

**SPECIAL COURT FOR SIERRA LEONE**  
PRESS AND PUBLIC AFFAIRS OFFICE

**PRESS CLIPPINGS**

**Enclosed are clippings of the latest local and international press on the Special Court and related issues obtained by the Press and Public Affairs Office as of:**

Monday, December 13, 2004

The press clips are produced Monday to Friday.  
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# Awoko

Motto: Service To The People

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INDEPENDENT

## No death penalty for war criminals

At the closing session of last week's Victims Commemoration Conference held in Makeni, the Deputy Registrar of the

Special Court of Sierra Leone- Mr. Robert Kirkwood has assured delegates from Tonkolili, Port Loko, Koinadugu and Bombali Districts that there will be no death

*Contd. Page 2*

## No death penalty for war criminals

*From Front Page*  
penalty for war criminals indicted by the Special Court. The reason according to Mr. Kirkwood is that the International Community does not buy the idea of death penalty and therefore kicks against it. According to the Deputy Registrar, all indictees are for now presumed innocent and that they have only been placed in detention centers because the Special Court Prosecutor believes they have cases to answer. "It depends on the Trial Judges as to what sentence they would pass at the end of the trial," he stated, reiterating the fact that no death penalty would be given irrespective of the crime an indictee may have committed. Mr Kirkwood

further cited the instance of other War Crime Courts where the highest sentence passed on the young indictees was 43 years. On the issue of why the Court has decided to indict only the

ringleaders, leaving other categories like middle, Town and District Commanders, Mr. Robert Kirkwood explained that in future, no leader will assemble people again and arm them to carry out such bloody carnage on their people.

Cocorioko (formerly Daily News Inquirer)

## SIERRA LEONE KAMAJOR OFFICIAL SAYS MILITIA HAS NO PLANS TO DISTURB THE PEACE

Monday December 13, 2004

A man claiming to be an official of the disbanded Civil Defence Force (CDF) has called COCORIOKO to assure all Sierra Leoneans that the militia had no plans to disturb the peace over the trials of Chief Hinga Norman and two other Kamajor officials. Mr. Michael S. Samoh, who claimed to be talking by mobile phone from Bo, told this newspaper that the militia was law-abiding and was still loyal to the SLPP government of President Ahmad Tejan Kabbah.

Mr. Samoh said he was responding to what he regarded as speculation circulating on the internet that the Kamajors had mobilized to disturb the peace in Sierra Leone if the war crimes trials of their leaders did not go their way. Mr. Samoh debunked the speculation as an ill-conceived plan to further damage the name of the CDF.

Samoh clarified the circumstances leading to the two resolutions recently released by the Kamajors of the Eastern Province and the Civil Society of the South. He informed COCORIOKO that the resolutions stemmed from a Special Court-approved Outreach being conducted by one of Chief Norman's Defence Counsels, Dr. Bubakai Jabbie, in continuation of investigations by the Norman Team for more facts and evidence to buttress the defence of the indicted CDF leaders. The Outreach is also designed to enlist more witnesses to testify on behalf of the Chief and other leaders.

During the Outreach, the members mentioned in the resolutions pledged their support for and solidarity with the Hinga Norman cause and vowed to assist in whatever way possible to prove that Norman and the CDF officials were heroes instead of villains. Mr. Samoh said there was no threat implied in the messages of solidarity. According to him, they were just expressions of support and solidarity with the Chief.

Mr. Samoh took his time to also debunk a list of supposed witnesses for the Hinga Norman Defence that was circulated on the internet. He stated that neither the CDF Defence lawyers nor the Chief was aware of the list and he intimated that Chief Hinga Norman was very mad to hear that such a list was being circulated on the internet.

Samoh expressed optimism that the CDF officials would be found innocent at the end of the day, thereby paving the way for redirection of focus to national reconciliation and national rehabilitation.

# **LIBERIA-SIERRA LEONE: International community needs to commit for long haul to stop return to war**

[This report does not necessarily reflect the views of the United Nations]



© ICG

DAKAR, 9 Dec 2004 (IRIN) - Liberia and Sierra Leone risk tipping back into conflict if the international community does not commit for the next 15 to 25 years with a fresh approach to restore security and civil freedoms, according to leading think tank, the International Crisis Group.

"The interventions in Liberia and Sierra Leone are failing to produce states that will be stable," the ICG said in a report published on Wednesday. "A fresh strategy is needed if both are not to remain shadow states, vulnerable to new fighting and state failure."

The ICG criticised donors for not handing over promised and much needed-funds and said that post-war efforts were veering off course, as UN peacekeepers simply ticked off the standard elements in a one-size-fits-all recipe for peace.

"There is no simple and quick nation-building conveyor belt. If the cycle of 'collapse, partial recovery, new collapse' is to be avoided, the international community needs to stay patiently involved with both countries for a generation, not for a brief post-conflict transition capped off by a first election," the Brussels-based group warned.

Both Sierra Leone and Liberia witnessed brutal civil wars that spanned the 1990s and the images of young and often drugged-up combatants toting machetes and guns and mutilating innocent victims touched a nerve around the world.

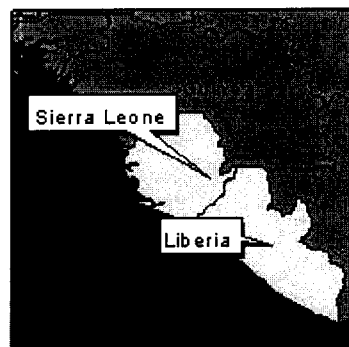
The new ICG report, entitled "Rebuilding Failed States" ([www.crisisweb.org](http://www.crisisweb.org)), called for action to be taken by the United Nations, the British and American governments, international donors, and politicians and citizens in both West African countries to consolidate a real and meaningful peace.

It said judicial institutions needed not only to be repaired but reformed, new armies needed to be trained properly to win back the trust of civilians who often saw them as tainted.

Ordinary civilians should be pushing through to the frontlines of politics, and economic resources, be they diamonds and timber or government funds, should be put beyond the reach of criminals.

## **Sixteen months of peace for Liberia**

Liberia's 14-year conflict finally drew to a close when the warring parties signed a peace deal in August 2003. Now a transitional government, made up of the three armed factions that fought the war and civilian society groups, is working to lead the country to free and fair elections in October 2005.



## Passive Aggression

Why the Pentagon may be hoping that Saddam Hussein beats the rap for invading Kuwait.

