

Law and Our Rights

Establishment of International Criminal Court

A Historic Step towards Universal Criminal Jurisdiction

by A H Monjurul Kabir

There is no international judicial system for punishing the Pol Pots, Rao Forman Alis or Golam Azams of the world. Although an international court to solve civil disputes between nations has existed in the Hague for 50 years, the only international criminal courts have been the temporary tribunals for Rwanda and Bosnia. The United Nations is not eager to keep setting up new tribunals to deal with new genocides, and a permanent court is needed to act as a deterrent.

FOR more than a century, the world has debated the establishment of a permanent International Criminal Court to try individuals for the most serious violations of international humanitarian law. With each passing war and incident of mass genocide, interest in such a court was rekindled. After the atrocities of World War II, the cry of "never again" reverberated perhaps the loudest — the world never endure another holocaust. Yet for decades the United Nations was unable to advance the cause of a permanent court.

There is no international judicial system for punishing the Pol Pots, Rao Forman Alis or Golam Azams of the world. Although an international court to solve civil disputes between nations has existed in the Hague for 50 years, the only international criminal courts have been the temporary tribunals for Rwanda and Bosnia. The United Nations is not eager to keep setting up new tribunals to deal with new genocides, and a permanent court is needed to act as a deterrent.

In this world, no one seems to be interested in prosecuting the perpetrators of genocides. Bangladesh which experienced 3 million deaths in its bloody war of independence of 1971, is also not an exception. The figure 3 million was first estimated by Bangabandhu Sheikh Mujibur Rahman, the Prime Minister of Bangladesh (as he then was) in an interview with British journalist David Frost on 18 January, 1972 in Dhaka, Bangladesh for New York television programme "David Frost in Bangladesh". The figure quoted by Bangabandhu has now been confirmed by a number of internationally reputed genocide scholars. Professor Ted Robert Gurr of University of Maryland and Professor Barbara Harff of US Naval Academy in Annapolis in a study on "Victims of the State: Genocides, Politicides and Group Representation from 1945 to 1995" set the upper limit as 3 million which ranked Bangladesh next to the holocaust of Hitler, where 6 million Jews were killed. Astonishingly and most unfortunately no governments in Bangladesh since its independence including that of Sheikh Mujibur Rahman took any effective step nationally or internationally to try the perpetrators of genocide of '71. The same thing happened in Cambodia. When the Khmer Rouge appeared ready to turn over Pol Pot last year, no one wanted to prosecute him. Cambodia, fraught with political and legal chaos could not be forum for his trial. Canada had domestic laws enabling its courts to address genocide committed outside its borders. That was very generous of the Canadians, but the world obviously needed a regular venue for delivering verdicts on genocide, war crimes and crimes against humanity.

In fact the creation of a strong and effective International Criminal Court with a global jurisdiction to try war criminals and instigators of genocide individually is long overdue. The world may soon have a strong International Criminal Court to take charge of the Pol Pots. Delegates from the world's nations convened in Rome, Italy on 15 June for the United Nations Plenary Conference on the Establishment of an International Criminal Court (ICC). In Rome, delegates will have the support and expertise of senior representatives from more than 200 NGOs.

However they still have the daunting task of reaching consensus on the draft statute by July 17 1998, when the conference is scheduled to conclude. Organisers have tentatively set July 17 as the date when the ICC statute will be open for signature by all states in Rome.

The International Criminal Court: An Overview
The proposed International Criminal Court (ICC) is a permanent judicial institution with a global jurisdiction to try individuals for gross breaches of international humanitarian law. Unlike the international

Court of Justice in The Hague, whose jurisdiction is restricted to States, the ICC will have the capacity to indict individuals; and unlike the Rwandan and Yugoslavian War Crimes Tribunals, its jurisdiction will not be chronologically or geographically limited. In order to ensure universal acceptance, the jurisdiction of the ICC will be limited to the most serious violations of international humanitarian law, notably the three "core" crimes of war crimes, crimes against humanity, and genocide.

The Rome Conference
The United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court has been convened at the Food and Agricultural (FAO) premises in Rome, Italy from June 15 — July 17, 1998. At the Conference, UN delegates are under the mandate to consider "the question concerning the finalization and adoption of a convention on the establishment of an international criminal court in accordance with General Assembly resolutions 51/207 of December 17, 1997."

