

Strategic Perspective:

U.N. Criminal Court Binding on All

by John Loeffler, World Affairs Editor

In short, we are likely to do better by building our 'house of world order' from the bottom up rather than from the top down. It will look like a great, 'booming, buzzing confusion' to use William James' famous description of reality, but an end run around national sovereignty, eroding it piece by piece, is likely to get us to world order faster than the old-fashioned frontal attack.

This quote was from U.S. Deputy Assistant Secretary of State Richard Gartner's speech in 1968, titled *The United Nations and Alternative Foundations—The Hard Road to World Order*.

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U.S. Dep. Asst. Secretary of State

Two obstacles have confronted the United Nations in achieving its publicly stated goal of “global governance,” the first being a system of global taxation and the second, a law enforcement arm.

A great step toward establishing the latter occurred this past July when the United Nations Diplomatic Conference in Rome voted 120 to 7 in favor of establishing an international criminal court to try individuals accused of genocide, war crimes, crimes against humanity, and the crime of aggres-

sion. Upon signing by the 60th nation, the new international statute creates an Assembly of States' Parties (ASP) consisting of one representative from each nation that ratifies the statute. The statute will take effect 60 days after it is ratified and the ASP will control the functioning of the International Criminal Court.

For widely differing reasons, the United States and a cadre of other countries voted against the statute, including China, Libya, Algeria, India, Qatar, and Israel. These countries, representing two-thirds of the world's population, believed the statute was seriously flawed.

It is interesting that Israel, many of whose citizens are the most blatant victims of genocide in history, voted *against* the international criminal court proposal.

For over a year, Israel has fought Arab bloc insertion of a paragraph defining the transfer of civilians into occupied territory as a war crime. This stipulation would open up Israel to prosecution for allowing Israelis to move into Judea and Samaria.

Nonparticipating nations may still enter into an ad hoc agreement with the court to participate on a case-by-case basis. Non-cooperative states will be referred to the ASP and/or to the U.N. Security Council.

There is no indication of what the ASP or the Security Council is expected to do in the event of non-cooperation by a country, whether a "Party to the Statute" or not. This is probably the first international statute which affects even non-consenting member states.

Background of International Crimes

The problem of dealing with serious international crimes has been on the world's mind since World War II, when it was forced to confront the horrors of the Holocaust.

In order to deal with the shock of Nazi death camps, since there was no law which existed at the time—the Holocaust being a legal event sanctioned by the legitimate government of Hitler's Germany—the Allies had to create a hitherto nonexistent category of law called "crimes against humanity."

Charges under these crimes were then applied after the fact to Nazi leaders in a process which would not have stood Constitutional muster in our own court system, since it prosecuted the Nazis *ex post facto* on the basis of laws

which didn't exist when the crimes were committed. The motive of punishing the Nazis was noble, but the method used opened a Pandora's box of dangerous international law which is coming to fruition today.

Benjamin B. Ferencz, a prosecutor at the Nuremberg Trials, has been one of the major advocates for the creation of the ICC. His support is unwavering, even though it will trample on America's sovereignty. He claims, "Antiquated notions of absolute sovereignty are absolutely obsolete in the interconnected and inter-

dependent global world of the 21st century."

Structure of the Court

The ASP will elect 18 judges to serve 9-year terms, divided

into three Chambers:

1. A Pre-Trial Chamber, consisting of "not less than six judges";
2. A Trial Chamber, of not less than six judges; and
3. An Appeals Chamber, consisting of four judges and the Presidency, which consists of a president and two vice presidents elected by the judges.

The function of the Pre-Trial Chamber may be carried out by a panel of three judges assigned to a particular case, or by any one of the three. Pre-trial functions in-

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clude ruling on jurisdictional matters, issuing warrants or subpoenas, determining issues of jurisdiction and admissibility, and the like. The trial judges hear and decide the cases brought before them—without assistance from a jury.

The new statute also creates an Office of the Prosecutor, elected by the ASP for a 9-year term. The Prosecutor, a Deputy and their staff are responsible for investigating and bringing to "justice" any person accused of an "international crime."

Definitions of Crimes

International crimes fall into the categories of genocide, crimes against humanity, war crimes and aggression.

The first three are very tightly defined crimes. Crimes against humanity are defined to include murder, extermination, enslavement, deportation or forcible transfer of populations "without grounds permitted under international law," torture, rape, enforced prostitution, sexual slavery, forced pregnancy, enforced sterilization, persecution against any identifiable group, apartheid, and "other inhumane acts of a similar character."