By Mark Leon Goldberg

Web Exclusive: 12.10.04

[Print Friendly](#) | [Email Article](#)

Monday marks the one-year anniversary of Saddam Hussein's capture. The day after the capture, December 14, 2003, the Coalition Provisional Authority's chief, Paul Bremer exclaimed, "We got him!" The phrase was reprinted in headlines throughout the world. But now that we got him, a surprising dilemma has surfaced: Do we want him convicted? On one charge, at least, doing so might have lasting repercussions for the United States down the road.

Long before troops from the U.S. Army's 4th Infantry Division rooted Hussein out of his "spider hole" in Tikrit, though, plans were already well under way to set up a tribunal to prosecute him and his Baath Party co-conspirators for crimes committed during their brutal 36-year reign. Initially, Pentagon lawyers and civilian legal experts borrowed heavily from the statutes of the International Criminal Court (ICC), and the war-crimes tribunals for the former Yugoslavia, Rwanda, and Sierra Leone to piece together a draft statute for the Iraqi Special Tribunal to try Hussein and his cohorts.

In its original inception, the draft that the Pentagon provided the Iraqi Governing Council included war crimes, genocide, and crimes against humanity as punishable offenses. Purposefully left out of the draft, and excluded from the jurisdictions of these existing tribunals, was the crime of aggression. In customary international law, aggression is generally understood as the use of armed force by a state against the sovereignty, territorial integrity, or political independence of another state when not in self-defense or without the United Nations Security Council invoking Article VII of the UN Charter (which authorizes the use of force to maintain global peace and security).

Though the crime of aggression played a central role in the Nuremberg trials for Nazi leaders, it has been a touchy subject for the United States since the end of the Cold War. For better (think Kosovo) or worse (Iraq), the United States is more likely than any other country to apply armed force in contravention of the United Nations. For that reason, the United States has conscientiously sought to avoid making aggression a more clearly defined war crime. In the late 1990s, Americans dispatched by President Clinton to negotiate the statute of ICC, for example, ran into some trouble when their European counterparts insisted on including aggression in the ICC's charter. To save the entire deliberations, both sides agreed to punt on the issue and negotiate a definition in 2009.

The Iraqi Special Tribunal however, is a collaborative process between the United States and Iraq in which an ostensibly sovereign Iraq has final say over what to do with its war criminals. When presented with the draft statute, Salem Chalabi, then the president of the tribunal, insisted that the final version include a catchall provision for crimes recognized by Iraqi national law. This is not uncommon in international criminal law; the statute of the Special Court for Sierra Leone contains a similar provision.

It turned out to be a fateful decision. Because what the Pentagon lawyers apparently didn't know at the time is that Iraq has had a law on the books since the 1950s that prohibits aggressive war. As it's written, the law proscribes the "pursuit of policies" that may lead to war against a fellow Arab country. Now, because he invaded Kuwait, it appears that Hussein will be the first person since Nuremberg to be tried for the crime of aggression.

This course was affirmed in October when the Iraqi judges and magistrates who will try cases before the Iraqi Special Tribunal met under the same roof for the first time. Michael Scharf, director of the Frederick K. Cox International Law Center at the Case Western Reserve University School of Law, attended the meeting, which for security concerns was held in secret in London. At the meeting, Scharf told me, a consensus was reached that the Iraqi judges would try Hussein for the crime of aggression.

As aggression has not been applied as a war crime since Nuremberg, the only available models for prosecution or defense strategy stem from those proceedings. At the London conference, Scharf lectured the Iraqi judges on Hussein's possible defense strategy. Scharf expects that Hussein may use a *tu quoque* ("you also") defense in which the conduct of the accused is defended by turning the critique back against the accuser. In practice, this amounts to a "two wrongs obscure what it means to be right" line of reasoning.

As Scharf explained to the judges, this defense was effective for certain Nazis on trial. The Nazi naval commander Karl Doenitz, for example, was able to convince the Nuremberg tribunal that he could not be convicted of waging unrestricted submarine warfare because U.S. Admiral Chester Nimitz had done the same thing in the Pacific theater -- and therefore the law outlawing such acts was unclear and unenforceable. Similarly, Scharf told me, "Hussein may argue that the debate over the legality of the U.S. invasion of Iraq indicates that there is no international agreement on the definition of aggressive war," a conclusion that could exonerate Hussein for

invading Kuwait in 1990.

Hussein will almost certainly be found guilty for crimes against humanity. But according to Mark Vlasic, a law professor and former prosecution lawyer at the Yugoslav tribunal, the genocide and aggression charges lack great precedent and will take center stage at the Iraqi Special Tribunal. Indeed, the judges' rule on aggression will set an extremely important precedent in international law -- precisely what the United States and other powers have been seeking to avoid for decades.

Some close observers of the Iraqi Special Tribunal, such as Lieutenant Colonel Michael Newton, a law professor at West Point, consider the inclusion of aggression as proof that this is an Iraqi-driven process, with Americans playing only minor roles. To others, though, the fact that aggression is on the table looks more like a gaffe; it would be mighty embarrassing if Iraqi judges acquit Hussein for his aggressive war against Kuwait precisely because, by invading Iraq, the United States further obscured the definition of aggressive war.

Either way, this is a rather awkward situation for the United States. On the one hand, conventional wisdom would have it that the United States wants to see Hussein tried and convicted for all of his crimes. But insofar as U.S. prudential interests are inherently hostile to establishing case law on aggression, the authors of the Bush doctrine of preemptive war may not be overly disappointed if Hussein beats this particular rap on the grounds that the crime is not adequately defined to establish criminal liability -- or, better yet, if he never faces the charge at all.

*Mark Leon Goldberg is a Prospect writing fellow.*

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# THE INDEPENDENT

NO. 140

Monday December 13 2004

## "Al-Qaida linked" S/Leonean Lebanese jailed

...Call for surveillance on Malama Thomas and Ecowas streets

Samih Ossaily, a Lebanese who claims to be a Sierra Leonean, another Lebanese Azziz Nassour (Mansour?) and six others have been jailed for six years in Antwerp, Belgium for trading conflict diamonds from Sierra Leone and war-torn Democratic Republic of Congo. Ossaily, aged 38, has been sentenced to three years and fined US\$ 3,000 while Nassour

(Mansour?) has been sentenced to six years and fined US\$ 33,600.

Asa Diam a company in Antwerp, which belongs to Nassour's brother, has been fined US\$ 81.7 million for failing to declare diamonds to customs. Prosecutors allege that at least \$16 million passed through the Asa Diam account. The other six defendants have been sen-

tenced to 30 months each. At the opening of the trial last month, Nassour pleaded guilty to smuggling \$400,000 worth of diamonds.

