On the Record for an International Criminal Court, Issue 23

It's a Wrap! Looking Beyond Rome

July 27, 1998

From the Editorial Desk

With this issue, On the Record comes to a temporary close. We would like to thank those who have helped us during the last two months. During the Rome conference, the newsletter was distributed to over 4,000 subscribers via the Internet. In addition, the NGO coalition (CICC) made a selection of articles available each day, for publication in the daily conference newspaper Terra Viva.

Our team in Rome comprised of Anna Bliss, Machteld Boot, Teresa Crawford, Iain Guest, Jason Hawkins, Rochelle Jackson, Willem Offenberg, Ingela Stahl and Sheryl Winarick. In Washington, Andria and Barry King edited and formatted the copy, before dispatching it to our subscribers. Albert Cevallos provided background material.

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On the Record will return. We don't know for what conference, or campaign, but we'd like your suggestions. We would also welcome any volunteers for future projects. In the meantime, keep tuned to our website. The Advocacy Project aims to work with civil society to promote humanitarian principles. We hope you'll be with us.

Beyond Rome – What Are the Prospects for the International Criminal Court?
by Iain Guest

On July 17, the diplomatic conference in Rome adopted the draft of a new international criminal court by 120 votes to 7, with 21 abstentions. That vote suggested more support for the package than anyone had thought possible just two days earlier. But what exactly have they agreed to? Will the new court be able to deter the atrocities that have become a hallmark of modern conflict?

No one will know for sure until the court comes into existence. That could take years because the treaty will first have to be ratified by 60 governments. Indeed, the speed of ratification could be the first test of the court's eventual effectiveness. The United States, for example, argued that giving more authority to the court would mean fewer ratifications. Supporters of the court disagree. They are taking governments at their word, and assuming that countries are more concerned with punishing war criminals than avoiding "frivolous" prosecutions against their own nationals.

The new court will pick up where the Nuremberg tribunal and the two ad hoc tribunals for Rwanda and the former Yugoslavia have left off. Like these tribunals, but unlike the International Court of Justice (which regulates disputes between states) the Court will prosecute individuals. It will not cover events that occurred before its entry into force, unless specifically requested. Amendments can be proposed to the statute after seven years, but as things stand at present there will be no reservations. This may deter governments from joining. But the alternative – a treaty full of holes – was considered a greater risk.

The Fight Over Definitions – Aggression and Crimes Against Humanity

The court will prosecute crimes against humanity, genocide, war crimes, and aggression. All were carefully defined in Rome, with the important exception of aggression, which will be taken up at a review conference seven years after entry into force.

This decision on aggression will postpone one of the tougher issues debated at Rome. It is far from clear how individuals (as opposed to states) can be charged with aggression. It is also possible that the inclusion of aggression could invite a role for the UN Security Council. But many felt that dropping aggression from the ICC statute would weaken the legacy of Nuremberg, which prosecuted crimes against peace.

Definitions provided the first major battleground between governments that wanted a court with independence and authority, and those that were determined to keep it as restricted as possible. For a crime against humanity to be taken up, it will have to be "widespread or systematic" as well as linked to a policy and directed against civilians. The purpose is to prevent the court from taking up isolated acts, no matter how outrageous. But the result is a restrictive definition that could leave out some very serious crimes – such as the massacre of unarmed ex-combatants. This was the price to be paid for ensuring that the court can prosecute crimes against humanity in peace as well as war.

Looking down the list of specific "crimes against humanity," one finds that many have been diluted for the same reason. For example, "enforced disappearances" can be prosecuted, but only as long as they occur over a "prolonged time." This notion has no place in the decisions of the Inter-American Court or the UN declaration on disappearances. Serious compromises were also made on the definition of "torture" and "deportation." Neither can be taken up by the ICC if the act was deemed "lawful" by the national authorities. Some fear this could open the way to the forcible expulsion of asylum-seekers or Roma who are suddenly declared "unlawful." But once again, this was the price to be paid for getting these crimes listed at all. India had demanded that disappearances be excluded altogether.

War Crimes – the Specific Crimes

A similar battle was fought out over the definition of war crimes. Here, it must be said, there were some imaginative, positive achievements. Attacks against aid workers and unarmed UN peacekeepers will be punishable as a war crime, in international or internal armed conflicts. This was not without controversy. Some argued that aid workers were already protected under the Geneva Conventions, which proscribe attacks on civilians. Listing specific categories, they warned, would only endanger those not included. But this concern was dwarfed by the need to provide greater protection for aid workers. By way of a reminder of the importance of this inclusion, several UN officials were killed in Tajikistan two days after the conference ended.

