

**PROJECT:**

**JUSTICE**

**& RULE OF LAW**

PARLIAMENTARIANS FOR GLOBAL ACTION  
& THE INTERNATIONAL CRIMINAL COURT



parliamentarians *for* global action



## PARLIAMENTARIANS *for* GLOBAL ACTION

President: Mr. Kenneth Dzirasah, MP, Second Deputy Speaker (Ghana)

Treasurer: Mr. Karl-Göran Biörsmark, MP (Sweden)

Former Presidents:

Mr. Karl-Göran Biörsmark, MP (Sweden)

Mr. Allan Rogers, MP (UK)

Mr. Moses Katjuongua, MP (Namibia)

Mr. Murlu Deora, MP (India)

Sen. Silvia Hernández, (Mexico)

Mr. Warren Allmand, MP (Canada)

Hon. Olafur Grimsson, Former MP, Current President (Iceland)

Mr. Walter McLean, MP (Canada)

International Law Program Convenor: Senator A. Raynell Andreychuk (Canada)

International Law Program Deputy Convenor: Senator Anthony Johnson (Jamaica)

Former Program Convenors:

Ms. Elena Poptodorova, MP (Bulgaria)

Dr. Herta Däubler Gmelin, MdB (Germany)

Ms. Emma Bonino, MEP (Italy)

Hon. A.N.R. Robinson, Former Prime Minister, Current President (Trinidad & Tobago)

Rep. Jim Leach (USA)

Former Deputy Convenors: Hon. Philip Marmo, MP (Tanzania)

Ms. Helen Beim, MP (Denmark)

Mr. James Orengo, MP (Kenya)

Program Advisors:

Prof. Cherif Bassiouni, DePaul University

Amb. Philippe Kirsch (Canada)

Mr. Richard Dicker, Human Rights Watch

Mr. Christopher Hall, Amnesty International

Mr. William Pace, CICC

Mr. Michael Posner, Lawyers Committee for Human Rights

Staff:

Ms. Shazia Rafi, Secretary-General

Dr. Kennedy Graham, Former Secretary-General

Mr. Aaron Tovish, Former Deputy Secretary-General

Dr. David Donat-Cattin, Senior Program Officer

Ms. Tanya Karanasios, Senior Program Officer (1996-1998)

Ms. Marie-Claire Leman, Program Officer

Mr. Paul Nutti, Program Officer (1994-1996)

Mr. Robert Dickson, Program Coordinator (1991-1993)

Mr. Stuart Chuzmir, Program Coordinator (1989-1990)

Mr. Juan Kim, Program Associate

Ms. Dorothy Wisniowski, Program Associate (1998-1999)

Ms. Begoña Esteller, Program Associate (1996-1997)

Ms. Tatsuya Kitagawa, Parliamentary Assistant (1999-2000)

Ms. Fatimé Dam, Executive Officer

Consultants:

Mr. Eduardo Gonzalez-Cueva

Ms. Yulia Shirkova

*The report written by:* **MR. JACK FREEMAN**, CONSULTANT

*Edited by:* **MS. MARIE-CLAIRE LEMAN**, PROGRAM OFFICER

**MR. JUAN KIM**, PROGRAM ASSOCIATE

**MS. ANNA GEKHT**, DEVELOPMENT ASSOCIATE

*DESIGN AND LAYOUT:* **YDESIGN** [WWW.YDESIGN.TV](http://WWW.YDESIGN.TV)

# ABOUT PGA

## *A DYNAMIC NETWORK OF INDIVIDUAL DEMOCRATICALLY ELECTED LEGISLATORS*

Parliamentarians for Global Action (PGA) was established in 1978-79 in Washington, D.C., by concerned parliamentarians from around the world to take joint action on global problems that could not be solved by any one parliament or government. The organization's initial focus was on disarmament issues, but over the years it has broadened its outlook to encompass action on other issues as well: peace and democracy; international law and human rights; population and sustainable development.

Because they come from elected parliaments, drawn from both government and opposition parties, PGA members bring to the table authority on behalf of their constituencies and a responsibility to them as well. This enhances PGA's ability to deal with the negotiation and implementation of any successful policy. It also strengthens PGA's usefulness as a link between civil society and executive authority at all levels-national, regional, and international-making it a uniquely effective partner of other NGOs concerned about the same issues.

Within PGA's membership-1,350 parliamentarians from 103 countries-is a concentration of high-level politicians, including Prime Ministers, Cabinet Ministers, Chairs of Finance, Foreign Affairs, Justice, Health, and Defense Committees. Many of PGA's members advance to higher posts within their governments, such as the Presidents of Iceland, Trinidad and Tobago, Botswana, the Philippines, and Côte d'Ivoire and the Prime Ministers of Canada and New Zealand.

With its headquarters in New York City a short distance from United Nations headquarters, PGA works closely with the UN Secretariat, the entire UN system and other intergovernmental agencies-including the UN Development Programme (UNDP), UN Population Fund (UNFPA), the World Bank, Asian Development Bank, International IDEA, and ECOWAS.

The track record achieved by PGA in its support of the International Criminal Court, and its campaign to promote speedy ratification of its enabling statute, demonstrate just how effective it can be.

# EXECUTIVE SUMMARY

Since as far back as 1989, members of Parliamentarians for Global Action (PGA) have been seeking to promote the establishment of a permanent International Criminal Court (ICC). The issue was placed on the international agenda when A. N. R. Robinson, a PGA member who was then Prime Minister of Trinidad and Tobago, introduced a resolution for it at the United Nations General Assembly. Other PGA members, in Canada, Germany, Italy, the United Kingdom and the United States, also voiced early support for the idea of the court and introduced resolutions in their own parliaments calling for its establishment.

In 1991, the goal of an International Criminal Court became the focus of a PGA program, and the organization began sponsoring forums and other events to keep the issue before its members. PGA officials say that despite attacks made on the idea of the court by some countries, PGA members rallied behind it because they realized that promoting the organization's goal of peace and stability in the world could not be done without also strengthening the rule of law.

