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:

Tuesday, September 07, 2004

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World court eyes 2005 start

By Anthony Deutsch in The Hague
September 7, 2004

PROSECUTORS at the International Criminal Court will begin their first war crimes trial next year if suspects in Congo or Uganda can be arrested and transferred to the Netherlands, Chief Prosecutor Luis Moreno-Ocampo said today.

Mr Moreno-Ocampo told the court's governing body his staff is examining complaints regarding six more conflicts on four continents to see whether war crimes were committed that could fall under the court's jurisdiction. He did not name them.

But the Argentinian prosecutor warned that future investigations may be hindered unless the countries sponsoring the court meet their financial obligations.

"I cannot and will not announce the opening of a third investigation without being certain that sufficient resources are available," he said.

About 80 of the 94 countries that endorsed the Rome Treaty creating the court were attending a weeklong conference focusing on budget issues, as the court gears up to move from the phase of investigations toward its first prosecutions.

Another 40 countries were attending as observers. The US, which opposed the court's creation, did not attend.

Investigators were dispatched to Congo and Uganda after the two African nations referred jurisdiction over alleged war crimes committed during rebel conflicts. The court is empowered to prosecute crimes only when a country's national judiciary is incapable of handling the cases.

Mr Moreno-Ocampo said "rape and other crimes of sexual violence, torture, child conscription, and forced displacement continue to take place" in the two nations.

Substantial progress has been made in investigating those crimes, said Mr Moreno-Ocampo, and those cases could be ready for trial early next year. "If defendants are arrested, we will begin the first case at the beginning of 2005," he said.

The court, operational since July 2002 after 60 countries ratified its founding treaty, has not yet named suspects or issued public indictments.

Mr Moreno-Ocampo said he expected to be ready to open a third investigation by mid-2005, but warned budget constraints might delay that. His office also has made plans to launch a fourth investigation in 2005.

He also urged the assembly not to cut administrative positions that it had approved last year at the second conference in New York, in administration.

The assembly has proposed €69 million ($120.68 million) for the coming year, up from around €53 million this year.

But that amount "is woefully inadequate to meet the responsibilities of this court as set out in its statute," said Richard Dicker, director of the International Justice Program at

the New York-based Human Rights Watch. The member states financing the court "need to ratchet up their support for the court they created," he said last week.

The US, a major donor to other international bodies, has actively opposed the International Criminal Court.

Fearing politically motivated prosecutions, Washington has negotiated bilateral agreements with dozens of countries to ensure that indicted US citizens cannot be extradited to the court.

"The United States is not the only country that has not acceded to the Rome Statute," Zeid said. "It is our task to convince them that the court is a well constituted court, that its operations are running smoothly, and to convince them to accession."

The Associated Press

This report appears on NEWS.com.au.

Title : Key funding talks open on world war crimes court
By :
Date : 06 September 2004 1958 hrs (SST)
URL : http://www.channelnewsasia.com/stories/afp_world/view/105227/1/.html

THE HAGUE : Countries that have signed up to the world's first permanent war crimes court opened a conference to discuss crucial funding for the tribunal, which has run into strong opposition from the United States.

"The Netherlands regrets that the United States cannot commit itself to the ICC and its fight against impunity," Dutch Foreign Minister Bernard Bot said in his opening speech.

The International Criminal Court (ICC) is based in The Hague, and for the first time, the five-day conference of the states party to the court is being held in the same city. Eighty of the 94 states that have signed up are attending.

No cases have yet been brought before the court.

The most important issue on the agenda will be agreeing the 2005 budget, with the prosecutor having already launched two official investigations into alleged war crimes committed in northern Uganda and the Democratic Republic of Congo.

The ICC has proposed a 70 million-euro (84 million-dollar) budget.

The ICC became a legal reality in July 2002 and is mandated to try genocide, war crimes and crimes against humanity, although only those committed after its foundation.

The United States, which had initially signed the Rome Treaty creating the court has since retracted its signature. Washington has started an active campaign against the ICC because it fears the court could become politicised.

Bot, whose country currently holds the rotating European Union presidency, insisted that dialogue with the US must continue.

"The United States shall stay our friends and allies. At the same time we will defend the independence of the ICC," he vowed.

The Bush administration has pressed countries to sign bilateral agreements that guarantee that US soldiers cannot be extradited to The Hague if they are prosecuted for genocide, crimes against humanity or war crimes by the ICC.

To date, some 30 of the 94 states who signed up to the court have signed such agreements.

The president of the Assembly of States Parties, Jordan's Prince Zeid Raad Zeid Al-Hussein, called upon the states to give financial support to the ICC.

"What would be too expensive would be the consequence of not having a court at all," he said.

"The Court is the only institution that can give us hope for the 21st century."

The conference will also discuss the workings of a fund set up to help victims and compensate them for their suffering.

The Netherlands announced Monday that it would donate 100,000 euros (120,000 dollars) to the fund and called on other states to do likewise.

- AFP

The Christian Science Monitor, September 7, 2004

September 7, 2004, Tuesday

SECTION: OPINION; Pg. 09

LENGTH: 859 words

HEADLINE: Put **teeth** in 'never again' **vow with fast, full-scale UN response**

BYLINE: By Robert C. Johansen

DATELINE: SOUTH BEND, IND.

BODY:
Cambodia, Yugoslavia, East Timor, Sierra Leone, Congo, Liberia, Rwanda. Now, Darfur. After each genocide or major atrocity, everyone promises: "Never again." But mass murder has happened again, and yet again. The time to stop it has come.

Here's how: Establish a permanent **United Nations** Emergency Service and base it, until needed, at a **UN**-designated site, ready with mobile field headquarters to quell an atrocity within 48 hours after **UN** authorization. Because it would be permanent, it would not suffer from current delays in setting up an ad hoc force. Because it would be made up of volunteers from around the world, it would not be held back by the chronic reluctance of **UN** members to deploy their own national units in risky situations.

A 12,000- to 15,000-member Emergency Service could be expertly trained and coherently organized, so it would not fail due to a lack of skills, equipment, cohesiveness, experience in resolving conflicts, or gender, national, or religious imbalance. It would be an integrated service encompassing civilian, police, judicial, military, and relief personnel prepared to conduct all necessary functions in complex emergencies, so it would not lack the specialized professionals essential to succeed in peace operations. There would be no confusion about the chain of command, which would be headed by a designee of the **UN** secretary-general with the approval of the Security Council.

In the past, even when the Security Council has been able to agree on authorizing a peace operation, three to six months often pass before a force is fully in position. In similar cases in the future, the proposed Emergency Service could make a big difference. Moreover, once a permanent **UN** force is established and earns a reputation for effectiveness, it would be easier for the Security Council to agree to deployments because council members would not face new start-up costs, complicating delays, and the danger of putting their own national units at risk (or the embarrassment of voting for a force and then not contributing to it).

Because the **UN** has lacked the capacity to move promptly in the past, millions of innocent people have been killed and millions more wounded. Genocidal frenzies have forced tens of millions from their homes, destroyed entire economies, and wasted hundreds of billions of dollars.

If the **UN** Security Council had previously established an emergency service, the thousands of people now being killed in Darfur and the 2 million who have fled their homes would probably still be alive and well and living in their communities.

The service could protect families in secured villages against marauding warriors bent on "ethnic cleansing." It could gather evidence of crimes against humanity and arrest those committing them. It could hold detainees in a rights-sensitive international penal system until they can be indicted and tried by a tribunal operating under international standards of due process. The service also could begin emergency humanitarian assistance to victims fleeing previous raids, and provide security for humanitarian workers.

The **UN** Emergency Service would, for the first time in history, offer an immediate, comprehensive, internationally legitimate **response** to crisis.

Although the emergency force would cost an estimated $ 2 billion to establish, with an annual recurring cost of $ 900 million, those expenses are far lower than the costs likely to occur if conflicts are allowed to spiral out of control.