Women's groups also succeeded in getting rape, forced prostitution, trafficking in women and children, and forced pregnancy declared as war crimes and crimes against humanity. Forced pregnancy was resisted to the end by Arab governments and nongovernmental right to life groups, who exploited fears that its inclusion would allow the court to prosecute doctors who refused to provide abortions. This was one of the least savory skirmishes in Rome, because both sides gave the impression that their interest lay in influencing the larger UN agenda, instead of preventing the terrible sexual crimes committed against women (and men) in such places as Bosnia and Rwanda. In the end, though, the agreed definitions were a strong restatement of priorities.

The skirmishing over war crimes ranged far and wide. UNICEF and children's groups had hoped that the court would reduce the involvement of children in war, both as victims and participants. There are good things in the statute. For example, the court will not prosecute children under the age of 18. In addition to banning the use of child soldiers under 15, it will also be a war crime to "use" children in war for purposes other than fighting – for example delivering ammunition or reconnaissance missions.

But some key provisions on children were seriously weakened. The UN Convention on the Rights of the Child sets 15 as the minimum age of recruitment, which is too low for many but not something that could be changed in Rome. Given this, campaigners wanted as much protection as possible built into the statute. Here they ran into American concerns that the recruitment of 17-year-olds by the US army might be covered at some stage in the future. As a concession to the US, "recruitment" was changed to

"conscripting and enlisting." The first reaction of children's advocates was that this would make it harder to prevent the forcible recruitment of children by guerrilla groups.

In another piece of chicanery, Lebanon insisted on the insertion of "national" before "armed forces" in order to exempt the recruitment of children by the Hezbollah in southern Lebanon. This too was accepted to bring in the Arab delegations. But it may well create a much broader loophole.

Many will feel the Rome conference missed a huge opportunity to advance the campaign against landmines. A clear majority of governments wanted the use of nuclear weapons, landmines and blinding lasers declared war crimes, and prosecutable by the ICC. But this was resisted by the nuclear powers. Russia, China, Britain and the United States also refused to countenance any inclusion of landmines, whose use they feel is still permitted by customary international law despite growing support for a total ban under the Ottawa treaty.

This produced the worst kind of compromise. Poison gas and dumdum bullets are outlawed. But the vastly more destructive nuclear weapons, landmines and blinding lasers are not. Nor are chemical, biological or bacteriological weapons, which are already subject to nearly universal prohibition. The statute allows for "indiscriminate" weapons that are covered by a comprehensive ban to be included at a review conference. But once again, that would not happen for seven years after the treaty enters force, and many feel that including landmines under the statute would have prodded governments to join the international campaign for a total ban.

War Crimes – the General Debate.

Overall, the section on war crimes was not as damaging as many had feared. At one stage the United States was arguing for a very high threshold, which would have put all but the most egregious war crimes beyond the scope of the court. The Arab states led a large group of nonaligned governments that did not want the court intervening in internal armed conflicts. France dug in its heels over war crimes as a matter of principle, which it felt could be used against French soldiers in Africa and even France's nuclear weapons program.

All this prompted the International Committee of the Red Cross (ICRC) to issue an extraordinary series of public warnings, the like of which has rarely been seen from this august and discreet agency. This helped to ensure that internal armed conflict remained in the statute. Indeed, given that the majority of today's crimes occur in such wars, their exclusion would have been simply unacceptable. Moreover, a late insertion by Sierra Leone ensured that the court will also be able to take up crimes committed by armed groups fighting against each other, as well as government forces.

But once again, some serious compromises had to be accepted. In the first place, although the threshold for war crimes is lower than it could have been, the court will still only be able to prosecute for crimes "in particular when committed as a part of a plan or policy or

as part of as large-scale commission of such crimes." This is intended to ensure that the court concentrates on the larger, more significant crimes (The US also viewed it as a way of ensuring that Americans are not prosecuted for isolated acts in war). But this could give the impression that there is no such thing as the isolated war crime, which would be dangerously misleading. Too often, war crimes do indeed consist of swift and brutal actions against noncombatants – a rape here, a murder there. That will remain a crime, punishable under international law, even if the international court finds such acts beyond its own scope.

As with crimes against humanity, government after government tried to impose its own anxieties – or was it guilty conscience – on these definitions. In return for allowing the court to prosecute war crimes in internal armed conflict, governments will be able to "maintain or re-establish law and order or to defend the unity and territorial integrity of the state by all legitimate means." This could provide a useful loophole for governments like Indonesia, Nigeria, and Algeria as they seek to quash protest with violence.

Here, too, the United States was responsible for inserting a dangerous exemption. Under a compromise worked out at a diplomatic conference in the 1970s, an army can launch an attack which could cause incidental civilian losses as long as this is justified by the military advantage. In Rome, the United States demanded that the word "overall" be introduced in relation to the probable military advantage. This could allow attackers to assault a town as part of a larger military campaign, or in the hope of deriving unspecified future military benefits. Once again, it could well be construed as weakening the protection of noncombatants in war.

