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International Courts and Tribunals

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The most significant developments in 1997 regarding international courts and tribunals are reviewed herein, particularly events relating to the International Court of Justice, the United Nations Compensation Commission (a quasi-tribunal), the International Tribunal for the Law of the Sea, the Iran-United States Claims Tribunal, and the proposed permanent International Criminal Court. Other significant developments relating to the International Criminal Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda, and dispute settlement within the World Trade Organization are detailed in other reports in this issue.

I. International Court of Justice

The International Court of Justice (ICJ) is the principal judicial organ of the United Nations (U.N.). The ICJ is charged with the task of delivering judgments in contentious cases submitted to it by sovereign states and issuing nonbinding advisory opinions at the request of certain U.N. organs and agencies. It began the year 1997 (the 51st since its initial inaugural sitting on April 18, 1946) with nine contentious cases. The ICJ rendered one Judgment and held hearings in three cases, and issued two orders. No cases were discontinued and no new cases were introduced in 1997; no cases were pending before any chamber of the court. This section reports briefly on the main judicial activity of the ICJ during 1997.

A. CONTENTIOUS CASES DURING 1997

1. *Gabcíkovo-Nagymaros Project (Hungary/Slovakia)*

The court held a first round of ten public hearings on the merits of this case on March 3-7, 1997, and on March 24-27, 1997, followed by a second round of four public hearings on April 10, 11, 14, and 15, 1997. By an order dated February 5, 1997, the court decided to

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accept the invitation of Slovakia, and agreed to by Hungary, to visit the site along the Danube River to which this case relates, with a view to obtaining evidence. This site visit, the first in the history of the ICJ, took place on April 1-4, 1997.

On September 25, 1997, the ICJ handed down its judgment in the case, which was brought by both parties on July 2, 1993. The court found that both Hungary and Slovakia breached their obligations under a bilateral treaty concluded in 1977 concerning the construction of the Gabcíkovo-Nagymaros System of Locks: Slovakia for putting into operation an alternative solution from October 1992 and Hungary for its prior unilateral suspension and abandonment of the project envisaged by the 1977 Treaty. The ICJ found that these breaches were contrary to the spirit of joint investment and operation evidenced by the terms of the Treaty, which should have resulted in the construction of installations for the production of hydroelectricity and the improvement of navigation on the Danube River between Bratislava (Slovakia) and Budapest (Hungary). According to the court, Slovakia became a party to the Treaty as successor to Czechoslovakia upon the latter's dissolution as a state in 1993, since the Treaty established a territorial regime creating rights and duties affecting the relevant parts of the Danube. This meant in turn that the Treaty was left unaffected by a state succession.

Hungary suspended and abandoned the project in 1989, giving in to domestic pressures. In the view of the ICJ, such conduct rendered impossible the accomplishment of the system of works described by the Treaty as "single and indivisible." According to the court, this conduct could not be justified by a state of necessity, because the perils that Hungary invoked were not sufficiently established or imminent in 1989; Hungary should have awaited the outcome of bilateral negotiations.

The ICJ equally condemned Slovakia for putting into operation an alternative solution (Variant C) that led to the unilateral diversion of the Danube on Slovak territory. The court found such conduct did not meet the Treaty's cardinal condition that a joint system of locks be constructed constituting a single and indivisible operational system of works, which, by definition, cannot be achieved by unilateral action on the part of either party. The court rejected all of the defenses Hungary advanced to justify its notification of termination of the Treaty on May 19, 1992, and found that the parties' reciprocal wrongful conduct did not terminate the Treaty.

In addressing the legal consequences of its judgment, the ICJ reiterated that the Treaty is still in force as between Hungary and Slovakia. The court found that both parties are under a legal obligation to negotiate in good faith the manner in which the Treaty's multiple objectives can best be achieved. The court also held that the joint operational regime envisaged by the Treaty should be restored by the parties and that any work carried out so far should be made to comply with the Treaty. The project's implications for the environment are to form a key issue in the parties' negotiations. The ICJ stressed that current environmental standards must be observed by both parties so that the quality of the water in the Danube is protected.

Finally, the ICJ suggested that the matter of compensation, which both parties must pay and which both are entitled to obtain, could be resolved through an overall settlement, provided each party renounces all financial claims and counter-claims. The court held that the accounts for the construction of works must be settled in accordance with the Treaty and related instruments, and that Hungary must pay a proportionate share of the costs related to the works legitimately constructed on Slovak territory if Hungary is to share in their operation and benefits. Under the Special Agreement, Hungary and Slovakia have six months to agree on the modalities for executing the court's judgment.

