



**Parliamentarians for Global Action  
Action Mondiale des Parlementaires  
Acción Mundial de Parlamentarios**

**20th Annual United Nations Parliamentary Forum**

**In Defense of Human Dignity:  
Striking the Balance of Peace and Justice**

**1-2 October 1998  
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Truth and Reconciliation

Ending Impunity

Human Rights

Peace Negotiations

**Peace**

**Conflict Prevention**

Establishment of an International Criminal Court

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# About PGA

## *A Dynamic Network of Individual Democratically Elected Legislators*

**Parliamentarians for Global Action (PGA)** was established in 1978-1979 by concerned parliamentarians from around the world to take joint action on global problems that could not be solved by any one government or parliament. While its initial driving force was the critical need for disarmament, Global Action today works on an expanded list of global issues such as fostering democracy, conflict prevention and management, international law and human rights population, empowerment of women, and economic reform.

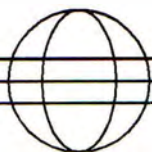
PGA is an association of individual parliamentarians that is action-oriented with specific programmes under the political direction of a fifteen-member Board. This structure allows Global Action to effectively push policies at the national, regional, and international levels. The leadership also includes a thirty-three member International Council, which represents all the regions of the world. PGA also works closely with the UN system through the advisory body of the UN Committee for PGA, comprising senior UN ambassadors, high-level UN officials, and some leading NGO representatives. The current chair is Ambassador Hans Dahlgren of Sweden.

With a membership of only elected legislators, PGA members bring authority and mandate of their constituents and a responsibility to them as well. This structure gives PGA a greater authority on policy matters vis-à-vis the executive branch of government and vis-à-vis civil society.

PGA includes in its membership a concentration of high-level politicians, including Prime Ministers, Cabinet Ministers, and Chairs of Finance, Foreign Affairs, Population, Health, and Defense Committees. Many of PGA's members leave parliament for higher government posts such as the Presidency of Iceland, Presidency of Botswana, former Prime Ministership and Presidency of Trinidad & Tobago, and Vice Presidency of Dominican Republic. Also, as an NGO of parliamentarians, PGA is able to create effective partnerships with civil society groups, thereby enhancing the role of parliamentarians as the intervening link between civil society and executive authority. PGA's programmes on women, peace and democracy, a nuclear free world, and international law work in close cooperation with NGOs and leading research institutions in these fields.

PGA also has had an extremely effective track record with inter-governmental agencies such as the UN Secretariat, UNDP, UNFPA, UNICEF, UNIFEM, UNESCO, the World Bank, Asian Development Bank, and International IDEA. PGA's guiding principle of bringing the input of key players from both government and opposition and its close working relationship with members serving on relevant parliamentary committees makes it an invaluable agency for the negotiation and implementation of any successful policy.

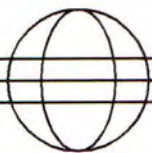
PGA's Headquarters is located in New York City, in a close proximity to the United Nations. The offices of National Group representatives and other leading PGA members serve as liaison links in various countries around the world.



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# Executive Summary

## OPENING

Now in its fiftieth year, the Universal Declaration of Human Rights is still subject to debate and struggle regarding its application. Mr. Moses Katjuongua, MP (Namibia), and President of Parliamentarians for Global Action (PGA), opened PGA's 20th Annual UN Parliamentary Forum on human rights and peace with the fundamental question of how, in a rapidly globalizing world, principles of human rights can be enforced on international, national and local levels?

The limited and temporary Rwandan and Yugoslavian tribunals have paved the way for a permanent court to protect human rights across the globe. In Rome on July 17, 1998, a total of 160 countries convened to produce a statute for the creation of a permanent International Criminal Court (ICC). Hundreds of non-governmental organizations (NGOs) took part in the Rome conference, representing an unprecedented level of participation of civil society in a law-making conference, and the international human rights community soundly endorsed the effort. But the proposed International Criminal Court, an enforcement

mechanism that would dovetail with the Universal Declaration of Human Rights, also raises questions of sovereignty, worldview, and the compromise of peace and justice.

H.E. Louise Fréchette, the first UN Deputy Secretary-General, in her opening salutation, noted the hurdles that had to be overcome to produce the Rome statute. "Small states had to be reassured that the statute would not give more powerful states hold over their sovereignty; others had to be assured that peace would not outweigh justice," she said. Across the globe, war-torn countries have faced this seemingly inevitable trade-off. But Mr. Moses Katjuongua, in his opening remarks, also presented the possibility that peace and justice can have a complementary rather than a zero-sum relationship, stating that "peace, democracy and justice are mutually reinforcing principles."

## STRIKING THE BALANCE OF PEACE AND JUSTICE

Striking an acceptable balance of peace and justice is a delicate operation, and unique to each situation. The

record of truth commissions, in those countries that have had them, offers a preview of some of the challenges the ICC will have to address. In some cases an imperfect compromise seems to have worked for the best. In South



*Participants at the 20th Annual UN Parliamentary Forum.*

Africa, for example, a partial—and highly controversial—amnesty was offered to those accused of apartheid-regime crimes, in order to ensure a smooth transition to new democratic order. "Without considering amnesty," said

Hon. Dullah Omar, Minister of Justice of South Africa, in the opening session, “we would never have achieved democratic elections in our country.” Accountability was the price for that amnesty: leaders of the apartheid regime were compelled to appear before South Africa’s Truth and Reconciliation Commission. Significantly, the partial amnesty did not preclude the possibility of prosecution.

Dip. Dante Caputo of Argentina likewise described his country’s experience as encouraging: in 1983, Argentina, along with several other Latin American countries, emerged from more than a decade of military dictatorship and violence to begin a reconciliation process. The president signed decrees for the trial of the military junta leadership, and ultimately—despite the fact that they attempted to amnesty themselves—the government, with overwhelming popular support, succeeded in imprisoning the junta leaders. This incites reflection, Caputo mused: “We must not ignore the power of broad political consensus.” Dip. Caputo also cautioned that there is not a single prescription, noting that had the Argentinean solution been applied to Chile, “it would have been a disaster,” and vice-versa in Chile.

However, the success of truth-for-justice compromises has been more ambiguous in other countries. Dip. Schafik Jorge Handal (El Salvador), one of leaders of the FMLN movement who was at the head of the negotiating committee resulting in the Salvadoran peace agreement signed on January 16, 1992, in Mexico, spoke disparagingly of his country’s compromise: the government unilaterally took advantage of its majority in parliament to approve a general amnesty law, and those responsible for many crimes pardoned themselves. “Our experience,” he said, “is that the Truth Commission’s results have not helped to reconcile society and have left much dissatisfaction.” Meanwhile Haiti’s Truth and Justice Commission, said Dep. Fritz Robert Saint-Paul (Haiti), simply listed cases of violations, recorded victims’ testimonies, and did nothing about it. The Truth Commission’s Report, which was belatedly published in a limited number of weighty tomes, has been, for the most part, kept in a locked drawer.

Farther south, Uruguay, Chile, and Brazil, like Argentina, are going through similar processes of reconciliation after decades of insurgency and repression, but they are experiencing different results. Most strikingly, in Chile there was great social demand for justice, but the opposite happened: After the military dictatorship ended, the head of the 1973 coup, General Augusto Pinochet, continued to take part in government and is today a



*H.E. Dullah Omar, Minister of Justice, The Republic of South Africa.*

senator in the Republic (albeit, for the moment, in absentia). While the Universal Declaration of Human Rights offers no room for moral relativism, Caputo noted that the differing experiences of these countries should warn that what works for one country may not work for another. International problems cannot be solved in the abstract; they must be placed in the context of place and history.

### ***Evolution & Evaluation of the Rome Statute***

The idea of a permanent International Criminal Court germinated in Nuremberg. There, after World War II, twenty-four Nazi leaders were indicted by a special international tribunal, which held public sessions from November 1945 to October 1946, heard hundreds of witnesses, and utilized captured German documents to prove charges of war crimes and crimes against peace and humanity. Throughout the Cold War, however, the idea of establishing a permanent tribunal was put on the back burner. It was not to be revived until the 1990s, with the *ad hoc* tribunals of Rwanda and the former Yugoslavia—which derive their legal authority from the Nuremberg Principles and other post-WWII conventions. Though temporary, regional, and unfairly selective, these tribunals have provided both impetus and a useful model for a permanent International Criminal Court.

Over the past five years, six preparatory conferences for the ICC were held before July 1998. That July, a five-week conference in Rome generated the first statute for its creation. The process was far from smooth, said Mr. Philippe Kirsch (Canada), who was Chairman of the statute’s Committee of the Whole in Rome. A mandate to reach general agreement, a tremendous volume of work (over 1,400 substantive points of disagreement), and the political nature of such key issues as the death penalty



made negotiations for the statute arduous, and the result a best-possible (but far from perfect) package. Despite their significant political differences, 120 out of 160 nations voted in favor of the treaty in the end—a victory realized only at the last minute—and only seven nations voted against. However, among these seven was the United States. (See the internet web site [www.un.org/icc](http://www.un.org/icc) for individual states' explanations of their votes.) Sixty ratifications are now needed to bring the treaty into force.

The statute on the whole exhibits both strengths and some significant weaknesses. Mr. Richard Dicker of Human Rights Watch expressed the general feeling of the human rights community that the benefits of the statute far outweigh its shortcomings, and he reassured hesitant parliamentarians that the statute was drafted with keen attention to their concern over the court's potential threat to national sovereignty: The proposed ICC is not intended to substitute itself for national courts, but can only act where the court finds a state unwilling or unable to act. It will deal with crimes whose definitions are drawn from international treaties that the overwhelming majority of states have *already* ratified themselves. The most controversial or difficult to define crimes—for example, every attempt in an international forum to define "terrorism" failed, despite its acknowledged importance—are either not included, or are pending further discussion. The statute distinguishes internal



Dep. Simone Ehivet Gbagbo (Cote d'Ivoire).

conflicts from internal disturbances such as riots. Finally, the court will not have retroactive jurisdiction, so states can rest assured that there will be no digging around in the closet for old skeletons.

The statute also stands out in its particular recognition of gender crimes. "The majority of victims of war crimes and crimes against humanity are women," said Ms. Barbara Bedont of the International Centre for Human

Rights and Democratic Development. "Yet these crimes have always been under-reported, under-investigated and under-prosecuted," as a result of sexist beliefs that these crimes were minor misdemeanors, the stigma attached to such crimes that makes women reluctant to come forward, and the fact that male investigators and translators traditionally view rape as a crime unconnected to, and less important than, genocide.

The women's caucus for gender justice—300 women's organizations worldwide, the largest caucus of the conference—helped ensure that the statute included a separate category for gender crimes, including "rape, sexual slavery, enforced prostitution, forced pregnancy, forced sterilization, or other forms of sexual violence." The caucus also fought to make sure the new court would not be male-dominated. Administration of the ICC will include gender provisions: there must be a fair representation (but not necessarily 50-50) of women and men judges, and the ICC must include judges with an expertise in crimes against women—meaning knowledge of history, pattern, and psychology of such crimes. The new gender category was accepted in December of 1997 by universal consensus.

The statute's most significant weakness may reside in its future efficacy, for several powerful countries are not in its support. The United States and China voted against the statute, and the only member of the United Nations Security Council that has signed so far is France. This lack of superpower support could undercut the court's authority and limit its jurisdiction. On the other hand, in addition to France, Russia and the UK have signed. Furthermore, since the court can take jurisdiction either in the state of the accused or the state of the crime, if for example a big state that had not ratified the treaty were to invade a smaller state, and the smaller state had ratified the treaty, then the court *would* have jurisdiction.

While parliamentarians in the audience wondered whether the lack of support from key states like the United States might undermine the moral authority of the court, Richard Dicker of Human Rights Watch opined that, on the contrary, the US commitment to the rule of law might ultimately come under pressure if it didn't use the court or see that cases went before it.

In addition to the need to shore up superpower support, some parliamentarians also expressed their concern that the court is too limited in scope, as many crimes, including drug trafficking and terrorism, were omitted. This was because either these crimes were too difficult

to define, or because enough states significantly opposed their inclusion, and so the Committee could not reach consensus. The Committee ultimately decided that they would be reconsidered in the future, at the first review conference.

Finally, it is worth noting that the ICC Statute, like Truth Commissions, addresses only the symptoms, but not the causes, of strife, as Ms. Theresa Ameley Tagoe (Ghana) had earlier pointed out.

### ***Ratification***

Ratification of the Rome Treaty first requires finalizing the wording of the text. A preparatory commission will be convened in 1999 to resolve eight pending definitions (including “terrorism”) to be adopted. To go into force, the treaty requires sixty ratifications, which require national legislation be adopted on the part of each ratifying state. Since Rome, thirty-five states have signed the statute, indicating the first steps on the part of their national governments.<sup>1</sup> To facilitate this end, parliamentarians and speakers suggested that non-

hand-in-glove with the treaty. A certified copy of the statute must then be obtained and translated into national language. Next the government must prepare a bill for parliament; after the proposal and hearings, parliament votes. He stressed the need for solidarity and pooling of resources throughout this process. States with similar legal systems (and languages as in several Nordic countries) can share drafts, nomenclature, etc., and regional organizations may be of assistance. International assistance, including that of the UN or from organizations such as the CICC, or PGA, will be invaluable. Mr. Corell suggested states establish a task force of legal experts, police, defense lawyers, and parliamentarians—but no more than twenty people—which can translate and compare work between countries. The task force should be given a time limit to prepare draft legislation, after which the Minister of Justice should share information with parliament, which then would establish a preparatory commission scheduled according to the General Assembly. Finally, international legal and judicial input should be sought.

### ***Mechanisms of Justice***



*Ms. Theresa Nyarko-Fofie, MP (Ghana), and Mr. Kofi Attor, MP (Ghana).*

governmental organizations, including Parliamentarians for Global Action, might serve as a megaphone for projecting the court’s value.

Mr. Hans Corell, Under-Secretary-General for Legal Affairs, highlighted what parliamentarians can do to ensure the treaty is ratified. First, national legislation should be examined to see if the details are already in place to support the treaty. In most cases they are not, and it is necessary to adjust national legislation to go

Ambassador Muhamed Sacirbey, Permanent Representative of Bosnia & Herzegovina to the United Nations, pointed out that a treaty will only be as strong as the will to support it—the lack of Security Council support for the tribunal on the former Yugoslavia, and its results, proves the point. In his view, the problem is the selective application of international law, for the purpose of protecting a state or client, or in order to negotiate with a particular person who is believed “necessary for peace”—as in the case of Slobodan Milosevic, President of the Former Yugoslavia. This is a fundamental error that does not facilitate, but rather undermines, justice. It is also important to remember, he said, that all treaties and international tribunals of the past fifty years germinated from post-WWII *realpolitik*, and not from “do-gooder” morality. “They are preventive diplomacy—and they won’t be effective unless we choose to make them so,” he argued forcefully.

The balance of power between government and military bears on the outcome of reconciliation processes as well. *New York Times* journalist Ms. Tina Rosenberg, a long-time observer of the “growth industry” of truth commissions, observed that in Latin America, one problem with the truth-for-justice exchange—and the reason amnesty figures so prominently in the solutions—

<sup>1</sup> As of February 2, 1999, 74 countries have signed the ICC Statute. Senegal is the only country, thus far, whose parliament has ratified the statute.





*Left to right: Dip. Juan Carlos Maqueda (Argentina), Dip. Carlos Becerra (Argentina), and Dip. Marcelo Lopez Arias (Argentina).*

is that old military regimes still hold a gun to the heads of new regimes. Argentina, for example, tried nine of the top junta members, five of whom were found guilty, but it was then forced to stop after three military revolts. Many countries have failed to persuade the military to give evidence, and often reports do not have any names on them. Former communist Europe, on the other hand, has the opposite problem: the government is too strong, there is no independent judiciary, and no empowered opposition. The most exciting model, in her view, is South Africa. But South Africa's example cannot be adopted by every country, since it depends on the new government having sufficient power to compel the old regime to come forward and testify.

### ***Human Rights as a Basis for Prevention and Peace-Keeping***

As parliamentarians asserted time and again, the ICC must not be seen as an alternative to ensuring and protecting human rights, which is the surest means of maintaining peace. Looking over fifty years of history of human rights, Professor Roberto Garretón, Special Representative of the UN for Human Rights in the Democratic Republic of Congo (Ex-Zaire), remarked on the emergence of human rights terms and tools in international relations. He recognized three particular milestones: the creation of special rapporteurs; the development of the monitoring system that has had enormous political impact; and now a third major achievement, the statute for the ICC. But in his own experience in the DRC, the international community's approach to human rights left him unequivocally pessimistic.

Prof. Garretón called on the audience to remember what the international community did there. Briefly, the 1994 genocide in Rwanda caused 1.2 million Hutus to take refuge in Zaire. The tension of tribal rivalry was unprecedented and well reported by agencies such as the United Nations High Commissioner for Refugees (UNHCR) and Medecins Sans Frontieres; but nothing was done. Refugee camps in the Congo also fell prey to the violence. Rwandan Hutu militias from the camps crossed back into Rwanda, killing Tutsis, as well as locals. In this generalized situation of violence, groups of disenfranchised Zairian Tutsis took up arms against the army and somewhat unexpectedly took over the country, easily defeating the corrupt, unpaid, rag-tag army. Tutsis of Rwandan origin but of Zairian nationality, wanting recognition, then joined with Congolese who wanted to get rid of Mobutu. "In all," said Garretón, "it was a rather strange war, with no prisoners, no battles, just attacks on refugee camps." The many victims were buried in mass graves.

Garretón was appointed special rapporteur, but the rebel forces refused his team entrance into the Congo, preventing their investigation as well as that of a second team sent later. So the UN condemned the massacres—"well, who would celebrate them?"—and asked the



*Sen. John Connor (Ireland).*

governments of Congo and Rwanda to investigate the massacres themselves. The result: Nothing was done. War broke out. Humanitarian assistance was then used to try to solve a political problem—not its purpose—and in the end everybody lost.

