

Statement

Secretary of
State for
External Affairs



Déclaration

Secrétaire d'État
aux Affaires
extérieures

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AS DELIVERED

AN ADDRESS BY

THE HONOURABLE BARBARA McDOUGALL,

SECRETARY OF STATE FOR EXTERNAL AFFAIRS,

TO THE INTERNATIONAL MEETING OF EXPERTS ON THE
ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL TRIBUNAL

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Affaires extérieures et
Commerce extérieur Canada

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Canada

Vancouver's role as an important international city is emphasized by not one but two significant international meetings -- the North Pacific Co-operative Security Dialogue at which I spoke last night, and the International Centre for Criminal Law Reform and Criminal Justice Policy.

I would like to congratulate you on this initiative, and also welcome the many distinguished individuals who have come to Canada, to Vancouver, to discuss a subject that has major implications for the concept and conduct of international law.

The idea of an international criminal court is not new. There have been war crimes trials dating back to the Middle Ages, when military leaders who allowed their soldiers to commit inhumane acts against innocent civilians were tried for violating the "laws of God and man." Early in this century, the League of Nations called for the creation of an international criminal tribunal to make terrorists accountable for their criminal acts.

The horrors of World War II prompted the establishment of the Nuremberg and Tokyo military tribunals to prosecute those responsible for war crimes and crimes against humanity.

As a member of the Tokyo Tribunal observed: "War is and always has been a crime in the eyes of reason and universal conscience, expressions of natural law upon which an international Tribunal can and must be based."

The Nuremberg tribunals created a landmark in international law by firmly establishing an important principle -- that there are some acts that so grossly violate the norms of behaviour accepted by the international community, that international law imposes individual criminal liability on their perpetrators.

Four decades have passed since the Nuremberg Tribunals were dissolved. During that period, some took a stab at the establishment of a permanent international criminal court continued within the United Nations. Sadly, the international community ran into a wall of defeatism and a lack of political will, to agree on the creation of an international tribunal to bring to justice those guilty of violating fundamental norms of international law.

Over the past two years, however, events in the former Yugoslavia have shocked the international community out of its lethargy. Evidence of atrocities is too graphic to ignore any longer. We have all seen the heart-rending reports of those who have seen the bullets, the detention camps and the mass graves, or experienced the systematic rape and torture.

Canada is dedicated to a resolution in the former Yugoslavia, through peacekeeping, humanitarian assistance, monitoring missions and all those other things we do as well as we can in

the circumstances. But still, the violence, the senseless killing, goes on. We must surely, then, contemplate other steps.

We know an important deterrent to criminal acts of any sort is the sure knowledge that perpetrators will be prosecuted, reviled and punished. In the former Yugoslavia, however, authorities are despised as lacking the ability or the will to confront these perpetrators, or as incapable of conducting trials of the perpetrators effectively and impartially.

Accordingly, at the London Peace Conference last August, Canada called for the establishment of an international tribunal to bring to justice those who violated the most fundamental of international humanitarian law in the former Yugoslavia. We were joined in this call by other members of the London Conference, who agreed to "take all possible legal action to bring to account those responsible for committing or ordering grave breaches of the Geneva Conventions." At last, the consensus necessary to establish an international court to prosecute those accused of international crimes is finally emerging. The need for a permanent international criminal court has become more obvious in the face of the growing need to respond urgently to these and other crimes, and to the demands of world public opinion for concrete action.

At the forty-seventh session of the UN General Assembly, I called for the drafting of a statute by the International Law Commission to establish an international criminal court. The potential long-term deterrent effect of such a body could be considerable. However, at the General Assembly, it became discouragingly clear that this could not be realized in the immediate future, and that the court's role in dealing with Yugoslavia-related war crimes would be marginal. Surely, the situation in the Balkans demands more urgent action.

Consequently, I have strongly advocated the establishment of an ad hoc tribunal for offences committed in the former Yugoslavia.

