



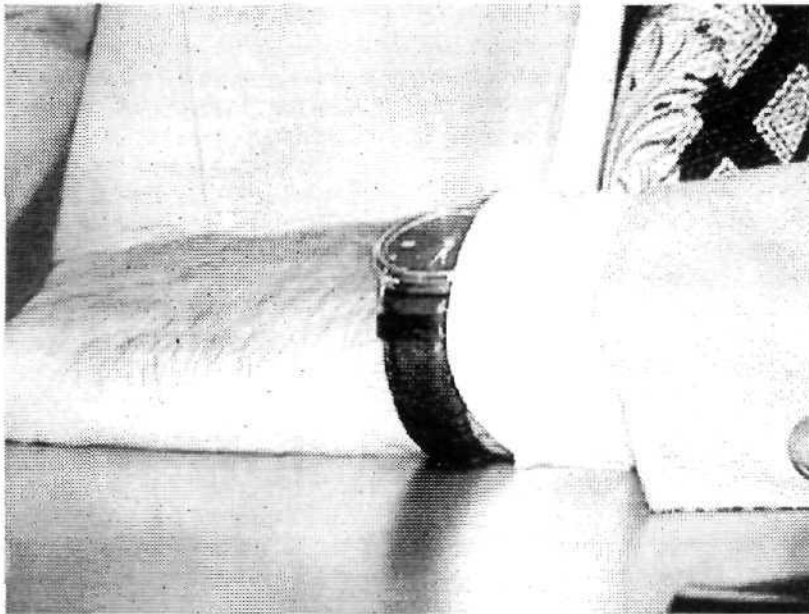
# TERRAVIVA

ROME, JULY 15, 1998

U.N. CONFERENCE ON THE ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT

N° 23

## HIGH NOON



*Kirsch's watch ticks faster*

**L**ike the lone sheriff in a classic Western, chairman Philippe Kirsch is conducting a desperate but determined search for a critical number of deputies to back his attempt to gather support for a compromise Statute for an International Criminal Court (ICC) before the Wednesday "high noon" deadline of sorts, set for the Committee of the Whole to complete its work.

On Tuesday, delegates from a 30-odd group of countries and others were filing in and out of the Canada Room, which Kirsch has adopted as headquarters for the Bureau negotiations, even as pressure was mounting from several quarters.

The document to be introduced Wednesday evening will be in the words of one like-minded delegate - "positive for the expectations of the majority and is likely therefore to generate even more heat."

The Canadian diplomat is trying to avoid the two most feared - but increasingly present - threats: an endless round of votes or a postponement. Both would represent a setback to the momentum painfully achieved so far. Kirsch would much rather go for consensus as, he said, he has successfully done in the past. But several like-minded and non-aligned delegates said they were not frightened by the prospect of a vote to settle the ICC stalemate.

Kirsch told journalists Tuesday that the "main difficulty" in achieving consensus was the fact that "some states tend to forget the main objective" - a Court acceptable to all. These states would rather put the stress on their own national interest and national legal systems in the State. Of course, he refused to identify such states or to describe the minimum elements that a compromise would have to contain

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### CICC Monitor

Conso at Torch-light March

## 'We'll Stop Clock if Needed'

**M**ore than a thousand people staged a vivid display of support for international justice and the creation of an independent, effective and fair International Criminal Court (ICC) Tuesday evening at a Torch-light March, held along at the 'Sacred Way' at the Roman Forum.

No less than Italy's Prime Minister Romano Prodi attended the march, was organised by the Transnational Radical Party and promoted by the Italian NGO "No Peace Without Justice" to lobby for the ICC at negotiations that end this week.

At the end of the march, ICC President Giovanni Conso told the many hundred torch-bearers: «We have to get an agreement even if it means stopping the watches.»

Earlier, beneath darkening skies, a growing crowd of activists gathered in front of Rome's town hall, the Campidoglio, above the Forum. They waved multicoloured banners, and held bright yellow balloons that read "Yes - International Criminal Court".

The crowd sported baker-like white baseball caps and billboards

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**Terra Viva**  
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**Publisher**  
Roberto Savio

**Managing Editor**  
Alejandro Kirk

**Editor**  
Johanna Soni

**Senior Reporter**  
Farhan Haq

**Reporters**  
Alison Dickens  
Jorge Pina

**Advisor**  
Stefano Palumbo

**Art**  
Winnie Dobbs

**Chief, Technical Services**  
Mauro Teodori

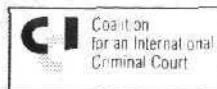
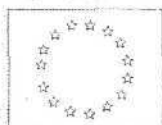
**Editorial assistant**  
Claudia Diez de Medina

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## HIGH ...

from page 1

in order for him to present the package to delegations.

UN undersecretary general Hans Corell said that "delegates have to realise that it may not be possible to insist on their national positions, if there is to be an understanding."

Kirsch rejected - on technical grounds - the possibility of postponing the adoption of a Statute if he fails to reach understanding. In any case, this is an alternative that horrifies both non-governmental organisations and *like-minded* countries.

### Undue pressure

Bill Pace, the convenor of the NGO Coalition for an ICC, quoted reports that the United States has been using undue leverage on like-minded countries, including Germany and other European states, in order to force a change in their stand. He said some delegates had confidentially told him that if the proposal to be presented by Kirsch is not acceptable to Washington, they may then receive new orders from home. Those countries "expect a signal from the US," he said.

Other delegates have said that France and the US have resorted to financial and economic arguments to persuade smaller countries to soften their support for a strong and independent Court.

A US spokesman would neither confirm nor deny reports of such intense and bilateral lobbying and other assertions that have spread in the last few, tense days of the conference. "The US does not comment on bilateral discussions in the context of multilateral negotiations," he said.

"The US has an extraordinary working relationship with a wide variety of states, and any such relationship includes speaking frankly on a number of issues. The nature of the relationship makes it absolutely essential that such discussions remain confidential," he added.

Richard Dicker of Human Rights Watch, argued that "a deal is being orchestrated to have a protocol annexed (to the Statute) that would allow countries to opt out after signing the Statute."

This is equivalent to "a photo opportunity Court: they sign and then they opt out," he said. To others, this annex option was a typical diplomatic escape hatch for controversial agreements and one very likely to be adopted.

With evident anxiety, CICC representatives are concentrating lobbying efforts on what they consider the very essential issues - inherent jurisdiction, independence for the Prosecutor, coverage of internal conflicts and gender. Pace said that the inclusion of aggression as a war crime was not a priority for the Coalition, because there is no consensus among NGOs on the matter.

