

## Progress on the Proposed International Criminal Court

The UN's Preparatory Committee on the Establishment of an International Criminal Court ("PrepCom") engaged in detailed substantive and technical discussions at its third and fourth sessions held in New York from February 11-21 and August 4-15, 1997. Two more sessions are scheduled for December 1-12, 1997 and March 16 to April 3, 1998, leading up to a proposed plenipotentiary conference in Rome in June/July 1998. 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 such as genocide, war crimes and crimes against humanity. (For background information about the proposed Court and earlier PrepCom discussions see the September-October 1996 issue of *ASIL Newsletter*, p. 15.)

In both the third and fourth sessions of the PrepCom the work was organized by dividing into two working groups. The goal of the groups was to agree on draft language for a treaty creating the Court to be submitted to the 1998 Rome diplomatic conference. Where no consensus on language could be reached different options were included in the working group reports.

At the February 1997 session the first working group dealt with the definition of crimes subject

to the Court's jurisdiction. The second working group discussed general principles of general law which would be applicable to the Court's work. At the August 1997 session a working group focussed on the principle of complementarity (the relationship between the jurisdiction of the proposed International Criminal Court and national courts) and on trigger mechanisms for initiating prosecutions. The other working group discussed a variety of procedural issues.

**Third Session** - The first working group generally agreed on the definition of genocide, the central issue remaining whether the definition from the Genocide Convention should be reproduced in the new Court's statute or if the statute should refer to the Genocide Convention. The delegates largely agreed on the definition of crimes against humanity. With regard to war crimes, the crime of aggression, terrorism, drug trafficking and attacks against UN personnel, the working group recommended that the text resulting from discussions be reconsidered at a future time. The second working group produced draft composite texts on a number of general principles of criminal law. These include the principle of *nullum crimen sine lege* (no crime without law), individual criminal responsibility, personal jurisdiction, command responsibility, irrelevance of official position, and *mens rea*.

**Fourth Session** - The first working group in

this session reached fairly broad agreement on text for Article 35 concerning the delineation of circumstances in which the Court may decide it should not hear a case. With regard to the trigger mechanism a number of options were discussed with no agreement yet reached. The main issues concerning this mechanism are whether the Court should have inherent jurisdiction over all "core" crimes or only genocide, and whether referral of cases by the Security Council should be required or the Court be able to proceed independent of the Security Council.

The procedural matters discussed by the second working group included the allocation of power to initiate investigations and the supervision of those investigations, the rights of suspects, the commencement of prosecution, notification of indictment, trial in the presence of the accused, functions and powers of the trial chamber, rights of the accused, and the protection and participation of victims and witnesses.

**Fifth Session** - The next session of the PrepCom, scheduled for December, is expected to concentrate on international cooperation and judicial assistance, penalties, procedural matters, and general principles of criminal law.

For more information on the PrepCom proceedings contact the NGO Coalition for an International Criminal Court, 777 UN Plaza, New York, NY 10017; tel: (212) 687-2176; e-mail: [cicc@igc.apc.org](mailto:cicc@igc.apc.org) ♦

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## ASIL Outreach

### ASIL Panel at APSA Meeting

Working from a title, "International Law in the Undergraduate Classroom: Back Door, Front Door or Locked Door?," ASIL Executive Director Charlotte Ku moderated a panel at the American Political Science Association Annual Meeting on why international law is taught outside of law school and the particular challenges that presents.

Panelists were Professors Paul Diehl, University of Illinois, Urbana-Champaign; Stephanie Farrow, Dickinson School of Law; John King Gamble, Behrend College, Pennsylvania State University; and Christopher Joyner, Georgetown University.

Diehl touched on how international law is on the periphery of graduate education in political science and is not regarded as a

core subject in the discipline. In a typical political science program, the subject is considered an optional one depending largely on faculty interest to teach the subject. He further noted a general misunderstanding of international law as a subject that is often thought to be a course on the UN.

Gamble suggested five steps to improve receptivity to international law: 1) reach out to campus business programs; 2) take advantage of the internationalization "buzz" presently showing up at many colleges and universities; 3) repackage materials to provide greater flexibility in the time required to cover the material; 4) develop more appropriate teaching materials; and 5) use internet—the ASIL Web Site, for example—as a resource to overcome professional isolation and to exchange teaching ideas.

Joyner emphasized that international law had to fit into international relations materials in order to be effective in that setting, calling for less emphasis on understanding of case development and legal reasoning, and more on the policy character of law and how interests play a role in its formation. His teaching emphasis is on demonstrating law's relevance to current day events and on analyzing its use by decision makers.

Farrow wound up by noting that the sense of professional isolation exists even for those teaching international law in law schools. This is further manifested when students taking international law are reminded that their carefully learned methods for understanding and assessing U.S. law are not appropriate to international law. ♦