

sufficient. For Web users who want to understand more of what the choices are, or for anyone who has to teach new users Web searching skills, the Spider's Apprentice is an excellent, free resource. Of course, all of these search capabilities and explanations do not solve the much more complex issues surrounding the evaluation of the quality of information retrieved.

Readers interested in the range of possibilities for Web-based information might want to look at the Diplomacy and International Affairs Hypertext Information System (<http://heimedac.unige.ch/>) from the Mediterranean Academy of Diplomatic Studies. This site offers a database approach to international legal materials. Users can combine selections of document types, countries, keywords, and other details to search and retrieve relevant documents. There are improvements needed, such as a clear statement of the criteria used for selecting the "thousands of fully searchable international legal materials." It is, however, a project that offers a working model of a different approach to locating international legal materials. It may or may not be an approach that works for other researchers and students, but it is a welcome opportunity to experiment with and think about possible alternatives for document searching and retrieval.

In the realm of printed reference tools that have appeared in a new format, the well-known annual from the United Nations, *Multilateral Treaties Deposited with the Secretary-General*, is available on the Web in the United Nations Treaty Database (<http://www.un.org/Depts/Treaty/>). Registration is required to use the site, but currently there is no fee. Recently there have been interruptions in the updating of the information, although resumption of updating is promised. Currently there are no texts of treaties available. The question of how and when, and at what possible cost, full texts of treaties might become available is an issue worth monitoring.

As always, I welcome comments or suggestions. I can be reached at Stanford University by e-mail at pzarins@sulmail.stanford.edu or by telephone at 415-725-1028. ♦

ASIL UN OBSERVER REPORT

By Richard Hartzman

UN Considers International Criminal Court

The UN's Preparatory Committee on the Establishment of an International Criminal Court, at the close of its second session, recommended a continuation of discussions with the goal of finalizing the text of a statute for the proposed court by the end of April

1998. The Committee also recommended the convening of a diplomatic plenipotentiary conference later in 1998 to adopt a convention on the establishment of a permanent international criminal court.

Before adoption of the recommendations, the Chinese representative expressed "serious reservations", arguing that the setting of a date was a political issue that should be dealt with in the political organs of the UN. She also said that setting a specific date for the conference would hinder the pace of progress, but added that China would not block the Committee's recommendations. Those recommendations will be presented to the fifty-first General Assembly session this fall.

The Preparatory Committee was established by General Assembly resolution 50/46 in December 1995. It is charged with preparing an acceptable text of a convention for an international criminal court.

The proposed court would be a permanent tribunal established by a multilateral treaty with worldwide jurisdiction to try individuals for gross breaches of international humanitarian law. Unlike the International Court of Justice, which is limited to hearing cases between states or issuing advisory opinions to UN organs, the new court would have jurisdiction over individuals; and unlike the War Crimes Tribunals for the former Yugoslavia and Rwanda, the jurisdiction of the new court would not be chronologically or geographically limited. The court would complement national criminal justice systems in prosecuting and suppressing crimes of international concern.

The idea for a permanent international criminal court was first broached in 1947 but was not taken seriously until after the end of the Cold War. The process leading to the establishment of the Preparatory Committee began in November 1992 when the General Assembly, by resolution 47/33, asked the International Law Commission (ILC) to give priority to the elaboration of a draft statute for an international criminal court. Upon the completion of a sixty article draft statute by the ILC in 1994, the General Assembly, through resolution 49/53, set up an ad hoc committee to review the major substantive and administrative issues arising out of the draft statute. After meeting for four weeks in two sessions in 1995, the ad hoc committee recommended to the fiftieth session of the General Assembly that future work be organized with the goal of an early completion of a draft convention. The recommendation led to the creation of the Preparatory Committee.