In sum, Prof. Garretón said, "Political problems require political solutions; military problems must have military

solutions ... it depends on the cause giving rise to the conflict what solution you must employ.” He expressed disillusionment with the UN—more specifically, with the countries that make it up. “Nothing was done to save many human lives; and this will lie on the conscience of diplomats for many years to come.”

In addition to respect for human rights, progress toward greater social justice could help prevent strife and keep peace. Whereas earlier he had expressed frustration with his country’s Truth Commission, Dip. Schafik Handal now gave a more nuanced review of the Salvadoran Peace process, which at least resulted in improvements in human rights, although the underlying issue—the struggle for social justice—was never resolved.

For many years arbitrary detainment, forced disappearances, fraud, torture, and killings plagued El Salvador. Throughout the 1970s political groups took up arms, and by 1979-80 the conflict exploded, resulting in a twelve-year civil war. In January 1992 a political resolution was reached. A proposal came from the FMLN to do away with the military machinery—“we wanted justice and above all social justice,” Handal said. Six years later, the peace process has had significant results in demilitarizing society and reducing human rights crimes. However, the economic and social problems at the root of the conflict are worse than ever: the gap in wealth is growing, in part due to the Salvadoran state’s economic policies.



*Rep. Gary Ackerman (USA), Mr. Murli Deora, MP (India).*

Throughout the conference, parliamentarians spoke to these concerns and what they mean to the ICC. Earlier Mr. Warren Allmand, President of the International Centre for Human Rights and Democratic Development



*Ms. Sirpa Pietikäinen, MP (Finland), and Ms. Charity Kaluki Ngilu, MP (Kenya).*

and PGA International President from 1988-91, warned that the ICC is not a cure-all: Strong civil society, peacekeeping, and a range of UN and international policies must all work in tandem for peace and justice. And in their earlier speeches, both Dip. Caputo and H.E. Dullah Omar, Minister of Justice in South Africa, also called for a broader definition of human rights, inclusive of social justice, to buttress the work of the ICC.

Mr. Bacre Waly Ndiaye, representing Mrs. Mary Robinson, High Commissioner for Human Rights, spoke of the important recognition this century that national conflict can have international impact. The Rome statute for an ICC forces the eventual establishment of what he called “the centerpiece of international criminal law and justice.”

## CLOSING

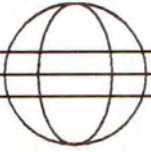
The Forum and the enthusiasm the Rome Statute has generated amongst parliamentarians, in spite of the evident road blocks and pitfalls in its path, is perhaps best summed up by the statement of Senator Anthony Johnson (Jamaica), earlier in the day: “There is an optimistic way of seeing the present,” he said. “Fifty years ago there were no means of looking at human rights: no conventions, no definitions, no Refugee Convention—that has all happened in our lifetimes. Human rights are now a matter of global concern, and this is a weighty achievement.”

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*Report of the rapporteur -- Catherine Orenstein*

Note: For more complete notes and quotations please see the full conference summary.





## Opening Session

<b>Welcome Remarks:</b>	Mr. Moses K. Katjiuongua, MP (Namibia), PGA President
<b>Opening Remarks:</b>	Mr. Warren Allmand, President, International Centre for Human Rights and Democratic Development
<b>Inaugural Speech:</b>	H.E. Ms. Louise Fréchette, United Nations Deputy Secretary-General
<b>Keynote Speech:</b>	Dr. Dullah Omar, MP, Minister of Justice, The Republic of South Africa

**Mr. Moses Katjiuongua, MP (Namibia), 1998 PGA President**, opened the conference with a greeting to all present. In honor of the 50th anniversary of the Universal Declaration of Human Rights (UDHR), he posed a question to the participants: "How can this Declaration of Human Rights be enforced at international, national and local levels?" PGA, he said, has steadfastly advocated for the establishment of an independent and effective international criminal court (ICC); the goal is now to make it a living and practical reality—in an age when "the word 'massacre' has become a common phrase." He observed that just as an ICC Statute was adopted, wars rage in many parts of the world. In contrast to the peace and justice dichotomy, he cautioned: "The world of inaction is still with us . . . peace, democracy and justice are mutually re-inforcing principles."

**Mr. Warren Allmand, President of the International Centre for Human Rights and Democratic Development and PGA International President from 1988-91**, declared, "No state can claim to be a democracy without adhering to human rights."



UN Deputy Secretary-General H.E. Louise Fréchette.

He noted that "the treaty for this ICC will soon go to your parliaments for your ratification; and we will be counting on you parliamentarians to see that the statute is ratified."

**“The world of inaction is still with us . . . peace, democracy and justice are mutually re-inforcing principles.”**  
—Moses Katjiuongua, MP (Namibia)

### INAUGURAL SPEECH: HISTORIC YEAR FOR HUMAN RIGHTS

**H.E. Ms. Louise Fréchette, UN Deputy Secretary-General**, began her speech with the observation that "rarely if ever has there been a time in the history of international cooperation where the interests of peace and justice will no longer be seen as contradictory." She noted the achievement of two historic landmarks, "in the year in which we celebrate the anniversary of a third one—the UN Declaration of Human Rights." The first landmark occurred in Rwanda with the first judgement ever in the International Criminal Tribunal in Rwanda (ICTR), in the case of genocide. And secondly, she noted, the work of the Yugoslav tribunal—though incomplete—is a milestone. "No longer will it be easier to punish a person for killing one person than for killing a thousand."

**Deputy Secretary-General Fréchette** then went on to introduce the topic at hand, the ICC, a statute whose creation was produced on July 17, 1998, in Rome, Italy. "The road was far from smooth," she said. "Small states had to be reassured that the statute would not give more powerful states hold over their sovereignty; others had to be assured that peace would not outweigh justice." More than 200 non-governmental organizations (NGOs) took part in the conference, which she pointed out represents

an unprecedented level of participation of civil society in a law-making conference. The statute is open until December 31, 2000, and **H.E. Fréchette** expressed hope that a large number of member states will have signed and ratified the statute by then. With this, she said, “oppressors can no longer hide inside their borders.”

## KEYNOTE SPEECH

**Hon. Dullah Omar, Minister of Justice, The Republic of South Africa**, began with a special greeting of solidarity to conference participant **H.E. President Arthur N. R. Robinson** of Trinidad and Tobago, who has been an instigating force behind the ICC. **Minister Omar** began by noting the irony of his own nation’s history in this year, the anniversary of the UDHR. In 1948, the South African state rejected the Universal Declaration of Human Rights. Indeed, the state was an affront to the international community, and remained so until April 1994. It represented the very opposite of the UDHR. Ironically, had the state survived, it, too, would have celebrated its 50<sup>th</sup> anniversary. But, **Minister Omar** said, international documents such as the UDHR ultimately de-legitimized the apartheid state and legitimized the struggle for democracy.

**Minister Omar** spoke of Africa’s historic struggles:

- Colonialism and the legacy of slavery that has been so difficult to overcome as outside interests and corporations continue to profit from Africa’s wealth;
- Continuing plagues of war; and
- Genocides that have suppressed human dignity.

He acknowledged the monumental atrocities of the past, but added that there is also a necessity of accepting responsibility for dealing with that legacy. “Former colonies continue to live in misery; and powerful conglomerates and interests dominate the world economy; the negative effects of globalization must be overcome by the developing nations; otherwise the poor will only get poorer and the rich richer. If the dignity of the world’s poor on every continent is to be restored, the implementation of the UDHR and other instruments must be ensured.”

To that end, **Minister Omar** argued that political and economic transformation as well as social and attitudinal transformation must occur. “This means the creation of institutions and structures through which ordinary people can participate—not merely voting once every five years, but influencing day to day decisions that affect everyday

lives. The bill of rights must create a climate of tranquility, responding to the baggage of apartheid, and it must take into account the social and economic imbalances.”

Regarding South Africa’s precedent-setting Truth and Reconciliation Commission (TRC), **Minister Omar** gave a sort of cost-benefit analysis of what South Africans went through in negotiating the end of apartheid—arriving finally at an “imperfect” solution, one which seems to epitomize the peace vs. justice trade-off, yet one in which he expressed a good deal of pride and satisfaction. South Africa’s negotiated settlement was preceded by a long and bitter struggle and ultimately reached a point where both sides of the conflict had to make concessions. Apartheid had discredited South Africa’s legal institutions. Courts were seen as mechanisms to implement injustices, and these legacies had to be redressed. International obligations with regard to human rights violations—apartheid was a crime against humanity—were also germane, since the architects of the settlement could not ignore standards of international law. The liberation movement and democratic forces demanded justice.

“Former colonies continue to live in misery; and powerful conglomerates and interests dominate the world economy; the negative effects of globalization must be overcome by the developing nations; otherwise the poor will only get poorer and the rich richer. If the dignity of the world’s poor on every continent is to be restored, the implementation of the UDHR and other instruments must be ensured.”

—Minister Dullah Omar  
(South Africa)

At the same time, it was imperative to ensure a smooth transition to new democratic order. Nation-building and reconciliation were important too. Ultimately, a settlement could not be achieved without some form of amnesty—the most controversial aspect of South Africa’s TRC.

Explaining this aspect of the settlement, **Minister Omar** said that South Africans asked themselves many questions: “How do we dislodge the apartheid regime from power? How do we end white minority domination in our country? How do we end a situation in which there is no peace and no justice? How do we bring democracy to our country? How do we persuade our enemy, the apartheid regime, to relinquish power?... When, if it does, will we prosecute its leaders for the crimes they committed when in power? In other words, how do we draw a line



between the past and the future? Without considering amnesty, we would never have achieved democratic elections in our country.”

After democratic elections, South Africa incorporated a provision in its constitution for a partial amnesty. “We did not agree to a general amnesty; only a provision for a person to apply for amnesty if the applicant made full disclosure about the act of which he was accused. In other words, accountability was the exchange we made. To that end, we created a separate amnesty institution, with a judge, making it a quasi-judicial matter. We also set up three committees:

1. Amnesty Committee
2. Human Rights Violations Committee
3. Reparations and Rehabilitation Committee

“In addition to the amnesty committee, the human rights violations committee addressed victims’ concerns, allowed them to tell their stories, and the reparations and rehabilitation committee’s function was to make recommendations to the government to restore dignity to victims.” Above all, **Minister Omar** stressed that the South African settlement does not offer impunity—the amnesty process did not exclude prosecution. Nor is it a permanent condition. There was a fixed time frame to apply for amnesty, and this has expired. The TRC is now considering last applications for amnesty and should be finished processing them by next year. Finally, victims may also appear before the TRC to argue against amnesty.

Addressing some of the criticisms of South Africa’s TRC, **Minister Omar** said, “Some say the TRC is not successful if the leaders of the apartheid regime have not admitted their guilt. But I disagree. The principle of the TRC is that leaders of former apartheid regime were compelled to appear and to justify what they had done. They may have disappointed the South African Republic by refusing to acknowledge their role, but that does not mean the TRC has failed or the system of justice has failed. ...The mere fact that they were compelled to appear before the TRC is a form of accountability in and of itself.”

**Minister Omar** then offered his support of the ICC, stating that South Africa was one of first countries to sign the Rome statute. There is no contradiction between the TRC and the ICC, he said, as none of the crimes that are the jurisdiction of the ICC would have qualified for amnesty in South Africa. “Let us not look at the ICC in isolation, but in the context of

a world order in which gross violations of human rights will be minimized if not eliminated.”

## DISCUSSIONS

### *Hindsight*

**Ms. Sirpa Pietikäinen, MP (Finland)** asked, “How would you do it differently if you could do it again; and what are the longer term effects of the TRC?” **Minister Omar** replied, “I doubt whether we would have done anything differently; amnesty was decided upon before the interim elections. The interim constitution is more of a peace treaty than a constitution. As a result, the white minority regime relinquished power and, through the subsequent elections, we were able to sweep them out of office. Now, how do we honor the promise in the interim constitution? I still think a law simply making a provision for amnesty would have ignored the concerns of victims and only dealt with the perpetrators. It would also not have satisfied the concerns of the international law. Maybe we would have done it more efficiently; not differently.”

### *South African Model as an Example for Future TRCs*

**Senator John Connor (Ireland)** asked: “Consequent to the peace process in Northern Ireland, it has been suggested that we might establish a Truth Commission. Could you suggest a model our country might copy, or improve on?” **Minister Omar** stated that South Africa’s TRC is not a TC per sé; in a number of countries with truth commissions, he observed, general amnesty was granted, whether or not consistent with international law; in some cases the law for general amnesty was passed by the very same regime responsible for those violations. That was not allowed to happen in South Africa. Regarding what other countries might learn from South Africa’s experience, he suggested these concepts as universally applicable:

1. Democracy must be established.
2. Respect for human rights must be cultivated.
3. Accountability and rule of law must be established.

“Those are the things which must be done; how you get there may be different from one country to another.”

### *Lessons for Kosovo*

**Ms. Elena Poptodorova, MP (Bulgaria)**, asked if there are patterns in South Africa which can be applied to Kosovo, since there they have two communities of

different ethnicities fighting each other? To this question, he declined to venture an answer, saying that South Africa's situation was very different.

### *Victim Reparations*

**Sen. Anthony Johnson (Jamaica)** asked, regarding victims who have gone to the TRC, what assistance or recourse can they be given? **Hon. Kenneth Dzirasah, MP (Ghana), First Deputy Speaker**, asked whether there is any recourse for families of those killed? **Dep. Fritz Robert Saint-Paul (Haiti)** spoke of Haiti's Truth and Justice Commission, which simply listed cases of violations, recorded victims' testimonies, and there it ended. "There must be reparations," he concluded.

**Minister Omar** responded to **Sen. Johnson**: "With regard to victims, the TRC has identified a large number of persons to whom interim reparations—urgent relief—will be granted: money, counseling, medical treatment, etc. The TRC also makes recommendations regarding final relief, which will go to parliament for final decision." He spoke of the problem of financial resources, and whether a tax should be levied to gather the money needed. Regarding recourse for those who have died, and whether there is recourse for their families, he said that a family must be notified of an amnesty application and they must receive legal assistance so they may oppose an amnesty application if they wish. He noted that there are examples where amnesty has been refused.

### *TRC & ICC Mandates*

**Mr. Ross Robertson, MP (New Zealand)** asked whether an ICC could be expanded to try cases of terrorism, drugs, and environmental degradation? To that question, **Minister Omar** said these were reasonable expectations but that the Rome statute was limited in order to come to an agreement in a reasonable time frame "so we focused on 'core' crimes." **Mr. Allmand** responded that the ICC must be considered in context: it is only one instrument, which cannot be isolated from other necessary measures

“How do we persuade our enemy, the apartheid regime, to relinquish power?... When, if it does, will we prosecute its leaders for the crimes they committed when in power? In other words, how do we draw a line between the past and the future?”

—Minister Dullah Omar  
(South Africa)

including peace-keeping, the building of strong civil society, and a whole range of policies that the UN and the international community must adopt in order to have peace and justice in the world.

### *The ICC as a Deterrent*

**Ms. Dianne Yates, MP (New Zealand)** asked, "How do we apply the principles of the TRC to the ICC, and can the ICC be a deterrent?" **Minister Omar** answered that indeed, the ICC can be a deterrent. He was quick to add that it would not be a perfect deterrent, but it could make a contribution.



*Ms. Theresa Ameley Tagoe, MP (Ghana).*

### *TRC Obstacles*

**Dip. Schafik Jorge Handal (El Salvador)** introduced himself as one of the leaders of the FMLN movement who was at the head of the negotiating committee resulting in the Salvadoran peace agreement signed on January 16, 1992, in Mexico. But after this Truth Commission presented its report in 1993, the government party unilaterally took advantage of its majority in parliament to approve a general amnesty law. Thus, those responsible for many crimes pardoned themselves. "Our experience, similar to the experience of Chile," he said, "is that the TC's results have not helped to reconcile society and have left much dissatisfaction: the vast majority of the victims were not heard or compensated either morally or financially."

**Ms. Charity Kaluki Ngilu, MP (Kenya)**, asked, "When the government itself is responsible for crimes, what can we do?" She related her own government's electoral fraud, and how it has set up a commission to investigate this. She asked whether in such a case the ICC might be used to help a people challenge its government?



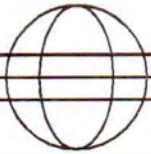
**Minister Omar** responded that settlements must be accompanied by a transformation process, which improves the lives of people: "You cannot maintain the inequalities created by apartheid. The empowerment of victims through the TRC is important." Responding to **Ms. Ngilu**, he said, "These are not matters for amnesty: people who commit crimes and murders must be prosecuted for crimes and murders. There must be an independent judiciary and prosecutorial branch."



*Left to right: PGA Secretary-General Shazia Rafi, Moses Katjuongua, MP (Namibia), and Minister Dullah Omar (South Africa).*



*Left to Right: Mr. Ross Robertson, MP (New Zealand), Dep. Houda Kanoun (Tunisia)*



## Session I: Striking the Balance of Peace and Justice in Peace Negotiations

**Chair:** Mr. Allan Rogers, MP (United Kingdom)

**Speakers:** Commissioner Emma Bonino, Commissioner for Humanitarian Affairs, European Commission  
Dip. Dante Caputo (Argentina), Former Minister of Foreign Affairs, Former UN Secretary-General's  
Special Representative for Haiti  
Hon. Mosé Tjitendero, Speaker of the National Assembly of Namibia

**Commissioner Emma Bonino, European Commissioner for Humanitarian Affairs** and a founding member of PGA until her appointment as Commissioner, opened the session by expressing her appreciation for having had the chance to focus on issues broader than the national concerns by which most parliamentarians are held hostage. Turning to the issue of an ICC, she declared: "Ratification of the ICC must come from parliamentarians. You have the lead." In Rome, after five weeks of negotiation, 120 countries voted in favor of the ICC statute, seven against, and 21 abstained.