As one dissident non-aligned movement delegate put it to *Terra Viva*: "If you want aggression in (the Statute), then you will have the (United Nations) Security Council in, and we want it out." (See story on Page 5)

## Italy

Responding to critical calls for Italy to show stronger leadership as the host country, Italian foreign minister Lamberto Dini personally addressed the Committee of the Whole Tuesday, with a strong appeal for "acceptable compromise while not destroying the substance" of the ICC.

"This has been the spirit in which we have defined the crimes falling within the scope of the Court, the complementarity between national courts and the International Court, the powers of the Prosecutor to institute proceedings at his own initiative, and the relationship between the Court and the Security Council," he said.

He insisted that a Statute, not a mere Final Act, must be solemnly signed "by the representatives of all the countries here in Rome" on Saturday at the city's historic Campidoglio square.

Reflecting the general state of mind of many delegations here, Dini stressed that the Conference is at a crucial phase - "with success or failure hanging on a thread."

There is an enormous political abyss between the two conceptions of a Court, not counting those who don't believe in any Court whatsoever. NGOs claim that the US, France and the other Security Council members want a Court ruled by the UN's main political body, while the US claims that an ICC with the characteristics defined by the *like-minded* group would simply not attract a sufficient number of countries to be effective.

"The problem is that there are two Courts here," a *like-minded* delegate said. "One is the one we want - independent, strong and with universal jurisdiction - and there is the other one, controlled by the Security Council."

"In this search for consensus, we compromise on all issues, in order to achieve a consensus that then we are going to be the only ones to sign anyway," he said, implying that a vote would not be such a bad alternative under these circumstances.

Another delegate, however, argued that such a Court would be equivalent to a "small club," or as one journalist put it, "a Court that would try only the genocides, crimes against humanity and war crimes committed by New Zealand or Germany."

According to Dicker, jurisdiction is the main issue at stake. The US proposal, he said, would mean that "the ICC (can) prosecute someone like (Iraqi President) Saddam Hussein, only after getting his consent first."

Jelena Peric of the Lawyers for Human Rights, insisted that a Court without the United States is "absolutely" possible. But a European delegate called such an option unthinkable: "We are prepared to go the extra mile for an agreement (with the US). We're desperate for it." *Alejandro Kirk*

**W**

# NEW YORK

ith negotiations on establishing an International Criminal Court (ICC) grinding to a close this week, it's worth remembering that the reason 173 governments gathered in Rome was to create a system of justice that would be more than just another 'victor's court' - like Nuremberg or the recent UN tribunal for Rwanda.

But in one major sense - which has become more apparent as divisions over the powers of the ICC have been more clearly defined - the ICC is in many ways indeed serving as a victor's court.

Throughout the intense debate that began in Rome Jun. 15, and is slated to end Friday, supporters for strong ICC powers - including independence for the Court's prosecutor and limited oversight by the UN Security Council - have been clearly marked by their own struggles for basic human rights.

The fate of the conference now appears to hang in the balance but some 60 countries - mostly from Eastern and Western Europe, Southern and Central Africa and Latin America and the Caribbean - cling to the belief in the viability of a tough, independent Court.

Significantly, for many of those governments, often dubbed the 'like-minded states', the Court is not simply an international institution, but a promise to their own constituents that recent dark eras in their history will not be repeated.

South Africa, with its own experience of a Truth and Reconciliation Commission, has helped push along measures to ensure that victims of atrocities can participate in the ICC's work, and that the crime of apartheid is included in its docket.

Latin American nations have proved to be staunch opponents of most efforts to protect military regimes from the consequences of their actions. When some countries pushed for officers to have a wide berth to claim that superior orders can excuse them from responsibility for their crimes, two key countries which tried to narrow that excuse were Germany and Chile - places where the phrase 'superior orders' has a decidedly sour ring.

From Eastern European countries, emerging from decades of Soviet domination, to African states throwing off the yoke of colonialism and apartheid, supporters of an ICC with a wide jurisdiction and strong mandate are all victorious.

As with all victors, they enjoy strong mandates from their constituencies to ensure that the evils their societies faced - from "ethnic cleansing" to "disappearances" - must never happen again.

Latin American states can assure their voters that elected governments, not military juntas, will be the order of the day. African states which have faced several rounds of massacres can have insurance that the next cases will end with trials of the 'big fish' and not the 'small fry.'

The Court therefore not only symbolises a kind of victory, but consolidates it: the victory of democratic states over their authoritarian counterparts. But that also is where the Court's difficulty lies, since the ranks of those victors may not be nearly enough to guarantee justice in the countries that actually need it - the ones which are not yet victors.

U.S. Ambassador David Scheffer, in laying out a hardline argument for states to consent to ICC jurisdiction before cases can be tried, argued that the Court needs to have the widest amount of support possible, lest it fail.

Despite criticism of the U.S. position by human rights groups, Scheffer's point is a valid one: What good is a tribunal for the world's worst crimes which



## Coming Soon: Victor's Court

would be actively resisted by the very nations where those crimes occur?

Diplomats in Rome are already reasonably certain whom the Court's jurisdiction will include and whom it will not. The like-minded nations are almost certain to join on to the ICC, on the lines of the compromise currently being developed, very quickly. Other nations, including Japan and even a few Arab states, are also considering joining on, sources say.

Many other regions, however, still do not fit in the category of victors for this particular victor's court. Most of North Africa and the Middle East, virtually all of South Asia and much of South-east Asia - and of course, the particular case of the United States - are unlikely to sign on to the Court.

Many of them are single-party states or countries, like Algeria or Nigeria, which have cancelled elections. Others have problems with brutal military occupation of territory..

The U.S. case - like those, to a lesser extent, of France, China and Russia - stems from balancing the military role of a superpower with political pressures to ensure that such a role is not constrained or checked by any international body.

What this means is that the last week of the ICC conference has much the same dynamic as does any victor's court. The 'winners' argue they are upholding universal principles of justice; the 'losers' complain that the system is unfair, and loudly warn they will not accept its jurisdiction.

In this case, however, the 'losers' are powerful enough - especially thanks to the United States - to thwart the ICC's establishment if they are not satisfied and if they wish to assert themselves.

Although many activists spoke of the need to have the ICC without U.S. support if the price was, in the words of Human Rights Watch's Richard Dicker, "cutting the guts of this Court out", few really believe that is an option.

The European countries that enthusiastically support the ICC have no intention of excluding Washington, and few have any hope that the Court can work without the financial and political support of the United States.