But another major initiative by the United States on war crimes was rejected. Just prior to the Rome Conference, the US introduced a long and complex document ("elements of crimes") that proposed sharper definitions of crimes. Given that the court will have to establish criminal responsibility, this was not unreasonable. Some of the phrases used (e.g. "treacherous") are clearly unsatisfactory. The problem was the paper came at the last minute, and so was viewed as a delaying tactic. The proposal survived in the eventual statute, but in greatly diluted form. The proposed elements will merely help the court to interpret crimes, and will have to be adopted by two thirds of the Assembly of States' parties.

At this early stage it is impossible to predict what impact these new definitions will have. One important article states clearly that nothing in the statute will affect current or future international law. But the ICRC is apprehensive that it may complicate the its efforts to promote the Geneva Conventions and additional protocols.

The Fight over Jurisdiction

As expected, the second broad battle in Rome was fought over the jurisdiction of the court. Once again, it clearly divided those in favor of a strong court from those that fear what it might do.

Referrals. Cases will be referred to the court by the UN Security Council, by states' parties to the ICC treaty, and by the court's prosecutor. The inclusion of the latter represents a significant achievement by nongovernmental organizations, which had insisted on the court having a prosecutor who could act proprio motu – that is, initiate his or her own cases and act on information from whatever source.

The United States had strongly opposed this, arguing that the prosecutor would be bombarded by an intolerable amount of information and political pressure. But NGOs replied that the court would simply never receive cases if it were left to the Security Council or governments. There is certainly plenty of evidence to this effect. During the 1970s and 1980s, no government accused the Khmer Rouge of genocide for their atrocities (1975-1978). None accused Iraq of war crimes for having used chemical weapons against the Kurds of Halabja (1988). The reason was simple: both the Khmer Rouge and Saddam Hussein were viewed as allies by Western governments.

Even today, the UN Security Council is selective about when and how it prosecutes war crimes. Tribunals have been set up on the former Yugoslavia and Rwanda. But the Council recently sidestepped calls to establish a tribunal to investigate the mass killing of refugees in the Eastern Congo (1996-1998). This, say NGOs, is politicization on a grand scale and a powerful argument for an independent prosecutor. Not only did the Rome conference agree, but it also established a reasonable balance between the Security Council and Court. The Council will be able to refer cases. It will also be able to withhold cases from the court that would compromise its own peace-making efforts – as long as there is consensus among the five permanent members on the need. This will prevent any single government exercising a veto and keeping a case away from the court.

On the other hand, so many other curbs and restrictions have been built into the court that many fear it will still have a hard time launching a prosecution.

Preconditions to Jurisdiction – acceptance by the state of nationality or territory. A case will only be taken up if the state where the crime occurred or the state of the accused's nationality has ratified the ICC statute, or agreed to accept the court's jurisdiction in the case concerned.

This was the single most disputed article at Rome. It is unacceptable to the United States, because it could allow the court to have jurisdiction over a national from a country that has not ratified the ICC treaty. If, for example, a suspect flees to a country that has not ratified the ICC treaty, he or she would have to be handed over if the state of nationality or territory so demanded. This, to the US, violates a cardinal law of international relations – that states are not bound by a treaty they have not ratified.

But NGOs fear the opposite scenario. Suppose, for example, that a tyrant flees to a third country after genocide has occurred, and is arrested. This (custodial) state has ratified the ICC treaty, and wants to surrender the suspect to the ICC in the Hague. But this will not be permitted unless the state where the crime occurred and the state of the accused's

nationality has agreed. It could, says Richard Dicker of Human Rights Watch, allow war criminals to travel freely around the world.

Both scenarios are conceivable, but on balance the NGO concerns seem more realistic, because Rome made so many other concessions to governments.

Prior Notification and Complementarity. At the insistence of the United States, the prosecutor will first notify all states parties as well as those who would exercise jurisdiction over the case (territorial and nationality states) before a case is taken up. This will allow the government a first shot at prosecution. Unlike the two ad hoc tribunals, which have priority over national courts by dint of having been created by the UN Security Council, the international criminal court will only take up a case if the government is "unable or genuinely unwilling" to do so. How this will be decided in practice is still not entirely clear. The aim is to prevent sham trials, or a case being taken up by a country where the judiciary has collapsed. But there could be plenty of disagreement about when this is the case, and governments will have several chances to challenge the admissibility of a case.

