

**Interest Group on**

# **INTERNATIONAL ORGANIZATIONS**

**THE AMERICAN SOCIETY OF INTERNATIONAL LAW    SPRING 2001    NEWSLETTER**

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## **A MESSAGE FROM THE CHAIR**

It is a pleasure to present the Spring 2001 Issue of the Newsletter of the ASIL International Organizations Interest Group. This issue contains articles about the International Criminal Court, the international administration in Kosovo and East Timer, and Non-Governmental Organizations that fight crime. Special thanks go to our Committee Chairs and especially our Newsletter editor, Bryan MacPherson, for making this publication possible.

At the Annual Meeting on Friday, April 6, 2001, from 12:15-1:45 pm, our Interest Group will be sponsoring a panel on "The Proliferation of International Tribunals: Conflict or Coexistence, featuring Gregory Fox, John Washburn, Laurence Helfer, and Cesare Romano. Following the panel will be a brief Interest Group business meeting, at which we will elect officers for the 2001-2002 term. If you are interested in serving as Chair of one of our Interest Group's Committees next year, please let me know before the meeting.

On November 3, 2000, the International Organizations Interest Group served as the primary sponsor of a major international conference in Boston entitled "Universal Jurisdiction: Myths, Realities, and Prospects. The conference speakers included David Scheffer, U.S. Ambassador at large for War Crimes Issues; Henry King, who served as a prosecutor at Nuremberg; William Schabas, Director of the Irish Centre for Human Rights; Jason Abrams of the United Nations Office of Legal Affairs; Lt. Col. William Lietzau, who recently served as Legal Adviser to the Joint Chiefs of Staff; as well as a number of academic experts and legal counsel to Amnesty International, Human Rights Watch, and the Lawyers Committee for Human Rights. The

Conference papers are being published in the spring 2001 issue of the New England Law Review.

On November 9, 2001, the International Organizations Interest Group and the International Law Students Association will co-sponsor a day-long conference entitled "Responding to Rogue Regimes." If you are interested in serving on the Program Committee and helping to organize panels for this conference, please let me know as soon as possible.

I hope you find the information and articles contained in this newsletter to be of interest, and I encourage you to submit a short article for publication in our Fall Issue of the Newsletter.

Prof. Michael P. Scharf  
New England School of Law  
Chair, 10 Interest Group  
(617) 457-3009  
mscharf@fac.nesl.edu

**ASIL • 2223 Massachusetts Avenue, N.W. • Washington, DC 20008 • (202)  
939-6000**

In the waning days of his presidency, William J. Clinton authorized the U.S. signature of the Rome Treaty establishing an International Criminal Court, making the United States the 138th country to sign the treaty by the December 30th deadline. According to the ICC Statute, after December 30, 2000, States must accede to the Treaty, which requires full ratification -- something that was not likely for the United States in the near term given the current level of Senate opposition to the Treaty. While signature is not the equivalent of ratification, it sets the stage for U.S. support of Security Council referrals to the International Criminal Court, as well as other forms of U.S. cooperation with the Court. In addition, it enables the United States to continue to seek additional provisions to protect American personnel from the court's jurisdiction. Clinton's action drew immediate fire from Senator Jesse Helms, Chairman of the U.S. Senate Foreign Relations Committee, who has been one of the treaty's greatest opponents. In a Press Release, Helms stated:

Today's action is a blatant attempt by a lame-duck President to tie the hands of his successor. Well, I have a message for the outgoing President. This decision will not stand. will make reversing this decision, and protecting America's fighting men and women from the jurisdiction of this international kangaroo court, one of my highest priorities in the new Congress.<sup>1</sup>

During the 107th Congress, Helms is likely to resurrect the "Servicemembers Protection Act, Senate Bill 2726, which he initially introduced in June 2000. The Act would prohibit any U.S. Government cooperation with the ICC, and cut off U.S. military assistance to any country that has ratified the ICC Treaty (with the exception of major U.S. allies), as long as the United States has not ratified the Rome Treaty. Further, the proposed legislation provides that U.S. military personnel must be immunized from ICC jurisdiction before the U.S. participates in any U.N. peacekeeping operation. The proposed legislation also authorizes the President to use all means necessary to release any U.S. or allied

personnel detained on behalf of the Court.<sup>2</sup>

The inescapable reality for the United States is that the ICC will soon enter into force with or without U.S. support. As this is being written, twenty-seven countries have already ratified the treaty, and 139 have signed it, indicating their intention to ratify.<sup>3</sup> Sixty ratifications are necessary to bring it into force. The Signatories include every other NATO State except for Turkey. Three of the Permanent Members of the Security Council (France, Russia, and the United Kingdom) have signed it. Both of the United States' closest neighbors (Mexico and Canada) have signed it. And even Israel, which had been the only Western country to join the United States in voting against the ICC Treaty in Rome in 1998, later changed its position and signed the Treaty.

The question facing the Bush Administration, then, is whether its interests are better served by playing the role of a hostile outsider (as embodied in Jesse Helms' "American Servicemembers Protection Act") or by playing the role of an influential insider (as the U.S. has done for example with the Yugoslavia Tribunal). In deciding on a course of action, the Bush Administration must take into consideration the consequences that would flow from the hostile approach.

First, the approach would transform American exceptionalism into unilateralism and/or isolationism by preventing the United States from participating in U.N. peacekeeping operations and cutting off aid to many countries vital to U.S. national security. Further, overt opposition to the ICC would erode the moral legitimacy of the United States, which has historically been as important to achieving U.S. foreign policy goals as military and economic might. Perversely, the approach may even turn the United States into a safe haven for international war criminals, since the U.S. would be prevented from surrendering them directly to the ICC or indirectly to another country which would surrender them to the ICC.

Second, the United States would be prevented from being able to take advantage of the very real benefits of an ICC. The experience with the Yugoslavia Tribunal has shown that, even absent arrests, an international indictment has the effect of isolating rogue leaders, strengthening domestic opposition, and increasing international support

for sanctions and even use of force. The United States has recognized these benefits in pushing for the subsequent creation of the ad hoc tribunals for Rwanda and Sierra Leone, as well as proposing the establishment of tribunals for Cambodia and Iraq. But the establishment of the ICC will signal the end of the era of ad hoc tribunals. When the next Rwanda occurs, the United States will not be able to employ this very useful tool of international criminal justice.