The next few days should reveal whether this is to be a Court for the world's current democratic victors - or one which can help consolidate other victors in years to come. *Farhan Haq/IPS*

terra viva

**L**egal experts and diplomats have had their heyday during the past four weeks of the International

Criminal Court (ICC) conference, a delegate said, but "now it's the turn of foreign ministers".

So far, they have been conspicuous by their absence in Rome, this being a "United Nations diplomatic conference". But nothing promises to move ahead without their express consent, as the conference entered a "critical phase" Tuesday.

This appears to be the reason why diplomats from some economically powerful nations in the group of like-minded states were issuing non-committal replies to reporters who wanted to bind them to unequivocal statements on the state of the ICC negotiations.

There was uncertainty, for example, on how the chairman of the Committee of the Whole, Philippe Kirsch, would go about with the new package everyone expects him to produce by Wednesday evening.

Will it be on a take it or leave it basis? Or, will it be one or two rounds of voting? Diplomats did not rule out such a possibility. Others from across the Atlantic suggested that once a decision was taken in favour of a vote, it would not be confined to one or two rounds: "We might end up in tens of rounds." Especially if India, backed by the Non-Aligned Movement, is adamant on the inclusion of the use of nuclear weapons as a war crime by the proposed ICC, they remarked.

And what if the U.S. concludes

that the 60-odd like-minded states were uncompromising? Will the U.S. delegation then take to 'nyet' - the inevitable response for which the defunct Soviet Union's master diplomat, Andrei Gromyko, became eminently famous?

It is not against the U.N. practice that member states vote against a resolution, if they do not want to refrain from casting their vote or even staying away from the voting session. What then?

Meetings and informal discussions are underway in the last crucial hours of the conference, many of them involving the American position. However, Bill Pace, convenor of the Coalition for an ICC (CICC) announced Tuesday that his appointment with the US delegation for evening of the same day had been cancelled. 'Leave them alone; they are not yet ready' - this seemed to be the message Jelena Pejic of the Lawyers Committee for Human Rights conveyed in reacting.

"We would like to have the U.S. on board right from the beginning. However, if they wish to repeat their performance at the Landmines Treaty negotiations, let them! But we are not going to give in on the issue of an independent and effective ICC," pledged a delegate from the like-minded group.

As the conference nears the end, these countries have come under "massive pressure" from Washington - as delegates from among the allied and powerful and less powerful nations admitted without wanting to go on record. At least

# Niceties Give Way to 'Nyets'

some of them from among the economically powerful states appeared to be puzzled: There are certainly more important issues than that of the ICC in relations between the U.S. and their European allies.

"Nerves are lying bare," said another delegate. "And it might get worse when we have the final draft of the Bureau proposal," he added, predicting that a tug-o-war would ensue, with each side desperately trying to bring the other to its knees.

But for all the obstacles in the path of the ICC negotiations, the struggle between protagonists and opponents here have been debating even the most controversial aspects in a "friendly and constructive manner," assured a delegate. Spoken like a true diplomat.

Ramesh Jaura / IPS

## Reworked Preamble Sets the Tone

**A**

reworked preamble to the ICC statute, the product of an initiative of Andorra, Spain and the Dominican Republic, has been finalised and submitted to the Committee of the Whole after discussions with non-governmental organisations (NGOs).

The Faith-based Caucus, a coalition of religious and interfaith NGOs that has been working on improving the preamble, welcomed the text. "Everything is a compromise in the final statute. We are very delighted with the poetic and ethical language of the final text, and are particularly pleased with the introductory sections," said Elaine Harvey, chair of the Faith-Based Caucus.

In the opening paragraph of the amended preamble, signatories to the statute would be affirming that they are "conscious that all peoples are united by common bonds, and that their cultures are woven together in a shared heritage, a delicate tapestry that may at any time be rent asunder by unimaginable atrocities threatening the peace, security and well-being of our world".

Harvey also said she was pleased to see that the preamble reaffirmed the principles enshrined in the UN Charter, which have withstood the test of almost half a century. She said the preamble "has managed to capture some of the vision and ethical qualities which we hoped would be reflected, as well as the spirit of international cooperation".

"We believe we have raised awareness of the common spiritual foundation that is the motivating force behind delegates and NGOs at the conference," Harvey remarked.



The Rome Treaty Conference

# MONITOR

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CICC Address: c/o WFM, 777 UN Plaza - New York, New York 10017 USA

email [cicc@igc.org](mailto:cicc@igc.org) Web Address <http://www.igc.org/cicc> William R. Pace *Convenor* Rik Panganiban *Editor*

Address during the Rome Conference: c/o Movimondo, Piazza Albania 10, Roma - Tel. 5783202 - 5783179 Fax 5783251

## NGO Coalition Special Report on Country Positions on L 59

# THE VIRTUAL VOTE

*Readers should be aware that this report does not aim to provide a complete picture of all positions held by countries with respect to Part 2. Only state interventions in the Committee of the Whole's discussion on Proposal L 59 on Monday are included in this analysis.*

*Not all states expressly addressed every single issue contained in this report. Hence, readers should note that our calculation of percentages is to be understood as the ratio of states voicing a certain position to the total number of states speaking out on this particular point.*

*The distinguished delegates are advised that this report is based on NGO observations and is not an official document. It may contain inaccuracies. The numbers presented are necessarily simplifications of the more elaborate statements made by delegations*

*We apologise for any possible errors and welcome any comments or corrections. Please contact the Team Secretariat at 570-50 203 (Sudan Room) for more information.*

Based on the Bureau's Proposal A/CONF.183/C.1/L.59, the Committee of the Whole went into a second round of an overall discussion on the crucial questions in Part 2 on Monday. The NGO Teams monitoring the debate continued their efforts to provide an accurate picture of the current state of negotiations. Following up on our first Special Report distributed Friday evening, the three NGO Teams concerned with Part 2 of the Statute have assembled new data summarising the country posi-

### States Required for Jurisdiction

## 89%

supported the Korean Proposal  
for all core crimes

60 States supported Option 1\*

11 States supported Option 2

### Threshold for War Crimes

## 80%

supported Option 2

39 States favoured Option 2\*

9 States favoured Option 1

### Chapeau of Section D:

## 61%

supported deleting or changing

tions put forward in the Committee of the Whole during Monday's debate.

As a general trend, the support for positions ensuring a strong and effective Court reported in the CICC Monitor's first Special Report has been reconfirmed and even strengthened by the statements made on Monday.