Delegates at the Conference face the challenge of addressing numerous issues left unresolved over the past three years of negotiations. Governments must confirm the range of crimes under the Court's jurisdiction, their definitions, the role of the Security Council, the manner in which cases are referred to the Court (or "trigger mechanisms"), the Court's composition, and financing questions.

The ICC is to be established by treaty and its relationship with the UN will be negotiated in a separate agreement between the Court and the UN. It is anticipated that on July 17, 1998, the ICC statute will be open for signature by all states. The number of signatures required for ratification will be determined at the Conference. Once the statute is adopted, like all international treaties, national parliaments and governments must ratify it.

The Need For The ICC
"Never again" was the communal vow after World War II; the world must never see another Holocaust another genocide of 1971 (in Bangladesh). Yet 50 years later, war in Bosnia, genocide in Rwanda, and the death of Pol Pot before he was tried for his crimes, all demonstrated that the global community has failed to uphold its promise. Warlords and dictators plan and commit mass rapes, illegal executions, and other violations of international human rights and almost total impunity. An estimated 14 million civilians have died in war-related deaths since Nuremberg.

Currently, the world's main recourse is to impose sanctions, embargoes, or, very rarely, collective military force in response to the most serious atrocities committed against humanity. These blunt instruments often hurt innocent civilians more than the offending individuals. Only by holding individuals accountable for violations of international law will the global community be able to deal effectively with the perpetrators of the most serious crimes of concern to the international community. This is crucial both to aid present victims and to deter future criminals (who, at a later point, might include drug traffickers, terrorists, and those who commit crimes against UN personnel).

In countries where no courts exist that are capable of dealing with individuals violating international humanitarian law, an ICC could step in. Such a Court could deter future dictators from killing their own citizens. The maintenance of international peace would also greatly benefit from the existence of an ICC. United Nations

peacekeepers can sometimes stop wholesale slaughter by placing themselves between the warring sides. However, as we have seen in Somalia, Bosnia, Rwanda, Haiti, and elsewhere, the hatred that fuels fighting does not go away once the shooting stops. The cycles of violence continue so long as the

History At A Glance

THE "Road to Rome" and the effort to establish a permanent international Criminal Court has been a long and often contentious one. While the Court has roots in the 19th century, the story best begins in 1872, when Gustav Moynier, one of the founders of the International Committee of the Red Cross, proposed a permanent court in response to the crimes of the Franco-Prussian War. The next serious call came after World War I, with the 1919 Treaty of Versailles. Framers of the Treaty envisaged an ad hoc international court to try the Kaiser and German war criminals. The world, reflecting on the Holocaust, cried "never again!" The call for an international institution to try individuals for the most heinous crimes resonated throughout the world — and many saw the founding of the United Nations as a major step towards a permanent Court. Yet more than 50 years would pass before the world's leaders would meet in Rome to participate in a treaty conference to establish a permanent International Criminal Court.

- Here are some highlights of the "Road to Rome" over the last half-century.
- October 1946** Soon after the Nuremberg Judgment, an international congress meets in Paris and calls for the adoption of an international criminal code prohibiting crimes against humanity and the prompt establishment of an international criminal court (ICC).
 - May 1947** The French Representative on the UN Committee on the Progressive Development of International Law and its Codification proposes an ICC.
 - December 9, 1948** The UN General Assembly adopts the Convention on the Prevention and Punishment of the Crime of Genocide. It calls for criminals to be tried by such international penal tribunals as may have jurisdiction. Separately, members ask the International Law Commission (ILC) to study the possibility of establishing an ICC.
 - December 10, 1948** The UN General Assembly adopts the Universal Declaration of Human Rights, detailing human rights and fundamental freedoms.
 - 1949-1954** The ILC studies the question of an ICC, prepares reports, and drafts statutes, but opposition from powerful states on both sides of the Cold War stymies the effort, and the General Assembly effectively abandons the effort pending agreement on a definition of the crime of aggression and an international Code of Crimes.
 - 1974** The General Assembly agrees on a definition of aggression.
 - December 1981** The General Assembly asks the ILC to return to the question of establishing a Code of Crimes.
 - 1989** The end of the Cold War brings a dramatic increase in the number of UN peace-keeping operations and a world where the idea of establishing an international Criminal Court is more viable.
 - June 1989** Motivated in part by an effort to combat drug trafficking, Trinidad and Tobago resurrect the proposal for an ICC. The General Assembly asks the ILC to prepare a draft statute.
 - 1992** The General Assembly requests the ILC to complete a draft statute for an ICC.
 - 1992-1995** War in Bosnia-Herzegovina, clear

people involved feel that justice has not been served.

