



# HUMAN RIGHTS

Center for Human Rights and Humanitarian Law

# BRIEF

Washington College of Law • American University

Volume 3, Number 1 • Fall 1995

## War Crimes Tribunal Dismisses Jurisdictional Challenge

by Diane F. Orentlicher\*

On October 2, 1995, the Appeals Chamber (Chamber) of the International Criminal Tribunal for Yugoslavia (IT) rendered one of the most important rulings on war crimes since the Nuremberg judgment. At that time, the laws of war applied almost exclusively to wars between states. Fifty years ago, if governments went to war against their own citizens, international law would look the other way, however gruesomely the battles were waged. No longer. In a decision on jurisdiction, the Chamber ruled that some atrocities committed in civil wars are international crimes — crimes for which an international court can summon individuals to account.

This ruling reflects a profound change in the nature of armed conflict since World War II, and a corresponding change in the laws of war. As the decision notes, the law previously enforced a “stark dichotomy,” elaborately regulating wars between states while shielding the conduct of civil wars from the scrutiny of global conscience. But the dichotomy has gradually broken down, the Chamber noted, in part because the “State-sovereignty-oriented approach” that left states alone when it came to internal con-

flicts “has been gradually supplanted by a human-being-oriented approach” in postwar international law.

At the same time, civil wars have become both more frequent (one study has identified 94 armed conflicts during a recent six-year period; of these, only four were classic inter-state conflicts) and more savage, often entailing violence on a scale so vast

The State-sovereignty-oriented approach that left states alone when it came to internal conflicts has been gradually supplanted by a human-being-oriented approach.

that their effects reverberate across an increasingly interdependent world. In consequence, the Chamber concluded, “the international community can no longer turn a blind eye to the legal regime of such wars.”

No case better illustrates the point than the one which gave rise to the judgment. The decision arose out of a challenge to the Tribunal’s jurisdiction by its first defendant, Dusko Tadic, a former café owner and karate instructor in the Prijedor district of northeastern Bosnia. His alleged crimes are emblematic of the depravity with which contemporary ethnic conflicts have been waged. When I visited a refugee camp in Croatia two and one-half years

continued on page 20

## Beijing Panel Brings Together Activists and Delegates

by Alison E. Graves

On September 9, 1995, the Washington College of Law’s (WCL) Center for Human Rights and Humanitarian Law and the Women and International Law Program presented a panel, *Women’s Human Rights and the Platform for Action*, at the UN Fourth World Conference on Women in Beijing. The goal of the session was to create a human rights bridge between the NGO Forum, which concluded on September 8th and the main conference which began its session on September 4th and concluded on September 15th. Drawing on the perspectives that emerged during the NGO Forum and the first week of the confer-

continued on page 10

## INSIDE:

Future of Inter-American Human Rights System	Page 2
Enforcement of Human Rights Through ILO	Page 4
World Bank Withdraws from Project at Panel’s Recommendation	Page 5
Pioneering Strategies for Mental Disability Rights	Page 6
Lobbying for Specific Language in Beijing Platform	Page 16
Indigenous People File Suit	Page 18

See page 12 for Point/Counterpoint on The Quandary of Economic Sanctions

Beijing Panel, continued from page 1

ence, the five panelists briefed participants and members of the press on the current state of deliberations with regard to key issues in the Platform for

Drawing on the perspectives that emerged during the NGO Forum and the first week of the conference, the five panelists briefed participants and members of the press on the current state of deliberations with regard to key issues in the Platform for Action.

Action, including violence against women, women's health and reproductive rights, and the role of institutional arrangements in ensuring the protection and promotion of women's



Layli Miller Bashir

Participant braves inclement weather at NGO Forum.

human rights. The panel culminated a year of conferences and in-depth research sponsored by the Women and International Law Program whose director, Lauren Gilbert, headed the

The NGO Forum and Beijing Conference were attended by an estimated 30,000 delegates, observers and press.

Center for Human Rights and Humanitarian Law's delegation to the official conference.

In November 1994, a group of

respected academics and human rights advocates assembled at American University to participate in a conference on the International Protection of Reproductive Rights designed to conceptualize reproductive rights within the full spectrum of civil, political, economic and social rights embodied by human rights norms. Following the November conference, the Women and International Law Program and the International Human Rights Law Group co-hosted an informal briefing for policymakers and non-governmental organizations in May 1995. The purpose of this briefing was to discuss the draft Platform for Action for the Beijing Conference. The language of the extant draft was problematic. The briefing in May was the first time that John Shattuck, Assistant Secretary of State for Democracy, Human Rights and Labor, together with policy makers from the State Department, USAID, Health and Human Services, and the

Department of Justice met with NGO representatives to examine the content of the draft Platform for Action for Beijing and to explore strategies for ensuring the integrity of women's health and human rights, including reproductive rights, in the final document.