Please note: this trend would be much stronger if one were to add all those countries which spoke out in favour of these positions last week, but did not take the floor on Monday.

the Chapeau

36 States of 59 addressing  
internal armed conflict opposed  
the present Chapeau to D

### Acceptance of Jurisdiction

## 75%

supported automatic jurisdiction  
for all core crimes

64 States supported Option 1\*

21 supported Option 2

### The Prosecutor

## 83%

supported *proprio motu*  
Prosecutor

63 States supported a *proprio*  
*motu* Prosecutor\*

13 States did not support a  
*proprio motu* Prosecutor

\* Counting all the SADC states as represented by South Africa.

**CICC** Editor's Note - The CICC Monitor and Terra Viva are independent publications, published respectively by the NGO Coalition for an International Criminal Court and the Inter Press Service. Reports and articles issued by On the Record are editorially independent.

## Opting in on War Crimes Would Be "Retrograde Step for International Law" Warns Angry Red Cross

The International Committee of the Red Cross has warned the Rome Conference that any decision to allow states to pick and choose acceptance of the court's jurisdiction over war crimes would represent a "retrograde step for international law" that would "severely limit the court's effectiveness."

The Red Cross warning was delivered at the end of Monday's discussion on the latest draft to be issued by the Conference bureau. It comes amidst reports that a compromise deal may be near on the critical issue of whether or not the court will have the power to prosecute internal armed conflict.

The positions on this have polarised sharply in the last three days. According to a tally by the NGO Coalition, only 16 states spoke out against the inclusion of internal armed conflict during the public debate last week. Now the balance appears to have shifted, and reports of a deal are in the air. Unfortunately, the deal appears likely to water down the Geneva Conventions.

The current text would include internal armed conflict under the scope of the court. But as *On the Record* reported on Saturday, the crimes listed would be introduced by a highly restrictive chapeau that would exclude many of today's armed groups.

Another problem has now emerged following two US statements to the conference, both of which have insisted that the court must not have automatic jurisdiction over war crimes and crimes against humanity. This would mean, in effect, that any state that ratifies the court could at the same time declare a willingness to cooperate with the court over an investigation. If such a declaration were not forthcoming, the court would not be able to take it up automatically.

Worried observers feel that this has provided a huge opportunity for the nonaligned governments, which basically want to keep internal armed conflicts out of the statute. They can now accept the inclusion of such conflicts into the statute, knowing full well that they need not be bound by the court. Some feel

that this loophole has reassured China, Indonesia and Algeria, all of which appeared to shift course yesterday. Indonesia and Algeria said they could accept the inclusion, if the concept of "internal armed conflict" was better defined. Even China appeared to soften its position and edge towards inclusion.

There is another element of the deal that appears to be a drastic reduction in the crimes that would be listed as war crimes committed in internal armed conflict. As reported last week in *On the Record*, the current draft proscribes a series of specific crimes that range from the conscription (recruitment) of children under fifteen into the armed forces to attacking hospitals. This list is reportedly under such intense scrutiny that some fear it may be gutted completely in the compromising. One observer said there is talk of taking all the crimes out except for the recruitment of children and "direct attacks" on civilians, aid workers and units carrying the Red Cross emblem.

All this has prompted yet another anguished protest by the ICRC. Late Monday, the Red Cross delegation announced: "It is essential that the International Criminal Court have automatic jurisdiction over war crimes and crimes against humanity, and not only over genocide. If it is to serve as an effective complement to national courts, the Court must be competent to try such cases as soon as a state becomes party to the treaty. By virtue of the principle of universal jurisdiction, every state has the right and in many instances the duty under international law, to prosecute or extradite suspected war criminals. "This principle reaffirms the fundamental rule that criminals are not immune from prosecution wherever they have committed their crimes and whatever their nationality. Any form of additional consent, such as an opt-in precondition for the exercise of the court's jurisdiction, gives the impression that states can lawfully protect war criminals from prosecution. This could be a retrograde step for international law and would severely limit the court's effectiveness."

### FINANCE

## Three Proposals, One Deadlock

Governments that want a strong criminal court have proposed that it should be funded by the United Nations for an initial period – possibly between one and three years – after which the costs of the court would be born by states parties. The proposal was put forward by the Netherlands on behalf of the 59 likeminded governments on Friday. A counterproposal by the United States would have the court funded by states parties, although it would also allow the court to seek funds from the UN General Assembly for any investigation incurred by a referral from the UN Security Council. Japan is also proposing that the court be funded by states parties, although it too says that the court could seek UN funding "during the initial phase."

With less than a week of the conference to run, observers are relieved that the likeminded have finally put their support behind a funding formula. For much

of the last three weeks, financing has been on the backburner, completely overshadowed by the more controversial issues of jurisdiction and definitions.

Yet the possibility is strong that this meeting will end without agreement, and some NGO experts who are well steeped in UN funding horror stories are reminding delegates that this is another way to cripple the court. The UN Human Rights Committee, which monitors implementation of the International Covenant on Civil and Political Rights (ICCPR) failed to receive funding from states parties, as was intended, and ended up paralysed for several months before approaching the UN General Assembly for funding.

The prospects for an agreement do not seem good, because the two formulas on the table reflect the underlying tensions that are overshadowing the entire debate. The United States is determined not to pay for a court that it will not ratify. On the other hand, a funding formula

that left all costs to the states parties would certainly deter smaller, poorer states from ratifying. As *On the Record* has noted, these are precisely the states that would stand to benefit most from adherence. This was the experience of the committee that monitors the 1984 Torture Convention, in its early phase.

Nothing about funding international organizations is simple, so it is hardly surprising that this discussion has caused problems. But many are surprised and dismayed that it has taken this long for the disagreements to crystallize.

Even now, there remain major questions about the two main texts on the table – from the Dutch and the US. The Dutch text suggests that the states parties would approach the UN General Assembly for funds. But it is far from certain that the General Assembly would agree. If major UN members are opposed, the GA process would give them plenty of chances to dig in their heels.

## FINAL CLAUSES

# Assembly, Review, Reservations and Amendments Offer 'Way Out' on Disputed Articles

*The final clauses of the ICC statute lack the drama and controversy surrounding the more political issues like jurisdiction and definitions. But they will have a major impact on the success of this conference. On the Record sums up the debate as it stands.*

## Settlement of Disputes

A dispute on the judicial functions of the court will be settled by the judges. A dispute between states parties on interpretation will either be resolved through bilateral negotiations or – failing that – referred to the Assembly. The Assembly may decide to refer a dispute to the International Court of Justice.

