

A WORLD COURT FOR TODAY'S WORLD

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On June 21, the Tribune published the second of three editorials opposing the establishment of an international criminal court. Seldom has an editorial been so misinformed. It seems that the editorial board has neither read the draft statute nor understood the issues.

The establishment of a permanent international court has been in the making since World War I. During that period, the international community has established five ad hoc investigative commissions and four ad hoc tribunals. Quite clearly this selective prosecutable approach is not the best way to bring major perpetrators of the world's most heinous crimes to justice. A permanent court, with a well-defined statute and due process, is what the world community expects because that is what all societies have developed in their national legal systems.

The United Nations has addressed this need since 1947, but it was not until 1994 that its efforts appeared to bear fruit. The obvious reasons were that the Cold War had ended and the world community looked forward to a new world order based on justice, particularly after the recent tragedies of Cambodia, Yugoslavia and Rwanda.

Between 1995 and 1998 a committee set up by the General Assembly prepared a draft statute that it completed on April 3. The draft statute, carefully worked out with the full and effective participation of more than 100 states, consists of 12 parts, some 120 articles contained in more than 100 pages of detailed text, and it was further refined at the Diplomatic Conference in Rome, June 18 through July 17.

As contemplated, the court's jurisdiction is limited to three crimes: genocide, crimes against humanity and war crimes. There is also a proposal to include aggression, but it is not yet fully developed, owing to uncertainty as to the role of the United Nations Security Council.

The three core crimes are well established in international law, and their definitions in the draft statute reflect that law. The same core crimes also are contained in the statutes of the tribunals for the former Yugoslavia and Rwanda established by the Security Council. States are in complete agreement with the formulation of genocide and there are only minimal differences concerning the definition of crimes against humanity.

The contentious question is that of war crimes. The Geneva Convention of 1949 and the two Additional Protocols of 1977 are quite clear as to what constitutes a war crime, and that is reflected in one of the alternative texts. And, although there are no questions with respect to war crimes in international conflicts, there are questions raised by some states as to the inclusion of certain war crimes in non-international conflicts.

Understandably, the U.S., France and the United Kingdom, which contribute the bulk of forces for peacekeeping operations, want to ensure against trivial prosecutions that could inhibit their role in such operations. But the draft statute ensures against that contingency by having the Security Council and member states to the treaty refer situations to the prosecutor.

Of greater significance is that no prosecutions before the court can occur while national courts are able and willing to prosecute. This gives primacy to national legal systems.