Pre-Trial Curbs. The prosecutor will be kept on a tight leash before and during investigations, and this will certainly rule out any frivolous or unjustified prosecutions. He or she will have to seek permission from a pre-trial chamber (consisting of 3 of the 18 judges) before launching a case. Once a case is under way, the prosecutor will have to seek the cooperation of the government in any investigation that could require compulsory orders (such as search warrants or exhuming mass graves). He or she will only be able to interview voluntary witnesses or consult libraries without being under the scrutiny of the local authorities. The ad hoc tribunals have shown that this could be very valuable, but governments have certainly done much to guard against maverick investigations by the ICC prosecution.

Opting out of War Crimes. The biggest loop-hole of all will allow any state that ratifies the statute to prohibit the court from prosecuting their nationals for war crimes for seven years after it ratifies. This was a concession to the French, whose adherence (with Britain) ensures the court of at least two permanent members of the Security Council. But it could create a two-tier system of crimes under international law once the court comes into existence. At one level, there will be genocide (which very rarely happens) and crimes against humanity. All states that ratify will accept the court's automatic jurisdiction over these two categories. At another level there will be war crimes (which happen wherever soldiers carry a gun). For these, the ICC statute will allow states to simply walk away for seven years. Hopefully, no government will have to gall to accept such an invitation. But it would well be that this will weaken international efforts to outlaw and deter war crimes, and confirm the worst fears of the Red Cross.

The Battle Ahead – and the Role of the United States

Whether or not these fears are realized could depend on how the results at Rome are sold to the public and promoted. Will the emphasis be on the risk or on the potential?

Like it or not, one has to start with the United States - one of just seven governments that voted against the statute in Rome. Not only will the court be weaker for the absence of the US, but the US has repeatedly shown its ability to undermine and work against treaties that do not meet with its approval. It is hardly reassuring to hear US spokesmen insist they will work to "improve" the court in the years ahead.

If the Rome Conference is anything to go by, this means ensuring that the court will never, under any circumstances, prosecute Americans. During Rome, the US repeatedly raised the specter of Americans serving in peacekeeping missions being arrested and tried in a kangaroo court. This certainly betrayed extraordinary insecurity on the part of a country that sees itself as the sole remaining superpower. But is it justified?

In one respect, yes. This is neither the time nor place to review peacekeeping operations in detail, but there can be no doubt that several recent missions have left much to be desired. Hundreds of Somali civilians were killed by UNOSOM in 1994. UNPROFOR troops were accused of frequenting rape hostels and smuggling duty free goods into and out of Sarajevo. UNTAC detained several prominent Cambodians for months without trial in Cambodia (1992). (One Khmer Rouge colonel even died in a UN jail.) Very little has been done to prevent these excesses. Canada, Belgium, and Italy held inquiries into allegations against their troops in Somalia, but peacekeeping missions could clearly benefit from more discipline and accountability. War crimes are war crimes, whether they are committed by Americans, Britons, or Iraqis – in the service of a UN mission or any other military activity. The best way to prevent "maverick" charges against peacekeepers is to tidy up peacekeeping.

But to many governments at Rome, this concern about American peacekeepers seemed little more than a pretext. As it is currently constituted, there is not the remotest chance of the court prosecuting an American for frivolous reasons – any more than it would prosecute a doctor who refused a request for abortion. As a result, observers in Rome looked for a deeper explanation.

Many found it in the presence of military experts on many delegations, not just that of the United States. This explained why the US wanted "conscripting" children, instead of "recruiting" and why Britain, China, Russia, and even New Zealand joined the US in agreeing that soldiers in the heat of battle must always obey orders even if it means shelling the occasional church. There has always been a tension between obeying the orders of a superior and the dictates of natural law. The Rome conference arguably tilted the balance in favor of superior orders, which will be accepted as an excuse against criminal responsibility except in cases of genocide and crimes against humanity. Many concluded that several of these American interventions on war crimes were intended to give the fighting man more leeway.

Then again, at a more political level, many doubted whether the US Senate would ever ratify the statute. This, more than anything, convinced them not to create a weak and pallid court, even if it meant snubbing the United States. Here the US has only itself to blame. Time and time again in the last 20 years, US administrations have exploited the

dark fears of Americans towards multilateral commitments instead of challenging these fears head on. This was the fate of the Law of the Sea Treaty (originally proposed by a Republican administration), the repayment of American dues to the UN, the UN Convention on the Rights of the Child, and even the additional protocols to the Geneva Conventions. In each case, the United States pressed the world to produce a "responsible" package, only to spurn it.

Delegates in Rome saw no chance of this changing as long as US foreign policy is directed by Senator Jesse Helms, chairman of the Senate Foreign Relations Committee. This was one more reason not to create a court that is dedicated to the proposition that it will never prosecute Americans. Delegations were stiffened in their resolve by one of the best organised and best-informed nongovernmental campaigns in the history of UN lobbying.