## Reservations

Many feel that there should be no reservations, and this is certainly the view of many NGOs, who feel that reservations would fatally weaken the statute. The argument against this is that reservations would allow states to join the statute, while opting out of articles they simply cannot support. States in support of reservations argue that in this way the treaty may get more ratifications and

enter into force sooner. Most delegations that have spoken say that no reservations should be permitted. Malaysia and Vietnam have said they are against any reference to reservations at all (option 4). This would mean defaulting to the Vienna Convention, and allowing states parties to reserve on any issue as long as the reservation does not contradict the purpose or object of the treaty. The US, China, Russia, India and Japan are among those that support reservations on specific articles, although here again there are variants. According to one proposal, no reservations will be allowed unless this is expressly provided for in the actual article. Another proposal would allow a state to make reservations at the time of ratification. The nature of the reservation is not specified.

## Amendments

Amendments offer governments the chance to make changes in articles. Under the present text, any state party could propose an amendment after a certain number of years have passed following entry of the treaty into force. Most states want five years, while the US suggests ten. Amendments will be taken up by the first meeting of the states parties at the first Assembly meeting that follows notification of the proposed amendment. The Assembly will decide whether to address the amendment, or convene a review conference. If the Assembly cannot agree on the amendment by consensus, it can be put to a vote. At present, three different types of amendments have been identified: institutional, substantial, and amendments concerning Article 5 (definitions). Different types of majority are being proposed for these three categories, reflecting their potential for controversy. Institutional issues (court organisation, registry, etc.) are relatively uncontroversial and could be decided by a 2/3 majority. There is more disagreement over issues of substance (e.g. what to do if a state refuses to coop-

erate). Those who favour a strong court want to ensure that a small majority cannot block the Assembly and might accept a 3/4 majority; others are so worried that they have proposed a majority of 7/8. The US and UK have supported a special category of amendment for Article 5 because they are concerned that the Assembly might agree that the use of certain new weapons systems (or nuclear) could be declared a war crime at some future stage. As a result, the US and UK have proposed that if such an amendment is passed, it should only come into force if ratified by all states parties. The majority who disagree suggest 5/6. Here, as elsewhere, the likeminded are trying to remain true to the notion of a rounded, complete court. "A la Carte" amendments would certainly not help.

## Review

The UN Secretary-General shall convene a review conference, five or 10 years after the entry into force of the ICC treaty. The review conference would include, but would not be limited to the crimes contained in article 5.

## Signature, Ratification, Acceptance, Approval, or Accession

The ICC statute would be opened for signature immediately after the successful conclusion of this conference. The number of ratifications required to bring it into force is not agreed.

## Early Activation of the Statute

Pending entry into force of the statute, states that have signed the statute will refrain from any acts that might defeat the "object and purpose of the Statute." They will also pay due regard to the relevant principles contained in the statute. This shows that the statute will exert an immediate impact, which may be good news or bad. If the text waters down key issues, such as the definition of war crimes or internal armed conflict, it would be very serious.

## Withdrawal

A state can notify the UN if it withdraws from the statute. This would take effect a year later. But the state would still be obligated to pay contributions incurred during the period of membership. Withdrawal would not affect the "continued consideration of any matter which is already under consideration" by the court prior to withdrawal. In other words, once a case is under way a state could not avoid the court simply by withdrawing from the statute.

Find more articles at On the Record Web Site:  
<http://www.advocacynet.org/icc>

PURL: <https://www.legal-tools.org/doc/e749b5/>

On the Record endorses the creation of an effective and independent court and those who are campaigning for its establishment. Our project is supported by the Coalition for an International Criminal Court (CICC). On the Record is editorially independent, and solely responsible for the contents.

## Finance

Nor does the Dutch proposal specify the time that the UN would help with funding. The Law of the Sea secretariat received UN support for a year before turning to its states parties, but many feel this was not long enough to put the organisation on a firm financial footing. As a result, many would prefer three years.

The US proposal, meanwhile, leaves open the possibility that the court could go back to the UN General Assembly to cover the costs of any investigations that result from Security Council referral. But this would certainly create a major flare-up, because Security Council activities are paid for under the UN peacekeeping budget. Peacekeeping uses a different method of assessment from the UN regular budget, and lays a heavier burden on the permanent five members. As a result, many feel that this part of the US proposal is also intended to minimise the costs to the US. Once again, it seems, the US priority is to ease the pressure on itself, rather than build the court.

## ACCEPTANCE OF JURISDICTION

Out of the 85\* states taking the floor on the question of acceptance of jurisdiction, an overwhelming majority spoke in support of automatic jurisdiction for all three core crimes (Art.7 bis Option 1). Option 2, envisaging a combination of automatic jurisdiction for genocide only and opt-in clauses for war crimes and crimes against humanity, attracted far less support.

64\* spoke in favour of Option 1.

21 supported Option 2.

## PRECONDITIONS FOR JURISDICTION

Article 7 now provides for a jurisdictional regime based on the Korean proposal for genocide with three options remaining for the other core crimes. Option 1 extends the Korean model to these crimes. Option 2 requires acceptance of the territorial and the custodial State and Option 3 the acceptance of the State of nationality. The vast majority of States addressing the issue wanted to see the Korean proposal applied to all core crimes.

60 delegations preferred the Korea Proposal (Opt 1).

11 spoke in favour of Opt 2, with 5 of these supporting a combination solution with Option 3.

## THE PROSECUTOR

Article 12 offers two options on the powers of a *proprio motu* Prosecutor. Option 1 provides for judicial review by the Pre-Trial Chamber in accordance with the wording of Article 12. Option 2 would add further safeguards. An overwhelming number of those who took the floor to address this issue supported a *proprio motu* Prosecutor.

63 states based their positions on the inclusion of a *proprio motu* Prosecutor\*  
27 maintain that no additional safeguards are needed

6 are calling for Option 2 safeguards

13 states remain opposed or have expressed

strong reservations about such a Prosecutor

## THE ROLE OF THE SECURITY COUNCIL

Article 10 (2) offers three options for the role of the Security Council in deferring the Court's jurisdiction. Option 1 allows the deferral of investigation or prosecution for a renewable period of twelve months. Option 2 allows for an unspecified and renewable deferral period. A significant number of states called for a shortened period of deferral or a limitation on renewals. Option 3 is no provision on deferral.

33 states called for a provision on preservation of evidence during a deferral; no state opposed such a provision.

53\* states supported Option 1.

5 states supported Option 2.

14 states supported Option 3.

