

Indo-US pact: No extradition to tribunal

PRESS TRUST OF INDIA
NEW DELHI, DECEMBER 26

VOWING to bring to justice those who commit genocide, crimes against humanity and war crimes, India and the United States today signed an agreement not to extradite each other's nationals to any international tribunal without express consent of the two countries.

The agreement, inked by Foreign Secretary Kanwal Sibal and US Ambassador to India Robert Blackwill, stipulates that each country will not knowingly facilitate, consent to or cooperate with efforts by any third party or country for the extradition, surrender or transfer of each other's nationals to any international tribunal.

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This can be considered only if the two sides are otherwise obligated to do so by an international agreement to which they are parties. "India and the US share the strongest possible commitment to bringing to justice those who commit war crimes, crimes against humanity and genocide," Blackwill told reporters at Hyderabad House shortly after the accord was signed.

"However, we are concerned about the International Criminal Court Treaty with respect to the adequacy of checks and balances, the impact of the treaty on national sovereignty and the potential for conflict with the UN charter," he said.

He said the new accord was "emblematic of the strides that continue to be made in transforming US-India relations. Both governments look forward to working in close cooperation on such significant issues."

crimes, crimes against humanity and genocide alleged to have been committed by their respective officials, employees, military personnel and nationals.

The accord provides that in the absence of any express consent by either country, such persons would not be surrendered or transferred by any means to any other entity or third country or expelled to a third country unless otherwise obligated to do so.

It further stipulates that when either government extradites, surrenders or otherwise transfers its nationals to a third country, it will not agree to the surrender or transfer of that person by the third country to any international tribunal.

The agreement will enter into force after an exchange of notes confirming that they have completed the necessary

domestic legal requirements for this purpose. "It will remain in force until one year after the date on which one party notifies the other of its intent to terminate this agreement," it said.

Both India and the US have been laying emphasis on the sanctity of national judicial processes and voiced reservations over cases of human rights violations going to multilateral courts like the International Criminal Court or the International Court of Justice for adjudication.

In effect, if a third country or party demands that a person of Indian or American origin wanted for such crimes in each other's country be tried in a multilateral court, it will not be possible unless permission is given by the respective governments or the sides are mandated to do so under any international agreement.

'Crack team' will handle extraditions

By Akshaya Mukul
TIMES NEWS NETWORK

New Delhi: The Union law ministry is planning to set up a 'crack team' of legal specialists to handle extradition cases. According to ministry sources, the government has been spurred into action by the embarrassing end to its demands for the extradition of Bofors accused Ottavio Quattrocchi from Malaysia and underworld don Anees Ibrahim from the United Arab Emirates. As for Mumbai crime boss Abu Salem, although his remand in Portugal has been extended for another 90 days, it is far from clear that the CBI will manage eventually to get its hands on him.

A law ministry official said that apart from political considerations, the reluctance of foreign governments to extradite offenders was mainly due to "the ill-prepared manner in which our case is presented". He said, "Most often, when arrests are placed the government dispatch-



A. Ibrahim O. Quattrocchi Abu Salem

es CBI or police officials to the country concerned. But what is mostly considered foolproof evidence by the police here at times fail to stand the scrutiny of foreign legal systems. That is why we feel specialised lawyers should be part of the team."

The new team being put in place by the law ministry will comprise lawyers well versed in international law and extradition treaties. They will be asked to go through all important extradition cases from scratch and plug the legal loopholes. The team will be readied very soon.

Referring to the case of Abu Salem, who was arrested in Portugal

in September, an official said, "It was a tough case considering India does not have an extradition treaty with Portugal. Indian officials who went to Lisbon failed at the first task—they could not convince the Portuguese authorities about Salem's danger potential and his past deeds. The promise not to award Salem capital punishment came more as a knee-jerk reaction than a well thought out plan."

Ironically, even that assurance may back-fire. The CBI and the home ministry did only enough homework to realise that Portuguese courts would not extradite a man to face the death penalty but did not realise that the Portuguese constitution rules out extradition even in cases where life imprisonment may be awarded. Thus, deputy Prime Minister L.K. Advani's assurance that Salem would "only face life imprisonment" could well be used by Salem's defence team in Lisbon to get the don off the hook.

THE TIMES OF INDIA

23 DEC 2002

Quattrocchi in Italy; passport impounded

By P. S. Suryanarayana

SINGAPORE, DEC. 16. Malaysia's Court of Appeal today ordered the impounding of the "travel documents" of Ottavio Quattrocchi, Italian businessman, the request for whose extradition to India in connection with the Bofors payoff investigations and trial was dismissed by the High Court in Kuala Lumpur on Friday.

The new turn of this magnitude in the extradition case may remain a matter of purely "academic" value, for the present at least, as the Italian national has already reached his country following the High Court's ruling on a "review" plea against a lower court's refusal to sanction his extradition to India. The focus now shifts to the status of Interpol's notice that was originally issued against him.

Confirming today's legal denouement, Malaysia's Deputy Public Prosecutor, Kamarulhisham Kamaruddin, said over the phone from Kuala Lumpur that the Court of Appeal had ordered that Mr. Quattrocchi's

"passport be held" pending hearing on a relevant petition that was filed by the Malaysian Public Prosecutor, who held India's brief in the absence of a bilateral extradition treaty.

Mr. Kamarulhisham, who argued India's case before the High Court, said the appeal had been duly lodged against Mr. Quattrocchi's discharge.

However, according to the legal officer, the latest action by the Court of Appeal might turn out to be an "academic" exercise in view of what he described as "unconfirmed" reports that the Italian national had left Malaysia after the High Court's ruling in his favour.

'I have reached Milan'

On being contacted by *The Hindu*, Mr. Quattrocchi said over his cellular phone that he was "not aware" of any legal developments concerning him in Kuala Lumpur today.

Indicating that he had already reached Milan, he said he had been given to under-

stand that the High Court's ruling was the "final thing" in the extradition case.

Going by his statements, he apparently reached Italy for a "family reunion" after travelling through Chinawhere, too, he met a family member.

Soon after the High Court delivered its judgment, Mr. Quattrocchi's counsel, Muhammad Shafee Abdullah, took the line that Section 37 (6) of Malaysia's Extradition Act of 1992, under which the Italian citizen's "right to liberty" was reconfirmed, was categorical in scope.

Mr. Shafee had also underlined that the Section conferred a sense of finality on the High Court's judgments as regards "review" petitions such as the one that India lost in this case.

Without disputing the primacy of this Section, the Malaysian Government's prosecution has sought to challenge the High Court's ruling on the ground that the lower court had not fully observed due legal procedures.

Extradition & international law

By V. S. Mani

10-10, 17/12

INDIA HAS had some disappointments in its recent attempts to get fugitives extradited from other countries. It hurts us more when some of these countries happen to have 'friendly' relations with India. The cases of Anees Ibrahim and Ottavio Quattrocchi need to be looked at from this perspective.

This is an area where political considerations play a prominent role, unless there is an applicable bilateral extradition treaty. Indeed, a country does not need a treaty to decide that a fugitive found within its jurisdiction should be extradited to another country that requests extradition. It can, if it wants to, take that decision without any treaty obligations whatsoever, even by exercise of executive discretion. Where there is a bilateral extradition treaty, the states party to it normally go by its terms.

The process of extradition usually involves interposition of the Judiciary in both countries, and this has permitted the emergence of some discernible principles of international law governing extradition.

International law recognises four points as a basis of exercise of criminal jurisdiction by a sovereign state, namely, territoriality (the state where the offence has been committed), nationality (the national state of the offender or the accused), the protective principle (the state whose essential economic or other interests have been directly and adversely affected by the offence), and universality (the offence being an international crime).

Terrorism has added one more — the passive personality principle, i.e., the need for a state to seek justice for its own national or property who/which has been the victim/target of the offence. These often give rise to overlapping claims of two or more states to jurisdiction over the same offence. In a friendly and cooperative environment of bilateral

International law does not impose any obligation on states to extradite... Extradition treaties are traditionally bilateral in nature.

relations, these competing claims are generally resolved through diplomacy leading to extradition. India got, without difficulty, the Britannia tycoon, Rajan Pillai, and the gangster, Babloo Srivastava, extradited from Singapore with which it has no extradition treaty. Indeed, extradition can take place without a treaty obligation, purely as a voluntary act.

Extradition involves handing over of an offender or a person accused of an offence by the country where he is found to another country that requests his extradition. International law does not impose any obligation on states to extradite. Nor does it set out any special procedure for handing over the person concerned to the requesting state — this has been made clear since the Savarkar case between France and Britain before the Permanent Court of Arbitration at the turn of the 20th century.

Hence, the development of extradition treaties since the late 18th century. Extradition treaties are traditionally bilateral in character. Yet most of them seem to embody at least five principles, as endorsed by many judicial pronouncements and state practice in respect of domestic extradition legislation. First, the principle of extraditable offences lays down that extradition applies only with respect to offences clearly stipulated as such in the treaty. Second, the principle of double criminality requires that the offence for which the extradition is sought be an offence under the national laws of the extradition requesting country as well as of the requested country. Third, the requested country must be satisfied that there is a prima facie case made out against the offender/accused. Fourth, the extradited person must be proceeded against only against the offence for which his ex-

tradition was requested. Finally, he must be accorded a fair trial (this is of course part of international human rights law now). Judiciary and other legal authorities are likely to apply these principles equally to situations where no extradition treaty exists.

While these are situations largely governed by the political relations between the two countries involved, yet even a political/administrative decision to extradite or deport is likely to go before the law dispensing authorities including the judiciary in the extradition-requested state.

Traditional bilateral extradition treaties, however, incorporated a 'political offences' exception, for protection of the individual against possible persecution at the hands of the requesting state. On the basis of this clause, the requested state could refuse extradition on ground of the offence being a political offence.

The Anees' extradition is governed by the Indo-UAE Extradition Treaty, in force with effect from May 29, 2000.

The treaty provides for extradition of persons accused of an offence punishable with imprisonment for at least one year or more. The extraditable offence of this nature may include an attempt or conspiracy to commit or incite or participate in the commission of the offence. The treaty applies regardless of whether the offence was committed outside the territory of the extradition-requesting state, or whether the whole or part of it was committed from the territory of the requested state. But in such a case, the requesting state must have a legitimate basis for exercise of its jurisdiction.

The Indo-UAE treaty provides that a request for extradition may be refused (1) if the offence is a "political

offence"; (2) if the person concerned had already been tried for the same offence and acquitted or convicted; (3) if the request relates to an offence the prosecution of which is time-barred; (4) if the request relates to an offence committed by an alien outside the territory of the requesting state but violates the principle of double criminality; or (5) if the requested state prosecutes the person concerned for the extraditable offence committed within its territory, or is being investigated or tried by the requested state. The treaty, however, considerably reduces the impact of the "political offences" exception, by saying that the exception would not apply to (i) assault against high political functionaries of either state, murder, culpable homicide, or robbery, (ii) "offences relating to terrorism", (iii) any offence under international treaties under which India and the UAE have an obligation to prosecute or extradite; and (iv) any attempt, conspiracy, incitement, or participation in these offences.

Evidently, the political relations between India and the UAE must ultimately inveigh such decisions.

The CBI and the Home Ministry will be well advised to seek the assistance of some eminent criminal lawyers specialised in criminal trial, on matters relating to evidential requirements of a prima facie in extradition cases, rather than exclusively relying on police investigative experience.

In all cases of extradition, it is best to approach the appropriate Indian court first, get the accused declared a proclaimed offender by the court, and then seek extradition in a foreign country.

The judiciary of the extradition-requested country is most likely to respect these judicial proceedings establishing prima facie case against the fugitive.

(The writer teaches International Law at the School of International Studies, JNU.)

17 DEC 2002

Most wanted, most elusive



This week, Anees Ibrahim got away, so did Quattrocchi. Ritu Sarin reports on what the CBI now plans to do

THE list of India's 20 most wanted men is now a much-circulated document internationally. If there's only one thing that is stopping India from ticking off some names from the list and bringing them before the Indian courts, it is the excruciating process of extradition. And never have In-

vestigating agencies, led by the Central Bureau of Investigation (CBI), come face to face with the pitfalls of the process as they did last week.

