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INSTITUT CATALÀ INTERNACIONAL PER LA PAU

ICIP E-REVIEW
Issue 3
MAY 2010

ISSN 2013-5777

EDITORIAL

The Kampala Conference: the review of the Statute of the International Criminal Court

The Review Conference of the Statute of the International Criminal Court was convened by the UN Secretary-General on 7 August 2009, in accordance with the stipulations of article 121 of the Statute, and will be held in Kampala (Uganda) between 31 May and 11 June. The Statute was adopted at the diplomatic conference held in Rome in June and July 1998 and came into force on 1 July 2002, after being ratified by 60 States. After the recent ratification by Bangladesh, there are 111 States Parties to the Statute.

The Kampala Conference will take place at a time when the Court has begun the first trials relating to the situation in the Democratic Republic of the Congo: the case of Thomas Lubanga Dyilo, founder of the Union of Congolese Patriots (UPC) and the Patriotic Forces for the Liberation of Congo (FPLC), who is accused of the war crime of forcible conscription of child soldiers; and those of Germain Katanga, ex-commander-in-chief of the "Patriotic Resistance Force in Ituri" (FRPI), and Mathieu Ngudjolo Chui, an Army colonel and former commander of the militia of the National Integrationist Front (FNI) and the Patriotic Resistance Force in Ituri (FRPI), accused on various charges of crimes against humanity (murder, rape and sexual slavery of women) and war crimes (apart from the above, forcible conscription of child soldiers to participate actively in hostilities, attacks against the civil population and looting).

The choice of Uganda is no coincidence. It was not only one of the first African States to ratify the Statute, but was also the first State (on 29 January 2004) that asked the Court's Prosecutor to investigate a situation - that of Uganda itself – in which crimes which were within the Court's competence appeared to have been committed. The choice of an African country is also an attempt to respond to the harsh criticism that it has received from the continent, centered on a perceived bias against Africa at the International Criminal Court. Indeed, the five investigations opened to date by the Court affect African countries (Democratic Republic of the Congo, Uganda, Central African Republic, Sudan and Kenya). However, the Prosecutor is also closely monitoring the situation in other countries: Afghanistan, Colombia, Côte d'Ivoire, Georgia and Palestine.

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From Nuremburg to Rome: The importance of the International Criminal Court for the former Yugoslavia in the process of creating and consolidating International Criminal Justice

Héctor Olásolo Alonso
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Almost sixty-five years ago, on 11 November 1946, the International Criminal Tribunal in Nuremburg handed over its verdict on the case against twenty-three of the political and economic leaders of the Nazi regime, who were accused of embarking on a war of aggression and systematically committing war crimes and crimes against humanity during that war. One year later, the International Military Tribunal for the Far East gave its verdict on the criminal liability of the main Japanese political and military leaders for the massive atrocities committed by the Japanese armed forces during the Second World War.

At that time - when the Universal Declaration of Human Rights, the Convention for the Prevention and Punishment of the Crime of Genocide, and the Geneva Conventions were being written - nobody would have imagined that the world would have to wait for almost fifty years for the international community to establish a new International Criminal Court with jurisdiction to investigate and judge the most serious crimes for the international community.

However, the advent of the Cold War completely frustrated the plans to create an International Criminal Court that were being prepared by the International Law Commission in 1949. Unfortunately, it was necessary to wait until the symbolic fall of the Berlin Wall in 1989 and the subsequent collapse of the Soviet Union before the voices that had been clamoring for an international criminal justice system for almost half a century were once again heard, after the Cold War was over.

It was in this context that the United Nations Security Council, in Resolution 827 of 25 May 1993, created the International Criminal Tribunal for the former Yugoslavia (hereinafter the "Tribunal for the former Yugoslavia") in order to investigate and judge the serious violations of human rights and international humanitarian law caused by the radicalism and intolerance that came to light in the late 1980s and early 1990s among several nationalist movements that emerged in the former Yugoslavia after the death of Tito in 1980.

As a result, international criminal justice was once again employed - albeit by a legal body with a temporary mandate and with a jurisdiction limited to the territory of the former Yugoslavia (hence its description as an "ad hoc" court) - to facilitate reconciliation between the various national and religious groups, who had lived together in peace and relative prosperity after the bloodshed they had previously experienced during the Second World War, but had returned to it in the early 1990s.

Whether the investigations and judgments of the Tribunal for the former Yugoslavia have succeeded in facilitating reconciliation between the various national and religious groups that inhabit the region is something for sociologists and political scientists to assess. Of course, this task has not been easy, as the Tribunal for the former Yugoslavia was created in the middle of the pandemonium of the conflict, and the individuals being investigated were often considered war heroes. Furthermore, its creators deprived it of the basic tools for making any type of reparation to victims apart from seeking the truth and punishing the leaders responsible for the atrocities committed. In addition, its work during its first ten years of existence, in terms of raising the profile of its activities among the inhabitants of former Yugoslavia, was very limited.

However, despite these limitations, it must be acknowledged that the Tribunal for the former Yugoslavia has played a unique role in the development of international criminal justice, constituting a link between the first efforts by the Tribunals of Nuremburg and Tokyo to construct a true international criminal justice system, and its consolidation with the approval of the Rome Statute of the International Criminal Court in 1998. This Statute enabled a permanent Court committed to universality, with jurisdiction over the most serious crimes against the international com-

munity - genocide, crimes against humanity, war crimes, and once it has been defined, the crime of aggression - to begin work on 1 July 2002.

The current situation would undoubtedly have been difficult to achieve without the creation of the Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda in 1993 and 1994 respectively, based on the general principles contained in the rulings of the International Criminal Tribunals of Nuremburg and Tokyo, a jurisprudential body on the factors defining international crimes, and the types of perpetration and participation by political and military leaders in committing these crimes, to give just a few examples.

Likewise, the work of the Tribunal for the former Yugoslavia has shown that despite the initial difficulties in terms of legal cooperation and the protection of witnesses, if there is a will, the international community can find the necessary measures to encourage affected States to cooperate with international criminal justice in the arrest and transfer of accused individuals who have held political and military posts at the highest level. The arrest and transfer to the Tribunal for the former Yugoslavia of Slobodan Milosevic, Radovan Karadic, Moncilo Krajisnik, Bijbiana Plavic, Milan Milutinovic, Moncilo Pericic, Dragoljub Ojdanic, Ante Gotovina and Sefer Halilovic, to name just a few examples, are undoubtedly very important precedents considering that unlike the Second World War, there were no victors or vanquished in the former Yugoslavia, due to the Dayton Accord of 1995, which ended a conflict that had begun in the second half of 1991.

Although Ratko Mladic, ex-commander in chief of the Bosnian Serb armed forces and the presumed architect of the design and implementation of the extermination of 7,000 Bosnian Muslims after the takeover of the Srebrenica safe area has yet to face justice, the arrest and transfer of Slobodan Milosevic to the Tribunal for the former Yugoslavia in late 2000 significantly changed the perception that top-level political and military leaders can only be subject to international criminal justice after being subjected to a prior military defeat.

This change of perception undoubtedly played an important role in the subsequent arrest and transfer of Radovan Karadzic to the Tribunal for the former Yugoslavia, of Charles Taylor (ex-President of Liberia) to the Special Court for Sierra Leone, and of Jean Pierre Bemba (ex-Vice-president of the Democratic Republic of the Congo) to the International Criminal Court. The recent issue of an arrest warrant against Omar Al Bashir, the current President of Sudan, due to his presumed criminal liability as the architect of the crimes against humanity and war crimes committed by the Janjaweed militias and Sudanese armed forces is no less than another example that today, international criminal justice cannot be ignored, even by Heads of State in office, at the peak of their political and military power in a country with substantial energy resources.

Finally, even in areas in which the work of the Tribunal for the former Yugoslavia has shown its shortcomings, such as its lack of restorative justice initiatives and the limited impact of its public awareness and dissemination activities, its work has been very important in enabling the negotiators of the Rome Statute and the legal operators of the International Criminal Court to adopt the measures necessary to ensure the participation of victims in the criminal proceedings taking place at the Court, to establish a comprehensive system of reparations (including a reparation fund with donations from States, organizations and individuals so that reparation to the victims does not exclusively depend on assets confiscated from the guilty parties), and to prioritize the raising public awareness and dissemination of the Court’s work in the regions where it carries out its investigations and trials.

The topics to be submitted for discussion at the Kampala Conference

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The Kampala Conference, at which the 111 States Parties to the Rome Statute can participate and vote, will consider various issues in the form of amendments to the Statute.

Of the amendments that will be submitted for debate, the most important refers to article 5.2 of the Statute, concerning the inclusion of a definition of the crime of aggression. It was impossible to reach agreement on this point in 1998, and the outlook is no better today. The text proposed by Liechtenstein, as President of the Working Group on the crime of aggression (proposal for a new article 8 b)) which has been working during this period, is a text that includes several options. The disagreement lies not in the definition of the crime of aggression itself, as there is agreement on attributing it to "planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations." As regards the contents of the concept of aggression, there is an agreement to use the stipulations of resolution 3314 of the United Nations General Assembly, of 14 December 1974. The controversy is related to the function of the Court (a judicial body) and that of the UN Security Council (a political body), to which the United Nations Charter attributes the competence of determining the existence of an act of aggression (proposal for new article 15b)), and specifically, whether the Court can ascertain the existence of a crime of aggression, or whether this is subject to the need for a prior assessment by the Security Council in this regard. The worst of the options, from the point of view of the Court's judicial independence in investigating similar situations that could be dealt with on an equal terms due to the political nature of the Security Council, is the one that reads: "In the absence of such a determination, the Prosecutor may not proceed with the investigation in respect of a crime of aggression". It should be borne in mind that three of the permanent members of the Council (the United States, Russia and China) are still not States Parties to the Statute. This type of option would be worse than postponing the definition of the crime.