## INTERNAL ARMED CONFLICT

A new chapeau to section D has been introduced to L.59, restricting the Court's jurisdiction with respect to war crimes in internal armed conflict in a number of ways. An impressive majority of States speaking out on this issue called for the deletion of this chapeau or voiced serious objections to its language, even despite the lack of an explicit option to this effect.

59\* states made a statement on internal armed conflict.

36\* of these wanted the Chapeau deleted or changed.

## THRESHOLD FOR WAR CRIMES

Article 5 quater offers two options on the threshold for the Court's jurisdiction over war crimes. Option 1 gives the Court jurisdiction "only when", Option 2 "in particular when" crimes are committed as part of a plan or policy.

39 States favoured Option 2.

9 States wanted the more restrictive Option 1.

\* Counting all the SADC states as represented by South Africa.

# NAM Won't Budge On Aggression, Nukes

**A**fter two hours of discussion late Tuesday, countries of the Non-Aligned Movement (NAM) agreed that they would insist that "aggression" and the use of nuclear weapons be included as crimes in the docket of the International Criminal Court (ICC).

Saeid Mirzaee Yengejeh, senior counsellor at Iran's permanent mission to the United Nations who presided over the meeting, said the decision had been taken "unanimously". Asked whether there was a room for flexibility, Mirzaee repeated that the decision was unanimous. Besides, he said, NAM foreign ministers at their meeting in Cartagena had already decided that.

This point was brought up by a delegate from the like-minded group of countries Tuesday, who said there was no doubt in his mind that the NAM would stick to its guns and, if need be, insist on a vote on the two provisions in the Committee of the Whole.

An African delegate at the meeting confirmed that view: "We have already given up on several issues. We cannot repeat that in this case. If the Americans do not want, let them stay out. They will come in later."

A Libyan delegate also insisted there was no going back. The US, Russia, China, Great Britain and France who are permanent members of the U.N. Security Council - already have power to decide on issues of serious concern to the developing countries, he explained. "We cannot leave it to them again to decide whether aggression is a crime."



## 'We'll Stop Clock ...

from page 1

that displayed slogans in many languages: "Nunca Mais", "No Alibis. The ICC Must Be Established on July 17" read some of them. A penny-farthing painted orange and gold had a huge doll balanced on its handle-bars wearing a baseball cap and a billboard that read "USA Forget Democracy". One large green banner said "Yes to Justice", in English and Chinese. "I Care Because I Have A Dream" read a Radical Party banner, the same statement endorsed by some 700 people who have been fasting since July 7 for the creation of an ICC.

"I wanna be that number - when the saints go marching in," sang Charlie Cannon and the group Voices in Transit from a podium flanked by roses. As Prodi and the mayor of Rome, Francesco Rutelli, arrived, journalists thrust mikes under Prodi's nose for comment and blocked views of the mega-screen where European Commissioner Emma Bonino was to come on air. "The stakes are very high at the Rome ICC Conference, and the Torch-Light March is not a criticism of its work, but is encouraging the Conference to conclude its work satisfactorily," a somewhat fuzzy-imaged Bonino told the crowd via the video-conference. "It's a sacrosanct battle," she said in a play on words, referring to the route along the Via Sacra, an ancient Roman triumphal road.

Prodi agreed: "The Torch-Light March is of great external importance - its historic route shows the importance our country assigns to the favourable conclusion of this Conference. There's great involvement, not abandonment, and we must march forward as we are doing tonight."

As the Campidoglio glowed in a late burst of sunlight, and rooftop flags fluttered in the evening breeze, the procession descended on the floodlit Forum. Under the Arch of Septimius Severus, past the Temple of Antonius Faustina and the haunting ruins of the Basilica Massentius and Nero's Domus Aurea the crowd walked, along giant flagstones. Just after the Colosseum, at the Arch of Constantine, the marchers gathered torches, bearing them along the last half-mile under the Palatine hill to the entrance of FAO. *Alison Dickens*

**"T**here is a problem of transparency regarding the package that will be presented to delegations" by the chairman of the Committee of the Whole, Spain's chief delegate, Juan Yañez-Barnuevo, complained in an interview Tuesday.

He said that the real negotiations are taking place neither in the formal nor in the informal fora, but elsewhere as "informal informal" talks, without properly taking into account all those interested governments.

Spain, at least, was not among the 30-odd countries invited to the meeting convoked by chairman Philippe Kirsch at the Canadian Embassy on Jul 5, he added.

Diplomatic sources say the group was selected in order to reflect all significant positions in the Conference, but not all feel that way, it seems.

Kirsch said that he had taken special precautions regarding formal and informal negotiations and that all 12 coordinators are informed of all developments. They, in turn, deliver the information to delegations.

Notwithstanding this fact, he added, "in any negotiation" there are delegations that are not fully informed or out of some processes, which is "inevitable."

Yañez-Barnuevo expressed also concern that too many concessions were being adopted to please countries that will then "perhaps not be able to sign or ratify or will have problems, leaving aside the interests expressed by the core nucleus of countries which will sign and ratify."

"It is essential to know what will be the core group of countries with which this Court will take off...There cannot be laid down a package that will not meet their concerns," he added.

He said that it was particularly worrying to see that there are attempts to establish "different regimes" of jurisdiction for the three core crimes - genocide, crimes against humanity and war crimes- which he said would render the Court ineffective.

The Spanish diplomat had been present in the drafting of the two ad-hoc tribunals - that for the former Yugoslavia and Rwanda - established by the United Nations Security Council, and expressed his hope that he will also be part of the ICC's birth here in Rome.

**Where  
are  
decisions  
being  
made?**

t e r r a v i v a



# FROM THE IPS WIRE

## Bangladesh Premier Feels the Heat

**DHAKA**

Prime Minister Sheikh Hasina Wajed is hard pressed to prove that she is an efficient manager, and able to steer Bangladesh out of a political and economic morass.

Problems are piling up faster than the authorities can solve them, and Hasina's rival, seasoned politician and previous prime minister, Begum Khaleda Zia, is not letting go of a single opportunity to lambast the government.

The government is blamed for the breakdown in law and order, rampant corruption, lack of discipline and violence on university campuses, electricity and other shortages, most of which are problems it inherited and had promised to tackle.

"It is high time the ruling party quit power or else people will force them out of power," opposition leader Zia said at a recent anti-government rally in the capital city Dhaka.

"We will ask the president to hold fresh elections as the government has failed in all sectors," she told her supporters, who have been clamouring for the government's ouster ever since their party lost power to the ruling Awami League in June 1996.