Now the most difficult part is to start the ratification campaign. Before the ICC can come into force, sixty ratifications are needed. If there is political will, she said, this can be done in two years. On the first day of the conference, in another room, others were celebrating the forty needed ratifications for the landmine ban, which was signed in December of last year. "The ICC may be more difficult to ratify, but I strongly believe that this century of two world wars, genocide, and barbarity may end with a symbol to bring impunity to a halt and start the new millennium with a new way of resolving conflicts."

**“We said ‘never again another Bosnia’—and here we are with another one [Kosovo]. ... This has not all happened by chance. It is not destiny. Somebody organized this destruction. These people must be held accountable. While the ICC and other courts are not the miracle cure, they are indispensable. Truth and Justice must go hand in hand.”**  
—Commissioner Emma Bonino



*Left to Right: Commissioner Emma Bonino, European Commissioner, Mr. Allan Rogers, MP (UK)*

### KOSOVO NEEDS AN ICC

She used Kosovo as an example of why the ICC is direly needed. "We said 'never again another Bosnia'—and here we are with another one [Kosovo]. Three hundred thousand internally displaced; fifty thousand refugees in the mountains, with winter approaching; this has not all happened by chance. It is not destiny. Somebody organized this destruction. These people must be held accountable. While the ICC and other courts are not the miracle cure, they are indispensable. Truth and Justice must go hand in hand."

### RECONCILIATION IN LATIN AMERICA

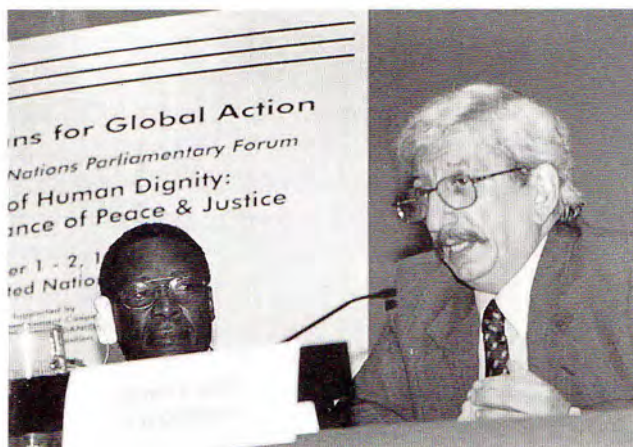
**Dip. Dante Caputo (Argentina)** began with a belated thanks to PGA for supporting work done in Haiti, where



he had been entrusted by the UN Secretary General to work on that country's democratization process. He then went on to say that what he had heard in the morning's session only confirmed to him that international problems cannot be solved in the abstract; there is no theoretical solution; they must be placed in the context of place and history. As an example, he considered the cases of the South Cone of Latin America: Chile, Argentina, Uruguay, and Brazil are all currently going through similar processes of reconciliation. They all went through periods of grave violations of human rights. In the 1970s they experienced insurgency and repression. The 1980s marked the return to freedom and a state of law. Yet each country responded totally differently.

### *Argentinean Experience*

Noting that he was struck by a "simple but true" dilemma depicted in the Forum aide-memoire that "achieving peace requires some compromise," **Dip. Caputo** stated that we must "resolve this dilemma"—that which has been facing Latin America since the 1980s.



*Dip. Dante Caputo (Argentina), with Hon. Mose Tjitendero, MP (Namibia). (R. to L.)*

Argentina began its reconciliation process at the end of 1983. Three days after the beginning of the new administration, the president and his cabinet signed decrees for the trial of the military junta leadership. The military juntas were ultimately sentenced to life in prison, and other subsequent juntas faced major sentences as well. A few months after the trials began in 1983, the last military junta enacted a self-amnesty law. The political party that would win the elections in 1983 with Dr. Alfonsín declared the amnesty law void during the

electoral campaign. This generated an overwhelmingly popular response. The government succeeded in imprisoning the military who had the weapons and ability of repression. This incites reflection, **Dip. Caputo** noted: "We must not ignore the power of broad political consensus."

### *Chilean, Uruguayan, & Brazilian Experiences*

On the other side of the spectrum is Chile, he observed. In Chile, there was a great social demand for justice as well, but the

**“This illustrates the error of considering situations outside of history. ... What works for one country may not work for another. If the method of Chile had been applied to Argentina, it would have resulted in disaster, and vice versa.”**

**—Dip. Dante Caputo (Argentina)**

opposite happened. In Chile's case, the person who headed the military coup in 1973, General Pinochet, continued to take part in the institutional activities of government after the coup and remains a senator-for-life in the Republic today.<sup>1</sup> In the middle is Uruguay, which followed the path of referendum. After consulting the people, there were investigations and punishments. And finally, in Brazil the climate for punishment was much less severe than in the other cases. There were no formal solutions, but rather a de facto solution. That is, nothing happened.

It is striking, **Dip. Caputo** noted, that these four countries with similar situations each came up with disparate responses. This illustrates the error of considering situations outside of history. Furthermore, **Dip. Caputo** added, these cases prove that what works for one country may not work for another. If the method of Chile had been applied to Argentina, it would have resulted in disaster, and vice versa. **Dip. Caputo** maintained that the notion of human rights should go beyond its limited definition of physical integrity and fundamental freedoms: "We need to gradually incorporate a broader vision of human rights." During the Cold War, two visions of human rights co-existed—the western and the communist. The western vision espoused public freedom and physical integrity, while the communist notion extolled the right to health and education. We now need to revisit the integral vision of human rights. He argued that we should, among other things, re-examine the problem of taxes and weak justice as human rights:

<sup>1</sup> This discussion took place 17 days before the arrest of General Augusto Pinochet in London, stirring international debate on peace and justice in Chile. See page 27 for further discussion during the Forum of the Chilean experience.

“The poor pay more taxes than the rich in many of our nations. There are different penalties depending on whether a crime is committed by the poor or by the rich.” Referring back to southern Latin America, he concluded that “the phantom of military coups is more and more remote; we don’t have to look for the source of conflicts there. However, the unequal effort and unfair distribution of profits—human rights which are as vital as others—can be a source of danger and destabilization.”

## NEW HUMAN RIGHTS CONCEPTS FOR A CHANGING WORLD

**Dr. Mosé Tjitendero, MP (Namibia), Speaker of the National Assembly**, wondered what individuals are doing to truly strike a balance between peace and justice, a subject he considered timely. He noted that, unfortunately, the practice of human rights is still not felt by many people around the world today. **Dr. Tjitendero** pointed to an age-old dilemma: “Every time we liberate ourselves, we lack the model of liberation, and we quickly relapse into what we know best—and what we know best, quite obviously, is the model of the oppressor and the oppressed.” He looked at three changes—decolonization, end of the Cold War, and the wave of global democratization—as changes in which the principal mover is the human being. However, he noted that “we are the changing agents and yet in the process we still victimize ourselves.” For example, he argued that we are still fighting for gender equality and basic human rights. All this tells us is that we have not yet mastered the techniques to properly direct inevitable change to address the essential aspects of human life.

He expressed concern that human rights law is being crafted under old laws—that is, there is a contention between national law over international law, in many cases. Therefore, he warned that we must be practical in our approach. The key is democratization, but this must be a collective process in order to pave the way forward. **Dr. Tjitendero** stated, “In the process of democratization the object is to improve the social and

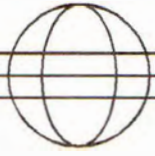
political situation of our citizens, but the models we have inherited from the past may not have been intended for the promotion of human rights at all, but rather for the purpose of control, for authoritarian governments. If the models we have inherited are from the past—the Cold War, slavery, colonization—then what is the model we are using? These models need to be addressed. We cannot inherit institutions and say we are serving just ends. ‘Rule of Law’ in the past meant a colonial governor, authoritarianism etc. ...We require new models of liberation.” Responding to **Dip. Caputo’s** statement, **Dr. Tjitendero** concluded, “My colleague from Argentina has said we are discussing old concepts; but I think the situation is new; we are discussing these concepts in a changed world. There is a greater realization that the globe is one and that humanity is indivisible. We are looking for collective solutions.”

## DISCUSSION

### *Expansion of the Ad Hoc Tribunals*

**Dip. Andres Palma (Chile)** noted that the principles of the ICC are already being applied in Rwanda and Yugoslavia [through the Ad Hoc Tribunals]. Therefore, should the jurisdiction of these tribunals be extended to address geographically related conflicts? For example, should the Rwanda Tribunal be extended to the Democratic Republic of Congo (Ex-Zaire)? **Commissioner Bonino** responded that the ad hoc courts in Rwanda and the former Yugoslavia have been established by the Security Council with a limited mandate, regional scope, and time limit. Kosovo is already under mandate of the existing tribunal for the Former Yugoslavia; the problem is that President Slobodan Milosevic has not recognized the existence and competence of the tribunal. Regarding the Rwanda Tribunal, the Security Council gave it a regional scope but with a time limit of 1994. **Commissioner Bonino** concluded that it will be up to the Security Council to extend the mandate. “I think they should, whilst awaiting the ICC.”





## SESSION II:

# Establishing a Permanent International Criminal Court: Road to Rome

**Chair:** Mr. Warren Allmand, President, International Centre for Human Rights and Democratic Development

**Speakers:** Mr. Philippe Kirsch, Department of Foreign Affairs and International Trade (Canada)  
Mr. Richard Dicker, Associate Legal Counsel, Human Rights Watch  
Ms. Barbara Bedont, International Centre for Human Rights and Democratic Development

**Mr. Warren Allmand, President, International Centre for Human Rights and Democratic Development (Chair),** began by marking the ICC as a major breakthrough in the struggle against impunity. “Between 1975-79, Pol Pot engineered the extermination of some two million Cambodians, but he died an old man before the international community decided to put him on trial.” He traced the history of the idea for an ICC to the World War II Trials in Nuremberg and Tokyo, but it had been put on the back burner throughout the Cold War, he observed. He then gave an overview of the process that led to the signing of the Treaty in Rome. Six preparatory conferences were held from 1995-98 before the draft statute went to Rome

**“You as parliamentarians are probably the single most strategic constituency in government today who have the authority and the ability to move this court from a statute on paper to a viable, working, effective mechanism to protect victims.”**

**—Mr. Richard Dicker,  
Human Rights Watch**

for a five-week-long Conference of Plenipotentiaries, supported by more than 700 NGOs. The Ad Hoc Tribunals of Rwanda and the former Yugoslavia were a good model, but were temporary and unfairly selective. Many people had feared that the court that would be achieved would be one not worth having, with a Security Council veto that would lead to continued selectivity, but that did not materialize. The PGA Forum was extremely

fortunate to have three key individuals to speak on the ICC, he observed.

## UNITED NATIONS DIPLOMATIC CONFERENCE ON THE INTERNATIONAL CRIMINAL COURT

**Mr. Philippe Kirsch (Canada), Chairman of the Committee of the Whole in Rome,** drew attention to four major influences on the negotiations in Rome:

- The overwhelming presence of NGOs: **Mr. Kirsch** believed that NGOs had a real effect on the negotiating process, which proved to be very healthy.
- The mandate of the conference included the obligation to make every endeavor to reach general agreement: As chairman, **Mr. Kirsch** was careful to avoid premature voting, which could have led to unpredictable results and an incoherent statute. He tried hard to explain to NGOs that he was not committing high treason—the aim was a strong statute that also had strong political support.
- The sheer volume of work: **Mr. Kirsch** noted that the document that came out of the last preparatory conference (PrepCom) in March 1998 had about 1,400 brackets, representing 1,400 substantive points of disagreement. Flexible systems, like working groups, were adopted to try to bring people together.
- The political nature of the issues: He added that there was very little flexibility on important issues in the negotiations such as definitions of crimes and jurisdiction, penalties, and gender issues. This complicated the task of the Committee of the Whole—attempts to prompt

delegations to change their views invariably failed until the end.

**Mr. Kirsch** then gave a quick overview of the conference, which consisted of the Plenary, the organizational and political organ, which heard statements from political figures, NGOs and others, and which voted on the Statute at the end. The Committee of the Whole reported to the Plenary; it heard detailed statements on all parts of the statute. It also formed working groups on various issues. The Drafting Committee had the task of turning the decisions of the Committee of the Whole into a coherent statute.

### ***Politics of Rome***

Early on in Rome, blocs and serious divides were apparent. The like-minded group of states, which wanted a strong court, grew in numbers, but never spoke with one voice. In addition, the five permanent members of the Security Council, the well-organized Arab states, and latterly, the Non-Aligned Movement began to operate coherently. **Mr. Kirsch** met with as many delegations as



*Mr. Philippe Kirsch, Chairman of the Committee of the Whole in Rome.*

possible to determine where there was willingness to move. By the end of the first week, a number of potential conference-wrecking issues had begun to emerge: the death penalty, the inclusion of terrorism and drug-trafficking, nuclear weapons, internal conflicts, and jurisdictional and gender issues.

### ***Difficult Negotiations***

On Sunday, the 5<sup>th</sup> of July, in an attempt to move things forward, a representative selection of 30 countries met to look at a discussion paper. The meeting was disappointing, producing no concessions or movement. On July 7<sup>th</sup>, the conference tabled a general paper that

attempted to define options and the directions in which the statute was heading. That tabling led to two twelve-hour debates on the following two days.

The second paper tried to narrow things down further, by omitting any explicit prohibition of the use of nuclear weapons, raising the threshold for internal armed conflict, and confirming the Prosecutor's independence. It failed miserably, according to **Mr. Kirsch**, and failed to increase support for the court. There was widespread agreement that the crime of aggression should be included, but no agreement was reached on its meaning, nor on the role of the Security Council.

Only in the last three days of the conference did some delegations begin to talk to each other, but on Thursday, the penultimate day, everyone was unhappy. A draft statute was proposed. Finally the Committee of the Whole realized that it was impossible to reach general agreement, so they tried to put together the best possible package under the circumstances, attempting to have both a strong statute and one which would command strong support.

**Mr. Kirsch** rejected claims that the final version was a surprise: maybe 98% of it came from provisions known throughout the conference, and the last 2% from attempts to bring people together right up until the end. He concluded that that the final result did balance and accommodate different interests, and the tremendous vote in favor vindicated this decision.

## **THE ICC: IMPERFECT BUT IMPORTANT STEP FORWARD**

**Mr. Richard Dicker, Director, Campaign for an International Criminal Court, Human Rights Watch**, singled out **Mr. Kirsch** for praise, stating that it was impossible to overestimate the role he played in the Rome Conference. He argued that, while from a human rights perspective this was not a perfect statute, the important thing to keep in mind is that the treaty "is undoubtedly a historic step forward." It will give victims justice, limit impunity, serve as an important deterrent and, as an important byproduct, it will strengthen national systems. It contains "that difficult and necessary mix of authority for the court to be able to do its task, and the checks of judicial review necessary to curb abuses."

He remarked that one of the remarkable things about the statute was that it brought together states from Southern Africa, West Africa, Eastern Europe, North



### *The ICC Statute in a Nutshell*

- The Prosecutor will have the ability to start investigations upon his or her own initiative. The Prosecutor must, however, obtain the authorization of a Chamber of three judges to proceed with an investigation.
- In cases triggered by the Prosecutor or by a State Party, the Court can exercise jurisdiction if either the state where the crime occurred or the state of the nationality of the accused is a State Party or gives its consent.
- An investigation can be delayed by the Security Council, but does not require the prior authorization of the Security Council.
- Crimes committed in both international and non-international armed conflict are included in war crimes.
- States can opt out of granting the Court jurisdiction over war crimes for a period of seven years.
- High thresholds have been set for a crime to come within the definitions of war crimes and crimes against humanity.
- Crimes of sexual violence such as rape, sexual slavery, gender persecution, and forced pregnancy have explicitly been listed as both war crimes and crimes against humanity.
- There are extensive provisions for protection of victims and witnesses. The statute specifies in several places that special attention should be paid to victims of crimes of sexual and gender violence. In addition, victims will have the ability to participate at several stages of the proceedings.

—Ms. Barbara Bedont, ICHRDD

Europe, Latin America and the Caribbean, and the Like-Minded States.

The court will have jurisdiction over war crimes, crimes against humanity, and genocide—three core crimes whose definitions are overwhelmingly drawn from international law documents, ratified by the vast majority of states. Once seven-eighths of the parties approve its definition, aggression will also be included. Crimes against humanity do not necessarily occur in wartime. The threshold for such crimes is higher than that found in the Rwanda and ICTR tribunals, which disappointed many NGOs although it should reassure states. There is an exhaustive list of war crimes, thirty-four for international armed conflict, and sixteen for non-international armed

conflict. There is an overall threshold for both types: in respect to war crimes “in particular when committed as part of a plan or policy on a large scale.” This clear prioritization of war crimes addresses US concerns that one soldier’s wrongdoing could be classed as a war crime. As far as internal armed conflicts go, they are clearly differentiated from “situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.” It was very important to include this category of conflicts, since that is the major problem in the world today.

By ratifying the treaty, a country will have to accept *all* the core crimes within the court’s jurisdiction. The only exception is with respect to war crimes, where there is an opt-out clause, for a non-renewable period of seven years. By Article 12, where the Security Council doesn’t refer the matter, the court only has authority if *either* the state where the acts occurred, *or* the state of nationality of the accused, has consented to its jurisdiction. *Human Rights Watch* finds this disappointingly restrictive, but there are ways to get around this, particularly by the widest possible ratification of the treaty. It is consistent with international law and practice to link the court’s jurisdiction with the countries of territory and nationality.

**Mr. Dicker** concluded by declaring, “We have a good statute. It is a statute with life and death significance, but if it is to be more than simply a piece of paper, your parliaments, your national assemblies, your congresses, have to get busy on the process of ratifying the statute and amending domestic legislation where that is necessary. Really, you as parliamentarians are probably the single most strategic constituency in government today who have the authority and the ability to move this court from a statute on paper to a viable, working, effective mechanism to protect victims.”

