

PRO-FAMILY GROUPS WORRY ABOUT EFFECTS OF INTERNATIONAL COURT

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CNSNews.com
February 11, 2002

Pacific Rim Bureau (CNSNews.com) - Just eight more countries must ratify the statute setting up the International Criminal Court for the body to become a reality, and pro-ICC campaigners believe this could happen within just two months.

Critics fear the court will infringe on nations' sovereignty, and could even become a forum for the United Nations to impose pro-abortion and anti-family measures on member-states.

The ICC comes into force once 60 signatory countries have ratified the 1998 Rome Statute, its founding document. Portugal and Ecuador on February 5 became the 51st and 52nd to do so.

Around two dozen countries are in the process of getting the go-ahead for ratification from their respective parliaments. Canada and most European Union members already have ratified.

Because the first 60 countries to ratify will play a defining role - including nominating judges and prosecutors - William Pace of a coalition of non-governmental organizations promoting the ICC predicted in a statement that the remaining eight ratifications would occur very soon.

Once the target has been reached, the Rome Statute will enter into force within two to three months, and then the court's framework and officials will be finalized over a period of around 12 months, the Coalition for the International Criminal Court (CICC) explained.

The CICC is a network of more than 1,000 NGOs supporting the creation of the court, which will be located in The Hague.

The tribunal will be modeled on those set up after World War II and following the conflicts in Bosnia and Rwanda. Supporters say it is essential to have such a court for cases where a country is unable or unwilling to place suspects on trial for major crimes committed there.

A full-time prosecutor will be empowered to initiate investigations, and 18 judges, from 18 countries, will hear cases. Individual nations may also bring cases, as may the U.N. Security Council. It will be empowered to hand down sentences up to a maximum of life imprisonment.

Anti-life, anti-family fears

Crimes within the court's jurisdiction include genocide, crimes against humanity and war crimes. Crimes of sexual violence including rape, sexual slavery, enforced prostitution, enforced pregnancy and enforced sterilization are also covered.

It is the inclusion of "enforced pregnancy" that most concerns pro-life campaigners.

Despite claims that it only refers to rape for the express purposes of impregnation - this was alleged to have occurred during the Bosnian war - the term has been used before in legal proceedings to mean denial of abortion.

The pro-life group Real Women of Canada has pointed out that the American Civil Liberties Union and Planned Parenthood, in a 1992 legal challenge against abortion legislation in Utah, described "enforced pregnancy" as "forcing women to continue pregnancy against their will for the purpose of serving the state's declared interest in preserving unborn human life."

Last summer Irish pro-lifers, campaigning ahead of a national referendum on whether Dublin should ratify the Rome Statute, echoed the argument.

"Forced pregnancy [as covered by the Statute] is not rape," said Pat Buckley of an ad-hoc No to ICC campaign. "It is the denial of access to abortion, in certain circumstances. It is the denial of access to abortion that is the new crime."

He warned that individual nations may eventually be forced to include this on their statute books. Indeed, campaigners like the Women's Caucus for Gender Justice have pointed out that countries' domestic laws may need to be amended to be brought in line with the ICC Statute.

The Population Research Institute, a right-to-life research group in the U.S., has brought to public attention collusion by the U.N.'s population body with China's controversial population policies, which include forced abortion and sterilization.

In response to queries, the PRI's director of governmental affairs, Scott Weinberg, voiced concern about the possibility a body like the ICC could impose "anti-natal views" and prosecute those who oppose coercive population-control policies.

"We're concerned about violations of the sovereign rights of nations, and the inalienable rights of women and families to determine for themselves the timing and spacing of their pregnancies," Weinberg said.

Steps taken under China's "one-child policy" to keep population growth in check "are in essence human rights abuses, described by the Nuremburg War Crimes Tribunal as crimes against humanity."

Yet global bodies promote such policies. The United Nations Population Fund (UNFPA) has collaborated with China and other countries "to fulfill global population targets," and has praised what it calls Beijing's "practical measures," he said.

"We know UNFPA officials have advocated for the implementation of China's coercive population control policies in other nations. Punishment for non-compliance includes imprisonment, fines and the destruction of homes."

"The imposition of anti-natal views on the poorest of the poor by corrupt governments or through an international criminal court, and the prosecution of individuals who heroically oppose coercion, is something which must be opposed with the utmost vigilance," Weinberg said.

Prof. Richard Wilkins, managing director of the World Family Policy Center and law professor at Brigham Young University, said this week it was inevitable that issues like abortion, homosexuality, children's rights and religious freedom would come within the ICC's jurisdiction.

"The court's structure also permits pressure groups to obtain ready influence over prosecutorial functions," he noted.

Wilkins saw the potential for problems ahead.

"Should the court's judges attempt to impose values contrary to or insensitive to the various cultures of the world - a very real possibility - the court may well make future conflicts inevitable."