When governments from around the world, meeting in 1998 in Rome (a venue first proposed by a PGA member in the European Parliament), adopted the statute to create an ICC, PGA embarked on an intensive global campaign to generate and increase public support-political will-for ratification of the ICC statute. PGA also provided technical and other support to parliaments engaged in the ratification process.

Conducted under the framework of PGA's Campaign for the Rule of Law and Social

Justice, the organization's effort in support of the ICC included:

- ∞ a series of briefings, seminars, workshops, conferences and other meetings, at the national, regional and global levels, aimed at involving parliamentarians and other national decision-makers in the process of ratification of ICC;
- ∞ presentations at parliamentary meetings of other organizations, including the Commonwealth Parliamentary Association (CPA) and the Parliamentary Assembly of the Francophonie;
- ∞ development, in collaboration with Professor M. Cherif Bassiouni of DePaul University (Chicago) and the International Institute on Criminal Sciences (Siracusa, Italy), of a project on Technical Assistance on ICC Implementation to help selected countries conform their own legal codes to the requirements of the ICC statute;
- ∞ a leadership role in the nongovernmental Coalition for an International Criminal Court, including serving on the coalition's steering committee.

In large part because of these efforts by PGA, the Rome Statute was ratified by more than 60 countries-the number needed to bring the ICC into being-in less than four years, in contrast to the decades often needed for the implementation of other international agreements. On the day of that ratification, on 11 April 2002, joining United Nations Secretary-General Kofi Annan in a teleconference ratification ceremony at the United Nations were Mr. Robinson (now President of Trinidad and Tobago) and Prof. M. Cherif Bassiouni, a longtime adviser to PGA. And on 1 July 2002, the International Criminal Court officially came into being. \*



**H.E. ARTHUR N.R. ROBINSON,**  
*PRESIDENT OF THE REPUBLIC OF TRINIDAD  
AND TOBAGO*



*PGA PRESS CONFERENCE WITH UN UNDER-SECRETARY-GENERAL, **HANS CORELL, PRESIDENT ROBINSON, PROF. M. CHERIF BASSIOUNI AND DIP. EMMA BONINO, MEP (ITALY) BY VIDEO LINK FROM ROME, 11 APRIL 2002***



**PROF. M. CHERIF BASSIOUNI, DePAUL UNIVERSITY AND  
MR. WARREN ALLMAND, MP (CANADA)**



**AMB. ELENA POPTODOROVA, MP  
(BULGARIA), CURRENT AMBASSADOR OF  
BULGARIA TO THE UNITED STATES ADDRESS-  
ING THE ROME CONFERENCE, JULY 1998**

# PGA & THE INTERNATIONAL CRIMINAL COURT

It's an idea that has long intrigued many people: a permanent and global tribunal that could sit in judgment of those accused of genocide and other crimes against humanity. Such a tribunal, the International Criminal Court (ICC), finally came into existence in July 2002, after the Rome Statute, which called it into being, was ratified by the governments of more than sixty countries. That ratification, on April 11, 2002, was the triumphant culmination of a major effort by Parliamentarians for Global Action (PGA)-an effort that PGA and its members had been involved in since 1989.



## **RATIFICATION CEREMONY** *(left to right)*

**MR. BEN FERENCZ**, FORMER NUREMBERG PROSECUTOR, **MR. WILLIAM PACE**, CONVENOR, CICC; **H.E. ANR ROBINSON**, PRESIDENT (TRINIDAD AND TOBAGO); **PROF. CHERIF BASSIOUNI**, CHAIRMAN, DRAFTING COMMITTEE OF THE ROME CONFERENCE; **H.E. AMB. PHILIP KIRSCH**, CHAIRMAN, ICC PREPComm; **MR. HANS CORELL**, UNDER-SECRETARY GENERAL FOR LEGAL AFFAIRS, UNITED NATIONS



**MR. JAMES ORENGO, MP (KENYA) SPEAKING ON HIS EFFORTS TO ENSURE KENYAN ASSISTANCE IN BRINGING SUSPECTED RWANDAN WAR CRIMINALS TO JUSTICE, THE HAGUE, NETHERLANDS, 1993.**

Back then PGA was still focused largely on mobilizing political support for strengthening the existing International Court of Justice and, from 1993-94, for setting up tribunals to deal with the genocide and other crimes against humanity committed in the former Yugoslavia and Rwanda. Several PGA members, however, were already working toward establishment of an international criminal court whose reach would be global and whose mandate permanent.

At a special session of the United Nations General Assembly, A. N. R. Robinson, then Prime Minister (now President) of Trinidad and Tobago, called for passage of a resolution supporting creation of such a court. In Italy Emma Bonino proposed a similar resolution soon afterward. In Germany PGA member Herta Däubler-Gmelin spoke up in favor of the court. And in the United States, Rep. James Leach introduced a resolution in Congress urging support for an international criminal tribunal.

Suddenly an issue that had clearly been on the political “back burner” became red hot as one national legislature after another was asked, by PGA members and their like-thinking colleagues, to give it their support. It was the start of what was to become an international groundswell of support for the court-in parliaments, among nongovernmental organizations (NGOs), and in the United Nations.

**REP. JAMES LEACH (USA)**

**MS. EMMA BONINO, MEP (ITALY)**





**GLOBAL DIALOGUE ON THE NEW  
WORLD ORDER WORKSHOP,**

*January 1991, US Congress,  
Washington, DC, USA*



By January 1991, it became clear to members of PGA's board that this was an issue on which their organization should take the lead. The board called for a program proposal to be drawn up, with the help of relevant foundations, on the International Criminal Court. Five months later, in June, PGA's board voted to hold a workshop in the US Congress in Washington, D.C., on the establishment of the court, and in September 1991 that workshop was held in conjunction with a "Global Dialogue on the New World Order."

The following January, the PGA board directed the organization's secretariat to prepare documentation on the ICC issue, including copies of legislation introduced by PGA members, and to distribute this documentation to members along with a request that they bring the issue up in their own parliaments. It was also agreed that any contact that PGA might have with the leaders of the Commonwealth of Independent States (the former Soviet Union) should include discussions of the court issue.

