

## **Article in the Times of India dated 29<sup>th</sup> November, 2004 to which the campaign responded**

International court needs to come out of UN control  
Rakesh Bhatnagar

There has been an outcry against the US' stand against the Rome Statute, which paved the way for the establishment of the International Criminal Court two years ago.

Despite the US and six other countries voting against the inception of the ICC, 107 countries supported the international adjudicatory body to deal with cases of genocide, war crimes and crimes against humanity. The criminal court is headed by career diplomat and Judge Phillipe Krisch.

Around the time when Krisch was visiting New Delhi in early November explaining the role of ICC to political leaders, the Bush administration was busy gathering support for defeating a resolution in the UN to remove the sole international criminal court from the world body's agenda but it failed.

"The support shown in the UN General Assembly for ICC shows that governments won't allow the US' isolated ideological opposition to the court to wreck this crucial structure of global justice or threaten the relationship the UN has with ICC," said William Pace, Convener of the Coalition for the ICC, which includes over 2,000 civil society groups from around the world.

Krisch is optimistic about the future of ICC but feels that its jurisdiction needs to be enlarged and that can be done only in 2009 when the ICC governing body meets in The Hague. Seriously affected by the US and its allies' attempt to dictate terms to certain sovereign nations, the ICC countries are pressing for including "aggression" as an offence that can be tried by ICC.

"It is not a body parallel to the one set up to protect human rights," Krisch says. "We can take up cases which are either referred to by the UN Security Council or the prosecutor," says Krisch. The court has just begun its first investigations in the war-torn countries of the Democratic Republic of the Congo and Uganda. The two countries approached the ICC for an investigation in to the crimes.

Though ICC is backed by over 100 countries, it has some inherent jurisdiction problem. It cannot move on its own; it has to be approached by two authorities — Security Council or its prosecutor. Moreover, ICC cannot take up individual complaints alleging any of the offences enumerated in its jurisdiction if they are made from countries which have an established justice delivery system.

"ICC respects the sovereignty of nations and cannot take up complaints from there unless the justice delivery system has collapsed there," Krisch says.

However, some Indian legal experts, who recently attended the ICC conference in Rome, wonder as to how free and fair justice can be rendered by a body that is controlled by the UN. "Independence is a condition precedent for free and fair dispensation," they say.

These genuine doubts on the independence of the ICC are bound to prevail for long, at least until the ICC is charted out of the UN control. But for that the UN resolution has to be amended or modified in order to give a free look to the first-ever world forum, which may be able to handle cases of blatant aggression of sovereign countries by the all powerful countries.

## Independent ICC

We are writing in response to the article 'International court needs to come out of UN control' (Nov 29). We at ICC-India: the Indian Campaign on ICC, are concerned that within a span of three months, this is the second article (the first was 'Security Council role in ICC working opposed', Sept 7) wherein the premise that ICC is under UN Control is flawed. On July 17, when the US voted against the Rome Statute along with six others, 120 nations voted in favour of the International Criminal Court.

ICC is an independent judicial institution bound not by the UN Charter but by its own statute. The article goes on to say that it cannot move on its own and that it has to be approached by two authorities—the Security Council or its prosecutor. It also states that the ICC cannot take up individual complaints if they are made from countries which have an established justice delivery system. However, whilst the Security Council may refer a situation to the ICC, investigations and prosecutions can also be initiated by:

a) Referral to the court by the state parties themselves.

b) The prosecutor can initiate an investigation into a crime that has been brought to his or her attention. This in itself is the court's inherent jurisdiction. The office of the prosecutor is an independent organ of the court with powers to receive information on crimes within the jurisdiction of the court.

Moreover, the ICC statute does not bar individuals in countries with an established justice delivery system from sending the chief prosecutor information of alleged crimes within the jurisdiction of the court.

— *Vahida Nainar and Pouruchisti Wadia,*  
*ICC India*