2. *Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libya v. United Kingdom) and (Libya v. United States)*

Hearings on the preliminary objections filed by the United Kingdom and the United States, respectively, in these cases, which are very similar (but are not joined), took place on October 13-22, 1997. The ICJ is expected to deliver its judgment on the respondents' preliminary objections to its jurisdiction and the admissibility of Libya's application in February 1998.

3. *Oil Platforms (Iran v. United States)*

On June 23, 1997, the United States filed a counter-memorial in this case, together with a counter-claim, requesting the ICJ to declare that Iran breached its obligation to the United States under article X of the 1955 Treaty by attacking vessels, laying mines in the Gulf, and engaging in military actions that were dangerous and detrimental to marine commerce. The United States also claimed that, due to this breach, Iran must make full reparation to the United States in a form and amount determined by the ICJ.

4. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia-Herzegovina v. Yugoslavia)*

In this case, the ICJ rejected Yugoslavia's preliminary objections in its judgment of July 11, 1996. Yugoslavia filed a counter-memorial on the merits together with counter-claims, on July 22, 1997. The counter-claims requested the ICJ to adjudge and to declare that Bosnia-Herzegovina is responsible for acts of genocide allegedly committed against the Serbs in Bosnia-Herzegovina and for other violations of the obligations established by the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. The court's order of December 17, 1997, upheld (13-1) the admissibility of the counter-claims. The counter-claims were held to form part of the proceedings in the case because they are directly connected with the subject matter of Bosnia-Herzegovina's claims and constitute separate claims seeking relief beyond the dismissal of the applicant's claims. This is the first time the court upheld the admissibility of counter-claims at a preliminary stage.

5. *Maritime Delimitation and Territorial Questions between Qatar and Bahrain*

Qatar and Bahrain each filed a counter-memorial on December 23, 1997.

6. *Kasikili/Sedudu Island (Botswana/Namibia)*

In this inter-African case brought by Special Agreement on May 29, 1996, both parties filed a memorial on February 28, 1997, followed by their counter-memorials on November 28, 1997, in accordance with the court's order of June 24, 1996.

7. *General List*

As of December 1997, the General List of ICJ cases was composed as follows: Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libya v. United Kingdom) and (Libya v. United States), Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia-Herzegovina v. Yugoslavia), Maritime Delimitation and Territorial Questions between Qatar and Bahrain, Land and Maritime Boundary (Cameroon v. Nigeria), Fisheries Jurisdiction (Spain v. Canada), and Kasikili/Sedudu Island (Botswana/Namibia). Hearings are scheduled for the first half of 1998 in two cases: Land and Maritime Boundary (Cameroon v. Nigeria) and Fisheries Jurisdiction (Spain v. Canada).

8. *Miscellaneous*

On February 6, 1997, the ICJ judges elected Stephen Schwebel (United States) President and Christopher Weeramantry (Sri Lanka) Vice-President of the court for three-year terms.

On September 25, 1997, the date of the delivery of the Judgment in *Gabcíkovo-Nagymaros (Hungary/Slovakia)*, the court launched its own website on the Internet and made that judgment available by electronic means. The website, <http://www.icj-cij.org>, also provides useful basic information on the ICJ.

B. Advisory Jurisdiction

No advisory proceedings were instituted or pending in 1997.

II. United Nations Compensation Commission

The United Nations Compensation Commission (UNCC), created by the U.N. Security Council pursuant to Resolution 687 in 1991, is the principal international institution responsible for the processing, determination, and payment of claims against Iraq arising from the Gulf War. A number of significant developments occurred in 1997, including the payment of hundreds of millions of dollars to claimants, the first major award to the government of Kuwait, and further progress on several precedent-setting corporate, government, and large individual claims.

A. Payment of UNCC Awards

The UNCC paid out claims of over $726 million in category A (departure claims), category B (serious personal injury or death claims), and category C (individual claims up to $100,000). The UNCC approved over $6 billion in additional awards, but was delayed in making such payments to claimants because of a shortfall in funds generated from Iraqi oil revenues. Beginning in December 1996, the United Nations authorized Iraq, pursuant to U.N. Resolution 986, to sell $1 billion worth of oil per quarter, with thirty percent, or $300 million per quarter, earmarked for the UNCC Compensation Fund to settle Gulf War claims. Such sales generate approximately $1.2 billion per year for the UNCC, far short of that required to pay the amounts awarded thus far.