### *Gender Perspective of the ICC Statute*

**Ms. Barbara Bedont, Assistant Program Coordinator for Democratic Development/Justice, International Centre for Human Rights and Democratic Development**, began by stating that there are many provisions addressing crimes of sexual violence—a victory for the women who fought for this. These provisions were necessary because, if perpetrators of human rights crimes have enjoyed impunity, perpetrators of crimes of sexual violence have enjoyed even greater impunity. “The majority of victims of war crimes and crimes against humanity are women. Yet these crimes have always been under-reported, under-investigated and



under-prosecuted.” Some of the reasons for it are sexist beliefs—i.e. rape is inevitable in war—and the stigma attached to them, which makes women reluctant to come forward, fearing being shunned by their communities, and the trauma of reliving them. We did not learn from the experiences of the Rwanda and Former Yugoslavia tribunals, for example, the mistake of using male investigators and translators with women victims. They did not know how to characterize the crimes: they saw rape as less important than genocide, and they did not see how it was connected with genocide. **Ms. Bedont** maintained, “Rape is a tool of genocide: it can be used to kill; to destroy reproductive capacities of women; and to instill psychological trauma undermining a group’s ability to survive. This connection is only now starting to be recognized.”

### ***Role of the Women’s Caucus in the Rome Conference***

The *Women’s Caucus for Gender Justice*—300 women’s organizations worldwide, the largest caucus of the conference—fought for a separate category just for crimes of sexual violence, which was traditionally not mentioned at all, or subsumed under another category such as under “harm to dignity.” In December 1997, a separate category was created under the definition of war crimes: “Rape, sexual slavery, enforced prostitution, forced pregnancy, forced sterilization, or other forms of sexual violence.” This category was accepted by universal consensus.

**“Rape is a tool of genocide: it can be used to kill; to destroy reproductive capacities of women; and to instill psychological trauma undermining a group’s ability to survive. This connection is only now starting to be recognized.”**

**—Ms. Barbara Bedont, ICHRDD**

rather, it addresses, for example, the case of Bosnian women who were raped by Serb soldiers and detained to keep them from terminating their pregnancies, thereby forcing them to bear “Serb babies”—changing the ethnic composition of the population, a form of genocide. Other examples include Jewish women who were impregnated so that Nazis could perform medical experiments on their fetuses.

**Ms. Bedont** elaborated on a few issues:

- Forced pregnancy — the category is not about forbidding a woman access to abortion;



*Ms. Barbara Bedont, Assistant Program Coordinator for Democratic Development/Justice, International Centre for Human Rights and Democratic Development.*

- Persecution on various grounds can cover gender (under the category of crimes against humanity) — meant to address, for example, “sexual apartheid” under the Taliban in Afghanistan, where women have no right to walk the streets or to visit doctors, and suffer other severe deprivation of human rights.
- Enslavement (a crime against humanity)— refers to trafficking of persons, including women and children.
- Personnel of the ICC — there must be a fair representation (but not necessarily 50-50) of women and men judges (and other personnel)—this means there are no quotas, but it goes beyond tokenism. The ICC must include judges with expertise in crimes against women—meaning knowledge of history, pattern, and psychology of such crimes. This is necessary because of the extra difficulty in prosecuting these crimes. “This means that if your country has few female lawyers and judges, then you will be at a disadvantage in getting your nationals represented in the court.”

**Ms. Bedont** highlighted a provision in the Rome Statute that provides a sort of constitutional guarantee of rights to ensure that the court itself will not violate people’s rights: “The interpretation and application of the law by the court must be consistent with international human rights and without adverse discrimination on grounds of race, religion, color, gender, age, disability [etc.]” She concluded that the statute would ensure the court was not male-dominated, that sexual violence was not a side issue, and that it would not affect national abortion laws.



## DISCUSSIONS

### *Nuclear Weapons as Crimes Against Humanity*

**Mr. Warren Allmand** raised the issue of nuclear weapons. Although the use of nuclear weapons was not prohibited per sé, could a broad definition of war crimes and crimes against humanity allow the court to decide that their use was a crime? In response, **Mr. Philippe Kirsch** stated that the option to include additional prohibited weapons requires an amendment of the statute.

### *Rape as a War Crime*

**Dr. Maj-Britt Theorin, MEP (Sweden)**, thanked **Ms. Bedont** for the work she had done on something “very new.” **Ms. Bedont** had brought up the issue of rape. **Dr. Theorin** commented that for many years, they had tried to get rape defined as a war crime, but it was not in the Geneva Protocols, and it seemed that the only way to do this would be an amendment, which would be very difficult. Was it sufficient to have it in the ICC Treaty as a war crime? **Ms. Bedont** thought the ICC Statute really codified customary international law on this issue. The statutes for the Rwanda and Former Yugoslavia tribunals had included rape as a war crime. And a very recent decision in the Rwanda tribunal had relied on the ICC statute in finding Jean Paul Akayesu guilty of these crimes. She thought that the customary law was fairly established and an official amendment would not be necessary.

### *ICC Protecting Women in Afghanistan?/Gender Balance*

**Ms. Dianne Yates, MP (New Zealand)**, asked **Ms. Bedont** whether it would be possible for Afghan women under the Taliban to take class actions, since individual action proved unfeasible. She also wondered how gender balance could be achieved in the composition of the court when countries elected the personnel. **Ms. Bedont** responded that jurisdiction can be triggered in different ways, such as the prosecutor acting on information from any reliable source. Therefore, it need not be necessary for women in Afghanistan to do so collectively or under formal procedure—the prosecutor could do so just by reading the newspaper.

**Mr. Philippe Kirsch** replied to the second question posed by **Ms. Yates** on enforcing gender balance in the ICC personnel. He agreed that there was no clear answer to the question of gender balance. The states are obliged to nominate appropriate candidates. The Preparatory Committee, which will deal with procedural rules, etc., has

a broad mandate, and he hoped they could devise detailed rules on this. **Mr. Warren Allmand** added that the Preparatory Committee’s work should be watched carefully as it did cover several important issues.

### *Enforcement & Penalties*

**Ms. Yates** further inquired about the execution of enforcement and penalties. **Mr. Dicker** replied that there is imprisonment for a specified term not exceeding 30 years and life imprisonment. He added that there was a great deal of debate on this, particularly from Latin American countries, whose constitutions often prohibit life imprisonment. But a life sentence is mitigated by a mandatory review after two-thirds of the sentence, or 25 years, has been served. Member states will make arrangements with the court regarding incarceration facilities. Fines and forfeitures may be imposed. **Mr. Allmand** recalled that the proposal to include the death penalty was strongly voted down. **Mr. Dicker** said it was a very controversial question that could have had devastating consequences.

### *NGOs’ Impact on the ICC Statute*

**Mr. Ross Robertson, MP (New Zealand)**, was interested in **Mr. Kirsch’s** words about the “overwhelming” presence of NGOs, and wondered how NGOs enhanced the conference’s effectiveness. He also asked what parliamentarians could do to define, develop, and deliver the fine values espoused by NGOs. **Mr. Kirsch** replied that he believed that NGOs had a profound effect on the conference, promoting a court that would be very strong, while some states would have supported a very conservative court. He thought that their pressure was very healthy, keeping everyone on their toes, especially those countries that wanted a strong court. Their technical assistance was also very important, particularly for small delegations, assisting them to come to grips with a very large, complex statute, which even he hadn’t studied in full.

**Mr. Allmand** commented that the common set of values **Mr. Robertson** mentioned were to be found to some extent in the Preamble. **Mr. Dicker** mentioned that we were now in a different stage of the process, and the NGO community, including the Coalition for an International Criminal Court (CICC), was committed to partnership with governments in order to obtain the sixty ratifications necessary to bring it into force. The group of Like-Minded States had to continue, but with a different focus now: that of an early entry into force. Politicians have a critical role to play in projecting to their

constituencies the significance of the first ever permanent court to deal with these crimes. PGA could serve as a sort of megaphone in projecting the values of the court.

### *Jurisdiction of the ICC*

**Mr. Aftab Shahban Mirani, MP (Pakistan)**, inquired that many important countries haven't signed the statute, so what happens if one of them commits a crime? Where will convicted criminals be incarcerated, he asked, in the state of their nationality, or where the crime was committed? **Mr. Dicker** responded that, to his knowledge, so far some thirty-five states had signed the Statute, and none had yet ratified it. Once the treaty entered into force, the court could take jurisdiction if the Security Council referred a matter to it, regardless of ratifications. Also, citizens of non-state parties could be prosecuted if the



*Mr. Richard Dicker, Director, Campaign for an International Criminal Court, Human Rights Watch.*

matter was referred to the Prosecutor by the state on whose territory the acts occurred. As far as incarceration goes, it would depend on arrangements made by states with the court, but it was highly unlikely that someone would be incarcerated in the country where the crimes were committed.

**Cong. Javier Diez-Canseco (Peru)** asked what would happen if a non-state party, which had veto power in the Security Council, was responsible for crimes under the court's jurisdiction—what would this mean for the court's efficacy? **Mr. Dicker** replied that it was unlikely that the Security Council would refer matters where the nationals of one of its permanent members were involved, since that member could use its veto, but if it was referred another way, then a majority of the Security Council and all the permanent members would have to vote in favor of delaying the prosecution for 12 months. This will be harder to do, although it still represents political interference in the court.

### *Ratification: Political, Cultural, Attitudinal Changes Necessary*

**Cong. Diez-Canseco** also commented that he believed ratification was bureaucratically and politically possible, but it should be made a matter for public debate, since it opens up national systems too. It isn't just a juridical matter, but will also change attitudes and culture. **Dip. Juan Carlos Maqueda (Argentina)** announced that all the Argentinian congress members present committed themselves to securing Argentina's speedy ratification. He asked why so many crimes, including drug trafficking, had been omitted from the Statute, and also inquired about the investigation procedures. **Mr. Kirsch** said that, while there had been support for the inclusion of "treaty crimes" such as drug trafficking, terrorism, and crimes against UN and humanitarian personnel, a number of states had been against this, for a variety of reasons. Every attempt in an international forum to define terrorism had failed, despite its acknowledged importance. The conference decided that some issues were too complex to look at then, and passed a resolution to examine them at the first review conference. On investigations, **Mr. Dicker** said that states would be under a duty to cooperate. The court would not have a police force and therefore would depend on states. The Pre-Trial Chamber could authorize the Prosecutor to take certain steps within states' territory without their consent according to Article 57(3), and Article 99 also helped.

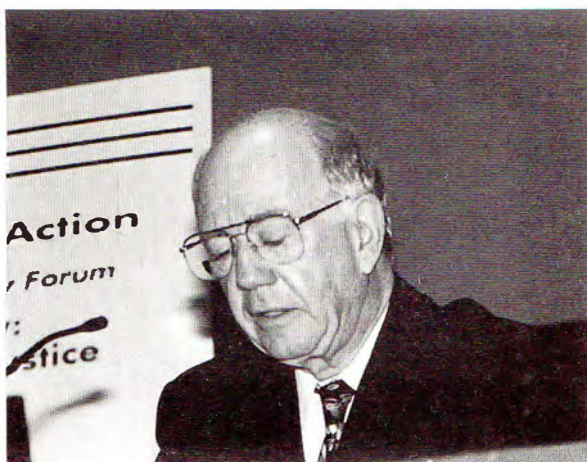
### *Moral Authority of the ICC Without Support of Key Permanent 5 Members*

**Mr. Pashupati Rana, MP (Nepal)**, wondered whether with major powers like Russia, China, and the US outside, the court would have anything more than moral authority. He also wondered what the reason was for these countries' lack of support. He allowed that perhaps it might have been related to their possession of nuclear weapons. **Mr. Allmand** said there was one easy answer—since the end of the Second World War, there had been 200 wars, most of which had occurred in small countries and not the US, China, etc. (although serious human rights violations may also occur there.) Also, only one state's consent was necessary: thus if a small state which had ratified was attacked by a large state, the court would have jurisdiction.

**Mr. Dicker** said it was significant that the UK, France, and Russia had all voted in favor of the statute in the final vote. The combination of all the EU, SADC, Francophone West Africa, Canada, Australia, the Republic of Korea and many Latin American countries was a potent one, combining states with the resources to make the



court viable, and states from the less developed world and South, many of whom have experienced abusive regimes and who see the ICC as a guarantee against their recurrence: viability and legitimacy and universality. **Mr. Dicker** did not think it was unduly naïve to believe that the US commitment to the rule of law would come under pressure if the US didn't use the court or see that cases went before it. **Ms. Bedont** added that the Security Council members could support the court without ratification, by making use of their power of referral.



*Mr. Warren Allmand, President, International Centre for Human Rights and Democratic Development.*

### *Using the ICC as a Preventive Tool*

Referring to the ICC, **Ms. Theresa Ameley Tagoe MP (Ghana)**, commented, "This is the first time I have seen something right from the beginning [consider] gender." She added that all crimes against humanity and war crimes had causes, and this court would only act after they had taken place: "You have to prevent [these crimes], and I've yet to hear something that will prevent all these sufferings."

**“You have to prevent [these crimes], and I've yet to hear something that will prevent all these sufferings.”**

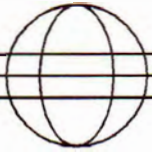
**—Ms. Theresa Ameley Tagoe, MP (Ghana)**

**Mr. Allmand** agreed with her as to the importance of prevention, which can be addressed by UN and regional bodies: the court was aimed at combating past impunity. **Amb. Kirsch** indicated that the court could have an important deterrent role: for

example, once the authors of war crimes in Bosnia were indicted, the levels of attacks on UN personnel dropped substantially. **Ms. Bedont** added that the same thing was happening in Kosovo. The authorities' attempt to hide their acts showed their fear of the Former Yugoslavia tribunal.

### *ICC: Agenda for Parliamentarians*

**Mr. Allmand** concluded by reiterating that the ball was now in the court of parliaments, the Land Mines Treaty had been very encouraging, and we should aim for more than the minimum sixty ratifications.



Day 2: October 2, 1998

## SESSION III:

### Ending Impunity:

#### Mechanisms for Enforcement, Part I

#### *International Approaches*

**Chair:** Ms. Elena Poptodorova, MP (Bulgaria), Convenor, International Law & Human Rights Programme  
**Speakers:** Mr. Hans Corell, Under-Secretary-General, Office of Legal Affairs, United Nations  
Drs. Jan Hoekema, MP (The Netherlands)  
Cong. Javier Diez-Canseco (Peru)

**Ms. Elena Poptodorova, MP (Bulgaria), Chair,** opened the session by briefly recapping the great significance speakers attributed to the Rome Treaty in yesterday's sessions. She then directed the discussion to what parliamentarians can do *now* to make sure the treaty is ratified—she hoped the second day of speeches might focus on recommendations and conclusions that conference participants could take home.

#### OVERVIEW OF THE RATIFICATION PROCESS

**Mr. Hans Corell, Under-Secretary-General, UN Office of Legal Affairs,**

began with an overview of the ratification process. What is ratification? Simply put, it is the approval by the parliament of a state such that a treaty becomes binding. **Mr. Corell** noted that first, national legislation should be examined to see if the details are already in place to support the treaty. In most cases they are not, and it is necessary to adjust national legislation to go hand-in-glove with the treaty. He then gave an outline of the process of ratification:

1. A certified copy of the statute must be obtained;
2. Statute is then translated into national language;
3. Government must prepare a bill for parliament: first proposal, hearings, etc.;
4. The bill is presented to parliament; and
5. Parliament votes.

**“Time and political pressure are of the essence.”**  
—Drs. Jan Hoekema, MP  
(The Netherlands)

**Mr. Corell** also discussed the need for solidarity and pooling of resources—for example, the translation duties. He pointed out that states with similar legal systems could share drafts, nomenclature (a system or set of terms), etc. Other bodies of assistance could include regional organizations, the UN, and NGOs such as PGA. Vis-à-vis getting assistance, he listed the following steps:

- a) Set up a task force with legal experts from judiciary, lawyers, police, defense lawyers, parliamentarians—but not too big a group, no more than twenty people.
- b) Translate and compare work between countries.
- c) Give the task force terms of reference to prepare draft legislation—with a time limit.
- d) Minister of Justice should then liaise with the speaker of parliament to arrange hearings.
- e) Minister should share information with parliament.



*Mr. Hans Corell, Under-Secretary-General for Legal Affairs.*





*Drs. Jan Hoekema, MP (Netherlands)*

- f) Preparatory commission should be scheduled according to General Assembly.
- g) Finally, seek legal assistance, judicial input on international level.

## PARLIAMENTARY PERSPECTIVES ON RATIFICATION

**Drs. Jan Hoekema, MP (Netherlands)**, began, "Time and political pressure are of the essence," advising conference participants to be aware of the time their governments will need to present a bill to parliament, and accordingly to put pressure on their governments. He drew attention to the need for publicity and the need to check governmental behavior. Third, he advised the participants to be aware of shortcomings in criminal procedure texts. He stressed the need for political will to make the ICC become reality—pointing out that countries concerned with issues of sovereignty may opt out for seven years from the jurisdiction of the court regarding criminal offenses committed on their territories.

**Cong. Javier Diez Canseco (Peru)** began on a practical note, listing the four main issues that must be addressed for the Treaty's future:

1. Ratification of the Rome statute for the ICC, including overcoming the problems of the final wording of the text.
2. Formation of a preparatory commission, in order to resolve the eight pending definitions to be adopted in statute text (e.g., "terrorism").
3. Signing of statute: since Rome, there have been 35 signatures by states—indicating first steps on the part of national governments. Peru signed this October.
4. Ratification: requiring national legislation to be adopted and norms in the constitution adapted to

what is contained in the treaty. This relates to national sovereignty and international human rights—an interplay that will change national norms.

"Is the ICC," he asked, "about punishment or justice?" Rather than debating the merits of the ICC as a deterrent to crime, **Cong. Diez Canseco** observed that the ICC is an instrument with "an authentic, genuine human face, providing real guarantees that peace is based on justice, and justice will be based on human values." Speaking on Latin America, he suggested establishing commissions to promote national debate about the issues of the ICC and thereby promoting national will and resolve to move ahead with discussions. He concluded, "Regional technical teams might be one way of saving money and might also lead to an increase in the efforts being made towards ratification."

