

THE INTERNATIONAL CRIMINAL COURT

Seeking Ways to Fight International Crime

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The areas of conflict among nations increase daily, and the international community has used specific mechanisms in an attempt to solve controversies in today's world. Since its founding in 1945, the United Nations has been the international community's highest governing body and its charter the highest norm of international law. The charter stipulates that the International Court is the United Nations' highest tribunal. In the following pages, Ricardo Franco refers to the establishment of an International Criminal Court and the problems and debates involved.

The General Assembly of the United Nations passed Resolution 49/53 on December 9, 1994, creating a Special Committee for the Establishment of an International Criminal Court. The special committee has already had three very successful meetings.

As is to be expected, the creation of an international criminal court has been the object of both profound study and heated discussion revolving around the manifold problems inherent in the idea, some of which are briefly described here.

The creation and composition of the court. The main object in creating the court is to be able to sanction the perpetrators of grave international crimes as a deterrent to these crimes being repeated. The idea that the court's jurisdiction should complement that of national tribunals came up immediately, since the new court would limit itself to the gravest crimes concerning the entire international community.

Method of creation. Most countries agreed that the court should be set up through a multilateral treaty as an independent judicial body and not as a United Nations body through a reform of the U.N. charter.

Relationship with the United Nations. It was also thought that a basic condition for the establishment and functioning of the court was that it have a close relationship with the United Nations. However, some countries considered this inappropriate because it would compromise the court's independence.

The permanent nature of the court. From the beginning, the court was conceived of as a permanent judicial body which would meet when matters were brought before it. Therefore, some of the posts, like those of president, judges, secretary and prosecutor, were conceived of as full-time.

Appointment of the judges and the prosecutor. It was suggested that the judges and prosecutor be appointed by specialists in criminal and international law. Some delegations thought, on the other hand, that this limitation could complicate the selection of the candidates.

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The prosecutor's function. It was proposed that the prosecutor have the faculty to open criminal proceedings, for which he/she should previously obtain the consent of the governments involved.

Approval of the enabling legislation for administrative rules of the court. It was considered extremely important to establish a strong link between the charter and the rules of the court, and therefore some delegations suggested they both be drafted and approved at the same time.

The lower courts and appeals courts. It was approved almost unanimously that the court system should include both lower and appeals chambers. The function of the latter would be to deal with the appeals of decisions made in the former.

From the very beginning, the work was guided by the following principles which were meticulously examined:

The principle of complementarity. The third paragraph of the preamble of the "Draft Charter" stipulates that the court will be established to complement national judiciary systems in criminal matters in those cases in which these specific systems are non-existent or ineffective. Rivers of ink flowed in the debate about this principle, which spurred many interventions by the participants.

Some delegations strongly favored the prevalence of national jurisdiction, arguing on the basis of the advantages of the legal stipulations in each country, summarized as follows:

a) All participants would be operating within the context of an established legal system, which would include bilateral and multilateral agreements; b) relevant legislation would be better defined and more developed; c) proceedings would be less complicated since they would be based on familiar

norms and precedents; d) both prosecution and defense would probably be less costly; e) more proof and witnesses would usually be available; f) language problems would be reduced to a minimum; g) national courts would apply already established measures to obtain evidence and testimony, including norms on

damages; and h) sentences would be precise and could be carried out immediately.

Consequences of the principle of complementarity vis-à-vis the list of crimes which should be included within the international criminal court's jurisdiction. Some delegations considered that complementarity necessarily meant the establishment of a single legal system for all the crimes included in the court's jurisdiction. It was argued that a single legal system of this kind is conceivable only if the court's jurisdiction was reduced to very few important crimes.

Other questions regarding jurisdiction. The general consensus about article 33 of the Draft Charter was that to comply with the requirements of precision and certainty in criminal proceedings, the charter should clearly establish the rules the court should follow, regardless of national policies about conflicts in law.

The list of crimes to be included in the charter and their specifications. Some delegations proposed that the court's jurisdiction be limited to only three or four crimes delineated in international law, listed in article 20, sections (a) and (d), such as: a) genocide; b) aggression; c) grave violation of the rules of war; and d) crimes against humanity. ^{VIII}

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