Given this, a confrontation was inevitable. The Americans demanded a watertight guarantee that the court would not prosecute nationals from states that do not adhere to the new court. When this was not forthcoming, the US joined Libya, Iraq, Israel and three others in lonely opposition. Now the Clinton Administration threatens to actively work against the establishment of the court.

This would be tragically misguided. By trying to safeguard the court against "mischief," the US has weakened its ability to protect noncombatants in war. Many delegations have deep misgivings about the concessions made in Rome. That, if nothing else, should ensure that any campaign to reopen the Rome package by the US will be fiercely resisted.

- Iain Guest is a former journalist and UN official.

Strong Lobbying Efforts of Latin American NGO's Impacted the Rome Conference

The Latin American NGO Caucus came to the Rome conference with a mission. How to turn the adversarial relationship they had at home with their governments into a workable relationship at the conference. They needed to convince their governments that there was popular support for a strong and independent court, and that these governments could provide the leadership that created that court.

There was a diversity of opinions among Latin American countries about how the court should look. Mexico and Colombia were in opposition to the creation of the court. Peru was silent. Brazil was for an opt in/opt out regime. There was concern that Uruguay was following the US, and that smaller Central American countries were getting pressure from the United States. The Pentagon was sending people to talk with military leaders in many of these countries telling them how bad the court would be for them. This put politics back into the military arena, which these countries have struggled to remove. Argentina, Brazil, and Chile were all progressive in their stances.

According to Eduardo Gonzalez, coordinator of the Latin American NGOs for the Coalition, it was a struggle to let governments know that the people at home would support them if they took a strong stance at the conference.

There was a shift in Mexico's stance on war crimes and internal conflict after a widespread cry was taken up in the media at home over their stance. NGOs there spoke out in the media and contacted parliamentarians with real time updating of what their Foreign Affairs minister was doing in Rome. NGOs in Colombia met with their Foreign Affairs minister and were told Colombia would accept the inclusion of internal armed conflict.

At home NGOs made sure that the conference was part of the public debate. They did this by educating people through public discourse and meeting with foreign affairs ministers. In Peru, a debate between the NGOs and the foreign affairs ministers prompted a public outcry from the United States Embassy there. The participants in the debate were able to come to agreement on a number of issues, and were so vocal in their criticism of the United States that the Embassy issued a letter of protest. Peru eventually came out strong on behalf of gender issues and an independent prosecutor.

There were 16 Latin American NGOs represented at the conference. They utilized fax and email to lobby at home. Their concerns about their relationships with their governments at home carrying over to their relationships at the conference were not realized. The government delegations were open to hearing their concerns regarding gender issues. The influences of religion and the Vatican on discussions were not as strong as they had feared. US pressure was also minimized.

The court that emerged from the conference is a testament to the strength of the Latin American Caucus and the work of the NGO Coalition. It is hard to tell if the better relationship established here will carry over to domestic debate on issues economic adjustment programs, national security and peace agreements.

Profiles:

Eduardo Gonzalez, by Anna Bliss

It was not immediately clear to Eduardo Gonzalez why On the Record wanted him for a profile piece. But as the interview got rolling, as he began recalling the experiences that set him on the road to Rome as the ICC Coordinator for Latin America, it became quite clear. Perhaps the most striking quality about this 31-year-old Peruvian is his passion; he is a dynamic, persuasive speaker, and a highly spirited member of the Coalition. He considers himself a sociologist, "but really more an activist."

One day in 1986, in the capital city of Peru, Eduardo was sitting in a class at the Catholic University. Suddenly, he and his classmates were bewildered by the sound of great booming explosions off in the distance. It was not until the following day that Eduardo read in the papers that there had been a mutiny in the island prison of El Fronton, just off

the coast of Lima. The government had responded with a military bombardment that indiscriminately killed over 200 prisoners. "This was a very important moment for me; before, I was this bleeding-heart liberal who theorized a lot. . .. It was then that I really became an activist."

Peru has experienced a great deal of internal conflict. Most notable, for Eduardo, was Shining Path, a radical communist Maoist movement which executed dissidents and leaders of leftist groups who were not exactly aligned with it. Anyone who was not a "pure left winger" was considered a traitor. The object of Shining Path was to create and sharpen contradictions between the have and have-nots. On such grounds, human rights activists were accused of treason.

Frequently, car bombs were planted in residential areas. Two of Eduardo's classmates died in the bombing of the Tarata building. In another incident, his friend Ernesto Castillo was detained by the police, never to be seen again. A campaign eventually brought the case before the Inter-American Court of Human Rights, whereupon the Peruvian State was found guilty.

Another area of immediate concern for Eduardo is the forced recruitment of young people, "a problem I've seen with my own eyes. Young people are rounded up in poor neighborhoods, asked to show their ID's – of course they don't have ID's to show – so they are taken to barracks and forced into military service. . . It is argued that these kids need education, need to be civilized. . . Some of them are as young as 14 and 15 years old."