Another of the amendments covered in the same Statute is the review and possible deletion of article 124, which allows a new State Party to opt for excluding from the Court's jurisdiction war crimes related to it for a period of seven years. This possibility has only been used by France (who waived it in 2008) and by Colombia (the seven years expired on 1 November 2009).

The other amendments refer to the inclusion of new types of crime or new crimes in the competence of the International Criminal Court. Belgium has presented an amendment, with the support of Argentina, Austria, Bolivia, Bulgaria, Burundi, Cambodia, Cyprus, Germany, Ireland, Latvia, Lithuania, Luxembourg, Mauritius, Mexico, Romania, Samoa, Slovenia, and Switzerland to extend three types of war crime already stipulated for international armed conflicts to non-international armed conflicts (article 8.2.b, items xvii to xix), referring to the use of poison or poisoned weapons; the use of asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices, and the use of bullets which expand or flatten easily in the human body.

Mexico has presented a specific amendment on the inclusion of the use of nuclear weapons or the threat to do so as a specific war crime. The Netherlands has proposed a repetition of the procedure used with the definition of aggression, but with regard to a new crime of terrorism. This would involve including a new item e) (the crime of terrorism) and a new section 3 in article 5. A working group will prepare a definition of the concept of terrorism before the crime became operational before the Court and this would only occur when the definition was approved at a subsequent conference of the States Parties.

Trinidad and Tobago has proposed inclusion of a new crime in article 5: international drug trafficking. The proposed definition suggests that the crime, of which there would be various types, would fall within the jurisdiction of the International Criminal Court only when it "poses a threat to the peace, order and security of a State or region".

Finally, Norway has presented an amendment aimed at facilitating international cooperation in adapting penal facilities where people condemned by the Court to have to serve their sentences, in order to avoid them having to be concentrated in the most developed countries, as occurred in the cases of the international criminal courts for ex-Yugoslavia and Rwanda.

Apart from the debate on amendments to the Statute, other political considerations that have made this early phase of the International Criminal Court a complicated one will also be considered.

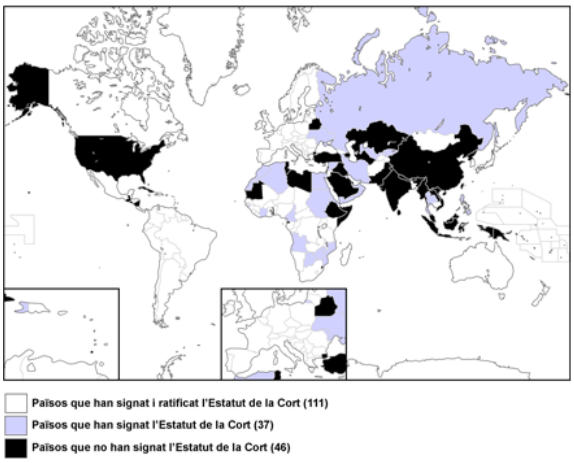
These included the unfortunate role played by the Security Council in the case of Darfur, in which after submitting the situation for investigation, it received the warrant for the country's president's arrest with astonishment and reluctance, and has to date been unable to exert sufficient pressure on Sudan for that country to co-operate with the Court.
Another of the difficult issues that the States Parties have to discuss is the effect of the unilateral Declaration by the Pa-

lestinian National Authority of its acceptance of the Court's competence, which was formalized on 22 January 2009, on a retroactive basis and with effect from 1 July 2002. The acceptance of this declaration issued by the only internationally recognized representative of the Palestinian population and territory is equivalent to that presented by a "State", and according to article 12.3 of the Statute this would extend the competence of the Court to crimes committed in the territory or by Palestinians, and especially to the attacks by Israel on the Gaza Strip in December 2008 and January 2009. Should this be interpreted otherwise, this would mean that there is an area and certain people in the world with no international representation, and therefore that the protection of the International Criminal Court would not be applied to the territory and population of Palestine until the creation of a Palestinian state. In this sense, an interpretive declaration by the State Parties who maintain that they are committed to the creation of a Palestinian State, on making the Palestinian National Authority equivalent to a State, for the purposes of the Statute of the International Criminal Court, would be of great legal value from the point of view of preventing impunity for crimes committed in the Gaza Strip documented in the reports by Amnesty International, Human Rights Watch and the committee of experts appointed by the League of Arab States and the United Nations Human Rights Council.

For more information:
International Criminal Court Website (http://www.icc-cpi.int/)
International Criminal Court Coalition Website (http://www.iccnow.org/)
Kampala Conference Website (http://www.iccuganda2010.ug/)

The geography of the International Criminal Court

Pablo Aguiar
ICIP expert



The International Criminal Court (or the ICC) has a universal commitment. However, after the adoption of the Court Statute, in 1998, it took four years to obtain the 60 ratifications necessary for its entry into force, in July 2002. 111 states have signed and ratified the statute, 37 countries have signed it but have yet to ratify it, and 46 countries have done neither. As the map below shows, there is a great deal of imbalance in the geographic distribution.

The region most obviously favorable to the Court is Western Europe. With the sole exceptions of Monaco and the Vatican City, all the countries are party to it. The response in Central and Eastern Europe is less unanimous: there are 17 countries that are party to it, and seven signatories who have not ratified it, including the Russian Federation. There are also five countries that have yet to sign or ratify it, including Turkey and Belarus.

The next region in terms of members of the Court is America: all the countries (25) are members, except for four Caribbean states who have signed but not ratified it, and another six who have not signed it, including the USA, Cuba and some Central American countries. The case of the USA is unusual, as it signed the treaty on the last day of President Clinton's term of office. However, in May 2002, during the presidency of George W. Bush, the USA sent a letter to the UN Secretary-General withdrawing its signature. Israel did the same a few weeks later.

Making a geographical distinction in Africa is easy: the sub-Saharan countries are mostly in favor of the Court, as can be seen by the large number of ratifications (30); this is despite the failure of some countries to ratify it (11), and the fact that some that have not signed it (7). However, in North Africa there is not a single member state of the Court; some countries (4) have signed and others (4) have not. The situation is very similar in the Middle East, where only Jordan is a member country of the Court.

The rest of Asia and Oceania are also mostly opposed to the ICC. Only 14 countries - including Australia, Japan, New Zealand and South Korea - have signed and ratified the treaty; only three states are awaiting ratification. Finally, almost half the world's countries that have not signed or ratified are in these continents (23 out of 47).

Action by the International Criminal Court:

A geographical overview of the countries where the ICC has taken action is striking: the four cases begun so far, as well as the one being considered, apply to Africa:

Democratic Republic of the Congo: This became the first case investigated by the Court when the prosecutor Moreno-Ocampo threatened to begin enquiries. In November 2003, the Congolese authorities asked the Court to intervene, making it into a case filed by a member country of the ICC. The accusations are against four commanders of various rebel groups in the east of the country.

Uganda: In December 2003, the President of Uganda asked the prosecutor to investigate the actions of the rebel forces called the Lord's Resistance Army. The accusations were presented against four commanders of this guerrilla force.

Central African Republic: This is the first case undertaken in which sexual crimes exceed the number of murders. The Central African Republic government referred the case to the prosecutor. The first accusation is against Jean Pierre Bemba, ex-vice president of the Democratic Republic of the Congo. The charges against Bemba relate to his time as leader of the Movement for the Liberation of Congo, and he is accused of invading the Central African Republic in order to provide support for ex-president Patassé:

Kenya: In November 2009, the prosecutor asked the Pre-Trial Chambers for permission to begin work on the case on an ex motu basis. The Chambers recently approved the investigation.

Some conclusions may be drawn regarding the geographical scope and the actions carried out by the ICC:

The Court is not a universal tribunal: neither the world's most powerful country nor the most populous continent are areas favorable to the ICC. North Africa, the Middle East, the rest of Asia and Oceania are regions where the member countries of the Court are in a minority or even an exception. It is necessary to work towards a world in which an overwhelming majority of ICC Member States make the pressure involved in remaining outside the court heavier than that involved in ratifying the treaty.

Meanwhile, three of the five cases currently under way are the result of requests by the governments concerned. The subsidiary character of the ICC is mentioned in the Rome Statute, but it was not originally considered that its main task would be to provide support for justice administrations unable to judge the serious crimes committed within their own territory. Despite not sitting in judgment on dictators, it will be a positive development if it acts - in whatever way - against impunity. However, the Court's bias towards Africa is still surprising ... all are serious violations only committed on that continent?

On the definition of aggression

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The Statute of the International Criminal Court left open the definition of the crime of aggression due to the major disagreements between those parties seeking to restrict it, and subject its application to the prior control of the Security Council, and those who wanted a broader definition and freedom for Criminal Court to prosecute offenders. The Rome Conference ended by establishing a working group to continue the debate on the question.

In the light of the authoritative definition of aggression included in the appendix to resolution 3314 (XXI) of the General Assembly, there was no shortage of proposals to define a crime according to the generic terms in article 1 of that definition (worded similarly to article 2.4 of the United Nations Charter); or to copy it, including the indicative list of acts of aggression in article 3, or even to extend it. In view of these proposals, the States attempting to impose absolute control by the Security Council on the Court's actions once again proposed more restrictive definitions for the crime.