The United States has suggested that without its support, an ICC is destined to be impotent because it will lack the power of the Security Council to enforce its arrest orders. But as the ad hoc Tribunals for Rwanda and Sierra Leone indicate, in most cases where an ICC is needed, the perpetrators are no longer in power and are in the custody of a new government or nearby states which are perfectly willing to hand them over to an ICC absent Security Council action. Moreover, the Security Council has been prevented (by Russian veto threats) from taking any action to impose sanctions on States that have not cooperated with the Yugoslavia Tribunal despite repeated pleas from the Tribunal's Prosecutor and Judges that it do so. Indeed, in the Yugoslavia context, where the perpetrators were still in power when the Tribunal was established, it was not action by the Security Council, but rather the withholding of IMF loans that have induced Croatia to hand over two dozen Croat indictees. This indicates that, unlike the League of Nations (which ICC opponents in the United States have frequently referred to in this context), the ICC is likely to be a thriving institution even without United States participation. In other words, the United States may actually need the ICC more than the ICC needs the United States.

Third, the United States achieves no real protection from the ICC by remaining outside the ICC regime. This is because Article 12 of the Rome Statute empowers the ICC to exercise jurisdiction over nationals of non-party States who commit crimes in the territory of State Parties. Opponents of the ICC have attempted to negate this problem by arguing that international law prohibits the ICC from exercising jurisdiction over the nationals of non-parties.<sup>4</sup> In a lengthy article in *Law and Contemporary Problems*, I provide a detailed critique of this legal argument, pointing out that it is not supported by the historic record or guiding precedents.<sup>5</sup> But far more important than what I have to say is the fact that the

representatives at the ICC PrepCom have rejected the argument, indicating that the ICC Assembly of State Parties and the ICC itself are extremely unlikely to accept it.

If U.S. officials and personnel can be indicted by the ICC whether or not the U.S. is a party to the Rome Treaty, then the United States preserves very little by remaining outside the treaty regime, and could protect itself better by being an influential insider. This has been proven to be the case with the Yugoslavia Tribunal, which the U.S. has supported with contributions exceeding \$15 million annually, the loan of top-ranking investigators and lawyers from the federal government, the support of troops to permit the safe exhumation of mass graves, and even the provision of U-2 surveillance photographs to locate the places where Serb authorities had tried to hide the evidence of its wrongdoing.<sup>6</sup>

This policy bore fruit when the International Prosecutor opened an investigation into allegations of war crimes committed by NATO during the 1999 Kosovo intervention. Despite the briefs and reports of reputable human rights organizations arguing that NATO had committed breaches of international humanitarian law, on June 8, 2000, the International Prosecutor issued a report concluding that charges against NATO personnel were not warranted.<sup>7</sup> I am not suggesting that the United States coopted the Yugoslavia Tribunal; but when dealing with close calls regarding application of international humanitarian law it is obviously better to have a sympathetic Prosecutor and Court than a hostile one.

I served as Attorney-Adviser for Law Enforcement and Intelligence and Attorney-Adviser for United Nations Affairs at the State Department under the first President Bush. Unlike much of the commentary on both sides of this issue, which is clouded by emotionalism and idealism, I have sought here to provide a detached risk-benefit analysis of the foreign policy and national security consequences of the question facing the new Administration.<sup>8</sup>

The risks to U.S. servicemembers presented by the ICC have been greatly exaggerated, while the safeguards contained in the ICC Treaty have been seriously underrated. But to the extent that such fears are valid, U.S. opposition to the ICC will only increase the likelihood that the ICC will be more hostile than sympathetic to U.S. positions. And, ironically, by opposing the Court, the United States would likely engender more

international hostility toward U.S. foreign policy than could result even from an indictment by the Court. Thus, whether or not the U.S. is able to achieve additional safeguards to prevent the ICC from exercising jurisdiction over U.S. personnel, it will be in the interests of U.S. national security and foreign policy to support, rather than oppose, the ICC. This does not require immediate ratification. Perhaps it is better to let the Court prove itself over a period of years before sending the treaty to the Senate. But when the next Rwanda-like situation comes along, the Bush Administration will find value in having the option of Security Council referral to the ICC in its arsenal of foreign policy responses.

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Notes:

1. Press Release, December 31, 2000: Helms on Clinton ICC Signature: "This Decision Shall Not Stand." Copy on file with the author.
2. See S.2726, 106th Cong. (1999).
3. Rome ICC Treaty Conference: Rome Statute Signature and Ratification Chart, [www.igc.org/icc](http://www.igc.org/icc).
4. See Preamble to S. 2726; Press Release, December 31, 2000: Helms on Clinton ICC Signature: "This Decision Will Not Stand."
5. Michael P. Scharf, The ICC's Jurisdiction over the Nationals of Non-Party States: A Critique of the U.S. Position, 63 LAW & CONTEMP. PROBS. (2001), On internet at [www.law.duke.edu/journals/63LCPscharf](http://www.law.duke.edu/journals/63LCPscharf).
6. Ruth Wedgwood, Improve the International Criminal Court, in Toward an International Criminal Court 57 (Council on Foreign Relations, 1999), available at [www.foreignrelations.org/public/pubs](http://www.foreignrelations.org/public/pubs).
7. Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia, at 44 (on file with the author)
8. For a more detailed analysis, see THE UNITED STATES AND THE INTERNATIONAL CRIMINAL COURT: NATIONAL SECURITY AND INTERNATIONAL LAW (Sewall and Kaysen, eds., 2000) (A project of the American Academy of Arts and Sciences of which I served as Co-Director).