His interest in the forced draft was strongly inspired by a special case during the border conflict between Peru and Ecuador, when a 14 year old boy was taken to the front and killed because he was ill. "The media presented him as this boy-hero who volunteered, who asked to serve. . . so I investigated." He has published several articles on the topic of forced draft in international magazines.

Such terrors and injustices have long roused the activist in Eduardo. It is little wonder that he has devoted much of his studies to the interests of young people. As an undergraduate, Eduardo worked with social extension groups from his university that reinforced popular movements. He contributed to the work of neighborhood organizations and literacy campaigns, taught classes, and wrote his undergraduate thesis on how young people relate to social matters, class differentiation, and political activism. Eduardo also started to work with an NGO called "Social Photography Workshops" (TAFOS), which appealed to the world of images. The NGO gave cameras to peasant class organizations and workers, encouraging them to use it to strengthen their identity and chronicle their daily lives. As a result, there are about 2 million photos in the Archives in Peru.

By 1992, a coup d'etat imposed harsh neoliberal economic policies, and totally weakened subversive organizations in Peru. Seeing that his opportunities for politics and activism were very limited, Eduardo decided that "it was time to study, time to re-think popular

movements and democracy." In 1995, he earned a Fulbright scholarship that brought him to the New School of Social Research in New York City, where he will be finishing his Ph.D. this year. He is writing his dissertation on partial democracy regimes and in particular the Fujimori regime. He plans to return to his home country after graduating.

In a forum held by the Women's Caucus at the Rome conference, he used the example of forced draft to demonstrate the importance of gender issues that include men as well as women. "There is the perception that gender issues are an exotic fashion from American academia." These issues, he argues, are not only real, but also fundamental to the kinds of inhumanity that the ICC conference is addressing. He asserted, "how masculinity is constructed is a gender issue. There is this idea that men must fight; they are barbaric; their natural inclination is to fight. . . .There is the notion that the army provides rites of passage to real masculinity. Civilians are not considered real men. Men are indoctrinated with an extremely sexist militaristic ideology. That indoctrination is the ideological source of war between men and women. . . .Violence against women is a direct result (and reflection) of violence against men." Eduardo believes those issues of men and women are understandable only in context of each other. He believes that "it would be a great strategy if everyone interested in gender issues united."

Eduardo's larger commitment is to "the permanent expansion of humanitarianism." He declared, "I will put all of my will and strength into the success of this conference." He believes that, in any case, it will be a long fight, but finds hope in the growing allegiance of NGOs. He points out that 600 Latin American NGOs signed a declaration supporting the ICC, 15 of them with representatives actually in Rome. "[The struggle] will not end on the 17th of July, but will begin," he said, referring in particular to the future of the Coalition.

Eduardo's commitment to human rights finds its roots deep in the turbulent history of his people. "We Latin Americans are products of a lot of colonization. . . .We have suffered massive genocide and rape. We have a real mix of culture and diversity, which makes us a unique focus of human rights activism."

There is a well-rounded diversity to the man himself. He recognizes three core areas of his identity: the political, the creative, and the personal. He published a book of poetry (titled "Intolerance" after the 1915 film) before leaving for New York in 1995. Now, in addition to his dissertation, he is working on a free narrative reporting on the 80s, including the issue of disappearances and the political climate in Peru, "a very traumatic time for my generation."

He concluded his interview with On the Record with the same note of modesty that he began with: "I'm not an expert, but I have flare." He describes himself and many of his Latin American colleagues as "students in the school of life." Eduardo has the kind of flare that keeps the conference alive and kicking, even as negotiations draw to a close.

Vahida Nainar from Bombay: "Breaking the myth of homogeneity"
by Anna Bliss

Until today, I had only seen Vahida in what I would consider traditional Indian dress – elegant, earth-toned shalwar-kameez and strappy leather sandals – the kind of indigenous clothing that carries instant mystique to the excessively Western mind such as my own. But today she entered the FAO building in a white T-shirt and a navy blue blazer. What I have come to realize is that Vahida is a truly modern woman – young, cosmopolitan, educated, independent, worldly and actively aware. She has been married once, and lives in her own apartment in Bombay. She works with Women Living Under Muslim Law, an international network that fights to emancipate women from the oppressive, patriarchal interpretations of Islam. Here in Rome, she is a member of the diverse Women's Caucus.

Vahida was raised in a lower-middle class suburb in Bombay – a predominantly Maharashtrian Hindu locality – by parents of mixed cultural and religious heritage. While her father was Muslim, it is the "independent spirit" of her mother that continues to inspire the now 33-year-old daughter. Vahida explained that she was raised in a rather secular household, and that "my interaction was mainly with people of religions other than my own." She has always admired her mother for "living the life of dignity to the extent that she could," even in very limited circumstances. Ms. Nainar gave her children the education and independence that she herself did not enjoy.