As PGA kept up the pressure year after year, by July 1998 support for the court achieved critical mass. Representatives of 148 countries gathered in Rome to adopt the Rome Statute for the International Criminal Court. Among the people who addressed that gathering was Bulgarian MP Elena Poptodorova. Speaking on behalf of PGA, she stressed the

**AMB. DAVID SCHEFFER**, US AMBASSADOR FOR WAR CRIMES ISSUES,  
**AMB. HANS CORELL**, UNDER-SECRETARY GENERAL FOR LEGAL AFFAIRS,  
UNITED NATIONS, **AMB. SACIRBEY**, BOSNIAN AMBASSADOR TO THE UN AT  
PGA CONFERENCE IN TRINIDAD AND TOBAGO, MAY 1998



“important and noble goals” represented by the proposed tribunal and the importance of making sure that it had all necessary safeguards to protect the legal process against politicization.

Ms. Poptodorova, now Bulgaria’s Ambassador in Washington, recalls that support of the ICC was one of several priorities for PGA as “an issue-oriented organization.” It was PGA, she says, that made it possible for legislators from all over to meet with their counterparts to discuss the practical aspects of the issue, and not only at the national level but at the regional and international levels as well. PGA, she says, played a key role in the NGO Coalition for the ICC, an important voice at the Rome meeting, and was particularly instrumental in expediting ratification by individual parliaments, working with them to help speed the process. “Parliaments tend to take their time,” she says, “sometimes much too much time.” Some international agreements languish for decades waiting for parliaments to take action. How was PGA able to help push through enough ratifications to make the court a reality in the astonishingly brief span of only four years? Her answer: “When you are insistent enough ...”



**SEN. RAYNELL ANDREYCHUK**  
(CANADA), CONVENOR OF PGA  
INTERNATIONAL LAW & HUMAN RIGHTS  
PROGRAMME



**DR. MANTO E. TSHABALALA-MSIMANG,**  
MINISTER OF HEALTH, FORMER MINISTER OF JUSTICE,  
(SOUTH AFRICA), **MS. FATIMA HAJAIG, MP**  
(SOUTH AFRICA), **MS. L. GANDHI, MP** (SOUTH  
AFRICA)

Insistent? Persistent? In Uruguay, for example, PGA members of Parliament pressed the executive branch for almost two years before they could get it to ratify the court statute.

At the global ratification ceremony held at the United Nations in April 2002, President Robinson shared in the applause. He recalls the event as “magnificent, a great occasion.” Looking back on the efforts leading up to it, he says that PGA was “a motivating force in the whole process of the establishment of the court-at every stage it was important.” And he describes PGA members as “tremendously motivated individuals.” When he first broached the idea for the court in 1989, he says, he received no support from the governments of any of the major countries, but, he adds, “I was tremendously stimulated by my association with the parliamentarians I met through PGA.”

According to one of those parliamentarians, Sen. A. Raynell Andreychuk of Canada, PGA occupies a unique position among international organizations-and was uniquely capable of getting the job done. “Only an NGO made up of parliamentarians,” she says, “is able to build coalitions-our own membership supplemented with other parliamentarians-and to lobby from within.” In the effort to promote the court, she says, PGA’s “special role was to lobby, to pressure, to support, to strategize, to give information, and to get more countries on board.” She sees PGA as “just the answer” to the question of generating political will. “We’re not effective all the time,” she adds, “but I think we’ve made our mark.” She continues:

“We punch above our weight. We tackled a very complex legislative issue that’s politically driven; it was really an issue of political will.” She says that promoting the rule of law-through campaigns such as this in support of ICC-is central to the work of PGA because it is fundamental to democracy and therefore ties in with all other PGA programs. What’s more, she says, “PGA brought to the discussion the perspective of parliamentarians-of people who govern-and that gave it credibility.”



**DR. MAJ BRITT THEORIN,**  
*MEP (SWEDEN)*

Another PGA member, Dr. Maj Britt Theorin of Sweden, Member of the European Parliament, says that PGA was able to get the job done because its 1,350 members of elected parliaments were able to use their power to raise the issue and to muster the political support among their colleagues—the political will—needed to put it over the top. “It shows PGA has been a main player” in the ratification of the ICC, she says. “We’ve shown we can really do constructive work.”

The main challenge PGA had to overcome, Dr. Theorin says, was raising enough funds to get the job done, adding that it was able to do that by putting “good proposals” before the European Commission. In retrospect, she says with pride, “PGA has fulfilled every promise made in those proposals.” The most important lesson PGA has learned from the experience, she says, is the need to have a structural plan and also enough factual knowledge to respond to objections. For example, she says—speaking as a long-time advocate of women’s issues—those who would exempt peacekeeping forces from the jurisdiction of the court must be reminded that too often in the past women have been raped or abused by such troops.

Dr. Theorin says that PGA’s support of the court is “extremely important” to the organization’s core mission. “You have to believe in what you’re doing,” she says. “It’s important that international law be followed; every society is based on law.” PGA’s successful efforts in support of the court, she adds, demonstrated “the willingness of parliamentarians from all political backgrounds” to work together to translate their ideals into political reality.

One of the world’s leading experts on international criminal law, Prof. M. Cherif Bassiouni of DePaul University, whose ideas and expertise have inspired PGA’s work and who has been a senior adviser to PGA for several years in its work related to the court says, PGA “carved a place for itself, working with parliamentarians to push for ratification.”

Emma Bonino, former European Commissioner for Humanitarian Affairs (and a longtime member of PGA), agrees that PGA’s role in support of the court was of “really great importance.” She says that under the auspices of PGA, along with the NGO Coalition, No Peace Without Justice, and other groups, no fewer than 27 regional conferences were held to inform and educate the leg-

**SEN. AMADOU M. NDAO,** (*SENEGAL*)  
AT “SECURING STATE COOPERATION AND COMPLIANCE: THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA” CONFERENCE, FEBRUARY 1997, BELLVILLE, SOUTH AFRICA



islators who were being asked to ratify the Rome Statute. Those parliamentarians, she adds, were the key to “mobilizing the political will of their governments.” A major point that had to be clarified, she points out, was the “complementarity” of the court’s jurisdiction, its role as a “court of last resort” that poses no threat to national sovereignty. But there were other issues of specific concern to the governments of certain countries, she says, such as the statute’s barring of the death penalty, kingly immunity and royal pardons; some countries had to change their constitutions, she says, before they could ratify the Statute. In some cases, she adds, “a lot of explanation” was needed. Ms. Bonino points out that the idea of international criminal jurisdiction, along with the rule of law and human rights, are “quite new concepts” in foreign affairs. “It is very important,” she says, “to have an organization like PGA that has this as a core mission.” The lesson to be drawn from the organization’s successful support of the court, she says, is how important it is to bring together organized civil society (NGOs) with people from “traditional institutions” such as parliamentarians. Ordinarily, she adds, NGOs “do not have the global perspective” that PGA provides.