An option limited to the *war of aggression*, suggested by Russia, did not meet with the agreement of the other permanent members of the Security Council. In its favour was the fact that it was the *crime against peace* prosecuted in Nuremburg (and in Tokyo), the only one which according to its sponsors could be claimed to have a customary legal nature that can be defended *erga omnes*. However, it did not take into consideration the changes in international rules on the prohibition of the threat or use of force in article 2.4 of the United Nations Charter which in terms of individual criminal liability, made redundant the definition of aggression agreed upon in 1974 (res. 3314-XXI), upon which the proposals of a majority of countries were based.

Another restrictive option was presented by Germany, which was an attempt to limit the crime to armed attack, with the objective of *military occupation or territorial annexation*. If this point of view had been accepted, the remote destruction of a country or its destruction from the air without the intention of setting foot in it would not be liable to criminal prosecution. By coincidence, this proposal was formulated a few months before the aerial bombardment of Serbia by some members of NATO, including Germany. Germany subsequently maintained that the crime of aggression presupposed a *large-scale* armed attack against the territorial integrity of another State, *manifestly* unjustified in international law. It thereby aimed to emphasize the importance or seriousness of the attack, and its undoubted illegality, two considerations that were also present in the proposals by other States. It would be interesting to consider how some of the proponents of these definitions describe armed attacks like the one by Israel on the Gaza Strip in January 2009.

The idea of the *threshold* after which aggression becomes a crime is reasonable in itself, and all the proposals mentioned here can be considered as manifestations of it. However, they may also be redundant to the extent that the *importance* and *seriousness* of the aggression:

1. is implicit in the types of article 39 of the Charter of the United Nations, which mentions the *act of aggression* after the *breach of the peace*;
2. is stated in res. 3314 (XXIX), according to which “the fact that the acts concerned or their consequences are not of *sufficient gravity*” are relevant circumstances for the Security Council to conclude “that a determination that an act of aggression has been committed would not be justified”; and
3. is also mentioned in the Statute of the Criminal Court, when it affirms its jurisdiction over *more serious* crimes.

Is the aim now to suggest that only the most serious acts involved in the most serious crimes are to be subject to the Court’s jurisdiction? Or rather - something which seems obvious - that there are uses of force prohibited by international law that can be described as aggression only when they cross a given threshold of seriousness, as the International Court of Justice ruled in the case of *military and paramilitary activities in and against Nicaragua*? If this is the case: 1) the act of aggression is the premise of the crime; 2) if there is aggression, there is a crime; and 3) the definition of the crime only requires those who were involved in the aggression, how, and to what extent to be determined.

In view of the imminent Review Conference of the Statute of the Criminal Court (Kampala, May-June 2010), the final report of the Working Group (13 February 2009) made some progress in the definition of the *act of aggression* in terms of determining who commits a *crime*. Article 8 b) of the draft amendment to the Statute of the Criminal Court, which has broad-based support, declares (1) that the *crime* is committed by those who “in a position effectively to exercise control over or to direct the political or military action of a State ... plan, prepare, initiate or execute an *act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations*” (emphasis added). It is therefore a crime by leaders; the attack and violating the Charter is not enough; it has to be done on a large scale. The raising of the threshold over which the act of aggression may lead to individual criminal liability is one of the concessions that have to be made in the interests of consensus.

In order to help the Court to interpret and apply this provision, article 8 *bis*, in section number two, reproduces, the contents of articles 1 and 3 of the definition of aggression in the Appendix to Resolution 3314 (XXI) of the General Assembly in its entirety in successive paragraphs, thereby combining a generic definition with a non-exhaustive list of acts of aggression.

It goes further, and makes a proposal regarding the elements of the crime. This includes: 1) the statement that the description of a violation as “manifest” is an *objective* description; and 2) the requirement to prove that the perpetrator of the crime was aware of the factual circumstances that: a) established that such a use of armed force was inconsistent with the United Nations Charter, and b) constituted a manifest violation of the Charter. However, there is no requirement to prove that the perpetrator has made a “legal evaluation” of either consideration.

Spain and the International Criminal Court

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The Spanish delegation at the Rome Conference, led by the Ambassador Juan Antonio Yáñez-Barnuevo, Spain's current Permanent Representative to the United Nations, played a very active part in the group of countries who promoted what became the final agreement in the creation of the Court.

The Spanish Government ratified the Rome Statute of the International Criminal Court (ICC) on 19 October 2000. The Spanish Parliament had previously authorized the ratification, in accordance with constitutional stipulations, by means of Constitutional Law 6/2000, of 4 October (Official State Bulletin of 5 October 2000). Spain made a declaration by virtue of the option allowed by subsection b) of paragraph 1 of article 103 the ICC Statute, which stated that: "Spain declares that when the time comes, it will be willing to receive individuals condemned by the International Criminal Court, on condition that the length of the sentence imposed does not exceed the longest sentence stipulated for any crime according to Spanish legislation." This takes into consideration the possibility that the ICC might impose life sentences, which are not provided for by current Spanish criminal legislation.

The ICC Statute came into force on 1 July 2002, for the first 60 States that ratified it. There are now 111 States Parties.

To bring into full force the complementary nature that is established between the ICC's jurisdiction and the national jurisdictions, it is necessary for each State Party to ensure that its legislation imputes the jurisdiction to judge the crimes included in the Rome Statute to its national jurisdiction, and that its criminal material laws classify all the offences listed in the Statute as punishable. In the case of Spain, these legislative changes have been made mainly by means of the Constitutional Law 15/2003, which amended the Penal Code (Official State Bulletin of 26 November 2003). The most significant aspects of this law, as regards the ICC, are the changes in the limitation periods for crimes, the definition of torture, the inclusion of crimes against the administration of justice by the ICC, the inclusion of crimes against humanity and some war crimes and the inclusion of the responsibility of superiors and the effects of their orders for crimes committed by their subordinates.

In order to state the various material and institutional aspects necessary to articulate the co-operation between the ICC and Spanish courts, Constitutional Law 18/2003 of 10 December, concerning Cooperation with the International Criminal Court, was adopted (Official State Bulletin of 11 December 2003). Among other stipulations, the Law makes provision for cases in which it is proper to apply for a restriction on the Prosecutor of the ICC, if he/she is considering undertaking an investigation according to article 18 of the Rome Statute, and has exercised or is exercising criminal jurisdiction in Spain as a result of being aware of certain events that presumably constitute crimes under the Rome Statute, or to challenge the competence of the ICC or the admissibility of a case according to article 19 Rome Statute. It also states that only the executive, by agreement of the Council of Ministers, may ask the Prosecutor of the ICC to open an investigation, thereby denying the possibility of initiative to any Spanish legal authority. The law also includes a provision (article 7.2) which has nothing to do with cooperation with the ICC, but instead is an attempt to limit the universal jurisdiction in Spain, by preventing Spanish legal bodies and prosecutors from opening - *ex officio* or after an accusation or action - any proceedings covering events occurring in other States when the presumed perpetrators are not Spanish nationals, if the ICC is competent to judge them, and only provides the initial urgent ruling for which it may be competent.

This measure was completed by Constitutional Law 1/2009 of 3 November, "complementary to the Law for procedural legislation reform for the implementation of the new legal Office, amending Constitutional Law 6/1985, of 1 July, concerning the Legal Power" (Official State Bulletin of 4 November 2009), which severely restricted the possibilities for action which article 23.4 of the Constitutional Law on Legal Power of 1985 conferred on the Spanish High Court in the sphere of the universal prosecution of crimes within the competence of the ICC. Indeed, the current wording says that in order for Spanish courts to be able to become involved, "there must be proof that the presumed perpetrators are located in Spain or that their victims are of Spanish nationality, or have some significant connection with Spain, and in any event, that another competent country and the International Court have not begun proceedings involving an investigation and effective prosecution, where appropriate, of the punishable acts."

As a result, the International Criminal Court can expect very little cooperation from the Spanish jurisdiction when it needs it most, i.e. with regard to the prosecution of crimes involving the authorities of States that are not Parties to the Rome Statute, committed in their own territories and against their own nationals.

Proposal on the amendments on weapons and projectiles in the statute of the International Criminal Court

The Centre for International Humanitarian Law Studies of the Spanish Red Cross (CEDIH)

In July 2009, the Centre for International Humanitarian Law Studies of the Spanish Red Cross (CEDIH) produced a proposal for amendments to the Statute of the International Criminal Court concerning weapons and projectiles, which we reproduce here. This can be compared with the current wording of the Statute at www.icc-cpi.int/Menus/ICC/Legal+Texts+and+Tools/Official+Journal/Rome+Statute.htm.

I. INTRODUCTION

Article 8, 2 b), section xx of the Rome Statute of the International Criminal Court says "war crimes" are: "Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts":

xx. Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123;

In view of the imminent (Uganda, May 2010) Review Conference of States Parties to examine the amendments to the Rome Statute, this study and proposal is limited to the corresponding Amendments concerning weapons and projectiles, the use of which in international armed conflicts constitutes a war crime, and the contributions of other Amendments relating to the same subject in the sphere of non-international armed conflicts.