Although removed from her Muslim roots while growing up, Vahida would eventually come into close proximity with the destructive realities of Muslim persecution in India. While studying law in the late 80s at the Bombay University, Vahida joined a Muslim women's group called Awaaz-e-Niswaan (Voice of Women) – a group marginalized in the context of the larger women's movement then in India. Starting out in a small law office, Awaaz-e-Niswaan addressed in particular the concerns of Muslim women who were involuntarily "divorced, deserted, and looking for legal recourse." This early experience laid the foundation for her feminist consciousness. Vahida recalled, "when I started to work with women's groups I saw that women were faced with discrimination on a daily basis; I could understand that; I could relate to their frustration. I also saw how other women accepted and internalized it, how it was so ingrained in their consciousness – this was surprising to me. This was another level to deal with as a political ideology."

As the largest minority in India, Muslims have been subject to much persecution. Since 1947, the year of India's independence, the economic status of Muslims has continually deteriorated. In the past 20 years, they have had to contend with the massive growth of the right wing Hindu community, which, according to Vahida, is extremely reactionary and anti-Muslim. India has been riven with communal riots, depriving many Muslims of property and persons.

In 1992, the demolition of a mosque by religious right-wing Hindu forces triggered riots all over the country. According to Vahida, "Bombay was the worst. The outlook of the city changed completely." Vahida pointed out that these communal riots erupted in the name of religion: "Religion was used as a political motivation, when in fact it had a material basis." Left with very little faith in the governmental system, Muslims in India are always wondering when violence will crop up next.

The natural response for many Muslim leaders has been to become more conservative in order to protect Muslim identity. Vahida points out that all too often, "the burden of maintaining Muslim identity falls to women." Concerned with this regressive religious trend, she and her colleagues recognize an urgent need for reform. Muslim women are stuck between a rock and a hard place. "This particular issue I'm working on. It's a very delicate balance" between fighting the reactionary communal forces. She insisted that "change must come from the mobilization of Muslim women themselves."

Vahida has occasionally found herself subject to religious discrimination. As have many Indian women, she has found herself labeled as a Muslim: "my Muslim identity was very latent, but it was brought to the forefront." Twice in Bombay, in 92 and 93, she had difficulties finding apartments: "I was refused for no other reason than because I was Muslim."

Vahida first got involved with WLUML in '88. She applied for its exchange program and was selected to travel abroad. Until then, she had never been outside India, and hardly even outside Bombay. "The exchange program was a real eye-opener to what was happening the world over in contexts that were different from my own," she recalled. Among the places she traveled were Geneva, France, and Egypt. She witnessed the variety of ways that people could live and adapt under the similar context of Muslim law – a huge revelation to someone fighting for human rights.

Women Living Under Muslim Law is a network with links to about 1000 individuals and groups from all over the world – and 30-50 active networkers from Asia, Africa, the Middle East, etc. Founded in '84 and formalised in '86, the networkers meet every three years and decide on upcoming activities. Vahida said that she has "yet to see other organizations function like this." The emphasis is on forging connections and links between women from an array of Muslim communities through publications, solidarity initiatives, and collective projects. The network's four chief projects have included the exchange program, the reinterpretation of the Koran, women and law, and an up-coming one on feminism in the Muslim context.

Network members from 28 countries are participating in the Women & Law research project of documenting Muslim laws from different countries and communities. The aim, Vahida said, is "to break the myth of homogeneity of Muslims as a community – an all pervasive myth both within and outside Muslim communities." Through the scope and breadth of such analysis, these women have been able to conclude that "laws are not divine, but man-made, and therefore changeable . . . though they are derived from a divine source." The final objective of this research project is to publish an international book that illustrates and celebrates the diversity of Muslim laws.

In addition to working with WLUML, Vahida organized the Women's Research and Action Group in '93. "I had this vision," she recalled, "of setting up an organization in Bombay (that would accommodate) the lack of research on issues concerning Muslim women" that she perceived in the women's groups she had come to know.

Rosette Muzigo-Morrison
by Rochelle D. Jackson

I have met some pretty amazing people. People who have rattled my belief system and people who have helped change the way I think. But Rosette Muzigo-Morrison is altogether different. She blew me away.

Rosette arrived in Rome on June 26th. Armed with experience from the International Criminal Tribunal for Yugoslavia (ICTY) and Rwanda (ICTR), she is optimistic that the conference will not only produce concrete results, but will also build upon the experience of both tribunals. Her presence here is hardly incidental. Like many others attending the Rome conference, she has a vested interest – that of a strong International Criminal Court. "If I had my way, either we'd have a meaningful court or we'd have none, instead of a weakling court which would be unable to do anything," she said.