Dullah Omar, South Africa’s former Justice Minister, stresses the cross-boundary networking fostered by PGA. “With an international body like PGA,” he says, “individuals fighting for human rights in different countries do not feel as isolated as they might otherwise.” Noting that PGA “has championed setting up the ICC from the beginning,” he says that its strong support not only “influenced important people in leadership positions,” but also enabled parliamentarians to speak out forcefully on the issue and with greater knowledge.

As Dr. Kennedy Graham, former PGA Secretary-General, explains it, the organization “lent critical political support at a critical moment.” He says that packages of information that PGA provided to its members, including draft questions for them to raise with their governments, were especially helpful. “When similar questions are being raised in 29 different parliaments at the same time,” he says, “that kind of thing gets noticed politically.” In his view, the ratification of the ICC statute is “the single biggest advancement for humanity

**REGIONAL WORKSHOP ON MECHANISMS FOR THE DEVELOPMENT OF INTERNATIONAL CRIMINAL JUSTICE, TRINIDAD AND TOBAGO, MAY 14-15, 1998.**

(l-r) **HON. B. PANDAY**, PRIME MINISTER (TRINIDAD AND TOBAGO), **MR. SRINIVASAN**, DEPUTY SECRETARY GENERAL OF THE COMMONWEALTH, **HON. DULLAH OMAR**, MINISTER OF JUSTICE (SOUTH AFRICA), **HON. R. MAHARAJ**, S.C., ATTORNEY GENERAL (TRINIDAD AND TOBAGO), **MR. M. KATJUONGUA**, MP (NAMIBIA), PRESIDENT OF PGA, **AMB. H. CORELL**, UN UNDER SECRETARY-GENERAL FOR LEGAL AFFAIRS, **DR. M. ARRIGHI**, ORGANIZATION OF AMERICAN STATES, **MS. S. RAFI**, SECRETARY-GENERAL, PGA  
(Photo: Ministry of Public Administration and Information, Republic of T&T)





**PROF. IRWIN COTLER,**  
*MP (CANADA)*

since the establishment of the United Nations Charter in 1945.” And the speed with which it was accomplished, he says, is nothing less than “remarkable.”

Lloyd Axworthy of Canada, a former PGA member and former Foreign Minister, agrees that PGA demonstrated remarkable effectiveness in its support of the ICC. That was chiefly, he says, because of its ability to get legislators involved, “to develop a political constituency worldwide.” That was essential, he says, “to keep the pressure on” in support of the court and to counter the attacks on it coming from Washington and elsewhere. “For something like this to work,” he says, “there has to be real partnerships, real synergy, linkages—that is, political will.” Another PGA member from Canada, Irwin Cotler, also emphasizes the need for political will “to speak out against racism, racial discrimination, xenophobia, and all forms of related intolerance ... and to anchor our advocacy in the fulcrum of international human rights norms.”

But the need for support of the ICC did



**DR. KENNEDY GRAHAM,**  
*FORMER PGA SECRETARY-GENERAL*



**DR. LLOYD AXWORTHY,**  
*FORMER MP AND FORMER FOREIGN  
MINISTER (CANADA)*



*PGA EXECUTIVE COMMITTEE MEETING, MAY 1998, PRESIDED  
BY **MR. MOSES KATJIUONGUA, MP (NAMIBIA)***

not end with ratification, Axworthy stresses. “The court is in a very critical period now,” he says. “We need to make sure it gets a good launch-and the resources it will need. It is still under a lot of attack.” In other words, even though the Rome Statute has been ratified by so many nations and the court is a reality, there is still plenty of work that PGA and its members must do.

And that work is moving forward. Ratification efforts are still being pushed in parliaments all over the globe. PGA is working closely with its members to ensure that harmony is created between the ICC and national legal systems. PGA is working with its members to make sure that the process of electing judges to the court is as transparent and democratic as possible, and that only the most highly qualified judges and prosecutors are chosen. And PGA members remain in the forefront of those defending the court against efforts, by the US and others, to scuttle it. This promises to be an ongoing battle, but it also serves as a reminder that the stakes here are not only legal but political as well.

And that is one more reason why PGA, as the world’s only organization of leaders from democratically elected parliaments, continues to have such an important role to play. \*

# THE COURT: Q&A

[1]

**Q. WHERE IS THE INTERNATIONAL CRIMINAL COURT BEING SET UP?**

**A.** THE SEAT OF THE COURT IS IN THE HAGUE, IN THE NETHERLANDS, BUT IT IS AUTHORIZED TO TRY CASES ELSEWHERE WHEN APPROPRIATE.

[2]

**Q. WHAT CRIMES WILL THE COURT TRY?**

**A.** THE CRIMES LISTED AND DEFINED BY THE STATUTE SETTING UP THE COURT INCLUDE: GENOCIDE, WAR CRIMES AND CRIMES AGAINST HUMANITY, SUCH AS SYSTEMATIC EXTERMINATION OF CIVILIANS, ENSLAVEMENT, TORTURE, RAPE, FORCED PREGNANCY, FORCED DISAPPEARANCES, AND PERSECUTION ON POLITICAL, RACIAL, ETHNIC OR RELIGIOUS GROUNDS.

