to expect the US to submit to the ICJ's compulsory jurisdiction over Nicaragua.

But Sofaer omitted to say that it was US reservations which had weakened the ICJ's jurisdiction in the first place. For example, in 1956 the US instituted action before the ICJ against Bulgaria after the Bulgarians shot down a commercial airliner carrying American civilians that had strayed into Bulgarian airspace. But Bulgaria was able to use the Connally reservation against the US, in accordance with the principle of reciprocity. This permitted Bulgaria to argue that the matter fell within Bulgarian domestic law – in Bulgaria's subjective determination – and therefore the ICJ had no jurisdiction to hear the case. In other words, the US was prevented from successfully pursuing its case against Bulgaria by its own reservation.

The real crux of the matter was that the Reagan Administration wanted the right to make decisions involving national security interest, which would not be subject to review in the ICJ. The "national security interest" exists wherever the US engages – which means wherever US troops are deployed.

What are the lessons for the ICC? First, reservations should not be allowed as a condition to ratification. Any reservations that limit the liability of individuals who commit genocide would destroy the very purpose of the Treaty. It could even be argued that this is a violation of the Vienna Convention on Treatise, and thus a violation of international law.

Second, to avoid any opt-in opt-out regime similar to that of the ICJ. The ICJ effectively gives veto power to every member of the United Nations. This would be devastating to the ICC. It would be an affront to humanity to give tyrannical regimes the option to withdraw from the jurisdiction of a court whose very purpose is to bring them to justice.

Yet, the Rome negotiations have seen the reemergence of the opt-in opt-out regime, as well as talk of reservations. The current draft of article 6 contains a possibility for an opt-in regime that could limit the possibility of withdrawal once the court's proceedings have begun. This would make it slightly more difficulty for a state to walk out during a case, but it still could happen. The ICJ's dismal experience should serve as a warning. Let's not also relegate the ICC to the political sidelines of international relations.

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The International Criminal Court: Setting the Record Straight
by Jerome J. Shestack and David Stoelting

Jerome J. Shestack is the president of the American Bar Association. David Stoelting is co-chair of the ABA Coordinating Committee on the International Criminal Court.

From June 15 until July 17, more than 150 nations, including the United States, are assembled in Rome at a historic diplomatic conference. The purpose is to draft a treaty that may at last lead to the creation of the world's first permanent international criminal court to try individuals accused of war crimes, genocide, and crimes against humanity, thus obviating the need for the ad hoc courts used since Nuremberg and Tokyo.

Earlier this year, the American Bar Association (ABA) strongly recommended the creation of an effective and independent international criminal court. So have the International Committee of the Red Cross, the Vatican, the Council of Bishops of the United Methodist Church, the American Jewish Congress, and hundreds of other civic, religious, and human rights organizations. It is a court whose time has come.

The treaty under negotiation would create such a court, which should be supported by every American with an interest in furthering a just rule of law. Regrettably, however, the treaty negotiations for an International Criminal Court (ICC) generally have been under-reported in the United States. Moreover, some that are opposed to the ICC have issued a series of broadside myths that plainly distort the issues. These myths must be countered.

Myth No. 1: The ICC would be unconstitutional. Our Constitution expressly grants Congress the power, "To define and punish. . . offenses against the laws of war." The US Supreme Court in In re Yamashita (1946) cited this grant of authority as permitting the establishment of appropriate tribunals "for the trial and punishment of offenses against the laws of war." The participation by the United States in the Nuremberg and Tokyo tribunals was consistent with the Constitution, as is the creation of a permanent tribunal prosecuting the same types of crimes. There is no surrender of sovereignty, but rather an appropriate exercise of sovereignty, as in any treaty grounded in mutual obligations. The sovereignty issue is just a red herring.

Myth No. 2: The ICC would target US soldiers. Portraying the ICC as a malleable tool that America's enemies would utilize to further political means is also misleading and, in fact, demeans US Courts. In every instance, national courts – and not the ICC – would be the preferred forum for the trial of accused war criminals. Only if national courts were either unavailable or ineffective would the ICC proceed. Obviously, the ability of US courts to prosecute instances of war crimes would obviate the need for trial of a US citizen by the ICC. Moreover, the draft treaty contains a number of safeguards designed to minimize the possibility of any politically-motivated prosecution. In addition, the United States, if it ratifies the ICC treaty, would play a role in the selection of judges and prosecutors of the highest integrity.

Myth No. 3: The law to be applied by the ICC is overly broad and vague. Wrong again. The ICC will prosecute only three so-called "core crimes" – genocide, war crimes and crimes against humanity. These crimes – as United States courts have recognized – are subject to universal jurisdiction, meaning that all governments have a duty to prosecute perpetrators. The definitions of genocide and war crimes largely derive from the Genocide Convention of 1948 and the "grave breaches" provisions of the 1949 Geneva

Conventions, which have been ratified by nearly every country on earth including the United States. Crimes against humanity, which developed from the Nuremberg Charter, similarly is recognized by nearly every country. In short, the essential parameters of the core crimes cannot be disputed.