During the production of this report, the following basic criteria have been taken into consideration:

1. The existence or otherwise of a "complete prohibition" of a weapons or projectiles system in any International Convention or Protocol in force.
2. The existence or otherwise of international humanitarian customs. The publication "*Customary International Humanitarian Law*" (J.M. Henckaerts and L. Doswald-Beck, CICR, Buenos Aires, 2007) has been used for reference purposes.
3. The number of States Parties in the Rome Statute of the International Criminal Court, which are also Party to the specific Convention or Protocol that prohibits the weapon or projectile concerned.
4. The description of the typical action to be incriminated, specifying the employment of such a weapon in the context of an armed conflict, without considering other actions that are also prohibited in some Conventions, such as "the development, production, storage and transfer" or the breach of the "obligation to destroy them", as these actions are not always carried out (or in the case of destruction, are omitted) "in the context of an armed conflict", and therefore sometimes cannot be included in a war crime.

II. AMENDMENT NO. 1, RELATING TO WAR CRIMES COMMITTED IN INTERNATIONAL ARMED CONFLICTS

A. Study of the Proposal for additional Amendment to article 8, paragraph 2, b. War crimes committed in international armed conflicts

1. Chemical weapons (addition of a section xxvii)

The Paris Convention of 13 January 1993, on the prohibition of production, development, use, storage and transfer of chemical weapons and their destruction has been ratified by 188 States. Only 6 States (Angola, Egypt, the Democratic People's Republic of Korea, Myanmar, Somalia and Syria) are not party to the Convention.

All the 110 States Parties of the Statute of the International Criminal Court are Parties to the Paris Convention on chemical weapons. The prohibition on the use of chemical weapons is also undoubtedly part of international humanitarian custom. This custom includes the prohibition of their use in non-international armed conflicts.

2. Biological and toxin weapons (Addition of a section xxviii)

The London, Moscow and Washington Convention of 10 April 1972 prohibits the development, production and storage of bacteriological (biological) and toxin weapons and makes their destruction compulsory. The purpose of this Convention is the complete exclusion of the possibility of bacteriological (biological) agents and toxins being used as weapons (Preamble to the 1972 Convention).

163 States are currently Parties to the Convention. Of the 110 Parties States in the Rome Statute, only 14 (Andorra, Burundi, Central African Republic, Chad, Comoros, Djibouti, Guyana, Liberia, Malawi, Marshall, Namibia, Nauru, Samoa and Tanzania) are not Parties to the 1972 Convention. Furthermore, analysis of the Practice of both the States Parties and non-Parties to the aforementioned 1972 Convention shows that the prohibition of biological weapons is part of customary international law. Not only is there a consolidated international custom, but this custom also includes the prohibition of their use in non-international armed conflicts, with no existing practice to the contrary.

4. Excessively injurious conventional weapons or those with indiscriminate effects

This criminalization is proposed for inclusion in article 8. 2. b) of the Rome Statute, concerning the use of some weapons prohibited by the Geneva Convention on prohibitions or restrictions on the use of certain conventional weapons which may be deemed to be excessively injurious or to have indiscriminate effects, of 10 October 1980.

Non-detectable fragments (addition of a section xxix)

Protocol I of the aforementioned Convention of 1980 prohibits the use of any weapon the primary effect of which is to injure by fragments which in the human body escape detection by X-rays. Although 108 States are Parties to this Protocol, this prohibition is considered part of international customary humanitarian law applicable both in international and non-international armed conflicts, and causes no disagreement on its meaning in practice among States, including those that are not Parties to this Protocol.

The majority of the 110 States Parties to the Statute of the International Criminal Court are also Party to Protocol I of 1980 and 34 States are not.

However, it can be concluded that no official practice contrary to this prohibition has been found, and the use of a weapon that lacks any appreciable military use and causes unnecessary suffering has not been demanded.

Blinding laser weapons (addition of a section xxx)

Protocol IV of the 1980 Convention, approved in Vienna on 13 October 1995, prohibits the prohibits the use of laser weapons specifically designed, as their sole combat function or as one of their combat functions, to cause permanent blindness to unenhanced vision, that is to the naked eye or to the eye with corrective eyesight devices. It is therefore a complete prohibition on this type of weapons. This Protocol was approved by consensus.

94 States are Parties to this Protocol. The majority of the 110 States Parties to the Statute of the International Criminal Court are also Party to Protocol IV of 1995, although 42 States are not. However, they would be obliged by a prohibition that at present exists in customary international law.

B. Conclusion on the proposal for an amendment to article 8.2.b) of the Rome Statute

Amendment no. 1

Additions of the following sections are proposed for article 8, 2, b):

xxvii. Use of the chemical weapons regulated by the Paris Convention of 13 January 1993, on the prohibition of the production, development, use, storage and transfer of chemical weapons and their destruction.

xxiii. Use of the biological and toxin weapons regulated by the Geneva protocol for the prohibition of the use in war of asphyxiating, poisonous or other gases, and of bacteriological methods of warfare of 17 June 1925, and by the London, Moscow and Washington Convention on the prohibition of the development, production and stockpiling of bacteriological (biological) and toxin weapons and on their destruction.

xxix. Use of weapons which lead to injury by means of fragments in the human body that are non-detectable by X-rays, prohibited in Protocol I of the Geneva Convention of 10 October 1980, on prohibitions and restrictions of certain conventional weapons which may be deemed to be excessively injurious or to have indiscriminate effects.

xxx. Use of laser weapons specifically designed, as their sole combat function or as one of their combat functions, to cause permanent blindness to unenhanced vision, prohibited by Protocol IV, approved in Vienna on 13 October 1995, of the Geneva Convention of 10 October 1980, on prohibitions or restrictions on the use of certain conventional weapons which may be deemed to be excessively injurious or to have indiscriminate effects.

III. AMENDMENT NO. 2, CONCERNING WAR CRIMES COMMITTED IN NON-INTERNATIONAL ARMED CONFLICTS

A. Study of the Proposal for the additional Amendment to article 8, paragraph 2, e. War crimes committed in non-international armed conflicts

1. Amendment relating to the use of poison, asphyxiating gases and certain projectiles (addition of sections xiii, XIV and xv)

The proposal is to include art. 8. 2. e), which refers to war crimes committed in non-international armed conflicts, three new sections numbered xiii, xiv and xv, after the crimes currently included. These proposals cover the use of poison and poisoned weapons (xiii), the use of asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices (xiv) the use of bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions (xv).

The proposed text is identical to the current text in force applicable to international armed conflicts, stipulated in the Rome Statute in Article 8.2.b), sections xvii, xviii and xix, which presented no problems and obtained approval for its preparation at the Rome Diplomatic Conference.

2. Amendment relating to chemical and biological weapons (addition of sections xvi and xvii)

This also refers to non-international armed conflicts and proposes adding sections xvi (biological weapons and toxins) and xvii (chemical weapons) to article 8.2. This is consistent with the proposal for Amendment number 1 to the Statute, which contains identical incriminations in the context of international armed conflicts.

3. Amendment relating to excessively injurious conventional weapons and those with indiscriminate effects (addition of sections xviii and xix)

The contents with regard to international armed conflicts are the same as the amendment considered previously, but it refers to non-international armed conflicts and consists of a proposal for the addition of the appropriate sections (xviii and xix) to article 8.2. e) of the Rome Statute.

Support for the amendment is proposed only in terms of its reference to fragments that are non-detectable in the human body (Protocol I of 1980), including section xviii) and to blinding laser weapons (Protocol IV of 1995), which would be section xix), with these added as further sections to article 8.2. e) of the Statute.

B. Conclusion on the Proposal for the additional Amendment to article 8, paragraph 2, e. War crimes committed in non-international armed conflicts

Amendment no. 2

Additions of the following sections are proposed for article 8, 2, e):

xiii. Use of poison or poisoned weapons.

xiv. Use of asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices.

xv. Use of bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions.

xvi. Use of the chemical weapons regulated by the Paris Convention of 13 January 1993, on the prohibition of the production, development, use, storage and transfer of chemical weapons and their destruction.

xvii. Use of the biological and toxin weapons regulated by the Geneva protocol for the prohibition of the use in war of asphyxiating, poisonous or other gases, and of bacteriological methods of warfare of 17 June 1925, and by the London, Moscow and Washington Convention on the prohibition of the development, production and stockpiling of bacteriological (biological) and toxin weapons and on their destruction.

xviii. Use of weapons which lead to injury by means of fragments in the human body that are non-detectable by X-rays, prohibited in Protocol I of the Geneva Convention of 10 October 1980, on prohibitions and restrictions of certain conventional weapons which may be deemed to be excessively injurious or to have indiscriminate effects.

IN DEPTH

INTERVIEW

Interview with Ucha Nanuashvili

Ucha Nanuashvili, the director of the Human Rights Centre of Georgia came to Barcelona last Spring, having been invited by the Institut de Drets Humans de Catalunya to participate in its program about "Forgotten Conflicts". In this interview, he explains the difficulties that Human Rights organizations find when working in hostile environments; about the unique and inspiring campaign of apology towards the communities that have suffered an armed conflict; about the political and social situation in Georgia and about the perspectives of peace processes in the southern Caucasus.

Human Rights Centre is the main human rights organization in Georgia. Could you explain when it was created, how many people work in it and how is it financed?
We started in 1996. In those early days we were all volunteers and the funds were very limited and individual. In 1999 we started to receive financial backing for our human rights educational programs and now we also receive the European Commission's support. We have recently started a project to build a network of human rights organizations; it is a regional programme including the three sovereign states of the southern Caucasus: Armenia, Azerbaijan and Georgia. Comparatively, the situation in Georgia in this aspect is considerably better than in our neighboring countries. Our coordinator in Zugdidi, for instance, is (an) from Abkhazia (he is Georgian), and he is able to cross the border easily, but after the war he is facing serious problems with the security forces in Georgia: they think that he could be a spy, because he has regular contacts with both communities. This man is one of the 23 workers we now have in our offices in four cities. Most of them are Georgian citizens, but we also have people from other countries. That is the reason why our web page (this is web site of the (sorry campaign www.apsni.org) is in four different languages. If an Abkhaz and a Georgian meet, they normally speak in Russian and sometimes in Georgian. Both languages have a common origin: Caucasian, but you have to study in order to be able to understand them.