The Committee is open to all member states of the UN, members of the specialized agencies and members of the International Atomic Energy Agency. The Chairman of the Committee is Adriaan Bos (Nether-

lands); its Vice-Chairmen are Cherif Bassiouni (Egypt), Silvia A. Fernandez de Gurmendi (Argentina), and Marek Madej (Poland); and its Rapporteur, Jun Yoshida (Japan).

The Preparatory Committee held its first session at UN headquarters from March 25 through April 12, 1996. Its second session was also held at UN headquarters, from August 12-30, 1996. At both sessions, the Committee engaged in a comprehensive review of issues related to the ILC's draft statute.

The remainder of this article will briefly summarize the issues which have thus far been considered by the Preparatory Commission. Further information and documents are available at the Internet Web site for the NGO Coalition for an International Criminal Court: <http://www.igc.apc.org/icc>

Deliberations at the First Session

■ *Crimes to be considered by the court.* There was general agreement that crimes under the court's jurisdiction should be limited to the most serious "core crimes" of international concern - genocide, crimes against humanity and war crimes. Opinion leaned against the inclusion of aggression among the core crimes, despite its being in the ILC's draft statute. Most delegations also urged that treaty-based crimes, which are also in the ILC draft, not be considered among the core crimes. There were some calls for the prosecution of torture, enslavement, forced labor, unlawful deportation, rape, sexual abuse and forced prostitution, particularly when associated with ethnic cleansing or political, racial or religious persecution. Many delegations stressed that adjudication should be consistent with the legal principles of *nullum crimen sine lege* (no crime without law) and *nullum poene sine lege* (no penalty without law).

■ *General rules of court.* Caution was expressed against filling the court's statute with extensive and detailed rules. There was debate over the extent to which the court should apply national laws, many delegations saying they should be utilized only as a last resort. There was almost unanimous agreement that the statute should provide for individual responsibility and an age of responsibility, although there were differences on what that age should be. Differing views were also expressed on whether or not there should be a statute of limitations. Most delegations believed that corporations should not be prosecuted. There was discussion of defendant's rights and a call for the inclusion of applicable principles of law, such as liability, complicity and defense, in an annex to the court's statute. Some urged that omissions, negligence and conspiracy that result in crimes falling within the court's jurisdiction should be held

punishable under the statute, and that self-defense and the defense of others be listed as permissible defenses. Many felt that there was no need to include provisions on causation in the statute as criminal responsibility only exists if traceable to a defendant.

■ *Complementarity.* There was considerable discussion about how the principle of complementarity, which concerns the relationship between the jurisdiction of national courts and the proposed International Criminal Court, is to be articulated. The preamble to the ILC's draft statute states that the court "is to be intended to be complementary to national criminal justice systems in cases which those systems cannot resolve". Several delegations expressed concern that the court not impinge on the prerogatives of national jurisdiction. Others stressed that complementarity should not be used as a shield by States to protect their nationals from the court's jurisdiction. Many delegations proposed that the new court should have inherent jurisdiction over the core crimes of genocide, crimes against humanity and war crimes. Others proposed a jurisdiction based on consent, with the court adopting an "opting in" approach, since it would require the cooperation of both the State in which the crime was committed and the State which had custody of the suspect in order to prosecute effectively.

■ *Trigger Mechanisms and the Security Council.* A variety of proposals were presented regarding the role of the Security Council in triggering prosecution before the court. There were calls for eliminating the provisions in Article 23 of the draft statute which would prohibit the bringing of a complaint before the court unless the Security Council referred the matter. Several delegations cautioned that the political functions of the Council and the juridical functions of the court should be kept separate. Some argued that the Council should not have the power to refer matters to the court. Others endorsed the draft statute provisions for referral, and some urged that the General Assembly also be empowered to refer matters to the court. It was generally agreed that States parties to the statute directly interested in a matter should be able to lodge complaints with the court. Some delegates urged that, under restricted conditions, victims and their close relatives should also be able to lodge complaints with the court. There was almost unanimous opinion that the prosecutor of the court should not have the power to initiate an investigation on his or her own; that it should be initiated only with the consent and cooperation of the States. Some, however, argued that granting such powers to the prosecutor would enhance the effectiveness of the court.