According to data from the Carnegie Commission on Preventing Deadly Conflict and from the International Commission on Intervention and State Sovereignty, the international community spent approximately $ 200 billion in seven major interventions in the 1990s. It could have saved an estimated $ 130 billion of that expenditure with a more effective preventive approach.

Leaders from some progressive national governments, human rights organizations, religious groups, and surviving members of victimized families around the world are calling for a rapid-deployment capability to protect the innocent from future atrocities. Yet because not enough governments have answered this call, members of civil society must press governments now to establish this **UN** Emergency Service.

It could curtail violence in divided societies, deflect venomous attacks between those of different ethnicities and religious traditions, end a culture of impunity, encourage the concentration of scarce resources on meeting human needs rather than on harming one's neighbors, and bring an energizing focus to the meaning of human security. It could produce monumental benefits in lives saved, mothers and daughters protected against grievous violations, families still able to live at home, time and money never spent to kill and destroy, tolerance maintained, laws upheld, and communities at peace.

Finally, we could give genuine meaning to "never again."

* Robert C. Johansen is senior fellow at the Kroc Institute of International Peace Studies and professor of political science at the University of Notre Dame.

LOAD-DATE: September 06, 2004

IRINNEWS.ORG

UN Office for the Coordination of Humanitarian Affairs
Tuesday 7 September 2004

LIBERIA: DDR commission rejects October deadline for completing disarmament

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Row breaks out over when disarmament should end

MONROVIA, 7 Sep 2004 (IRIN) - A government commision overseeing the disarmament of former combatants in Liberia has rejected a UN statement that the process must end in October. It said on Monday that the campaign must go on for longer in order to mop up all the weapons still held by the warring factions in remote areas of the country.

"The National Commission on Disarmament, Demobilization, Reintegration and Rehabilitation, set up by the Transitional Government does not agree to the recent pronouncement by the UN Mission in Liberia to end the disarmament programme on October 30", Moses Jarbo, head of the commission, told IRIN.

Jarbo said neither the government, nor Liberia's three warring parties who are represented on the disarmament commission had been notified of the October 30 deadline before Jacques Klein, the head of the UN mission in Liberia (UNMIL), announced it last Wednesday.

Jarbo said he worried that the disarmament programme, which has so far demobilised more than 71,000 people claiming to be former combatants, would "run into trouble" unless it were allowed to run on for longer.

He noted that UNMIL had yet to open a planned disarmament camp for fighters of the Liberians United for Reconciliation and Democracy (LURD) rebel movement at Voinjama in Lofa county in the far northwest of the country and another for rebels of the Movement for Democracy in Liberia (MODEL) at Harper in Maryland, near the southeastern border with Cote d'Ivoire.

"We cannot disarm in those two key counties alone in two months time. The rainy season is on and many roads in the interior are inaccessible. We need enough time," Jarbo stressed, describing the October 30 deadline imposed by Klein as "unrealistic and unilateral."

Brigadier Joseph Owonibi, the deputy commander of UNMIL's 15,000-strong peacekeeping force in Liberia, announced in late August that disarmament would only finish at the end of December. But a week later, Klein brought the deadline forward by two months.

Clive Jachnik, the head of UNMIL's disarmament programme in Liberia, declined to comment on Jarbo's refusal to go along with the latest UN timetable. "I have no reaction to this," he told IRIN.

Speaking to journalists on 1 September, Klein said that any Liberian found carrying unauthorised weapons after October 30 would be arrested and prosecuted.

UNMIL made a false start to the disarmament programme in December last year before relaunching it in April.

The number of people who have already come forward to register for demobilisation is already double the UN original estimate of 38,000.

But critics of the programme say many of those reporting for demobilisation are simply civilians seeking to cash in on the US$300 resettlement allowance offered to each former combatant. They point to the fact that fewer than one in three of those reporting for disarmament has actually handed in a weapon.

Jarbo declined to set an alternative date for ending disarmament, saying only: "The relevant parties must agree to it."

"Coming out with a deadline on disarmament must be done through a process of consultation among all stakeholders including the commission, warring parties, the Economic Community of West African States (ECOWAS), the African Union and the UN where a consensus can be reached," he told IRIN.

UN Security Council Resolution 1509, which came into effect a month after an 18 August 2003 peace accord ended 14 years of civil war in Liberia, mandated UNMIL "to carry out voluntary disarmament and to collect and destroy weapons and ammunition as part of an organized DDRR programme."

But it would be impossible for UNMIL to prosecute any former combatants who refuse to disarm without the cooperation of the power-sharing transitional government, which is preparing Liberia for fresh elections in October 2005.

The exact date when disarmament will end is important for relief agencies that plan to start the repatriation of more than 300,000 refugees from other West African countries on October 1.

Many of these are expected to head for LURD-controlled Lofa county, where the Voinjama disarmament site is only due to open on Wednesday.

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The Commercial Appeal (Memphis, TN) September 4, 2004 Saturday Final Edition

September 4, 2004 Saturday Final Edition

SECTION: NEWS; Pg. A8

LENGTH: 417 words

HEADLINE: DARFUR JUST **ONE OF THREE SUDAN WARS - UN** SAYS **PEACE** MUST BE **COMPREHENSIVE**

BYLINE: Associated Press

DATELINE: NAIROBI, Kenya

BODY:
While the world focuses on the crisis in **Darfur, three** times as many people have been suffering for many more years in two other conflicts involving the Sudanese government.

And, while money has flowed in to help the 2 million people in **Sudan's Darfur** region who have been caught in 18 months of civil war, few funds are available for the 6 million Sudanese and Ugandans affected by related conflicts that have lasted more than 18 years.

"The magnitude of these other problems has been lost a bit because of the intensity of **Darfur,**" Dennis McNamara, the top UN official dealing with people displaced within their own country by war, said Friday.

McNamara recently returned from a trip to northern Uganda, where more than 1.6 million people have fled their homes because of an 18-year-old civil war between government forces and the rebel Lord's Resistance Army.

The rebels, operating from bases in the southern region of neighboring **Sudan,** rarely try to hold territory in Uganda and concentrate their attacks on civilians. The group has abducted more than 30,000 women and children to use as servants, concubines and child soldiers, according to UNICEF.

As a result, more than 90 percent of the population in northern Uganda has taken shelter in 180 refugee camps.

"We're very concerned about (northern Uganda) being neglected. It's been very hard to maintain international attention and donors haven't funded it adequately," McNamara said.

In the 1980s and 1990s, the Ugandan government supported the southern-based **Sudan** People's Liberation Army in its battle with the Sudanese government in Khartoum. **Sudan's** government, in return, backed the Lord's Resistance Army, a cult-like group that has little contact with the outside world.

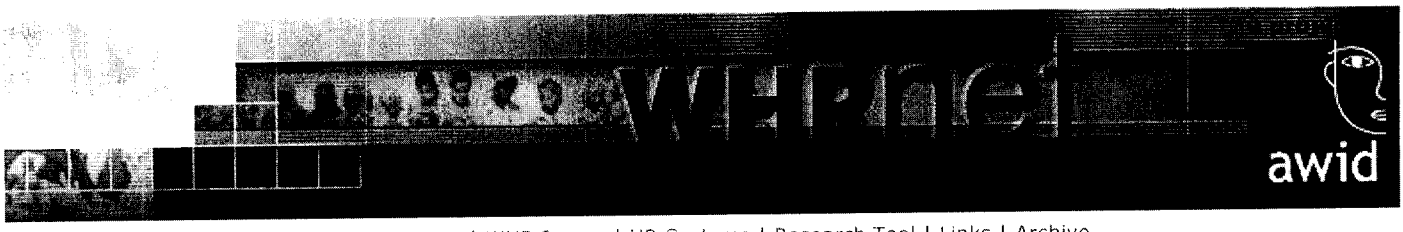
Sudan and Uganda normalized relations in 2001. But reports persist of senior Sudanese officials protecting Joseph Kony, the Ugandan rebel leader, as recently as last month.