The Awami League, the country's independence party, and the opposition Bangladesh National Party (BNP) have taken it in turns to lead the government, since the end of a long spell of martial law in December 1990.

## Worldly Woes of Mexican Clergy

**MEXICO CITY**

A gathering of 2,000 Roman Catholic priests in Mexico committed themselves to confronting the shortage of priests, growing secularism and widespread ignorance of religion among the

population, which they said was the victim of "savage liberalism."

To fulfill that task, which they see as crucial at the end of the second millennium of the Christian era, the clergy plans to prevent - at any cost - the gospel from being distorted by "worldly contamination," said Cardinal Dario Castrillon.

Castrillon closed the third international meeting of priests Sunday in the name of Pope John Paul II. The gathering got underway Jul. 7 in the Basilica of Guadalupe, dedicated to Mexico's patron saint.

"From your posts in the vanguard, you are responsible for the new evangelisation," said a message sent by the Pope, who pressed the clergy to "courageously face up to the incomprehension, mistrust and persecution you must suffer in your pastoral work."

At the gathering, the Church promised to push for more equitable state policies, and berated governments and citizens who see money as "the new gospel."

The most difficult aspect of the priest's mission today is "keeping up with the world's rhythm," Ecuadorean priest Roberto Toro told IPS.

## Overdose of Complacency in Anti-Polio Drive

**GENEVA**

The year 2000 target for total eradication of poliomyelitis will not be met unless sufficient resources are mobilised on a timely basis, warn World Health Organisation (WHO) officials.

"We are virtually on the home stretch," says Dr. Bruce Aylward, in charge of the WHO Global Polio Eradication Initiative, "and we badly need the second wind to finish on time. Only a handful of polio-endemic countries is left in the world."

The polio virus is still circulating widely in three specific areas which include large, densely populated

countries: Bangladesh, India, Nepal and Pakistan in South Asia; the Democratic Republic of Congo and Nigeria in central and west Africa; and Ethiopia, Somalia and Sudan in the Horn of Africa.

Members of the Global Technical Consultative Group on Polio Eradication (TCG), gathered in Geneva for their annual assessment meeting last week, warned that "a deadly combination of a shortfall in funds and an overdose of complacency could jeopardise efforts to eradicate polio in the final stages of the global campaign."

They pointed out that "in the decade since the initiative was launched there has been a 90 percent decline in reported cases worldwide. But the target will not be met unless timely funds are forthcoming, they stressed.

## Euro Impact on Latin America Gradual

**CARACAS**

The new euro monetary unit - the common currency of the European Union (EU) - will have a gradual impact on Latin America and the Caribbean, the EU's second most important trading partner, according to an economic study released here.

Latin American and Caribbean nations belong to the so-called "dollar economy" - the greenback accounting for more than 60 percent of the world's financial reserves, 80 percent of bank loans and 40 percent of bonds.

A study by the Latin American Economic System (SELA) predicts that in January 1999, when the euro will begin circulating as the national currency of 11 of the 15 member nations of the European Union, the international monetary system will then consist of two main players.

In the case of Latin America and Caribbean, however, the study maintains that the euro will have only a gradual impact. The European bloc has a 70 billion dollar trade balance with Latin America and the Caribbean, which translates into a 10 billion dollar trade deficit for the region, while EU investments account for 23 percent of all investments in the region, according to SELA.

Venezuelan consultant Nelson Ortiz says that in the long run, the effects will be positive - even if only because there will now be two major monetary players instead of one.

# Reaching Men, Through Their Mothers

**F**rom targeting only women, the world's longest-running family planning programme in India may be in the process of enlisting their mothers-in-law.

Ever since international population experts began focusing on men after it became clear that women could not bring about sexual and behaviour changes in male-dominated societies, Indian organisations have also tried innovative approaches.

Aiming to bring men on board to make them more responsible about parenthood, sexual and reproductive rights, experts have found that mothers-in-law could be the key to the success of the new strategy.

Studies have shown that the older women control the reproductive health of young couples, particularly in joint families where the discussion on choice and timing of contraception and number of children are collective family decisions.

In rural south India, a study showed that the extended family had a say of up to 44 percent in matters related to family planning methods and number of children.

To win mothers-in-law over to their side, health workers and activists have organised 'sasusammelans' (meetings of mothers-in-law), on an experimental basis, in some parts of the country.

Last month, a workshop 'Involving Men as Partners' was held here to discuss the results of some of the new strategies for reproductive health were shared. Many of the case studies suggested that the traditional Indian mother-in-law was a crucial link in the chain to the reproductive rights of the couple.

But the question that popped up over and over again was how to persuade the traditional Indian mother-in-law that caring for her daughter-in-law's reproductive health is not indulgence but ensuring a healthy grandchild?

The pioneering 'sasusammelans' and 'men's clubs', a strategy has created a more gender sensitised approach to reproductive health and reworked gender relations.

But Vinit Sharma, co-author of the case study, said that though the meetings have given the programme a boost, the men in the family remain the ultimate decision-makers. As a mother-in-law said: "We're dependent on the men to give us money to go to the doctor." *Rita Manchanda/IPS*

**W**estern diplomats are putting fresh weight behind calls for a 'Dayton-style' regional conference to bring the fighting in the breakaway Serbian province of Kosovo to a halt.

But the province's ethnic Albanians must bridge the differences between their own rival factions first.

Only then can they join talks on the lines of the Dayton conference, called in 1995 to bring the Bosnian war to a fragile halt.

The original architect of Dayton, U.S. envoy Richard Holbrooke, is now looking into the Kosovo imbroglio, backed by Russian Deputy Foreign Minister Nikolai Afanasyevsky. German Foreign Minister Klaus Kinkel agrees that proximity talks might be the answer. "Perhaps we need a process that resembles the one that took place in Dayton," he told the Berlin daily 'Tagesspiegel' at the weekend.

All want the feuding ethnic Albanian forces to work together. "In Kosovo we're working with the Albanians to strengthen their cohesiveness," Holbrooke said last week. "They're having a little bit of trouble getting their political act together."

Afanasyevsky says the Albanians have to prove the existence of a united front that can face Belgrade as well as the international community.

Dozens have died in the province since February, when Yugoslav President Slobodan Milosevic began attacks on ethnic Albanian separatists from the Kosovo Liberation Army (UCK). The UCK has also urged an end to division, Sunday calling on the Albanians to stop the "shameful bickering" between rival political leaders.

But the guerrillas have also refused to put themselves under the control of the shadow government of

## Kosovo Albanians Seek to Bridge Differences

Kosovo, elected by clandestine vote in March, and led by Ibrahim Rugova.