Support for and Challenges to the Court

The recent effort to establish a permanent International Criminal Court has received widespread support. In the past four years of negotiations, delegates have established consensus on a range of contentious issues. Calls for an independent and effective Court have emerged from new and exciting sources, including powerful regional blocs, coalitions of non-governmental organizations (NGOs), and some of the world's most influential leaders. Court advocates successfully positioned the ICC on national agendas and millions of people now understand the opportunity the world has to create one of the most meaningful international institutions in history.

However, while great progress has been made, major obstacles remain. Challenges to the Court are no surprise, given that thousands of representatives from justice, defense, foreign, and other ministries of the world's governments must meet and agree on a compli-

ment an International Criminal Court, and the independence, impartiality and effectiveness of a Court once approved.

Support for the Court Like-Minded and Regional Groupings

Regional groupings represent one of the most exciting developments of the ICC over the past few years. These blocs of countries identified common principles and positions for an effective Court and organized to advance their agendas. Early in negotiations, small and medium-sized countries formed a bloc of Like-Minded Countries which quickly became a leading force for a strong ICC. Countries have also formed powerful regional blocs.

Non-Governmental Organizations Support
As already mentioned for more than 50 years, NGOs have played a vital role in the effort to establish an ICC. Many of the world's leading human rights, humanitarian, and peace organizations put the ICC at the top of their agendas, and they played an important role in rekindling UN interest in the Court. In February 1995, ap-

proximately 30 of these international NGOs formed the Coalition for an International Criminal Court (CICC) and joined forces in a way never before realized. Three years later, the Coalition is now 800 member organizations-strong, with representative throughout the world.

Challenges to the Court

While state and NGO organizing efforts reflect deep and growing support for the ICC, challenges to the Court remain. These challenges are often political and inter-related, and have emerged in response to specific elements of the draft statute that are still unresolved. Some key areas of debate include the Court's jurisdiction, state consent, Security Council control, the independence of the Prosecutor, and financing of the Court.

Delegates generally agree that the Court has jurisdiction over war crimes, genocide, and crimes against humanity. However, the definition of these crimes is still under debate. Currently, the statute includes more options on the definition of war crimes than were in the original text, including the addition of references to various forms of sexual slavery. No consensus exists on the inclu-

de of prejudice to the accused in his trial. The Court declared that it has power to indicate provisional measures under Article 41 of its Statute, which is intended to preserve the respective rights of the parties pending its decision based on the presupposition that irreparable prejudice shall not be caused to rights which are subject to a dispute in judicial proceeding and that such measures are only justified if there is urgency. The Court found that since Mr. Breard's execution is ordered for 14 April 1998 and such an execution would render it impossible for the Court to order the relief that Paraguay seeks and thus cause irreparable harm to the rights it claims, the Court concluded that the circumstances require it to indicate, as a matter of urgency, provisional measures in accordance with article 41 of its statute.

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an effective Court insist that the definition of genocide, crimes against humanity, and war crimes must reflect the current state of international law. If the definitions are regressive, the damage to international law would be irreparable.

Admissibility and State Consent

The concept of complementarity is intrinsic to the ICC — the Court upholds the primacy of national courts. Its purpose is to complement a national criminal justice system in cases where that system is "unable or unwilling" to investigate on its own. While governments agree of the principle of complementarity, they disagree on the related concepts of state consent and the jurisdiction of the Court. Some delegates contend that a State should be allowed to "opt out" and refuse the jurisdiction of the Court with respect to certain crimes. While such a policy may facilitate the treaty ratification process for many countries, critics argue that a regime of state consent would paralyze the Court.

Security Council Control and the Independence of the Prosecutor
A majority of governments agree that the Security Council should be able to refer cases to the Court. Less agreement exists on Security Council authority to halt ICC proceedings. Many participants believe such authority would jeopardize the independence, credibility, and effectiveness of the Court; a political body should not be able to control a judicial body. Many representatives support a compromise proposed by Singapore, which requires the Security Council to vote in order to halt proceedings.

Connected to this debate is the independence of the Prosecutor. Will the Prosecutor be able to initiate cases (based on information obtained from any source) or do only the Security Council and States party to the treaty have this power? Britain, Germany, South Africa, and about 50 other states believe the Prosecutor should be able to initiate investigations. The United States, France, and some other countries insist that only the Security Council or individual states refer matters to the Court. Needless to say, the latter view may seriously hamper the court's operation.

