

Crimes against the Child

Crimes against Humanity

International Round Table organised by AMADE
Under the Patronage of UNESCO

25-26 April 2003
Monaco

Final Report

► Background

The international Round Table on ‘Crimes against the Child, Crimes against Humanity’ organised by the World Association of Children’s Friends (AMADE), held under the patronage of UNESCO in Monaco on 25-26 April 2003, assembled a group of experts in international humanitarian and criminal law, specialising in the Rights of the Child, together with representatives of international bodies and non-governmental organisations (See Appendix).

The purpose of the meeting was to explore the various sources of incrimination for crimes against humanity within the context of current international criminal law and identify every possible route for future qualification of the most serious crimes against children as crimes against humanity.

The Round Table was part of the extension of the initiative by the Filipino branch of AMADE, which was discussed and adopted at the AMADE Annual General Meeting in March 2002 as one major avenue for the organisation to pursue. The AMADE proposal was given support in the Declaration by His Serene Highness Crown Prince ALBERT of Monaco at the 27th Extraordinary Session of the United Nations General Assembly on Children, in New York in May 2002, in which His Serene Highness stressed the urgent need to reinforce existing legal measures at international level ‘in order to ensure, beyond constraints of temporal or national boundaries, the prosecution and punishment of crimes against nature perpetrated against children by ascertaining that those crimes are qualified as crimes against humanity’.

AMADE held a preliminary *in camera* meeting of the panel of invited experts on the 25th April 2003. This first session was followed with a public meeting and a general debate on the report from the work of the preliminary expert session by Professor Karel VASAK, former Legal Adviser to UNESCO, which took place on the 26th April 2003.

► Opening

The Round Table recognised the legitimate emotion aroused by certain instances of intolerable aggression against the physical or moral integrity of the child, the nature of which profoundly offends the universal conscience.

In her opening address, Her Royal Highness the Princess of HANOVER, President of AMADE, spoke of the ‘great sense of indignation that has fuelled AMADE’s energy in order to make possible the project’ and called for ‘juridical reflection on how to ensure that the most horrendous crimes against children are qualified as crimes against humanity, and that their perpetrators receive a punishment commensurate with the atrocity of their crimes’.

In welcoming the participants to the Round Table, Mr. Jacques DANOIS, Secretary-General of AMADE, reaffirmed the call by Her Royal Highness to ‘obtain from the international community the recognition that every physical or moral crime committed against children is a horror that must not go unpunished’.

It was with this in mind that the work conducted within the framework of this round table aimed at favouring a legal and criminal approach, proposing a set of preliminary imperatives of accuracy and objectivity, in order to examine the most appropriate means for the repression of the gravest crimes committed against children. As pointed out by His Excellency Mr. Patrick LECLERCQ, Minister of State of the Principality of Monaco, at the opening of the expert session, ‘the purpose of this meeting is to examine a highly sensitive issue that can no longer be ignored, namely the legal status of the child’.

To quote His Excellency Mr. Juan Miguel PETIT, Special Rapporteur on the sale of children, child prostitution and child pornography of the United Nations Commission on Human Rights in his message of support: ‘now as never before the sight of children grappling with severe problems all over the world (...) forces us to think, fight and push for new policies and innovative strategies to guarantee the rights of children to a decent future’.

Along the same lines, the statement read from His Excellency the late Mr. Sergio VIEIRA de MELLO, United Nations High Commissioner for Human Rights, brought up the need for the international community to ‘unite to make every effort to ensure that the protection of children's rights becomes a true priority’.

At the opening of the expert session, Mr. Bruno CATHALA, Director of Common Services of the International Criminal Court, read a message of support from His Excellency Mr. Philippe KIRSCH, in which the recently appointed President of the ICC endorsed the project emphasising the ‘importance of protecting the children’s rights, particularly those who are the victims of the most heinous crimes’.

Without exhausting a subject whose reality was highlighted by all of the participants, the discussions, thanks to their value and quality, produced a set of recommendations and provided guidelines for further action by AMADE.

► Summary of the proceedings

The present report provides an overview of the main conclusions and recommendations by the participating experts. It draws on both the work conducted during the *in camera* session and the discussions which followed the presentation of the report on this preliminary session at the public meeting of the round table.