First, after 12 long years of the Bofors case investigation, the CBI had to face the ignominy of Kuala Lumpur High Court judge Augustine Paul dismissing its appeal for the extradi-

tion of Ottavio Quattrocchi. While CBI Director P C Sharma described the order as "disturbing" (see interview), the agency's chief prosecutor N Natarajan was even more candid. "The order is inexplicable and not in accordance with law. Our case was dismissed because charges were not framed. But how could charges be framed



Younger brother of Dawood Ibrahim, Anees is wanted in connection with the '93 blasts case. Details of his passport and his addresses have been passed on to the FBI which helped in getting him arrested in Dubai. He's been granted bail, will be tried for committing a murder in the UAE

when the accused had not turned up for trial?" he demanded, speaking to *The Sunday Express* from Chennai.

If Ottavio Quattrocchi has managed to avoid the trial court in the landmark Bofors pay-off case so far, for the CBI's other star accused Dawood Ibrahim Kaskar's brother Anees Ibrahim, it is the trial court that was set up for the 1993 serial bomb blasts in Mumbai. Nor are these the

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only setbacks 2002 has brought for the CBI. Three months ago, notorious Mumbai gangster Abu Salem was arrested in Lisbon; his extradition papers could only be processed and sent on the very day that Quattrocchi's extradition request was turned down and Anees Ibrahim released on bail.

Natarajan, who is also the Chief Prosecutor in the Mumbai bomb blast cases, says that though India has an extradition treaty in place with the UAE, they had hoped Anees would be deported. "But now we have another prolonged extradition process ahead of us," he rues. "The UAE authorities have said that

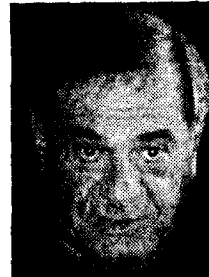
Anees was wanted for a murder in their own country and that in an earlier case bail had been granted in similar circumstances."

So, will the much-hyped cooperation pact between the UAE and India be limited to relatively inconsequential criminals? The answer will become clearer in the coming months, but till date, the CBI has succeeded in extraditing only one major criminal from anywhere in the world. Gangster Babloo Srivastava was extradited by the CBI from Singapore; he is still in jail in India. The other "arrivals" from Dubai — including Aftab Ansari, Raju Anadkat and Muthappa Rai — were

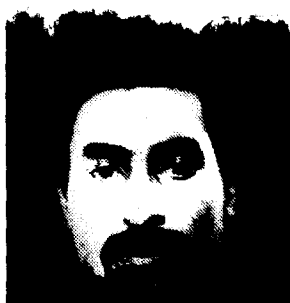
all deportees. It was the relative ease with which they were released by the UAE that had made officials hopeful of getting Anees too.

As a quid pro quo, in May, India too deported a criminal wanted by the UAE. The accused in question was a woman named Roshan Ansari, who is alleged to have murdered her stepdaughter in Dubai. After committing the crime, she fled to Mumbai but was deported. In the case of Abu Salem, top officials have pointed out that getting hold of Salem wouldn't be as much of a pushover as, say, getting hold of Ansari.

(Inputs from S Ahmed Ali)



OTTAVIO QUATTROCCHI: An Italian businessman who headed the Snamprogetti company, Quattrocchi left India soon after the Bofors kickbacks story broke. In 1999, a special judge issued non-bailable warrants of arrest against him. The next year, he was arrested but subsequently released and allowed to appeal. On Friday, the High Court dismissed India's extradition request.



ABU SALEM: Wanted in more than 60 cases in India, Abu Salem was recently arrested with wife Monica Bedi in Lisbon. He had a relatively clean slate till 1991, when he began smuggling gold with Anees Ibrahim. Later, he was said to have had a hand in bringing RDX into Mumbai, and handing over arms to Bollywood actor Sanjay Dutt.

■ But Kuala Lumpur High Court judge Augustine Paul dismissed India's appeal, also saying the extradition case we presented was technically weak. Your comments.

How can one cite technical grounds? That is what I feel bad about. They simply did not consider the case on merit. They have not gone into the details of our case against him at all. This is why we are distressed.

■ The Dubai authorities have been changing their stand on sending Anees Ibrahim back to India. Considering he is one of the main accused in the 1993 serial blasts case and Dawood Ibrahim's brother, isn't this a major setback?

He is a very important accused from our point of view and we are hoping

the cooperation extended by the Dubai authorities over three other wanted men — led by Aftab Ansari — will carry over to this case. Even if he is out on bail, it does not mean our extradition request will not get a hearing. I am in regular touch with our Ambassador in Dubai and am still confident of a breakthrough.

■ How is the international climate and agencies like the FBI helping India's case?

The international climate is very favourable. As far as the FBI is concerned, they didn't help us at all in detaining Abu Salem. That was all our work. But we did share information with them on Anees Ibrahim's profile and activities both pre- and post-arrest. And let me tell you, we have been getting full co-operation from the Portuguese

government. It is just that their style of functioning is different from that of the UAE government.

■ On what do you base your optimism about the Anees case, given that the Dubai authorities did not even inform you immediately about his detention?

They told us a day after he was arrested. We did not go public immediately because such things are best tackled without too much publicity. The news leaked out many days after he was detained. Now, we have been formally asked to send our extradition request, which we will be doing.

■ And you managed to send Lisbon the extradition request for Abu Salem only on Friday. Where has the CBI gone wrong in preparing these requests?

We haven't gone wrong. It is just that filing an extradition request needs a lot of preparation. The only procedures are the bottlenecks.

■ There has been criticism about how, for example, we didn't have Anees Ibrahim's fingerprints to send to Dubai though he had been arrested in Mumbai earlier. Isn't this a slip-up?

Fingerprints can be located and they are not that essential. They form part of evidence which buttresses the case.

■ What is the CBI's game-plan now?

Everything is not in our hands since these people are detained or living abroad. We can only send well-researched requests. The rest depends upon the co-operation we get from other governments.

INDIAN EXPRESS
15 DEC 2002

Dubai jolts Delhi with bail to Anees

Sudhi Ranjan Sen
New Delhi, December 13

A DUBAI court on Friday released Anees Ibrahim, underworld don Dawood Ibrahim's brother, on bail, throwing the whole question of his extradition and subsequent trial in India wide open.

Senior CBI officials in New Delhi confirmed the news, but said they were still awaiting official word from Dubai to this effect. "Anees moved court yesterday and was given bail this morning. But Dubai has not sent us any official message," an official said. Incidentally, Anees walked

into relative freedom on a day when a special court in Mumbai issued an open-dated non-bailable warrant against him on the city police's plea. The warrant would be handed over to the Interpol to secure his extradition. But it was not known immediately whether the Dubai court had restrained Anees from travelling out of the UAE.

"We were aware since December 3 when Anees was held that both Dawood and the ISI were lobbying hard with the Dubai authorities to secure his bail. It seems they have succeeded," a senior CBI official said.

"We were told at first that Anees had been arrested because



Ottavio Quattrocchi
Gets reprieve

Blow to Bofors case

A MALAYSIAN high court has rejected India's plea for the extradition of Ottavio Quattrocchi, saying the offences alleged against him were "open to doubt". The Malaysian attorney general, who represented India's case, has moved the court of appeal.

Details on Page 11

of the (Interpol) red corner notice issued at our behest in the 1993 Bombay blasts case. Later,

we were informed that he had been arrested for his role in the murder of Irfan Goga, another

underworld don. It all indicates the formidable pressure on the Dubai authorities to go soft on the man," the official added.

Senior CBI officials, however, said that they would rush the extradition request to Dubai as planned before. "Since we aren't sure if any travel restrictions have been imposed on him, we will go ahead and send the request to Dubai," one of the officials said. CBI director PC Sharma confirmed that Dubai would be sent the extradition request, but refused to call the bail to Anees a setback.

Anees is facing charges of circulating fake currency notes in India at the instance of Pak-

istan's ISI. Two of the four accused in the case are facing trial, while Anees and his close associate Aftab Batki are absconding.

The other, more serious, charge against the man is that he played a key role in the Bombay blasts of 1993 when he allegedly participated in the conspiracy to smuggle in arms and ammunition from Pakistan for distribution in India.

Meanwhile, in a parallel drive on Friday to secure the extradition of Abu Salem, the main accused in the Bombay blasts case, India sent a formal request to Portugal with a promise that Salem would not be awarded the death penalty.

14 DEC 2002

Italian hand in Quattrocchi case

Statesman News Service

NEW DELHI, Dec. 10. — The Italian Prime Minister, Mr Silvio Berlusconi, has written to his Malaysian counterpart, Dr Mahathir Mohammed, requesting that Kuala Lumpur extend support to Ottavio Quattrocchi, an Italian national, in his extradition fight with India.

This diplomatic intervention, sources said, has put the Malaysian government "under pressure".

A senior official said New Delhi had recently received information regarding Rome's "unusual interest in Quattrocchi's extradition case," adding, "we are given to understand that the Malaysian government is under pressure." Sources also said that the court hearings of the Quattrocchi case are

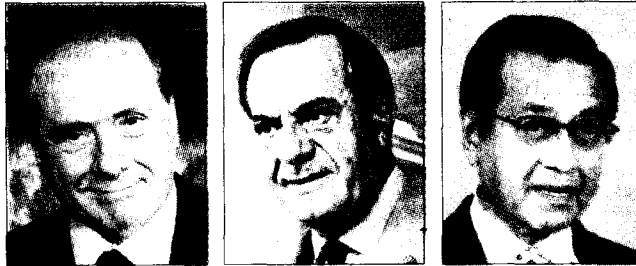
being attended by Italian diplomats posted in Kuala Lumpur.

Today, the Malaysian high court did not allow Mr US Prasad, CBI's deputy

plea on the ground that the allegations against Quattrocchi were vague.

Yesterday, the high court hearing the Indian appeal against the sessions court's judgment observed that Kuala Lumpur and New Delhi had jumped the gun by sending the case to court before establishing dual criminality of the offences for which Quattrocchi is wanted in India.

Mr Berlusconi himself is embroiled in several cases in Italy. He has been countering charges that he has links with the Mafia, has bribed tax officials and a judge and manipulated accounts. His opponents allege that Mr Berlusconi has, among other things, changed laws that could have put him behind bars. But Mr Berlusconi's supporters say he is the victim of a political witch hunt.



(From left) Mr Silvio Berlusconi, Ottavio Quattrocchi and Dr Mahathir Mohammed. — File photographs

legal adviser, to assist the Malaysian Attorney-General's counsel. The judge, Mr Augustine Paul, said the A-G's office had given authorisation under the wrong provisions.

A Malaysian lower court had last month rejected India's extradition

THE STATESMAN

1 1 DEC 2002

Govt determined to get Salem, says Advani

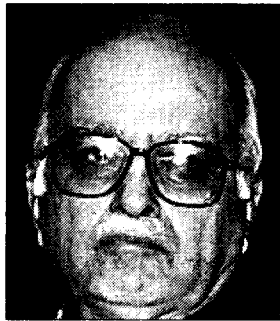
Statesman News Service

NEW DELHI, Dec. 4. — Deputy Prime Minister Mr LK Advani today said government was determined to secure extradition of underworld don Abu Salem to India from Portugal and formalities in this regard were being completed.

While replying to a supplementary question in Raja Sabha, Mr Advani said: "We are determined to get Abu Salem extradited to India. This has been decided." The Portugal government was fully cooperating with New Delhi in this regard and had sent Salem to 90 days remand, he added. Mr Advani said the only difficulty was that the Portuguese government had a policy of not allowing extradition of any person to a country which had capital punishment.

Even as India did not have an extradition treaty with Portugal, Mr Advani said: "We are hopeful that Abu Salem will be extradited to India." The

government was completing various processes before the 90-day remand ends. After the government received information of the detention of Salem on 19 September, a CBI team was sent to Portugal and it along with Indian Embassy officials there discussed the issue of extradition of Salem.



Advani: 'We are hopeful'

On whether any legal assurance being given to Portugal would not amount to an interference in the Indian judicial process, Mr Advani said the highest legal opinion has been sought in this regard. The gangster had been involved in Mumbai serial blasts in 1993, and also wanted for crimes in Delhi, Madhya Pradesh, Andhra Pradesh and Gujarat. The Centre has asked state governments to give details about his crimes and this would be furnished along with the FIR to the Portuguese government. Interpol would also be informed in detail about Abu Salem's crimes, he said.