Myth No. 4: The ICC would be a dangerous threat to US foreign policy. Nonsense! In fact, the prosecution of war criminals has been a benchmark of US foreign policy since the landmark Nuremberg and Tokyo trials. There have been numerous pronouncements by Congress favoring the prosecution of war criminals by an international tribunal. Indeed, the United States spearheaded the creation of the ad hoc tribunals for the former Yugoslavia and Rwanda, and Congress has routinely approved significant funding and other resources for these tribunals. Ratification of an ICC treaty with narrow jurisdiction over the "core crimes" is wholly consistent with the fundamental tenets of US foreign policy.

Myth No. 5: The ICC will trample the rights of defendants. Wrong again. There is not the slightest doubt that the proceedings before the ICC will accord with the highest international standards of fairness and due process. To mention just some: the presumption of innocence; the right to be informed promptly of charges; the right to counsel; the right to prompt trial; the right to examine witnesses; the right to not be compelled to confess guilt; and the right to an appeal.

The ICC is a straightforward means of furthering the rule of law in the case of war crimes from which all nations have long suffered. It should not engender trepidation and suspicion. One thing is certain, those who oppose the ICC should reexamine their commitment to the rule of law.

Two hundred and twenty-two years ago, the United States was founded on the rule of law as set forth in the Declaration of Independence. The current ICC negotiations offer an unparalleled opportunity for US leadership to demonstrate its commitment to rule of law. This opportunity should not elude us because of simplistic and overwrought misperceptions.

Profile

Zeiba Shorish-Shamley: An Afghan Campaigner Argues for a Strong Court
by Anna Bliss

Zieba Shorish-Shamley strikes one as a decidedly strong woman. Smartly dressed, well composed, proud posture – but such qualities only reaffirm her intelligence, intensity, and determination in the field of human rights. To scratch the surface of her work and personality is to find that few individuals at this conference have a greater stake in the success of the International Criminal Court.

As a young woman, Zieba left her home in Afghanistan for the United States to continue her education. She has not been back since. But much has happened in the meantime to

strengthen her ties to her people, especially to the family she left behind. She earned her PhD at the University of Wisconsin, Madison, where she studied cultural anthropology, and focused on the plight of Afghani refugees. She then taught at Western Michigan University until, one day, she quit her professorship and headed for Washington, DC. This was in the early 90s, when faction fighting was breaking out in Afghanistan. For her, it was high time to leave academia behind and fight full tilt for human rights.

She is now the director of the Women's Alliance for Peace and Human Rights in Afghanistan (WAPHA), an advocacy and research project she founded in March of last year. Already, this Alliance is represented in five continents. As its leader, Zieba sends out alerts about the problems in her native country, offers possible solutions to organizations that can implement them, lectures at universities, participates in demonstrations, and has even testified three times before the United States Congress. "My organization holds all factions responsible for the misery of my people," she explained. The Alliance's chief concern is the welfare of women, and the struggle against Taliban forces.

To the question of how she ended up here in Rome as a prominent member of the Women's Caucus, her response was swift and sweeping, impassioned and personal, and very well informed. She began by explaining that her country has experienced 20 years of war.

In 1979, the Soviets entered into Afghanistan and did not withdraw until ten years later. Over one and a half million Afghanis died. Thousands of women were raped, tortured, imprisoned, disappeared, and sometimes killed by enemy troops for information about the Mujahidin, the Afghanistan resistance freedom fighters. Moreover, the war left a legacy of ten million landmines, which continue to kill, injure, and maim 20 to 25 people every day. Afghanistan has no central system to monitor human rights violations. This means that victims have no opportunity for redress.

From the time of Soviet withdrawal to 1994, the country was ridden with factional wars. Again, the all too familiar injustices of war ran rampant. While these horrors were not sanctioned by governmental policy, dominant factions nonetheless used women for war tactics, "to dishonor the enemy."

In 1994, a new menace emerged: the Taliban, a militant, ex-Marxist/Leninist culture existing under the name of Islam. They consist of the Pashtun, one of the 20 ethnic groups of which the Afghanistan population consists. "Taliban," Zieba pointed out, means "student of religion," a frightfully misleading title. Many of the Taliban members are Afghani refugee orphans. Raised on Pakistani soil in refugee camps, these individuals are deprived of families and have very little sense for Afghanistan society. Early on, they are indoctrinated with highly misogynist values by the Deobandi-led Pakistani school.. They are trained by the ISI, the Pakistan secret police, which is financed by Saudi Arabia – another misogynist society. "This Ôbrand' of Islam is a misguided interpretation of Islam and a tribal custom in culture," Zieba explained.