## DISCUSSIONS

### *PGA's Role in Ratification*

**Ms. Poptodorova** stated that PGA could start working on a regional level, as **Cong. Diez Canseco** just suggested. **Prof. Longin Pastusiak, MP (Poland)**, said that the most effective and cheapest campaign would be the face-to-face work of individual parliamentarians, and that PGA has been successful in this way on other issues. **Mr. Pastusiak's** second point was his concern that of the seven countries voting against the ICC, two are big powers, others come from the Middle East—might this not weaken the effectiveness of the court? He also asked about errors in the statute text. In response, **Drs. Hoekema** warned that "parliamentarians must not bind governments with quasi legislation—this is a take-it-or-leave-it" concept. **Mr. Corell**

noted, in response to concerns of sovereignty, that the modern concept of sovereignty of the state is interactive, not isolationist.

### *Upcoming PrepCom*

**Mr. Gianfranco Dell'Alba, MEP (Italy)**, asked about the timing of the preparatory committee, and **Dip. Juan Carlos Maqueda (Argentina)** inquired about the delay in UN preparations of the final text of the statute. **Dip.**

“The ICC is an instrument with an authentic, genuine human face, providing real guarantees that peace is based on justice, and justice will be based on human values.”  
—**Cong. Javier Diez-Canseco (Peru)**

**Maqueda** also wondered when the preparatory committee would be established and how long it would take to deal with the eight pending issues. In response to **Mr. Dell’Alba**, **Drs. Hoekema** said that when the resolution is adopted by the General Assembly (GA), a delegate or group of delegates would take charge of the resolution, and if at the end of October there is consensus, it would be adopted without a vote; but the resolution will not be put forth before the GA [for some time after that]. **Mr. Corell** explained that the delay on the final text—which should be completed in early October—is due to mistakes discovered in the texts. The eight pending issues before the prep committee relate to two matters: (1) the rules of procedure, and (2) the elements of crime.



*Cong. Javier Diez-Canseco (Peru), Ms. Elena Poptodorova, MP (Bulgaria).*

### *Consequences of Abstention*

**Dr. A. Moyeen Khan, MP (Bangladesh)**, asked what can be done to turn the seven opponents to support the ICC? **Sen. John Connor (Ireland)**, asked about the twenty abstaining countries, and **Mr. Aftab Shahban Mirani, MP (Pakistan)**, asked whether only sixty ratifications are enough to make the ICC effective. **Drs. Hoekema** responded that an abstention might be a “no” vote in disguise; or for technical reasons a country might not be in a position to sign on to the statute. In that case, political pressure is needed to remove the impediments preventing a country from signing on.

Regarding the efficacy of the ICC, he said ratification by specific countries is needed, and also noted that regardless, “the moral norm of a treaty can be binding even if the treaty is not de jure.” Speaking to **Mr. Mirani’s** question, **Mr. Corell** said that the number of ratifications

necessary for a treaty to be effective is a political decision that varies. Regarding **Sen. Connor’s** inquiry, he referred to the Rome conference web site, [www.un.org/icc](http://www.un.org/icc). “There you will find the individual states’ explanations of their votes.”

**Sen. Manuel Medellin Milan (Mexico)** noted that Mexico abstained from the treaty for three reasons: first, the power of the security council’s mandate is not as broad in the GA, and one member could veto a decision referring a case to the court; second, the court’s jurisdiction over individuals, not states; and third, eliminating weapons of mass destruction from the list of acts to be characterized as a war crime. “These reasons prompted Mexico to abstain even though it supports the idea of the ICC.”

Responding to **Sen. Medellin Milan’s** comment, **Cong. Diez-Canseco** said it is not true that one member of the Security Council can veto a case that has been initiated in the court: a permanent member can only cast a veto on referring a case to the court, but the court also has other ways of triggering action.

### *Civil Society and the ICC*

**Sen. Anthony Johnson (Jamaica)** spoke of the need for civil society’s support of the ICC; he spoke of governmental “logjams” that only public opinion clears up. He suggested working with journalists, talk shows, and the like to tie the ICC into local issues that attract public notice.

**Drs. Hoekema** agreed completely with **Sen. Johnson**. **Mr. Ross Robertson, MP (New Zealand)**, seconded Senator Johnson’s appeal for public relations work. He asked whether the year 2000 was too ambitious a timeline for the ratification of the treaty. **Drs. Hoekema** and **Cong. Diez-Canseco** agreed with **Mr. Robertson’s** point about the ambitiousness of the time-schedule discussed at this conference, though each noted the need for ambitiousness. In particular, **Cong. Diez-Canseco** noted the symbolic importance of the deadline.

### *ICC Regional Responses*

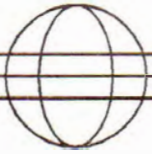
**Mr. Theo Meyer, MP (Switzerland)**, recounted a recent visit to Rwanda where the overcrowded prisons are the result of slowness in judgements—what can an ICC do for this? **Dep. Ibrahima Fall (Senegal)** said there needs to be a plan of action based on regional organizations and an exchange amongst regional organizations—but added, “in doing this, can we count



on the support of the UN, since **Mr. Corell** earlier spoke of the limited resources of the UN?” Responding to **Mr. Meyer**, **Mr. Corell** said that the organization is no stronger than its member states. “We must be realistic; an ICC cannot deal with all cases. If there are so many prisoners, they would have to be dealt with by a national court.” About the support of the UN, he noted that this is very important. It is not possible for the Secretariat to organize the exchange meetings of regional organizations that **Dep. Fall** suggests, but the UN can assist—again, with limited resources. Responding to **Mr. Meyer**, **Cong. Diez-Canseco** said that the overburdened, backed-up Ad Hoc Tribunal in Rwanda (ICTR) is not a good precedent for the ICC.

#### *ICC Jurisdiction*

**Mr. Peter Truscott, MEP (UK)**, pointed out two potential problems with the ICC: first, if local prosecution of criminals supercedes the ICC—could this be used to escape justice? And second, regarding peacekeeping forces, could the court prosecute peacekeepers who transgress a sort of “double jeopardy”? Regarding the court’s jurisdiction, **Cong. Diez Canseco** stated that the ICC will deal with cases that are not taken up in the national system in order to stop impunity; if a case occurs at the national level, there is no need for the ICC; ambiguity regarding this will be worked out in the preparatory committee.



## SESSION IV:

### Ending Impunity:

#### Mechanisms for Enforcement, Part II

##### *National and Regional Approaches*

**Chair:** Sen. A. Raynell Andreychuk (Canada)

**Speakers:** Amb. Muhamed Sacirbey, Permanent Representative of Bosnia-Herzegovina to the United Nations  
Dip. Carlos Montes (Chile)  
Ms. Tina Rosenberg, *The New York Times*

#### CONTINUED SELECTIVE APPLICATION OF INTERNATIONAL LAW

**Ambassador Muhamed Sacirbey, Permanent Representative of Bosnia & Herzegovina to the United Nations**, began by discussing the lack of Security Council support for the tribunal on the former Republic of Yugoslavia; since issuing a statement in 1996 calling for suspects to be handed over, it had taken no action against violations. He had spoken to PGA last year about the selective application of international law, which continued to be a problem: while it was easy to talk about it in principle, countries consistently choose

to be selective in order to

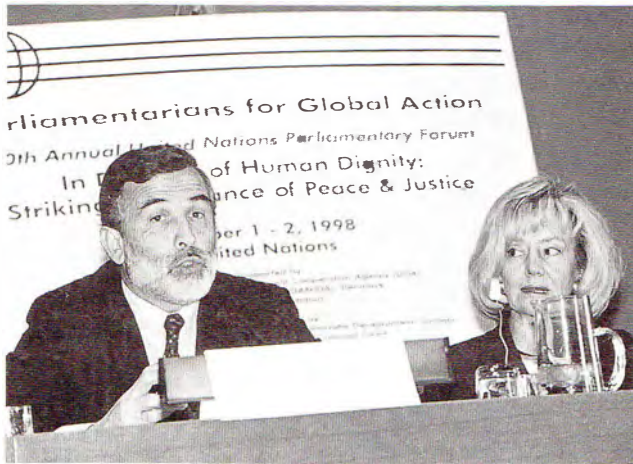
- Protect a client,
- Protect themselves if they fear they will be implicated and, most commonly,
- **Negotiate** with a particular person whom they believe to be “necessary for peace.”

This last one, negotiating with war criminals to end war, seems to imply a contradiction between peace and justice. However, **Ambassador Sacirbey** believes such an analysis to be erroneous. The Dayton Peace Accords came about because Mr. Radovan Karadzic, leader of the Bosnian Serbs, was indicted—not because of 3½ years of futile negotiations. Mr. Richard Holbrooke, US Negotiator who brokered the Dayton Accords, will agree with that assessment, but he also believes that Slobodan Milosevic, President of Yugoslavia, is necessary for peace, even though he, more than anyone else, is responsible for the war in Kosovo. Some people believe that peace there depends not on finding the correct settlement plan, but the correct negotiating partners. But this is mistaken, according to **Amb. Sacirbey**, since peace in Bosnia was obtained not because of Milosevic, but *despite* the entire Serb leadership (largely appointed by Milosevic). This is a chess game in which, as the pawns disappear, it becomes clear who are the king and queen. Obviously the international community has an advantage, but it’s avoiding checkmate—and more pawns are disappearing in the meantime.



Left to right: H.E. Amb. Muhamed Sacirbey, Permanent Representative of Bosnia-Herzegovina to the UN, Ms. Tina Rosenberg, *The New York Times*.





Left to right: Dip. Carlos Montes (Chile), Sen. A. Raynell Andreychuk (Canada).

## HUMAN RIGHTS LAW AS PREVENTIVE DIPLOMACY

All the treaties and international tribunals of the last 50 years, **Amb. Sacirbey** contended, are not really to do with human rights, but are a form of preventive diplomacy. "These treaties were not adopted by a bunch of do-gooders," said **Amb. Sacirbey**. Although NGOs had played an important role, this was essentially a matter of *realpolitik* by those dealing with World War II. One big problem is that every mediator thinks he knows best, and can make a peacemaker from a warmonger: it is ego that is the obstacle to peace, analyzed **Amb. Sacirbey**.

## TRUTH & RECONCILIATION: CHILE'S EXPERIENCE

**Dip. Carlos Montes (Chile)** spoke of the Truth and Reconciliation Commission in Chile. He outlined briefly the context for it: the 1973 coup against a democratically elected government, with grave human rights violations, eventually leading to a transition to democracy in 1990, managed by the military dictatorship. It was a complex situation, particularly since, unlike Argentina, the Chilean military was still headed by General Augusto Pinochet, and the same judges were in place. The commission was formed as a compromise and consisted of eight people of recognized status and intellect, and different ideological slants. It examined more than 3,000 cases of violations ending in death, and produced an exhaustive study of three volumes. It did not deal with non-fatal violations, although it referred to mass

detentions and tortures. The findings of the commission were made public and, thus, vindicated the victims and gave some symbolic reparations. Social security also formed part of the reparations to victims' families.

As for prevention, the Commission proposed that Chilean law should be made compatible with international law, the judicial system should be reformed, the military should be put under civilian control, and human rights education should be started. **Dip. Montes** observed that the report was of great moral value—letting the truth be told is the start of justice. It did move the country, especially when the head of state apologized on behalf of the state. But a month after it was published, an opposition leader was killed. **Dip. Montes** also cautioned that not all of the Commission's aims were achieved, such as national reconciliation. Impunity continued in many cases. Chilean law does reflect some, but not all, international human rights documents. Health care and benefits were given to victims and families, but there is still no policy for human rights education.

**Dip. Montes** concluded that the Chilean answer had some positive effects, but it had not met its big aims. The whereabouts of 86% of the "desaparecidos" ("disappeared") from the dictatorship are still unknown, so there was still no truth. And there was no justice either, because those responsible had never been held accountable, and General Pinochet still protects himself.<sup>1</sup>

**Sen. Andreychuk** commented that she had been on the UN Human Rights Commission when Chile adopted this solution. The Commission had decided to respect Chile's choice, and relax their scrutiny, but they feared it would not lead to full justice, as **Dip. Montes'** testimony bore out.

### Goals of Truth & Reconciliation Commissions

**Ms. Tina Rosenberg, The New York Times**, began by noting that she had only been an observer of countries dealing with the past. Typically, they found themselves forced to choose between peace and justice, even though they believed both to be necessary.

There are two goals of truth commissions, according to **Ms. Rosenberg**:

- To satisfy the victims, a backward-looking goal.
- To prevent such things recurring, by changing the political culture, a forward-looking goal.

<sup>1</sup> Merely two weeks after the Forum, General Pinochet was arrested in London by the request of a Spanish Magistrate investigating the "Dirty War" of Latin America. The extradition process has gripped the entire world because of the implications of such a bold enforcement of human international human rights law.

The Latin American countries were the first to experience what is now something of a “growth industry,” and gave the world truth commissions. They were extremely important, but the reason most chose amnesty is that the old military regimes were still holding a gun to the head of the new regimes. Argentina tried nine of the top junta members, five of whom were found guilty, and began to try lower-down people, but had to stop after three military revolts. Chile has some military officials in prison, including General Manuel Contreras, but that is for a crime that took place in Washington, DC (assassination of Orlando Letelier along with some US nationals). Many countries have failed to persuade the military to give evidence, and often reports do not have any names on them.

### *Using Law to Further Political Ends*

**Ms. Rosenberg** then examined the formerly communist Europe, which has had almost the opposite problem: it is not that the new governments are too weak to punish, but that they are too strong. There are no checks from an independent judiciary or opposition with full political rights. They are using law and justice in the guise of dealing with the past for political ends. A law in the Czech Republic bars people from government service if they appeared on a highly dubious list of secret service informers—guilt is presumed. In Germany, Marcus Wolf, head of foreign spying for the Stazi, was prosecuted for treason by a state of which he was not a citizen.



*Dip. Roberto Delmastro (Chile).*

### *South Africa: Guiding Example for the Future?*

**Ms. Rosenberg** stated that the most exciting example of truth commissions is South Africa. One of the constraints on the new government was that the African National Congress (ANC) believed the old apartheid

regime could shut everything down. The new government did grant an amnesty—but not a blanket one. Amnesty had to be earned, the whole truth had to be disclosed, and it was subject to limits, e.g., if the act was too atrocious, or not politically motivated. These limits were very upsetting for many South Africans, but the trade-off had to be made. Since many of the old judges and police still hold their positions, many criminals would never have been brought to justice anyway, she observed. It was very healing for victims to hear their torturers speak.



*Dip. Andres Palma (Chile).*

The process was democratized; no one got all of what they wanted, but many people did get something. The old regime can no longer hide behind myths of the past, as opposed to other countries like Chile, where it is claimed that there was a “legitimate war against the left.”

Although not totally effective, the South African TRC is more so than any other country. This model can’t be adopted by every country, though, since it depends on the new government having sufficient power to compel the old regime to come forward and give testimony. **Sen. Andreychuk** concluded that the real answers to this issue are yet to come.

## **DISCUSSIONS**

### *Disagreement on Chile*

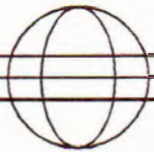
**Dip. Roberto Delmastro (Chile)** said there could be no peace without justice, and neither were possible without the full truth, not just half truth. He asked whether the ICC could be further developed, to cover more matters, or to challenge governments as well as individuals. What was the role of truth commissions in the event of crimes against humanity, genocide, and terrorism?



**Dip. Andres Palma (Chile)** agreed with the panelists that, sadly, because of the lack of full acknowledgement of what happened there, there was no reconciliation in Chile. He debated some facts about what happened in 1973 with **Dip. Delmastro**, disputing the notion that the climate of violence surrounding the coup d'état was controlled by the guerilla movement. Instead, **Dip. Palma** argued that in Chile, civil society was very active and mobilized. But in the case of that coup d'état, it was the armed forces who actually controlled Chile completely when the coup was carried out in twelve hours. He also contended that many human rights violations occurred

long after the coup, when they could not be justified. In response, **Dip. Montes** said that they should not be debating what happened in Chile. The problem now was how to recognize human rights violations and move forward to create a culture in which human rights are respected. But there is still a feeling of importance, and a lack of will to collaborate.

**Senator Andreychuk** concluded that it seemed not to matter whether mechanisms were national, regional or international; they are all preventive diplomacy and will not be effective unless we choose to make them so.



## LUNCHEON SESSION:

### Human Development: Economic & Development Rights

**Moderator:** Karl-Göran Biörsmark, MP (Sweden), PGA Executive Board Member

**Speaker:** H.E. Mr. Bo Göransson, Director-General, Swedish International Development & Cooperation Agency

H.E. Mr. Bo Göransson, Director General, Swedish International Development & Cooperation Agency, spoke on economic human rights at a Special Luncheon Session during the Annual Forum. He spoke about his trip in January 1995 to Burundi and Rwanda, where he met with the PGA Emergency Response Delegation, which was also visiting the region at the request of the UN Secretary-General's Special Representative. **Mr. Göransson** remarked that "ever since, I've been living with PGA [and] seeing, in the field, what [PGA] was actually doing." **Mr. Göransson** also presented a formal agreement between PGA and SIDA to initiate a Parliamentary Fellows Program.



*Mr. Bo Göransson, Director-General, SIDA.*



*Mr. Aftab Shahban Mirani, MP (Pakistan).*

#### SWEDISH CONTRIBUTION TO THE GLOBAL HUMAN RIGHTS NETWORK

He noted that Sweden's financial support of the UN system has, in one way, contributed to the "global human rights framework" and to fostering an "international democratic system." **Mr. Göransson** also discussed SIDA's support of countries, communities, and NGOs to promote democracy and human rights. Indeed, this financial assistance has increased over time. He pointed out that the promotion of economic human rights is an integral aspect of Sweden's bilateral and multilateral assistance. He emphasized that Sweden regards human rights as being "interdependent, indivisible, and universal" but cautioned that "in practice, however, the economic, social, and cultural rights have historically been treated around the world not only as a second generation of rights, but also as a second priority. Our position is that this should no longer be the case."