An American Journalist Douglas Farrah of the Washington Post in USA first named Ossaily in the Al-Qaida network.

The problem of Ossaily and

Nassour started when Douglas Farrah mirrored what he said was an Al-Qaida network in West Africa and named Ossaily as the brain behind the network. The Belgium High Council (HRD) which represents all the various sectors of the Belgian diamond sectors subsequently requested the

Contd. page 3

## "Al-Qaida linked" S/Leonean Lebanese jailed

From page 1

gate the two dealers. The HRD confirmed that neither Nassour nor Ossaily were members of the diamond bourse in Antwerp and they did not have licence to operate in Belgium. They were operating in a Mafia-like way, which bred suspicion.

The Washington Post named Azziz Nassour and Samih Ossaily, who has naturalised in Belgium, as buyers of smuggled diamonds from Sierra Leone which were then channelled to Osama bin Laden's Al-Qaida. They were reported to have dealt with Ibrahim Bah the former logistics officer of the Revolutionary United Front in Sierra Leone led by Foday Saybana Sankoh. Ossaily however denied any links with Al-Qaida

even prior to his conviction in court, reports states.

Bah on the other hand is reported to have fought with the *Mujahideens* in Afghanistan, the Hizbollah in Lebanon against the "Israeli oppressors" and then left for Casamance in Senegal where he joined the rebellion. He also dealt in arms and ammunitions. He later went to Libya where he apparently met with Charles Taylor of Liberia. Later, he travelled to Ghana and stayed at the Grand Hotel believed to be owned by President Muammar Al-Gaddafi. He, Taylor and Foday Sankoh met in that hotel where the Liberia invasion was planned.

Bah joined Taylor and they launched the war in Liberia. Later, when RUF backed by Taylor launched its own war,

especially after the capture of Kono, he became an intermediary between RUF and people believed to be Al-Qaida operatives who he dealt with in Liberia.

The wife of Ossaily, the Lebanese who insisted in Belgium that he was a Sierra Leonean even though he had also naturalised as a Belgian citizen, sought a divorce with him and accused him of working for the Hizbollah in Lebanon.

Many more Lebanese in Sierra Leone are believed to be operating in a similar manner and siphon part of their wealth to clandestine organizations. It is also reported that many of those at Ecowas and Malama Thomas Street still clandestinely deal in diamonds, which they now trade in Lebanon instead of Antwerp.

# Unconquered corruption brings war

## -US Ambassador

The US ambassador to Sierra Leone Thomas Hull has warned that if corruption is not conquered there is likelihood for the war to replicate itself.

"No one wants to return to the past, but unless corruption is conquered, this remains,

frankly, a possibility", he said on the 1st International Anti-Corruption Day also observed in Sierra Leone in December.

He said at the annual event attended by president Ahmad Tejan Kabbah, vice president Solomon Berewa and other dig-

nitaries including Commissioner of the Anti-Corruption Commission in Sierra Leone, Sir Collier Sierra Leone that the country has enormous potential for democracy and development for stability and growth provided that

corruption is defeated. "The alternative is a lower standard of living that could destabilize high expectations that it created when citizens were told that democracy is the best path to peace, development, and prosperity.

The ambassador pointed out that the Anti-Corruption Commission is a case in point. "The people of Sierra Leone expect the ACC to identify and convict those officials who, by their malfeasance, have betrayed the public trust.

and, by extension, have betrayed the country. Given the public perception of widespread corruption among government officials, Sierra Leoneans are looking to the ACC and the promise of democracy to restore their faith in government. As the ACC intensifies its work, the National Anti-Corruption Strat-

*Contd. page 3*



*President Kabbah*

## Unconquered corruption brings war

*From page 1*

National Anti-Corruption Strategy that is being developed will be an important step forward", he added.

"As a public servant, my individual reputation depends on my integrity, and the same principle applies to the reputations of countries. Sierra Leone's reputation unfortunately has been tarnished by decades of misrule, mismanagement, and corruption by previous rulers that led the horrific violence of the past decade. A pervasive political and

bureaucratic culture of corruption has evolved that has produced a dangerous cynicism that must be reversed by regaining public trust", he urged.

He warned, "As long as the culture of corruption prevails, government will not have the revenue to respond to the needs of the people, civil servants will be demoralized and unresponsive, foreign investors will be deterred, respect for law will be low and crime will rise, the economy will be crippled, and poor people will

be further victimized. Foreign aid will also be affected. Most disturbing, however, is the stark reality that corruption is perpetuating conditions that contributed to the decade of conflict that devastated Sierra Leone."

Ambassador Hull said the war on corruption would be a long struggle, but it could and must be won. "The future is in your hands, and the commitments of Sierra Leone's political leadership and of the Anti-Corruption Commission gives hope for that future," he concluded.



## International Criminal Court: Guilty As Charged

By *David Storobin, Esq.*

In July 1998 representatives of governments and nongovernmental organizations concluded a five-week international conference in Rome, producing a treaty establishing the International Criminal Court. The mission of the ICC, which went into effect in 2002, is to prosecute persons charged with war crimes, crimes against humanity, crimes of aggression and genocide. [1]

However, the ICC statute, as well as the existence of an International Criminal Court itself, is full of alarming possibilities. Specifically, the court may result in arbitrary and highly politicized "justice," similar to the resolutions passed by the United Nations. Additionally, militant dictatorships are highly likely to abuse the court, just like they abuse their power in the United Nations, the Human Right Commission, the Durban Conference and every other international organization where they are active participants.

The ICC does not provide many of the most basic legal safeguards American citizens enjoy under the U.S. Constitution. Endangered constitutional protections include the prohibition against double jeopardy, the right to trial by an impartial jury, and the right of the accused to confront the witnesses against him, the right not to incriminate yourself, the right to compel a witness to testify, etc. Moreover, judges and prosecutors will be appointed and removed by member vote, resulting in a tyranny of the majority court.

As Yale University law professor Ruth Wedgwood points out, "The United States has a penchant these days for joining international negotiations that spin out of control . . . We may be the 'indispensable country,' as Secretary of State Madeleine Albright likes to say. But we often set ourselves up as Alamo holdouts, criticized as the indispensable country with indefensible positions." [2]

The court may also be an unlawful entity under international law and it may be unconstitutional for U.S. Senators to ratify the Rome Treaty.