■ *Judicial Cooperation and Enforcement.* In discussing cooperation between national judicial authorities, it was urged that States parties to the statute should give the new court priority over national courts in prosecuting core crimes, and that jurisdictions holding an accused should defer to the court when that individual is charged with genocide, war crimes or crimes against humanity. Others, however, expressed the view that the court should generally defer to national courts, consistent with the principle of complementarity. With regard to enforcement, several delegations recommended that States should be obliged to recognize the judgments of the court as they would the judgments rendered by their national judiciaries, and should be obliged to carry out the verdict of the court.

Deliberations at the Second Session

During the Second Session of the Preparatory Committee there were further discussions about major substantive and administrative issues. Issues addressed included fair trial and rights of the accused, the establishment, composition and administration of the court, and its relationship to the United Nations.

The Preparatory Committee continued its discussion of trigger mechanisms. Some delegations said that only States should be allowed to lodge a complaint before the proposed court, and that investigations be undertaken only with the permission of the States in which the alleged crimes took place. Trigger mechanisms by the prosecutor and Security Council were also further debated, as were the discretionary powers of the prosecutor. A number of delegations proposed the creation of a pre-trial chamber, called the indictment or instruction chamber.

With regard to the commencement of prosecution, some delegations viewed the power of the president of the court, as delineated in the ILC draft statute, to be excessive. Alternative proposals included the use of a court officer other than the president who would undertake pre-trial actions. The ILC draft provisions regarding the notification of the indictment, arrest, pre-trial detention or release were also discussed.

Other topics concerning prosecution which were the subject of discussions included motions to challenge the court's jurisdiction, trials in absentia, the functions and powers of the trial chamber, the advisability of allowing the entry of guilty pleas at the commencement of the trial, and the possibility of closed sessions.

Delegations were divided on allowing the death penalty and the levying of fines. There were suggestions that the court be empowered to demand compensation for damages and restitution of property,

and to render the penalty of disenfranchisement (the denial of certain citizenship rights).

There was a proposal for the creation of a special unit concerned with the protection of victims and witnesses, similar to the one established by the former Yugoslavia Tribunal. The structure of the court, selection of judges, and conduct of trials was considered, as were administrative mechanisms such as the functioning of the registry. Means of funding, the court's relationship to the United Nations, and the method of formation - whether by treaty, amendment to the UN Charter, or annexation of a treaty to the Charter - were also topics of discussion.

At the end of the second session, it was agreed that the numerous proposals be compiled in an annex to the session's report for subsequent deliberations of the Preparatory Committee. ♦

INTEREST GROUP NEWS

Interest Group on Innovations in Teaching International Law

The ASIL's newest proposed Interest Group, Innovations in Teaching International Law (formerly Innovations in International Legal Education), has received preliminary designation by the Executive Director. The Group's goals are the development and exchange of innovative curricula on international law as well as the expansion of the breadth and types of audiences exposed to international law. Be sure to consider joining the Group when you renew your ASIL membership this fall. The dues are \$5.00.

The Group is off and running with its first major project, the collection of syllabi and descriptions of innovative teaching methods (e.g., simulations, negotiation exercises) for exchange and discussion. In addition, the Group has set up an electronic mailing list, which already has nearly 60 subscribers from 14 countries. In order to subscribe, send a message to majordomo@mail.law.vill.edu that states **subscribe asil-innovations**

You then can post messages to the list by directing them to asil-innovations@mail.law.vill.edu

Mark your calendars now for the Interest Group's interactive program at the 1997 ASIL Annual Meeting. The program is scheduled for Saturday, April 12, 1997 at 3:00 p.m. It is tentatively titled "Teaching International Law for the Next Millenium: Workshop on Innovative Teaching Methods." If you are interested in presenting an innovative teaching technique at the workshop, please contact Diane Edelman.