## 2000-2001 INTERNATIONAL ORGANIZATIONS INTEREST GROUP OFFICERS

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Article 71 of the U.N. Charter provides that the Economic and Social Council may make arrangements to consult with non-governmental organizations concerned with matters within its competence. Paragraph 20 of the Council's resolution 1996/31 (U.N. document E/1996/96, at 55) states that such consultative arrangements are made to enable the Council or one of its bodies to secure expert information and advice from organizations having topical proficiency and to permit organizations that represent important public opinions to express themselves.

There exist scores and scores of non-governmental organizations devoted to the eradication of crime. The most influential of these organizations have "consultative status" and work directly with the Economic and Social Council. (The definitions for "general consultative status," "special consultative status," and "on the roster" are in paragraphs 22, 23, and 24 of the Council's resolution 1996/31.) Such non-governmental organizations are invited to attend and participate in sessions, including committee meetings and programs, of the Council's Commission on Crime Prevention and Criminal Justice. They help plan and sometimes fund programs, they recommend experts and consultants for projects, they sponsor seminars, and they produce manuals and other publications. These same organizations (and others that request ad hoc accreditation) are also invited to participate in the quinquennial U.N. Congresses on the Prevention of Crime and the Treatment of Offenders. They may also be given the privilege to request and receive information from the U.N.'s Department of Public Information and from the Dag Hammarskjöld Library.

This article identifies and describes these non-governmental organizations. The twenty-three NGOs included in this article were found in the Yearbook of International Organizations, in the Crime Prevention and Criminal Justice Newsletter of June 1997, in the "List of Non-Governmental Organizations in Consultative Status" (U.N. document E/1999/INF/5), and on the Economic and Social Council's webpage for links to its listings of NGOs having consultative status, at [http://www.unog.ch/ess\\_mission\\_services/ngo/ngo2.asp](http://www.unog.ch/ess_mission_services/ngo/ngo2.asp).

1. Academy of Criminal Justice Sciences  
1500 North Beauregard Street, Suite 101  
Alexandria, Virginia 22311  
<<http://www.acjs.org/>>

Founded in 1963, the Academy promotes scholarly and professional research in the disciplines of criminal justice and policy analysis, and sponsors conferences and publications for disseminating its members' ideas and findings. The Academy claims to have over 4,000 members, and one of its main objectives is the professional growth of its individual members. The Academy also has scores of institutional members, many of which are colleges and universities that offer degrees in criminology and criminal justice.

2. Asia Crime Prevention Foundation  
Sunshine 60 Building, 36th floor  
1-1 Higashi-Ikebukuro  
3-Chome, Toshima-ku  
Tokyo 170, Japan  
<<http://www.acpf.org/>>

The Foundation was established in 1982 to promote sustainable development, peace, and stability in Asia through more effective crime prevention, criminal justice policies and practices, and mutual cooperation. Its goal is "Prosperity Without Crime." The Foundation organizes annual world conferences as forums for discussion and action, it publishes reports, and it sponsors special initiatives in support of the U.N. Crime Prevention and Criminal Justice Programme. By facilitating contacts and ongoing cooperation among its members in fifty-nine countries and territories, many of them in decision-making positions as well as in academia, it reinforces its resolve and its solidarity. The Foundation publishes monographic reports and the quarterly Asian Journal of Crime Prevention and Criminal Justice.

3. Centro Nazionale di Prevenzione e Difesa Sociale

Piazza Castello 3  
20121 Milan, Italy

The Centro considers itself the lead Italian institution in crime prevention and social control and concerns itself with issues like organized crime, money laundering, corruption, environmental offenses linked to technology, juvenile maladjustment and delinquency, and migration and crime. In the field of criminal justice, the Centro attracts experts, encourages research, sponsors colloquiums, and publishes. It also acts as the secretariat for the International Society of Social Defense and Humane Criminal Policy, the International Association of Penal Law, the International Penal and Penitentiary Foundation, the International Society of Criminology, and the International Committee for Coordination. Also in its capacity of secretariat, it organizes many of the inter-organization preparatory meetings for the U.N. quinquennial Congresses on the Prevention of Crime and the Treatment of Offender.

4. Forum Européen pour la Sécurité Urbaine  
38 Rue Liancourt  
F-75014 Paris, France  
<<http://www.urbansecurity.org/>>

Formed in 1987, the Forum is a network of about 150 (chiefly) European cities and towns. All its work is aimed at reducing crime and delinquency and at promoting safety and security in cities, on city transport, in shopping centers, and in schools. It specializes in the sorts of conflicts that occur in cities among different age groups, in close spaces, during festivals, with migrants, among juvenile recidivists, etc. It sponsors training for municipal safety officials and arranges studies and programs between individual European cities and international associations and institutes. The Forum has consultative status with the Council of Europe. It has worked with the U.N. Centre for Human Settlements (HABITAT) and with the recent U.N. Congresses on Crime Prevention and Treatment of Offenders, and it has participated at meetings on urban crime and insecurity convened by the U.N. and the European Union.

- 5 Friends World Committee for Consultation  
4 Byng Place  
London WC1E 7JH, United Kingdom  
<<http://www.quaker.org/fwcc/>>

Founded in 1937, the Committee has

organizations and individual members in eighty-two countries and territories. It works to encourage and strengthen the religious life of Friends with workshops, intervisitations, study, conferences, and lectures and to promote understanding between Friends and people of other faiths. Particularly, the Committee is interested in prison issues and penal reform, peace, disarmament, the environment, and women's rights and proper treatment. The Committee began its representation at the U.N. in 1948. Today, in addition to special consultative status with ECOSOC, it has consultative status with the U.N. Conference on Trade and Development, and permanent liaisons with the U.N. Environment Programme, the U.N. Children's Fund, and the U.N. Development Fund for Women. It publishes the semiannual Friends World News.

6. Howard League for Penal Reform  
1 Ardleigh Road  
London N1 4HS, United Kingdom  
<<http://web.ukonline.co.uk/howard.league>>

Established in 1867, the League was the first organization in the world to be granted U.N. consultative status. Much of its work is conducted in England and Wales. It also works directly with the U.N. Committee on the Rights of the Child. The League is concerned with issues like alternatives to prison, suicide and violence in prisons, shackling of women prisoners, rehabilitation, the age of criminal responsibility for children, and prison visitation rights for women with children. It publishes original research on these concerns and holds conferences and seminars and runs public education campaigns to disperse its ideas and to eventually influence governmental policies. The League publishes reports, fact sheets, books, the quarterly Howard League Magazine, and the quarterly Howard Journal of Criminal Justice.