Financing
One of the most disputed issues of the final PrepCom was the financing of the Court. The draft statute presents three options: through contributions from states, through the United Nations general budget, or through a combination of the two. In addition, the Court may

accept voluntary contributions from governments, international organizations, individuals, and corporations. As of the June Conference, observers estimate that approximately half of the delegations appear to be in favor of direct financing of the Court by the regular UN budget.

The Road from Rome

It is hard to anticipate the results of the Rome Conference. What kind of Court might emerge? Will delegates reach consensus on the most contentious issues by virtue of a "package deal" established in the final moments of negotiations? Will delegates ask for more time, and another Conference, to settle the most disputed sections of the statute? While expectations for Rome are high, advocates for a strong ICC contend that the effectiveness and credibility of the Court must not be sacrificed simply for a conclusive conference. Many delegates and NGO representatives argue that it would be better to extend the negotiation process than to create a weak Court.

Regardless of the outcome, delegates and NGOs will leave Rome with a great deal of work before them. Supporters will have to continue to lobby governments to join the public, and build the case for an International Criminal Court in their home countries. Rome is only one (very important) stop on the road to establishing a permanent Court. And for Bangladesh, it is of immense importance as it testifies a painful and horrifying nine months of genocide still beyond any jurisdiction of justice. But terminating 3 million victims of genocide as merely martyrs and paying rich tribute for them on a regular fashion infact have an inherent tendency to encourage the perpetrators and send a wrong message to the world that we have an opulent heritage of forgiveness towards the perpetrators of crimes against humanity, war crimes and other universal crimes under international law.

This article is dedicated to the sacred reminiscence of Shaheed Janani Jahanara Imam.

Source: At A Glance, ICC. Courtesy: Coalition for An International Criminal Court (CICC); Oshkar, A Coalition for Human Rights and Law Watch, An Alternative Platform for Legal and Human Rights Studies and Action

A Slap on the World Court's Face

Continued from last week

The Paraguayan government claimed that the failure to provide notification required by the Vienna Convention precluded Paraguay from protecting its interests in the United States as provided for in Articles 5 and 36 of the Vienna Convention. Paraguay could not contact its national, assist in the defence of its national's detention, or ensure that international norms were respected in the treatment of, and proceedings against, its national.

Because of lack of such consular assistance, Paraguay maintained that Mr. Breard made a number of objectively unreasonable decisions during the criminal proceedings, which was conducted without translation. He refused to accept the prosecution's offer of life in prison in exchange for guilty plea. He insisted, as he has no understanding of cultural and legal differences between United States and Paraguay, on confessing and denouncing his past criminal

conduct since he believed his confession and denunciation would appeal to the mercy of American court, as they would in court in Paraguay.

As soon as Paraguay came to know Mr. Breard's fate, the consular officers assisted in challenging his conviction and sentence by filing a petition on 30 August 1996 to the Federal Court of First Instance for a writ of habeas corpus, where Mr. Breard claimed for the first time violations of Vienna Convention. The court rejected the assertion of his right under Vienna Convention since the matter was not raised earlier. The court ignored facts that Mr. Breard was unaware of his rights because the United States authorities failed to comply their obligations under the Convention promptly to inform him of those rights.

Since Mr. Breard's petition for a writ of certiorari to the United States Supreme Court to exercise its discretionary authority to review the lower Federal Court's decision against

him had no or very little chance of success, the Republic of Paraguay filed its own lawsuit on 16 September 1996 in Federal Court of First Instance against the municipal officials responsible for Mr. Breard's arrest, conviction, continuing imprisonment, and pending execution, alleging violations of the Vienna Convention.

Finally, the Republic of Paraguay asked the World Court to adjudicate and declare: (1) that United States, in arresting, trying, convicting and sentencing Mr. Breard violated its international legal obligations to Paraguay, as provided by Articles 5 and 36 of the Vienna Convention;

(2) that Paraguay is therefore entitled to restitution in integrum;

(3) that the United States is under an international legal obligation not to apply of procedural default, or any other doctrine of its internal law, so as to preclude the exer-

cise of rights accorded under Article 36 of the Vienna Convention.

(4) that the United States is under an international legal obligation to carry out in conformity with the foregoing international legal obligations any future detention.