UNIVERSAL JURISDICTION UNDERMINED

THE U.S. ADMINISTRATION'S efforts to get all its citizens exempted from the jurisdiction of the International Criminal Court continues apace. A senior official is travelling to Europe to convince Governments there that they must make general the limited exemption from the jurisdiction of the Court that they have thus far agreed to grant U.S. citizens. While Washington desires that all its citizens be exempted from the Court's jurisdiction, the Europeans had decided that only U.S. military personnel and diplomats would be exempt from the jurisdiction of the Court. Although the U.S. has refused to ratify the Rome Statute that established the Court, it is a signatory to the instrument and as such should have been fully aware of how this new system of international criminal justice is to work. The Court has been established to try those responsible for widespread and systematic crimes against humanity and as such would take cognisance of cases of genocide or ethnic cleansing akin to those perpetrated in the former Yugoslavia and Rwanda in the not-so-distant past. It will not take cognisance of random acts of violence by the soldiers or civilians of any nation and thereby the Court's constituting statute meets one of Washington's stated concerns that soldiers participating in the ongoing operations in Afghanistan or future operations in Iraq could be brought for trial before this international judicial body. Neither will the Court take cognisance of crimes committed before it was constituted and therefore there does not appear to be any basis for Washington's concern that its citizens, who might have been complicit in atrocities committed in Chile or Indonesia or Vietnam, would be tried outside the ambit of the U.S. judicial system.

Washington's reservations in respect of the Court become even more difficult to understand in view of the principle of complementarity on which the Court is based. As per this

principle, the Court will take cognisance of a case only when the judiciaries of the nations concerned are unwilling or unable to proceed against those ultimately responsible for the alleged crime against humanity because the accused are serving or former heads of Government or otherwise. Washington's expressed fear is that frivolous proceedings might be instituted against its officials especially in an international climate where there are people readily willing to accuse the U.S. of all manner of atrocities. Since the U.S. takes such pride in the independence and efficiency of its criminal justice system, it contradicts itself when it states that its own judiciary will not seriously consider evidence of the quality necessary for a successful action before the Court. Neither does it appear very likely that victims, who can trace their injuries to a U.S.-based source, would prefer to approach the Court before they have exhausted all the avenues provided by the U.S. judicial system. While an action *in tort* is qualitatively different from a criminal proceeding, there are not likely to be very many victims of a U.S.-originated action who would forego the opportunities to obtain the notoriously heavy damages that are fairly routinely handed out by the U.S. judiciary.

With the Europeans very keen on getting the Court up and running, the signs of U.S. intransigence on the matter are likely to further aggravate the strains between these traditional allies. As it is, the decision to exempt U.S. military personnel and diplomats was an intra-European compromise and they will not be pleased that Washington still presses for total immunity. Supporters of the Court point out that its founding principle is universal jurisdiction — that anyone irrespective of his position can be charged for crimes against humanity — and that if some nations, especially the hyperpower, were to exempt themselves this principle would be undermined.

INDU

10 OCT 2002

Govt digs into the past to get Salem

Aloke Tikku in New Delhi

Oct. 9. — The Centre is turning the clock back to see if a 19th century extradition treaty that the British had signed with Portugal could be given a new lease of life to bring Abu Salem to justice.

But officials, who dug deep into history to pull out a dusty 1892 extradition treaty, are not too sure. The set of documents was being run past law experts to determine its status and what it would take to breathe life into the treaty.

"We are looking at the treaty... The implications are still not clear," an official, putting the "Treaty between Great Britain and Portugal for the Mutual Surrender of Fugitive Criminals" under the magnifying glass, said. The treaty was signed in Lisbon on 17

October 1892 while a convention between the United Kingdom of Great Britain and Northern Ireland, Australia, New Zealand, South Africa and India, and the Portuguese Republic. It was amended in 1932.

The govt is checking if a 1892 Portugal-Great Britain treaty could be used to extradite Abu Salem and bring him to justice

A provision in the Portuguese Constitution says that extradition of people would only be permitted on condition of reciprocity based on an international agreement. Officials suggest that if it is possible to re-validate the 1892 treaty, it would cut the red tape involved in signing a fresh treaty.

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Laws and international agreements entered into by Britain during their rule had been validated after Independence. "At this stage, it looks like it might be possible to do something similar here too," an official said.

It is pointed out that even if legal opinion supports the contention that the old treaty could be revived, it would require concurrence from Portugal too. Salem would still escape death penalty even if he is found guilty. The treaty explicitly barred Portugal from delivering any person "either guilty or accused of any crime punishable with death".

The treaty can delay Salem's extradition. It says a fugitive required by the requesting country, would be extradited after he is discharged of all crimes committed in the country which is to extradite him.

WEDNESDAY, OCTOBER 2, 2002

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A DANGEROUS DOCTRINE

THE FINANCE MINISTER, Jaswant Singh, is treading dangerous ground in endorsing the doctrine of pre-emption that is being articulated by the U. S. President, George W. Bush, and his senior officials. He is quite mistaken in claiming a right for India to act in pre-emptive mode and in trying to minimise the ill-effects of a doctrine that has ominous portents irrespective of the circumstances and context in which it is to be applied. Mr. Singh has taken a line from the U. S. Secretary of State, Colin Powell, who tried to play down the doctrine's ramifications by implying that it is merely an "elevation" of the many tools at the disposal of the Governments and not one that excludes or eliminates the other means available for promotion of national security and military strategy. However, the very term pre-emption in itself signifies a willingness to project power on terms significantly different from those set by the traditional doctrines, of containment and deterrence. As per these traditional doctrines, nations could build and possess a quantum of force as would deter any potential adversary from launching an offensive and would try to prevent a source of threat from acquiring the means to initiate aggression. Pre-emption would mean that a nation can conduct itself pro-actively and launch an attack as soon as it reached a conclusion that some other state or non-state actor, like a terror network, had begun to acquire the means to pose a threat. In taking recourse to such a doctrine, each nation would be essentially reserving for itself both the sole right to identify the source of risk and its magnitude and the right to act without needing to advert to other assessments that do not strike the same conclusion.

Articulated in the broad and generalised fashion as it has been, the doctrine is a recipe

for chaos as it suggests that any state — irrespective of the quality of its decision-making processes — can take it upon itself to act when it perceives a threat whether that threat is real or not. In this context, it is interesting that the first question that has been raised at every forum before which U. S. officials presented the doctrine is whether it could be rightly said to pertain to the India-Pakistan situation as well. A perception of being under threat is strong in this country and there are hotheads who believe that doctrines propounded by Washington can be expropriated by New Delhi. There is of course a much closer match in power between India and Pakistan that it would be sheer madness for anyone in New Delhi to seriously consider the adoption of this doctrine. Even the indication of a desire to do so would further vitiate an already poisonous atmosphere.

It is to be hoped that Washington's re-framing of its strategic doctrine is a work in progress and that the final product will take into account the diversities and complexities of a still very dangerous world. Gen. Powell, unlike some others in the higher echelons of U. S. policy-making, has shown a receptivity to the sensitivities and concerns of other nations. The U. S. National Security Advisor, Condoleezza Rice, in another articulation of the doctrine of pre-emption, has spoken of the need for responsible nations to identify common values and coordinate their positions preliminary to the resort to force. It would be a far greater service to the cause of global peace and stability if the makers of grand strategy devoted more attention to developing an understanding of the political, even philosophical, dimensions of the complex current global situation. Instead, the inclination appears to be to search for arguments that will support the casting off of existing restraints.

'Extradition laws need change'

by S.S.

Statesman News Service

NEW DELHI, Sept. 29. — India will have to work toward signing many more treaties of 'Extradition by Mutual Consent' with other nations, particularly those in the European Union, before it can be certain there will no repetition of the kind of agonies suffered in trying to bring Abu Salem home.

However, such treaties, facilitated under the Vienna International Diplomatic Convention, in any case created an unequal situation for the Indian citizen.

India has suffered the indignation of being unable to take action against terrorists who seek refuge in countries where laws do not facilitate their return to this country. "We have no such treaties with European countries," government officers said. Former law minister Mr Eduardo Faleiro who pursued legal studies in Portugal said at most treaties of that nature in any case created an unequal situation for the Indian citizen.

"The detection, investigation and prosecution skills of Indian agencies leave much to be desired and unless there is a drastic improvement on these counts, India cannot hope to better her performance," experts said.

Officials admit that if India assures Portugal that it will not bring charges against Salem under the Terrorist And Disruptive Activities (Prevention) Act, Waging War Against the State or the Explosives Act (all of which carry the death penalty), "all we have left is a case of falsification of documents". This will mean that Salem will get a sentence of around only two years, they said.

THE STATESMAN

30 SEP 2002

Second phase of Milosevic trial begins 2219

THE HAGUE, SEPT. 26. United Nations prosecutors opened their genocide case against the former Serbian leader, Slobodan Milosevic on Thursday, vowing to prove that he played a leading role in the worst crimes against humanity in Europe since World War II.

Prosecutors began the second phase of Mr. Milosevic's trial with an 80-minute opening statement on the 61 counts of war crimes, including genocide, that he faces for the Croatian and Bosnian wars from 1991 to 1995. The first stage of the trial that concluded earlier this month covered the 1998-99 Kosovo conflict.

Mr. Milosevic was then given three hours for his opening remarks.

The lead trial prosecutor, Geoffrey Nice, told the war crimes tribunal that the coordinated destruction of villages and systematic murder of civilians will be traced back to the Bosnian Serb leadership, and ultimately, Mr. Milosevic.

Mr. Milosevic was an "essential participant in a joint criminal enterprise," Mr. Nice said, with the primary aim of creating a Serb state by "destroying or expelling" non-Serb inhabitants from the Balkan region. "Genocide was the consequence," he said. "The accused intended to destroy the Bosnian Muslim population in part or in whole in order to achieve those aims," Mr. Nice said.

Mr. Milosevic operated like a careful criminal, Mr. Nice added, making sure there was no paper trail leading to him. But the evidence, the prosecutor said, will "reveal a careful design and strategy, and all of that may be laid at the door of this accused," he said.

From his office in Belgrade, Mr. Milosevic's regime funded and armed Serb forces in Croatia and later in Bosnia, who indiscriminately shelled civilians "to create an unbearable situation with no hope for further survival."

By expelling non-Serbs, Mr.



A Bosnian Muslim survivor of the Srebrenica massacre at the end of the Bosnian war, cries as she watches a live TV broadcast of the trial of the former Yugoslavian President, Slobodan Milosevic, in front of a wall covered with photos of missing persons from Srebrenica, in Tuzla, on Thursday. — AP

of the break-up of Yugoslavia. He looked rested after a two-week break in court hearings and listened closely to the prosecution, sometimes smirking or frowning.

Outside the war crimes tribunal for the former Yugoslavia, a dozen Bosnian protesters called for the arrest of the former Bosnian Serb leader, Radovan Karadzic and his wartime General, Ratko Mladic, who remain at large despite also being indicted for genocide in Bosnia.

The former Yugoslav President has been charged for the mass execution of Muslims in the city of Srebrenica, and the three-year siege of Sarajevo, Bosnia's capital, when Serb snipers shot children, women and the elderly on the streets and in their homes.

In the 1991-1992 Croatian war, Mr. Milosevic's indictment says, forces under his command murdered thousands of civilians and forced 170,000 Croats and non-Serbs out of a third of Croatia. — AP

Milosevic sought to rearrange the territories into a "tidy map."

Mr. Milosevic, who has refused a lawyer and is conducting his own defence, then began his response to the allegations, showing a video on the history and thousands of counts of ethnic cleansing".

By thousands of killings and innumerable acts of inhumanity and thousands of counts of ethnic cleansing".

By thousands of killings and innumerable acts of inhumanity and thousands of counts of ethnic cleansing".

Minor criminal tag for Salem likely

Govt in a bind over tough Portugal law

Aloke Tikku in New Delhi

Sept. 23. — To get Abu Salem to India, the authorities might have to decide to try the underworld don for relatively minor crimes such as passport forgery. Prosecuting Salem for crimes like the Mumbai serial blasts may have to be given a miss if Portugal is to be persuaded to hand him over.

Deputy Prime Minister Mr LK Advani had last week declared that the government was prepared to give an assurance to Portugal that it would waive the death penalty. A crime like the Mumbai blasts can attract death penalty under Indian law. But it appears now that assurances from India on waiving such a punishment will not be enough.