7. Human Rights Watch (HRW)  
350 Fifth Avenue, 34th floor  
New York, New York 10118-3299  
<<http://www.hrw.org/hrw/index.html>>

Founded in 1987, much of HRW's work consists of specialized prison research. It investigates conditions for sentenced prisoners, pre-trial detainees, immigration detainees, and those held in police detention facilities, whether the prisoners

are political or criminal. It searches for instances of murder, disappearance, torture, arbitrary incarceration, deplorable jail conditions, and discriminatory treatment practices. HRW relies for the bases of its prison examinations on the "Standard Minimum Rules for the Treatment of Prisoners." (See U.N. document A/Conf.G/1, pg. 67-75.) Its inspectors visit only the institutions it targets (not model prisons), and they must be able to converse privately with inmates of their choice. HRW publishes its findings in reports which are released to the press, sold openly, and sent to the governments of the countries wherein the studies were made.

8 Institut Henry Dunant  
114 Rue de Lausanne  
1202 Geneva, Switzerland  
<<http://www.henrydunant.org>>

The Institut was founded in 1965 by the International Committee of the Red Cross as a research and training institute for Red Cross activities. The Institut has a library of more than 10,000 volumes and continually sponsors studies on, for example, training youth leaders and on the origins of the Red Cross and its principles. It organizes seminars and round tables -- often including government officials -- on humanitarian concerns such as conscripting children as soldiers, family reunification after wars, prisoner treatment, and the growing numbers of street children in the world. The Institut has permanent liaisons with the U.N. Educational, Scientific and Cultural Organization, the U.N. Institute for Training and Research, and the Council of Europe.

9. International Association of Judges  
Palazzo di Giustizia  
Piazza Cavour  
1-00193 Rome, Italy  
<<http://space.tin.it/edicola/masbonom/>>

Founded in 1953, the Association is a non-political international organization of, not individual judges, but national associations of judges. Its aim is to safeguard the independence of the judiciary. The Association also has consultative status with the Council of Europe and the ILO. It attends and contributes to the U.N. Congresses on the Prevention of Crime and the Treatment of Offenders. (See, for example, U.N. document A/Conf.144/19, pg. 14). Four study

commissions annually research and publish reports on judicial system issues. The themes of the research work can be obtained from its website.

10. International Association of Juvenile & Family Court Magistrates  
Justitieplein, Sluissingel 20  
NL-4811 TA Breda, The Netherlands  
<<http://www.uia.org/uiademo/org/c1375.htm>>

The Association was founded in 1928 and is comprised of national associations (and many committed individuals) whose members exercise functions as youth and family court judges or with services directly linked to youth justice and welfare. It is often asked to furnish experts to help draft international conventions concerned with the interests and protections of children, such as the Council of Europe's European Convention on the Exercise of Children's Rights (ETS no. 160) and the U.N. "Standard Minimum Rules for the Administration of Juvenile Justice" document A/RES/40/33 of 1985). The Association also has consultative status with the U.N. Children Fund. The members of the Association study the functioning of judicial authorities charged with jurisdiction over minors, the causes of youth maladjustment, and national legislation meant to benefit the governance of children. The Association biannually publishes The Chronicle, which is a forum for its members to debate their interests.

11. International Association of Penal Law  
Parliament  
A-1017 Vienna, Austria

The objective of the Association is to harmonize laws on criminality with scientific findings and data on crime. Its members concern themselves with the scientific study of the causes of crime, of the offenders themselves, and of the needed legal safeguards of society. These scientific studies culminate in the International Association's quinquennial congresses, the last of which was held in Budapest in 1999. Many of the studies are published in the International Association's two serials, *Revue Internationale de Droit Penal* and *Nouvelles Etudes Penales*. The Association was founded in 1924, and also has consultative status with the Council of Europe, and the GAS. It works closely with ECOSOC's Crime Prevention and Criminal Justice Division by hosting meetings,



publishing various U.N. materials, and by contributing funds to certain U.N. crime research and training projects.

12. International Bar Association

271 Regent Street  
London W1R 7PA, United Kingdom  
<<http://www.ibanet.org/>>

The Association was formed in 1947 as a federation of national bar associations and law societies. It has two million individual lawyer members in such national associations in 104 countries and territories. The Association's objectives are to advance and unify the science and practice of jurisprudence, to promote ideational exchanges among national bar associations, and to work with the legal departments of international organizations like the U.N.. For example, the Association in 1997 provided substantive material on the role of criminal law in the protection of the environment to the U.N. Commission on Crime Prevention and Criminal Justice. (See U.N. document E/Cn.15/1997/10, pg. 17-18.) Furthermore, it has supported the establishment of the International Criminal Court and continuance of the International Criminal Tribunal for the Former Yugoslavia. It also holds general consultative status with the U.N. Conference on Trade and Development, and observer status with the World Intellectual Property Organization, the Council of Europe, and the International Maritime Organization. It publishes the monthly International Business Lawyer, the International Code of Professional Ethics, conference reports, books, and pamphlets.

13. International Committee of the Red Cross (ICRC)

19 Avenue de la Pair  
CH-1202 Geneva, Switzerland  
<<http://www.icrc.org/ihl>>

The ICRC was founded in 1863 and performs two important duties: it reviews and counsels revisions to the Geneva Conventions on war practices and to drafts of new humanitarian treaties before they are submitted to diplomatic conferences; and it watches, during armed conflicts, for violations of war-making agreements, of prisoner of war agreements, and humanitarian treatment agreements, and publicizes such

violations to create public pressure against the violators. The ICRC has a large staff. It publishes the bimonthly International Review of the Red Cross, in which it reports its activities and its draft proposals for updates and revisions of international war victims rights agreements. It has observer status with the U.N. General Assembly and with the U.N. Special Committee on Peace-Keeping Operations.