### I. CONSTITUTIONALITY OF ICC RATIFICATION IN THE U.S.

The preamble to the ICC draft statute states that "the International Criminal Court established under this Statute shall be complementary to national criminal jurisdictions." Yet, it is a practical impossibility if the ICC is to succeed. [3]

Consider the following situation. Race-related disturbances break out throughout the United States, causing a significant amount of lives being lost among American blacks. Black leaders claim that this is a genocide (or any other crime under the ICC), while white leaders claim that police and the army restrained itself to the best of its ability, but had to do what it did to contain the riots. The situation involves American citizens, army and police acting within the borders of the United States. The U.S. Supreme Court sides with whites, but blacks maintain that this is merely a "show trial" and the country is run by white supremacists who appointed white supremacist judges to the Supreme Court (an identical situation happened in October, 2000 in Israel that resulted in 13 deaths among Arab citizens of Israel). Before it is decided whether the ICC can prosecute anyone in the United States government, it must be decided whether the ICC has the right to review Supreme Court decisions and the effectiveness of its process.

If the ICC cannot supersede national courts, a state will only need to organize a "show trial" or pass laws/regulations/rules making it certain that everyone will be acquitted. This would defeat the whole purpose of the ICC and make it into just another bureaucracy that does nothing but waste money. On the other hand, if the ICC were to be given the power to decide courts' effectiveness, as is the case under the ICC statute, it will - in effect - be given the power of judicial review and effectively become the highest court in the land when it comes to genocide, crimes against humanity, war crimes and any other crimes that may be included under ICC jurisdiction in the future.

The United States Constitution states that the Supreme Court shall be the highest court in the country. Under ICC

statute, the court - by virtue of having the power of judicial review - would become superior to the U.S. Supreme Court. Article III of the U.S. Constitution states: "The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish." Any reasonable reading of this clause establishes that all courts governing American citizens acting in the United States shall always be inferior to the Supreme Court. Yet, for certain crimes, the ICC would become superior to the Supreme Court, thus making ratification of the Rome Statute unconstitutional.

During the Civil War, U.S. government officials arrested anti-war politicians in Indiana and tried them in military, rather than civil court. One of the defendants appealed. The Supreme Court unanimously found in his favor: "The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances." The court sided with the defendant because the military court was not "part of the judicial power of the country" under Article III of the U.S. Constitution and, therefore, its verdict was invalid. [4] The same reasoning applies to the ICC: its decisions against Americans who committed crimes against other Americans in the United States are unconstitutional because the ICC is not allowed under Article III.

## II. FURTHER CONSTITUTIONAL CHALLENGES TO THE ICC

The United States Supreme Court held that U.S. courts have a legal "right to annul or disregard" the provisions of a treaty if "they violate the Constitution of the United States." [5] A "treaty cannot change the Constitution or be held valid if it be in violation of that instrument." [6]

The International Criminal Court does not have many legal rights provided to Americans by the United States Constitution. "My most vicious, my most heinous client [in the United States] has more rights under the U.S. Constitution [than defendants did under the Yugoslavia tribunal]," Nick Kostich, an American defense attorney for Dusko Tadic who was tried by the Yugoslavia tribunal, which served as the model for the ICC. [7] Unfortunately, as described immediately below, the Rome Statute also did not provide defendants many of the Bill of Rights protections we consider so vital to a just legal system and in the future, defense attorneys and defendants are likely to issue the same complains as Mr. Kostich.

### 1. The Right Not to Incriminate Yourself

The Fifth Amendment to the U.S. Constitution states: "No person shall . . . be compelled in any criminal case to be a witness against himself." The ICC doesn't fully recognize this right. Rule 74 of the ICC Rules of Evidence and Procedure states that while a witness has the right to object to a question that would require a self-incriminating answer, the judges may still force him to testify. In determining whether the witness is to disclose self-incriminating evidence, the rule states that the importance and uniqueness of the evidence, in addition to possible incrimination and sufficiency of witness protection. Thus, the right not to incriminate yourself is ignored by the ICC.

### 2. Double Jeopardy

The Fifth Amendment further states: "No person shall . . . be subject for the same offense to be twice put in jeopardy of life or limb." The ICC also doesn't recognize this right. Indeed, by virtue of allowing the ICC to re-try individuals who were already tried by national courts (after ICC found the process "ineffective"), it in and of itself creates the problem of double jeopardy. That is especially so considering that the court seeks to be complimentary to the national courts. Even if this problem can be solved, however, it remains a fact that people can be tried again and again in the ICC until the prosecutor and the alleged victims get the desired result. And even if a conviction never results, one can easily understand how a person can be terrorized - financially, emotionally and otherwise - throughout his life by being tried again and again for the same crime. According to "Protection of United States Troops From Foreign Prosecution Act of 1999": "A prosecutor under the ICC Treaty would be able to appeal a verdict of acquittal, effectively placing the accused in 'double jeopardy' . . . Such appeals are forbidden in the law of the United States and have been inconsistent with the Anglo-American legal tradition since the 17th century." [8]

### 3. The Right to an Impartial Jury And the Tyranny of the Majority Court

The Sixth Amendment to the U.S. Constitution states: "In all criminal cases, the accused shall enjoy the right to a . . . trial by an impartial jury." The ICC statute doesn't recognize this right either. Instead, the accused will face a panel of U.N.-appointed judges. Furthermore, according to article 46 of the ICC statute, a prosecutor may be removed from office if the absolute majority of member-states votes against him and a judge may be removed if two-thirds majority votes against him.

This creates a potential problem of politicization and corruption of judges and prosecutors in what may turn out to be a "tyranny of the majority" court. For example, the 57-member strong Islamic bloc constitutes almost half of the nations that signed on to the ICC. This would make it impossible to remove a judge that is biased in favor of, say, Palestinians and against Israel. Furthermore, it would be virtually impossible to remove a prosecutor guilty of the same bias considering that Islamic nations will need to work out an agreement with only a small number of member-states in order to protect a prosecutor who recklessly and viciously uses his prosecutorial powers not to prosecute criminals, but rather to persecute Israeli officials.

Reversing the situation, any prosecutor who would not take the orders of the Islamic bloc would be in effect assured of losing his job. Likewise, Moslems would nearly always succeed in removing a judge that did not make ruling that satisfied them.

Effectively, in cases involving Israel, the Islamic bloc may become the "employer" of judges and prosecutors, as it would have the ability to fire them or allow them to continue receiving a paycheck. This would be the case with many other international conflicts. Democracies such as Russia (Chechnya), India (Pakistan/Kashmir) and even secular-Islamic Turkey (Kurds, Syria and Iran) may also fall prey to the Islamic bloc, while other countries would be subject to the good will of their more powerful enemies (more powerful in the sense that they will have more votes and thus, greater ability to appoint, block and remove judges and prosecutors).