Under Taliban oppression, women are completely banished from society and the most basic privileges of life. Sixty thousand Afghanis are widows who cannot work, and are beaten if they try to leave their houses in search of assistance (from the UN, for example). Women are committing suicide by taking caustic soda – which grants them a prolonged and painful death. But for many women, this is better than subjugation to Taliban and watching their children starve before their eyes. Children of eight and nine years old prostitute themselves in order to support their families. All forms of reproductive health, and health in general, are in crisis. Future generations are jeopardized. Widows are dying of tuberculosis because they aren't allowed to expose themselves to sunlight. Their windows are even painted black so that they cannot be seen from outside. Unfortunately, since 70% of the population are women and Afghanistan is largely a Muslim country, the large majority of the population has no voice.

Zieba illustrated the horror of women's lives in present-day Afghanistan as if she could not help it; she spoke out of a deep, inner compulsion that drew from both compassion and outrage. At last, she paused and declared with great gravity, "That is why I am hereÉ. Every single core crime listed in the ICC statute is happening right there, right now, to my people." She wants a court that that can bring criminals to justice, whether the crimes are internal or external.

She has not been to Afghanistan for the last 20 years. In fact, on account of her work, she is banned from her country and receives threatening calls and e-mails from Taliban supporters. Although geographically alienated from the family she has there, she does manage to communicate with them. "What I love about my family is that they support me with this struggle. Every single day I worry about them because of my own involvement."

"Who I am is because of my family, particularly my brother," Zieba said. Her older brother, a young doctor, was killed by a soldier in the communist regime. His wife, then only 21, raised their two children and never re-married. "My brother was a true feminist. He really believed in the equality and honor of all human beings." Zieba holds her family in the highest regard.

Softening her tone, she continued, "The horror seems to go on forever. But I am the type of person never to give up hope. I will struggle against Taliban, and every regime that oppresses people, to my last breath. This has become my life." Recalling a report on children and landmines on CNN last Friday, Zieba shook her head and said, "I don't know sometimes how I survive. I just feel so powerless. But I have to struggle. They [her people] have no one else."

The same fighting spirit in the face of despair goes for the ICC conference: "I still haven't completely given up. I want a truly independent court with no manipulation of bigger powersÉ.It doesn't do to have temporary painkillers. We need to uproot the disease to create a healthy society. And to me, that disease is injustice."

The Virtual Vote
NGO Coalition Special Report on Country Positions on L.59
July 15, 1998

Based on the Bureau's Proposal A/CONF.183/C.1/L.59, the Committee of the Whole went into a second round of an over-all discussion on the crucial questions in Part 2 on Monday. The NGO Teams monitoring the debate continued their efforts to provide an accurate picture of the current state of negotiations. Following up on our first Special Report distributed Friday evening, the three NGO Teams concerned with Part 2 of the Statute have assembled new data summarizing the country positions put forward in the Committee of the Whole during Monday's debate.

As a general trend, the support for positions ensuring a strong and effective Court from the CICC Monitor's first Special Report has been reconfirmed and even strengthened by the statements made on Monday.

Threshold for War Crimes
80% favoured Option 2
39 states favoured Option 2*
9 states favoured Option 1

Section D: Internal Armed Conflict
61% supported deleting or changing the Chapeau
36 states of 59 addressing internal armed conflict opposed the present Chapeau to D

Acceptance of Jurisdiction
75% supported automatic jurisdiction for all core crimes
64 supported Option 1*
21 supported Option 2

States Required for Juridiction
89% supported the Korean proposal for all core crimes
60 states supported Option 1
11 supported Option 2

The Prosecutor
83% supported a proprio motu Prosecutor
63 states supported a proprio motu Prosecutor*
13 states did not support a proprio motu Prosecutor

Readers should be aware that this report does not aim to provide a complete picture of all positions held by countries with respect to Part 2. Only state interventions in the Committee of the Whole's discussion on Proposal L.59 on Monday are included in t his analysis.

Not all states expressly addressed every single issue contained in this report. Hence, readers should note that our calculation of percentages is to be understood as the ratio of states voicing a certain position to the total number of states speaking out on this particular point. The distinguished delegates are advised that this report is based on NGO observations and is not an official document. It may contain inaccuracies. The numbers presented are necessarily simplifications of the more elaborate statements made by delegations. We apologize for any possible errors and welcome any comments or corrections. Please contact the Team Secretariat at 570-50 203 (Sudan Room) for more information.

- Counting all the SADC states as represented by South Africa.