14. International Institute of Higher Studies in Criminal Sciences

12 Via S. Agati  
I-96100 Siracusa, Italy  
<<http://www.ncjrs.org/unojust/isisc.htm>>

The role of the Institute is to convene conferences of experts and to conduct studies and training sessions in order to develop U.N. norms and standards in comparative criminal justice and human rights. Some of the Institute's concerns are extradition, organized crime, and impunity. In 1996, it prepared text for three sections of the Draft Statute for the International Criminal Court (U.N. document A/Conf.183/2/add.I). In 1997, it hosted and worked with the U.N.'s Intergovernmental Expert Group Meeting on Extradition and contributed substantially to the Group's final resolution, especially to the section covering the planning of training seminars for developing countries. (U.N. document E/Cn.15/1997/6, pg. 8-10). The Institute was founded in 1972, and also has consultative status with the Council of Europe. It publishes the Quaderni series on the criminal sciences.

15. International Society for the Reform of Criminal Law

840 Howe Street, Suite 1000  
Vancouver, B.C., Canada V6Z 2M1  
<<http://www.isrcl.org/>>

This is an association of judges, legislators, lawyers, academics, and government officials, is drawn largely from common law jurisdictions. It was established in 1987 and, in general, is committed to advancing international standards of law and criminal justice worldwide. Its interests include developing policies for the International Tribunal for Crimes in the Former Yugoslavia, drafting model legislation on criminal sanctions to protect the environment, developing an international peacekeeping program, and sponsoring studies of the impact of crime on



women and children. The Society has participated in a number of U.N. meetings and conferences and works directly with the U.N.'s Crime Prevention and Criminal Justice Programme. It has observer status with the Council of Europe but not yet with ECOSOC. Since 1991, the Society has published the Criminal Law Forum jointly with Rutgers University School of Law at Camden, New Jersey.

16. International Society for Traumatic Stress Studies  
60 Revere Drive, Suite 500  
Northbrook, Illinois 60062  
<<http://www.istss.org/> >

Members of the Society are concerned with the immediate and the long-term consequences of traumatically shocking events on people. Such traumatized people include victims of crime or community violence, holocaust survivors, refugees, torture patients, victims of political oppression or exploitation, persons suffering with severe grief, and persons in high risk occupations. Members of the Society conduct studies, deliver lectures and publish articles on innovative remedies for the victims, and on feasible pro-active preventions for traumatizing situations. The Society publishes the quarterly Journal of Traumatic Stress. The Society began in 1985. It also has consultative status with the U.N. Children Fund and, associative status with the U.N. Department of Public Information. Currently, the Society is working with the U.N. to develop instructions and guidelines for governments of countries torn by trauma-causing events.

17. International Society of Social Defence and Humane Criminal Policy  
Piazza Castello 3  
1-20121 Milan, Italy

Founded in 1946, the Society's mission is to advance socialistic, multidisciplinary theories of criminality and of society's reaction to crime, to decriminalize and depenalize the less harmful crimes, and to rely on less suppressive and more enlightened responses to those crimes. It envisions a formal establishment of structured criminality policies and services that would become a section of institutionalized society. The Centro Nazionale di Prevenzione e Difesa Socials acts as its secretariat. One of its concerns is

public corruption. Its representatives annually addend and advise the meetings of the Economic and Social Council's Commission on Crime Prevention and Criminal Justice, one of whose jobs is to implement the United Nations' 1996 Declaration Against Corruption and Bribery in International Commercial Transactions (U.N. document A/RES/51/191).

18. Prison Fellowship International (PFI)  
P.O. Box 17434  
Washington, D.C. 20041  
<<http://www.pfi.org/>>

PFI is an association of prison fellowship organizations in eighty-six countries and territories. It was founded in 1979 and today claims a staff of 300 paid workers and of 100,000 volunteers. The national organizations work in each country with Christian churches to assist prisoners and ex-prisoners, to provide chaplaincy and prison welfare services, and to advocate fairness for prisoners. PFI is a member of the U.N. Crime and Justice Information Network. It relies upon U.N. standards and minimum rules in criminal practice when advising its national prison fellowship organizations. It makes comparative studies of the U.N. rules for juvenile detention, imprisonment alternatives, prison health care, and transborder transfers of prisoners with actual nations' practices of these aspects of incarceration. PFI also sponsors ancillary meetings in coordination on issues being at the U.N. Congresses on the Prevention of Crime and the Treatment of Offenders.

19. Radda Barnen International  
Swedish Save the Children  
Torsgaten 4  
S-107 88 Stockholm, Sweden  
<<http://www.rb.se/>>

Radda Barnen (or Save the Children) was founded in 1979 to work for the respect and the rights of children at risk. Today, it works for these rights according to the principles of the Convention on the Rights of the Child (U.N. resolution A RES 44 25 of November 20, 1989.). Despite the fact that nearly all countries of the world have ratified the Convention (the U.S. signed but has not ratify this treaty), there is a gap between what could and should be achieved by its implementation and the conditions in which children actually live and subsist. Radda Barnen

provides protection, rehabilitation, and education for refugee children, children in armed conflicts, child soldiers, street children, and children exposed to exploitative labor or sex practices. It has partnerships with national groups for long-term programs for children's rights and welfare in Romania, the Baltic States, parts of the former Yugoslavia, Estonia, and Lithuania. It has consultative status with the U.N. Children's Fund, and it operates an emergency standby team which cooperates with the U.N. High Commissioner for Refugees to intervene and help children caught in natural disasters. Radda Barnen publishes reports, videos, and a newsletter about child soldiers.