Moreover, judges, even if they are not influenced by outside parties, may still have their personal biases, seeing as they are human. Specifically, a Palestinian or even a Libyan judge would naturally be biased towards Palestinians and against Israelis in any case involving Israel and the Palestinians. There is nothing in the ICC rules that would force a Palestinian judge off the bench in such case. Rule 24 lists the following as grounds for removal of a judge:

- (i) Disclosing facts or information that he or she has acquired in the course of his or her duties or on a matter which is sub judice, where such disclosure is seriously prejudicial to the judicial proceedings or to any person;
- (ii) Concealing information or circumstances of a nature sufficiently serious to have precluded him or her from holding office;
- (iii) Abuse of judicial office in order to obtain unwarranted favourable treatment from any authorities, officials or professionals. [9]

In addition, Rule 34 also lists the following:

- (a) Personal interest in the case, including a spousal, parental or other close family, personal or professional relationship, or a subordinate relationship, with any of the parties;
- (b) Involvement, in his or her private capacity, in any legal proceedings initiated prior to his or her involvement in the case, or initiated by him or her subsequently, in which the person being investigated or prosecuted was or is an opposing party;
- (c) Performance of functions, prior to taking office, during which he or she could be expected to have formed an opinion on the case in question, on the parties or on their legal representatives that, objectively, could adversely affect the required impartiality of the person concerned;
- (d) Expression of opinions, through the communications media, in writing or in public actions, that, objectively, could adversely affect the required impartiality of the person concerned. [10]

Thus, as long as the judges do not express their opinion through "communications media," it is very possible that the pool of judges will be similar to the makeup of the U.N. Human Rights Commission. There is nothing in the rules that would prevent a Palestinian, Iranian and Iraqi judges from presiding over a case involving Israelis, or three Pakistani judges from presiding over a case involving Indians. A person with the most basic understanding of international politics should understand the effect this would have on the fairness of the process.

In the United States, to avoid a biased jury, lawyers for both sides have the right to question potential jurors, and reject them from sitting on the jury, both for reason and - a limited number of potential jurors - without reason. With both sides having a chance to reject prejudiced people, there is a better chance of having impartial triers of fact.

Such system should also be adopted by the International Criminal Court. Additionally, judges from nations obviously hostile to the defendants' or victims' nation (e.g., states at war) should not preside over trials (i.e. an Iraqi judge should not supervise a trial involving an American) to prevent even the appearance of injustice (in most American jurisdictions, judges must recuse themselves if there is a mere appearance of potential bias, not just when there is actual bias).

#### 4. The Right to Confront and Cross-Examine a Hostile Witness

The Sixth Amendment also states: "In all criminal cases, the accused shall enjoy the right . . . to be confronted with the witnesses against him." The ICC recognizes no such right. Diana Johnstone stated in the "Nation" that when "witnesses are granted anonymity . . . [and] cannot be cross-examined or charged with perjury," the consequences of a lie will be "particularly grave in proceedings where verbal testimony rather than material proof is the basis for conviction." [11] During the Yugoslavia Tribunal, Nick Kostich, an American defense attorney for Dusko Tadic, stated that his client "is not being given the right to confront his accusers," and "the defense has not been presented with the names of witnesses." [12] This is the likely result in ICC trials.

Besides promoting perjury and biased interpretation of events, this prevents the jury from hearing the whole story since a witness not subject to cross-examination will not have to answer hard questions.

#### 5. The Right to Compel a Witness to Testify

The Sixth Amendment further states: "In all criminal cases, the accused shall enjoy the right . . . to have compulsory process for obtaining witnesses in his favor." Once again, the ICC does not recognize one's right to compel a witness to testify. Rule 65 states:

1. A witness who appears before the Court is compellable by the Court to provide testimony, unless otherwise provided for in the Statute and the Rules, in particular rules 73, 74 and 75. [emphasis mine]
2. Rule 171 [which describes what can be done when a witness refuses to testify] applies to a witness appearing before the Court who is compellable to provide testimony under sub-rule 1. [emphasis mine] [13]

Thus, only the people who are already appearing in court may be compelled to testify. There is no rule compelling a person who doesn't already appear before the ICC to testify. This naturally prejudices the defendants. Whereas a victims would want to testify because he wants to rectify or avenge the wrong committed onto him, an unrelated person would probably choose not to spend his time and money to support a defendant.

Additionally, many who are intimately familiar with the conflict may be afraid to appear in court for the fear of incriminating themselves. While there are some provisions meant to protect witnesses from self-incrimination, they are not guaranteed and many people - especially non-lawyers - would be afraid of "opening a can of worms." Mikhail Wladimiroff, lead defense attorney in the case against Dusko Tadic at the Yugoslavia Tribunal, remarked that even though the court "understood very well the issues we raised about the fairness of the trial if we were not able to produce the evidence as we wished . . . they could not take away a lot of limitations, such as the fact that there was no legal instrument to compel a witness to come to The Hague." Wladimiroff added that that limitation caused an imbalance in the presentations of the prosecution and defense cases because "those people who were victims of Dusko Tadic were eager to have him tried and convicted and therefore they were quite pleased to step forward and tell their story. . . . But no one who was involved with him would step forward and witness for the simple reason that they will point at themselves." [14]

These mistakes should not be repeated by the ICC. The Rome Statute needs be amended to include this vital right to protect defendants from unfair prosecution and sentencing.

## 6. The Right to be Secure from Unreasonable Search and Seizure

The Fourth Amendment guarantees “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” Any evidence acquired by public authorities by means contrary to the Fourth Amendment is suppressed. This is yet another right that is not recognized by the ICC.

Rules 63 and 64 which deal with evidence and its admissibility never mention suppression of evidence and/or testimony that was unlawfully obtained. For example, Rule 63(2) states the chamber shall have access to all information to determine its admissibility. There is no mention that evidence may be found to be inadmissible because of the way it was acquired. [15]

The right to be free from unreasonable search and seizure protects people from terrorism by the government.

Absence of the right to be free from unreasonable search and seizure, creates a window for government to permanently persecute and terrorize their political opponents, knowing they can harass them to no end because anything they find will always be admitted in the ICC.

## 7. The Amnesty Option

Amnesty can be a great tool in helping foster peace between people. For example, in South Africa, TRC helped bring supporters of the ANC, Afrikaners, non-Afrikaner whites, and Black Homeland leaders and their supporters together to create one undivided, peaceful nation.