[3]

**Q. WHAT ABOUT CRIMES OF AGGRESSION, TERRORISM AND DRUG TRAFFICKING?**

**A.** THE ICC IS AUTHORIZED TO PROSECUTE CRIMES OF AGGRESSION, BUT THAT CAN HAPPEN ONLY AFTER AGREEMENT IS REACHED ON HOW AGGRESSION IS TO BE DEFINED. TERRORISM AND DRUG CRIMES ARE OUTSIDE THE COURT'S MANDATE NOW, ALTHOUGH THE ROME CONFERENCE PASSED A RESOLUTION RECOMMENDING THAT INCLUDING THEM BE CONSIDERED IN THE FUTURE.

[4]

**Q. DOES THE ICC'S JURISDICTION OVERLAP THAT OF NATIONAL COURTS OR THE INTERNATIONAL COURT OF JUSTICE?**

**A.** NATIONAL COURTS ALWAYS HAVE PRIMARY JURISDICTION. UNDER THE PRINCIPLE OF "COMPLEMENTARITY," THE ICC WILL ACT ONLY WHEN NATIONAL COURTS ARE UNABLE OR UNWILLING TO ACT. THE INTERNATIONAL COURT OF JUSTICE DEALS ONLY WITH DISPUTES BETWEEN STATES, NOT CRIMINAL ACTS BY INDIVIDUALS.

[5]

**Q. HOW CAN WE BE SURE THAT PROSECUTIONS WON'T BE POLITICIZED?**

**A.** CHECKS AND BALANCES ARE BUILT INTO THE PROCESS. THE ICC PROSECUTOR IS OBLIGED TO DEFER TO STATES WILLING AND ABLE TO PURSUE THEIR OWN INVESTIGATIONS AND CANNOT EVEN START AN INVESTIGATION WITHOUT PERMISSION FROM A PRE-TRIAL CHAMBER OF THREE JUDGES. THE SUSPECT AND THE STATES CONCERNED ALSO HAVE THE RIGHT TO CHALLENGE ANY INVESTIGATION. AT TRIAL, STATES AND DEFENDANTS CAN CHALLENGE THE JURISDICTION OF THE COURT OR THE ADMISSIBILITY OF THE CASE. ALSO, THE UN SECURITY COUNCIL CAN REQUEST THAT INVESTIGATION OR PROSECUTION OF A PARTICULAR CASE BE DEFERRED FOR RENEWABLE ONE-YEAR PERIODS.

# THE TIMELINE

At a special session of the UN General Assembly on drug trafficking, Prime Minister A.N.R. Robinson of Trinidad and Tobago, a PGA member, introduces a resolution calling for the International Law Commission to address the question of establishing “an international criminal court or other international trial mechanism.” This placed the issue, which had been languishing for four decades, back on the global agenda. Soon afterwards U.S. Congressman James A. Leach, convenor of PGA’s international law program, introduces a resolution into Congress calling for creation of an ICC. Another PGA member, Emma Bonino, introduces a similar resolution in the Italian Parliament.



**PRIME MINISTER A.N.R. ROBINSON**  
*INTRODUCES AN ICC RESOLUTION TO THE UN  
GENERAL ASSEMBLY, 1989.*

1989



1990

**JUNE:** A committee of experts, chaired by Prof. M. Cherif Bassiouni of DePaul University (who has been a PGA adviser for years), prepares a draft statute for a court that would have jurisdiction over all international crimes and submits it to the United Nations.

**JANUARY:** The PGA Board decides to draw up, in conjunction with relevant foundations, a program proposal on the International Criminal Court.

**JUNE:** The PGA Board votes to hold a workshop in Washington, D.C., on the establishment of an ICC.

**SEPTEMBER:** Support for an International Criminal Court is one of the issues discussed at a PGA-sponsored forum, "Global Dialogue on a New World Order," held on Capitol Hill, Washington, D.C.

**DECEMBER:** After representing PGA at a workshop on the International Criminal Court held in Courmayeur, Italy, William Powell, MP, tells the British House of Commons: "We and the other permanent members of the Security Council should take a lead in bringing forward the draft [statute] and turning it into agreed international law with an agreed international tribunal capable of enforcing it ... [I]t is our duty to do everything that we can to ensure that there is a tribunal available that has authority throughout the world."

PGA takes up the International Criminal Court as the central theme of its International Law program and establishes a working relationship with Prof. Bassiouni, a leading authority on the court.

1991

**PARTICIPANTS OF PGA ANNUAL FORUM, WASHINGTON, DC, SEPTEMBER 1991**



ATTORNEY GENERAL  
**IAN WADDELL,**  
MP (CANADA)



**APRIL:** PGA member Attorney General Ian Waddell, MP, tells Canada's Parliament: "I call on the House to urge the government of Canada to support, at the United Nations Sixth Committee this fall, the proposal for an International Criminal Court, an idea whose time has come."

**MAY:** PGA member Paul East, MP, tells New Zealand's Parliament: "Difficulties [in reaching agreement on an International Criminal Court] should not deter us from working to achieve consensus among nations. Until we do, [the world] will remain unable to deal with those who commit atrocities such as the murder of 270 people flying in a Pan Am jet over Lockerbie."

**MAY:** Convenor of PGA Human Rights Program Rep. James Leach (U.S.) tells a teleconference discussing the proposed International Criminal Court that political action is essential "to transform the idea into reality." He calls on PGA to launch a campaign to raise the issue in parliaments and with governments and urges support for a UN resolution endorsing it.

**DECEMBER:** PGA co-sponsors a seminar on prospects for the ICC in Siracusa, Sicily.

**MARCH:** A PGA delegation led by A.N.R. Robinson, former Prime Minister of Trinidad and Tobago, calls on UN Secretary-General Boutros Boutros-Ghali and officials of the US government to support the establishment of an International Criminal Court. PGA submits to Boutros-Ghali a document, "Towards a Global Security System for the 21st Century," which calls for the establishment of an international criminal court.

*PGA SUBMITS TO UN SECRETARY-GENERAL  
BOUTROS GHALI A DOCUMENT CALLING FOR THE  
ESTABLISHMENT OF THE ICC, 1993.*



PGA organizes parliamentary delegations to consult with members of the International Law Commission, affirming the role that parliamentarians must assume in shaping the political context of ICC negotiations.

In the UN General Assembly, PGA convenes a group consultation of ambassadors and Sixth (Legal) Committee consensus. As a result, elements of the PGA position are included in the final resolution passed by the General Assembly.