Left to right: Drs. Jan Hoekema, MP (Netherlands), Dr. Maj-Britt Theorin MEP, (Sweden).

## MAINSTREAMING HUMAN RIGHTS

**Mr. Göransson** called for the integration of “human rights into normal routines and procedures of the development cooperation.” He stated that SIDA considered children’s and women’s rights of utmost importance. Other high priorities included the trade union movement and the protection of land rights. **Mr. Göransson** stressed that growth and human rights are linked together: “Without democracy and human rights, experience shows us that the fabric of society becomes unstable, and citizen and investor confidence becomes weak. Conflicts take on exaggerated form, and armed outbursts become more likely.” He concluded by reiterating Sweden and SIDA’s commitment to upholding the UN Charter and the Covenant on Economic, Social, and Cultural Rights.

## DISCUSSION

### *Kosovo Crisis*

**Ms. Elena Poptodorova, MP (Bulgaria)**, thanked **Mr. Göransson** for SIDA’s commitment to PGA. She raised the issue of the crisis in Kosovo and asked whether SIDA would become involved and what should the international

community do to make a positive impact in the region? He replied that, indeed, SIDA will be involved, but cautioned that humanitarian funds cannot replace military intervention and diplomacy, if that is what is required.

### *Overseas Development Assistance*

**Drs. Jan Hoekema, MP (Netherlands)**, asked how the Swedish elections and slowing down of economic growth have affected Swedish society in their acceptance of the ODA requirement that Sweden fulfills (min. recommendation being 0.7% of GDP)? Even with the forming of the new government, **Mr. Göransson** did not believe that ODA would go down. Regarding the public, he commented that there was a decrease in the public’s support of development aid but SIDA, as an organization, enjoyed an increasing positive opinion by the public.



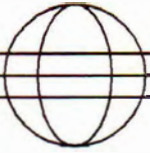
tarians for

Left to right: Mr. Bo Göransson, Director-General, SIDA, Mr. Moses Katjiuongua, MP (Namibia).

### *PGA Receives Award*

During PGA’s October 2, 1998, Annual Forum luncheon, the World Health-Mind-Heart Foundation honored PGA’s work on furthering international cooperation and understanding with an award presented by Mr. Longin Pastusiak, MP (Poland), and member, Honorary Council of the Foundation. The award was accepted by PGA’s Secretary-General, Ms. Shazia Z. Rafi, who affirmed that “there really is a magic that happen[s] when all of you, who have such commitment to the issues that we all work for globally, get together.”





## SESSION V:

# Human Rights as a Basis for Conflict Prevention and Peace-Making

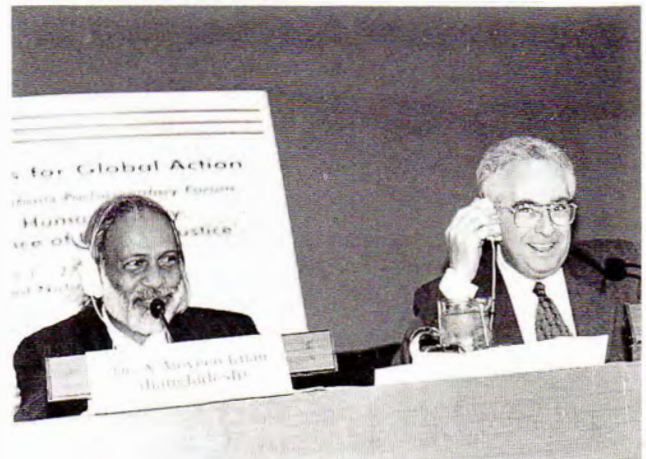
**Chair:** Dr. A. Moyeen Khan, MP (Bangladesh), Former Minister of State for Planning

**Speakers:** Prof. Roberto Garretón, Special Rapporteur of the United Nations for Human Rights in the Democratic Republic of Congo (Ex-Zaire)  
Dip. Schafik Jorge Handal, MP (El Salvador), Leading Peace Negotiator of FMLN  
Mr. Bacre Waly Ndiaye, Representative of Mrs. Mary Robinson, High Commissioner of Human Rights; Director, New York Office of the High Commissioner for Human Rights

**Professor Roberto Garretón, Special Representative of the UN for Human Rights in the Democratic Republic of Congo (Ex-Zaire),** raised the question of whether it would have been possible to prevent what happened in the Congo. He called the audience to remember what the international community did. Looking over fifty years of history of human rights treaties, covenants, and the evolution of the concept of human rights, he recognized three important advances: the creation of novel mechanisms such as the special rapporteurs; the evolution of individual access to the UN system, which had had a greater political effect than anything else; and the statute of the ICC this year. There is some doubt whether it is a human rights instrument or not, as there is no reference whatsoever to the Universal Declaration of Human Rights in it.

He went on to elaborate the notion of novel mechanisms. Novel mechanisms come from the first country (Chile) to be an object of the rapporteur mechanism. Rapporteurs are a political mechanism, drawing on the UDHR, and may be appointed to cover either a country (only twenty-two countries have thus been investigated) or a functional area. They are experts in human rights, appointed without, and often against, the state's wishes; their reports and procedure are public, and names are given.

He then briefly reviewed the situation in Ex-Zaire/ Democratic Republic of the Congo. Zaire's long-time dictator, Mobuto Sese Seko, was regarded as defending Western/Christian civilization in Africa and so he was



*Left to right: Dr. A. Moyeen Khan, MP (Bangladesh), Prof. Roberto Garretón, Special Representative of the UN for Human Rights in the Democratic Republic of Congo (Ex-Zaire).*

allowed to do as he wished. For twenty-nine years, neither the UN nor the US nor any other country was concerned with what he did. But in the 1990s, Mobuto ceased to be necessary, and a special rapporteur was appointed. The levels of corruption and poverty he found were beyond belief, and accompanied a tremendous culture of oppression.

From 1990, things did begin to change, which could have led to democracy. The single party system ended, and NGOs began to operate. Some Zairean Tutsis (Rwandan origin centuries ago) had been denied full citizenship, and denounced by the Zairean government. The 1994 genocide in Rwanda (mainly of Tutsis—as many as 1.2



million deaths) caused 1.2 million Hutus to flee to refugee camps in Zaire. One should have foreseen the conflict at that point. The inter-ethnic tension was unprecedented and well reported by bodies like the UNHCR and Medecins Sans Frontieres. So nobody can claim to be surprised about what happened. But nothing was done.

Refugee camps in the Congo (Laurent-Desire Kabila changed the name to the Democratic Republic of Congo from Zaire in 1997 after militarily defeating Mobutu) also fell prey to the violence. Rwandan Hutu militias from the camps crossed into Rwanda, killing Tutsis, and fought local people. In this generalized situation of violence, groups of disenfranchised Zairean Tutsis took up arms against the Zairean army and somewhat unexpectedly took over the country, easily defeating the corrupt, underpaid, and rag-tag Zairean army, forming an odd coalition of interests with Congolese wanting Mobutu out, and with the RPF, who wanted to prevent the repatriation of Rwandan refugees. It was a rather strange war with no prisoners and no battles—just attacks on refugee camps. The many victims were buried in mass graves.

### ***International Community's Response to the Congo Undermined***

“So what did the international community do? They appointed me as special rapporteur, with a supporting team. The rebel forces refused our entrance into the Congo; they complained we would lie, and they put numerous obstacles in our way, preventing us from investigating. The Secretary-General of the UN said if they did not appoint a team, Kabila would appoint his own team; but the problem was that this weakened the mechanism of the Commission on Human Rights. Kabila agreed to a different team but it too was unable to investigate anything.”

What did the UN do next? “Now we get to the tragic part,” noted **Prof. Garretón**. The UN consists of some 185 states—they are the ones that have responsibility. Neither of the teams of the Commission on Human Rights or the Secretary-General was allowed in to investigate. **Prof. Garretón** continued, “We condemned the massacres—well, who would celebrate them?—and asked the governments of DRC and Rwanda to investigate the massacres themselves. In other words, nothing happened. There were political solutions suggested—

forcing Rwanda to accept returning refugees with some guarantees, respecting non-refoulement, disarming the militias—but nothing was done.

**“Political problems have to have political solutions; military problems must have military solutions—the solution to a conflict depends on its cause.”**  
—Prof. Roberto Garretón

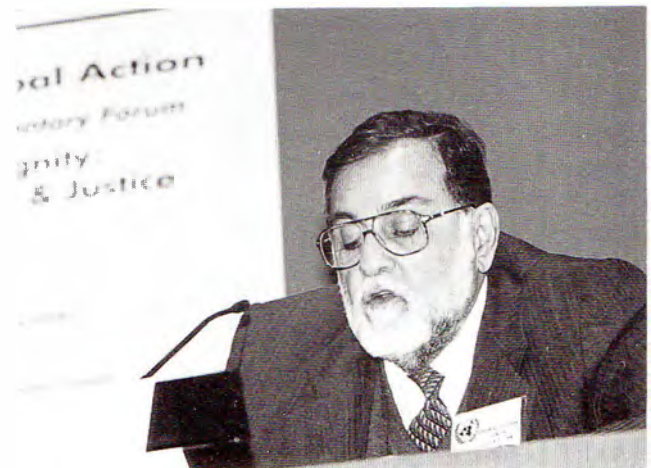
“And what happened? War. Humanitarian assistance was used to try to solve a **political** problem—the war in the Congo was not like an earthquake in which simple humanitarian aid was called for. Everybody lost; everyone blamed the humanitarian organizations, which were totally discredited, because the political problems were not resolved.” The way

the UN handled the Congo situation, by avoiding solutions to the root causes, reminded him of the words of Archbishop Helder Camara: “When I give food to the poor, they call me a saint; when I ask why they’re hungry, they call me a communist.” Throughout the world, the cause of human rights lost out. Now there is another rebellion against Kabila. The lesson to be drawn from this is: “Political problems have to have political solutions; military problems must have military solutions—the solution to a conflict depends on its cause.”

In closing, **Prof. Garretón** expressed disillusionment with the UN, or rather the 185 member countries who were responsible. “Nothing was done to save many human rights,” he lamented, “and this will lie on the conscience of diplomats for many years to come.”

### **PEACE-BUILDING IN EL SALVADOR**

**Dip. Schafik Jorge Handal (El Salvador)** spoke specifically to the case of El Salvador, in the context of its century-long history of authoritarian governments with only brief interruptions until the peace agreement signed in 1992. For many years, arbitrary detainment, forced



*Dip. Schafik Jorge Handal (El Salvador).*



Left to right: PGA Projects Director Ms. Ayaka Suzuki, Mr. Bacre Waly Ndiaye.

disappearances, electoral fraud, torture, persecution of organizers of almost any kind of association, and politically motivated killings were commonplace in El Salvador. During the 1970s, political groups took up arms, because their exclusion from political systems left them with no alternative, and in 1979-80, the conflict exploded, resulting in a twelve-year civil war.

#### ***Beginning of Peace Process***

In January 1992, a political solution was reached after two years of intense negotiation with the assistance of Secretary-General of the UN and a "Group of Friendly States." The Farabundo Martí National Liberation Front (FMLN) insisted on institutional changes and democracy. "We wanted justice and above all social justice," **Dip. Handal** said. "This was at the essence of the FMLN right up until 1992, when FMLN became a legal political party."

Now six years after the end of the civil war, **Dip. Handal** noted that, although the government is not fully complying with the accord and the Truth Commission's proposals are not complied with, thus limiting the rule of law, there have been significant achievements: demilitarizing society, the opening of political spaces, and greater freedom of expression and association, and also a sharp drop in human rights violations.

However, he stressed, nothing has been done vis-à-vis the social injustice that was at the root of the conflict—indeed the gap between rich and poor is growing, and unemployment increasing, which he attributed in part to the Salvadoran state's economic policies. There is a crime

wave, and social tensions are increasing. Peace is a precious achievement, but it is not enough on its own. He quoted the Pope, criticizing unregulated markets, and added that El Salvador is caught between increasing democracy and increasingly wild markets. He ended, "We must now move towards social justice."

**Mr. Bacre Waly Ndiaye, Representative of Mrs. Mary Robinson, High Commissioner for Human Rights, Director, New York Office of the High Commissioner for Human Rights, read a statement by Mary Robinson.**

The 50<sup>th</sup> anniversary of the UDHR and the adoption of the ICC statute was indeed an apt time to consider the linkages between human rights, justice and democracy, in the light of the rule of law, which both informs and operationalizes human rights. **Mr. Ndiaye** spoke of the important recognition this century that national conflict can have international impact. The Rome statute for an ICC forces the eventual establishment of what he called "the centerpiece of international criminal law and justice." As finally adopted, articles 5-8 of the Rome statute give the court jurisdiction over the crime of aggression (once defined), genocide, crimes against humanity, and war crimes. It is significant that the breadth of the statute is

**“Human rights—civil, political, economic, social, and cultural—can be best secured with the help of a broad vision that comprehends the contextual elements of justice, the rule of law, and democratization, understood as part of an ongoing process.”**

**—Mrs. Mary Robinson, UN High Commissioner for Human Rights**

not limited to armed conflict; even in peacetime situations, the international court may have jurisdiction.

**Mary Robinson's** statement lastly added that "human rights, the rule of law, and democratic governance are all ingredients for a just and lasting peace, both at the domestic and other levels of the community of nations. I believe strongly that human rights, civil, political, economic, social, and cultural, can be best secured with the help of a broad vision that comprehends the contextual elements of justice, the rule of law, and democratization, understood as part of an ongoing process."



## DISCUSSIONS

### *Financing Human Rights*

**Mr. Ross Robertson, MP (New Zealand)** asked what role the United Nations should play in supervising banks and security markets. **Prof. Garretón** agreed with **Mr. Robertson's** comment about the problem of globalization. **Prof. Garretón** remarked that the international financial institutions represent a small group of powerful states, or rather, of small groups within those states, and are endowed with a role not given them by the world's peoples—that of directing the global economy. They condition access to credit and control the parameters of development according to the interests of the small minority they represent. He agreed that some entity should emerge to address these issues, whether or not it is the United Nations. **Mr. Ndiaye** responded by speaking of the need to take up globalization from a human rights perspective: "To give a human face to economic action." The "Human Development Report" by UNDP was a praiseworthy effort to deal with this neglected question. Under the recent reforms, human rights had been mainstreamed in the UN system, and the HCHR has initiated contact with various UN agencies regarding this.

**Dip. Alejandro Dagoberto Marroquín (El Salvador)** commented that it was necessary to strengthen human rights offices financially, so as to preserve their independence. **Mr. Pashupati Rana, MP (Nepal)**, spoke of how money flows and individuals like George Soros, and other private institutions and individuals, who affect the international economy—they, and not the UN agencies, are the real issue. Operating in the absence of international mechanisms of control, they can cause even governments to kow-tow (e.g., Clinton's visit to China). **Dip. Handal** mentioned Chile's controls on speculative capital flows, which are far more dangerous than anything else, including the World Bank or IMF. A few governments have attempted to limit capital flows, but no one is bold enough. The IMF makes it harder for states to defend themselves from speculation, which he regards as aggression. This is the exact opposite of what they should be doing, i.e., helping. He also spoke of the need for international organizations far more representative than the Bretton Woods institutions, which are dominated by only a few countries' interests.

### *Support for Parliamentarians*

**Dep. Ibrahima Fall (Senegal)** asked what support parliamentarians could expect from international and

regional organizations—in this case, the UNHCHR—in their efforts to mobilize on the ICC. **Mr. Ndiaye** responded to **Dep. Fall** by reversing the question, saying that power is now in the hands of parliamentarians who must get the Rome statute ratified.

### *Human Rights Achievements of UNHCR*

**Sen. John Connor (Ireland)** asked whether **Mary Robinson's** visits to Rwanda and Tibet in 1997 had achieved anything vis-à-vis human rights. **Mr. Ndiaye** replied that the United Nations tried to play a preventive role in Rwanda in 1993, but there had not been sufficient political will for a peacekeeping operation to that country. It had been agreed that the UNHCHR would open an office in Kigali to observe the state of human rights, and to strengthen the national capacity to deal with human rights abuses; but the government decided to end the human rights part and keep only the national capacity-building part of the operation. So they had been forced to leave Rwanda.

He said the trip to China was educational, enabling them to see what it was really like, as well as providing the opportunity for China to sign the International Covenants on Civil and Political Rights, and Economic, Social and Cultural Rights. He said: "The role of the High Commissioner is to hold critical dialogues with all interested parties, which in this case includes China." The Dalai Lama had congratulated Ms. Robinson, which must be taken as a good sign.

### *Human Rights Education & Conflict Prevention*

**Sen. Anthony Johnson (Jamaica)** echoed Ms. Tagoe's earlier comment on conflict prevention and expressed his concern about today's global climate of "demonization" and the need for education—to prevent global citizens from "demonizing" each other, thus paving the way for slaughter.

**Mr. Ndiaye** thought **Sen. Johnson** had put his finger on something important, since it seemed that the killings in Rwanda and the former Yugoslavia had been preceded by messages of hate. Work was being done on early warning mechanisms and human rights education. Early warning isn't sufficient—early action is also required. **Prof. Garretón** agreed with **Sen. Johnson**, but also said that there is a more optimistic way of seeing the present. Fifty years ago there were no means of looking at human rights: no conventions, no definitions, no Refugee Convention—that has all happened in our lifetimes. Human rights are now a matter of global concern, and this is a weighty

achievement. On the question of prevention, he said that the best means of protecting human rights is to defend strong democratic systems—and that is the responsibility of parliamentarians.