To date, with two exceptions, no decisions were rendered regarding the many corporate, government, and large individual claims, totaling over $200 billion. The two exceptions are the Well Blowout Control claim, discussed below, and small category F claims (government claims) approved in December 1997 awarding approximately $2.2 million to eight governments for damages to property of embassies and consulates in Kuwait. The UNCC established several panels in category D (individual claims in excess of $100,000), category E (corporate claims), and category F (government claims) to decide several cases that will resolve major jurisdictional and substantive issues. Several of those panels submitted interrogatories to the parties in those cases seeking additional information. The decisions rendered in those cases will have far-reaching impact for the remaining category D, E, and F claimants. There are approximately $15 billion in category D claims, $80 billion in category E claims, and between $100 and $200 billion in category F claims. It is anticipated that some of the cases will be decided in early 1998.

The UNCC announced in October that it hopes to complete its work within five years, or by 2003. The UNCC hopes to have five additional panels established in 1998 to complete all the category D, E, and F claims. The UNCC made clear that the vast majority of the several thousand claims will be decided on the basis of the briefs submitted without the benefit of hearings.

B. GOVERNING COUNCIL DECISIONS

1. *Well Blowout Control Claim*

On December 18, 1996, the Governing Council of the UNCC approved the recommendations of the Panel of Commissioners and awarded approximately $610 million in damages to Kuwait Oil Company (KOC) for costs incurred in extinguishing the oil wells set aflame by Iraqi troops in 1991.[1]

The Panel found that the bulk of the oil-well fires were directly caused by explosives placed on the wellheads and detonated by Iraqi armed forces. Assuming, as Iraq alleged, that some of the oil wells may have been set fire due to allied bombing, the Panel found that Iraq was nonetheless liable for any direct loss, damage, or injury suffered as a result of military operations of either side. In so holding, the Panel concluded that for a loss to be compensable, the injurious action need not be attributable to Iraq or its agents, as long as the loss was the result of Iraq's unlawful invasion and occupation of Kuwait.

The Panel held that KOC took reasonable steps to mitigate the loss caused by the oil well fires and that it is entitled to recover reasonable expenses associated with such efforts. Such reasonable expenses must be determined with reference to the extraordinary circumstances prevailing in Kuwait in the aftermath of the Gulf War. In light of those circumstances, the Panel concluded that $610 million was not an unreasonable amount to reimburse KOC for the expenses it incurred to mitigate the damage caused by Iraq.

2. *Egyptian Workers' Claims*

On October 1, 1997, the Governing Council of the UNCC approved the recommendations of the Panel of Commissioners and awarded approximately $84 million to Egyptian workers.[2] In December 1993 Egypt filed a $491 million category C claim, representing the value of funds deposited by Egyptian workers into Iraqi banks for transfer to beneficiaries in Egypt. In its final report on the jurisdictional phase, the Panel determined that only those claims relating to deposits made on or after July 2, 1990, were within the jurisdiction of the Commission. This date represents the date of deposit of funds expected to be transferred by August 2, 1990, the onset of the Gulf War.[3]

Pursuant to the award, Egypt submitted documentary evidence of payment orders received by Egyptian banks from Iraqi banks regarding deposits made after July 2, 1990, totaling over $84 million. Egypt asserted that substantially higher amounts, approximately $188 million, were received by Iraqi banks from Egyptian workers after July 2, 1990, for deposit in Egyptian banks than is indicated by the $84 million in payment orders. The Panel rejected Egypt's argument, however, finding that "the burden of providing evidence in support of the workers' claims lies with Egypt"[4] and that the "Panel is unable . . . to conduct inquiries . . . [as to] the

1. *See* U.N. GAOR Compensation Comm. Governing Council Decisions, U.N. Doc. S/AC.26 Dec.40 (1996).

2. *See* U.N. GAOR Compensation Comm. Governing Council Decisions, U.N. Doc. S/AC.26/1997/3 (1997).

3. *See Report and Recommendation Made by the Panel of Commissioners Concerning the Egyptian Workers' Claims (Jurisdictional Phase)*, U.N. Doc. S/AC.26/1995/R.20/Rev.1 (1997). Resolution 687 provides that "Iraq, without prejudice to the debts and obligations of Iraq arising prior to 2 August 1990, which will be addressed through the normal mechanisms, is liable under international law for any direct loss, damage . . . or injury to . . . corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait." S.C. Res. 687, U.N. SCOR, ¶ 16, U.N. Doc. S/Res/687 (1991).