Most observers agree that until Kony, who claims to be the Messiah, surrenders, dies or is captured, the war in Uganda will continue.

While diplomats have focused on ending the fighting in **Darfur** in western **Sudan,** little is being said about the wars in northern Uganda and southern **Sudan,** which are both also linked to the Sudanese government, McNamara said.

"We can't be politically selective if we want to have a solution when the causes are inter-linked," he said. "If we stabilize **one** part, and not the other, the unstabilized bit may destabilize the stabilized bit."

LOAD-DATE: September 5, 2004



The International Criminal Court: An Opportunity for Women

August, 2004

By **Ana Elena Obando**, *WHRnet*

The International Criminal Court (ICC) recently began its first formal investigation to judge crimes committed in the Democratic Republic of Congo. It is urgent that the women's movement monitor whether the ICC effectively investigates and sanctions the perpetrators of sexual and gender crimes committed against women. Sexual violence as a weapon of war can no longer go unnoticed. This special issue addresses key aspects of the ICC, such as gender crimes and related case law, gender-sensitive proceedings and the possible implications of implementing international standards nationally to advance women's human rights.

The First ICC Investigation

On July 17, 1998 the United Nations Conference of Plenipotentiaries on the Establishment of an International Criminal Court approved the ICC statute with 120 votes in favor, 21 abstentions and 7 votes against. With 94 ratifications as of today, the court is the first permanent international criminal tribunal to establish individual criminal liability for the commission of international crimes such as genocide, war crimes and crimes against humanity.

For the court to exercise its jurisdiction, the crime must have been committed in the territory of a member state or by a national of a member state. Additionally, the ICC can exercise its

jurisdiction if a state that is not a party agrees- and the crime has been committed in the territory of that state or by a national of that state.[1]

The International Criminal Court Statute is commonly referred to as the Rome Statute, where it was signed. A legally binding instrument for State Parties, the Rome Statute contains legal, policy and symbolic opportunities that may help advance women's human rights. The gender perspective contained in the principles, crimes and proceedings of the ICC is due to the immense work and sustained efforts of many women throughout the world who, year after year, challenge the increased conservative and fundamentalist forces[2] attempts at marginalizing women's rights.

Years of struggle have led to the construction of one of this century's most relevant institutions. June 23 of this year, the Office of the Prosecutor, headed by Dr. Luis Moreno Ocampo, announced the beginning of formal investigations by the ICC into the situation in the Democratic Republic of Congo (DRC). The Office of the Prosecutor will investigate crimes under the jurisdiction of the ICC committed in DRC territory since July 1, 2002 (the date the Rome Statute entered into force).

A letter of referral was sent to the Office of the Prosecutor and signed by the republic's president, Joseph Kabila. This initiated the Congolese investigations.

Referral by a state party to the ICC is one of the three ways a case can be brought before the court. The two other means are: referral by the UN Security Council in accordance with the authority conferred in Chapter VII (Chapter VII comprehends article 39 to 51 of the United Nations charter. It is the chapter related to the action that the Security Council must take with respect to threats to the peace, breaches of the peace, and acts of aggression in order to maintain or restore international peace and security http://www.un.org/aboutun/charter/) or by the Prosecutor who can initiate an investigation *propio motu*[3] based on information regarding crimes within the jurisdiction of the court.

Human Rights Watch estimates that at least 5,000 civilians were massacred in the Ituri province in Congo between July 2002 and March 2003, when the rebel forces, some of them from neighboring countries, clashed with government troops.[4] The United Nations confirms that in the Congo conflict at least 50,000 people have been killed since 1999. It also confirms that 40,000 women and girls have been raped by the parties involved in the conflict.[5]

The reports brought to the Court focus in large part on the rape, torture, forced displacement and illegal recruitment of child soldiers in the DRC. At least 6 million civilians have died since the 1990s as a result of the armed conflicts between rival tribes. States, international and non governmental organizations have reported that thousands of these deaths were from massive assassinations and summary executions initiated in 2002. Thirty-one thousand people have abandoned their homes to find refuge in Burundi, after new outbreaks of violence began in May of this year.[6]

This precedent setting ICC investigation must ensure that the Rome Statute and crimes against women are treated and prosecuted to the fullest extent of the law, as it informs the weight and relevance given to rape and sexual violence in war situations in future cases.

Why does the ICC matter?

The ICC provides an opportunity to guide national legal systems towards a gendered justice that translates into a culture of peace and respect for of human rights.

Despite the existing international human rights norms and legal protections, in domestic and

international conflicts, girls and women are disproportionately brutalized, rape and violations by military and paramilitary forces and rebel groups.

Systematic patterns of rape, torture, slavery and other gender crimes against women during wars and in times of peace are evidenced in Rwanda, the former Yugoslavia, Israel, Palestine, Iraq and the Congo. In the Ad Hoc Tribunals (Rwanda and Yugoslavia) multiple forms of violence against women were recognized, as was the victims' fear of reporting and revealing their stories due to lack of protection and/or for fear of becoming victims of a legal process insensitive to the inequalities of gender, ethnicity, race, etc.

The creation and implementation of the International Criminal Court is a great legal-political step in the international community's efforts to end global impunity. For the first time in the history of law, this legal instrument codifies, the investigation and prosecution of gender crimes against women; it establishes the right of victims to protection and participation in some stages of the process; it recognizes their right to restitution, compensation and rehabilitation; and perhaps most importantly, it creates a new paradigm of justice within international law, that symbolizes the construction of peace, rather than the sanction of war.

Over the past fifty years domestic, regional and international armed conflicts and human rights violations have left perpetrators unpunished, arms and reconstruction dealers enriched and approximately 170 million people dead. Still many states have not ratified the ICC- the United states is one such example. Instead the US government, protects its interests and imperial behaviours by threatening to withdraw military assistance from states that ratify the ICC without signing a bilateral agreement to not extradite American citizens before the Court.[7]

Recently this same government threatened to withdraw all of its soldiers from UN peacekeeping missions if the Security Council did not renew the immunity granted by Resolutions 1422/02 and 1487/03. Resolution 1422 adopted in July 2002 and renewed as Resolution 1487 in June 2003, requests that the ICC not proceed with investigations or trials of officials participating in peacekeeping missions or missions authorized by the UN who are nationals of countries that have not ratified the Rome Statute of the ICC. While the resolution was adopted unanimously in 2002, it requires annual renewal. In 2003, France, Germany and Syria abstained from voting. This year, the American delegation did not receive the necessary votes to support a draft resolution for its "last" year exempting the military in any criminal proceeding of the Court. The resolution required a minimum nine votes from the 15 members of the Security Council.[8]

To counter the political and economic power of some countries that have not ratified the Rome Statute, it becomes increasingly important that international criminal law norms are incorporated into national legal systems as a means of guaranteeing a state of law, strengthening a sovereign democratic system and opening traditional legal conceptions up to gender-sensitive interpretations.

Political actions alone do not devalue the Court's significance and efficacy. Our legislatures' failure to adopt the standards set by the Court statute and international jurisprudence also threaten the principle of complementarity[9] and leaves us, once again, in the hands of a too often sexist national justice whose scales incline towards privileged gender. A key strategy for influencing national law would be a lobbying effort to incorporate all validation, participation and protection proceedings for victims, as well as the sexual and gender crimes in the Court statute, since they reflect more equitable, just and advanced definitions

Sexual and Gender Crimes

Sexual violence is characterized by the violation of one's physical body. It is characterized by a sexual element, as in the case of sexual slavery, forced pregnancy, rape or sexual mutilation.