A declaration on the prospective role of the ICC is drafted by A. N. R. Robinson of Trinidad and Tobago, then a member of parliament and convenor of PGA's International Law Program. Signed by more than 220 parliamentarians from 27 countries, it is presented to the UN Ad Hoc Committee.



*PGA DELEGATION MEETS WITH UN SECRETARY-GENERAL BOUTROS BOUTROS GHALI, 1995.*

**MARCH-APRIL:** PGA, as a key member of the NGO Coalition for an ICC, monitors the opening session of the United Nations Preparatory Committee on the Establishment of an International Criminal Court.

**JUNE:** PGA holds the first of two Parliamentary Conferences on "Securing State Cooperation and Compliance: The Ad Hoc Tribunals" in Strasbourg, France.

**AUGUST:** At a meeting of the UN Preparatory Committee, A. N. R. Robinson of Trinidad and Tobago, convenor of PGA's International Law and Human Rights Program, tells the delegates: "A danger to be avoided is the perception that the institution is being shaped as an instrument to meet the concerns of the powerful while disregarding those of the powerless."

1994

1995

1996



**MS. TANYA KARANOSIOS,**  
PGA SENIOR PROGRAM OFFICER AT  
THE INTERNATIONAL NGO FORUM ON  
AFRICA AND THE ICC, SENEGAL,  
FEBRUARY, 1998.



**SECURITY STATE COOPERATION AND COMPLIANCE: THE  
AD-HOC TRIBUNALS WORKSHOP, FEBRUARY 1997, SOUTH  
AFRICA MR. JAMES ORENGO, MP (KENYA), MR. GIANFRANCE  
DELL'ALBA, MP (ITALY), H.E. ARTHUR N.R. ROBINSON,  
PRESIDENT OF THE REPUBLIC OF TRINIDAD AND TOBAGO**

**FEBRUARY:** PGA holds the second Parliamentary Conference on "Securing State Cooperation and Compliance: The Ad Hoc Tribunals" in Cape Town, South Africa.

**JUNE:** PGA delegation attends a conference in Paris on the establishment of an ICC. Speaking for PGA, Dr. Herta Däubler-Gmelin, Justice Minister of Germany, urges parliamentarians to advocate for the ICC by addressing the public and initiating and adopting legislation for a permanent ICC.

**AUGUST:** At a PGA briefing for 40 parliamentarians held in New York, Paul Rantao, MP, Botswana, details the need to support the establishment of a permanent ICC.



**HON. PAUL RANTAO,**  
MP (BOTSWANA)

PARTICIPANTS OF THE PARLIAMENTARY CONFERENCE IN STRASBOURG,  
FRANCE, LED BY PGA PRESIDENT, MURLI DEORA, MP (INDIA), JUNE 1996





*SEMINAR IN TANZANIA ON COOPERATION WITH THE ICTR, DECEMBER, 1997*

**FEBRUARY:** In Dakar, Senegal, PGA organizes a delegation of Senegalese parliamentarians to attend the No Peace Without Justice Conference for the establishment of an International Criminal Court, chaired by Senegal's President Abdou Diouf.

**MAY:** PGA co-sponsors, with Trinidad and Tobago, a Latin American/Caribbean Regional Workshop on Mechanisms for the Development of International Criminal Justice.

**JULY:** Meeting in Rome, delegates of 120 nations adopt the text of a Statute to Establish an International Criminal Court, an action hailed by UN Secretary-General Kofi Annan as "a giant step forward in the march toward universal human rights and the rule of law." PGA participates in the process as a member of the steering committee of the NGO Coalition for an International Criminal Court, with a delegation led by Elena Poptodorova, MP (Bulgaria).

**OCTOBER:** At its annual United Nations Parliamentary Forum, PGA examines existing and potential enforcement mechanisms for dealing with violations of international human rights, with special focus on the ICC.

In collaboration with the International Criminal Justice and Weapons Control Center and the International Institute on Criminal Sciences, PGA develops technical assistance projects to help selected countries with implementation of the ICC statute.

**JULY:** South Africa's Justice Department organizes a workshop focusing on ratification of the ICC statute by states of the Southern African Development Community (SADC). The conference produces several documents, including a "ratification kit" drafted by a group of experts including PGA's program officer.



**MS. SHAZIA RAFI, SECRETARY GENERAL, PGA, MR. HANS CORELL, UN UNDER-SECRETARY GENERAL FOR LEGAL AFFAIRS, AT LATIN AMERICAN AND CARIBBEAN REGIONAL WORKSHOP, MAY 1998, TRINIDAD & TOBAGO**



PGA BRIEFING SESSIONS FOR THE DELEGATES OF THE ICC PREP COM, UN HEADQUARTERS, AUGUST 1999:

(l-r) **SEN. RAYNELL ANDREYCHUK** (CANADA), **MR. ANTONIO PANNUNZIO, MP** (BRAZIL), **SEN. ANDREW JOHNSON** (JAMAICA)



MEETING OF LEGAL EXPERTS AND OFFICIALS FROM 26 COUNTRIES IN GABARONE, BOTSWANA, LED BY **DR. DAVID DONAT-CATTIN**, SENIOR PROGRAM OFFICER, PGA, OCTOBER 1999



WORKSHOP IN SOUTH AFRICA, 1999



PGA BRIEFING SESSIONS FOR THE DELEGATES OF THE ICC PREP COM, UN HEADQUARTERS, AUGUST 1999

**JULY, AUGUST:** PGA, in cooperation with DePaul University, organizes briefing sessions at the United Nations for delegates to the ICC PrepCom, coordinated by Sen. A. Raynell Andrechuk (Canada) and PGA adviser Prof. M. Cherif Bassiouni.

**AUGUST:** At the ICC PrepCom, Shazia Rafi, Secretary-General of PGA, urges that the world community, having adjusted to globalization of the economy, should now adjust to the globalization of justice.

**OCTOBER:** At a meeting of legal experts and officials from 26 countries in Gabarone, Botswana, PGA co-sponsors panel discussion to endorse a strong position in favor of the ICC.