What are the roots of the conflict between Georgia and the neighboring regions of Abkhazia and Southern Ossetia?
Vladimir Putin, stating that he was acting in favor of Russian citizens, gave Russian passports to the Ossetians and the Abkhaz. This produced a confrontation in this region that led to an opposition against Georgia. Nowadays, the Abkhaz have their own identity cards, but 70-80% of the population in Abkhazia have double nationality; they are also Russian. On the other hand, Georgian society is very militarized. There is universal male conscription lasting one year, and this familiarizes the population with weapons. During the year 2007, the military budget reached 32% of the government's budget, while in 2008 and 2009 it has been stabilized at 22%. We used to have a Ministry for reintegration (formerly known as the Ministry for conflict resolution), with a ridiculous budget, 300.000 dollars per annum, compared to the one billion dollars the Ministry of Defense gets. The problem is that the budget is absolutely confidential. Only five members of parliament have access to the final budget, which is not public. This is only legitimized by the "exceptional" situation I mentioned before and most of the money probably goes straight into Saakhasvili(let's use Government, as Saakashvili is not only one person in this process)'s pockets. War is the only chance for Saakhasvili's political survival and to keep him in power. This explains his interest in preserving this situation, he wants to maintain the feeling that war may be impending and that an emergency government is necessary. Acting, obviously, with emergency measures. Respect for human rights is not a priority when you manage to convince the population that war may be starting any moment. In this sense, the government is spending a lot of money on military equipment for the Georgian army.

What was the situation like in Georgia after the war? Are you optimistic regarding the peace process?
Even though it was horrible, a positive consequence of the war was that Georgian society realized that they had work to do and that they had to oppose war if they did not want it to happen again. In a certain sense, it has helped to prevent other wars from breaking out. Regarding the future, in January 2013 elections will be held in Georgia, even though they could be advanced.

What role does the Geneva process play in the peace process?
It is a governmental initiative. The representatives of the Georgian and Russian government (and Ossetian de facto government) met in order to try and elaborate a common agenda in reaction to the consequences of the war and to advance in the peace process. But both sides use the conflict in their own interest and, without international organizations or a civil society in these countries, if (a) great pressure is not applied, the process will not prosper. I am talking about an internal pressure, but also about an external one. Independent media has to be strengthened. This becomes obvious if you consider that there is a part of the population who believe that Georgia won the last war against Russia. There is no independent nationwide television in Georgia, and the level of propaganda is very high. And there are some independent newspapers, but they have a very low circulation, normally less than 5.000 copies. And the opposition parties are now stronger than a few years ago. Saakashvili lost some of his popularity after the war. But only a small part of the opposition parties support our "Forgiveness campaign". Most of them support quite the opposite. And the civil society is very weak.

Has this situation been the norm since Georgia's independence?
No. Right before the Rose Revolution, civil society was strong in Georgia and we even had some relatively strong independent media. This was a Georgian particularity that distinguished us from our neighbors, like Azerbaijan or Armenia. Now the situation is the exact opposite. Most of the independent media has disappeared, some members of the civil society have been co-opted by the government and they are now MPs, ministers, etc. And there has also been a strategic miscalculation by foreign countries and international organizations, who decided to give their support to the government and not to the country as a whole. For instance, many human rights programs funded by foreigners stopped, because it was stated that human rights no longer needed promoting. All this allowed the government to become more authoritarian. After a few years the donors realized that a lot of human rights promotion had to be undertaken and they started new programs, but it was already too late.

One of the most interesting projects of the Human Rights Centre is the "Sorry" campaign that you mentioned before. What is it about exactly?
This is an old idea; it has its origins in the first demonstrations against the war in Abkhazia in 1992-1993, even though we formally started it in 2007. When Georgia started the war in Abkhazia, we wanted Georgian society to be aware of the negative consequences brought upon them in their own name, and that is why we organize public awareness campaigns through our web page, with information and documentation about those years, photographic exhibitions of the conflict and other activities both in Georgia and in Abkhazia, in order to recover the truth about what happened and to apologize to the victims of the conflict. It is a tough task, because Georgian society is very militarized. Many organizations and political parties called us to state their radical opposition to the "Sorry" campaign. They even held demonstrations during our public events and they also tried to wreck our main office. We have received death threats and all sorts of intimidations, even from representatives of our own government. The situation after the war is slightly different, because we used to be the only organization against the war and the militarization of society and now we are not the only ones. We have the support of small independent radios, like Radio Liberty, and from digital media. Society is starting to consider that it is possible to control the rebel regions with means other than military ones. Now we have more support. In 2007, society as a whole was against our campaigns, and even most of the NGOs would not sign our manifesto against war or support our "Sorry" campaign. There are now more people giving us support, even in Georgian society. And we have a very positive response from the Abkhaz population, especially from those living abroad. After the war, thousands of Abkhaz migrated to places like Germany, Russia and the USA.

Do you think that the position of the EU and the USA has varied after the war? What do you think could be done in Georgia during the Spanish presidency of the European Union?
Until not long ago, Georgian society would see the European Union and the United States in a very similar light. Now there is the perception that there are differences in the way they act. But, answering your question: yes, it has changed, especially in the United States. The Americans had given their full support to Saakashvili; now they are more cautious. They are trying to support all of the country and not only its president. The new Obama administration has brought a new ambassador and a completely new team to the embassy; these changes are seen in a very positive light. In the past, Saakashvili could rely on a full support that he has now –fortunately- lost. And regarding the European involvement in Georgia, it has increased in the recent past, not only on an institutional level, but also from the civil society; giving financial support to the civil society and also trying to back independent media and the civil society. Finally, even though we are aware that there are many problems ahead, we think that during the Spanish presidency of the European Union the trust building measures could be prioritized. For instance, there are some ongoing negotiations in the framework of the Geneva process, but none on a civil society level. Only five years ago, we were capable of holding regular meetings with organizations from Georgian and Abkhaz civil society. This is now practically impossible due to the restrictions in border access. In this sense, we have heard about the programme of the Generalitat de Catalunya in support of Human Rights activists and we think that our own activists could make use of it. It is a possibility we have to explore.

Interview by Pablo Aguiar, Javier Alcalde and Aida Guillén.

PLATFORM

Building peace in towns: Mayors for Peace

Josep Mayoral
Mayor of Granollers. Vice-president of Mayors for Peace

Every year on 6 August, at 8.15 a.m., time stops in the Hiroshima Peace Park, in memory of the victims of the atomic bombing of the city. And every year on 9 August, at 11.02, the city of Nagasaki commemorates the destruction caused by the second bomb dropped on Japan in 1945.

There is a minute's silence for the victims, and a moment to remember the horror of war and an opportunity to listen to the testimony of people who lived through the bombing. The aim of the event is to demand the elimination of the nuclear threat. It is an expression of a commitment to peace.

In December 1945, calculations suggested that over 200,000 people had died as a result of the bombings. New names are added to the list every year. Even today, many people are suffering from the consequences of exposure to the atomic bomb. Those who survived the attack have physical and mental injuries that will accompany them for the rest of their lives. And many of their descendants suffer from serious illnesses.

The elimination of weapons of mass destruction, and especially nuclear weapons, is an objective that is shared by many people who lived through the horror of the explosion, and many other people committed to peace all over the world. In order that a tragedy like theirs should never be repeated, the cities of Hiroshima and Nagasaki have led a movement to show the world their experience and to work towards the complete elimination of nuclear weapons. For some years, *Mayors for Peace* has been working towards the total removal of the nuclear threat by the year 2020, the 75th anniversary of the bombing.

Mayors for Peace is an international organization, which currently has over 3,600 member towns from 135 countries and regions. It is an association of towns that works for peace and disarmament on two levels: by working with governments and international organizations to achieve international commitments that enable them to progress towards a fairer and more peaceful world (by meeting the millennium objectives or fostering all types of disarmament), and working within towns for tolerance, peaceful conflict resolution and education for peace.

The Nuclear Non-Proliferation Treaty (NPT) Review Conference will take place at the United Nations headquarters in New York this May. At the Conference, a great deal of hope will be placed on achieving specific agreements that enable progress to be made towards disarmament. Mayors for Peace will be participating actively, representing millions of citizens who have expressed their desire to live in a fairer, more caring and more peaceful world.

The NPT was signed in 1968 and came into force in 1970, and has three basic pillars: non-proliferation, disarmament and the right to peacefully use nuclear technology. It has been ratified by 189 countries, including the five States recognized as Arms Nuclear States (the United States, Russia, China, the United Kingdom and France), and has not been signed by India, Pakistan or Israel, countries which possess nuclear weapons but which have not acknowledged this. North Korea announced its withdrawal from the Treaty in 2003.

Article 6 of the NPT anticipates nuclear disarmament: "Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a Treaty on general and complete disarmament under strict and effective international control." There has been no subsequent development that has led to this article being implemented.