4. *Egyptian Workers Claims*, 12 MEALEY'S INT'L ARB. REP., Oct. 1997, at App. F, F-3 ¶ 37.

existence, or not, of payment orders issued from 2 July 1990 that were not received by Egyptian banks."[5] The Panel noted that it is:

> aware that the total amount of the workers' funds deposited on or after 2 July 1990 in Iraq may well exceed the amount for which Egypt has been able to provide payment orders. . . . [H]owever, the Panel is unable to consider recommending payment to any claimant for whom a payment order has not been filed by Egypt and whose identity and amount claimed are not specified. Egypt has filed payment orders with a total value of $84,751,554, as well as a list of the claimants whose identities are contained in the payment orders. Therefore th[at] figure . . . will be used by the Panel as a starting point for the verification of the claims in the merits phase.[6]

On that basis, the Panel awarded Egypt approximately $84 million plus interest. The Panel's decision may signal that the UNCC will impose a particularly onerous evidentiary burden on claimants, potentially leading to billions of dollars in claims being denied because documentary evidence in support of those claims are in Iraqi hands, beyond the reach of most claimants.

C. Governing Council Reports

In 1997 the Executive Secretary submitted to the Governing Council of the UNCC several reports regarding category D, E, and F claims.[7] These reports were drafted in response to the many factual and legal issues that arose in preparation for hearings in certain category D, E, and F cases. In accordance with article 16(3) of the UNCC Provisional Rules, governments that submitted claims are given the opportunity to provide their views and comments on these reports for consideration by the UNCC panels, and many governments do so. These reports do not resolve the many issues presented by such claims, but rather frame the legal issues for consideration by the panels. Resolution of these issues will determine the compensability of many of the claims.

1. *Report No. 18*

On January 31, 1997, the Executive Secretary circulated its eighteenth report to the Governing Council.[8] The issues presented for category E corporate claims included, inter alia, (i) to what extent sample or secondary evidence is acceptable as proof of ownership of lost property; (ii) whether lost property discovered after the liberation of Kuwait may be deemed to be caused by Iraq when the claimant had no knowledge of the circumstances of the loss; (iii) the value of the loss in circumstances when a claimant's property is subject to a creditor's claim; (iv) the appropriate depreciation value to apply to the loss of fixed assets; (v) whether the loss of stock value is attributable to Iraq or to other noncompensable causes; (vi) whether loss of business income and profit incurred well after Iraq's invasion and occupation are attributable to Iraq; (vii) whether to treat outstanding debts of businesses as uncollected or uncollectible; and (viii) whether contracts between a claimant and the Iraqi military are eligible for compensation.

5. *Id.* at ¶ 43.
6. *Id.* at ¶ 47.
7. These reports are not publicly available, but because of the importance these reports have to claimants, the U.S. Department of State made available abstracts of certain reports. The summary included herein is based on such abstracts.
8. *See* U.N. Doc. S/AC.26/1996/R.1 (1997).

2. *Report No. 20*

On July 31, 1997, the Executive Secretary circulated its twentieth report to the Governing Council.[9] The issues presented for category E corporate claims involve claims relating to the oil and gas resources of the state of Kuwait and include, inter alia, (i) the value of the assets damaged or lost relating to Kuwaiti exploration, transportation, refining, and distribution operations; (ii) whether the steps taken by claimants to mitigate damages were reasonable under the circumstances; (iii) the accuracy and reliability of claimants record keeping, accounting, and financial assumptions; and (iv) whether corporate claimants have legal standing to bring claims on behalf of government entities, including the governments of Saudi Arabia and Kuwait. Other issues relating to category E claims include: (i) whether business losses in the tourism and advertising industry are compensable; and (ii) whether business losses incurred in Israel as a result of threatened and actual Scud missile attacks and the protective regulations imposed by the Israeli Government in response thereto are compensable.

III. The International Tribunal for the Law of the Sea

The International Tribunal for the Law of the Sea (the Tribunal) was established under Part XV of the 1982 United Nations Convention on the Law of the Sea, which became effective in 1994. This year, the Tribunal adopted rules of procedure, internal judicial rules, and guidelines concerning the preparation and presentation of cases. Approximately 122 states are party to the Convention, and the Tribunal is authorized to deal with a variety of international disputes, including fisheries, navigation, ocean pollution, and the delimitation of maritime zones.