Had the ANC or some international tribunal or court threatened to prosecute apartheid leaders, as well as Black Homeland leaders who participated and promoted apartheid, a civil war would almost certainly result.

Indeed, as late as February 1994, merely three months prior to the first multi-racial elections in South Africa, the opposition Conservative Party and other Afrikaner hardliners were negotiating with Zulus a simultaneous uprising in order to establish a purely Afrikaner and a purely Zulu nation in parts of South Africa.

What prevented such Civil War were promises by the ANC to alleviate the fears of many that the new regime would persecute those who supported apartheid. It is almost impossible to believe that a Civil War in South Africa would've been avoided without the ANC taking steps towards what in 1994 was a fearful white population.

Such war, featuring a significant black advantage in population, but also a significant white advantage in financial power, education, control of private financial, infrastructure and other institutions, etc. would result in tremendous loss of life and would devastate South African economy.

It is, in my opinion, impossible to argue that prosecuting apartheid criminals, no matter how just, would benefit the nation. Indeed, it is impossible for a reasonable person to argue that amnesty should never be an option.

True, often times a truth commission may be complimentary to prosecution. Such course of action may even be proper in most cases. However, it is not proper in all cases.

Amnesty must be included as an option in the ICC. Otherwise, the ICC will serve to promote, rather than discourage violence.

## 8. Other Lost Rights

A number of other rights that Americans would be lost. For example, the ICC does not recognize the right to a reasonable bail or to free legal counsel. Regarding the right to free legal representation, while poor clients can potentially get free counsel, this right is questionable and defendants may be forced to pay for their attorney according to Rule 21 [Rule 21(5) states: “Where a person claims to have insufficient means to pay for legal assistance and this is subsequently found not to be so, the Chamber dealing with the case at the time may make an

order of contribution to recover the cost of providing counsel.”]. [16]

Considering the uneven level of wealth around the world, which affects salaries and prices, it would be hard to establish what exactly qualifies one as a “poor” individual. Would an American making \$12,000 a year be considered poor despite the fact that he is making more than most people in the world? To make sure that everyone receives a fair trial, all defendants without exception must be given the right to free, effective legal counsel. Such right would not be overly expensive (especially considering that it would be split between dozens or even hundreds of nations) and would serve to promote justice and the appearance of justice.

Moreover, according to the Protection of United States Troops From Foreign Prosecution Act of 1999, the right to a speedy trial would also be lost. [17] This is an essential right - especially considering that a defendant doesn't have the right to reasonable bail - because it creates a way to imprison an innocent person for a lengthy period of time.

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The Supreme Court has said that the federal government cannot enter into treaties that relinquish the constitutional rights of American citizens. The Court held that the federal government's treaty power does not enable it “to authorize what the Constitution forbids.” [18] Similarly, the Supreme Court held that constitutionally protected rights are sheltered from the domestic effect of treaties. [19] More recently, the Court stated: “Rules of international law and provisions of international agreements of the United States are subject to the Bill of Rights and other prohibitions, restrictions or requirements of the Constitution and cannot be given effect in violation of them.” [20] Since the ICC would give effect to provisions contrary to the Bill of Rights, including forfeiting Fourth, Fifth and Sixth Amendment rights, ICC judgments against Americans may not withstand a constitutional challenge.

### III. POTENTIAL ICC VIOLATIONS OF INTERNATIONAL LAW

One of many proposed anti-ICC bills in the House of Representatives seeks: “To prohibit United States economic assistance for countries that ratify the treaty known as the Rome Statute of the International Criminal Court, a treaty that provides for the establishment of an International Criminal Court, an illegal and illegitimate institution that violates the principles of self-government and popular sovereignty, as well as accepted norms of international law, and for other purposes.” [21]

Indeed, the issue of ICC conformity has been raised by many. Most jurists believe that: “A treaty is a contract between sovereign nations and, like a private contract, cannot force a nation to be subject to its terms if that nation has not agreed to be bound by its terms.” [22]

The ICC would become established upon ratification by 60 states. It would then have the power to investigate and prosecute citizens of any nation, as long as the crimes they've committed were in places that recognized ICC jurisdiction. Under all available recognized international law, a treaty is only applicable to the nations that sign and ratify it. As the American Servicemembers' Protection Act of 2001 points, “It is a fundamental principle of international law that a treaty is binding upon its parties only and that it does not create obligations for nonparties without their consent to be bound.” [23]

David Scheffer, U.S. Ambassador at Large for War Crimes Issues, wrote:

So, we are told, Article 12 empowers the ICC to exercise jurisdiction over the nationals of non-party states if the state of territory where the crime was committed is either a State Party to the treaty or, as a non-party, has lodged a declaration of acceptance of jurisdiction. Never mind that Article 11, paragraph 2, requires the Court to exercise jurisdiction only with respect to crimes committed after entry into force of the statute for any particular State unless, as a non-party, the State has made a declaration under Article 12, paragraph 3. I wonder how Article 11, paragraph 2, makes sense in the context of an international criminal court whose only targets of prosecution are individuals if that provision does not apply to the nationals of the State in question. Never mind that Article 24, paragraph 1, states, “No person shall be criminally responsible under this Statute for

conduct prior to the entry into force of the Statute." It seems to me that this provision can only be consistent with Article 11, paragraph 2, if it means "entry into force of the Statute for the state of nationality of such person" unless there is a Security Council referral under Chapter VII.

Never mind that Article 22, paragraph 1, which articulates the principle of *nullum crimen sine lege*, states that, "A person shall not be criminally responsible under this Statute unless the conduct in question constitutes, at the time it takes place, a crime within the jurisdiction of the Court." It is puzzling how a national of a non-party state that has not accepted the jurisdiction of the ICC at the time the conduct takes place, could be criminally responsible before the ICC for conduct that does not in fact fall within the jurisdiction of the Court. [24]

Michael Scharf, professor at the New England school of law, also wrote:

"Echoing the arguments he made in Rome, David Scheffer testified before the Senate Foreign Relations Committee that "the treaty purports to establish an arrangement whereby U.S. armed forces operating overseas could be conceivably prosecuted by the international court even if the United States has not agreed to be bound by the treaty . . . This is contrary to the most fundamental principles of treaty law. " (Hearing Before the Subcommittee on International Operations of the Committee on Foreign Relations of the United States Senate, 105th Cong. 2nd. Sess. S. Hrg. 105-724, (1998)(statement of David Scheffer, Ambassador at Large for War Crimes Issues). Another proponent of this view told the Senate Foreign Relations Committee: "The Fact is that this Court's assertions of authority over Americans is illegal . . . . The Court is entirely a matter of treaty. It is a creature of this treaty. Unless we join the treaty, it cannot exercise jurisdiction over the United States or its citizens. "(Hearing Before the Subcommittee on International Operations of the Committee on Foreign Relations of the United States Senate, 105th Cong. 2nd. Sess. S. Hrg. 105-724, at 40 (1998)(statement of Lee A. Casey, Esq.) [25]

However, Scharf himself disagreed that the ICC broke the norms of international law.