A senior Indian official, however, said he was hopeful there would be a way out: "We too are looking at these issues and examining the best way to proceed ahead. We realise it is not going to be an easy task."

The Portuguese Constitution forbids extradition of any person who may face death penalty. Assurances from other governments are not relevant. India therefore cannot seek Salem's extradition for crimes that may draw capital punishment.

It is not just a European Union convention — as India said — that Portugal has to contend with. Article (33)4 of the Portuguese Constitution too ties the hands of the Social-Democratic Party (SDP)-led coalition government in Lisbon. This provision

stipulates: "No one shall be extradited for political reasons, nor for crimes that carry the death penalty or any other penalty causing irreversible damage to the physical integrity of the person under the law of the requesting State."

This implies that the underworld don will not even have to stand trial for serious offences like the 1992 Mumbai blasts and the '97 Rajdhani bomb blast case. Abu Salem is wanted in well over 50 criminal cases in India, many of them relating to murder. He can only be tried for offences that are mentioned in India's request for his extradition. If at a later stage, the government wants to try him for any other offence, a clearance from the Portugal government will be required.

Portugal would have had the power to make an exception if a constitutional amendment, agreed to by the ruling Socialist Party and the Social Democratic Party in 1997, had gone through. According to Amnesty International — which opposed the proposal — the proposed Amendment would have provided for extradition in exceptional cases "if the Portuguese government received satisfactory assurances that the death penalty would be commuted and substituted by another penalty of limited duration". Opposition from like-minded groups forced the government to abandon the proposal in September '97.

Portugal abolished the death penalty for political offences in 1852 and criminal offences in 1867, and summarily abolished it in 1976.

Our world too!

Bush's intervention in Germany backfires

President George W Bush has probably succeeded in influencing the German elections to the Bundestag but not in the manner intended. He probably thought he had only to express his preference for the challenger to the German Chancellor and the voters would dutifully carry Herr Edmund Stoiber to a resounding victory. His instant success in forcing the Justice Minister to resign for comparing him to Hitler in his blind hatred of Saddam Hussein may have encouraged him; somebody in his administration should have been knowledgeable enough to tell him that the resignation had nothing to do with any sense of outrage in Germany that the American President should have been so compared but underlines the determination of the German people to forget Hitler as a bad dream and public opinion will turn against anyone who resurrects the name of the Nazi horror, irrespective of the context in which the reference is made.

If Bush were wise — he is anything but — he would have noticed that the object of his support, Herr Stoiber considered Bush's endorsement an embarrassment and acted accordingly. Whereas, earlier he had endorsed the American position on Iraq and was almost ready to go to war in support, he quickly turned around and made it conditional on Security Council endorsement after Bush's flat-footed intervention. Given his mindset, it is probable that Bush does not know how to account for the rejection of his candidate Stoiber and the victory of Chancellor Gerhard Schroeder by however narrow a margin. It will be recalled that Schroeder was trailing in the opinion polls, the economy was down, public perception was gaining ground that the Chancellor's liberal policy on immigration was hurting domestic employment — over 4 million unemployed. Stoiber was forging ahead and the Chancellor was searching for an issue he could exploit and getting increasingly desperate. Along comes the half-witted President of the United States who has not grasped the fundamental principle that foreign intervention, even perceived intervention tends to be the kiss of death. In the event, if a single judge of the American Supreme Court awarded the presidency to Bush by unjustifiably stopping the recount of crucial votes against Bush, then the President in his turn, has awarded the Chancellor-ship of the Bundestag to the very man he wished to exclude, Gerhard Schroeder.

The lesson is as old as history but Bush is not a student of history; he only understands power play and holds the belief with a missionary zeal that America is God's gift to mankind and the heaven born leader of the United States is destined to lead and it is the business of the rest of the world to follow meekly and in silence. He wanted weapons inspectors to return to Baghdad; Saddam complied. He now says Saddam is lying and wants a Security Council resolution to attack Iraq regardless. He says America has a right to pre-emptive strike to forestall Iraqi terrorism, which no one else has seen, but terrorism practiced by steadfast ally Musharraf is a matter to be solved politically! If Bush had a fleeting familiarity with logic he would know that it is not possible to prove a negative; in other words Saddam cannot prove that he is not lying. Bush probably thinks logic is a variation of Logo toys! This is his private problem; the tragedy is that its consequences will be visited upon the entire world.

There is hope that with the renewed mandate Chancellor Schroeder will strengthen the European voice against the reckless adventure that Bush and Blair threaten to unleash upon the world. It is our world too!

MONDAY, SEPTEMBER 23, 2002

ABU SALEM'S ARREST

NO-10
22/9

THE GOOD NEWS is that one of India's most wanted men has been apprehended. The not so good news is that there is some uncertainty about his being returned home and to justice. India has reasons to be extremely pleased on hearing that Abu Salem — former associate of Dawood Ibrahim, killer of audio cassette magnate Gulshan Kumar and one of the conspirators in the Mumbai bomb blasts — has been arrested in Portugal. Salem has been picked up before, but this is clearly India's best chance since 1993 — when he fled to live variously in Pakistan and the Middle-East — of having him sent back home. Salem and his companion, who is also on the police watchlist, were apprehended in Portugal for travelling on false documents. The challenge for the Indian authorities now is to persuade Lisbon about the gravity of the charges against this dreaded mafia don — who, in recent years, has terrorised the Mumbai film industry with a mixture of murder, extortion and blackmail — and the importance of ensuring that he stands trial quickly for them.

Since India has not signed an extradition treaty with Portugal, the likely recourse is to press for Salem's deportation. Even otherwise, India has found that the process of extradition is most often time-consuming and unrewarding. A couple of years ago, the gangster Chhota Rajan made good his escape after being arrested by the police in Thailand even as New Delhi was pressing Bangkok for his extradition. Attempts to extradite Naideem Saifee, the alleged mastermind of the Gulshan Kumar killing, came a cropper when a London court firmly blocked the move. It is not merely because Governments are uncooperative that extradition attempts fail; sometimes, they don't succeed because of the complex legal procedures which are involved in the very process. Deportation, which is an executive decision, is a relatively much simpler process. It was only earlier this year that Aftab Ansari

(alias Farhan Malik) — the main suspect behind the attack on the American Center in Kolkata and the mastermind behind a series of abductions — was deported from the United Arab Emirates (UAE). Ironically, it was only a few months before this that Salem was allowed to get away after being held by the Sharjah police and reportedly because the Indian authorities could not furnish the appropriate identification details in time.

In deference to an European Union convention which prohibits those accused of crimes from being deported to countries where they may face the death sentence, the Union Home Minister has indicated that India is prepared to assure the Portuguese Government that Salem will be spared of capital punishment. From the Indian point of view, this would be a small price to pay to get a terrorist don like Salem delivered home and to justice. Meanwhile, according to the CBI, the authorities in Portugal have indicated that they are ready to either extradite or deport Salem and that India should ready itself to 'receive' him. However, a Portuguese court has reportedly ruled out his deportation. Nevertheless, if Salem is sent back and quickly, it will be a reflection on the cooperation of the Portuguese Government but it will also be a reflection on the sea change in global attitudes towards terrorism following the September 11 outrage. As the deportation of Aftab Ansari seemed to suggest, most countries now are reluctant to permit those charged with terrorist activity to take up residence on their soil. With more and more organisations being banned and with more and more Interpol red corner notices being issued against terrorists, it is becoming difficult for them to move freely between countries. Safe havens too are increasingly hard to come by for these merchants of death and even Salem seems to have been on the run before being stopped in his tracks in Portugal.

Portugal rules out Salem's deportation

New Delhi: With a Lisbon court ruling out the deportation of underworld don Abu Salem, the government was on Sunday working out a strategy for his extradition to India even if it involved a longer process.

The court ruled against deporting 41-year-old Salem, the gangster accused of masterminding the serial bomb blasts in Mumbai in 1993 that killed hundreds of people, Lusa news agency reported from the Portugese capital.

Unfazed by the development, the CBI is going ahead with its decision to send a team to Lisbon to bring Salem back to India and is putting together evidence

to make out a strong case for his extradition to the Portugese authorities.

Interpol had asked the CBI on September 20 to prepare papers for Salem's extradition even though such a process would involve court procedures as against deportation of an accused which is the prerogative of the host government.

CBI director P.C. Sharma said that a team would leave for Lisbon in a day or two to make efforts to get back Salem who was arrested with his wife and starlet Monica Bedi and another aide outside his house in Lisbon on Wednesday. Salem has since been sent to 90

days' judicial custody.

Asked about the Lisbon court ruling, Mr Sharma said he was not aware of it. "Our thrust is to get him here and we are making efforts in this direction."

Meanwhile, debunking reports of the Lisbon court ruling out Salem's deportation, the Centre expressed confidence that it would be able to persuade Portugal either to deport or extradite the fugitive for which a CBI team would go there shortly.

On Salem being a "conduit" in funding of Osama Bin Laden's Al-Qaida terror network, Mr Sharma said this aspect was yet to be proved.

2 2 2003

THE HINDU

U.S. links military aid to pledge on ICC

WASHINGTON, AUG. 10. The Bush administration, making use of a provision of the new anti-terrorism law, warned foreign diplomats this week that their nations could lose all American military assistance if they became members of the International Criminal Court without pledging to protect Americans serving in their countries from its reach.

The threat to withdraw military aid — including education, training and help financing the purchase of equipment and weaponry — could be felt by almost every nation that has relations with the United States, though the law exempts many of its closest allies. The law gives the President authority to waive the provision and decide to continue military aid if he determines it is in the national interest. This part of the new law, which passed Congress with broad bipartisan support and was signed last week by the President, George Bush, provides the administration with its broadest and most coercive tool to keep American peacekeepers out of the hands of the new court. Written by Representative Tom DeLay of Texas, the majority whip, the measure is intended to force as many countries as possible to sign bilateral agreements not to extradite Americans to the new court for trial, according to a Republican Congressional aide who worked on the measure. Romania and Israel have signed such agreements.

The Bush administration opposes the

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court, the world's first permanent forum for trying individuals charged with genocide and other crimes against humanity, on the ground that it could subject Americans to politically motivated prosecutions abroad. This week, the State Department invited foreign ambassadors in for briefings to lay out American opposition to the court and to warn them of the prohibition against military aid to countries that are a party to the treaty establishing the court. "That is a fact under the law, it's right there in the law," said Philip Reeker, a State Department spokesman. "The President welcomes the law — I can't underscore how important this is to us to protect American service members."

Another provision in the law gives the President authority to free members of the armed services or other Americans who are in the court's custody by any "necessary and appropriate means," including use of the military. Nations that are members of NATO and other major allies — including Israel, Egypt, Australia, Japan and South Korea — are exempted from the military assistance prohibition. The Pentagon said the measure could touch just about every other country on the globe.

The United States has about 9,000 peacekeepers stationed in nine countries. After pitched debates with its European and North American allies, the administration won agreement from the United Nations Security Council last month to exempt

American peacekeepers for one year. After winning that temporary solution, the administration began seeking longer exemptions through a provision in the treaty known as Article 98, which allows nations to negotiate immunity for their forces on a bilateral basis.

Human rights groups condemned the administration's latest tactic of using the threat of withdrawing military assistance as a tool in those negotiations. "This makes the remote possibility of American prosecution by the court trump every other definition of national interest - it is fixation to the point of craziness," said Kenneth Roth, the executive director of Human Rights Watch. His organization sent a letter to every country that has signed or ratified the court treaty informing them that they should not necessarily feel compelled to sign an agreement because of the presidential authority to waive the provision on military aid.

Military assistance programs that could be terminated include international military education that brings foreign officers and students here for professional military training and financing for the purchase of American weapons and services. The goal of military assistance programmes, the Pentagon says, is to "enable friends and allies to acquire U.S. equipment, services and training for their legitimate self-defence and multinational security efforts." — *New York Times*

US peacekeepers not under ICC jurisdiction

PRESS TRUST OF INDIA

UNHQ, July 13. — The UN Security Council has voted unanimously to exempt American peacekeepers from the jurisdiction of the newly formed International Criminal Court for a year, ending US threats to halt peacekeeping missions.

As per the resolution passed late last night, the exemption can be renewed after one year but is not automatic as the USA wanted it.