Gender-based violence is related to sexual violence in that it recognizes ones gender and sexual identity as central, but it has much broader parameters for defining violence. For example, it includes psychological violence or non-sexual physical violence, as in the case of forced recruitment of children into armed forces.[10] Gender crimes against women as established in the United Nations Declaration on the Elimination of Violence Against Women: "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."[11]

The Rome Statute is redefining how the law interprets crimes against women or what are often termed "new" sex crimes against women.[12] Many of those listed under the Rome Statue were not specifically recognized by the Military Tribunals of Nuremburg and Tokyo[13] in 1945-46 or other international human rights treaties. Law No. 10 of the Local Council, which regulated the trials of low level Nazis, recognized rape as a crime against humanity. However, no one was tried for rape. The Tokyo Tribunal did use evidence of rape to support other charges of war crimes and crimes against humanity since rape, in one charge, was recognized as a serious violation of the laws and applicable customs in international armed conflicts.[14]

In the Tribunals for the former Yugoslavia and Rwanda in 1993 and 1995 consecutively, **rape** was not included as a serious crime in keeping with the Geneva Conventions[15] or as a violation of the laws or customs of war. Instead it was specifically noted as a crime against humanity.[16] For the first time, conduct such as sex crimes, the rape of women as a weapon of war, enforced pregnancy and forced prostitution were recognized as a serious violations of the 1949 Geneva Conventions, of the laws and customs of war, as genocide and crimes against humanity. Previously, crimes of sexual violence against women in war times were not considered to be genocidal practices in any international instrument.

Through these tribunals case law, pressure from the women's human rights movement and women judges conscious of gender, rape and other forms of sexual and gender-based violence have been legally recognized among the most serious and major of crimes (Bedont and Hall-Martínez, 1999). This was established in the *Akayesu* case (Rwanda) where the rape and sexual mutilation of Tutsi women was considered a form of genocide and, where rape was defined as "a physical invasion of a sexual nature, committed under coercive circumstances".[17] As well as in the case of *Celibici*[18] (Yugoslavia) where the rape of women was prosecuted as acts of torture and other inhumane acts. (Original citation in Spanish))

In fact, the Trial Chamber of the *Akayesu* case found that when rape was used as a method to destroy, or cause physical and mental damage to a group or members of group, it constituted genocide. Likewise, it decided that rape can be used as a method of birth prevention within the said group. For example, where ethnicity is determined by the father, raping women with the intention to impregnate prevents women from giving birth to a baby that shares their identity.[19]

These tribunals marked an important milestone in international humanitarian law given their precedent setting in processing of sexual and gender violence as crimes against humanity and genocide.

On July 17, 1998 the Rome Statute made great strides as it codified rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization and any other form of sexual violence that constitutes a grave breach of the Geneva conventions as a war crime. Moreover, these same crimes and sexual abuses of comparable severity were codified as crimes against humanity. Within international humanitarian law sexual and gender violence were treated as crimes of the equal seriousness and gravity as homicide, torture, inhuman treatment, mutilation, slavery, etc. (in addition to the Ad Hoc Tribunal issuing case law to this effect).

Article 7 of the Rome Statute defines crimes against humanity as part of a pervasive or systematic attack directed against any civilian population, requiring the perpetrator to have had knowledge that such conduct was part of a widespread or systematic attack. It does not require that the perpetrator know the precise details of the plan or policy of the state. Article 8 establishes war crimes as taking place within the context of international armed conflict (or with serious violations of Article 3 common to the four Geneva Conventions it does not have to be of an international nature) and be related to it. Additionally, the act must be committed as part of a plan or policy or on a large-scale. Sexual and gender crimes are included in both articles. The defining elements of the crimes are similar; the broader context of the crime determines whether they are tried as crimes against humanity or war crimes. The following crimes are included:[20]

Rape is defined as the invasion of a person's by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body. The concept of "invasion" is intended to be broad enough to be gender-neutral. Additionally, the invasion must have been committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent. It is understood that a person may be incapable of giving genuine consent if affected by natural, induced or age-related incapacity.

Sexual slavery recognizes that the perpetrators may be two or more people with a common criminal intent. The perpetrator exercises any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or all of the above, or by imposing on them a similar deprivation of liberty, such as forced work or by reducing a person to a servile condition. This conduct includes trafficking in persons, in particular of women and children. It also requires that the perpetrator caused such person or persons to engage in one or more acts of a sexual nature.

Enforced prostitution is defined as when the perpetrator has caused one or more persons to engage in one or more acts of a sexual nature, including any type of sexual act such as nudity or masturbation and not limited to penetration. Prostitution as a crime against humanity is carried out by force or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or third persons, or by taking advantage of a coercive environment or incapacity of a person or persons' incapacity to give genuine consent. Additionally, the perpetrator or another person must have obtained or expected to obtain some type of advantage, not only pecuniary, in exchange for or in connection to the acts of a sexual nature.

Forced pregnancy is defined as a perpetrator or third person committing the crime of raping a woman with the intent of impregnating. Additionally, the perpetrator must have confined or deprived the pregnant woman of liberty with the goal of preventing her from ending the pregnancy. Finally, this crime must have the intent of affecting the ethnic composition of the population (of the victim) or carrying out other grave violations of international law. Therefore, it is necessary that the rapist is from a different ethnicity than the victim.

Enforced sterilization is defined as the perpetrator depriving one or more persons of their biological reproductive capacity. Temporary birth control methods that do not remain in effect throughout the life of the person are not covered by this type of crime, even if they are imposed in an obligatory manner without the consent of the victim. Furthermore, the measure must be illegitimate and against the will of the person; the conduct must have been unjustified as a medical or hospital treatment of the victim or victims concerned or carried out without their genuine consent, which does not include consent obtained through deception.

Any other form of sexual violence is defined as the perpetrator committing an act of a sexual nature against one or more persons or causing such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against the victim or third persons, or by taking advantage of a coercive environment or such person or persons' incapacity to give genuine consent. Also, such conduct must be of comparable gravity to other crimes indicated in Article 7(1)(g) of the Statute, if constituting a crime against humanity, or be of comparable gravity to a grave violation of the Geneva Conventions, if constituting a war crime.

The Commission for the Historical Clarification of Human Rights Violations and Acts of Violence which have Caused Suffering to the Population of Guatemala established that: "Sexual violence affects a nexus of rights under international protection. The right to life, to physical and psychological integrity, to security, to personal liberty, and to dignity and honor form part of the essential principles of human rights or the so-called core rights, which should be respected by states. These rights are part of the conventional law of human rights and form part of customary international law."[21] (Citation translated from Spanish)

Persecution is classified only as a crime against humanity and is defined as the perpetrator targeting a person or persons by reason of their membership in a group or collectivity or targeting the group or collectivity as such, including not only politically, racially, nationally, ethnically, culturally, and religious based persecution, but also persecution for reason of gender.[22]

Taking Note of Case Law

The criteria for interpretation used within international humanitarian law are essential to global women's human rights activism.

For example, article 21 of the Statute, in relation to other law sources, guides its application and interpretation. This norm establishes that it must be consistent with internationally recognized human rights frameworks that do not make distinctions based on gender; age; race; color; religion or creed; political or other opinion; national, ethnic or social origin; economic position; birth; or other condition. That is, the norm allows the judges of the Court to utilize all existing treaties and conventions that protect women's human rights and at the same time establish a standard of interpretation for similar crimes nationally.

Case law of the Tribunal of the former Yugoslavia has had implications for legal bodies, such as the judiciary, given that these interpretations can be nationally incorporated. The tribunal declared that violent sexual conduct was evidence of very serious violations of customary international law.

The case known as *Foca* has already established that "the forms of forced sexual penetration perpetrated on women with the purpose of interrogating, punishing or exercising coercion constitute torture, and sexual access to women, exercised as the right of property, constitutes a form of slavery under crimes against humanity." (Viseur-Sellers, 1997). (Not translated from the original source) Following this line of jurisprudence, this same tribunal found Kunarac, Kovac and Vukovic guilty of torture and rape, categorized as crimes against the laws and applicable customs of international armed conflicts, and of torture, rape and slavery, categorized as crimes against humanity.