A. The M/V Saiga (Saint Vincent and the Grenadines v. Guinea)[10]

On December 4, 1997, the Tribunal issued its first decision since its establishment in 1994. The case involved an application brought by Saint Vincent and the Grenadines against the government of Guinea alleging that representatives of the Guinean Government arrested the vessel M/V Saiga off the coast of West Africa and illegally seized its crew. Guinea claimed the vessel was engaged in illegal offshore refueling of three fishing vessels in contravention of Guinean law.

After the Tribunal unanimously held it had jurisdiction under article 292 of the United Nations Law of the Sea Convention (the Convention), the Tribunal turned to the critical question of whether Guinea is obligated under the Convention to release the M/V Saiga upon posting of a bond. The Tribunal next addressed the standard of review. Recognizing that it was not deciding the merits of the underlying dispute, but rather dealing only with the question of release of the vessel, the Tribunal held that it would make its assessment based on "whether the allegations made are arguable or are of a sufficiently plausible character"[11] such that they may be relied upon for present purposes. Applying that standard, the Tribunal concluded that a claim that Guinea was in noncompliance with article 73, which provides that arrested vessels and their crews are to be "promptly released upon the posting of reasonable bond or other security,"[12] was alleged and that Saint Vincent and the Grenadines' allegation "is arguable or

9. *See* U.N. Doc. S/AC.26/1996/R. 13 (1997).
10. *See* Saint Vincent and the Grenadines v. Guinea, Case No. 1 (Dec. 4, 1997).
11. *Id.*
12. *Id.*

sufficiently plausible."[13] On the question of security, the Tribunal held that the security shall consist of the gasoil discharged from the M/V Saiga, together with US$400,000.

The decision is significant not so much for its sagacious reasoning, but rather that in the Tribunal's first real test of its mettle it effectively and prudently handled a dispute that required immediate attention in the remarkably short time frame—from initial application to final decision—of three weeks.

IV. Iran-United States Claims Tribunal

The Iran-United States Claims Tribunal was established in 1981 to resolve disputes between the governments of Iran and the United States and their respective nationals arising out of the Iranian Revolution of 1979. The vast majority of claims were resolved, but several important interpretative claims (A claims), intergovernmental claims (B claims), and claims by private parties remain outstanding. The total amount awarded to U.S. parties exceeds $2.1 billion, excluding interest, while the total amount awarded to Iran exceeds $1 billion.

A. Private Party Claims

1. *Aryeh v. Islamic Republic of Iran*[14]

On September 25, 1997, Chamber Three awarded approximately $500,000 plus interest to Moussa Aryeh, a dual Iran-U.S. citizen, for the expropriation of real estate owned by Aryeh in Iran. At issue in *Aryeh* was whether the claimant abused his dual nationality by purchasing real estate in Iran, a right allegedly reserved solely for Iranian nationals, and then bringing a claim for expropriation of such property against Iran before the Tribunal—a right reserved exclusively for persons whose dominant and effective nationality is that of the United States. Notwithstanding that an earlier decision by Chamber Two, *Karubian v. Islamic Republic of Iran*, held that Karubian abused his dual nationality and denied his claim for expropriation on this basis, the Tribunal in *Aryeh* held that Iranian law does not categorically bar foreign nationals from owning real estate in Iran, although it does severely limit that right. Accordingly, the Tribunal held that Aryeh's claim should be granted, with a twenty-five percent discount to reflect the limitations Iranian law would impose on the sale of foreign-owned property. "Since Iranian law itself . . . guarantees recompense for the taking of property [of a dual national] . . . den[ying] compensation completely cannot be justified. . . . [o]n the other hand, it would also be unfair to award the Claimant the full market value of his property in the present situation since he would have received less than full compensation under Iranian law."[15]

V. Proposed Permanent International Criminal Court—The Preparatory Committee

In December 1995 the General Assembly adopted a resolution establishing the United Nations Preparatory Committee on the Establishment of an International Criminal Court (Preparatory Committee). The Preparatory Committee has a mandate to prepare a widely accepted consolidated text of a convention for an international criminal court using the International Law Commission's draft statute (Draft Statute)[16] as a framework for discussion.

13. *See id.* at 18, ¶ 59.

14. *See Aryeh v. Islamic Republic of Iran*, 12 Mealey's Int'l Arb. Rep., Oct. 1997, at App. A.

15. *Id.*

16. *See Report of the International Law Commission on the Work of Its Forty-Sixth Session*, U.N. Doc. A/49/355 (1994).