But soon after the resolution which Britain, France and Mauritius helped draft — was passed, the USA indicated it would seek further exemption after 12 months.

After the vote, the American UN Ambassador, Mr John Negroponte, said protection provided by the resolution is only a "first step" and that the USA would "never permit the detention of any American."

"This resolution respects those who have decided to submit to the ICC and for one year it protects those of us who have not," he said, adding any attempt by the court to detain an American would have "serious consequences" and Washington was seeking additional protections through bilateral agreements.

After approving the resolution, the council quickly extended the mandates of the UN 1,500-strong police training mission in Bosnia and of a small observation mission in Croatian enclave of Prevlaka.

The Bosnian mission had been given a short extension till Monday night to allow diplomats sort out the issue.

Prevlaka mission was set to expire on Monday.

The resolution, adopted under chapter seven which allows for enforcement asked the

proceed with investigation or prosecution of any case "involving" current or former officials or personnel from a contributing State not party to the Rome Statute over acts or omissions relating to UN authorised operation."

The USA would never ratify the treaty establishing the court. Had the resolution not been adopted, all peacekeeping operations would have been in jeopardy, Mr Negroponte claimed.

India is not a party to the Rome treaty establishing the court, formed to try cases of genocide and war crimes. The UN ambassador, Mr VK Nambiar, had said during the debate that India would not allow its citizens to be subjected to the jurisdiction of the institutions it does not recognise.

The USA fears its citizens could be subjected to frivolous and politically motivated investigation and prosecution. It had threatened to shut the missions one by one if its peacekeepers are not exempted from the court's jurisdiction.

But opposition from allies led Washington to backtrack on the demand for perpetual immunity for peacekeepers.

Supporters of the court and human rights groups slammed the resolution as an attempt to amend the internationally negotiated statute, establishing the court through a council resolution.

The Canadian UN Ambassador, Mr Paul Heinbecker, said the resolution does have much support outside the council, adding it was "sad for the UN."

Other council members took solace in the fact that it did not provide perpetual immunity to American peacekeepers.

THE STATESMAN

1 JUL 2002

WAR CRIMES COURT ROW

Europe seethes at US threat to pull out peace force

Brussels, July 2

AMERICA'S EUROPEAN allies expressed "deep regret" yesterday over US threats to pull out of UN peacekeeping operations, the latest in a string of disputes shaking the transatlantic alliance.

The Bush administration said it would not budge in its opposition to the new international criminal court, which was created yesterday. Threatening to block a renewed mandate for the Bosnian peacekeeping force, it argues that the ICC could be a forum for politically motivated actions against its troops serving overseas.

"This is a very important matter of principle about protecting Americans who uniquely serve around the globe in peacekeeping efforts," said Ari Fleischer, the White House press secretary. "The world should make no mistake that the US will stand on principle to do what's right to protect our citizens."

European Commission president, Romano Prodi, said he was deeply concerned by Washington's opposition. "It's another movement of division between Europe and the US that we have to avoid at any cost," he said.

Per Stig Moeller, foreign minister of Denmark — which has just taken over the EU presidency — condemned the American stance. "I deeply regret this dramatic step that threatens UN peace operations in general," he said as high-level Nato and EU committees convened in emergency session to discuss the crisis.

Tony Blair insisted that safeguards built into the ICC's statute made it "inconceivable" for British peacekeeping forces — or their American counterparts — to risk prosecution for

alleged war crimes. Individual members of armed forces would only be prosecuted for war crimes, crimes against humanity or genocide if their own courts took no action. "We understand the concerns of the US, they are legitimate concerns, but our belief is they will be met," the Prime Minister said.

Last night Nato played down the risks to the S-For peacekeeping force in Bosnia, saying it could continue whatever the US position because the mission had been authorised by the 1995 Dayton peace accords. But the US threat has been criticised across Europe as a galling example of America's rapidly accelerating trend towards unilateralism under the Bush administration.

EU diplomats warned there were now worries about other UN-mandated peacekeeping operations, including the Nato-led K-For mission in Kosovo. "This is a question with implications that go far beyond Bosnia," said one.

The increasingly rancorous dispute between Britain and the US over the ICC is the latest in a string of quarrels ranging from the treatment of al-Qaida prisoners to steel tariffs, from the conduct of military operations in Afghanistan to Yasser Arafat's Palestinian leadership.

"What can be so special about US soldiers and officials that they must be shielded unconditionally from the supposed hazards of trial by an international tribunal?" asked General Sir Hugh Beach, a retired army officer.

London was also dismayed at the way the Pentagon paraded al-Qaida prisoners in its Cuban base at Guantanamo Bay and denied them the protection of the Geneva Convention.

The Guardian

TUESDAY 2 JULY 2002

Permanent war crimes court opens in Hague

AP and AFP

AMSTERDAM, July 1. — The world's first permanent war crimes court has come into force and Dutch administrators overseeing its initial months of operation are ready to register claims of genocide and war-time atrocities.

With the backing of 74 countries, and fierce opposition from the USA, the Hague-based institute will have the authority to prosecute individuals — not states — suspected of war crimes anywhere in the world. The International Criminal Court will not have the power to try offences committed before 1 July, 2002.

A four-member skeleton staff will open for business today at a temporary office “with a fax and a phone” to keep track of complaints until permanent representatives are appointed early in 2003, said Mr Bart Jochems, a spokesman for the Dutch foreign ministry yesterday.

Allegations will be filed and evidences handed to the court's caretakers will be retained for safekeeping until prosecutors take over next year.

The start of the court's jurisdiction signals the beginning of “the greatest institution of peace ever created,” said Mr William Pace, head of the Coalition for the International Criminal Court, which includes over 1,000 global organisations.

“All who believe in democracy and justice and the rule of law can celebrate,” Mr Pace said yesterday in an interview from New York. “This is truly one of the greatest advances of international law since the founding of the UN 57 years ago.”

British plea: Britain today appealed to the US administration to sign up to the new permanent UN war crimes court, but called for understanding over Washington's refusal to ratify the tribunal so far.

Foreign Secretary Mr Jack Straw urged leaders to look at the “totality” of US peacekeeping commitments throughout the world, notably Afghanistan.

Giving in to US demands to exempt UN peacekeepers from prosecution by the newly opened permanent war crimes tribunal would be like “launching a nuclear bomb” against international justice, Human Rights Watch said today.

American birth pangs for world court

FROM HELEEN VAN GEEST

The Hague, July 1 (Reuters): The first permanent world criminal court, dreamed of for decades, became a reality today — even as the United States fought tooth and nail to avoid its jurisdiction over humanity's most heinous crimes.

Without fuss or fanfare, the International Criminal Court's (ICC's) first four workers arrived at temporary quarters in an office block on the outskirts of The Hague to handle complaints of genocide, crimes against humanity and war crimes worldwide.

Human rights groups hail the ICC as global justice's biggest milestone since an international military tribunal in Nuremberg tried Nazi leaders after World War II.

But the ICC has no courtroom, prosecutor or judges just yet.

Armed only with telephones and office equipment as they await construction of permanent premises, the skeleton staff will pave the way for 18 judges and a chief prosecutor expected to be chosen next January.

"It's a great challenge for us all," said Sam Muller, head of the so-called "advance team" that started work today. The ICC team is set to double to eight members in coming weeks.

The court, backed by 74 nations, is not expected to begin operating properly until February and is unlikely to start investigations before the end of 2003.

No one — from head of state to citizen on the street — guilty of human rights violations, including systematic murder, torture and rape, would be immune from ICC prosecution.

UN secretary-general Kofi Annan said in statement the court "holds the promise of a world in which the perpetrators of genocide, crimes against humanity and war crimes are prosecuted when individual states are unable or unwilling to bring them to justice."

But the court, born of a 1998 treaty, has powerful critics like China, Russia and the United States, which wants immunity for its overseas peacekeeping troops and other US officials.

The United States has threatened to withdraw from all UN-authorised peacekeeping missions around the world if the 15-nation UN Security Council fails to grant it assurances that US nationals are safe from the court's grasp.

The Security Council refused the US immunity demand, and the United States yesterday vetoed a resolution extending the mandate of a UN police mission in Bosnia for six months. The United Nations now has until

Thursday morning to find a deal. The White House said today it will attempt to resolve the dispute with its UN Security Council partners before the deadline.

Bosnia warned it would not have the means to plug the gap if the international police force was pulled out.

Nato allies met in Brussels today to discuss any impact on the 18,000-strong Nato-led Stabilisation Force (SFOR) in Bosnia.

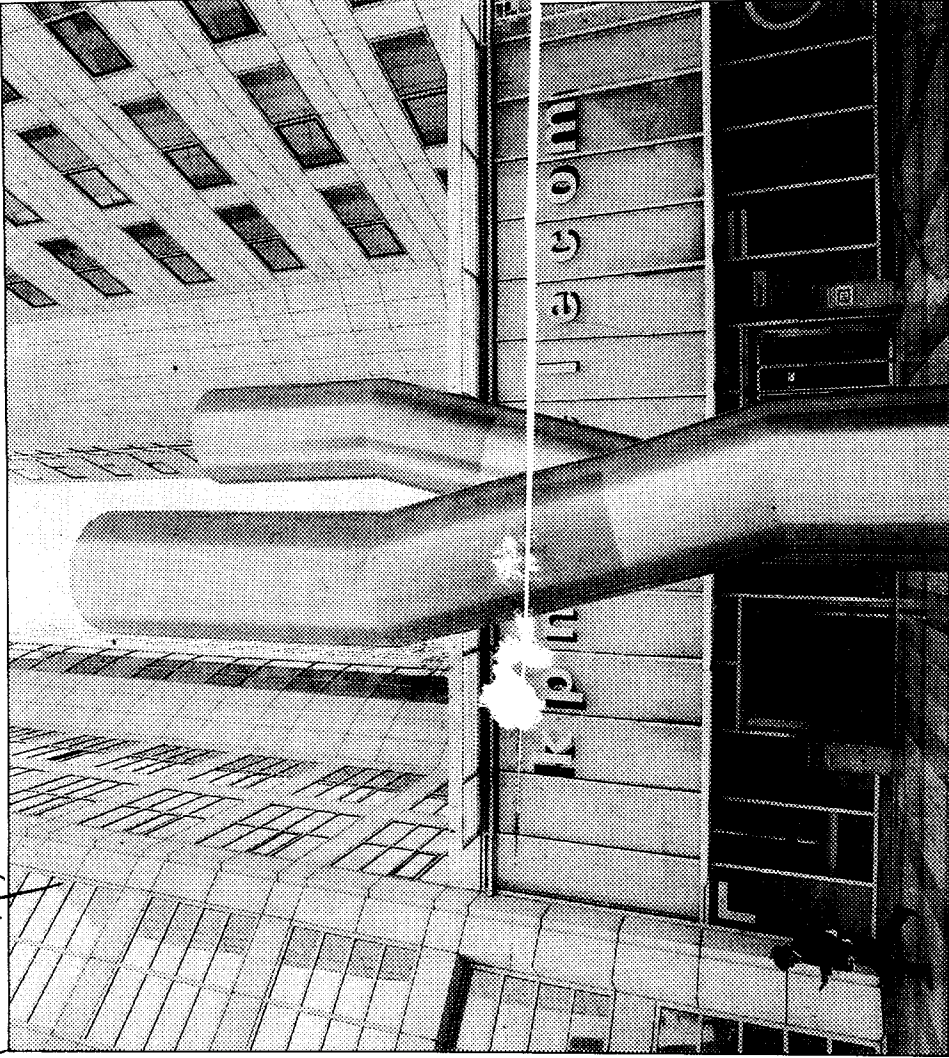
But in Sarajevo, US ambassador Clifford Bond told reporters the 2,500 US troops that are part of SFOR would remain, since SFOR's mandate was based on the Dayton Peace Accords.

The ICC cannot probe crimes committed before July 1, 2002, and will not supersede national courts, intervening only when they do not investigate or prosecute serious crimes.

Cases can be referred by states that have ratified the founding 1998 Rome Treaty, the UN Security Council or the tribunal's prosecutor after approval from three judges.

The Security Council also has the power to suspend an ICC investigation or prosecution if it believes it could obstruct its efforts to maintain international peace and security.

The United States, Russia and China are three of the five permanent members of the 15-seat Security Council.