Preliminary definitions

Although on the face of the evidence presented, all acts detrimental to children deserve a just sanction, the experts outlined the need to establish that the field of application of this project remain limited to the most serious crimes. In addition these crimes need to be sufficiently widespread and organised in practice, in contrast to isolated or sporadic acts, no matter how heinous the latter may reveal themselves to be. In that, the AMADE project adhered to the growing awareness of the international community that ‘the most serious crimes of concern to the international community as a whole must not go unpunished’ (Preamble of the Rome Statute of the International Criminal Court).

It was also indicated that one advantage of this definition of being ‘sufficiently widespread and organised’ would be of great use to assist the judges in their interpretation of which crimes against children shall fall within the category of ‘crimes against humanity’.

Quoting from the list proposed by the Secretary-General of AMADE to the plenary committee at the extraordinary session of the United Nations General Assembly on children, the following acts were highlighted without limitation, be it during times of peace or armed conflict: child slavery, hazardous labour for children, sexual abuse, commercial sexual exploitation of children, child prostitution, child-pornography on the internet, video and audio recordings or any other technological means, trading in human organs taken from children, the use of children for scientific experiments, child trafficking, the recruitment and enrolment of children for military operations, and the use of children as military targets.

In order to encapsulate all aspects relevant to the aforementioned crimes –massive scale, child-targeted atrocities– a concept of ‘paedocide’ was tabled for discussion. Although pertinent to the project as a powerful term for public mobilisation to be used for subsequent campaign by AMADE, the concept was rejected on the basis of the complexity of making feasible yet another addition to the existing and widely recognised list of crimes within the jurisdiction of the International Criminal Court as defined in Article 5 of the Rome Statute: a) the crime of genocide, b) crimes against humanity, c) war crimes and d) the crime of aggression.

Simultaneously, the issue of the definition of the child was given serious consideration in the light of the variety of definitions found at the international, regional and national levels. AMADE would call for an acceptance of the definition provided for instance by Article 2 of the ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour or Article 1 of the UN Convention on the Rights of the Child (CRC), that the term child shall apply to all persons under the age of 18 years unless under the law applicable to the child, majority is attained earlier.

I. Timeliness and opportunity of the project

The participating experts confirmed both the timeliness and opportunity of the project initiated by AMADE, thereby highlighting the importance of a conscious examination by the international community in the face of the existence of systematic and repeated violations of children's fundamental rights in relation to the development of a transnational organised criminality.

Looking back at the history of human rights protection since the end of WWII, three stages emerged:

1. from 1945 to the early 1970s, the international community sought to define and proclaim general human rights, the 1948 Universal Declaration of Human Rights being the benchmark in the recognition of inalienable rights of all members of humanity;
2. in the second stage, other important issues such as the environment, social, democratic and economic development were incorporated into this general human rights framework;
3. in the third and current stage, the aim is to develop legal instruments for the 'criminalisation' of infringements of human rights and eventually ensure a more effective prosecution of the persons responsible for those crimes.

II. The absence of effective sanctions against violations of children's rights.

The discussions of the round table established that the sanctions imposed against the infringement of children's rights are often insufficient, and that too frequently the perpetrators of the worst crimes against children benefit from impunity.

The reasons for this are twofold: on the one hand, existing legal instruments although widely ratified such as the Convention on the Rights of the Child are not always adequately followed with effective sanctions at the national level; on the other hand, legal means of prosecuting and punishing the gravest violations of children's rights may be limited by both the opting out and ratifying provisions or articles due to the lack of political impetus.

III. The route towards the ‘criminalisation’ of children’s rights: crimes against the child, crimes against humanity

A requirement to follow the route towards the ‘criminalisation’ of infringements of children’s rights appeared imperative to all participants in the round table.

One objective of this ‘criminalisation’ would be to ensure true and effective prosecution and punishment of those who commit the gravest violations against the fundamental rights of the child, in order to put an end to the impunity still frequently given to the criminals responsible for those violations. Correlatively, the existence of sanctions would be expected to work as a strong deterrent to the perpetration of such acts, and to become an essential element in their prevention.