From April 1992 to February 1993, in the armed conflict between the Bosnian-Serbs and the Muslim Bosnians in the area of Foca, non-Serbian civilians were murdered, raped and abused as a direct result of the conflict. The three accused soldiers took active part in the systematic attack; none of their victims did. One of the specific targets of the ethnic cleansing campaign

against the non-Serbian population was Muslim women, who were detained in specific places and were abused in multiple ways and repeatedly raped.

In the case known as *Kunarac*, the Appeals Chamber confirmed the judgment of the Trial Chamber, approving various considerations which are worth reviewing.[23]

1) The Trial Chamber considered the principle characteristic of this case to be the exercise of **slavery** through the sexual exploitation of women and girls. All the controls employed served this purpose. That is, the repeated violations of the victims' sexual integrity, through rape and other forms of sexual violence, were some of the most obvious exercises of the power derived from the right of property.[24] According to the Trial Chamber, to define a form of slavery, the factors or indications of slavery must be taken into account, such as: "control of someone's movement, control of physical environment, psychological control, measures taken to prevent or deter escape, force, threat of force or coercion, duration, assertion of exclusivity, subjection to cruel treatment and abuse, control of sexuality and forced labour."[25]

As for the sexual nature of slavery, the ICC Statute on elements of crimes considers that the perpetrator, in addition to exercising the right to property over one or more persons, must also have violated the person or persons in one or more acts of a sexual nature.

2) Regarding **consent to slavery**, the Appeals Chamber (Needs to be defined_ accepted that the prosecutor did not have to prove lack of consent as an element of the crime because slavery is based on the exercise of the right of property and that in such circumstances it was impossible to express consent, so it was sufficient to presume its lack.[26]

3) Regarding **rape**, although the appellants claimed that "[the victim's] resistance must be real throughout the duration of the sexual intercourse because otherwise it may be concluded that the alleged victim consented to the sexual intercourse" the Chamber emphasized the principle of international law, deducing from its investigation of various legislation around the world, that the violation of sexual autonomy must be penalized and that force, threats of force, or coercion negate consent.[27]

This legal principle, common to many legal systems analyzed in the Tribunal, establishes that a person has been raped when subjected to an act to which she or he has not freely consented or in which he or she has not voluntarily participated. In practice, the absence of freely given consent or of voluntary participation can be evidenced by the presence of various factors such as force, threat of force, or advantage over a person who is incapable of resisting.[28]

The Chamber extended its considerations, stating that force or threat is clear evidence of lack of consent, but that force was not an element per se of rape, but rather that there are other factors, in addition to force. A restricted notion of force or threat of force could open the door to perpetrators evading their responsibility for sexual crimes committed without physical force but under coercive circumstances, for example, rape in detention. In some legislation, it is not necessary to use weapons or physical force to demonstrate force. A future threat could serve as an indicator of force insomuch as there is a reasonable possibility that the perpetrator will exercise the threat. Here we can think about the thousands of domestic violence cases involving threats and death that are generally ignored by national authorities, although there exists a real possibility of their execution.[29]

The Appeals Chamber also concluded that:

"The *actus reus* of the crime of **rape** in international law is constituted by: sexual penetration, however slight: (a) of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or (b) the mouth of the victim by the penis of the

perpetrator; where such sexual penetration occurs without the consent of the victim. Consent for this purpose must be consent given voluntarily, as a result of the victim's free will, assessed in the context of the surrounding circumstances. The *mens rea* is the intention to effect this sexual penetration, and the knowledge that it occurs without the consent of the victim."[30] The Court Statute certainly incorporated many of these elements in the definition of rape, although it used much broader terminology than "penetration," that of "invasion" for the effect of a gender neutral term. It should be clarified that this definition of invasion includes not only the penetration of a sexual organ, but also any type of sexual abuse with objects or with parts of the body. This broadness of concept is crucial for much Latin American legislation where rape is still defined as "carnal access," reducing it to penetration with the male sexual organ.

Rape as an Act of Torture

The Appeals Chamber considered that **torture** "is constituted by an act or an omission giving rise to 'severe pain or suffering, whether physical or mental,' but there are no more specific requirements which allow an exhaustive classification and enumeration of acts which may constitute torture. Existing case-law has not determined the absolute degree of pain required for an act to amount to torture."[31]

The Trial Chamber (What are these- footnote) has not accepted the appellants' argument to the effect that suffering must be visible, because it determined that some acts establish per se the suffering of the victims and that rape is one of those acts. The Chamber went further and took as fact the suffering even without a medical certificate, establishing that sexual violence created serious pain and suffering, whether physical or mental. That is, once rape is proven, also proven is the severe suffering and pain of torture, because rape implicitly contains that pain and suffering. In this way the Chamber justified the characterization of rape as an act of torture.[32]

At the procedural level this concept of severe pain and suffering implicit in sexual violence guided the Prosecutor to take facts as proven without a medical certificate. Likewise, the Prosecutor's focus influenced the categorization of the crimes as sexual crimes, as well as the description of sexual crimes as torture or slavery. The Tribunal's credence of the women's testimony so many years after the acts occurred could serve as a model for national tribunals where there has been a tendency towards lack of credence of women and towards requiring proofs often impossible to obtain due to the private nature of the crimes.

The definition in the Rome Statute of the crime of torture as a war crime or crime against humanity, differs from that in the Convention Against Torture, as it does not require that the torture be committed for a particular reason, for example, to obtain a confession, or that it be officially committed, but rather that it can be committed by non-state perpetrators; a phenomena that disproportionately affects women.[33] This type of interpretation could provide standing in national courts to assert that other types of violent acts committed against women, like domestic violence or incest, for example, constitute torture.

The United Nations Special Rapporteur on Torture has also listed forms of sexual violence as methods of torture.[34] The Inter-American Commission on Human Rights and the European Court of Human Rights have already established that torture can be committed through rape. One of the cases which the Trial Chamber of the Tribunal on Yugoslavia certainly took into account in its decision was *Fernando y Raquel Mejía vs. Peru* from the Inter-American Commission on Human Rights that considered rape to be torture. The case *Mejía vs. Peru* addressed the rape of a woman by Peruvian soldiers while they kidnapped her husband.[35]

This case law and the implementation of the Court Statute may have very useful implications for our legal and judiciary systems, substantively and procedurally. The *Kunarac* case not only

clarifies legal concepts such as consent, force or threat of force, the various forms of control, and sexual autonomy in rape, but also serves as a paradigm for diverse interpretations that can be made regarding other types of sexual and gender violence against women.

The legal precedents set by the case law of these international tribunals are part of international humanitarian law and of human rights. They can be valuable if the women's movement commits to incorporating them in their respective domestic legal systems. Adopting definitions that reflect the highest standards of international law, whether from the ICC Statute or from any other international instrument, and using the ICC may be a strategic avenue for strengthening and modernizing criminal legislation in individual countries.

Gender-sensitive Legal Procedures

The procedural dimension of these legislations effectively defines the extent to which gender-based violence is being recognized. For example, Article 68 of the Rome statute addresses measures to protect security, physical and psychological well-being, victims and witnesses' dignity and privacy, particularly in cases of sexual or gender violence.

Rule 85 of the *Rules of Proceedings and Evidence* define victims as natural persons who have suffered harm as a consequence of a crime under the Court's jurisdiction. This includes organizations or institutions dedicated to religious worship, education, arts, science or philanthropy that have suffered direct harm to their assets (monuments, hospitals, places or objects that have humanitarian ends).

Rule 86 specifies that the Court's orders will take into account the needs of all victims and witnesses, particularly children, elderly persons, people with disabilities and victims of sexual and gender violence.