The core crimes in the ICC treaty -- genocide, crimes against humanity, and war crimes -- are crimes of universal jurisdiction. These crimes are so universally condemned that those who commit them are considered *hostis humani generis* (an enemy of all humankind), and any nation in the world has the authority to exercise jurisdiction over such persons without the consent of the individual's state of nationality.(Ian Brownlie, *Principles of Public International Law* 305 (4th ed. 1990); Kenneth C. Randall, *Universal Jurisdiction Under International Law*, 66 *Tex. L. Rev.* 785 (1985); Restatement (Third) of Foreign Relations Law of the United States, Sections 404 and 423 (1987).)

There is nothing novel under international law about a State exercising jurisdiction over the nationals of another State accused of committing an offense (whether or not of a universally condemned nature) in the territory of the former. The only difference here is that rather than prosecuting in domestic courts the state has delegated its authority to prosecute to an international body. [26]

Yet, Professor Madeline Morris of Duke University School of Law argued that there are no precedents for delegating territorial jurisdiction to another state when the defendant is a national of a third state in the absence of consent by that state of nationality. [27] The question is not where nations condemn genocide, war crimes and crimes against humanity. Rather, this is a question of jurisdiction.

The ICC cannot be argued as falling under the classification of customary international law because the Rome Conference treaty potentially allows fewer than a third of the nations to impose their will on the other 70% of sovereign countries. Indeed, about a third of all nations didn't even sign the Rome Treaty, much less ratified it. How can something fall under the classification of customary international law when it has not been accepted by the vast majority of nations?

The court also creates a precedent for the future by allowing treaties to be imposed upon nations that never accepted them. For example, what would stop the 57 Islamic nations from creating a court which would criminalize Zionism, if all they needed were 60 ratifications? And what would stop them from requiring only 57 ratifications? Or even 12? And would that subject, say, an Israeli Prime Minister to potential prosecution if he were to visit, say, Jordan where he would continue to be a Zionist?

Or, for example, what would stop a group of nations from passing a treaty requiring all countries of the world to

immediately destroy nuclear weapons in their possession. Would the United States be forced to obey the treaty despite what I assume will be very vocal protests by the American government?

The International Criminal Court also breaks the international law by criminalizing settlements in occupied territories as war crimes. Not only do people not think of settlements when they think of war crimes, but there is no international law of any kind that establishes settlements as war crimes. The ICC seeks to punish what is already widely regarded as an international crime. Even the most casual observer knows that this "law" was introduced by Lybia strictly to persecute the state of Israel because it is Jewish. At the 1998 Rome Conference and upon its signing of the ICC Statute, "Israel expressed its deep disappointment and regret at the insertion into the Statute of formulations tailored to meet the political agenda of certain states. Israel warned that such an unfortunate practice might reflect on the intent to abuse the Statute as a political tool." [28]

## CONCLUSION

During testimony before the Congress following the adoption of the Rome Statute, the lead United States negotiator, Ambassador David Scheffer stated that the United States could not sign the Rome Statute because certain critical negotiating objectives of the United States had not been achieved. "We are left with consequences that do not serve the cause of international justice. Multinational peacekeeping forces operating in a country that has joined the treaty can be exposed to the Court's jurisdiction even if the country of the individual peacekeeper has not joined the treaty. Thus, the treaty purports to establish an arrangement whereby United States armed forces operating overseas could be conceivably prosecuted by the international court even if the United States has not agreed to be bound by the treaty. Not only is this contrary to the most fundamental principles of treaty law, it could inhibit the ability of the United States to use its military to meet alliance obligations and participate in multinational operations, including humanitarian interventions to save civilian lives. Other contributors to peacekeeping operations will be similarly exposed." [29].

The International Criminal Court should also be rejected because it makes the American Constitution obsolete. For one, the Rome Treaty gives the ICC the power of judicial review over the U.S. Supreme Court, whereas the U.S. Constitution specifically states that the Supreme Court should be the highest court in the land.

Additionally, it robs Americans prosecuted by the ICC of the most basic rights: the right not to incriminate yourself, to be protected from double jeopardy, to an impartial jury, to confront and cross-examine hostile witnesses, to compel witnesses to appear before the court, to be free from unreasonable search and seizure, the right to the Miranda warning, to a reasonable bail and to free legal counsel. Moreover, judges and prosecutors will be appointed and removed by member vote, resulting in a tyranny of the majority court.

Regardless of legality of the ICC under the U.S. Constitution and international law, any court that doesn't provide for these basic rights should be rejected. The court also doesn't provide for amnesty, which is often essential for peacemaking. As such, it is likely to cause, rather than prevent war.

The International Criminal Justice court should also be rejected because it is illegal under international treaty law and because it "created" a law and judisdictional authority that did not exist in order to create an avenue to persecute Israelis.

Most importantly, in today's environment, it is impossible for anyone familiar with international political institutions (not including trade organizations) to believe that the court will be fair.

It is for all these reasons that then-President Bill Clinton said on the very day he signed the Rome Treaty: "I will not, and do not recommend that my successor submit the Treaty to the Senate for advice and consent until our fundamental concerns are satisfied." [30]

The paper was originally written in 2001.

## CITATIONS



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## No Saddam hunger strike

December 13, 2004

**US officials have denied claims that Saddam Hussein and senior members of his regime are on hunger strike at a secret detention location.**

"(Saddam) is in good condition and is continuing with his normal routine, which includes taking his meals," Lieutenant Colonel Barry Johnson, a spokesman for detention operations in Iraq, said.

The Iraqi lawyer of former deputy premier Tariq Aziz said Saddam and 11 top officials of his ousted regime had been on hunger strike since Friday to protest against ill-treatment in the secret detention centre.

Lt-Col Johnson said seven of the detainees "have been making a show of not taking meals beginning after the breakfast meal" on Saturday, but they had been snacking from military rations they receive each day.

The other five, including Saddam, had been eating regularly.

All but two said they would resume eating normal meals, and all had been drinking fluids.