**OCTOBER:** PGA launches campaign to promote prompt ratification of the Rome Statute for the ICC.

**NOVEMBER:** Inspired by the leadership of PGA members on the issue, the Parliament of Ghana votes unanimously to ratify the Rome Statute for the ICC.

1999

19



*EAST AFRICAN CONFERENCE ON ICC RATIFICATION, ARUSHA, TANZANIA, JUNE 2000*

*(l-r): HON. M. PINTO, MP (UGANDA), SEN. R. ANDREYCHUK (CANADA), HON. MARMO, DEPUTY SPEAKER (TANZANIA), HON. B. MUTYARD, MP (UGANDA), HON. L. TIBERHUA, SOLICITOR GENERAL (UGANDA)*

2000



**JUSTICE PILLAY, PRESIDENT, INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (ICTR) ADDRESSING THE EAST AFRICAN CONFERENCE ON ICC RATIFICATION, ARUSHA, TANZANIA, JUNE 2000**

**JUNE:** PGA organizes an East African Conference on ICC Ratification, in Arusha, Tanzania, in cooperation with the International Criminal Tribunal for Rwanda and the Commission of the East African Community/Cooperation. It promulgates a plan of action outlining steps toward ratification in each of the targeted countries.

**OCTOBER:** A PGA conference on ICC ratification, hosted by the Senate of Argentina, is held in Buenos Aires. Less than one month later, the plenary of the Argentinean Lower House votes in favor of ratification.

PGA ensures the sustainability of its International Law and Human Rights Program through a grant of the Commission of the European Union, which enables the organization to hold a series of events on a global scale. Funding for these events is also provided by the Ford Foundation and the governments of the Netherlands and Denmark.

20

*PGA CONFERENCE IN BUENOS AIRES, ARGENTINA, OCT 10-11, 2001*

*(l-r): DIP. C. FERNÁNDEZ DE KIRCHNER (ARGENTINA); DR. R. ALFONSIN, FORMER PRESIDENT OF THE BLOQUE RADICAL (ARGENTINA); DR. H. JAUNARENA, MP (ARGENTINA); DR. G. MONCAYO, PROFESSOR OF INTERNATIONAL LAW, UNIVERSITY OF BUENOS AIRES (ARGENTINA); DIP. M. LÓPEZ ARIAS, VP OF BLOQUE JUSTICIALISTA (ARGENTINA)*





PGA'S CONFERENCE IN LISBON, PORTUGAL, FEBRUARY 2001

**HON. SPEAKER DR. ANTONIO ALMEIDA SANTOS, MP, PRESIDENT OF THE ASSEMBLEIA DE REPUBLICA (PORTUGAL); HON. SPEAKER FRANCISCO FORTUNATO PIRES, MP, PRESIDENTE DE LA ASSEMBLEIA NACIONAL (SAO TOME'ET PRINCIPE)**

**THE FEBRUARY:** In Lisbon, PGA holds a Conference on ICC Ratification in the Lusophone Countries, the first such event for Portuguese-speaking nations.

**MAY:** With the help from the President of Namibia and other agencies, PGA organizes a Conference on ICC Ratification and Implementation in the SADC [South African Development Community] Region, in Windhoek, Namibia. One month later, one of the participants in the conference, the government of Mauritius, announces it is committed to ratifying the Rome Statute.



PARTICIPANTS OF PGA CONFERENCE IN LISBON, PORTUGAL, FEBRUARY 2001



PGA WORKSHOP ON ICC RATIFICATION AND IMPLEMENTATION FOR THE SADC REGION, WINDHOEK, NAMIBIA, MAY 28-30, 2001

(l-r): **HON. PATRICK K. KALIFUNGWA, MP (ZAMBIA); H.E. MOSÉ P. TJITENDERO, SPEAKER OF NATIONAL ASSEMBLY (NAMIBIA); HON. DR. E.N. TTJIRIANGE, MP, MINISTER OF JUSTICE (NAMIBIA); H.E. LUCIE EDWARDS, HIGH COMMISSIONER OF CANADA IN SOUTHERN AFRICA**



**MARCH:** The PGA members in Japan's Parliament host a "study session" for all Japanese parliamentarians on the ICC ratification process.

**APRIL:** At a special treaty event hosted by the United Nations, 10 member states simultaneously deposit their instruments of ratification of the Rome Statute for the ICC, bringing the total of ratifications to 66, well above the 60 required to trigger the process to bring the statute into force. PGA organizes a press briefing at the UN to reflect on the leadership role taken by parliamentarians in promoting the idea of the court and the effort to make it a reality.

**JULY:** The International Criminal Court officially comes into being.

**SEPTEMBER:** Dr. Irwin Cotler, MP, Canada addressed the Assembly of State Parties on behalf of PGA.

**NOVEMBER:** A three-day Parliamentary Assembly for the International Criminal Court and the Promotion of the Rule of Law is convened by PGA in Ottawa, Canada.



*EURO-IBEROAMERICAN CONFERENCE ON THE RATIFICATION AND IMPLEMENTATION OF THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT (ICC), MADRID, SPAIN*



*PGA SUB-REGIONAL SEMINAR ON CAPACITY BUILDING FOR PARLIAMENTARY COMMITTEES ON SECURITY ISSUES, DAR ES SALAAM, TANZANIA, SEPTEMBER 2002*

*L-R **MR. SIMON MAYENDE, MP (UGANDA), MR. LEONARD DEREFA, MP (TANZANIA), DR. DAVID DONAT CATTIN, SENIOR PROGRAM OFFICER, PGA***

## ***'In Pursuit of These Principles ...'***

The supreme goal of all nations and peoples, as humanity prepares for the 21st century, must be the development of a global security system that reflects the unity of all aspects of international affairs in the modern age. Global security today is comprised, not simply of the traditional notion of military security which underpinned political beliefs and organizational structures of the mid-20th century. It means also economic security, from poverty, over-population and environmental degradation; and social security, from injustices, inequity and violations of human rights. Each is closely related with the others, and this must guide the future development of the United Nations...

In pursuit of these principles, Parliamentarians for Global Action has adopted the following policies, and recommends them to Member States of the United Nations for their consideration...