The world's first permanent criminal court located in a former KPN telecom building in The Hague, Netherlands. (Reuters)

World crime court turns real amid rows

HELEEN VAN GEEST
THE HAGUE, JULY 1

THE first permanent World Criminal Court, dreamed of for decades, became a reality on Monday — even as the United States fought tooth and nail to avoid its jurisdiction over humanity's most heinous crimes. Without fuss or fanfare, the International Criminal Court's (ICC's) first four workers arrived at temporary quarters in an office block on the outskirts of The Hague to handle complaints of genocide, crimes against humanity and war crimes worldwide.

Human rights groups hail the ICC as global justice's biggest milestone since an international military tribunal in Nuremberg tried Nazi leaders after WWII.

Armed only with telephones and office equipment as they await construction

NATO to meet on court spat, says mission will go on

BRUSSELS: NATO called an emergency meeting on Monday to consider the implications of Washington's threat to shut down UN-authorized peacekeeping missions in a row over the powers of a new global war crimes court.

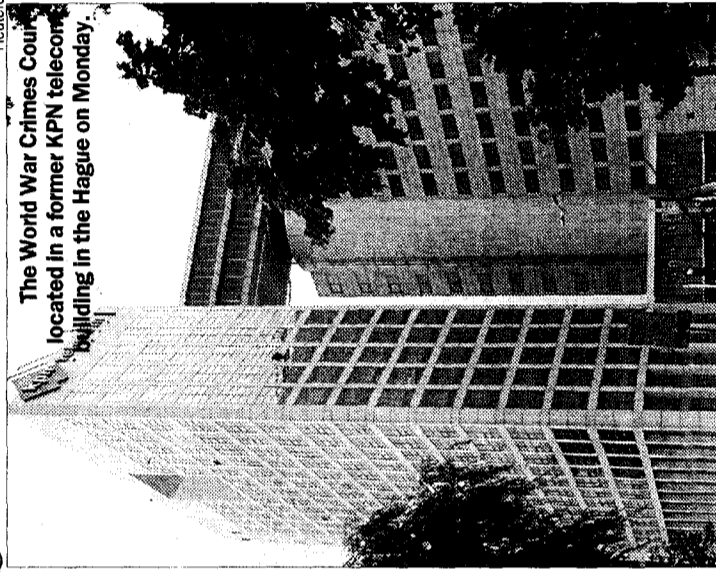
NATO spokesman Yves Brodeur said that ambassadors of the 19-nation defence alliance would hold a North Atlantic Council meeting at 3 pm. "It's going to be purely information. No decisions will be taken here because there are no decisions we can make here," he said.

Meanwhile, Bosnia warned on Monday it would not have the means to plug the gap if the country's UN policing mission is shut down by a US February refusal to renew its mandate. Liquidating the 1,600-strong force, which also provides training for a domestic force of some 17,000, would deal a blow to Bosnia's attempts to stand on its own feet after the 1992-95 war, a government spokesman said. The country would not have the resources to make up for the UN presence, he added.

—Reuters

of a headquarters, the skeleton staff will pave the way for 18 judges and a chief prosecutor early next year. The court is not expected to begin operating properly until February 2003. Judges and a prosecutor are expected to be chosen next January by countries backing the court,

Reuters
The World War Crimes Court located in a former KPN telecom building in the Hague on Monday.



which has been ratified by 74 nations. It is not expected to start investigating cases before 2003 end.

"There are four people there to deal with the mail, handle any complaints that come in and file them safely," Dutch foreign ministry spokesman Joep Sweijen said. "That number will go up to eight within the next couple of weeks." No one — from head of state to person on the street — guilty of human rights violations, including murder, torture and rape, would be immune from ICC prosecution.

But the court, born of a 1998 treaty, has powerful critics like China, Russia and US, which wants immunity for its overseas peacekeeping troops and other US officials. Washington on Sunday backed off — for now — from a vow to kill off the UN peacekeeping mission in Bosnia if the Security Council did not yield to its demands over the ICC.

—Reuters

2002 JUL 1

2002 JUL 1

South Korea, China in asylum scuffle

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Seoul/Beijing, June 14 (Reuters): South Korea and China plunged into a diplomatic row today after violent scuffles broke out at the South Korean consulate in Beijing when police hauled away a North Korean asylum-seeker.

They accused each other of violating international law after a South Korean diplomat said Chinese guards dashed into the mission, dragged the man out and held him for seven hours at the consulate guard house. Chinese police came later, and after a fracas with South Korean diplomats who formed a human shield for the asylum-seeker, the man was hauled away in an unmarked van.

At least one South Korean diplomat was injured in the brawl, which was broadcast on South Korean television.

The North Korean man's 13-year-old son eluded the guards and is holed up with 17 other North Koreans in the consulate. The South Korean foreign ministry called in China's ambassador to protest and demanded the detained North Korean man be handed back.

"We registered a protest to the Chinese side and demanded they undo what was done," President Kim Dae-jung's spokeswoman, Park Sun-sook, told reporters. China faces the prospect of a flood of North Korean asylum-seekers and each new case creates a fresh diplomatic dilemma for a nation eager to stay friendly with old ally North Korea and to continue improving ties with the West.

In Beijing, South Korean diplomat Cho Won Myung told Reuters how Chinese guards ran into the consulate, charged through the door and grabbed the man. In the world of diplomacy, consulate and embassy grounds are sacrosanct. "The action was contrary to international law because they didn't have our approval and we did not ask them to come in," Cho said.

"Despite that, they came in and grabbed him." China levelled the same charge at the South Korean diplomats who attempted to thwart the police.

Chinese foreign ministry spokesman Liu Jiancha denied China was to blame and slammed the South Korean

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diplomats who scuffled with police.

"Their behaviour was extremely incompatible with their diplomatic status and violated international law. China expresses extreme displeasure," he said. China also pointed the finger at the security firm involved.

The host country is responsible for providing security to protect foreign missions, and China stations armed guards around embassies and consulates throughout the country. Plainclothes police patrol sensitive areas, including Tiananmen Square. Liu provided no details on the firm. "In China, including Beijing, there are many civilian security firms," he said.

So far this year, 38 North Koreans have been allowed to leave China and head to Seoul via a third country after they sought asylum in diplomatic missions.

China has an agreement with North Korea to repatriate its citizens who enter illegally. But rights groups and U. lawmakers have said many North Koreans who are repatriated are tortured, imprisoned and sometimes killed.

THE TELEGRAPH

5 JUN 2002

U.S. pulls out of war crimes court

By Sridhar Krishnaswami

WASHINGTON, MAY 7. The Bush administration has announced that the United States is pulling out of the International Criminal Court on war crimes, a move that is seen as rare but not without precedents.

"It's over. We are washing our hands of it," remarked Pierre-Richard Prosper, State Department's Ambassador at Large for War Crimes issues. The outgoing Democratic President, Bill Clinton, signed the treaty in December 2000 but did not submit it for ratification by the Senate. The Republican President, George W Bush, never hid his total dislike and disdain for the treaty; and made no attempts to send it for Senate ratification as well. On Monday, the administration formally informed the United Nations that the United States "has no legal obligations" to the ICC because there was no intention to become a party.

The reaction to the decision to get away

from the ICC has been along expected lines — conservatives praising the administration and human rights groups attacking the move. In the words of one leading conservative, Representative Bob Barr, the administration has shown "real courage and leadership...in refusing to sacrifice America's constitutional principles to those bent on creating a one world government". But disappointment was expressed by many, especially among America's close allies in Europe and in this part of the world.

The reaction from Canada was particularly sharp. "I think there's a certain irony in the fact that the United States, which tends to extra-territorially apply its laws rather widely, is not willing to participate in a truly international consensus," the Foreign Minister, Bill Graham, remarked.

Even while walking away from the treaty, the Republican administration has given the impression that it was getting out of the process in a rather soft way.

Asked why this administration did not 'renounce' the signature on the treaty, Mr. Prosper argued that a decision was made by the President "not to aggressively attack or undermine" the treaty. "This was a better way to go," he said.

The Bush administration decision on the ICC is seen as a victory to hardliners such as in the Pentagon who were always wary of the implications to American service personnel overseas.

Unlike the World Court at The Hague which is restricted to governments, the ICC could try even individual citizens referred to it by the U.N. Security Council, by a government of an ICC Member or by the Court's own prosecutors.

The Under Secretary of State for Political Affairs, Marc Grossman, took the position that the ICC had the potential to go after American military personnel in politicised prosecutions and investigations.

Ex-general surrenders

THE HAGUE (NETHERLANDS): Yugoslavia's former army



commander, indicted for atrocities his forces committed during a brutal crackdown on ethnic Albanians in Kosovo, surrendered to the U.N. War Crimes Tribunal on Thursday. Gen. Dragoljub Ojdanic (*in the picture*), a top suspect whose troops drove 800,000 people from their homes and killed thousands during the 1998-99 war in the Serbian province, told reporters at Belgrade's airport that he felt "like any other hero" as he headed to the Tribunal to face justice. Gen. Ojdanic, who

travelled on a commercial flight to Amsterdam with his wife and a lawyer, is among six suspects who said they would voluntarily surrender rather than face possible arrest and extradition. A total of 24 Serbs are on the U.N. court's list of suspects wanted for alleged war crimes committed during the Balkan wars in the 1990s. They took part in war campaigns led by Slobodan Milosevic, the former Yugoslav President already on trial in The Hague. Gen. Ojdanic (60), has denied that his troops committed atrocities and insists the charges against him are unfounded. — AP

Universe's age

WASHINGTON: The dimmest, most faded old stars, glimpsed by the Hubble Space Telescope, offered confirmation that the universe is just under 14 billion years of age, scientists have said. That is an estimate, scientists at NASA headquarters told reporters on Wednesday, with an error margin of 500 million years either way. But because it was calculated by a completely different method than earlier estimates, it offers independent verification that astronomers are on the right track. "It's almost as if we were saying, you always thought you knew how old you were, but you never had proof," an expert said. "One

day, you open a drawer and there's your birth certificate, and you get the same answer. That's a real triumph." To get this confirmation, astronomers aimed the orbiting Hubble telescope at a globular cluster of stars in the constellation Scorpio, some 7,000 light-years from earth. A light-year is the distance light travels in a year, about 10 trillion kms. Such clusters are thought to be the oldest structures in the universe, coming into being about a billion years after the theoretical big bang. Within these clusters are scores of so-called white dwarfs, burned-out stars that have spent all the nuclear fuel at their cores and are simply fading slowly into darkness. — Reuters

World crime court keeps India on tenterhooks

New Delhi, April 12

THE INTERNATIONAL CRIMINAL COURT, which became a reality after yesterday's ratification of its founding statute, has sparked widespread concern on whether India could be dragged to the judicial body by any member state.

India is not a party to the Rome Statute the crucial 60th ratification of which came yesterday. The court will come into being on July 1 and is likely to start working in The Hague next year.

India's approach towards the new world body, which is empowered to try cases of genocide, crimes against humanity, and other grave crimes if na-

tions whose citizens are accused are not in a position to try them or do not want to try them, is being debated in academic and legal circles in the backdrop of New Delhi abstaining from voting on the Rome Statute.

India had abstained from voting on the Statute in July 1998 as its concerns revolved around the role of the Security Council as a "trigger" for probe and prosecution and in the matter of deferral

of prosecutions, the inherent jurisdiction of the International Criminal Court, the office of an independent prosecutor and the inclusion of internal armed conflict as a crime that the International Criminal Court can try.

"It is not as if the International Criminal Court comes in, India can refuse to cooperate. At the political level, it is going to be difficult to say no, the room for negotiations is very narrow, especially when the Security Council wants it, it is going to be tough," says Independent Law Researcher Usha Ramanathan.

"All countries because of the Security Council's power can be drawn into it. Kashmir is very much on the forefront, and precisely one of the reasons why India did not want to become a party. If it is precisely this which gets referred to by the Security Council, then where are we?" she asks.

The States party to the ICC Statute have the right to have a Judge nominated on the Bench, as the Prosecutor, and as members to the Prosecutor's and Registrar's office.

"The more parties you get, less will be the influence of those who do not agree," says Lars van Troost of Amsterdam based Amnesty International. "If you want to have a voice in International Justice, it is far better to ensure that you are an active member of the States — parties to the Statute."