#### 20. Street Kids International

398 Adelaide Street West, suite 1000  
Toronto, Canada M5V1S7  
<<http://www.streetkids.org/>>

Street Kids was initiated in 1988 to assist with programs and non-exploitative economic opportunities for children who live and work on the streets, which would lead them away from crime and risk and toward independence and self respect. It supplies educators and youth workers in developing countries with two of its specially created videos and its action-oriented Street Business Toolkit to encourage and stimulate unprotected street children and working children to discuss making decisions, sexual health, drugs, friendship, and other aspects of life on the city streets. It arranges for speaking engagements and for street worker training classes. One growing concern of Street Kids is child sex tourism. It has a working relationship with the U.N. Programme on HIV/AIDS, the U.N. Children's Fund, and the U.N. International Drug Control Programme. It intends to apply eventually for consultative status with ECOSOC.

#### 21. Transparency International (TI)

Otto-Suhr-Allee 97/99  
D-10585 Berlin, Germany  
<<http://www.transparency.de>>

Founded in 1993, TI is devoted exclusively to identifying and distributing information governmental corruption, and to raising public awareness of its detriment to both private enterprise and civil society. It offers "standards of conduct" for visibility in international business transactions for governmental procurement, and it

provides secretariat for the International Anti-Corruption Conference. TI's annual report tells of its work with governments and with intergovernmental organizations, and displays and explains its "Corruption Perception Index" (an enumeration of governments according to corruption indicators).

#### 22. World Muslim Congress

Al-Markaz F-6  
P.O. Box 1022  
Islamabad, Pakistan

The World Muslim Congress, or World Islamic League or Congres du Monde Islamique, was founded in 1926. It also has consultative status with the U.N. Children's Fund and works to promote among the Muslim nations sound criminal justice standards and practices for children. It sponsors cultural exhibitions and convenes World Muslim Conferences. Among its publications is the World Muslim Gazetteer, a one-volume encyclopedia that is revised every ten years.

#### 23. World Society of Victimology

University of Applied Sciences  
Department of Social Work  
Rheydter Strasse 232  
D-41065 Mönchengladbach, Germany  
<<http://www.world-society-victimology.de/>>

The Society was founded in 1979 to advance victimological research, especially interdisciplinary work in this field, and to arrange for international symposia where the many aspects of victimology can be discussed openly. In 1985, the Society succeeded in its efforts to persuade the U.N. General Assembly to adopt the "Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power" (U.N. document A/RES/40/134). It publishes monographs and semiannually, "The Victimologist."

The Rome ICC Statute marks an important advance in the doctrine of international legal personality of individuals. It is well known that the main purpose of the ICC Statute is to establish a permanent international mechanism for imposing criminal liability on individuals who commit the worst offenses against the law of humanity. Before the ICC, individuals - persons under investigation, accuseds, victims and witnesses will also have a comprehensive set of rights, and in some cases will have monetary remedies.

The international criminal responsibility of individuals for genocide, crimes against humanity and war crimes has progressively better established since Nuremberg. Various multilateral treaties, such as the Genocide Convention and the 1949 Geneva Conventions and their 1977 Protocols, advanced this process. These require States to use their national legal systems to criminalize acts that violate treaty provisions.

Direct individual responsibility to the International community -- rather than a multinational coalition of victorious powers - was established by the ad hoc United Nations tribunals for the Former Yugoslavia and for Rwanda. The Statutes of these tribunals also contained important procedural protections for defendants, similar to many in the International Covenant on Civil and Political Rights. Procedural rights of defendants are much more extensively protected by the ad hoc UN tribunals than they were by the Nuremberg court.

The Rome Statute of the ICC recognizes the international legal personality of the individual in at least six ways, some of which are novel in the system of international law and international organizations. First, of course, is the individual criminal responsibility for the most serious crimes against the international community as a whole. Second, the Court is required to protect an expanded set of procedural rights of those being tried. In both these cases, the fact that the ICC is intended to be a permanent organization for enforcement of these responsibilities and rights is the principle contribution of the Rome Statute.

Third, the ICC Statute protects substantive and equal protection rights of accused persons before the Court. Under Article 21 of the Statute, the Court must enforce internationally recognized human rights in applying the criminal law. The Court is also prohibited from making adverse

distinctions among persons on such bases as race, gender, religion, political opinion or national, ethnic or social origin.

Fourth, the protection of the accused is extended from rights within the Court to monetary remedies against the ICC. In some cases, individuals wrongly imprisoned or convicted may be awarded monetary damages for these wrongs.

Fifth, not only the accused, but victims and witnesses are protected in the procedures of the Court as well. The ICC Statute provides specific procedures for their protection, such as limited guarantees of confidentiality. It also establishes a separate office, a Victims and Witnesses Unit, to protect their interests.

Sixth, the ICC Statute establishes a system of monetary restitution for victims of crimes within the jurisdiction of the Court. Some restitution is designed to come directly from the assets of convicted persons. Other restitution is planned from a trust fund. The effectiveness of this scheme may be limited by the fact that only individuals, and not corporations or other private and public entities which hold most wealth in many economies, are within the jurisdiction of the Court. Nonetheless, the principle of restitution to individuals is established.

Both responsibilities and rights of individuals are integral to the ICC Statute. The Statute marks a significant milestone in the integration of the individual into the law of international organizations.

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\* The author is Chair of the ICC Committee of the International Organizations Interest Group.

RECENT DEVELOPMENTS IN THE SECURITY COUNCIL:  
AUTHORIZING INTERNATIONAL ADMINISTRATION IN KOSOVO & EAST TIMOR

Ralph Wilde\*

The Security Council has recently authorized two different international missions that share a striking characteristic: overall control for both civil and military administration in the territories concerned is given to international organizations. This paper briefly discusses these missions and the role of the Security Council in authorizing them.<sup>1</sup>

In the EU-brokered Peace Plan of 7 June 1999 that followed the NATO bombing campaign, the Federal Republic of Yugoslavia (FRY) and the Serb Republic agreed to the deployment in Kosovo of an international civil and security presence.<sup>2</sup> The terms of the security presence were further elaborated in an agreement on 9 June 1999 between the FRY, the Serb Republic, and NATO.<sup>3</sup> On 10 June 1999, the Security Council passed Resolution 1244, grafting its authority onto this international civil and military presence.<sup>4</sup>