Rule 70 establishes that a victim's consent in an act of sexual violence may not be inferred by the victim's words or actions when force, the threat of force, coercion or abuse of a coercive environment have undermined the victim's ability to give voluntary and genuine consent; when the victim is incapable of giving genuine consent; or from the victim's silence or lack of resistance to the act of sexual violence. Additionally, the credibility, honorability or sexual availability of the victim or witness cannot be inferred by the victim's previous or subsequent sexual conduct.

In accordance with these principles and in relation to Article 69 of the Statute on the legality and admissibility of evidence before the ICC, the ICC will not admit evidence that violates this principle. Rule 71 additionally establishes that "in light of the definition and nature of the crimes within the jurisdiction of the Court, and subject to article 69, paragraph 4, a Chamber shall not admit evidence of the prior or subsequent sexual conduct of a victim or witness."[36] This type of protection is necessary, due to the fact that generally, in national and international judicial practice, there is a tendency to relate the victim's prior or subsequent sexual conduct to the alleged facts, as a way of legitimizing the guilt of the victim and absolving the perpetrator's responsibility.

Protection measures, in conformity with Rule 87, include holding closed hearings, the presentation of evidence via electronic or other means, and the Prosecutor's capacity to refuse to divulge or present evidence or information if there exists a grave danger to the security of a witness or a witness's family. A victim or witness's privacy is also protected, by controlling the method of questioning with the goal of avoiding harassment and intimidation, particularly when addressing victims of sexual violence. Likewise, the Court, in those phases of the process that it considers appropriate, is empowered to take into account the victims' opinions and observations if their personal interests are affected, above all in the decision-making phase of the Preliminary Questions Chamber to authorize an investigation and decide

reparations- and this without detriment to the rights of the accused or in violation of due process can be considered an advance in criminal procedure because the norm pursues justice by trying to balance the rights of the accused and the rights of victims, which is not that common in national legislations.

The Statute also provides for a Victims and Witnesses Unit within the Registrar of the Court to advise and assist the Prosecutor and the Court on adequate measures of protection and security, above all when witnesses are in danger on account of their testimony. It is of great significance for women that the Unit must include experts in trauma from sexual violence on its staff.

The Court also has the power to determine the magnitude of the harm, losses or damages caused to the victims and to order the payment of reparations to the victims by those convicted. A trust fund to compensate victims and their families provides for such a situation.

To guarantee the prosecution of sexual crimes and victims' protection and participation, the Statute provides for a balanced representation of judges, men and women, and jurists specializing in concrete issues that include violence against women and children (art. 36). The ICC has seven female judges from diverse regions. Likewise, the Prosecutor has the power to name special advisors on issues like sexual violence, gender-based violence and violence against children, and the Registrar has the option to hire special personnel to attend to victims of trauma due to sexual violence. Not only is this typically ignored violence being seriously investigated, but victims are treated according to their condition, situation and need- something rarely achieved at the national level.

Implementing the ICC[37]

For the Court to be fully operational, State Parties that have ratified it must adopt legislative measures in full cooperation with the Court. The benefits of national implementation are two-fold: on the one hand, it places the States Parties to cooperate with the Court, and on the other, it allows them to exercise local jurisdiction over crimes over which the Court will have complementary jurisdiction.

As the Court does not have a police force or prisons, it relies on national bodies for law enforcement services and facilities making it necessary that each state adopts legislation that criminalizes any efforts to impede on the ICC's administration of justice; whether this is obtaining evidence; executing search warrants, searching and seizing; arresting and surrendering of persons; immunities for officials of the ICC; and dispositions on sentences and their enforcement.

Given the complementary character of the ICC, states will have the primary responsibility to investigate and judge the presumed crimes defined in the Rome Statute. On implementing complementarity, State Parties legislate on accountability of command, individual criminal liability, execution of sentences, immunities, and define in their domestic legislation at the least, each and every crime of international law under the ICC's complementary jurisdiction. This last does not absolve states' obligation from crimes codified in other international instruments.

The Court only has jurisdiction over cases that have occurred under certain specific circumstances. These circumstances include a state's acceptance of the ICC's jurisdiction, referral from the United Nations Security Council, and a State Party that is genuinely unable or lacks the willingness to exercise its domestic jurisdiction.

Finally, the Court can transmit a request for a person's detention or surrender to any state in whose territory that person may be found and request the cooperation of that state. In

accordance with Article 89(1) State Parties are obligated to comply with such requests issued by the Court. This cooperation must be effected in accordance with the dispositions of the Statute and local laws. The concept of surrender is distinct from extradition, since the first pertains to the transference of a citizen from a state to the ICC, while the second refers to the transference of a citizen from one state to another.

In the case of concurrent requests for extradition and surrender to a State Party by another state and by the Court, the request of the Court will have priority if the case has been admitted and if the state that has also made a request is a State Party. If the state making the request is not a State Party the Court will have priority if the case has been admitted, unless the state to which it has made the request is under an international obligation to extradite the person requested by the first state. The ICC may contribute to the creation of a state of functional law that provides justice to the thousands of victims of horrific crimes committed globally. It may help to bring about dialogue, tolerance, solidarity and the development of a culture of peace and respect for human rights. Its implementation is the responsibility of each and everyone one of us.

The Advantages and Disadvantages of the ICC for the Women's Movement(s)

Advantages:

- The ICC's jurisdiction is not geographically or temporally limited.
- Investigation of cases must respect the needs, interests and circumstances of the victims and the rights of the accused.
- The Prosecutor has the authority to take measures to protect the victim and witnesses as well as to maintain confidentiality of information.
- Victims are allowed to participate in various stages of the process.
- Evidence can be presented in camera, electronically or by other means when minor or adult victims of sexual violence are involved.
- The ICC applies individual criminal liability without distinction whether the person in question is a Head of State or Government, a representative of parliament or a military commander (arts 25 and 28). Official capacity is not grounds for reducing the sentence (art. 27). A military commander is criminally liable for the crimes committed by forces under his or her command or control (art. 28). Criminal responsibility also applies when the military commander knew or should have known that his or her forces were committing or about to commit such crimes, and failed to take all necessary measures to prevent or repress their commission (art. 28). The fact that a crime was committed by a person under the orders of a superior generally does not relieve that person of criminal responsibility.
- The Prosecutor is independent and separate from the ICC. The independence of the ICC is also ensured by the procedural rules contained in the Statute. For example, the Prosecutor can initiate investigations on his or her own initiative but cannot proceed without the authorization of the Pre-Trial Chamber judges. Once a case is referred to the ICC, neither the states nor the Security Council can interfere in the judicial functions of the Court or influence the process or decisions that it makes, with one exception, discussed under disadvantages.
- There is a Victims Trust Fund.
- The statute does not allow its ratification with reservations or declarations, explanations or interpretations.
- The obligation on states to cooperate strengthens judicial systems as well as national legal systems because they must be adapted to international standards.
- The Statute does not include the death penalty.
- There are procedural and substantive advances relating to women's rights.
- In summary, it is a system for the administration of justice characterized by political independence, impartiality, equality between the accused and the victims, and the principle of complementarity, which strengthens national judicial systems and represents

a legal symbol of peace-building for the international community.

Disadvantages:

- Cases before the ICC cannot be referred by a human rights organization, although these organizations can send information to the Prosecutor.
- Multinational corporations or other legal persons cannot by tried.
- Although the perpetrator's actions can be attributed to a state, an order for reparation cannot be made against the state.
- Victim participation in the process is not obligatory, but at the discretion of the Court.
- The Security Council can request a suspension of ICC proceedings for a period of 12 months if it considers that the trial constitutes a threat to peace and security, in accordance with Chapter VII of the UN Charter (art. 16) by a vote by the majority of the 15 members of the Security Council including the five permanent members; if only one permanent member opposes the suspension of the trial, the Court can continue its investigations.
- The concept of victim does not include other entities, such as human rights organizations.
- State Parties can refuse to cooperate with the Court if disclosing documents could compromise the national security interests of the state.
- States that are not party to the Statute do not have any obligation to cooperate with the Court.
- States can apply their own sentences, which may or may not include the death penalty.