Under the Rome Statute, the court's jurisdiction can be "triggered" by any State party to the Statute, by the UN Security

Council, by the prosecutor acting on his or her own motion. If the State's jurisdiction is triggered by the Security Council, the duty to cooperate extends to all UN member states, regardless of whether they are a Party to the Statute.

"Yes, every country can face this problem (like India on Kashmir)," says Prof V S Mani, who teaches International Law at JNU. He goes on to add "The Indian attitude would reflect the attitude of sovereign states towards any International Criminal Tribunal to sit on judgement over their jurisdiction."

Allaying fears of Kashmir being dragged to the ICC, a scholar

says, "It is true that some Pakistani NGOs may lobby for it. But, India is not a failed state."

"I think the understanding among the members is that they do not want to go for reasonable working countries," he said. "However, they do not want to give the assurance as they want to keep it as an open threat."

He adds: "The country will decide when it wants to become party since it is surrendering its criminal responsibility to an international court. Criminal jurisdiction is central to sovereign authority. Therefore, ICC is not a small instrument and the states should have time to reflect upon it."

PTI

9. 10. 15 International Criminal Court takes shape

UNITED NATIONS, APRIL 11. Despite vehement U.S. opposition, the world's first permanent war crimes tribunal will become a reality on July 1 with support from U.S. allies and nations from every continent.

At a ceremony on Thursday, the treaty establishing the International Criminal Court will receive the crucial 60th ratification, triggering its entry into force in less than three months. Ten nations will deposit their ratifications at the United Nations — Bosnia, Bulgaria, Cambodia, Congo, Ireland, Jordan, Mongolia, Niger, Romania and Slovakia. This will bring the number of ratifications from 56 to 66, but

all 10 nations will go down as number 60 in order to spread the honour.

For many countries and organisations, the establishment of the court is a historic milestone, the culmination of years of campaigning to ensure that the perpetrators of the worst crimes committed by individuals are brought to justice. For the U.S. President, George W. Bush's administration, however, the court is an unwelcome addition to the international legal establishment. Even though the then-U.S. President, Bill Clinton, signed the treaty, the United States has refused to ratify it, fearing its citizens would be subject to frivolous or politically motivated prose-

chutions. Washington has campaigned unsuccessfully to exempt U.S. soldiers and officials, and two weeks ago, the Bush administration said it was considering "unsigned" the treaty to stress that it won't be bound by its provisions. It is the only vocal opponent of the court.

The 1998 treaty establishing the court has been signed by 139 countries — and supporters have pledged to keep campaigning to make it universal. Richard Dicker, director of the International Justice Program at Human Rights Watch, said "signs are good" that between 90 and 100 countries will have ratified the treaty by early next year.

"The International Criminal Court is potentially the most important human rights institution created in 50 years.

It will be the court where the Saddam Husseins, Pol Pots and Augusto Pinochets of the future are held to account," Mr. Dicker said, referring to Iraq's President, Cambodia's late Khmer Rouge leader, and the former Chilean dictator. Philippe Kirsch, chairman of the commission preparing for the court's operation and Canada's ambassador to Sweden, said he expects the court to become operational soon after the states that have ratified the treaty meet in early 2003 to select a prosecutor and judges. — AP

International criminal court taking shape

LONDON, MARCH 21. The quest for worldwide justice is likely to come a great deal closer next month. If all goes to plan, the world's first permanent international criminal court will finally come into force, more than half a century after the United Nations called for its creation.

Britain has been in the forefront of moves to set up the International Criminal Court (ICC) while the United States has long been opposed to the idea. The timing of its birth — when Royal Marine commandos expect to be fighting Al-Qaeda forces and the Taliban alongside their U.S. allies — is therefore not without irony.

By Wednesday, 55 countries had ratified the treaty setting up the new court, which will have the power to try people accused of violating international humanitarian law.

The existing International Court of Justice in The Hague

deals only with states, not individuals. Just five more ratifications are needed before the ICC comes into force. These are expected in April. If the threshold of 60 countries is reached next month, the Rome Statute, setting up the ICC, will come into effect on July 1.

Since the statute does not operate retrospectively, that date will mark the start of the court's jurisdiction over genocide, crimes against humanity and war crimes. If the U.S. had not campaigned so hard against the ICC, it is possible that the treaty could have been ratified in time to try any captured terrorists accused of the attacks on Sept. 11.

However, individuals who commit war crimes and other grave offences after the statute comes into effect will be at risk of prosecution, even though the court's prosecutor and judges will not be elected before next year.

The Rome Statute was adopted in 1998, after five weeks of negotiations in the Italian capital. After the final vote, delegates from the 120 countries which supported the treaty cheered and hugged each other in delight as the U.S. representative — one of only seven who voted against — sat in silence.

Many states have had to change their own criminal laws before they could ratify the statute. In Britain, the International Criminal Court Act 2001 was passed to allow for the arrest and surrender of individuals for trial by the ICC, with equivalent legislation in Scotland.

The 2001 Act makes it an offence under the law of England and Wales for a person to commit genocide, a crime against humanity or a war crime. The law applies to acts committed in England and Wales or acts committed abroad by United Kingdom nationals, residents and

those subject to U.K. military law. Life imprisonment is the maximum penalty when murder is involved.

The ICC will step in only where other courts are unable or unwilling to tread. The court's jurisdiction is designed to take over where conflict has led to the collapse of the local judicial system, or where a dictatorial government refuses to punish its own abuses.

On one assessment, that could leave the ICC with very little to do.

After all, states that have ratified the statute should prosecute their offenders under their own newly-introduced war crimes legislation.

Equally, some countries that have not ratified may be reluctant to send suspects for trial at the ICC, although other non-party states may see advantages. — ©Telegraph Group Limited, London, 2002

Norms of conflict

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Milosevic is not Hitler

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It's a tricky question even though the notion of war crimes has been around at least since Nuremberg. Slobodan Milosevic is being indicted on 66 counts which include genocide and crimes against humanity, breaches of the Geneva Convention, extermination, torture, mass deportations, unlawful imprisonment, willfully causing great suffering, inhumanity, destruction of property and plunder, crimes committed in Bosnia in the period 1992-95 during a war that killed 200,000 people and in Kosovo in 1998-99. The question that is uppermost in some minds is whether Milosevic is personally responsible for the actions of Serb troops in Bosnia and Kosovo, whether he personally ordered the massacre of 7000 Bosnian Muslims in Srebrenica in 1995 and the expulsion of 700,000 Albanians in 1999. The question is being asked because the prosecution is dealing with specific instances of genocide, ethnic cleansing and so forth and not just that Milosevic was, as they say, the "controlling authority". Much is being made of a speech given to Bosnian Serbs asking them not to be beaten by the Muslims. This is taken as an incitement to murder, but there is room for interpretation that the defence, Milosevic himself, is likely to exploit.

International law

The similarities between Hitler and the Nazi nomenklatura on the one hand and Milosevic and his collaborators are, at best, superficial. We know, from the Wannsee document that Hitler personally ordered the extermination of the Jews, that it became a doctrine of national socialism. The fact that such a document is unlikely to exist in Yugoslav archives is not germane to the issue. What is, is whether criminal actions attributed to Milosevic derived from the official worldview of the ruling regime or were committed in the heat of the moment. We know that genocide was an effect of policy in Cambodia as was the expulsion of Asians from Uganda by Idi Amin and the massacres perpetrated on his people by Papa Doc Duvalier in Haiti.

The difficulties are enormous, in legal terms. For instance, what about the killing of civilians in Afghanistan? The Americans will say there was no intent to kill, but is that sufficient defence? Doesn't the Geneva Convention strictly prohibit the killing of civilians? What about Vietnam? No wonder George Bush went back on Clinton's commitment to the creation of a permanent International Criminal Court. The question is, what are the rules that apply in a war? The Geneva Convention deals mainly with the treatment of prisoners of war; the rest is a matter of human rights. If one puts the question to a military man, it would probably elicit a snigger. Collateral damage is routinely taken for granted. Besides which, it is well understood, even in the United States, that the defence of national security and sovereignty are more important than any notion of human rights.

War is about brutality, no matter how one looks at it, it is not possible to wage a civilised war, it is a contradiction in terms. Milosevic is intelligent enough to understand that and his defence will surely focus on history and politics, the engines that run human actions in a given context. Was it abnormal? — will be Milosevic's defence. He will point to Hashim Thaci and say his men were trying to do the same thing to the Serbs before 1998 and succeeded in driving 200,000 of them out after 2000. This is the norm of conflict in the Balkans and Milosevic will contend he did nothing out of the ordinary.

THE STATESMAN

16 JULY 2002

HAGUE / 'A PARALLEL LEGAL PROCESS'

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Milosevic challenges tribunal legality

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THE HAGUE, NETHERLANDS, FEB. 13. In his first comments to his war crimes trial, the former Yugoslav strongman, Slobodan Milosevic, on Wednesday challenged the legality of his arrest and of the U.N. Tribunal that is trying him on charges of murdering and oppressing non-Serbs in a series of Balkan wars.

After nearly two days of the prosecutors' opening statements, Mr. Milosevic was given his chance to speak. But with less than 30 minutes left before a scheduled adjournment, he declined to begin his formal statement. Instead, he demanded that the trial judges respond to his motions during pre-trial hearings that the court was illegal and that his arrest and transfer to The Hague violated the Serb and Yugoslav constitutions.

"I challenge the legality of this court because it is not established on the basis of law," Mr. Milosevic said. He accused the chief prosecutor, Carla Del Ponte, of already proclaiming his guilt and his sentence by conducting "a parallel legal process" in the media.

The presiding judge, Richard May, rejected his charges, and said the court had already ruled on its own legality. "Your views on this court are entirely irrelevant," he said. He then adjourned the day's hearings, leaving Mr. Milosevic to begin

what promised to be a lengthy political and legal argument on Thursday.

Mr. Milosevic's first words of the trial reflected the same defiant and belligerent tone he adopted in his five earlier pre-trial appearances since he was brought to The Hague from Belgrade last June 28. His remarks followed a case-by-case account of horrors in the former Yugoslavia during a decade of wars, a gristly taste of the sorrowful tales to be told by a parade of survivors in a trial that could last two years.

The former Yugoslav President is the first head of state to be called to justice before an international tribunal. His case is the most prominent in international law since a military tribunal tried the Nazi leaders after World War II. The prosecution's opening statement lasted longer than expected, delaying the start of Mr. Milosevic's statement.

The judge said Thursday's session would be curtailed, because the cramped docket of the Tribunal required the courtroom for another case. Earlier, Mr. Milosevic's legal advisers said he would speak for at least a full day. "He's going to provoke or to challenge very certain, strictly legal questions and after that he is going to speak also about the historical background, and the political back-

ground," said Belgrade lawyer Dragoslav Ognjanovic.

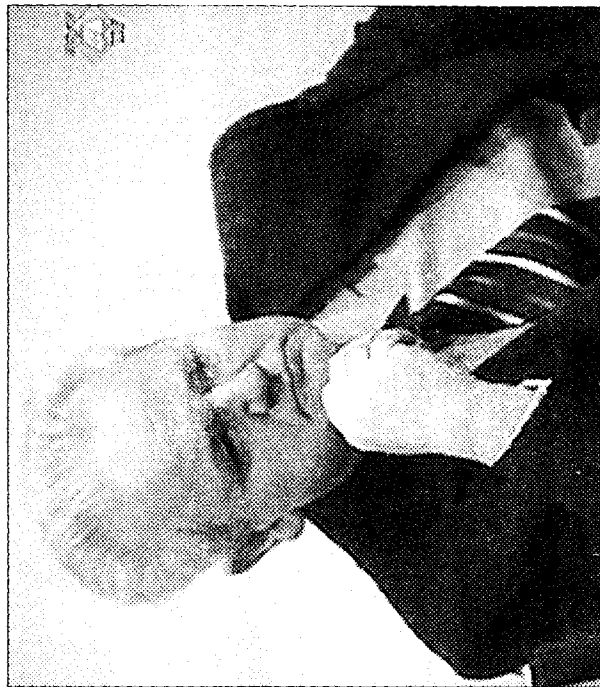
Mr. Milosevic will argue that he is not a war criminal but a leader who sought unity and peace in his country, say his advisers. In the final stage of the prosecution's opening presentation, principal trial attorney Geoffrey Nice described Mr. Milosevic as a criminal with the single aim of segregating the Serbs from their Yugoslav neighbours to maximise his control over the Balkan region. Mr. Milosevic doesn't recognise the authority of the court and plans to defend himself before the three-member panel of judges. His lawyers say he will seek to call Western officials to testify, including the former U.S. President, Bill Clinton, and the British Prime Minister, Tony Blair. Describing crimes in Bosnia, for which Mr. Milosevic has been charged with genocide, prosecutors showed video footage of rail-thin and frightened internees at the Trnopolje prison camp in 1992. — AP

THE HINDU

THE HINDU
THE HINDU TIMES

14 FEB 2002

Milosevic's epic trial opens at The Hague



Former Yugoslav President Slobodan Milosevic at the UN war crime tribunal at The Hague. (Reuters)

FROM PAUL GALLAGHER

The Hague, Feb. 12 (Reuters): Slobodan Milosevic inflicted "mediaeval savagery" on the Balkans in the 1990s, prosecutors said today at the start of the biggest war crimes trial since Hitler's henchmen were tried at Nuremberg.