Many voices are demanding stricter international legislation on disarmament, and specific agreements to abolish nuclear weapons, as stipulated in article 6 of the Treaty. However, although the international community unanimously agrees that nuclear weapons should never be used again, because of their indiscriminate effects, their impact on the environment and their profound consequences for security, the fact is that no agreement on their elimination has been reached.

However, the 2010 Review Conference takes place in a context that is much more favorable to breakthroughs in disarmament. The first is the change in North American politics, emphatically expressed by President Obama in Prague in April 2009. “So today, I state clearly and with conviction America’s commitment to seek the peace and security of a world without nuclear weapons.” The second is the historic resolution by the United Nations Security Council of September 2009, in which heads of state and government made a commitment to working to achieve a world free of nuclear weapons, and gave their support to a broad range of measures for reducing the nuclear threats in the world. And third, and most recently, there is the new START agreement signed between the United States and Russia for the reduction of their nuclear arsenals.

Spain’s President Rodríguez Zapatero emphasized the Conference’s opportunity to take a decisive step forward towards the abolition of nuclear weapons. In his speech to the Assembly of the United Nations on 24 September last year, he undertook to do everything possible, in Spain and the European Union, for the Review Conference to lead to concrete results that would enable us to move towards a world free of nuclear weapons.

Why are towns and mayors participating actively in the NPT Review Conference? Why are we committed to nuclear disarmament? There are various reasons. First, because towns and their citizens suffer from the consequences of conflicts and have been the victims of attacks by weapons of mass destruction. However, above all, because it is the obligation of local governments, the government that is closest to citizens, to work for the common good. And we must not forget the threat that violent conflicts entail to public security and welfare.

How are we working for peace in towns? By promoting tolerance, respect for difference and the peaceful resolution of conflicts within the towns, as well as a clear commitment to action beyond them. Building peace in the local sphere means promoting social cohesion, fostering civic values and preventing conflicts. And at the same time, building a strategy for external relations and networking with other towns that is consistent with our own municipal policies. We have a vital asset: our citizens. We create policies with civil society, because the city is essentially a collective project.

Our ability to respond and the experience accumulated in research on solutions to conflict within the city places local governments in a vital position in terms of networking with other towns, which enables them to exchange experiences and good practices. That is why we must progress in the search for solutions to common problems. We need to work as a network, to move forward with other cities in the world and we have to have shared working areas, to enhance the role of cities and to establish mechanisms that ensure the participation of the local world in international decision-making.

We are aware that the road towards the abolition of nuclear weapons is not an easy one, and that declarations and resolutions are not enough to achieve concrete results. However, we all agree that significant steps have been taken in disarmament in recent months. At Mayors for Peace, we are convinced that if we are able to work on a coordinated basis, with common objectives and clear route maps, we can also achieve an international commitment for the elimination of nuclear weapons.

The boomerang effect of the Garzón case: a setback that can become a victory for the universal struggle against impunity for international crimes

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There has recently been a great deal of talk, and with some justification, about the enormous *injustice* that would be committed if a judge were tried for having attempted to lift the veil which has covered the crimes of Franco's dictatorship since Spain's transition to democracy, and to shed light on the truth about so many direct victims of the dictatorship in Spain.

The mobilization of family members of many of those kidnapped, executed and/or "disappeared" during the civil war and Franco's dictatorship is not something new, but until recently they have been victims not only of a crime, but also of a silence - agreed upon by others, not by themselves - in the name of social peace and national reconciliation which distributed "irresponsibility" on a fifty-fifty basis. The legal embodiment of this enormous millstone which covered up the horrors of the past was undoubtedly the famous Amnesty Law of 1977 [http://www.boe.es/boe/dias/1977/10/17/pdfs/A22765-22766.pdf], which placed the crimes of opinion, association and demonstration on an equal footing with the war crimes and crimes against humanity committed with total impunity by Franco's regime against over 100,000 people, according to figures from the claims made to date.

Various attempts have been made to bury this horrifying fact, which every so often stubbornly emerges like a ghost from the past, and the most recent of these was the "Historic Memory Law" of 2007 [http://leymemoria.mjusticia.es/paginas/es/ley_memoria.html]. Despite its lack of any legal reparations, before it was approved in Parliament there was a bitter and hard-fought debate on the necessity of moving forward and not reopening old wounds that could once again divide Spain, in apocalyptic tones similar to those used by others committing international crimes, who use the same arguments and the same self-amnesties in the name of social peace to avoid the responsibility for their crimes elsewhere. This was a strange attitude to adopt in a democratic parliament, which was simply considering the opening of mass graves in order to identify family members and finally bury them with dignity, as well as a moral compensation - and a financial one where necessary - without drawing any conclusions on the possible value of the mass graves as evidence, or the reopening of any criminal proceedings, and did not (call into) question the force of the amnesty law in these cases.

It is in this context that some of the suits filed by relatives of the victims of Franco's dictatorship based on international criminal law were finally considered by Judge Garzón, as he and other judges in the Court had done with similar accusations for similar acts occurring outside Spain. These other accusations include the Pinochet case [http://www.archivochile.com/Dictadura_militar/pinochet/juicios/DMjuiciopino80021.pdf] – in which the initial investigation was begun by Judge Garcia Castellón and the extradition granted by the British courts was only prevented by a political decision of the then British Foreign Minister Jack Straw; the Silingo case [http://www.derechos.org/nizkor/espana/juicioral/doc/stscilingo.html] – who was condemned to 1,090 years in prison in Spain for his participation in "death flights" in Argentina; the lawsuit filed by Rigoberta Menchú [http://www.tribunalconstitucional.es/es/jurisprudencia/Paginas/Sentencia.aspx?cod=8691] due to the genocide committed in Guatemala – which was readmitted by the Court after the 2005 ruling to that end by the Constitutional Court; or the more recent SS Totenkopf case [http://www.derechos.org/nizkor/espana/doc/klm10.html], concerning atrocities committed in Nazi extermination camps, which are being investigated by the judge Ismael Moreno in Spain's High Court.

Since Nuremburg, the enormous extent of knowledge of the horrors experienced by thousands of innocent people has created a demand for "justice" for the abuses of power by governments and leaders who thought they would never be punished for their acts among the civil society of some countries - which like Spain, presume themselves to be democratic and governed by the rule of law. This was undoubtedly one of the main reasons for the creation of international criminal courts like those for the former Yugoslavia, Rwanda, Sierra Leone, and the International Criminal Court. It is also the reason for the wave of legal actions that have been taking place for some time in courts in various countries that can also guarantee a fair trial for both the accused and also and particularly - for the victims. This is precisely the reason why many of those legal actions are presented in countries other than where the crimes were committed, if the conditions are met, despite the victims' preferences.

The legal basis for all these actions are international laws, according to which international crimes - i.e. genocide, war crimes and crimes against humanity - are not only an attack on everyone who is part of the international community, but also cannot be prescribed or amnestied because of their seriousness. The purpose of these rules is to prevent the legal subterfuges that shelter those who have committed massive and atrocious crimes, and deny their victims the right to justice. This has been unanimously agreed on by all the international authorities that have ruled on this subject, ranging from the ad hoc criminal courts mentioned above, to the Inter-American Court of Human Rights (e.g. in the Barrios Altos case [http://www.corteidh.or.cr/docs/casos/articulos/Seriec_75_esp.pdf]) and the European Court of Human Rights (the Kolk and Kislyiy v. Estonia ruling [http://www.derechos.org/nizkor/impu/kolkesp.html] and the Ould Dah v. France ruling [http://www.cfcpi.fr/IMG/pdf_Ould_Dah_c._France_Conseil_de_l_Europe_.pdf]), under which Spain also has obligations.

The same legal basis has also been used for internal courts when judging international criminals in their own national courts, either for acts committed in their territory (Argentina, Chile, Peru, Estonia) or outside it (France, Israel, Italy and Spain). That is why the allegations by those accused of a possible expiration of law, the non-existence of their crimes in the national penal codes concerned and the possible existence of laws of amnesty which guarantee their immunity have been of no use to them in any of these cases. Interestingly, none of these decisions has led to the oft-mentioned social conflict. Guilty verdicts have at all times been limited to complying with democratic standards and the rule of law in the place where the legal proceedings have taken place, as well as the moral satisfaction of providing or contributing to bringing “justice” to victims who had been ignored up to that point.

This is certainly the reason for the astonishment among advocates of Spanish and foreign human rights after the Spanish Supreme Court gave leave to proceed with a criminal action filed not by the victims of Franco’s dictatorship, but instead by the supporters of that regime, and not because of violations of human rights during that period, but because of an attempt to investigate them.

It is precisely for this reason, despite the current situation, that I am firmly convinced that this criminal action, in the way that it has been undertaken and has developed, will ultimately be a step forward in the struggle against impunity in Spain and the world. This conviction is not the result of hope, but of facts. The unashamed actions by the Falange and the Manos Limpias trade union have achieved in a few days what none of the demonstrations by Franco’s victims had achieved in all these years:

1. They have led to the subject of impunity for the crimes of the civil war and the dictatorship finally being reported, with some disbelief and even indignation, by much of the Spanish and international press (including theThe New York Times [http://www.nytimes.com/2010/04/09/opinion/09fri2.html?ref=opinion], The economist [http://www.economist.com/world/europe/displaystory.cfm?story_id=15875987], Clarín [http://www.clarin.com/diario/2010/04/08/elmundo/i-02175947.htm], Süddeutsche Zeitung and The Guardian [http://www.guardian.co.uk/commentisfree/2010/apr/13/baltasar-garzon-spanish-judge-prosecution], among others);
2. They have mobilized broad-based sectors of the population, who without acknowledging themselves as direct victims of those acts, were angered by the “injustice” of the legal crusade as they did not understand why those responsible for the horrors not only remained unpunished, but were also able to prosecute the man attempting to establish the truth;
3. They have opened up new and imaginative ways of fighting against this impunity, such as using the universal jurisdiction, in which Spain was a pioneer, to prosecute international crimes that are as yet unpunished in this country;
4. As new information emerged from the investigations, victims who had resigned themselves to injustice became mobilized and involved. This in turn led to the correction of what had been the official version of a very murky period in Spain’s history up until that point, and one which has yet to be fully uncovered.