Ensure this legislation is being implemented in your own countries and monitor the work of the ICC to ensure that the sexual and gender crimes and procedures are being implemented within the ICC and in their own legislations.

Use the ICC as a tool for building a culture of peace through justice.

Reference for pros and cons:

Obando Mendoza, Ana Elena, Consultoría sobre la Corte Penal Internacional, CEDAW y su Protocolo Opcional para el Instituto Interamericano de Derechos Humanos, IIDH, San José, Costa Rica, 2002.

Additional Resources

Asociación Internacional de Derecho Penal (International Association of Criminal Law), "La Corte Penal Internacional, Ratificación y aplicación por las legislaciones nacionales" ("The International Criminal Court, Ratification and Application by National Legislatures"), International Review of Penal Law, Edition Erés, Toulouse, France, 2000.

Bedont and Hall-Martínez, *Ending Impunity for Gender Crimes under the International Criminal Law*, The Brown Journal of World Affairs, Winter/Spring, 1999, Volume 6, Issue 1.

BBC Mundo (BBC World), "La CPI investigará delitos en el Congo" ("The ICC Will Investigate Crimes in the Congo"), 6/23/04
http://news.bbc.co.uk/hi/spanish/international/newsid_3834000/3834279.stm

Chamberlain, Cynthia, La implementación de Estatuto de Roma para la Corte Penal Internacional en el Derechos Costarricense (Implementation of the Rome Statute of the International Criminal Court for Costa Rican Law), Thesis for graduate degree in law, University of Costa Rica, 2003

http://www.pambazuka.org/
07/09/2004

DARFUR BEYOND THE CROSSROADS; STRUGGLES OF AFRICAN NATIONALISM

Kwesi Kwaa Prah

I have had a chance to look at Farid Omar's article 'Darfur at the Crossroads: Caught Between Western Hypocrisy and Muslim Complicity'. (Read it online at http://www.nu.ac.za/ccs/default.asp?2,40,5,461) My impression is that while I can agree to some of the arguments he makes I am also in disagreement about some factual and interpretative errors in his discussion. I am going through his piece almost paragraph by paragraph in order to lay bare the discrepancies and factual inadequacies.

For a start, the Arab League and the Organization of Islamic Conference (OIC) have not been altogether silent about the genocide in Darfur, which is instigated, aided and abetted by the Khartoum government. In a recent report made by the BBC, 9th August 2004, entitled 'Arab League backs Sudan on Darfur', the reporter indicated that "Arab Foreign Ministers at an emergency session in Cairo backed Khartoum's measures to disarm Arab militias and punish human rights violators. They called on the UN to give Sudan more time to resolve the conflict. And Sudanese Vice-President Ali Osman Taha said he thought the UN's end of August deadline was impractical." In effect the report indicated that, "the Arab League has rejected any sanctions or international military intervention as a response to the crisis in Sudan's Darfur region." The Sudanese Vice-President Ali Osman Taha had indicated that, "We are really committed to disarm whoever is acting outside the law". But who armed the Janjaweed? He added that, "comprehensive stability was only possible if both the Arab Janjaweed militia and rebel groups disarmed."

It is possible to read into this, firstly, the indecisive and guarded complicity of the Arab League position on the tragedy of Darfur. Genocide is not something which can be given time to be reversed. The slaughter and butchery of 30 000 Furs (not Darfuris) is a matter which needs to be brought to a close immediately. In any part of the world today any extension beyond immediacy in terminating genocide would hardly be countenanced. In the present Sudanese conflict in Darfur with the Sudanese army plus the Janjaweed on one side and African nationalist rebels on the other, who are oppressors and oppressed?

Secondly, if you compare the stance of the Arab League to that of the United Nations you will notice an enormous gap in perception of the magnitude, dimensions and perceptions of the crisis. While some of us recognize in the crisis genocide and ethnic cleansing others see a question of disarming armed bandits and rebels as the heart of the matter. I am not aware of what the OIC has or has not said, but I would agree with Farid Omar that they appear to be "strangely silent". If that is the case, then that certainly amounts to implicit complicity.

I share Peter Takirambudde, Chief of the Africa Division of Human Rights Watch's view that Sudan is "trying to manipulate opinion in the Arab world to hide the massive crimes it has committed against Sudanese citizens."

Magdi Abdelhadi of the BBC has observed, with regards to the Arab League's

statement that "there were no surprises in the Arab League statement and Khartoum got what it wanted. The statement welcomed measures already taken by the Sudanese government to disarm the Janjaweed and bring those responsible for human rights violations in Darfur to justice. The Arab foreign ministers also pledged to assist Sudan and the international community in resolving the conflict peacefully. The statement was very much in line with a report by an Arab League's fact-finding mission to Darfur earlier this year, which largely exonerated the Sudanese government from responsibility and laid the blame on a combination of factors, including protracted drought, tribal conflict and under-development in western Sudan." Of course human rights violators should be brought to book. Human rights violations are unacceptable in the modern world, whether such violators are Americans in the Abu Ghraib prison in Iraq, Arab authorities in the Sudan, or human rights criminals in the Great Lakes area.

True enough, "While western hypocrisy on the situation in Darfur is really problematic, Muslim complicity in the Darfur mayhem is equally disturbing. The Muslim people and their allies around the world should stand up for Darfuris, denounce and expose western double standards and condemn the AL and the OIC for their inaction and failure to put pressure on Sudan to contain the crisis in Darfur." There I have no problems with Farid Omar's views. But then he goes on to say that, "The western media has presented the political and humanitarian crisis in Darfur and broader conflict in Sudan as a race or religious war. This is a false paradigm. The conflict in Sudan is not one pitting the so-called Muslim-Arab North and the so-called Christian/animist South, or between the Arab Janjaweed militia working in collusion with the Sudanese government and the Black Africans in Darfur. The people of Sudan are all Africans, be they Black-Africans or Arab-Africans." Here I have a bone to pick with Omar. Certainly the various conflicts or the various fronts of war in the Sudan are not simply racial or religious. That is the crude and distorted simplification of the issue. But, we must not forget that the Fur are Muslims just like the Arabs in the Sudan. Therefore the conflict cannot be put down to religious differences. Then, what is it?

For years the Khartoum regime of Muslim fundamentalists have also been pursuing ethnic cleansing in the Nuba Mountains of Southern Kordofan with genocidal overtones against the Nuba who are also mostly Muslims. A similar tactic has been in place there, that is, using local Arab militias working hand in glove with Sudanese army units against the Nuba. In the South of the country the conflict is of much longer standing and can be said to have commenced in August 1955, with a period of low intensity conflict between1972 and 1983. Since 1983 over two million southern Sudanese have died as a result of the war.

In the case of the war in southern Sudan the international media has too often simplified the struggle as a conflict between a Christian and animist South against a Muslim North. The real fact of the matter is that it is a struggle between Arabs and Arabized Nubians and the Africans of the Sudan whether they are Fur, Zaghawa, Messalit and other similar groups in the west or the Ingessana in the east or the Beja/Hadendowa in the Kassala area adjacent to Eritrea. Some Nubians are now rejecting Arabism. The struggle in the Sudan is an age-old struggle between the forces for the Arabization of Africans and African nationalism, which rejects Arabization.

It is not simply a question of Islam against Christians and animists. I have in the past on many occasions indicated to friends in the Southern Sudan that they have

for too long allowed their position to be sold short by playing to the international media and other interests which simply defined the struggle as one between Christians and animists in confrontation with Muslims. The explosion of media attention in the wake of the emergence of the Darfur crisis has underscored the falsity of the religious explanation of the conflict. If the Fur, Messalit, Zaghawa, Ingessana and Beja are Muslims certainly the struggle of the Sudan is not a religious conflict of Muslims and non-Muslims.