The former Yugoslav leader cynically harnessed Serbian nationalism to catapult him to power, spearheading a campaign to create a "Greater Serbia" from the wreckage of the collapsing communist country, the Hague war crimes tribunal was told.

"Beyond the nationalist pretext and the horror of ethnic cleansing, behind the grandiloquent rhetoric and the hackneyed phrases the search for power is what motivated Slobodan Milosevic," chief prosecutor Carla Del Ponte told the court. Milosevic, charged with

genocide in the 1992-95 Bosnian war and crimes against humanity in Croatia in 1991-92 and in Kosovo in 1999, inflicted unspeakable suffering on those Balkans who got in the way of his relentless pursuit of power, she said.

More than one million people were imprisoned or forced from their homes and tens of thousands were killed or maimed during the conflicts, prosecutors say. Churches, mosques, towns and villages were reduced to rubble, countless lives ruined.

"Some of the incidents revealed an almost mediaeval savagery and a calculated cruelty that went far beyond the bounds of legitimate warfare," Del Ponte told the court's three scarlet and black-robed judges and a packed press and public gallery.

Dressed in a crisp dark suit, blue shirt and striped tie, Milosevic jotted notes as a string of satellite trucks outside the hulk-

ing grey courthouse beamed the proceedings worldwide.

A crowd of Kosovo Albanians, who gathered to watch the trial in a mosque, said the 60-year-old former Serb strongman was responsible for shocking atrocities. "Finally the main criminal, the main butcher of the Balkans, is facing trial," said Tefik Halili, 34, whose cousin was shot by Serb forces three years ago in an attack on the village of Racak widely credited with stiffening Nato's resolve to begin an air war against Milosevic.

In Belgrade, Milosevic's former seat of power, the start of the trial was greeted by apathy rather than outrage or shame.

"He did us so little good they could have thrown him to the wolves for all I care," said Katarina, an unemployed mother towing along her three-year-old daughter in central Belgrade.

Milosevic has dismissed the charges as a conspiracy by the West to tarnish the memory of his 13-year rule and to overshadow its meddling in the region at the end of the Cold War.

The West, UN and NATO engaged in shuttle diplomacy, fraught peacekeeping, sanctions and air strikes during the conflicts. Milosevic has refused to recognise the court or to appoint defence counsel, prompting judges to enter not guilty pleas on his behalf and appoint three international lawyers as "amici curiae" or "friends of the court" to ensure he has a fair trial.

One of his legal advisers, Zdenko Tomanovic, said Milosevic had made contact with the "amici curiae" for the first time today, after previously refusing even to acknowledge them.

After the morning prosecution statements, Milosevic asked the amici: "Do you hear this rub-

bish? How can you not react?" Tomanovic said, adding that the contact was "friendly".

Prosecutors' opening statements will last at least into tomorrow. Only then will Milosevic get a chance to respond.

Prosecutor Geoffrey Nice took the court back to the collapsing Yugoslavia of the late 1980s to try to explain Milosevic's rise to power, showing archive film of the communist leader's landmark visit to Kosovo, when he whipped up the nationalist passions of aggrieved Serbs.

Milosevic, flanked by seated guards in the modern, blandly furnished courtroom, smiled faintly and raised his eyebrow in what appeared to be ironic amusement. Milosevic, said Nice, had come to wield great power in Yugoslavia from behind the scenes rather than overtly.

TRIBUNAL / HUNDREDS MAY TESTIFY

Milosevic to go on trial today

By Vaiju Naravane

109-12
12/2

PARIS, FEB. 11. The former Yugoslav leader, Slobodan Milosevic goes on trial at The Hague on Tuesday in the second most important war crimes trial after the Nuremberg hearings of Nazi war criminals just after the Second World War.

The International Criminal Tribunal on the Former Yugoslavia set up by the United Nations Security Council, is expected to call in hundreds of witnesses, including 30 of the former Yugoslav President's top aides. Mr. Milosevic has always rejected the legitimacy of the Tribunal, on the grounds that it was set up by the U.N. Security Council and not by the General Assembly. Most of the witnesses are expected to be victims of atrocities committed during the Balkan wars that began in 1991 with the breakaway of Slovenia from the Yugoslav Federation and ended in 1999 with Western attacks against Yugoslavia on behalf of the Albanian community in the Serbian province of Kosovo.

The identities of the aides who are likely to testify have been kept secret. But there is speculation that Zoran Lilic, who served as President of the Yugoslav federation between 1993 and 1997 will be one of them. He was forced out of the



BITTER MEMORIES: Milazim Hetemi, survivor of a massacre by Yugoslav forces, walks in a corpseless graveyard in the central Kosovo village of Izbica on Thursday. The ethnic Albanians from the Serbian province want to speak for the dead at the trial of the former Yugoslav President, Slobodan Milosevic, in The Hague, Netherlands, on Tuesday. — AP

inner circle by Mr. Milosevic because he opposed hardline policies in Kosovo.

Mr. Milosevic was the all-powerful President of Serbia, the dominant of the two Yugoslav republics.

A police general, Vlastimir Djordjevic, who reportedly covered up the disposal of hundreds of bodies of Albanians exterminated by Serbian mili-

tary and para-military forces in Kosovo is also tipped to be one of the witnesses along with Rade Markovic, the former secret police chief.

The Tribunal has the authority to issue sub-poenas but cannot force people to testify. Several of the witnesses are expected to be Croats and Albanians.

Geneva shield for Taliban

Guantanamo Bay, February 8

A PLANE carrying 28 detainees from the war in Afghanistan on Thursday landed at this remote naval base, where the US Government now plans to apply legal protections under the Geneva Convention to captured Taliban soldiers.

The decision, which the White House announced on Thursday, could have significant legal implications for detainees at the US military outpost in eastern Cuba. But US officials said captured Taliban soldiers would still not be classified as prisoners of war, and the decision will not apply to al-Qaida fighters and other suspected terrorists.

"It will not change their material life on a day to day basis. They will continue to be treated well, because that's what the US does," White House spokesman Ari Fleischer said.

"The United States has from the outset and will in the future be treating detainees in a way that is humane and consistent with the Geneva Convention," Defence

Secretary Donald H Rumsfeld said. Thursday's decision "will make no difference at all in that", he said.

The convention on prisoners of war sets international standards for the humane treatment of PoWs. Under the agreement, such prisoners cannot be compelled to give more than their name, rank and serial number.

It was unclear if the White House announcement would affect the detainees' access to legal counsel, possible trials, or if it would change the interrogation process that is already well underway. President Bush does not consider the detainees PoWs but still believes the Geneva Conventions apply to some of the detainees, officials said.

Human rights groups and some European governments pressed for the PoW status so the detainees would have greater legal protections. They also have expressed concern over how the captives have been treated.

The US suspended flights of prisoners from Afghanistan two weeks ago so that more cells could

be built to house them. Officials also said they did not want the processing of new inmates to distract them from their interrogations of suspects already at the base. Thursday's arrival was the first since 14 prisoners arrived on January 21. The latest group took off late Wednesday from the US base at Afghanistan's Kandahar airport.

US troops finished work this week on their temporary detention compound, Camp X-Ray. The camp now has 320 open-air chain-link cells.

The US has refused to detail where the 186 prisoners are from, except to say they come from over 24 countries. A few nations — Australia, Britain, France, Kuwait, Saudi Arabia, Sweden and Yemen — have said their citizens are among detainees.

There are more than 50 Saudis among them, according to Saudi Arabian Interior Minister Prince Nayef. His country has asked that its citizens be handed over so it can interrogate them.

The military erected a tented field hospital for detainees, and in

its first week of operation, the 16 staff physicians performed 10 surgeries, said Navy Capt Pat Alford. Officials say the field hospital, known as Fleet Hospital 20, could eventually hold 500 detainees. "I was wondering from being so close to New York City how I would feel about the detainees, and my first thought on seeing them was 'how sad for all of us. We're all in this together,'" said Lt Laura Bender, a United Methodist Church chaplain, who was at the hospital.

On Thursday, physicians performed their first amputation here, removing the infected lower leg of a detainee wounded in battle. On Wednesday, medical personnel removed the eye of detainee who had injured himself in a game before his capture.

"I think overall they (detainees) are happy to be getting the care," Bender said. "They don't speak English but I've been watching their body language and facial expressions and they seem to be willing participants. I have not seen any animosity toward their care givers."

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TWO WRONGS DON'T MAKE A RIGHT

MORALLY INDEFENSIBLE INDEED is the decision of the United States to disregard the codified international law about prisoners of war (PoWs) as it deals insensitively with those "detained" by it during its ongoing campaign against the Al-Qaeda terrorists and the Taliban combatants in Afghanistan. The U.S. should first revoke this untenable decision and move quickly to put an end to the obnoxious practices that have come to light during the transportation as well as interrogation of most of these prisoners. According to the U.S. President, George W. Bush, these "detainees" can only be treated as "illegal combatants" with no plenary rights as applicable to any category of PoWs under the universally acknowledged Geneva Conventions. The Bush administration's stated reasoning is that the incarcerated fighters in question, numbering less than 200, were captured in a new kind of war against the purveyors of terror. This war is said to be absolutely different from the conventional military campaigns which typically involve the armed forces of two or more antagonistic states. By expounding this novel political thesis, the U.S. is setting dangerous new precedents in the international arena in a cavalier fashion. Not only that. Washington seems to be depriving itself of the opportunity to set a civilised example that might be relevant to future scenarios, as yet unforeseen, involving non-state players. What is therefore amiss about the present U.S. action is not just a quibble regarding the definition of PoWs. Widely chronicled, too, are the narrative reports as also some visual footage about the cruelty that the U.S. interrogators have already inflicted on their captives belonging to the Taliban-Osama axis of terror.

The sooner Washington recognises that two wrongs don't make a right, the better it will be for any sustainable international campaign against the globalised politics of terrorism. Two inter-linked developments, which seem to have set off the current crisis of international conscience over

the American action, merit close scrutiny. First, citing the ferocious potential of the terrorist captives belonging to the Taliban-Osama mafia, the Bush administration has transported them to an American military facility at Guantanamo Bay from Afghanistan in almost unspeakable conditions of human indignity. Second, the coercive transportation has been compounded by the traumatic psychological pressure that is being exerted on the terrorist-captives at the Guantanamo complex in a bid to extract information from them about the vestiges of the Taliban-Osama network of savagery. If this is any 'creative' way of humiliating and neutralising the barbaric terrorists, the U.S. has certainly not crowned itself with glory. To discern this reality is not to condone any of the despicable deeds of the Taliban-Osama school of terror.

Two other aspects of the American treatment of the terrorist prisoners show how the issues should have been handled with greater sensitivity. The U.S. Secretary of State, Colin Powell, is in fact reported to have suggested to Mr. Bush that the "detainees" should be accorded the status of PoWs. The civilisational calculus of mankind does not admit of any other course, especially when the U.S. itself has deployed its overall conventional military machine, in one or more forms of the many possible postures, in the war against the Taliban and the Al-Qaeda adherents. Moreover, the Taliban, now deposed from power in Afghanistan, was arguably a 'state' player on whom the United Nations had imposed sanctions even before the current American action. The crux of Gen. Powell's reported suggestion is that there is no reason why the U.S. should bend the definition of PoWs. On a different plane, the U.S. has transgressed even its own definition of terrorist-captives by according a differential status to the so-called "American Taliban" among them as distinct from those belonging to several other countries.