Sovereignty concerns

When the treaty was hammered out in Rome, the U.S. joined a handful of other countries in opposing it. Most of the others were authoritarian dictatorships such as Iraq and China.

Washington's key concern was that its forces engaged in actions abroad could find themselves hauled before the tribunal.

Israel, although a prime initiator of the ICC proposal, joined the dissidents in protest of the decision to classify Jewish settlement on disputed territory ("the transfer of an occupying power's population into a territory it occupies") as a war crime punishable by the court.

Wilkins of the World Family Policy Center warned that, despite its founders' best intention, the ICC's founding statute "transfers a vast amount of decision making authority from previously sovereign nations to an international court that will be remote - and unable to be controlled by or accountable - to the diverse peoples and cultures of the world."

Its vague language allowed for an expansion of offenses way beyond conduct now considered "within the customary reach of 'genocide,' 'war crimes,' and 'crimes against humanity'," he said.

Congress last month dropped legislation, which would have forbidden U.S. troops to participate in peacekeeping missions unless they were exempted in advance from any possible ICC prosecutions.

The American Servicemembers Protection Act (ASPA) would also have prevented all cooperation with the ICC by federal or state authorities, and would have empowered the

president to use force to free any American servicemen held by the ICC.

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Patrick Goodenough's recent article, "Pro-Family Groups Worry About the Effects of the International Criminal Court" revisits concerns that were raised during the negotiations of the Statute of the International Criminal Court -- and then resolved to everyone's satisfaction. It also includes fanciful speculation regarding the potential jurisdiction of the Court.

First, it should be remembered that Court's Statute was negotiated at Rome in 1998 by 140 countries, including the United States. It contains 128 articles detailing, among other things, the jurisdiction and applicable law of the Court, the due process rights of defendants, the checks and balances of the Court's organs, and the powers of its governing body, the Assembly of States Parties. It is supported by a concise code of crimes that explains the precise actions and intent that must be proven for each crime, as well as rules of procedure and evidence that must be adhered to at all stages of the proceedings. The United States not only supported the adoption of these supplementary materials, it led the effort to draft them. Any question about the Court's potential reach must be measured against what is included in these documents.

The first concern mentioned in Goodenough's article is the fear that the criminalization of "enforced pregnancy" in the Court's Rome Statute will result in the indictment of individuals who oppose abortion or restrictive population policies. The Holy See raised this exact point during the Rome Conference. As a result, Article 7(2)(f) was added to make it clear that forced pregnancy means "the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy." It is hard to imagine a more explicit and narrowly drawn expression of legal intent.

Professor Wilkins asserts that the ICC will "inevitably" make pronouncements on "value" issues such as abortion, homosexuality, children's rights and religious freedom. This is entirely untrue. The only questions the Court will adjudicate are the crimes listed in its Statute: the most serious cases of crimes against humanity, war crimes, and genocide. These acts must have been committed deliberately and with intent. No doubt the subjects mentioned by Wilkins will be discussed at some point in the long life of the Court, but only if homosexuals, children, or religious groups are systematically targeted for crimes such as murder, torture, or enslavement. One would think that those concerned with protecting cultural and religious freedom would understand how essential this court will be for ending cycles of violence committed for the purpose of persecuting cultural, ethnic, and religious minority groups -- such as the ongoing conscription and enslavement of Christian children in the Sudan.

The second allegation raised in the article is that Israeli opposes the ICC because, it claims, the Statute classifies "Jewish settlement on disputed territory...as a war crime punishable by the court." In fact, the Rome Statute says nothing whatsoever about Jewish settlements. It does, however, restate well-accepted international law in criminalizing "[t]he transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it

occupies, or the deportation or transfer of all parts of the population of the occupied territory within or outside this territory." As a consequence of Israeli concerns over the breadth of this article, the Rome Conference agreed by consensus that an explanatory footnote should be added to the Elements of Crimes. It reads: "[t]he term "transfer" needs to be interpreted in accordance with the relevant provisions of international humanitarian law." Israel was apparently satisfied. It signed the Statute on December 31, 2000, as did the United States.

The article also asserts that the Statute somehow is incompatible with state sovereignty. The 139 countries that signed the Rome Statute, and the 52 countries that have ratified it thus far, have acted in pursuance to their sovereign rights to ensure that the most atrocious crimes known to humankind shall never again go unpunished. The rights of states are protected and preserved in the Statute through the creation of the Assembly of States Parties, the Court's governing body, which among other functions will hold the judges and officers of the Court accountable for upholding the requirements of the Statute. "Sovereignty" is the right of states to autonomous decision-making. It does not disappear because states choose to work multilaterally. The signing of a treaty is the quintessential act of a sovereign nation.

The ICC will apply the law as detailed in its Statute and further elaborated in its Elements of Crimes and Rules of Procedure and Evidence. Rather than arguing that ICC can use the "vague language" of its Statute and supplementary materials to target everyone's pet controversy, it's about time that those who oppose the Court take a look at these essential documents.

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