The Preparatory Committee held three, two-week meetings in 1997, the Third Session[17] from February 11-21, 1997, the Fourth Session from August 4-15, 1997, and the Fifth Session from December 1-12, 1997. A Sixth Session was scheduled for March 15-April 3, 1998. Following the Preparatory Committee meeting in the spring, there was to be a Diplomatic Conference in June 15-July 17, 1998, in Rome, Italy, where it is anticipated that the treaty will be finalized and ready for signature.

While 1996 was focused on debating the fundamental contours of a proposed international criminal court, 1997 was noteworthy in that the eight Preparatory Committee working groups made significant headway toward hammering out a text sufficiently refined and ready for consideration at the diplomatic conference in Rome. These working groups are divided as follows: WG1 (Definition of Crimes), WG2 (General Principles), WG3 (Complementarity and Trigger Mechanisms), WG4 (Procedural Matters), WG5 (International Cooperation and Judicial Assistance), WG6 (Penalties), WG7 (Composition and Administration of the Court), and WG8 (Establishment of the Court and Relationship with the United Nations).[18] All of these working groups met in 1997 with the exception of the last two, which were slated for meetings in March-April 1998.

A. Subject-Matter Jurisdiction

It is envisioned by the Draft Statute that the subject-matter jurisdiction of the court include the most serious crimes of concern to the international community as a whole. The working group agreed on draft articles for the crimes of genocide and crimes against humanity for inclusion in the consolidated text of a draft treaty. Further consideration to war crimes and crimes of aggression will be needed, as the working group could not reach consensus as to their scope and definition. The working group also bracketed for consideration crimes of terrorism and crimes of drug trafficking, although there was no consensus as to their inclusion in the draft treaty.

B. General Principles

The working group recommended the text of several articles concerning general principles of criminal law as a first draft for inclusion in the draft consolidated text. These articles include provisions on *nullum crimen sine lege* (no responsibility unless conduct constitutes crime), non-retroactivity (prohibition on ex post facto laws), personal jurisdiction, criminal responsibility, presumption of innocence, irrelevance of official position, age of responsibility, statute of limitations, actus reas, mens rea, mistake of fact or law, mental insanity, and intoxication. Work remains on the defenses of duress, self-defense, and sudden or extraordinary events.

C. Complementarity and Trigger Mechanism

The Draft Statute provides that the court is intended to be complementary to national criminal justice systems in cases in which such trial procedures may not be available or may be ineffective. The working group agreed on a recommended text on complementarity that provides a case is inadmissible when: (i) it is being or was investigated or prosecuted by a state that has jurisdiction over it; or (ii) it is not of sufficient gravity to justify action by the court.

17. The Preparatory Committee held two meetings in 1996.

18. The comments and views of Steven Gerber of the Washington Working Group on the International Criminal Court are gratefully acknowledged.

When a state is unwilling or unable to carry out the investigation, the court may exercise jurisdiction when it determines that a national court proceeding is being undertaken to shield the accused, when there is undue delay in the proceeding, or when the proceeding otherwise lacks independence or impartiality.

One of the more contentious issues is the so-called trigger mechanism by which investigations shall be initiated. The working group agreed on a number of issues relating to referral of a case by the Security Council or a State Party. The working group continues to discuss whether the prosecutor should have the right to self-initiate an investigation. Discussions will also continue regarding whether a prosecution may be commenced when it arises from a situation currently handled by the Security Council as a threat to or a breach of the peace or an act of aggression. The working group was unable to decide on a draft text addressing whether the complaining state must accept the court's jurisdiction over such crime, the state with custody over the accused must consent to the court's jurisdiction, and the state in which the crime allegedly occurred must consent to the court's jurisdiction.

D. Procedural Matters

The working group addressed a number of procedural matters relating to investigation of alleged crimes, commencement of prosecution, arrest and pre-trial detention, jurisdictional challenges, notification of the indictment, trials in absentia, proceedings on admission of guilt, functions and powers of the Trial Chamber, rights of the accused, and protection of victims and witnesses. The working group made little progress on these issues and even considered inclusion of only general principles in the draft text, leaving the establishment of detailed rules for the court.

E. International Cooperation and Judicial Assistance

The working group addressed a number of issues relating to international cooperation and judicial assistance, including obligations of a state to cooperate, requests for cooperation, extradition, provisional arrest, recognition and enforcement of judgments, and enforcement of sentences. Little progress was made on these issues.

F. Penalties

The working group recommended a text for inclusion in the draft statute that included articles relating to imprisonment, fines, disqualification, forfeiture, reparations, aggravating and mitigating circumstances, prior detention, applicable national legal standards, multiple crimes, legal persons, and fines and assets collected by the court.