In order to achieve this goal, it was felt appropriate to pursue all means to qualify these crimes as crimes against humanity with a view to obtain their imprescriptibility in accordance with the provisions of the United Nations Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity of November 26, 1968, ratified on November 11, 1970. Thus national and international tribunals would be allowed to examine these issues outside of the normal constraints of time imposed by the statutory period of limitation for ordinary crimes.

IV. General considerations on the implementation of the AMADE project

In order to become a long term program, the implementation of the AMADE project will require mobilisation and strong commitment, particularly by the national affiliates of the organisation, as well as by the whole of the governmental and non-governmental actors involved in the protection of children’ rights: humanitarian law and international penal law, i.e. tribunals, non-governmental organisations, the media, public opinion, governments, parliamentary instances, international bodies, national administrations, local authorities and federal instances.

The discussions also evidenced the need to strengthen the role of the international and regional committees, such as the United Nations Human Rights Committee, the United Nations Committee against Torture or the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, in order to increase their means of intervention.

Furthermore, the procedural aspects affecting the necessary “criminalisation” of children’s rights infringements should under no circumstances be neglected, requiring an improved educational level for specialised tribunal staff as well as a better developed level of assistance to minors and to child-witnesses. In the latter, AMADE shall seek to promote the provisions of the European Convention on the Exercise of Children's Rights as a model for setting out international standards in the protection of child-witnesses.

Lastly, the discussion highlighted the need to consider the question of compensation for the victimised child.

V. Towards a more effective application of existing legal instruments for the protection of children's rights

In discussing the possible ways to achieve a more effective punishment of the violations of children's rights, the experts acknowledged an awareness of the current state of 'treaty fatigue' within the international community. The consensus among participants was that the AMADE project should build on already existing and widely recognised legal instruments and mechanisms pertinent to the rights of the child in order to achieve the aims it set out.

The discussions underlined the absence of political impetus for yet another international convention of the magnitude of the United Nations Convention on the Rights of the Child. It was also clearly stressed that the proposal, adoption and ratification of a third optional protocol to the CRC would very likely run into difficulties due to this lassitude on the part of international bodies with respect to the growing number of texts.

It was suggested that the project should examine the efficacy of existing international conventions –including the Rome Statute– and seek ways to ensure more effective protection of children at the national, regional and international levels.

V.a. Proposed Amendments to the Optional Protocols to the CRC and Proposal for the revision of Article 7 of the Rome Statute of the ICC

At the international level, every effort must be made to encourage and reinforce the implementation of the numerous legal instruments and mechanisms which are available for the protection of the rights of the child, and to consolidate the means of prosecution against the perpetrators of the most serious violations of these rights. Among major international conventions and other reference material, the following were mentioned for their immediate relevancy to the project:

- ❑ United Nations Convention on the Rights of the Child, of November 20, 1989, entered into force on September 2, 1990
- ❑ Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in armed conflict, May 25, 2000, entered into force on February 12, 2002
- ❑ Optional Protocol to the United Nations Convention the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, entered into force on January 18, 2002
- ❑ African Charter on the Rights and Welfare of the Child (1990) adopted by the twenty-sixth Conference of Heads of State and Government of the OAU, entered into force on November 29, 1999
- ❑ European Convention on the Exercise of Children's Rights, opened for signature in Strasbourg on January 25th, 1996, entered into force on July 1st, 2000.
- ❑ ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, C182, Date of adoption: 17 June 1999
- ❑ Rome Statute of the International Criminal Court, July 1998

- ❑ Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 August 1949
- ❑ Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea. Geneva, 12 August 1949
- ❑ Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949
- ❑ Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949
- ❑ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977
- ❑ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977

1) Proposed Amendments to the Optional Protocols to the Convention on the Rights of the Child

A first avenue to pursue would be for AMADE to propose by way of a draft amendment, a modification of the two Optional Protocols to the Convention on the rights of the child, relating to the involvement of children in armed conflict, on the one hand, and the sale of children, child prostitution and child pornography on the other hand.

In line with the provisions of Article 12 of the Optional Protocol on the involvement of children in armed conflicts, and Article 16 of the Optional Protocol concerning the sale of children, child prostitution and child pornography, it would be possible to propose to the United Nations an amendment which would qualify the acts described in each of these protocols as crimes against humanity.