The history of the Arabs in the Sudan has been part of the history of the Arabs in Africa. Arabs entered Africa in the middle of the 7th century AD and have been steadily Arabizing Africans starting with the Berbers of northern Africa who till today have to a degree been resisting Arabization.

The Sudan and Mauritania are possibly the most decisive flash points in this process. Will Africans steadily accept to be culturally Arabized or will they resist Arabization and remain culturally rooted in their histories?

This is the real question of the Sudan and Africa. I say that I believe Africans prefer to remain African and not to become Arabs. I say this without prejudice to Arabs or those Africans who have become Arabized and wish to remain so. Just as much as Arabs have the right to protect their identity, history and culture, Africans also have a similar right. Just as much as Arabs wish to see the realization of Arab unity (el watani el arabi), Africans also most fervently wish to see the unity of Africans. The Arab League with all its weaknesses represents contemporary aspirations of Arabs for Arab unity.

As I have often argued, for as long as the pursuit of this ideal is conducted democratically for the freedom of Arab peoples, the ideal deserves the support of all progressive and well meaning people. But this must not be allowed to proceed geographically, politically, economically and culturally at the expense of Africans. Where does the border of the Arab world end and who are the people beyond the borders of the Arab world? Africans need to answer this question for themselves.

Today on the maps of the Arab League the Arab world includes about a third of Africa's geographical area. There are some of us who say enough is enough. No further expansion at the expense of Africans is tolerable. The notion Arab-Africans is a term used in the Sudan to hide the realities of Arabization. It is a concept, which has become in some ways a Trojan horse for Arab expansionism in Africa. Culturally and otherwise, people will always mix and adopt new identities, but this must not become a one-way traffic to Arabization and the cultural denationalisation of Africans.

In the broad historical experience of Africans two imperialisms can be pointed to, Arab and Western imperialism. Historically, Arab imperialism in Africa is older than western imperialism by a millennium. The day Africans realize that Arabs are not Africans and Africans are not Arabs but that the two peoples must live together in peace and with humanity towards each other their recognition of the African identity would have moved one step further and would have made a decisive conceptual move towards the ultimate achievement of African unity. The unity of Africa embraces historically, culturally and psychologically more directly the African Diaspora than the Arab north of Africa. In this sense, the African Diaspora is central to Pan-Africanism and African unity.

In a manuscript I am currently writing I have made the point that, if we want to maintain the rigour of the logic of the Diaspora link, we must, as Africans, define our reality on a historical and cultural basis. In this respect, geography is only useful in as far as it helps us to understand the historical and social process. We can therefore hardly define the reality of contemporary Africa as a geographical expression; that is, Africans as all who live on the continent of Africa. The argument has a resounding and irresistible flip-side, which is that, all who do not live on the continent or not born on the continent, are not Africans. This is the distorted logic, which pushes out the African Diaspora. We must not equate citizenship with nationality or cultural identity. A state may have people of different nationalities.

I do not agree that the so-called "race and religious analogy of the conflict is part of the ideological ploy of U.S. imperialism to generate anti-Arab hostility among African-Americans and Black Africans, to win support of African-Americans and Black African Christians for the US neo-Conservatives/Christian right project against Arab and Muslim Africans, and in particular against Sudanese Muslims. It is also aimed at undermining the long standing Afro-Arab solidarity that has historically striven against the forces of western imperialism, colonialism, apartheid and the occupation in Palestine."

Of course western imperialism must be denounced but so also must the Arabization of Africans be fought. It is ridiculous to bracket African-Americans with US neo-conservatives in this way. It is at best disingenuous and at worst mischievous. The point, which the Darfur crisis has forcefully brought home to many Africans in the Diaspora, is the fact that ultimately the definition and identity of Africans cannot be based on colour. In the Sudan it is not possible to differentiate African from Arab on the basis of colour and I am sure that with television available worldwide many Africans in the Diaspora who have for centuries been faced with white racism find it difficult to digest the fact that most Arabs in the Sudan have black faces. The point I have elsewhere made is that amongst Arabs colours range from black to blonde. The same is true for Jews. In years to come this may be more clearly true for Europeans.

Ultimately what defines an African from an Arab are cultural and historical belongings, not nature but nurture, not biology but rather culture. The black colour which is common for most Africans happens to be a miraculous bonus, in the sense that whereas most other major peoples of the world have other attributes they share as groups based on culture, religion, language, history and geography, mixed to different degrees, in the case of Africans in the absence of clearly unifying language and religion, colour has become a most useful blessing which makes most Africans recognizable from a good distance. But, in the future increasingly there will be many Africans who are not necessarily black. This is the way the world is moving and this is the future of humanity.

From my viewpoint, part of the tragedy of Darfur is that African nationalism in the Sudan has been conveniently split between what is going on in the west, south, east and northeast. Africans have so far failed to find sufficient ground to realize that they are all fighting the same war. The Arabist rulers in Khartoum have been clever at creating convenient and tactical truces, and thereby silencing and truncating the Southerner's struggle from the Fur, Ingessana, Nuba and Beja. This amounts to success for the policy of divide and rule, which has been in the past used to such consummation by successive Arabist regimes in Khartoum, who fear and deny the predominant African character of the Sudan. What al Bashir and the Khartoum clique fear most, is that the Arabist minority may lose control of the Sudan; that the

African majority may exert its preponderant character.

It is most doubtful if the Arab League, in its present form, would readily accept a thoroughly democratic solution to the national question in the Sudan. But Africans are waking up. Sooner or later the African character of the Sudan as a democratic expression of the society will triumph.

I am happy with Farid Omar's philosophically inclusive sense of humanity. But, I fear the persistence of the confusion of Arab and African on the continent and beyond. This confusion, on this specific matter, appears to be more prevalent among Africans than non-Africans. We still do not seem to know or understand who we are. I hope we do not go into another major Pan-African meeting/congress with this confusion. If this happens, we would not have made any real headway since the last one. Let us not try to foist an African identity on people who do not want to be so regarded and who reject the African identity; who continue to despise and enslave Africans. I agree with Farid Omar when he says that, "the root causes of the Sudanese conflict are primarily political and can be located in totalitarian tendencies that have overtime, suppressed the evolution of popular democracy." While this diagnosis is right the point has to be seen in relationship to the long history of oppression, slavery, war, ethnic cleansing and now genocide.

The suggestion that external forces have fanned the Sudanese conflict is grossly exaggerated and misplaced. Blaming the conflict on American arms and money and right-wing evangelical groups in the US does not do credit to the Africans of the Sudan. The Africans of the Sudan are a group oppressed by the minority Arab elite in the country. As for the territorial integrity and national sovereignty of the Sudan, we must remember that the Sudan as it is geographically represented today is like all African states an artificial creation of European powers. The British were anxious to control the whole of the Nile Basin in order to supply Egypt with its lifeline, the Nile waters.

Omar's contention that "the Sudanese government either has no interest in resolving the crisis or lacks the capacity to do so", is spot on. As for the AU I agree with Farid Omar that the about "300 Peace Monitors it has deployed in Darfur is grossly inadequate." Again Farid Omar's observation is pertinent when he writes that, "Like the Arab League and Organization of Islamic Conference, the Muslim and Arab media have also maintained a strange silence." In sharp contrast to events in the Middle East, coverage on the horrific Darfuri scene by Al-Jazeera and other leading Arab Satellite Televisions such as the Dubai-based Al-Arabiya is dismally marginal. Failure by Muslim and Arab media to adequately cover the grisly events in Darfur smacks of complicity.

Africans need to read the lessons right in this behaviour and attitude of the Arab media. The simple truth about all the wars in the Afro-Arab borderlands is that, at best we should be able to nationally coexist in peace. But if we cannot live together in peace, then we must go our separate ways without rancour, pain and mutual torment. The members of the global community have fortunately agreed as standing international protocol, since the Treaty of Versailles, that in our times, nations and peoples have the right to self-determination.

This protocol applies equally well to the African people of the Sudan.

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