Acceptance of Jurisdiction

Out of the 85* states taking the floor on the question of acceptance of jurisdiction, an overwhelming majority spoke in support of automatic jurisdiction for all three core crimes (Art.7 bis Option 1). Option 2, envisaging a combination of automatic jurisdiction for genocide only and opt-in clauses for war crimes and crimes against humanity, attracted far less support.

64* spoke in favour of Option 1.
21 supported Option 2.

Preconditions for Jurisdiction

Article 7 now provides for a jurisdictional regime based on the Korean proposal for genocide with three options remaining for the other core crimes. Option 1 extends the Korean model to these crimes. Option 2 requires acceptance of the territorial and the custodial State and Option 3 the acceptance of the State of nationality. The vast majority of States addressing the issue wanted to see the Korean proposal applied to all core crimes.

60 delegations preferred the Korea Proposal (Opt 1).
11 spoke in favour of Opt 2, with 5 of these supporting a combination solution with Option 3.

The Prosecutor

Article 12 offers two options on the powers of a proprio motu Prosecutor. Option 1 provides for judicial review by the Pre-Trial Chamber in accordance with the wording of Article 12. Option 2 would add further safeguards. An overwhelming number of those who took the floor to address this issue supported a proprio motu Prosecutor.

63 states based their positions on the inclusion of a proprio motu Prosecutor*

27 maintain that no additional safeguards are needed
6 are calling for Option 2 safeguards
13 states remain opposed or have expressed strong reservations about such a Prosecutor

The Role of the Security Council

Article 10 (2) offers three options for the role of the Security Concil in deferring the Court's jurisdiction. Option 1 allows the deferral of investigation or prosecution for a renewable period of twelve months. Option 2 allows for an unspecified and renewable deferral period. A significant number of states called for a shortened period of deferral or a limitation on renewals. Option 3 is no provision on deferral.

33 states called for a provision on preservation of evidence during a deferral; no state opposed such a provision.
53* states supported Option 1.
5 states supported Option 2.
14 states supported Option 3.

Internal Armed Conflict

A new chapeau to section D has been introduced to L.59, restricting the Court's jurisdiction with respect to war crimes in internal armed conflict in a number of ways. An impressive majority of States speaking out on this issue called for the deletion of this chapeau or voiced serious objections to its language, even despite the lack of an explicit option to this effect.

59* states made a statement on internal armed conflict. 36* of these wanted the Chapeau deleted or changed.

Threshold for War Crimes

Article 5 quater offers two options on the threshold for the Court's jurisdiction over war crimes. Option 1 gives the Court jurisdiction "only when", Option 2 "in particular when" crimes are committed as part of a plan or policy.

39 States favoured Option 2. 9 States wanted the more restrictive Option 1.

- Counting all the SADC states as represented by South Africa.

CICC Team Reports

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

Earlier this afternoon, the CICC held a press briefing with the international media. We covered key issues that we hope to be included within the treaty document for Friday and stated our firm willingness to continue fighting for their inclusion. Furthermore, we

discussed the excellent support by governments for core principles. We hope that the Chairman and the Bureau will issue a package reflecting the majority's opinion.

If the Bureau paper to be released tomorrow morning (July 15) allows for a workable Court, the CICC foresees the enormous support by governments and NGOs. However, we cannot underestimate the pressure of the United States, France and other countries on the conference and on individual countries to weaken the statute. We hope that all members of the CICC and readers will continue efforts at the local and national levels to press for a successful conference.

2. Today's Highlights

State Consent Team

There has been overwhelming support for autojurisdiction and the Korean Proposal. However, a group of countries continue to favor the opt-in proposal.

Trigger Mechanism and Admissibility Team

Support continues for the proprio motu powers of the Prosecutor as well as the Singapore Proposal regarding the role of the Security Council. Additionally, there appears to be agreement over article 16 (preliminary rulings regarding admissibility) and article 17 (challenges to the jurisdiction of the Court or the admissibility of a case). Regarding article 17, a state would reportedly not have the right to challenge admissibility twice.

Definitions Team

States continue to hold the same positions from last week with NAM countries advocating the inclusion of aggression and nuclear weapons.

Final Clauses

The large issue under debate centers around provisions on amendments. The final decision on this proposal depends on the formulation of the final package.

Enforcement Team

Article 94 (concerning the role of states in enforcement and supervision of sentences of imprisonment) and article 100 (concerning pardon, parole and commutation of sentences) have both been settled.

Composition Team

All articles covered by the Composition Team (articles 35 - 53) have been sent to the Drafting Committee.

Trial, Appeal and Review Team

The issues that remain outstanding are trial in abstentia, article 71 (sensitive national security information) and questions of gender in article 68 (protection of the accused, victims and witnesses and their participation in the proceedings). Article 73 (reparations to victims) has been finalized and they shall receive restitution and compensation.

End of Part 2