The injustice which is more than can be tolerated moves mountains, and perhaps this is an opportunity that must not be wasted so that the crimes that the Amnesty Law aimed to cover up should not to go unpunished.

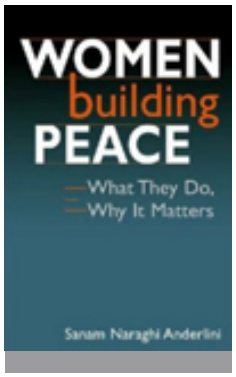
RECOMMENDATIONS

The idea of justice

Amartya Sen. *La idea de la justicia*. Madrid: Taurus, 2010

It is not very common for a Nobel Prizewinner in Economic Sciences to write about philosophy. This author has been challenging the predominant economic model for many years. While this model considers self-interest to be the essential factor in human motivation, Amartya Sen emphasizes the values of humanity. This economist showed that hunger is not a consequence of the lack of food, but instead of inequalities in its distribution mechanisms. He was the driving force behind the development of the Human Development Index at the United Nations. He was the creator of the concept of 'capability'. In other words, a government must be judged on the basis of the specific capabilities of its citizens. The fact that the citizens of a country have the constitutional right to vote means nothing if all the conditions for citizens to exercise their capability to vote are not met, including access to education and the means of transport to polling stations. Only when these barriers have been overcome is it possible to say that citizens can exercise their own personal *choice*.

With this new book, Amartya Sen's contribution to one of the fields which contains the most interesting works by philosophers of our age is nothing less than a milestone in this discipline. The classic theory of justice (Hobbes, Locke, Rousseau, Kant, Rawls) asked what form the most perfect possible institution should take, and reached the disappointing conclusion that "we will never be able to obtain (at) this ideal of justice, so there is nothing that can be done about it". Sen believes in placing the individual at the centre of his theories, and assumes that as social beings, we recognize that the injustices that surround us also affect us. He turns to the best of Adam Smith, Marx and Stuart Mill to ask how we should foster justice, how we can resolve the most flagrant injustices, how we can make the world a little more just, or to be precise, a little less unjust. It seems incredible that no author had ever succeeded in applying the theory of social choice to the benefit of other social sciences in such an effective way. Incredible, but true. And the practical consequences of this way of considering justice and injustice in order to improve the world are potentially infinite.
(J.A.)

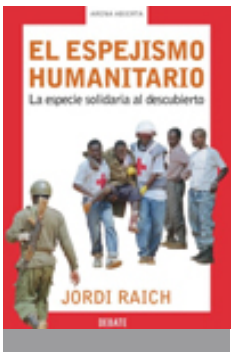


Women Building Peace: What they do. Why it matters

Sanam Naraghi Anderlini. *Women Building Peace: What they do. Why it matters.* London: Lynne Rienner Publishers, 2007.

What is women's part in the construction of peace? Why is it important? These are some of the questions which the author uses to examine women's contributions to the prevention and transformation of conflicts, mediation and peace negotiations, disarmament and demobilization processes and the reintegration of combatants, governance in post-conflict scenarios, transitional justice and reconciliation.

Her work as a researcher, trainer and writer has brought her into contact with women in Rwanda, Sri Lanka, Somalia, Nepal, Uganda, Iraq, Afghanistan, Bosnia, South Africa, Colombia and Palestine, and is the basis for her consideration of the experience of building bridges between the grassroots work by these women and the political sphere and international institutions. This reflection leads to the conviction that the inclusion and empowerment of women in the prevention of conflicts and in peace processes is not an idealism in the midst of international *realpolitik*, but instead is a pragmatic option if the objective to be achieved is sustainable peace.
(E.G.)



The humanitarian illusion: the charitable species revealed

Jordi Raich. *El espejismo humanitario: la especie solidaria al descubierto*. Barcelona: Debate, 2004.

Self-criticism is difficult, and is something that happens very infrequently… and it is necessary. That is precisely what Jordi Raich does in this book. In a sector not used to self-criticism, his reasons and reasonable arguments may be the best antidote to other criticisms occasionally heard of the sector as a whole, which are sometimes vague and generally unfair.

As the author explains, using his own shocking experiences -with an ironic touch- aid workers share a world of epidemics, earthquakes, hunger and war with other groups, including victims, politicians, journalists, soldiers and other aid workers. They often find a way of improving it. However, the situation sometimes ends up being dangerously similar to other worlds, in which corruption, mediocrity, competitiveness, guilt complex and ineptitude create a situation that may be even worse than the one that they found when they arrived. The author sheds light on this shadowy area using his own personal experience. After over twenty years working in the non-profit making industry, he continues to believe that it is an essential and an inevitable way to make progress.

In short, it is a unique work of testimony and reflection, written based on notes jotted down in villages and cities in seventeen countries in both hemispheres. It is necessary because it strengthens the sector and helps us to understand its contradictions and doubts, but also the motivations and virtues of the increasingly numerous and influential workers in our societies.
(J.A.)

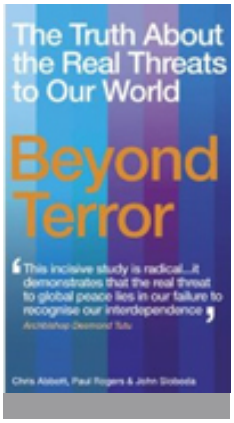
Iran: between the nuclear threat and the Western dream

Tréan Claire. *Irán: entre la amenaza nuclear y el sueño occidental*. Paris: Éditions Robert Laffont, 2006.

In this book, Tréan Claire, an expert in Middle Eastern affairs, gives us a perfect combination of the history and geopolitics of a region in the world that many people believe to be a threat to world peace. She does so by means of a series of reports and interviews, with testimony from Iranians from various social and political perspectives.

Over sixteen short chapters, the author focuses on the region from within, while considering some taboos and clichés about the region in depth, such as the liberation of women, the political system, gender, political and social discrimination, and the attitudes and opinion of civil society on Iran's foreign policy towards the West and specifically towards countries like Great Britain and the United States. She also looks at questions relating to nuclear weapons and the other conflicts in the Middle East.

It is therefore a fascinating book that provides an in-depth view of the country, its needs, concerns and shortcomings, which above and beyond the international political sphere and international relations, is what really most directly affects society, both in Iran and our own.
(R.A.)



Beyond terror: the truth about the real threats to our world

Chris Abbott; Paul Rogers; John Sloboda. *Beyond terror: the truth about the real threats to our world*. London: Rider, 2007.

Four challenges threaten our world: climate change, competition for resources, the marginalization of the 'underdeveloped' global majority, and international militarization. These four challenges are interrelated, and the solution to them is easier than it appears: only the political will is lacking.

Ending our dependence on oil would end the world's leading source of carbon dioxide emissions and reduce international tensions. The growing concern at the impact of radical Islamist terrorism is ironic considering figures that are really alarming like those for deaths from AIDS, malnutrition and pneumonia. The disproportion is horrifying. Not to mention the widening division between North and South, rich and poor, which will in turn deteriorate due to the effects of climate change if an urgent and coordinated response is not implemented in the next five to ten years.

In this publication, the authors analyze each of the four challenges and question whether the international terrorism of recent years is really the biggest threat to world security, underlining the serious conceptual error behind the 'War against Terror' led by the USA after the 9/11 attacks. The alleged Terrorist Threat is nothing more than a policy of preventive war with the self-centered purpose of ensuring its petrol resources and its influence in the Persian Gulf – the 'control paradigm' – an attempt to distract us from the real threats that are really making the world a highly unstable place.

Using the guideline of "curing the disease, not attacking the problem", the authors suggest a series of actions focused on change that will help mobilize the reader and increase political pressure.

Beyond Terror is a study that will prove an easy read for all the worried citizens who are considering the world of politics and geostrategic relations for the first time.
(A.E.)

History of peace and pacifism

Francesc Lluís Cardona Castro. *Historia de la paz y del pacifismo*. Barcelona: ANUE, 2008.

Francesc Lluís Cardona says that there have been many wars in history, but that there have also been many peaces and many pacifists. However, what does being a pacifist mean? Whether it is expressed through a political movement or as a specific ideology, pacifism is opposition to war and other forms of violence. It can be based on moral, religious or pragmatic principles. In any case, from a strictly rational perspective, pacifists are aware of the costs of war and violence and therefore believe in other ways of resolving conflicts.

This essential work considers the historic development of pacifism from its origins, when it was linked to the essence of the great religions, to the major challenges of today, including the modern period, wars and the post-Cold War era, the formulation of human rights, the nuclear threat and the relations of peace with development and climate change. The final chapter of the book includes biographies of a series of inspiring characters, some of which are very well-known, such as Gandhi, and others less so, such as Raul Follereau, who dedicated his energies to dignifying the life of people who suffered from leprosy.