**Cong. Javier Diez-Canseco (Peru)** remarked that “we often wait until war comes before beginning negotiations.” Noting that Scandinavian countries use negotiation as a means of dispute resolution, he asked about whether it could be used preventively. He wondered whether the Jubilee 2000 campaign could seek, through PGA, to integrate economic and social rights, and justice, in the world order. Conflicts have been completely foreseeable, **Prof. Garretón** agreed with **Cong. Diez-Canseco**, and it was necessary to develop a culture of pacific solutions and early warning systems. **Dip. Handal** agreed with **Cong. Diez-Canseco** that negotiation often occurs after conflict arises, but stressed that the UN had to democratize before it could play a useful role in prevention. “In El Salvador if we had had a negotiating mechanism before the conflict arose—and we had been asking the OAS to do this—then there would not have been a conflict.”

#### *Human Rights in Africa*

**Dep. Simone Ehivet Gbagbo (Cote d'Ivoire)** praised **Prof. Garretón's** evident understanding of Africa, as demonstrated by his analysis of the Congo, and noted that the problems in many African countries are due to a lack of democracy. She asked **Prof. Garretón** whether the “good governance” criterion that is spoken of so

much needs to have human rights and political aspects integrated, for a real solution. **Ms. Charity Kaluki Ngilu, MP (Kenya)**, spoke of Zaire and the failure of the international community for decades to recognize the problem of Mobutu, and asked whether the international community should be acting sooner, e.g., by denying visas to, and restricting business with, notorious dictators.

“In El Salvador if we had had a negotiating mechanism before the conflict arose—and we had been asking the OAS to do this—then there would not have been a conflict.”

—Dip. Schafik Jorge Handal (El Salvador)

In respect to good governance, **Prof. Garretón** noted that, “anything that protects human rights is good governance.” On a positive note, he remarked that the UN Commission on Human Rights has appointed a rapporteur on extreme poverty and one on an adequate standard of living, which is a start. In the case of Africa, the problem was not the lack of information, but the failure to make a decision.

#### *Globalization*

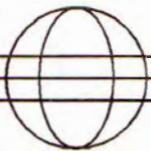
**Dep. Fritz Robert Saint-Paul (Haiti)** asked whether, if globalization was not taken into account, all the attention given to civil and political rights violations would prove a waste of time. **Dip. Handal** responded to the comment on globalization, saying that it is inevitable and not necessarily bad—progress also comes of it; the question is who will control it? It was necessary to develop alternative political schemes to deal with it, and fight for their implementation.

**Dr. A. Moyeen Khan, MP (Bangladesh)**, concluded the session by remarking that there must be an emphasis on the dual importance of peace and justice for all mankind.

“THE PGA ANNUAL FORUM continues to offer a very important platform for parliamentarians of diverse political, national, and international backgrounds to discuss current global issues that have direct bearing on democracy. Like its sister organizations — CPA, IPU, UAP — it offers opportunity for sharing diverse experiences from all parts of the globe. A close study of the list of participants and observers attached herewith clearly shows an impressive representation from member parliaments from the Commonwealth. The fact that [PGA] is an association affiliated with the United Nations gives it a timely global credential. This platform can be used to enrich the practice of democracy within the Commonwealth through sharing of ideas. It would be most appropriate, therefore, to recommend a greater involvement and support from the Commonwealth Secretariat through the Commonwealth Parliamentary Association (CPA).”

-- From the Report of Hon. Kenneth Dzirasah, MP, First Deputy Speaker (Ghana) to the CPA.





## Closing Session

**Chair:** Hon. Kenneth Dzirasah, MP (Ghana), First Deputy Speaker of Parliament  
**Speakers:** Theo Meyer, NR (Switzerland), Convenor, Peace & Democracy Programme  
Mr. Bill Pace, Convenor, Coalition for an International Criminal Court



Left to right: Theo Meyer, MP (Switzerland), Kenneth Dzirasah, MP (Ghana).

**Hon. Kenneth Dzirasah, MP (Ghana), First Deputy Speaker of Parliament**, chaired the final session. He offered closing remarks and expressed hope for further future collaboration between PGA and the Commonwealth Parliamentary Association, whom he represented at the Forum.

Panelist **Mr. Theo Meyer, MP (Switzerland)**, professed, "If human dignity were the norm between human beings, then we would not have to defend it." He expressed his belief that any ideology that promised it could do everything, couldn't be right. Human dignity should be seen as continually under threat, and every generation had to take steps to prevent its destruction. The conference had spoken a lot about the ICC. It is good that the ICC has been finally created, and something all parliamentarians can do at home is work for its early ratification. But the ICC only

becomes involved *after* crimes have occurred, so it cannot be the whole solution. The balance between peace and justice is a difficult one to strike, but it has to be attempted. **Mr. Meyer** advised that parliamentarians should avoid the temptation to say, "If they want to kill themselves, why not let them," as he had sometimes heard, but should instead maintain their strength and idealism. He was reminded of the first UN Secretary-General's words that the UN was founded not to bring paradise on earth, but to prevent hell.

**Mr. William Pace, CICC Convenor, Executive Director of the World Federalist Movement**, thanked PGA and its members for all the work they had done, not just on the ICC, but also on the Nuclear Weapons Advisory Opinion from the International Court of Justice. The Rome conference had been characterized by very democratic decision-making, and he quoted the *Times*

**"The fate of our world depends on the success of projects like the ICC ... the seeds we have sown in the last few days will germinate in our parliaments."**

**—Mr. William Pace, CICC Convenor**

of India on it: "Make no mistake—this is treaty-making of historic proportions." While it is important to secure its prompt ratification, it should not be rushed in order to ensure national legislation complies with it, and there was strong political support for it. "The fate of our world depends on the success of projects like the ICC" and "the seeds we have sown in the last few days will germinate in our parliaments."

**Mr. Moses Katjiuongua, MP (Namibia)**, concluded that the last two days had been hectic, hard work, and educational. He congratulated and thanked everyone for their efforts. He remained optimistic about the future. The phenomenal participation of members was an indicator of success, and PGA's prestige had risen because of it.



*Left to Right: Dr. Maj-Britt Theorin, MEP (Sweden),  
Mr. Jayantha Dhanapala, UN Under-Secretary-  
General for Disarmament Affairs*



*Left to Right: Ms. Barbara Seaman, Ms. Liz Abzug*



*Left to Right: Ms. Helen Beim, MP (Denmark),  
Lord Swraj Paul of Marylebone (UK), Mr. Allan  
Rogers, MP (UK)*

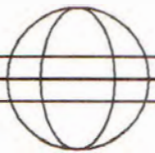


*Ms. Shazia Rafi, PGA Secretary-General, and Mr.  
Pashupati Rana, MP (Nepal).*



*Left to Right: Mr. Philippe Kirsch (Canada),  
Mr. Shashi Tharoor, UN Director of Communications  
& Special Projects, Mr. Murli Deora, MP (India)*





## PGA Celebrates Its Third Annual Defender of Democracy Awards

On October 1, 1998, PGA held its Third Annual Defender of Democracy Awards Dinner and Ceremony to honor Prof. M. Cherif Bassiouni and Ms. Charity Kaluki Ngilu, MP (Kenya). A Lifetime Achievement Award was also presented to the late Hon. Bella S. Abzug, for her work and commitment to democracy.

H.E. Arthur N.R. Robinson, President of Trinidad and Tobago (1997 recipient of the award and honorary patron of PGA's International Law and Human Rights programme), presented the award to his friend and collaborator, Prof. M. Cherif Bassiouni, for his thirty years of work as a lead player for the creation of the International Criminal Court (ICC). Ms. Charity Kaluki Ngilu accepted her award from PGA's President, Mr. Moses Katjuongua, MP (Namibia), on behalf of PGA's Multi-Party Group in Kenya. Ms. Ngilu has been a member of the Kenyan parliament since 1992 and during that time has emphasized the importance of integrating women into politics and policy decision-making. In fact, Ms. Ngilu became the first woman to run for president in Kenya in 1997.

The Late Hon. Bella S. Abzug was posthumously awarded the Lifetime Achievement Award for her life's work and accomplishments in the promotion of democracy. Dr. June Zeitlin of the Ford Foundation introduced Bella, and Dr. Maj Britt Theorin, MEP (Sweden), presented the award to Ms. Mim Kelber, Bella's life-long friend and co-founder of the Women's Environment and Development Organization (WEDO). Ms. Kelber then presented the award to Bella's daughters, Eve and Liz, who accepted the award on Bella's behalf. Bella is remembered as the co-founder of WEDO and as a catalyst in the creation of PGA's very own programme on the Empowerment of Women.

### *Defenders of Democracy*



*Prof. M. Cherif Bassiouni and H.E. Arthur N.R. Robinson, President of Trinidad and Tobago.*



*Parliamentarians for  
Global Action*

*Mr. Moses Katjuongua, MP (Namibia),  
and Ms. Charity Kaluki Ngilu, MP  
(Kenya).*

### *Lifetime Achievement Award*



*Dr. June Zeitlin, the Ford Foundation.*



*Ms. Mim Kelber, WEDO, and Dr. Maj-Britt Theorin, MEP (Sweden).*



*Left to Right: Mr. Karl-Goran Biorssmark, MP (Sweden), Ms. Charity Kaluki Ngilu, MP (Kenya)*



*Mr. Hirofumi Ando, Deputy Executive Director, UNFPA, and Dep. Houda Kanoun (Tunisia).*



*Left to right: Ms. Ayaka Suzuki, PGA Projects Director; Mr. Gianfranco Dell'Alba, MEP (Italy); Mr. Olara Otunnu, Special Representative of the UN Secretary-General on Children and Armed Conflict; Mrs. Nane Annan, First Lady of the UN.*





## Parliamentarians for Global Action

### 20th Annual United Nations Parliamentary Forum

#### **In Defense of Human Dignity: Striking the Balance of Peace and Justice**

October 1 - 2, 1998

United Nations  
Conference Room #1

Co-Sponsored by

The International Centre for Human Rights and Democratic Development  
Coalition for an International Criminal Court

Collaborated with  
Southern African Development Community Parliamentary Forum  
Commonwealth Parliamentary Association

### **Agenda**

#### **Day I: October 1, 1998**

9:00 – 9:45 Registration (*United Nations Visitors' Lobby: 46<sup>th</sup> Street and 1<sup>st</sup> Avenue*)

10:00 – 12:00

#### ***Opening Session***

*Venue: United Nations Conference Room #1*

- ◆ Welcome Remarks by PGA President, Mr. Moses K. Katjuongua, MP (Namibia)
- ◆ Opening Remarks by Mr. Warren Allmand, President, International Centre for Human Rights and Democratic Development
- ◆ Inaugural Speech by H.E. Ms. Louise Frechette, United Nations Deputy Secretary-General
- ◆ Keynote Speech by Dr. Dullah Omar, MP, Minister of Justice, The Republic of South Africa

12:00 – 13:00

#### ***Session I: Striking the Balance of Peace and Justice in Peace Negotiations***

Panel Discussion

Chair: Mr. Allan Rogers, MP (United Kingdom)

Speakers: Commissioner Emma Bonino, Commissioner for Humanitarian Affairs, European Commission

Dip. Dante Caputo (Argentina), Former Minister of Foreign Affairs,  
Former UN Secretary-General's Special Representative for Haiti  
Hon. Mosé Tjitendero, Speaker of the National Assembly of Namibia

13:15 – 13:30 Group Photograph (Conference Room #1)

13:30 – 15:00 No Scheduled Lunch

15:00 – 18:00

### ***Session II: Establishing a Permanent International Criminal Court***

- ◆ Brief Overview of the Preparatory Process
- ◆ Strengths and Weaknesses of the Statutes
- ◆ Gender Perspectives on the International Criminal Court
- ◆ Rome Negotiations

Chair: Mr. Warren Allmand, President, International Centre for Human Rights and Democratic Development

Speakers: Mr. Philippe Kirsch, Department of Foreign Affairs and International Trade, Canada  
Mr. Richard Dicker, Associate Legal Counsel, Human Rights Watch  
Ms. Barbara Bedont, International Centre for Human Rights and Democratic Development

19:00 – 22:00

### ***Defender of Democracy Awards Ceremony and Dinner United Nations Delegates Dining Room (by invitation)***

Defender of Democracy Awards Honorees:

*Prof. Cherif Bassiouni*  
*Ms. Charity Kaluki Ngilu, MP (Kenya)*

Also honoring  
*the Late Bella Abzug*  
with the PGA Lifetime Achievement Award

## **Day II: October 2, 1998**

9:30 – 11:30

### ***Session III: Ending Impunity: Mechanisms for Enforcement Part I International Approach***

*Venue: United Nations Conference Room #1*

- ◆ Ratification of the Treaty to Establish an International Criminal Court
- ◆ Future Steps



Panel Discussions

Chair: Ms. Elena Poptodorova, MP (Bulgaria), Convenor, International Law & Human Rights Programme

Speakers: Mr. Hans Corell, Under-Secretary-General, Office of Legal Affairs, United Nations  
Drs. Jan Hoekema, MP (The Netherlands)  
Cong. Javier Diez-Canseco (Peru)

11:45 – 13:00

**Session IV: *Ending Impunity: Mechanisms for Enforcement Part II***  
***National and Regional Approaches***

- ◆ Truth Commissions/Commissions of Inquiry
- ◆ Truth & Reconciliation Commissions in Chile and South Africa
- ◆ United Nations Ad-Hoc Criminal Tribunals

Chair: Sen. A. Raynell Andreychuk (Canada)

Speakers: Amb. Muhamed Sacirbey, Permanent Representative of Bosnia-Herzegovina to the United Nations  
Dip. Carlos Montes (Chile)  
Ms. Tina Rosenberg, *The New York Times*

13:00 – 15:00

**Luncheon Session: *Human Development: Economic & Development Rights***

*Venue: United Nations Delegates Dining Room #6*

Speaker: H.E. Mr. Bo Göransson, Director General, Swedish International Development & Cooperation Agency

15:00 – 17:45

**Session V: *Human Rights as a Basis for Conflict Prevention and Peace-Making***

*Venue: Conference Room #1*

- ◆ Is there a trade-off between achieving peace and human rights protection?
- ◆ How can human rights fit in failed states?
- ◆ What is the role of human rights in the democratization processes?
- ◆ What is the role of justice in the peace-making processes?

Chair: Dr. A. Moyeen Khan, MP (Bangladesh), Former Minister of State for Planning

Speakers: Prof. Roberto Garretón, Special Rapporteur of the United Nations for Human Rights in the Democratic Republic of Congo (ex-Zaire)  
Dip. Schafik Jorge Handal (El Salvador), MP, Leading Peace Negotiator of FMLN  
Mr. Bacre Waly Ndiaye, Representative of Mrs. Mary Robinson, High Commissioner for Human Rights; Director, New York Office of the High Commissioner for Human Rights

17:45 – 18:00

***Closing Session***

Chair: Hon. Kenneth Dzirasah, MP (Ghana), First Deputy Speaker of Parliament

Speakers: Theo Meyer, NR (Switzerland), Convenor, Peace & Democracy Programme  
Bill Pace, Convenor, Coalition for an International Criminal Court





## Parliamentarians for Global Action

### 20th Annual United Nations Parliamentary Forum

#### *In Defense of Human Dignity: Striking the Balance of Peace & Justice*

October 1 - 2, 1998

United Nations

#### List of Participants & Observers

##### **Special Guest**

H.E. Mr. A.N.R. Robinson  
President,  
The Republic of Trinidad & Tobago  
Former PGA Executive Committee  
Member

##### **Parliamentarians**

##### **Africa & the Middle East**

Mr. Moses Katjiuongua, MP (Namibia),  
President of PGA

Dr. Mosé Tjitendero, MP (Namibia), Speaker of  
the National Assembly

Hon. Kenneth Dzirasah, MP (Ghana), First  
Deputy Speaker of Parliament

Dep. Simone Elhivet Gbagbo (Cote d'Ivoire),  
Vice-President of the National Assembly

Mr. Edward Doe Adjaho, MP (Ghana)

Mr. Kojo Armah, MP (Ghana)

Mr. Kofi Attor, MP (Ghana)

Ms. Theresa J. Baffoe, MP (Ghana)

Mr. S.K. Boafo, MP (Ghana)

Dep. Ibrahima Fall (Senegal)

Ms. Naila Jiddawi, MP (Tanzania)

Dep. Houda Kanoun (Tunisia)

Dep. Momar Lo (Senegal)

Ms. Charity Kaluki Ngilu, MP (Kenya)

Ms. Theresa Nyarko-Fofie, MP (Ghana)

Mr. Abdou Charfo Alginy, MP (Niger)

Ms. Theresa Ameley Tagoe, MP (Ghana)

##### **Asia & the Pacific**

Sen. Rahim Datuk Baba (Malaysia)

Mr. Murli Deora, MP (India)

Mr. K. Kalita, MP (India)

Dr. A. Moyeen Khan, MP (Bangladesh), Former  
Minister of State for Planning

Mr. Aftab Shahban Mirani, MP (Pakistan),  
Former Minister of Defense

Mr. Praful Patel, MP (India)

Mr. Pashupati Rana, MP (Nepal), Former  
Minister of Foreign Affairs, Finance &  
Communications, and Water  
Resources

Mr. K.S. Rao, MP (India)

Mr. Ross Robertson, MP (New Zealand)

Mr. Tahagat Satpathi, MP (India)

Ms. Dianne Yates, MP (New Zealand)

Mr. A.R. Zamharir, MP (Indonesia)

##### **Canada**

Sen. A. Raynell Andreychuk (Canada), Former  
High Commissioner to Kenya, Somalia,  
& Uganda

## Europe

Ms. Helen Beim, MP (Denmark)

Mr. Karl-Göran Biörsmark, MP (Sweden)

Sen. John Connor (Ireland)

Mr. Gianfranco Dell' Alba, MEP (Italy)

Sen. Mario D'Urso (Italy)

Drs. Jan Hoekema, MP (Netherlands)

Ms. Pia Hollenstein, MP (Switzerland)

Mr. Krzysztof Kaminski, MP (Poland)

Ms. Lena Klevenäs, MP (Sweden)

Mr. Theo Meyer, MP (Switzerland)