The combined effect of these instruments is to subject Kosovo to the administration of international organizations, replacing the Serb Republic and Federal Republic of Yugoslavia (FRY) administration. The NATO-led military presence, K-FOR, is given wide powers to exercise military control throughout Kosovo.<sup>5</sup> These powers, coupled with the legally-mandated withdrawal of FRY and Serb Republic military forces from the territory,<sup>6</sup> effectively give K-FOR the authority to exercise plenary military control in Kosovo. The civil presence - the United Nations Mission in Kosovo (UNMIK)- is granted total responsibility for the conduct of civil administration in Kosovo.<sup>7</sup> It is also responsible for supporting economic reconstruction and aid provision,<sup>8</sup> deploying an international police force,<sup>9</sup> protecting and promoting human rights,<sup>10</sup> and assuring the safe return of refugees and displaced persons.<sup>11</sup> Other organizations assist in the performance of UNMIK's mandate, such as the Organization for Security and Co-operation in Europe (OSCE) whose responsibilities include conducting elections and monitoring human rights.<sup>12</sup>

The actual conduct of civil administration by UNMIK is intended as an 'interim' arrangement,<sup>13</sup> since UNMIK is also obliged to establish and oversee the development of provisional

democratic self-governing institutions,<sup>14</sup> to whom administrative responsibilities are to be transferred as and when this is feasible.<sup>15</sup> Moreover, when Kosovo's future status is settled, these responsibilities are to be transferred from the provisional institutions to whichever institutions are established by such a settlement.<sup>16</sup>

Turning to East Timor, the territory has been subject to the overall control of international organizations since around October 1999. International involvement on the ground began with the activities of the UN Mission to East Timor (UNAMET) in preparing for and conducting the August 1999 popular consultation ('the consultation').<sup>17</sup> UNAMET was anticipated by agreements between Portugal and Indonesia,<sup>18</sup> and Portugal, Indonesia and the UN,<sup>19</sup> allowing for the popular consultation. It was created by the Security Council in Resolution 1246 of 11 June 1999.<sup>20</sup> The consultation asked the East Timorese whether they accepted a proposal for "special autonomy" within Indonesia, or rejected this proposal, "leading to East Timor's separation from Indonesia."<sup>21</sup> The result was 78.5% in favor of rejection.<sup>22</sup> The outbreak of violence following this result led to the almost total evacuation of UNAMET personnel.<sup>23</sup> Eventually, an Australian-led multinational force (INTERFET) entered East Timor to restore order.<sup>24</sup> By October, INTERFET was exercising overall military control in the territory and, together with some personnel from UNAMET, also attempting to fill the vacuum created by the collapse of local civil administration.<sup>25</sup>

In resolution 1244, of 25 October 1999, the Security Council created the United Nations Transitional Authority in East Timor (UNTAET).<sup>26</sup> UNTAET has "overall responsibility for the administration of East Timor" and is "empowered to exercise all<sup>27</sup> legislative and executive authority, including the administration of justice." This mandate has three components. The first component covers "governance and public administration, and includes an international police force."<sup>28</sup> UNTAET enjoys the power to "enact new laws and regulations and to amend, suspend or repeal existing ones."<sup>29</sup> The second component covers "humanitarian assistance and

emergency rehabilitation;<sup>30</sup> and the third component covers military administration, with a force of up to 8,950 troops and 200 military observers.<sup>31</sup> Unlike in Kosovo, a single actor - the UN - conducts both civil and military administration. The transfer of military control from INTERFET to UNTAET was completed in February 2000.<sup>32</sup>

The degree of control accorded to international organizations in these two missions is unusual. Alongside this similarity, however, are many important differences. One such difference concerns the future of the territories affected. The accepted future status of East Timor is as an independent state, and this allows the mission there to focus its activities towards an agreed objective. In contrast, Kosovo's future status remains to be decided, denying the mission there a clear purpose beyond interim autonomy.

#### Notes

\* Trinity College, Cambridge University, Cambridge CB2 1TQ, UK; Chair, Security Council Committee. This article copyright Ralph Wilde, 2000.

1. This is drawn from a research project being conducted by the author on the administration of territory by international organizations.
2. Agreement on the principles (peace plan) to move towards a resolution of the Kosovo crisis presented to the leadership of the Federal Republic of Yugoslavia by the President of Finland, Martti Ahtisaari, representing the European Union, and Viktor Chernomyrdin, Special Representative of the President of the Russian Federation, 3 June 1999, UN Doc. S/1999/649, <www.un.org/peace/kosovo/sl 999649.pdf>, [hereinafter "Peace Plan"].
3. NATO - FRY - Serb Republic, Military-technical agreement, 9 June 1999, UN Doc. S/1999/682, <www.un.org/peace/kosovo/s99682.pdf>, hereinafter ["NATO - FRY - Serb Republic Agreement"].
4. SC Res. 1244, UN Dec. S/RES/1244 (1999), 10 June 1999, <www.un.org/Docs/scres/1999/99sc1244.htm>.
5. SC Res. 1244 ¶ 9; Peace Plan, esp. ¶ 4; NATO - FRY - Serb Republic Agreement.
6. SC Res. 1244 ¶ 3; Peace Plan ¶ 2; NATO - FRY - Serb Republic Agreement Article II.
7. SC Res. 1244 ¶¶ 10, 11, Peace Plan, ¶¶ 3 & 5.
8. SC Res. 1244 ¶ 11(g) & (h), respectively.
9. SC Res. 1244 ¶ 11(i).
10. SC Res. 1244 ¶ 11(j).
11. SC Res. 1244 ¶ 11(k).
12. OSCE Permanent Council, Decision No. 305, 1 July 1999, OSCE Dec. PC.DEC/305, 1 July, reproduced in OSCE Permanent Council, Journal 237, 1 July 1999, OSCE Doc. PC.JOUR/237/Corr., <www.osce.org/docs/english/pc/1999/journals/pcoe237.htm>.
13. SC Res. 1244 ¶ 10.
14. SC Res. 1244 ¶ 10 & 11(c); Peace Plan ¶ 5.
15. SC Res. 1244 ¶ 11(d).

