

# Crimes against the Child

## Crimes against Humanity

### AMADE International Campaign

## Crimes against the child, crimes against humanity: the end of impunity?

#### Keywords

RIGHTS OF THE CHILD, CRIME AGAINST HUMANITY, INTERNATIONAL JUSTICE, IMPRESCRIPTIBILITY, INTERNATIONAL CRIMINAL COURT (ICC), UNITED NATIONS, ROUND TABLE, EXPERTS, NGO

The World Association of Children's Friends (AMADE), under the patronage of UNESCO, had the honour of hosting an International Round Table on 'Crimes against the Child, Crimes against Humanity' in Monaco on the 25-26<sup>th</sup> of April 2003.

Experts in international humanitarian and criminal law, specialising in the Rights of the Child, along with representatives of international bodies and non-governmental organisations (see Appendix) attended the round table to debate matters concerning the protection of the fundamental rights of the child.



HRH the Princess of Hanover and HE Mr Patrick LECLERCQ with participating experts and members of AMADE. Conference Hall of the Oceanographic Museum, Monaco, 26 April 2003

#### Background and aim

The purpose of this round table was to explore the various categories of incrimination for crimes against humanity within the context of current international law and to identify every possible avenue for future qualification of the most serious crimes against children as crimes against humanity. This conference was partly an extension of an initiative by the Filipino branch of AMADE that had been discussed and adopted at the AMADE Annual General Meeting in March 2002.

Currently, the specific human rights of the child is expected to be met within the broader human rights framework. It is clear however that the existing body of human rights documents do not provide for the effective sanction of the most serious violations of children's rights.

The instigation of the initial steps to this AMADE project was supported in the Declaration by His Serene Highness Crown Prince Albert of Monaco at the 27<sup>th</sup> 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 the 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".

Nevertheless, although it was agreed that all acts detrimental to children deserve a just sanction, the experts gathered by AMADE concurred that it would be more pragmatic to limit the focus of their discussions to only the most serious crimes.

The emphasis being on the requirement that these crimes be sufficiently widespread and organised practises, in contrast to isolated or sporadic acts, no matter how heinous the latter may reveal themselves to be.

## Implementation

It was the opinion of the expert participants that the AMADE project should build upon 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.

Therefore it was decided 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.

### ● Proposed Amendments to the two Optional Protocols to the CRC

To this end, it was recommended that AMADE propose, by way of a draft amendment, a modification to the two Optional Protocols to the Convention on the Rights of the Child, relating to the involvement of children in armed conflict, the sale of children, child prostitution and child pornography.

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 is anticipated that a submission be made to the Secretary-General of the United Nations for an amendment which will qualify the acts described in each of these protocols as crimes against humanity.

In the event of such an amendment being submitted to the Secretary-General of the United Nations, AMADE would call upon the Governments of all State Parties to the CRC, and in the first instance among them, the Government of the Principality of Monaco, to support its application by agreeing to examine a proposed amendment in a conference to be held under the auspices of the United Nations, and to vote in favour of its submission to the General Assembly for approval.

### ● Proposal for the revision of Article 7 of the Rome Statute of the ICC

On a longer term perspective, a proposal for a 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, is seen as an effective way of allowing for a more effective sanction of those crimes.

It was noted that currently there are only two provisions that 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.

### ● A model-law to national states

A further issue of importance to the expert participants of the round table was that of the adoption of a common standard of laws and practises concerning the rights of the child. There currently exists too diverse an applicability of laws pertaining to children throughout the world.

As such, one important implication of AMADE proposed project would be to delegate, in the shortest timeframe possible, 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 this in mind, it was emphasised that there would be a distinct advantage in building on the universal acceptance of the CRC by using, for instance, the provisions contained in Articles 34 to 38 regarding serious violations of the fundamental rights of the child.

The draft law would also provide for the reinforcement of international judicial co-operation, 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 individuals responsible for the crimes therein identified.

## Perspectives

In the course of the two-day meeting, several other issues were raised by the panel, amongst them: the definition of the term ‘child’, the need to further set out international provisions for the protection of child-witnesses and the insufficient and ineffective sanctions against violations of children’s rights.

Although these points are not elaborated upon here, a detailed paper on the proceedings of the round table along with full transcripts of the speeches given by the distinguished participants are available from AMADE website at:

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

In conclusion, it is hoped that the setting up of the objectives projected by AMADE, in collaboration with the panel of experts gathered at the International Round Table on ‘Crimes against the Child, Crimes against Humanity’ in Monaco, will be speedily carried out.

This article has been written with the intention of highlighting and publicising the most pertinent objectives outlined above. AMADE welcomes any commentary contributions to the objectives it proposes to undertake.

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## Appendix: list of participating experts

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 57<sup>th</sup> 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