

AN IDEA WHOSE TIME HAS COME –
AN INTERNATIONAL CRIMINAL COURT

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The human devastation of World War II was not enough to make the motto "never again" truly universal or long-lasting. Many more tragic events were to follow. One writer notes that since the end of the second world war, killings by governments and casualties of internal conflicts in all regions of the world have resulted in more than 160 million deaths. Conflicts in Bangladesh, Biafra, Burundi, Cambodia, El Salvador, Lebanon, Liberia, Rwanda, Uganda and the former Yugoslavia have contributed to the death toll.

Such carnage could have been partially prevented by the world's major governments, which instead of turning a blind eye could have militarily intervened at low risk. Also, they easily could have prosecuted those responsible for ordering and committing such acts of aggression, genocide, crimes against humanity, war crimes, torture and other serious violations of human rights. But none of that took place.

Most governments' failure to pursue justice is due to their emphasis on achieving political settlements with the very leaders who are responsible for these crimes. This approach includes heralding political leaders for their statesmanship instead of prosecuting them for their crimes.^[1] The result has been impunity for the major offenders of the worst international crimes. This impunity fosters international crimes and other serious violations of human rights by mocking our professed values and declared commitments to the rule of law. It encourages political and military leaders to commit such crimes because they know that they will not be

held accountable for them.

Three years ago, the United Nations Security Council established two ad hoc tribunals for the former Yugoslavia and Rwanda. This was an important step, but unless a permanent judicial institution is formed to continue the work begun by those tribunals, perpetrators will go free, justice will be discredited, deterrence will dissipate and chances for peace will dissolve.

What is needed is a fair and effective permanent international criminal court, free from political influence and capable of prosecuting victors and defeated, soldiers and generals, ordinary civilians and heads of state.^[L]Since World War I, the world community has sought to establish such a court to prosecute violators of at least the four major international crimes: aggression, genocide, crimes against humanity and war crimes. However, governments have been reluctant to pursue the establishment of such a court because of its potential to limit their own political options and the possibility of it being used against their own leaders.

Nevertheless, efforts to establish an international criminal justice system have been relentlessly pursued by academic organizations, scholars and, more recently, by non-governmental human rights organizations. But without the leadership of the United States the dream of such a court will not come true.^[L]This country, in principle, favors such a court but sees it in a more limited role, and subject to the control of the UN Security Council. President Clinton came out in favor of such a court in a speech at the University of Connecticut in October, 1995. But several government agencies remain opposed; therefore, the president's October statement has yet to be translated into executive policy.

An international criminal court ensures that no one is above the law, particularly those responsible for heinous crimes. International criminals should not be rewarded because of political cynicism, or the passing exigencies of realpolitik. Justice must be regarded as an integral part of peace, for without it, how can

people reconcile? Victims are entitled to justice. Offenders deserve punishment. The world needs to establish a historic record of major international crimes, if for no other reason than to establish the truth and to educate future generations. Maybe then we can deter potential criminals and avoid the repetition of those crimes. Otherwise, we are condemned to repeat the mistakes of the past.

This is an idea whose time has not only come, but is long overdue.