Saddam was captured by US forces on December 13, 2003.

He faces charges of war crimes and crimes against humanity. His legal team has repeatedly accused the US of denying them access to their client.

The 67-year-old former president is being held in US custody in a secret location in Iraq. He has reportedly received treatment for an enlarged prostate gland, hernia problems and eye trouble.

Iraq's interim government has said he will go on trial after the January 30 elections, billed as the first free vote to be held in the country in half a century.

According to the latest edition of *US News and World Report*, Saddam planned the insurgency that continues to engulf Iraq well before his capture.

The magazine quoted a military intelligence report as saying that in late 2002 Saddam sent more than 1000 security and intelligence officials to two military facilities near Baghdad for two months of guerrilla training.

The violence continued to claim the lives of US and Iraqi forces across Iraq over the weekend.

*Agence France-Presse*

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## Medical News Today

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### Childhood is a brutal experience for half of world's children, UNICEF

12 Dec 2004

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Despite the near universal embrace of standards for protecting childhood, a new UNICEF report shows that more than half the world's children are suffering extreme deprivations from poverty, war and HIV/AIDS, conditions that are effectively denying children a childhood and holding back the development of nations.

Launching her 10th annual report on The State of the World's Children, UNICEF Executive Director Carol Bellamy said more than 1 billion children are denied the healthy and protected upbringing promised by 1989's Convention on the Rights of the Child - the world's most widely adopted human rights treaty. The report stresses that the failure by governments to live up to the Convention's standards causes permanent damage to children and in turn blocks progress toward human rights and economic advancement.

"Too many governments are making informed, deliberate choices that actually hurt childhood," Bellamy said in launching the report at the London School of Economics. "Poverty doesn't come from nowhere; war doesn't emerge from nothing; AIDS doesn't spread by choice of its own. These are our choices.

"When half the world's children are growing up hungry and unhealthy, when schools have become targets and whole villages are being emptied by AIDS, we've failed to deliver on the promise of childhood," Bellamy said.

The report - entitled "Childhood Under Threat" - examines three of the most widespread and devastating factors threatening childhood today: HIV/AIDS, conflict, and poverty.

#### Seven deadly deprivations

The report argues that children experience poverty differently from adults and that traditional income or consumption measurements do not capture how poverty actually impacts on childhood. It instead offers an analysis of the seven basic "deprivations" that children do feel and which powerfully impact on their futures. Working with researchers at the London School of Economics and Bristol University, UNICEF concluded that more than half the children in the developing world are severely deprived of one or more of the goods and services essential to childhood.

- 640 million children do not have adequate shelter
- 500 million children have no access to sanitation
- 400 million children do not have access to safe water
- 300 million children lack access to information (TV, radio or newspapers)
- 270 million children have no access to health care services
- 140 million children, the majority of them girls, have never been to school
- 90 million children are severely food deprived

Even more disturbing is the fact that at least 700 million children suffer from at least two or more of the deprivations, the report states.

The report also makes clear that poverty is not exclusive to developing countries. In 11 of 15

industrialized nations for which comparable data are available, the proportion of children living in low-income households during the last decade has risen.

### **A growing war on childhood**

Along with poor governance, extreme poverty is also among the central elements in the emergence of conflict, especially within countries, as armed factions vie for ill-managed national resources. The report notes that 55 of 59 armed conflicts that took place between 1990 and 2003 involved war within, rather than between, countries.

The impact on children has been high: Nearly half of the 3.6 million people killed in war since 1990 have been children, according to the report. And children are no longer immune from being singled out as targets, a trend underscored by the September 2004 attack on schoolchildren in Beslan, Russian Federation.

The report also outlines where the world stands on a ten-point agenda to protect children from conflict, first enunciated by UNICEF in 1995. It examines trends in child soldiers, rape as a weapon of war, war crimes against children, and the damage caused by sanctions, among other issues, and finds that although some progress has been made it has been far from sufficient to ameliorate the impact of war on children's lives.

For example, hundreds of thousands of children are still recruited or abducted as soldiers, suffer sexual violence, are victims of landmines, are forced to witness violence and killing and are often orphaned by violence. In the 1990s, around 20 million children were forced by conflict to leave their homes.

Conflict also has a catastrophic impact on overall health conditions. In a typical five-year war, the under-five mortality rate increases by 13 percent, the report states.

And with conflict aggravating existing poverty, the report emphasizes the need for greater global attention and investment in post-conflict situations, to ensure a steady and stable transition to development.

### **When adults keep dying**

The impact of HIV/AIDS on children is seen most dramatically in the wave of AIDS orphans that has now grown to 15 million worldwide.

The death of a parent pervades every aspect of a child's life, the report finds, from emotional well-being to physical security, mental development and overall health. But children suffer the pernicious effects of HIV/AIDS long before they are orphaned. Because of the financial pressures created by a caregiver's illness, many children whose families are affected by HIV/AIDS, especially girls, are forced to drop out of school in order to work or care for their families. They face an increased risk of engaging in hazardous labour and of being otherwise exploited.

HIV/AIDS is not only killing parents but is destroying the protective network of adults in children's lives. Many of the ailing and dying are teachers, health workers and other adults on whom children rely. And because AIDS prevalence grows in condensed pockets, once adults start dying the overall impact on surviving children in a community is devastating.

Because of the time lag between HIV infection and death from AIDS, the crisis will worsen for at least the next decade, even if new infections were to immediately stabilize or begin to fall. The report details the measures that nations must employ to prevent the spread of AIDS, keep adults living with HIV alive, and provide nurturing and care for children already orphaned.

### **Putting children first**

The State of the World's Children argues that bridging the gap between the ideal childhood and the reality experienced by half the world's children is a matter of choice. It requires:

- Adopting a human rights-based approach to social and economic development, with a special emphasis on reaching the most vulnerable children.
- The adoption of socially responsible policies in all spheres of development that keep children specifically in mind.
- Increased investment in children by donors and governments, with national budgets monitored and analyzed from the perspective of their impact on children.

-- The commitment of individuals, families, businesses and communities to get involved and stay engaged in bettering the lives of children and to use their resources to promote and protect children's rights.

"The approval of the Convention on the Rights of the Child was our global moment of clarity that human progress can only really happen when every child has a healthy and protected childhood," Bellamy said.

"But the quality of a child's life depends on decisions made every day in households, communities and in the halls of government. We must make those choices wisely, and with children's best interests in mind. If we fail to secure childhood, we will fail to reach our larger, global goals for human rights and economic development. As children go, so go nations. It's that simple."

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