

Cambodia photograph by David Hawk



Eyes on the ICC:

What Americans want to know about the new International Criminal Court

26 OCTOBER 2002

UNIVERSITY OF MAINE
SCHOOL OF LAW
PORTLAND, MAINE

presented in observance of United Nations Day

by Amnesty International, the International Law Society, and the United Nations Association of Maine

The 20th century was the bloodiest in human history, with 174 million people killed in genocide & mass murders.

Many new terrors loom.

So the world is moving to end impunity for individuals who commit certain internationally recognized crimes.

After July 1, when the International Criminal Court treaty entered into force following the required 60 ratifications, any genocide, war crime or crime against humanity can be investigated and prosecuted by the ICC if it occurs in a country that accepts the Court's jurisdiction, or is committed by a citizen of that country, or if the UN Security Council refers the case. The Court may act only if the nation having jurisdiction over the offender is genuinely unwilling or unable to prosecute.

The United States supported creation of the temporary tribunals for the former Yugoslavia and Rwanda, and took part in drafting the ICC Statute, signing it on 31 December 2000, then "unsigned" it in May 2002. The Court is being established even without the US Government's support, so American citizens need to know more about it.

The American Bar Association . . . and leading international lawyers in the country, including every living former Nuremberg prosecutor, all agree that it is in the interest of the US and its military to support the ICC.

The US inspired the world at Nuremberg by demanding that never again would crimes against humanity be allowed to go unpunished. We weaken our standing in the world when we insist that law applies to everyone else but not to the United States. No nation and no person has a sovereign right to commit crimes against humanity with impunity.

Benjamin B. Ferencz,
American prosecutor at Nuremberg war crimes trials

No one, regardless of their nationality, should be granted impunity for the worst crimes known to humanity.

Amnesty International

People all over the world want to know that humanity can strike back. That whenever genocide, war crimes or other such violations are committed, there is a court before which the criminal can be held to account, a court that puts an end to the global culture of impunity.

Kofi Annan,
United Nations Secretary General



The International Criminal Court

The 1 July entry into force of the Rome Statute of the International Criminal Court (ICC) launched jurisdiction of the first permanent international court capable of investigating and bringing to justice individuals who commit the most serious violations of international law, namely war crimes, crimes against humanity, genocide, and (when defined) aggression. Unlike the International Court of Justice, whose jurisdiction is restricted to States, the ICC has the capacity to indict individuals.

The Statute was adopted and opened for signature & ratification at the Rome Conference of Plenipotentiaries on 17 July 1998, by a vote of 120 to 7, with 21 abstentions. Less than four years later, during a historic ceremony on 11 April 2002, 10 states simultaneously deposited their instruments of ratification, crossing the threshold of 60 ratifications necessary for entry into force of the Rome Statute. Officials of the Court must now be elected and the logistical and other arrangements for the Court finalized; the ICC is expected to begin its work in the summer of 2003. The first meeting of the Assembly of States Parties, the body of ratifying countries that will oversee the Court's functioning, took place at UN headquarters in September.

The ICC will be complementary to national jurisdictions, and will act only when national systems are genuinely unable or unwilling to carry out investigations or prosecutions of such crimes.

The jurisdiction of the Court is not retroactive; it will apply only to crimes committed after 1 July 2002.

The Coalition for the ICC (CICC, a network of over one thousand civil society organizations from around the world) and like-minded governments are continuing to seek universal ratification and full implementation of the Rome Statute.

As of 30 September, the Rome Statute had 139 signatures & 81 ratifications, including the entire European Community, Canada, Australia and other traditional US friends.

Official ICC website:

www.icc.int

(includes employment opportunities)

The ICC Preparatory Commission and Assembly of States Parties

The ICC Preparatory Commission was established by the UN General Assembly pursuant to a mandate, embodied in Resolution F of the Rome Conference, to draft the Elements of Crimes and Rules of Procedure and Evidence, and other instruments supplemental to the treaty. Three sessions were convened in both 1999 and 2000, and two sessions were held in both 2001 and 2002. The most recent and final meeting was held from 1-12 July 2002, to discuss financial issues, preparatory documents for the Assembly of States Parties (ASP), and the crime of aggression. At these sessions, the CICC coordinated meetings among nongovernmental organizations (NGOs) and government delegations from all regions of the world. The Commission presented its work for approval by the first ASP meeting in September 2002.

The Assembly of States Parties, the ICC's governing body, is made up of the countries that have ratified the ICC treaty; meetings are open to any other countries that wish to participate as observers.

