

Crimes against the Child

Crimes against Humanity

**International Round Table organised by AMADE
Under the Patronage of UNESCO**

25-26 April 2003
Monaco

**Background to the "Crimes against the child, Crimes against humanity" Project,
by Mr. Eric Mallonga, President of AMADE-Philippines**

Your Royal Highness,

Mr Jacques DANOIS, who was a contributor to the inspiration,

Distinguished Ladies and Gentlemen,

Last year, we proposed that crimes against children be considered as crimes against humanity at the General Assembly of AMADE Mondiale.

We, in the Philippines, have seen and personally witnessed for ourselves the shocking brutalities that have been committed against children. Oftentimes these children have been the victims of shocking brutalities very difficult to describe. For example, we do have Muro-ami fishing. This involves children as young as eight, sometimes even seven years old, made to dive to the bottom of the sea to tie fishnets together. Some children get caught in the fishnets and they drown. The ship owners refuse to take responsibility for the deaths of the children, especially when the deaths take place outside the Philippines territorial waters. They claim no civil or criminal accountability because the deaths of the children happen outside the territorial jurisdiction of the Philippines.

We have also personally witnessed young children forced and recruited by insurgency groups. I have been requested personally by the Philippines Department of Social Welfare to look into, and investigate, the case of a nine-year-old child warrior who, while blindfolded, could dismantle and assemble an armelite in a matter of a few minutes. We ask : why does a nine-year-old child have to handle an armelite when he should be in school learning about literacy and numeracy, and playing with children of his own age, enabling him with skills and education, for him to be independent as he attains adulthood.

Filipino children are also trafficked to neighbouring countries for the purpose of commercial sexual exploitation. At a tender age, they have been made to perform strip-tease dancing, lap dancing, and a term that they call "dohan" or bar fine, where the bar owners are paid for the child to accompany the customer for purposes of prostitution.

We have wanted for this to be less emotional but we can never approach the problem if we do not look at these specific experiences emotionally and try to link them intellectually. It is the emotional value of these experiences which motivate and encourage us to bring the problem to the level and standards of humanitarian law.

I also remember the case of a doctor arrested in Canada for storing and maintaining internal organs harvested from 300 persons from a British hospital without any valid documents to prove that these organs were validly donated or that the persons or parents consented to any donation or removal of the organs.

We have also had cases of child slavery where children as young as 10, 11 and 12 have been taken or recruited by labour recruitment agencies and brought to the urban centres. These children were forced to fill up plastic containers with toxic chemicals, drench their arms in cylindrical drums while filling these containers with toxic waste resulting in the melting of their skin. And they would work in this sweatshops for 18 hours, without rest.

These are just a few of the experiences that we have sadly witnessed not just in the Philippines but during the four years that I have been attending the General Assembly of AMADE Mondiale here in Monaco, in conjunction and together with the Presidents and Officers of the different AMADE national chapters, and presided by Her Royal Highness the Princess of HANOVER.

There have been mutual and common experiences that we have witnessed. These experiences that we have mentioned are not only peculiar to the Philippines, these same crimes are being committed against children elsewhere, all over the world. These same experiences of crimes of inhumanity towards our children appeal to our sense of shame, our sense of decency, and our humanity.

There have been concerns raised on a liberal approach to the technical term of crimes against humanity. The crimes against humanity have been interpreted as referring to wartime conditions. But article 7 of the Rome Statute of the International Criminal Court precisely provides for trafficking and slavery among the crimes enumerated within the concept and definition of crimes against humanity. We would like to stress that although these crimes in the Rome Statute are committed during wartime or armed conflict situations, most crimes committed against children are committed during peacetime. The Rome Statute does enumerate crimes such as slavery and trafficking which are not necessarily wartime crimes. In short, article 7 of the Rome Statute does not delimit crimes against humanity only to armed conflict or wartime situations. It refers to situations even during peacetime.

The use of the term "attack", more particularly "widespread or systematic attack", in the definition of crimes against humanity, should not be strictly interpreted as a violent, active and aggressive assault on children. Such term could accommodate within its expansive framework the targeting of children as objects of the crime intended to be achieved by criminal syndicates and perpetrators. Children can be targeted by wealthy paedophile syndicates or by well-funded validly recognised recruitment agencies for sexual or labour enslavement, for organ removals, and these acts should be considered as a form of attack on children, even if such attack is not violent, active or aggressive.