Even here there is a problem recognized by some states, since "forced pregnancy" can be interpreted to mean *prohibition of abor-*

tion within a country and not just forced impregnation by rape or other means.

Aggression is Undefined

While genocide, crimes against humanity, and war crimes each have definitions, the crime of aggression is *not* defined by the final document. In an addendum entitled "The Final Act," however, the Commission to Establish an International Criminal Court is directed to "prepare proposals for a provision on aggression, including the definition and elements of crimes of aggression and the con-

ditions under which the International Criminal Court shall exercise its jurisdiction."

The United States objected to this provision, declaring that only the

U.N. Security Council can act on matters of aggression under Article VII of the U.N. Charter. Given the U.N.'s socialist track record, it could easily include verbal threats or intimidation, pressure to change sexual orientation or religious belief, and all manner of things.

The U.S. Opposed the Court

The United States voted against the proposed Court because the Pentagon feared that our troops stationed in U.N. actions around the world could become targets of politically motivated charges. U.S. representatives to

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the conference attempted to pass an amendment which would force any proposed case to be approved by the Security Council, in essence allowing the U.S. to veto the prosecution of Americans, but it was overwhelmingly defeated by the assembly.

Constitutional Protections Don't Apply

It is important to note that the United States's failure to approve the creation of the world Court will have little effect upon whether or not U.S. citizens can be tried by the Court. Quite the contrary—nations refusing to sign the treaty will have even less say about the Court's proceedings than those who do sign.

The rights guaranteed Americans by the Bill of Rights have no binding power over the U.N.'s prosecutors in the International Court. National sovereignty in these matters will cease to exist. Even if the United States fails to conform to the Court, Americans traveling abroad will be subject to arrest and extradition to the Hague for trial and their assets subject to seizure.

Court to be Funded by Confiscation

Another area of concern is funding for the Court and its 18 judges.

As it stands now, the participating nations would be assessed dues similar to the way U.N. dues are now assessed. However, the Court is also being given the right to confiscate the property and assets of accused parties and to convert those assets for its own use upon conviction.

(Remember: no juries, just the judges who stand to benefit from the property confiscated.)

We have already seen in this country how property forfeiture is rapidly expanding to include many crimes, corrupting law enforcement and the judicial system since forfeiture becomes a government-sanctioned method of legalized extortion and off-budget revenue generation on the part of law enforcement.

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The opportunities for corruption in a branch of an organization already known for massive corruption and waste are endless.

The Court also expressly accepts gifts and contributions from any nation, organization, corporation, or individual—a practice that is strictly forbidden by the U.N. Charter.

The Court is directed to establish a "Trust Fund" from which to compensate "victims" and has ultimate power to set amounts for such compensation.

In addition to the lack of juries in any of the Court's proceedings, appeals will be heard by the Court's own appeals judges. Enforcement authority provides for sentences of up to 30 years for most crimes and life in prison for the most severe crimes.

State Parties agree to use their law enforcement facilities to enforce the Court's judgments, and to house, at the state's expense, the international criminals if so requested.

Ratification

It is uncertain how long it will take to gain the required number of countries.

It could take as long as five years for individual nations to debate the merits of the proposal. However, as of this writing, close to 30 nations have already signed the document.

It is too early to fully comprehend what impact this Court will have in the world or in America. It is clear that many of the nations that voted for the Court in Rome expect to use the Court's power to prosecute America and Americans for a wide range of "crimes against humanity."

The official newspaper for the conference, *Terra Viva* (Living Earth), accused former President Bush of committing "the single

worst blood bath of the war [against Iraq]."

The NGO Coalition that formed to lobby for the Court held a demonstration on the 4th of July in Rome that accused President Clinton of "genocide" because of the economic embargo against Iraq.

The International Criminal Court now gives the world the legal instrument it needs to attack the United States.

If this Court is formally ratified, and most likely it will be, American citizens, military personnel and politicians had better beware—an unfriendly and jealous world community is waiting to devour the people and prosperity of

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this country.

In short, there is little any country can do to protect its citizens, and many of the U.N. member countries would love to use the court to punish the U.S. for being at the top of the heap.

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[Ed. Note: Henry Lamb and Dr. Floy Lilly, J.D. of Sovereignty International contributed to this article.]

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