The Rome Statute is built on the principle that national courts have primary responsibility for the prosecution of crimes by their nationals. The ICC is a court of last resort. It may conduct a prosecution only if impunity would otherwise result. There are safeguards built in to prevent decisions on prosecutions being taken based on political rather than legal grounds.

- Don Mackay, Representative of New Zealand,
message to the UN Security Council, July 2002

I am confident that Colombia's ratification and the recent entry into force of the Rome Statute will help bring about some peace, as well as a sense of vindication for the victims of [our] terrible situation.

- Colombian Senator Gustavo Guerra,
5 August 2002

[The US attempts to exempt its citizens would] seriously undermine the international legal order, as well as the legal systems of the states which have ratified the statute of the Court. . . . [The ICC] is extremely important for a country like ours, which has only just begun building its legal institutions.

- Yugoslav President Vojislav Kostunica,
Tanjug news agency, 12 August 2002

Countries such as Australia will benefit greatly from the development of international law. . . . Even Americans will benefit from a safer, law-abiding international environment.

-Australia's former Prime Minister Malcolm Fraser

In order of appearance:

Dean **David P. Cluchey** specializes in law & the economy at the University of Maine School of Law. In addition to frequent projects in Russia, he has served as Special Counsel to the Maine Attorney General and as a consultant to several committees of the Maine Supreme Judicial Court. He is co-author of a three-volume book, *Maine Criminal Practice*, and has written extensively on international trade regulation, antitrust and health care law. He is a Past President of the Maine Bar Foundation and has served as Chair of the Section on North American Cooperation of the Association of American Law Schools. He has been appointed by Governor King to be the 2002 UN Day Chair for Maine.



Anna N. Astvatsurova, President of the International Law Society of the University of Maine School of Law, is an Armenian refugee from Azerbaijan, former USSR. Her family settled in North Dakota in 1992, and she became a US citizen in 1997. She has a BA in English, Philosophy & Religion from the University of North Dakota, and is now in her 3rd year at the University of Maine School of Law.

She attended the final ICC Preparatory Commission meeting in July and the first Assembly of States Parties in September as a delegate of the Independent Student Coalition for the ICC. Recently she became the ISC-ICC's Director of Educational Programs. She is dedicating her life to "ensuring that the Armenian genocide is recognized and never forgotten by the world and, most importantly, that it doesn't ever happen again to anyone".



John Shattuck has been Chief Executive Officer of the John F. Kennedy Library Foundation since February of 2001. His career spans three decades of leadership in education, government

PROGRAM

► 12:30 REGISTRATION & ORIENTATION

► 1:00 WELCOME

David P. Cluchey,
Associate Dean
University of Maine School of Law
INTRODUCTIONS

Anna N. Astvatsurova,
President, International Law Society
University of Maine School of Law

► 1:15 HEARING

Moderator: **John Shattuck**,
CEO, Kennedy Library Foundation;
former Assistant Secretary of State

Panelists (in order of presentation):

- **John Washburn**,
American NGO Coalition for the ICC (AMICC)
- **Nicholas Rostow**,
General Counsel, US Mission to the United Nations
- **Jane Rocamora**,
International Criminal Defense Attorneys Association

Initial Questioners:

Kelci Greenacre, Hampden Academy
Amy Matuwezski, University of Southern Maine
William T. Bly, University of Maine School of Law

Reporter: **Craig Dorais**

► REFRESHMENT BREAK (15 minutes)

► 3:45 CONCURRENT WORKSHOPS (90 minutes):

A - The ICC's most fascinating legal details

What's new in the ICC Treaty? What have been the liveliest controversies in the preparatory negotiations? What are the Court's kinks? How is the Assembly of States Parties supposed to work? How will the Court's independence be protected?

Presenter:

John Washburn, Convenor,
American NGO Coalition for the ICC

Reporters: **Lori Londis** and **Jennifer Tarr**

service and the nonprofit sector. He frequently appears in the media and as a commentator on human rights and international affairs. He is the author of *Freedom on Fire: Human Rights Wars of the 90s*, to be published by Harvard University Press in 2003, *Rights of Privacy* (National Textbook Company 1977) and many articles on civil liberties, human rights and public service.