16. SC Res. 1244 ¶ 11(e) & (f).

17. See United Nations Secretary-General, Question of East Timor: Progress Report, 13 Dec. 1999, UN Doc. A/54/654, <www.un.org/peace/etimor/docs/ga654.htm>, [hereinafter "UN Secretary General Report, 13 December 1999"], ¶¶ 14-31.

18. Indonesia - Portugal, Agreement on the Question of East Timor, 5 May 1999, <www.un.org/peace/etimor99/agreement/agreeframe\_EngOl.html>, Appendix, A Constitutional Framework for a Special Autonomy for East Timor, <www.un.org/peace/etimor99/agreement/agreeframe\_Eng02.html> [hereinafter "Indonesia-Portugal Agreement 1999"]

19. Indonesia - Portugal - Secretary-General of the United Nations, Agreement regarding modalities for the Popular Consultation of the East Timorese through a Direct Ballot, 5 May 1999, <www.un.org/peace/etimor99/agreement/agreeframe\_Eng03.html> [hereinafter "Indonesia-Portugal-UN Consultation Agreement 1999"]; Indonesia - Portugal - Secretary-General of the United Nations, Agreement on Security, 5 May 1999, <www.un.org/peace/etimor99/agreement/agreeframe\_Eng04.html> [hereinafter "Indonesia-Portugal-UN Security Agreement 1999"].

20. SC Res. 1246, 11 June 1999, UN Dec. S/RES/1246 (1999), <www.un.org/Docs/scres/1999/99sc1246.htm>.

21. See Indonesia-Portugal-UN Consultation Agreement.

22. See United Nations Secretary-General, Letter to the President of the Security Council regarding the result of the popular consultation, 3 Sept. 1999, UN Doc. S/1999/944, <www.un.org/peace/etimor99/N9925500.pdf>.

23. See UN Secretary-General Report, 13 December 1999, ¶¶ 32-35.

24. See SC Res. 1264, ¶ 3 and UN Secretary-General Report, 13 December 1999, ¶¶ 35-37.

25. See UN Secretary-General Report, 13 December 1999, ¶¶ 36-37. For the temporal extension of UNAMET's mandate, see SC Res. 1257, 3 August 1999, UN Doc. S/RES/1257 (1999), <www.un.org/Docs/scres/1999/99sc1257.htm> and SC Res. 1262, 27 Aug. 1999, UN Doc. S/RES/1262 (1999), <www.un.org/Docs/scres/1999/99sc1262.htm>.

26. SC Res. 1272. Such an authority was anticipated by the Indonesia-Portugal Agreement 1999. See also UN Secretary-General Report, 13 December 1999, ¶¶ 37, 39-41.

27. SC Res. 1272, ¶ I.

28. SC Res. 1272, ¶ 3(a).

29. SC Res. 1272, ¶ 6.

30. SC Res. 1272, ¶ 3(b).

31. SC Res. 1272, ¶ 3(c).

32. See UNTAET Press Release, 23 Feb 2000, <www.un.org/peace/etimor/DB/db230200a.htm>; the handover was anticipated by SC Res. 1272, ¶ 9.

## ICC NEWS

Kenneth S. Gallant  
John Washburn

The Rome Statute of the International Criminal Court, opened for signature July 12, 1998, continues to gain ratifications. As of this writing, it has acquired twenty nine ratifications, nearly a half of the 60 ratifications needed to bring the Court into existence. A total of 139 nations signed the Statute before the December 31, 2000, deadline. Nations which did not sign by that date may join the ICC regime only by accession to the Statute. Among the nations signing on or just before the deadline were Egypt, Iran, Israel and the United States. The new American administration has no current plans to submit the Statute to the United States Senate for ratification.

On June 30, 2000, the Preparatory Commission (PrepCom) for the International Criminal Court completed work on two of its major projects: drafts of the Elements of Crimes and the Rules of Procedure and Evidence for the Court. The PrepCom meet again from Nov. 27-Dec. 8, and is meeting as this newsletter goes to press (Feb. 26 to March 9). All decisions of the PrepCom will be presented to the Assembly of States Parties for its review and approval. The Assembly will convene as soon as the United Nations receives the instruments for the 60 ratifications necessary to bring into force the Rome Statute for the ICC. Given the current pace of completed ratifications which could occur as early as mid-2002. Before then, the Commission is expected to meet at least once more in 2001 and at least once in 2002.

At these sessions, the PrepCom is considering administrative, budgetary, financial, and organizational matters and is doing further work to define the crime of aggression. It is giving particular attention to the relationship agreement between the United Nations and the ICC. This agreement will be especially complex and extensive because the ICC is an independent organization separate from the United Nations. In addition to routine matters such as liaison and communications, the agreement will cover difficult issues including implementing the right of the Security Council to require the Court to defer a particular situation, administering the referral of situations to the Court by the Security Council,

and arranging payments by the United Nations to the Court for its expenses on cases so referred. There is also likely to be considerable discussion of the desirability and extent of adoption by the Court of the financial, personnel, and administrative procedures and practices of the United Nations.

If you are interested in being a member of the ICC Committee of this interest group, or have a specific project the Committee might work on, please contact: Kenneth S. Gallant, University of Arkansas at Little Rock, William H. Bowen School of Law, 1201 McMath Ave., Little Rock, AR 72202-5142. Phone 501-324-9912, fax 501-324-99111 ksgallant@ualr.edu

## NEWSLETTER SUBMISSIONS NEEDED

This newsletter's success depends upon material being submitted by our members. Any items of interest to members are welcome, including articles, letters to the editor, announcements of events, employment opportunities (paid or volunteer) in international law, etc. prefer that longer works, in particular, be submitted by e-mail or on IBM compatible disk (in ASCII, WordPerfect 5.1, or Word 6.0). For anything sent by e-mail, do not assume I have received it unless you receive a conformation.

Bryan MacPherson  
915 S. 19th St.  
Arlington VA 22202

Phone: (703) 892-8663  
E-mail: bryanmacp@aol.com.