International Court of Justice's Provisional Measures:
The parties presented their oral arguments on 7 April 1998, and two days later, on 9 April, 15 Judges of the International Court of Justice pronounced a historic order. The World Court judges recalled all the arguments put forward by the parties and concluded that it has, prima facie, jurisdiction under Article 1 of the Optional Protocol to decide dispute between Paraguay and United States and decided that the relief sought by Paraguay under the Convention can only be determined at the stage of merits including whether the remedy is depended upon evi-

যে কোন পানি ব্যবহারযোগ্য। **PURE LIFE** পানি ফুটানোর প্রয়োজন নেই।

CRYSTAL MINERAL WATER POT

দক্ষিণ কোরিয়ার তৈরি "পিওর লাইফ" ব্রান্ড ড্রাগটার পিউরিকারার Unbreakable Jar (অভঙ্গ্য পাত্র) সহ এখন বাজারে পাওয়া যাচ্ছে। ১০০% ব্যাকটেরিয়া মুক্ত ও আর্পেটিক নিয়ন্ত্রিত বিতক মিনারেল পানির জন্য আপনি নির্ভরনার আপনার জন্য স্বাস্থ্যের মতোই কিনতে পারবেন।

"পিওর লাইফ" - এ নিয়ন্ত্রিত স্বরতলির মধ্য হতে পানি পরিশোধিত হয়ে আপনার পরিবারের সকলের জন্য সুস্বাদু ও স্বাস্থ্যকর পানি ফুট গ্রেড অভঙ্গ্য পাত্রে জমা হবে-

১ম স্তর : মাইক্রো ডোম সিরামিক ফিল্টার :
সিরামিক সিলভার দ্বারা আত্মদিত। ব্যাকটেরিয়া, মশা, জীবাণু, ভাইরাস ইত্যাদি পরিশোধিত করে।

২য় স্তর : অ্যাকটিভেটেড সিলভার কার্বন :
ক্লোরিন, ট্রাইহ্যালোমিথেন, জৈব রসায়ন, দুর্গন্ধ ও রং পরিশোধিত করে পানিকে স্বচ্ছ, পরিষ্কার করে স্বাভাবিক পানির ন্যায় প্রকৃত করে এবং খাওয়ার উপযোগী করে।

৩য় স্তর : ডিওক্লোরিন :
হেভী মেটাল শরীরের ভিতর জমা হয়ে মানুষকে শারীরিকভাবে ক্ষতিগ্রস্ত করে। "পিওর লাইফ" পানি বাহিত সকল প্রকার ভারী পরমাণুক দ্রব্য সম্পূর্ণভাবে পরিশোধিত করার ক্ষমতা রাখে।

৪র্থ স্তর : সিলিকা স্যাট :
অ্যাসিডিটি সমূহ অপসারণ করে পানির PH এর ভারসাম্য রক্ষা করে।

৫ম স্তর : সুপার ম্যাক মিনারেল স্টোন :
"পিওর লাইফ" এর মধ্যে সুপার ম্যাক মিনারেল স্টোন "জারমেনিয়াম" নামক এক ধরনের পদার্থ থাকে যেটা যন্ত্রার সেলকে প্রতিরোধ/ক্ষয় করে এবং দুর্গন্ধ ও দুর্ভিত পদার্থ শোষণ করে। পানিতে মিনারেল আয়ন ও অক্সিজেন সংযোগ করে এবং স্বাস্থ্য ভাল রাখে। এই পানির ব্যবহারের পূর্বে ফুটানোর কোন প্রয়োজন হয় না।

পানি শরীরের জন্য অপরিহার্য। মানুষের শরীরে ৬০ - ৭০ ভাগ পানি থাকে এবং শরীরের প্রায় প্রতিটি কার্যক্রমই পানির ব্যবহার অনবর্য। সেজন্য বিতক ও মিনারেল পানি খাওয়া প্রতিটি সচেতন নাগরিকের একান্ত প্রয়োজন। "পিওর লাইফ" সেক্ষেত্রে আপনার একমাত্র বিত্তক বন্ধু।

বাংলাদেশের একমাত্র পরিবেশক

কোবেদা ওভারসীজ লিঃ
ঢেয়ার বিল্ডিং (৬৫-৬৬ মতিঝিল বা/এ, ১০ম তলা) ঢাকা-১০০০
ফোন : ৯৫৫২৮৫৫, ৯৫৫১৬৯৯, ফ্যাক্স : ৯৫৫২৪৯৭