At the Conference on Security and Co-operation in Europe (CSCE) ministerial meeting in Stockholm last December, I called on my counterparts to acknowledge the principle of personal accountability for international offences, and to endorse the creation of a tribunal to bring this principle into effect.

The idea of establishing an international tribunal for the former Yugoslavia has been steadily gaining momentum since that time. One month ago today, the Security Council decided to establish a tribunal for the prosecution of those responsible for serious violations of humanitarian law in the former Yugoslavia. While the Security Council Resolution does not contain details for the institutional framing of the tribunal -- composition, procedures, location, jurisdiction -- it does require the Secretary-General

to report back in 60 days on how the tribunal might function. The Secretary-General faces a daunting task, but it is my fervent hope that the work of this conference will assist.

This meeting of experts from such a broad global base has before it the proposals of the French and Italian Commissions, and of the CSCE Special Rapporteurs on Croatia and Bosnia-Herzegovina for a draft statute of an ad hoc tribunal. You also have the extensive work of the International Law Commission on the question of a permanent international criminal court.

This conference can consider these proposals, and recommend the most appropriate functioning of an ad hoc war crimes tribunal for the former Yugoslavia. It is essential to create a neutral, objective tribunal that takes into account different judicial systems and ensures that fundamental principles of law and criminal procedure are applied and respected.

At the same time, it is also essential that states consider concrete measures to ensure that the tribunal has the financial and human resources necessary to function. Canada is considering ways in which we may offer assistance to the ad hoc tribunal.

Fundamentally, the solution ultimately lies in bringing the conflict in the former Yugoslavia to an end, but also, in bringing those responsible for committing inhumane acts to justice. But we cannot forget the imperative to relieve the suffering of innocent victims. Canada recently announced a contribution of \$1.5 million in humanitarian assistance for women and children who are victims of sexual violence and other atrocities of war in the former Yugoslavia. This special assistance will be channelled through the United Nations High Commissioner for Refugees and the UN Children's Emergency Fund.

We also actively seek to ensure that the UN Commission of Experts, charged with the gathering of evidence of war crimes and other breaches of international humanitarian law in the former Yugoslavia, has the resources to do its job. I urge other states to do the same.

Of course, the urgency of establishing an ad hoc tribunal to deal with the situation in the former Yugoslavia cannot deter us from our long-term goal of establishing a permanent international criminal court. Indeed, the ad hoc tribunal can only be, at best, a stepping-stone to that goal.

A permanent court would provide a standing mechanism, capable of responding to events quickly and decisively, as they occur. It would strengthen the principle of universal jurisdiction over individuals for international criminal acts, and ensure that individuals cannot act with impunity in violating fundamental norms of international law.

In establishing a permanent criminal court, the international community would vigorously counter the unwillingness or incapacity of some states to prosecute international crimes, and would place them under the jurisdiction of an independent juridical body.

Canada welcomed the decision by the forty-seventh session of the United Nations General Assembly to mandate the International Law Commission to draft a statute for a permanent international criminal court. Through its diligent work over the last 10 years, the ILC has conscientiously built a base for consensus on the creation of a permanent court. We are now able to see more clearly how such a Court might be created, how it would be composed, its jurisdiction, the laws it would apply, and how international offences would be prosecuted. I hope the work of this historic meeting of experts will move us all closer to achievement of this consensus.

I have no illusions about how quickly we can put together an effective system of permanent, international legal controls. But the urgency of addressing ongoing atrocities in the former Yugoslavia has heightened international outrage. The creation of an ad hoc tribunal to try those responsible for atrocities in the former Yugoslavia may well hasten the international community to finally establish a permanent international criminal court.

We are now in an era where the relative stability of the two-power, ideological, cold-war environment has been replaced by the turbulence we see all around us. This period, marked by escalating violence and discord in many parts of the world, is also characterized by an increasing willingness on the part of the international community to seek multilateral solutions to the problems of an interdependent world.

Greater adherence to the international rule of law is an important element in managing that interdependence. The establishment of an international criminal court would promote greater respect for the law, and greater civility in dealings between nations and individuals. Most important, it would establish a fundamental moral vision of the future.