In 1993 Mr Shattuck became Assistant Secretary of State for Democracy, Human Rights & Labor for five years, playing a leadership role in efforts to end the war in Bosnia and negotiate the Dayton Peace Agreement, establish the International Criminal Tribunals for the former Yugoslavia & Rwanda, restore a democratically-elected government to Haiti, administer US assistance to new and emerging democracies, and raise the profile of human rights in US foreign policy after the end of the Cold War. For this work he received an International Human Rights Award from the United Nations Association of Boston in 1998.

In 1998 Mr Shattuck again was nominated for a major foreign affairs position by President Clinton and confirmed by the Senate, this time as US Ambassador to the Czech Republic. His role in that country's challenging transition from communism to democracy was recognized by the Ambassador's Award from the American Bar Association Central and East European Law Institute in 2000.

Before entering government service, Mr Shattuck was at Harvard, where he was Vice President for Government, Community and Public Affairs from 1984 to 1993, and lectured on civil liberties at the Harvard Law School and the Kennedy School of Government. A founder of the Cambridge Partnership for Public Education, he was active in expanding Harvard's community service programs. He received a Distinguished Service to Public Education Award in 1990 from the Massachusetts Board of Education, and a Yale Law School Public Service Award in 1988.

Mr Shattuck's career began at the American Civil Liberties Union, where he was Executive Director of the ACLU Washington office and national staff counsel from 1971 to 1984. He was involved in major civil rights struggles during four administrations. In 1984 he received a Roger Baldwin Award for his national contribution to civil liberties.

A 1970 graduate of Yale Law School, Mr Shattuck received his BA from Yale, Magna Cum Laude and Phi Beta Kappa, in 1965, an MA with First Class Honors in international law from Cambridge University in 1967, and honorary degrees from the John Jay College of Criminal Justice, Kenyon College, and the University of Rhode Island.



John Washburn has had an extensive career in diplomacy and international governmental and non-governmental organizations. He was a director in the Executive Office of the Secretary General of the United Nations, 1988–1993, and then a director in the Department of Political Affairs at the UN until March 1994.

A member of the Foreign Service of the United States from 1963 to 1987, his last assignment was as the member of the State Department Policy Planning Staff responsible for international organizations and multilateral affairs. Earlier in his Foreign Service career, he was assigned to India, Iran, and Indonesia. Mr Washburn had a variety of assignments in the State Department's Bureau of International Organization Affairs. He conceived, helped to establish, and was Deputy Director of an office to further the coordination of American bilateral and multilateral diplomacy and was a member of US delegations to sessions of various UN bodies. He was Night Shift Chairman of the Iran Hostage Task Force in 1979. He received a special commendation from the Secretary of State as well as the State Department's Meritorious Honor Award and Superior Honor Award. In 1977–1978 he was a Congressional Fellow of the American Political Science Association.

B/D - Ad hoc tribunals / Women and the ICC

What is being learned from the successes and problems of the International Criminal Tribunals for Rwanda and the former Yugoslavia, from the difficulties of setting up ad hoc courts for East Timor and Sierra Leone, and from the continuing failure to bring anyone to justice for the Cambodian genocide?

Women's groups organized in 1997 as the Women's Caucus for Gender Justice to press for "gender mainstreaming" in the negotiations. Consequently, the ICC Statute is considered a breakthrough in recognizing certain crimes that target women; it also contains progressive provisions relating to the participation and protection of victims & witnesses in the process and women on the Court as judges, prosecutors and staff. How are women's rights advocates still helping to shape the Court? What do they expect from it?

Presenter:

Jane Rocamora,
Vice President, International Criminal
Defense Attorneys Association

Reporter: **Heidi Ellrich**

C - "Universal Jurisdiction" and the ICC

Based on the principle that some internationally defined crimes are so serious that all countries have a right to prosecute them, investigations have been opened in several countries into actions by officials of other countries. What is "universal jurisdiction"? What are its limitations and potential? What was learned in the Pinochet case? What cases have been decided already? Who is next?

Presenter:

Allen Springer
Professor of Government and Legal Studies,
Bowdoin College, Brunswick, Maine

Reporter: **Nicole Reitze-Johnston**

E - Justice and peacemaking

What are the potential conflicts between the requirements of justice and the exigencies of diplomacy/peacemaking? How might they be resolved?

Presenter:

Ken Rodman
William R. Cotter Distinguished Professor
of Government, Colby College, Waterville, Maine

Reporter: **Regina Stabile**

► BREAK (10 minutes)

► 5:25 CONCLUSION

Student reporters' notes eventually will be available at <www.unmaine.org/ICCevent>; for a paper version, call 207-832-6863 or write to ICC Event,
PO Box 397
Waldoboro, ME 04572.