Like the author says, it is an open list, and each reader can complete it according to his or her own opinion. Personally, I would have included Lazar Ludwik Zamenhof (1859-1917), the inventor of Esperanto, the universal second language designed to facilitate communication between peoples; Óscar Romero (1917-1980), the Archbishop of El Salvador, a defender of the oppressed and an enemy of (para)military violence; and Lluís Maria Xirinacs i Damians, (1932-2007), a Catalan theologist, philosopher, politician ... and pacifist, who showed us how to take non-violent action against Franco's dictatorship. They are all worthy of imitation, even in a small way, because as Francesc Lluís Cardona says, " we are all involved in the work of building a fairer and more caring world".
(J.A.)

Coalition for the International Criminal Court

www.iccnow.org

The Coalition of NGOs for the International Criminal Court (CICC) includes over two thousand organizations that are coordinated in supporting the work of the International Criminal Court (ICC). They came together in order to achieve a fair, effective and independent ICC. They have made a major contribution to each of the various phases involved in the process, ranging from the preparatory committee of the Conference of Rome (1996-1998) to the current Assemblies of the States Parties.

The complete website of the Coalition – available in English, French, Spanish and Arabic - includes detailed information on the Coalition's campaigns, which are part of a strategy for public information and awareness-raising. The CICC is working to make the Court more effective in this area. Of particular interest are the publications and resources available providing information on all current news, listed by region and subject. It also includes academic reports and documents, audiovisual resources, draft legislation, debates, governmental and intergovernmental documents.

In short, it is a crucial effort by the civil society -on an international scale- to make the work of the CICC have a positive effect on legal systems, and thereby to improve the protection of human rights everywhere.
(M.S.)

NEWS

INTERNATIONAL NEWS

Criticism of a commercial agreement with Israel by NGOs

The NGOs have played a central role in the campaigns over the last two decades to increase control over Spanish arms exports, and they have criticised the commercial agreement between the Spanish company Aries Ingeniería y Sistemas, S.A., and Goldtech Technologies, a supplier to the Israeli army and ministry of defense, for the future export of high technology for unmanned flights like those used by Israel in recent attacks against Gaza and Lebanon, including Operation Cast Lead. The Spanish company confirmed the agreement on the website Periodismohumano.

Israel is on the list of "destinations of serious concern" for arms manufactured in Spain, which according to NGOs including Fundació per la Pau, Intermon Oxfam, Amnesty International and Greenpeace, do not meet the requirements of Spanish law regarding the control of arms exports. In other words, they provide no guarantee that the weapons will not exacerbate latent conflicts or tensions, and will not be used for internal repression or to commit human rights violations in the destination country.

With regard to Operation Cast Lead, which took place at Christmas 2008, the Goldstone report, supported by the United Nations, stated that Israel had committed war crimes in Gaza, including attacks against children, a pregnant woman, a man on a motorcycle, men loading oxygen into a van and a police parade. According to Human Rights Watch, at least 29 civilians, (including eight children) were killed by these aeroplanes during the operation, which lasted three weeks. Amnesty International has documented the death of 42 civilians due to unmanned flights in Gaza.

In a joint declaration, the NGOs criticized the government's ongoing failure to comply with the Arms Trade Law approved in 2007. Among the sales in the first six months of 2009 are those to other countries with a very poor history in terms of human rights, including Colombia, Morocco, Sri Lanka, Thailand and Guinea.

Website link for more information: http://amnistiainternacional.periodismohumano.com/2010/04/30/espanael-gobierno-sigue-sin-cumplir-la-ley-de-comercio-de-armas-arpobada-en-2007/

New bilateral agreement between the USA and Russia to reduce nuclear weapons

The USA and the Russian Federation signed an agreement to reduce their nuclear arsenals on 8 April. The new agreement replaces the Strategic Arms Reduction Treaty (START) signed in 1991. Despite being insufficient, this reduction covers around 30% of the countries' respective arsenals. It will be significant if this step forward is complemented by other decisions, such as complying with the agreement prohibiting nuclear testing. Meanwhile, ratification of the treaty may be difficult, especially on the North American side, taking into account the political influence of the military-industrial complex.

The agreement aims to reduce the number of nuclear warheads possessed by each country to a maximum of 1,550. Furthermore, the two countries may only have 800 "strategic vectors", which are the devices enabling launches over long distances, such as intercontinental missiles, submarines and strategic bombers. Most of these devices - around 700 - may be deployed platforms. The agreement is a good prelude to the review of the Nuclear Non-Proliferation Treaty.

Rafael Grasa, the ICIP President, was interviewed on Spain's TV3 and TVE television channels about the agreement:
Website link to the TVE interview. 24h channel: http://www.rtve.es/mediateca/videos/20100408/mundo-24-horas-entrevista-a-rafael-grasa/740258.shtml
Website link to the TV3 interview. 3/24 channel: http://www.tv3.cat/videos/2825690/Un-futur-amb-menys-armes-nuclears

Human Rights Watch condemns the government of Iraq

On 27 April, Human Rights Watch published a report condemning systematic and brutal violations of human rights in secret Iraqi prisons. The methods of interrogation referred to in the report were used at Muthanna prison in Baghdad, under the jurisdiction of the Military Office of Prime Minister Nuri al-Maliki.

Human Rights Watch interviewed 42 people who talked about the conditions TO which they were subjected (to), and gave detailed descriptions of the harassment and torture they suffered in order to force them to sign confessions to crimes such as complicity with terrorism or being Baathists.

The current situation in Iraq is influenced by the recent elections and the very tight margin of victory for Prime Minister Al-Maniki, and there is the danger that tensions may exacerbate tribal conflicts and lead the country into a new cycle of violence.

ICIP NEWS

The ICIP will be present at two major conferences in 2010

Two major international treaty review conferences are taking place in 2010. The review conference of the Nuclear Non-proliferation Treaty will be held in New York from 3 to 28 May. Rafael Grasa, the ICIP President, will be participating in meetings during the first few days of the conference.

Likewise, the review conference of the Rome Statute of the International Criminal Court will be held in Kampala (Uganda), between 31 May and 11 June, and has been analyzed in depth in this issue. Antoni Pigrau will head the ICIP delegation that will attend the meeting, thanks to its accreditation directly with the Criminal Court.

Training session: 'Nuclear weapons, peace and international policy'

This is the first session in the "Tools for analysis" series, with Rafael Grasa i Hernández, president of the ICIP and lecturer in International Relations at the UAB, who will be present as an observer at the initial sessions of the Review Conference of the Treaty on the Non-Proliferation of Nuclear Weapon Treat, which will be held in New York in May. This session will be entitled Nuclear weapons, peace and international policy. The event will take place on Monday, 17 May, from 5 pm to 8 pm, in the Sala d'Actes of the Col•legi de Periodistes de Catalunya (Rambla de Catalunya, 10. Barcelona).

The session will consider the new nuclear agenda and international politics: arsenals, geopolitics and the policies of the nuclear states; the new START treaty and other arms limitation and/or multilateral initiatives; the prohibition of nuclear tests and the problem of security of arsenals; non-proliferation: the major topics for debate and the outlook for the New York Review Conference; disarmament and arms limitation campaigns on the subject, among others.

PDF of the invitation: http://www.gencat.cat/icip/pdf/invitacio_17demaig.pdf.

A new Working Paper is published

Also available on the ICIP website is the study by Roger Suso entitled "Territorial Autonomy and Self-Determination Conflicts: Opportunity and Willingness. Cases from Bolivia, Niger, and Thailand". The Catalan version of the text, translated by Albert Agut, will soon be available. We would also like to announce the next issues in the collection of ICIP Working Papers " Inter-American Court, Crimes against Humanity and the Construction of Peace in South America", by Joan Sánchez Montero and "Living in the Wrong Neighborhood: State failure and its implications for neighboring countries. Cases from Liberia and Afghanistan", by Alberto Fernández Gibaja. All the working materials are published on our website, and translated into several languages.

Roger Suso. "Territorial Autonomy and Self-Determination Conflicts: Opportunity and Willingness. Cases from Bolivia, Niger, and Thailand": http://www.gencat.cat/icip/pdf/WP10_ANG.pdf
ICIP Working Papers: http://www.gencat.cat/icip/cat/icip_wp.html

Grants and aid

Two grants and aid announcements were resolved in April: grants for research work in the field of peace, and grants for the training phase of new research personnel in 2000. The applications were assessed by the AGAUR guidelines based on the guidelines and criteria established by the ICIP. The list of the individuals selected is available for consultation at: http://www.gencat.cat/icip/cat/beques_i_ajuts.html

In order to ensure the broadest publicity possible, in the future the ICIP will include these grants in the Catalonia Research Plan blog.

Advice to the Welsh National Assembly

On 27 April, the ICIP advised the Welsh National Assembly on creating a similar institution in Wales. The advice session took place in the form of a videoconference, enabling Tica Font, director of the ICIP, to explain the Institute's creation, its institutional relations and its budget in detail. Members of the assembly -Andrew RT Davies, Mike German and Bethan Jenkins- subsequently asked questions to clarify some points. The transcription of the videoconference will soon be available on the Assembly's website, and its members were very grateful for the ICIP's willingness to share the details of its implementation.

The ICIP wil be present at the Nuclear Non-Proliferation Treaty Review Conference

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Rafael Grasa, ICIP President
Tica Font, ICIP Director
Antoni Pigrau i Pablo Aguiar, Issue Co-ordinatorsw
Guifré Miquel, E-Review co-ordinator
Design/Layout: ComCom

This issue involved the participation of:
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