AMADE calls upon the Governments of all States Parties to the CRC, and in the first instance among them, the Government of the Principality of Monaco, to support its action in the event of such an amendment being filed with the Secretary-General by agreeing to examine the proposed amendment in a conference to be held under the auspices of the United Nations, and to decide in favour of its submission to the General Assembly for approval.

In her statement at the public meeting of the round table, Mrs. Brigitte BOCCONE-PAGES, MP, lent the support of the national Parliament of Monaco to the AMADE project and outlined the ‘need to call upon a large number of States in order to activate the international processes of multilateral negotiation (...) and push forward the idea that crimes against children are crimes against humanity’. On behalf of the Parliament, she advocated a tripartite working group made of representatives of AMADE, the Government and the Parliament of Monaco.

2) *Proposal for the revision of Article 7 of the Rome Statute of the International Criminal Court*

On a longer term perspective, a proposal for the revision of the Rome Statute of the International Criminal Court through insertion in Article 7, defining crimes against humanity, with an explicit reference to crimes committed against children could allow for a more effective sanction of those crimes. It was noted that currently there are only two provisions which refer specifically to crimes perpetrated against children, namely Articles 6 and 8 of the Rome Statute concerning the crime of genocide and war crimes respectively.

Such a revision would allow for a better use of the regulations contained in the Rome Statute and would have the advantage of placing crimes against children squarely within the jurisdiction of the International Criminal Court.

V.b. Model-Law

One important implication of the above was that AMADE should consider, in the shortest timeframe possible, delegating a committee of experts the task of drawing up a model or draft law which could be offered to countries worldwide for implementation in their own domestic criminal law.

This model-law should define the list of crimes to be considered for qualification as crimes against humanity within national law. With respect to the above list, the discussion emphasised the advantage of building on the universal acceptance of the CRC by using for instance the provisions contained in Articles 34 to 38 regarding certain serious violations of the fundamental rights of the child.

The draft law shall also provide for the reinforcement of international judicial cooperation, both bilaterally and multilaterally, and the adoption of all necessary domestic measures, legislative or otherwise, with a view to making possible the extradition, in accordance with international law, of the persons responsible for the crimes therein identified.

» Conclusion

At the closure of the public meeting, His Excellency Mr. Jacques BOISSON, Ambassador of Monaco to the United Nations, presented a summary of the work of the round table in which he repositioned some of the general conclusions of the discussions within the contemporary framework of international humanitarian and criminal law.

It was also suggested that AMADE should issue a document in the form of a declaration or statement in order to consolidate the main conclusions and recommendations by the panel of experts, and allow for their dissemination through the network of participating non governmental organisations.

▶ Appendix - List of participating experts [A-Z]

Mr. Jacques BIANCARELLI,
French State Councillor and Former Judge at the Court of Justice of the European Communities

The Honourable Mr. Phillipe KIRSCH,
President of the International Criminal Court
Represented by Mr. Bruno CATHALA,
Director of Common Services of the International Criminal Court

The Honourable Mr. Sergio VIEIRA de MELLO,
United Nations High Commissioner for Human Rights
Represented by Mr. Joël MERMET,
Human Rights Officer Office of the High Commissioner for Human Rights (OHCHR)

The Honourable Judge Theodor MERON,
President of the International Criminal Tribunal for the Former Yugoslavia

The Honourable Mr. Olara A. OTUNNU,
United Nations Special Representative for Children and Armed Conflicts

Mrs. Francesca PIZZUTELLI,
International Committee of the Red Cross (ICRC)

Mrs. Hélène SACKSTEIN,
Convenor of the Focal Point Programme of the NGO Group for the Convention on the Rights of the Child

The Honourable Mrs. Maria Amalia SERENO,
Minister Councillor, Permanent Mission of Uruguay to the United Nations
Coordinator of the Resolution on the Rights of the Children adopted by the 57th Session of the United Nations General Assembly

The Honourable Mr. Peter TOMKA,
Judge at the International Court of Justice

Professor Karel VASAK,
Former Legal Adviser to UNESCO

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► Credits

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