A graduate of Harvard College and Harvard Law School, Mr Washburn is a member of various Bars, belongs to the American Society of International Law and the Council on Foreign Relations, and is a founding member of the Academic Council on the United Nations System. He writes frequently on the UN.

Mr Washburn is Convener of the American Non-Governmental Organizations Coalition for the International Criminal Court, co-chair of the Washington Working Group on the ICC, and a board member and past president of the Unitarian Universalist UN Office. In association with the international Coalition for the ICC (CICC), he has attended most of the UN negotiations on the Court since 1994, including the 1998 diplomatic conference in Rome.



Nicholas Rostow is the General Counsel of the US Mission to the United Nations and Senior Policy Advisor to the US Permanent Representative to the United Nations, Ambassador John D. Negroponte.

Before taking this position last October, he held the Charles H. Stockton Chair of International Law at the US Naval War College, Newport, RI. Mr Rostow's previous Federal government experience included service as Staff Director of the Senate Select Committee on Intelligence, Counsel and Deputy Staff Director of the House Select Committee investigating high technology transfers to China (the Cox Committee), and Special Assistant to Presidents Reagan and George H. W. Bush and Legal Adviser to the National Security Council under National Security Advisers Colin Powell and Brent Scowcroft. In addition, he served as head of the Massachusetts Office of International Trade and Investment under Governors William F. Weld and Argeo Paul Cellucci.

Mr Rostow earned his BA, PhD (history), and law degrees from Yale. He has taught at the University of Tulsa College of Law and the Fletcher School of Law and Diplomacy at Tufts Univer-

sity. His scholarly writing is in the fields of diplomatic history and international law.



Jane Rocamora, Clinic Instructor for the Harvard Immigration & Refugee Clinic at Greater Boston Legal Services, worked in 1994 and 1995 as a human rights field officer in Gisenyi, Rwanda, for the United Nations High Commissioner for Human Rights. Her activities focused on rebuilding the local judicial system, investigating criminal cases related to the genocide in Gisenyi, and investigating/resolving human rights violations in her sector. In 1995, the Government of Rwanda sponsored her participation as an expert consultant on judicial system reforms at a conference it hosted concerning genocide and accountability. Since that time, she has worked with both governmental and non-governmental organizations on issues related to strengthening both the International Tribunal for Rwanda (ICTR) and Rwanda's reconstructed domestic judicial system. In 1997, she returned to Rwanda for one year, seconded by the UN Development Program to work for Rwanda's Ministry of Justice, assisting in its reconstruction of the judicial system and its working relationship with the ICTR.

Returning to field work in 2000, Ms Rocamora was appointed Chief of the Judicial Support Section for OSCE in Kosovo, working on various aspects of rebuilding the judicial system there.

As a human rights expert, Ms Rocamora has more than a decade

of experience in the field of international human rights. In 1984, in collaboration with several colleagues nationwide, she assisted in the revitalization of the Legal Support Network for Amnesty International USA. She was co-author of several *amicus* briefs filed in US and Canadian courts on behalf of Amnesty International. In 1989, she founded the International Human Rights Committee of the Massachusetts Bar Association and was its co-chair until 1994.

In 1996, she co-founded and is currently Vice-President of the International Criminal Defense Attorneys Association, headquartered in Montreal. Through ICDA, Ms Rocamora actively participated in the preparatory commissions leading up to the adoption of the treaty establishing the International Criminal Court and its rules of procedure and evidence.

Ms Rocamora is also a Board Member and member of the Litigation Advisory Committee of the Center For Justice & Accountability, a San Francisco-based NGO that sues human rights violators present in the US.

Jane Rocamora graduated from Northeastern University School of Law in 1982. Her background in litigation has included a wide range of domestic civil rights and criminal law cases, including over two years in Florida representing individuals on death row in state and federal post-conviction proceedings. She taught international human rights and humanitarian law at Suffolk University School of Law for two years.



Kelci Greenacre is a senior at Hampden Academy. enrolled in a Law & Ethics class. She is a pianist and a dancer, a member of Hampden Academy's Bible Club and Junior Classical League, and a varsity field hockey player. She plans to go to college somewhere in the Northeast and to practice law eventually.



Amy Matuewezski, from Rhode Island, is a senior at the University of Southern Maine, majoring in Political Science with a business minor.