In the face of ongoing efforts by a handful of countries to roll back advances achieved in the area of women's rights, John Shattuck assured participants that the State Department would oppose any language that would weaken the commitments made at the Vienna Conference on Human Rights and at the International Conference on Population and Development in Cairo. He also indicated that henceforth, high level government officials,

including himself, Secretary of State Warren Christopher, and Under Secretary of State for Global Affairs Timothy Worth would be more actively involved in deliberations over the Platform for Action. This briefing was significant because it brought together NGOs with policy makers and helped to establish

Despite inclement weather and restrictive measures by the Chinese government, delegates from all over the world met to discuss the status of women today.

the State Department's strategy and ensure its commitment to a much broader conceptualization of women's human rights.

Women's rights advocates continued their efforts at the NGO Forum in Huairou and the Conference in Beijing, held in August-September 1995. The NGO Forum and Beijing Conference were attended by an estimated 30,000 delegates, observers and press. One hundred and eighty-one UN Member States participated in the Conference, as well as non-member states Switzerland, Kiribati, Nauru, Niue, Tonga, Tuvalu, the Cook Islands and the Holy See. Somalia and the Federal Republic of Yugoslavia were not invited. Despite inclement weather and restrictive measures by the Chinese government, delegates from all over the world met to discuss the status of women today.

Monica Selter, a student representing WCL in Beijing, explained that the Chinese government's decision to locate the NGO Forum forty miles away from the main conference caused

The Chinese government's decision to locate the NGO Forum forty miles away from the main conference caused tremendous logistical problems.

tremendous logistical problems. In addition, NGO representatives had difficulty obtaining the draft Platform for Action. "In fact," Selter reported, "some of the [local conference employ-

continued on next page

Beijing Panel, continued from previous page  
ees] started selling copies of the draft Platform, which should have been available for free, at outrageous prices." Of the approximately 30,000 women who participated in the NGO Forum, only about 2,000 attended the

High ranking government delegates were able to attend the panel because it took place during a break in government deliberations. Consequently, participants were able to exchange a wide range of ideas.

official conference. The WCL panel attempted to bridge this gap between NGOs convening in Huairou and government delegations deliberating in Beijing and was part of a day-long conference organized by American University's Center for the Study of the Global South, *Women Preparing for the Next Millennium: Voices from the Global South*. It was the only activity hosted by an academic institution permitted to take place at the main Conference site. According to Lauren Gilbert, high ranking government delegates were able to attend the panel because it took place during a break in government deliberations. Consequently, participants were able to exchange a wide range of ideas.

The panel acted as a link between the two forums and brought the press and NGOs up-to-date on the status of deliberations over the language of the Platform for Action. The five panelists were Carmel Shalev, law professor at the Hebrew University in Jerusalem, expert member of the Committee on the Elimination of Discrimination Against Women

The panel acted as a link between the two forums and brought the press and NGOs up-to-date on the status of deliberations over the language of the Platform for Action.

(CEDAW), and member of the Israeli delegation; Barbara Klugman, Coordinator of the Women's Health Project in Johannesburg and member of the South African delegation; Maria de la Luz Lima, member of the Mexican Congress, Professor of Criminal Law at the University of Mexico School of Law, and member of the Mexican delegation; Salma Khan, an economist and member of CEDAW from Bangladesh; and Rebecca Cook, Professor of Law and Medical Ethics at the University of Toronto, Director of the University of Toronto's Human Rights Programme, and member of the Canadian delegation.

Panelist Shalev set forth the legal framework under which women's reproductive health may be addressed as a human rights issue. Klugman elaborated on some of the tensions sur-



Salma Khan, economist and member of CEDAW from Bangladesh, addresses the merits of an Optional Protocol to CEDAW.

rounding women's reproductive health issues in the Platform for Action and suggested ways of dealing with these tensions. De la Luz Lima presented a brief historical perspective on how states and intergovernmental institutions had begun to address domestic violence within a human rights framework. Khan examined the value of an Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, which was proposed in the Platform for Action,

and discussed its ramifications. Cook acted as respondent and focused on the accountability of states for violations of human rights.

Layli Miller Bashir, a WCL student, attended the panel. She contrasted the

Despite adversity and compromises, delegates at the Conference produced a solid framework that they could take home and use to improve the status of women.

Conference's legal outcome, epitomized by the Platform for Action, with the sharing of personal experiences between women. To her, the real achievement at Beijing was the convergence of women from different cultures and perspectives. Bashir believes it was crucial for women with different backgrounds to recognize the variety of possible approaches to defining human rights. Representatives from South Asia focused on the continued trafficking of women. Middle Eastern and African participants highlighted the problem of genital mutilation. Western women tended to focus on structural problems, such as legal frameworks and equal rights in the workforce. To Bashir it was, therefore, important for participants to share strategies and experiences. The panel on *Women's Human Rights and the Platform for Action* promoted such collaboration.

Now that the Beijing Conference is over, Lauren Gilbert and the other participants in the Beijing process want to move forward and implement the policies discussed in the panel. Gilbert asserts, "Despite adversity and compromises, delegates at the Conference produced a solid framework that they could take home and use to improve the status of women." To this end, the Conference and resulting Platform were a success. Of course, the true achievements of the Beijing Conference cannot be known for some time. There is consensus, however, that the Platform for Action is a valuable tool that can be used to improve international human rights protections for women. 🌐

Photo courtesy of Center for the Study of the Global South