Rugova's policy of non-violence over the last decade won him the sympathy of the West but has failed to deliver Kosovan independence or autonomy. Rugova's claim to speak for Kosovo's ethnic Albanian majority, who outnumber Serbs nine to one in Kosovo, has been undermined by the recent success of UCK, which now controls around 30 per-

cent of the province despite heavy fighting.

France and Britain warn they will call on the U.N. Security Council to mandate military action if the warring sides do not cease fire. Moscow opposes use of NATO force.

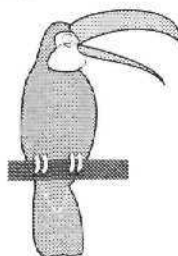
Among Rugova's rivals is Adem Demaci, who spent 27 years as a political prisoner in the former Yugoslavia, and Bujar Bukosi, prime minister of the 'government-in-exile' of Kosovo, based in Germany.

"All of the political parties and leaders, including Rugova and the DSK have lost influence in Kosovo as a result of the successes of the UCK," admits Bajram Kosumi, a political critic of Rugova. "There is a logic to its popularity, but nobody expected it. And none of the parties, none of the leaders, have managed to build a bridge to the guerrillas."

"Kosovo is different from Bosnia," says Belgrade analyst Dejan Djordjevic, "and Holbrooke's goal of brokering a peace deal between Milosevic and ethnic Albanians - probably some form of autonomy within Yugoslavia - seems even more difficult than the 1995 Dayton Peace agreement he made to end the Bosnian war."

"It's so hard to think how so different things: the UCK, Rugova, many ethnic Albanian politicians, the dream of a Greater Albania, and above all, Belgrade and its position, can all fit into a single bottle." *Vesna Peric Zimonjic*

Skip the hamburgers. As reports persisted Tuesday of "massive U.S. pressure" on European allies of the North Atlantic Treaty Organisation to back down on lobbying for a strong, independent ICC - a guessing game was underway in the corridors as to what "the only superpower" might really have in mind. Withdrawal of troops? Trade sanctions? European delegates were in fact also weighing the impact of such punitive measures on the U.S. economy itself. One of them hit upon on a novel idea: "Let them withdraw McDonalds," said the delegate, obviously enjoying Italian cuisine during his nearly four-week stay in Rome... ☆



Unheard women. Only men, and the European Commissioner Emma Bonino, were listened to respectfully at the Torch-march in favour of an ICC last night at the Campidoglio square, an angry female journalist complained. When other women spoke, including Pàtrizia Toya, a deputy foreign minister, the crowd just got distracted. Old habits die hard...☆

Speculationland. States of limbo are common in negotiations. They come around in between new proposals, papers or discussion papers. Those who know what's happening are nowhere to be found, while those who don't know hang around distributing their hypotheses. This is when speculations get wild and journalists write that "tension is mounting." Tuesday was such a day, but some decided to take it easy and enjoy Rome before it's too late...☆

# GOSSIP

Sergio, not Giorgio. The former Italian senator and president of the association 'No Peace Without Justice', Sergio Stanzani, was rechristened Giorgio by *TerraViva*. A technical problem? A typo? Wrong sources? No. Just a mistake by our gossip expert, who can add this oversight to his well-deserved bad reputation. Our apologies to Stanzani...☆

## CONCERTS

Foro Italico (open 20.00-02.00), Piazza De Bosis, lato Stadio del Nuoto. Tel 06 44233226. Tickets 8 000 lire. 22.00, Piu Bestiale Che Blues Facsimile Festival, soul-R'n'B Tribute.

Testaccio Village, Via di Monte Testaccio, 16. Tel 065754137. Tickets, 12 000 lire for weekly pass. 21.00. The Jeff Healey Band.

Jazz & Image, Villa Celimontana, 22.00. Tickets 9 000 lire. Scoppa Santucci Sextet.

Roma Incontra il Mondo, Villa Ada Lake, 21.30. Tickets 10 000 lire (for 10-day pass). Nando Citarella e i Tamburi del Vesuvio. Neapolitan music.

Roma Live Festival, Scalinata del Palazzo della Civiltà del Lavoro-Quadrato della Concordia, 21.00. Tickets 36 000 lire. James Brown. Promises to be action-packed!

Fiesta, Ippodromo delle Capannelle, Via Appia Nuova 1255, 21.30. Fania Latin Legends Band. Tickets 10 000 lire.

CS Villaggio Globale, Lungo Tevere Testaccio (Testaccio), 21.00. Dickies. Tickets 5 000 lire.

## WHAT'S UP

International Chamber Ensemble performs music by Paisiello, Mozart, Gershwin and others. Saint Paul-within-the-Walls Church (Via Nazionale), 20.30. Tel 0686800125. Free Admission

Tempietto Concerts, Teatro Marcello, 21.00. The Koine Trio performs music by Mozart, Beethoven and Piazzola. Tel 064814800 for info. Tickets 30 000 lire including access to archaeological area.

Villa Giulia Concerts. The Academy of S. Cecilia Choir performs Orff's "Carmina Burana"; Villa Giulia Etruscan Museums, 21.00. Tickets 15 000-35 000 L.

Teatro dell'Opera Orchestra and Choir directed by Daniel Oren performs music by Borodin, Gershwin, Ravel and Kodaly, Terme di Caracalla, Frigidarium, Via delle Terme di Caracalla, 21.00. Tickets 20 000 lire

The Young Italian Musicians perform music by Vivaldi, Albinoni, Back, Pachelbel and others. Trajan's Forum, 21.00. Tickets 25.000. Tel 0648882531.

## TOURS

Symphony of Light. Guided tours of Augustus and Nerva's Forum, 21.00, 21.15; 22.00 (tour in English). Tickets 12 000 lire. Tel 0648882531 for further info.

## TO VISIT

Palazzo Massimo Largo di Villa Peretti 1 (Piazza dei Cinquecento). Tel 06520726. Open Tue-Sun 9-22. Tickets 12.000 lire. After 15 years of costly restoration work, one of the world's finest collections of antiquities has finally re-opened in its entirety to the public.

Work in Progress, modern art exhibition. Features the work of contemporary Italian artists including Renzo Vespignani, Piero Guccione, Enzo Calabria and Ugo Attardi. Galleria Comunale d'Arte Moderna e Contemporanea, Via Cagliari 29. Tel 064742848. 10-19.00 Mon-Fri. 9.30-13.30 Sat. Closed Monday. Entrance 5 000. Until 27 September.