Mr. Longin Pastusiak, MP (Poland)

Ms. Sirpa Pietikäinen, MP (Finland)

Ms. Elena Poptodorova, MP (Bulgaria)

Mr. Allan Rogers, MP (United Kingdom)

Dr. Maj-Britt Theorin, MEP (Sweden)

Dr. Peter Truscott, MEP (United Kingdom)

## Latin America & the Caribbean

Dip. Dante Caputo (Argentina), Former Minister of Foreign Affairs; Former UN Secretary-General's Special Representative on Haiti

Cong. Ricardo Marcenaro (Peru), First Vice-President

Cong. Jorge Avendaño (Peru)

Dip. Marcelo Lopez Arias (Argentina)

Dip. Carlos Becerra (Argentina)

Cong. Javier Diez-Canseco (Peru)

Dip. Roberto Delmastro (Chile)

Dip. Schafik Jorge Handal (El Salvador)

Dip. Jose Ricardo Vega Hernandez (El Salvador)

Sen. Anthony Johnson (Jamaica)

Sen. Manuel Medellín Milán (Mexico)

Dip. Carlos Montes (Chile)

Dip. Juan Carlos Maqueda (Argentina)

Dip. Alejandro Dagoberto Marroquin (El Salvador)

Dip. Andres Palma (Chile)

Dip. Bernardo Quinzio (Argentina)

Dip. Jaime Rocha (Chile)

Dep. Fritz Robert Saint-Paul (Haiti), Former Speaker

Dip. Gerardo Antonio Suvillaga (El Salvador)

Dip. Marcelo Stubrin (Argentina)

## Speakers

Mr. Warren Allmand, President, International Centre for Human Rights and Democratic Development; Former PGA International President

Prof. M. Cherif Bassiouni, Chairman of the Drafting Committee at the UN Diplomatic Conference in Rome, Italy; Director, International Criminal Justice & Weapons Control Center, DePaul University College of Law

Ms. Barbara Bedont, International Centre for Human Rights and Democratic Development

Comissioner Emma Bonino, Commissioner for Humanitarian Affairs, European Commission, Former PGA Executive Board Member

Mr. Hans Corell, Under-Secretary-General, Office of Legal Affairs, United Nations

Mr. Richard Dicker, Associate Legal Counsel, Human Rights Watch

H.E. Ms. Louise Fréchette, United Nations Deputy Secretary-General

Prof. Roberto Garretón, Special Representative of the United Nations for Human Rights in the Democratic Republic of Congo (Ex-Zaire)

H.E. Mr. Bo Göransson, Director General, Swedish International Development Cooperation Agency

Mr. Philippe Kirsch, Department of Foreign Affairs and International Trade, Canada

Mr. Bacre Waly Ndiaye, Director of the High Commissioner for Human Rights, New York Office

H.E. Minister Dullah Omar, Minister of Justice, The Republic of South Africa

Mr. Bill Pace, Convenor, Coalition for an International Criminal Court

Ms. Tina Rosenberg, The New York Times



Ambassador Muhamed Sacirbey  
Permanent Representative of Bosnia &  
Herzegovina to the United Nations

#### **Confirmed Observers:**

#### **UN Permanent Representatives & Missions**

Amb. Anwarul Karim Chowdhury, Permanent  
Representative of Bangladesh to the UN

Amb. Hans Dahlgren, Permanent Representative  
of Sweden to the United Nations

Amb. Martin Andjaba, Permanent Representative  
of Namibia to the UN

Amb. Matia Mulumba Semakula Kiwanuka,  
Permanent Representative of Uganda to  
the United Nations

Amb. Percy Mangoela, Permanent  
Representative of Lesotho to the United  
Nations

Amb. George McKenzie, Permanent  
Representative of Trinidad & Tobago to  
the UN

Mr. Paolo Casardi, First Counsellor, Permanent  
Mission of Italy to the UN

Mr. Dionyssis Kalamvrezos, First Secretary,  
Permanent Mission of Greece to the  
United Nations

Dr. István Sándor, Counsellor, Permanent  
Mission of Hungary to the United  
Nations

Mr. Francesco Maria Taló, Counsellor, Permanent  
Mission of Italy to the UN

Mr. Jolyon Welsh, Permanent Mission of the  
United Kingdom to the UN

#### **UN Secretariat & UN Agencies**

Ms. Elisabeth Lindenmayer, Executive Assistant  
to the Secretary-General of the United  
Nations

Ms. Anita Amorim, United Nations Education,  
Scientific, & Cultural Organization

#### **NGOs, Advisors, and Experts**

Ms. Catherine Dumait-Harper, Delegate to the  
United Nations, Medecins Sans Frontieres

Mr. Del Eberhart

Prof. Benjamin Ferencz, Former Nuremberg  
Prosecutor

Ms. Irina Filippova, Development Officer,  
International Peace Academy

Mr. Mounir Abi Ghanem, Advisor to Minister  
Akrab Shehayeb, Minister of Environment

Ms. Adrienne Gombos, Equality Now, Inc.

Mr. Ameen Jan, Senior Associate, International Peace  
Academy

Mr. James P. Mayes, Esq.

Ms. Alejandra Meglioli, Program Advisor, Inter-American  
Parliamentary Group on Population and  
Development

Mr. Pierre Mvemba

Ms. Andrea Papan, UN Studies Program,  
Columbia University

Mr. Alfredo Sfeir-Younis, World Bank  
Representative to the United Nations

Prof. George L. Sherry, International Peace  
Academy

Mr. Alyn Ware, Lawyers' Committee on Nuclear  
Policy

#### **PGA Secretariat**

Ms. Shazia Z. Rafi, Secretary-General

Ms. Ayaka Suzuki, Projects Director

Ms. Kristen Joiner, Programme Officer,  
Sustainable Development & Population

Ms. Dorothy Wisniowski, Programme Associate

Ms. Alyson King, Rapporteur

Ms. Catherine Orenstein, Rapporteur

Mr. Eduardo Gonzalez, Consultant

Mr. Michael Agbeko, Finance &  
Administration Director

Ms. Beth Seidler, Development & Public Relations  
Officer

Ms. Carrie Cella, Development Assistant

Ms. Sandra K. Miura, Executive Officer

Ms. Fatimé Dam, Membership & Administration  
Associate



# PARLIAMENTARIANS FOR GLOBAL ACTION

## AIDE MEMOIRE

**The 20th Annual United Nations Parliamentary Forum**  
***In Defense of Human Dignity: Striking the Balance of Peace & Justice***  
**United Nations**  
**Conference Room #1**

**October 1 - 2, 1998**

### **Purpose & Sponsorship:**

The 20th Annual United Nations Parliamentary Forum is organized by Parliamentarians for Global Action's International Law & Human Rights and Peace & Democracy Programmes at the United Nations on October 1 - 2, 1998. The Forum will bring together over 100 parliamentarians, diplomats, governmental officials, and NGO representatives from all regions of the world to honor the 50<sup>th</sup> Anniversary of the Universal Declaration of Human Rights by addressing the critical need for the establishment of an International Criminal Court and the intricate relationship between human rights and justice in peace-making processes. This Forum is generously sponsored by the governments of Sweden (SIDA), Denmark (DANIDA), and the Ford Foundation. The Forum is co-sponsored by the International Centre for Human Rights and Democratic Development in Montreal, Canada and the Coalition for an International Criminal Court. The Southern African Development Community Parliamentary Forum has joined as a collaborating agency.

### **Overview:**

This year marks the 50<sup>th</sup> Anniversary of the signing of the Universal Declaration on Human Rights which now has 130 signatories around the world. In its 50 years, the world has undergone tremendous changes – decolonization, the Cold War, and global democratization. Human rights are no longer peripheral issues -- subsidiary to other strategic concerns – and they are increasingly becoming integral to policy making spheres of the state. The centrality of human rights was reinforced by the United Nations' creation of the position of High Commissioner for Human Rights.

Increasingly, human rights are becoming a key principle of collective security – the discipline that was defined by Cold-War principles of deterrence, MAD, and balance of power. It is now commonly understood that there is a relationship between violations of human rights and conflicts. Human rights and the rule of law are separate but interdependent principles. The rule of law is necessary for individuals to express their grievances without resorting to violence. Furthermore, fundamental human rights – such as freedom of association and freedom of speech – need to be complemented by a functioning and accountable judicial system that protects individuals from arbitrary violations of human rights.

Parliamentarians for Global Action (PGA) takes this opportunity to organize a global parliamentary conference to discuss the establishing of a permanent International Criminal Court – an unprecedented advancement of international human rights and humanitarian law -- and to debate the intricate relationship between human rights, peace, and justice in the contexts of democratization and peace-making processes. The conference will be organized into two parts: one focusing on the historic drive to create a permanent International Criminal Court, and another one focusing on furthering the debate on human rights and justice in democratization and peace-making processes.



### From Rome to Parliaments: Establishing an International Criminal Court

The statute to create a permanent International Criminal Court was adopted on 17 July 1998 at the United Nations Diplomatic conference in Rome. This was a monumental step in advancing international law by finally putting some teeth into its application. 160 states, 17 governmental organizations, 14 specialized agencies of the United Nations and the representatives of 250 accredited non-governmental organizations took part in the 5-week Conference, which was itself a culmination of the 3-year preparatory process. As efforts for the statute's adoption by consensus failed, a vote was taken. One hundred and twenty States voted in favor of the Statute, seven against, and there were twenty-one abstentions. The United States, among the seven states that voted against the statute,<sup>1</sup> expressed "profound misgivings" at the package prepared by the Bureau, chaired by Ambassador Phillippe Kirsch of Canada who served as Chairman of the Committee of the Whole.

The Rome treaty creating the International Criminal Court needs the ratification of 60 states to come into force.

The immediate reaction of experts and the media evaluating the achievements of the Rome Conference was that it was the culmination of fifty years' effort on the part of the international community to establish a permanent International Criminal Court. The court will have power to exercise its jurisdiction over persons accused of the most serious crimes of international concern. Those crimes are genocide, crimes against humanity, war crimes, as well as the crime of aggression, once an acceptable definition for the court's jurisdiction over it is adopted. The International Criminal Court would have the power to investigate and bring to justice individuals who commit the abovementioned crimes when a national criminal justice system is unavailable or ineffective.

### Other Mechanisms to End Impunity:

While a permanent International Criminal Court would greatly strengthen the application of international human rights and humanitarian law, there are other mechanisms that have been used to seek justice. In fact, an ICC will be a complementary mechanism that will be available rather than serving as only recourse. Some of these other mechanisms to end impunity have included truth commissions to document past human rights violations and facilitate reconciliation -- "to forgive but not to forget" -- national prosecutors, and the establishment by the UN Security Council of Ad Hoc Criminal Tribunals for former Yugoslavia (1993-) and for Rwanda (1994-). The lessons learned from these Ad Hoc Tribunals have strengthened the argument for establishing a permanent International Criminal Court as setting up Ad Hoc tribunals take time -- in the crucial post-conflict period -- and its work could be hampered by financial problems.

### Human Rights in Democratization

Human Rights should be a building block in furthering democratization through shaping an effective participatory government based on the rule of law. Widespread political participation -- including mainstreaming gender concerns -- and creating channels for individuals to play a role in the governance are crucial for building a just society. This creates a tremendous opportunity and challenge for parliamentarians. As elected representatives of the peoples, parliamentarians have a large role to play in aggregating diverse interests of society and to determine best possible policy.

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<sup>1</sup> The 7 states that voted against the statute were: China, India, Iraq, Israel, Libya, Qatar, and the United States of America according to A Global Agenda: Issues Before the 53<sup>rd</sup> General Assembly of the United Nations. Rowman & Littlefield Publishers: 1998. (UNA/USA Publication).

### Peace & Justice in Peace-Making Process

Peace and Justice are, of course, compatible goals but the realization of them has proved difficult. It has been argued, for instance, that in order to achieve peace, some compromises need to be struck such as granting amnesty to the dictatorship responsible for mass murders, or other mechanisms of accommodation. This draws from the argument that conflict is the biggest violation of human rights, therefore, all means should be used to end the violent, even if it seems to compromise the achievement of justice. On the other side of the coin is that there should be no compromises whatsoever since undermining human rights will inevitably set a shaky foundation on which to build a just society. Of course this is a simplified argument, and in real life, there is not an "either or" question, but how to maximize the needs of achieving peace and justice for a compromise of human rights today could lead to a perpetuation of unsustainable society leading to potential future conflicts. Increasingly, there is a consensus that peace agreements must have a strong justice component, as well as strong provisions for costs for implementing peace agreements.<sup>2</sup> Securing justice, however, is a multi-dimensional task and one which requires a major international commitment. In an international conference on impunity in Siracusa, Italy, it was eloquently posed:

If justice is to be secured, economic reconstruction is vital. Justice is a luxury that only the moderately well-fed and housed can afford. If people are fixated on daily survival, the measures necessary to create the institutions of justice are unlikely to be developed. Critical also is the need for social reconstruction. How and at what costs, can basic social infrastructure and social security such as medical, housing, employment, and education needs to be set off against the costs of justice?<sup>3</sup>

### **Objective:**

#### International Criminal Court

To increase the understanding of the Rome Statute through the discussion of:

- overview of the preparatory process
- strength and weaknesses of the Statute
- Rome negotiations
- Ratification of the treaty to establish an International Criminal Court; and

To promote the support of parliamentarians for ratifying the Rome treaty.

### Human Rights & Justice in Democratization & Peace-Making Processes

To learn about other mechanisms of seeking justice at national and regional levels through the discussion of:

- United Nations Ad-Hoc Tribunals for Former Yugoslavia
- The National Commission for Truth and Reconciliation in Chile

To advance a debate on human rights as a basis for conflict prevention and peace-making.

<sup>2</sup> For further discussion, please read the Background Paper for PGA's 19<sup>th</sup> Annual Forum, Crafting Lasting Peace.

<sup>3</sup> Joyner, Christopher C. & Bassiouni, M. Cherif ed. Reining in Impunity for International Crimes and Serious Violations of Fundamental Human Rights: Proceedings of the Siracusa Conference 17-21 September 1998. érés: 1998. p. 43  
 Ref: D\6\AF-98\016\



**PREAMBLE** Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people. Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law. Whereas it is essential to promote the development of friendly relations between nations. Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom. Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms, Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, Therefore **THE GENERAL ASSEMBLY** proclaims **THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS** as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction. **Article 1.** All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. **Article 2.** Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. **Article 3.** Everyone has the right to life, liberty and security of person. **Article 4.** No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. **Article 5.** No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. **Article 6.** Everyone has the right to recognition everywhere as a person before the law. **Article 7.** All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. **Article 8.** Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. **Article 9.** No one shall be subjected to arbitrary arrest, detention or exile. **Article 10.** Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. **Article 11.** (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence. (2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed. **Article 12.** No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks. **Article 13.** (1) Everyone has the right to freedom of movement and residence within the borders of each state. (2) Everyone has the right to leave any country, including his own, and to return to his country. **Article 14.** (1) Everyone has the right to seek and to enjoy in other countries asylum from non-political crimes or from principles of the United Nations. (2) No one shall be arbitrarily deprived of his right to a nationality. (3) No one shall be arbitrarily deprived of his right to change his nationality. **Article 15.** (1) Everyone has the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. (2) Marriage shall be entered into only with the free and full consent of the intending spouses. (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State. **Article 16.** (1) Everyone has the right to own property alone as well as in association with others. (2) No one shall be arbitrarily deprived of his property. **Article 17.** Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance. **Article 18.** Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. **Article 19.** (1) Everyone has the right to freedom of peaceful assembly and association. (2) No one may be compelled to belong to an association. **Article 20.** (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. (2) Everyone has the right of equal access to public service in his country. (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures. **Article 21.** Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality. **Article 22.** (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. (2) Everyone, without any discrimination, has the right to equal pay for equal work. (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. (4) Everyone has the right to form and to join trade unions for the protection of his interests. **Article 23.** Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay. **Article 24.** (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection. **Article 25.** (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit. (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace. (3) Parents have a prior right to choose the kind of education that shall be given to their children. **Article 26.** (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits. (2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author. **Article 27.** (1) Everyone has the right to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized. **Article 28.** (1) Everyone has duties to the community in which alone the free and full development of his personality is possible. (2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. (3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations. **Article 29.** Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

**"The choice before us was to have peace or to continue the war. . . . The dilemma was how to address the demand for justice, especially on the part of victims, and at the same time ensure a peaceful and smooth transition to a new democratic order. . . . How do we draw the line between the past and the future?"**

**Minister Dullah Omar**  
**Minister of Justice, South Africa**

Article 13. (1) Everyone has the right to leave any country, including his own, and to return to his country. **Article 14.** (1) Everyone has the right to seek and to enjoy in other countries asylum from non-political crimes or from principles of the United Nations. (2) No one shall be arbitrarily deprived of his right to a nationality. (3) No one shall be arbitrarily deprived of his right to change his nationality. **Article 15.** (1) Everyone has the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. (2) Marriage shall be entered into only with the free and full consent of the intending spouses. (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State. **Article 16.** (1) Everyone has the right to own property alone as well as in association with others. (2) No one shall be arbitrarily deprived of his property. **Article 17.** Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance. **Article 18.** Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. **Article 19.** (1) Everyone has the right to freedom of peaceful assembly and association. (2) No one may be compelled to belong to an association. **Article 20.** (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. (2) Everyone has the right of equal access to public service in his country. (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures. **Article 21.** Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality. **Article 22.** (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. (2) Everyone, without any discrimination, has the right to equal pay for equal work. (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. (4) Everyone has the right to form and to join trade unions for the protection of his interests. **Article 23.** Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay. **Article 24.** (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection. **Article 25.** (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit. (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace. (3) Parents have a prior right to choose the kind of education that shall be given to their children. **Article 26.** (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits. (2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author. **Article 27.** (1) Everyone has the right to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized. **Article 28.** (1) Everyone has duties to the community in which alone the free and full development of his personality is possible. (2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. (3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations. **Article 29.** Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.