### **THE RULE OF LAW**

∞ The establishment ... of an International Criminal Court, with concurrent jurisdiction, in the first instance, over individuals who commit international crimes, such as war crimes, genocide, terrorism and international drug trafficking.

∞ The establishment of an ad hoc international war crimes tribunal for the former Yugoslavia-as envisioned in Security Council resolution 80 (1993)l and the timely prosecution ... of individuals who may stand accused of serious violations of international humanitarian law.

*-FROM "TOWARDS A GLOBAL SECURITY SYSTEM FOR THE 21ST CENTURY," SUBMITTED TO THE SECRETARY-GENERAL OF THE UNITED NATIONS BY PARLIAMENTARIANS FOR GLOBAL ACTION ON 17 MARCH 1993.*

## ***An NGO with a Difference***

**QUESTION:** When is a nongovernmental organization (NGO) something more than an NGO?

**ANSWER:** When, like PGA, it is made up of parliamentarians—who, according to Bill Pace, Convenor of the NGO Coalition for the ICC, “are not really nongovernmental.” They are, he adds, “democratically elected representatives with a role in helping to set-or at least influence-government policies. They represent a level of government.”

That is a key reason, Pace says, why PGA and its members have been able to work so effectively to promote the ICC, starting from 1989, when the idea for the court was placed on the international agenda by PGA member A. N. R. Robinson, to the present and beyond.

PGA helped organize the NGO Coalition in 1995, Pace says, adding: “The Parliamentarians were especially helpful in achieving ratification of the court’s statute—playing a role that will only intensify and expand over the next few years.”

Another NGO leader in the fight for the court, Richard Dicker of the International Justice Program of Human Rights Watch, concurs. Speaking from The Hague, where he has been attending the war-crimes trial of Slobodan Milosevic, Dicker describes the contribution made by PGA and its members as, among other things, “very special and greatly important ... a crucial factor ... an extraordinary role.” As for the PGA staff members working on the ICC issue, he calls them “an excellent team.”

According to Dicker, the Parliamentarians still have a “very, very critical role” to play in fending off what he calls the latest assault on the International Criminal Court—bilateral impunity agreements that Washington is pressuring other governments to sign. Those agreements will have to be ratified by parliaments, he points out, so the parliamentarians may well have the final word on them.

As for PGA’s bringing parliamentarians together to serve as a sort of constituency for the ICC, Dicker sums that up in three words: “a phenomenal idea.”

**MR. WILLIAM PACE**, *CONVENOR, CICC*  
*AT INTERNATIONAL NGO FORUM: Africa*  
*and International Criminal Court,*  
*SENEGAL, FEBRUARY, 1998.*



**MR. RICHARD DICKER**, *HUMAN RIGHTS WATCH*, **MR. PHILIPPE KIRSCH**, *MINISTRY OF FOREIGN AFFAIRS (CANADA)*  
*AT PGA 20TH ANNUAL PARLIAMENTARY FORUM, OCTOBER 1998*

## **'A Significant Achievement ...'**

"The Rome Statute is not a perfect treaty and it would be an illusion to believe that its entry into force will automatically ensure human rights for everyone. Nevertheless, it is unquestionably a significant achievement for international cooperation and, above all, international law--which bears on all states the responsibility to protect, respect, guarantee, and promote humanity's most basic rights...

"The reality-no longer the mere idea-of a permanent international tribunal challenges all of us to make it one that is just, impartial, independent, and effective.

"We parliamentarians have had and continue to have a critical role in meeting those various challenges."

*--DIP. FELIPE MICHELINI (URUGUAY) AT THE SENATE OF SPAIN,  
MADRID CONFERENCE ON THE ICC, 28 JUNE 2002*



**DIP. FELIPE MICHELINI, MP (URUGUAY)**

## **'An Effective Guarantee ...'**

"Impunity is one of the gravest violations of the rights of persons. As was proclaimed in the international seminar 'Impunity and Its Effects on Democratic Processes,' held in Santiago, Chile, in 1996, 'Impunity is a state's renunciation of its obligation to punish human rights offenders. Its consequences are detrimental to a country's social fabric. It is the abhorrent institutionalization of injustice by those who are required to do justice' ...

"The permanent functioning of the International Criminal Court will be an effective guarantee against impunity and will dissuade the politically motivated use of violence that has been all too common in recent Latin American history."

*--DIP. MARGARITA STOLBIZER (ARGENTINA), FROM "SEGURO CONTRA LA IMPUNIDAD," AN OP-ED PIECE PUBLISHED IN THE NEWSPAPER LA NACIÓN ON 24 APRIL 2002.*



**DIP. MARGARITA STOLBIZER, MP (ARGENTINA)**

## ***The Lessons Learned***

Almost all of the people interviewed for this retrospective look at PGA's campaign for the International Criminal Court agree that at least two lessons can be learned from the campaign and from its remarkable success.

The first lesson pertains to the core mission of PGA, the world's only global organization of legislators from elected parliaments. As they see it, PGA exists to help these legislators come to grips with important issues that transcend national boundaries, to take action in support of ideals such as democracy, peace-making, and, as in this case, human rights and the rule of law. They note that although PGA's members represent no particular political point-of-view, since they are drawn from parties that range across the spectrum from liberal to conservative, what brings them together is their commitment to such global ideals. One important reason the campaign for the ICC was so successful, they say, was that it stemmed directly from the concerns and values closest to the hearts of PGA's members.

A second lesson to be drawn from this experience, they say, is the unique effectiveness that PGA has because of its members' expertise-as successful politicians-in coping with the realities of politics, the "art of the possible." PGA members, they say, know how to get things done, how to talk to different constituencies, how to assemble coalitions, how to nurture and build that all-important thing called "political will"-which so many people attending international conferences these days bewail as an impossible dream.

What PGA has accomplished with its campaign in support of the International Criminal Court, they say, shows just how powerful a force of political will can be today-if people care passionately enough to work for it and know how to direct it effectively toward achieving an important objective.



*FRANCOFONIE SEMINAR ON RATIFICATION AND IMPLEMENTATION OF THE ROME STATUTE, MAURITIUS, MAY 2002.*