William T. Bly, in his second year at the University of Maine School of Law, is a graduate of Rutgers College, where he majored in Political Science and History. His interest in international affairs and in learning more about possible "benefits and detriments associated with United States membership in the ICC" is influenced by the three years he spent in the US Army. He was stationed for 3 months in Saudi Arabia and Kuwait and for 15 months in the Republic of Korea. He is an officer candidate in the Maine Army National Guard Officer Candidate Program and is on track to receive a federal commission as a 2nd Lieutenant in the US Army in June 2003.



Allen Springer, a graduate of Amherst College and the Fletcher School of Law and Diplomacy, is

Professor of Government and Legal Studies at Bowdoin College, with teaching responsibilities in the fields of international law and organization, US foreign policy, and international environmental policy. His primary research interest is in the intersection of law and policy in the field of international environmental protection.



Ken Rodman, William R. Cotter Distinguished Professor of Government at Colby College and Acting Chair of the Department, has written extensively on international law and policy, including the recently published *Sanctions Beyond Borders: Multinational Corporations and US Economic Statecraft*. He spent July at the Institute for International Humanitarian Law in San Remo, Italy. Last summer he studied the war crimes tribunals and ICC at the Duke-Geneva Institute of Transnational Law.



Alphonse Déo Nkunzimana, who expected to be among the panelists and workshop presenters, sends his regrets. As the Coalition for the ICC's Outreach Liaison for Africa and Europe, he is involved in a Conference on Implementation of the Rome Statute in the Democratic Republic of Congo, taking place this weekend in Kinshasa and Lubumbashi.



Audio/visual excerpts:

- Coalition for the International Criminal Court <www.iccnw.org> and Witness public service announcement
- "In Search of Global Justice", produced by David Freudberg <www.humanmedia.org> for Public Radio International
- UN video library
- "Unwired - Acoustic music from around the world", produced by World Music Network <www.worldmusic.net> to benefit Amnesty International

In an interview on CNN (7 July 2002), **General Wesley Clark**, Supreme Allied Commander during NATO's Kosovo campaign, said:

I know that the worst-case analysis of this is that American soldiers could be subject to whimsical or politically motivated charges, but the honest truth is, the United States intends to operate under international law. We helped build international law, we need international law. And we've got to find a way to work with this court and bring it around and make whatever modifications need to be made to it.

But I was subjected to a war crimes investigation in my role as NATO commander. It didn't bother me a bit. We had full integration of lawyers in all of our activities. We never did anything that was the remotest bit beyond the shade of the law. We would never want to do that.

During the July 2002 UN Security Council discussion of the US demand for exclusive advance immunity from the International Criminal Court:

In the Holocaust museum in Washington, DC, there exist images and artifacts of a time, falling well within the lifespan of many around this table, where the breadth of human brutality found its full expression, a time which showed shamefully just how primordial we, human beings, still are...If we are ever to change all of this, to offer some sort of permanent juridical deterrent to the most vile criminals of the future, the only discussion we should be having now...is on how best we can assist the Court.

...And it would surprise no one here today were we to note that more innocent people have lost their lives violently by way of genocide, war crimes and crimes against humanity, over the last century, than all previous centuries combined stretching back two millennia. By not supporting the Court, it will not so much be a matter if we fail generations — in the same way that former generations failed the victims of yesteryear — but whether, by the end of this century, there will be any generations left to fail.

H.R.H. Prince Zeid Ra'ad Zeid Al-Hussein,
Jordanian Ambassador (elected president
of ICC Assembly of States Parties,
3 September 2002)

ORGANIZING SPONSORS

Amnesty International-Maine

www.amnestyusa.org
www.midcoast.com/~thesil

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www.usm.maine.edu/law
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www.hhrc.org

Independent Student Coalition for the ICC

www.isc-icc.org

Maine Model UN Program

www.usm.maine.edu/~kuzma/mun

Maine Veterans for Peace

www.veteransforpeace.org

Peace Action Maine

www.peaceactionme.org

Physicians for Social Responsibility/Maine Chapter

www.psr.org

<psr_maine@yahoo.com>

United Church of Christ Maine Conference

PO Box 966, Yarmouth, ME 04096

Unitarian Universalist Association, Northeast District

www.uua.org

USM Political Science Department

www.usm.maine.edu

World Affairs Council of Maine

www.wacmaine.org

World Federalist Association - Maine Chapter

www.wfa.org or www.midcoast.com/~thesil

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MAICC is part of AMICC (American coalition):

www.amicc.org

CICC (international coalition):

www.iccnw.org

Quick updates & easy actions:

www.USAforICC.org