She is acquainted with the difficulties faced by the prosecution as it struggles to investigate international cases against a backdraft of competing state interests. She knows all too well the importance of state cooperation and witness protection. For her, the issues being discussed at the Rome conference are nothing new.

Her beginnings are quite humble. She received her LLM from Notre Dame University in Indiana where her work focused on invoking international human rights law. Her interest and work in human rights began in her native homeland of Uganda. She takes this with her everywhere she goes and remains deeply concerned with human rights violations particularly against women and children.

In 1995, she found herself full thrust amidst the Yugoslav Tribunal with her first case, the Tadic trial. Her assignment: classification of conflicts. That is, whether the Yugoslav conflict was internal or external and whether the prosecution could charge those responsible with violation of the Geneva Convention. Additionally, she conducted extensive research on the development of definitions, the power of the Security Council, and the Tribunal's jurisdiction. She even appeared in court to argue and offer testimony on many of these issues for the Rwanda Tribunal.

Based on her experience with both tribunals and monitoring the discussion on the ICC, Rosette has noted that the resulting ICC may, in fact, be weaker than the tribunals. Her first concern is whether the ICC will be able to transfer accused defendants as opposed to extraditing them. That means if an arrest warrant is issued and an accused is located in a state the accused would be transferred. With extradition the task become all the more complicated. Extradition hearings and related motions may delay an already lengthy court process. The devil may be in the detail, but in a situation such as this it is also cumbersome and breaks down the work of any tribunal. "Can you imagine subjecting this

statute not only to this aspect, but almost every aspect, to national laws? Can you imagine where we are going to end? Is this criminal court ever going to be able to do anything?" she questioned.

Second, she is worried that the definitions of crimes are weaker in the ICC than the tribunals. States are making definitions to avoid collision. "Although it is disguised as the spirit of compromise, it is watering down the core of what humanity suffers," she said.

Third, the statute for the tribunals has more power over states than the ICC will. This is because the tribunals were established differently. Under the tribunal's statute, states have to defer to it even if the country has initiated proceedings for a trial. Unlike the ICC, where deference may have to be given to state laws.

In July 1995, still based with the Yugoslav Tribunal in the Hague, Rosette began working with the ICTR. But it was not until November that she actually began her work in Rwanda as a legal officer with investigators from Holland and Norway. Despite the fact that she and others had been selected to work with the tribunal, there was simply no money. Additionally, there was the practical problem of clearing the ground for landmines, which prevented physical location there, she explained.

Money came later when the prosecutor for the Rwanda Tribunal organized a conference, asking member-states to donate funds to enable the ICTR to begin. States donated money, equipment, and transportation such as trucks and cars or sent personnel.

>From the battlefield to the inner office, her next position was in the Registery, which was in the process of establishing a witness protection unit. When a position opened for an attorney in that department, she applied and was accepted. There, she worked on ensuring implementation of and adherence to protective measures. It is perhaps here that Rosette realized the importance of state cooperation.

"[Here] they talk about it from a very theoretical point of view without taking into serious consideration the reality of what is actually involved," Rosette said. It means asking states to waive the passport requirement for witnesses as well as other intrapoint and departure point procedures. "Without state cooperation you can't do anything," she continued. Thus, states emerge as pivotal players responsible for locating the accused, assisting in preserving evidence and transporting witnesses to name a few. Unlike states, which can call and rely upon its "police," tribunals do not have law enforcers. State cooperation becomes a necessity.

"I'm disappointed by America's stance. In April, I was in America and realized from human rights groups that the Pentagon was not very much in favor of the court," she said of the recent statements made by the United States government. The challenge is: can the world proceed without America? To this question, she admits she is unsure.

"We need an international court and I am hoping that the United States will be able to stand up and say, this is what is right and this is the way to go. I am also hoping that America can cooperate with the rest of the world."

Clarification

There may be some confusion in the important section about the preconditions to jurisdiction of the ICC that appeared in the article by Iain Guest in OTR #22. The court could exercise jurisdiction over a national from a state that has not ratified the ICC statute. If, for example, a suspect from such a state fled to another country he or she could be handed over to the ICC if the state where the crime occurred had ratified the treaty and so demanded. The opposite scenario could occur if a suspected war criminal was to flee to another country and is arrested. This (custodial) state could only surrender the individual to the ICC with the permission of the territorial state, or the state of the accused person's nationality. One of the two would have to have ratified the treaty. This could provide war criminals with a major loophole.

This is a complicated, but critically important component of the statute that will undoubtedly be much scrutinized in the months ahead. We apologize for any confusion.