With the Declaration, Protocol, Statute, multilateral Convention or Treaty, or whatever strategy we may subsequently take, we should be able to encourage and motivate States to take, at the very least, extra-territorial jurisdiction and cognisance over these crimes committed against children.

With the recognition of the jurisdiction of the International Criminal Court on such crimes, State-Parties thereto should be encouraged to act on crimes committed by their nationals or residents, even if the crimes were committed outside their territorial borders, to take jurisdiction over such crimes committed by foreigners residing within their own territorial boundaries, or at the very least to extradite nationals from another country who may have sought refuge with their territorial jurisdiction.

There are international law principles that can apply to accommodate crimes committed outside the territorial jurisdiction of a State. The international law principle of nationality, for example, recognises that State intervention is allowed when that State's nationals commit crimes against children elsewhere or when nationals of a country, which includes children, are harmed outside territorial borders. The principle of protection applies whenever there is a significant portion of the population whose security is threatened. In this case, when the security of children, a State can take extra-territorial measures. The principle of passive personality recognises that States can take cognisance or extra-territorial jurisdiction over acts that cause harm to a country's nationals abroad. Where a State's children are harmed outside their territorial limits, the State can demand that the perpetrators be brought to trial in the requesting State, whose nationals have been harmed. And the principle of universality, which allows jurisdiction anywhere in the world over States which, or individuals who, commit acts prohibited by international law as long as the State is mandated therefor. We emphasise the reasons for the extra-territorial applicability based on these principles because of our apprehension over crimes, which have been committed within a country and the criminal perpetrators thereof have easily escaped the jurisdiction of that country or State. There are only an estimated twenty States today that have extra-territorial laws for the prosecution of their own nationals who commit crimes outside their territorial jurisdiction.

However, even with those States that recognise these extra-territorial laws, such laws exclusively involve and are delimited to crimes on the commercial sexual exploitation of children. We would like to expand the extra-territorial applicability of laws for the prosecution of child-related crimes to cover all crimes committed against children and not just crimes on the commercial sexual exploitation of children. We are very fortunate that Her Royal Highness has continuously and wholeheartedly fully supported the initiative and that His Serene Highness Prince Albert raised this at the level of the United Nations.

We would like to point out that we should not delve too deeply on unnecessary technical details of the issue of international crimes committed against children and the complicated issues related thereto as to make it so daunting and thus effectively stifling action, legal or otherwise, on the problem of crimes being committed against children. Our advocacy should spark interest and spark discussion among policy-makers, academics and law-practitioners to promote better understanding and mutual co-operation in identifying these crimes and coming up with common solutions to the threats posed to the safety, security, morality and personal integrity of our children.

We hope the spirited but principled discussion onto this agenda will indeed spur positive and purposive action. We pray that this Conference will result in at least a Declaration that will clearly classify crimes committed against children as crimes against humanity.

Again we thank Her Royal Highness Princess Caroline, President of AMADE Mondiale for embarking on this noble proceed. We cannot express in words our deepest esteem and appreciation for the efforts shown and manifested by Princess Caroline and the officers of AMADE Mondiale, the AMADE nationales and the officers of Monaco.

We thank you and we rest assured that with the leadership of Princess Caroline humankind is better off. Humankind which has failed for centuries to recognise children as independent human beings with human rights should now start to change the ways we have brutalised our children. Children are not just extensions of their parents. Children are not inferior beings. Children are not chattel or commodities to be traded or purchased on the slave market, or on the flesh market. And we have to start with today's agenda recognising that international crimes against children exist and that these crimes should be condemned by all nations. This is a very good beginning. I do not know where we will end but this Conference has started something big, something serious and something very credible. Crimes against children are crimes against humankind.

Merci beaucoup.

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Information

AMADE International
16, Boulevard de Suisse
MC 98000 MONACO

Phone: +377.97.70.52.60

Fax: +377.97.70.52.72

amade@monte-carlo.mc

<http://www.amademondiale.org/>



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