

THE WESTERN CRIMINOLOGIST

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THE OFFICIAL NEWSLETTER OF THE WESTERN SOCIETY OF CRIMINOLOGY

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FROM THE PRESIDENT

Barbara Bloom

Greetings and thank you for making the 1998 Western Society of Criminology Annual Conference a successful event. The Conference marked the 25th anniversary of the WSC, a significant milestone in our organization's history. The Balboa Bay Club in Newport Beach proved to be a delightful location, providing wonderful waterfront views and plenty of "welcomed" sunshine. This year's conference theme was: *Visions of Justice: From Retribution to Restoration* and thanks to the diligent work of Program Co-Chairs Miki Vohryzek-Bolden and Jean L. Scott, and Facilities Chair, Libby Deschenes, the thought-provoking conference was well-attended and well-received.

Mark Umbreit, Director of the Center for Restorative Justice and Mediation, gave an inspiring keynote address entitled, *The Impact of Restorative Justice Through Mediation: Across National Perspectives*. I had the honor of introducing Dr. Umbreit whom I had met in the early 1980s when he provided assistance to Catholic Charities Oakland in the development of Northern California's first Victim Offender Reconciliation Program. I have been following his ground breaking work in the field of restorative justice for over a decade and believe that his cross-national research throughout the U.S., Canada and England will continue to inform criminal justice policy and practice.

This year's WSC awards went to the following distinguished individuals: Travis Hirschi for outstanding contributions to the field of criminology, Inger Sagatun-Edwards for outstanding service to WSC, James Cook for significant improvement of the quality of justice, Malcolm Klein for contributions to the field of criminology and positive influence on the President's career, and David Huizinga, Alice McGrath, D. Kim Rossmo and Mark Umbreit for academics and/or practitioners who have made important contributions to the field of criminology.

My very special thanks and appreciation go to Cheryl Maxson who did an outstanding job as our past President. She has set an exemplary standard for the presidency and will be a tough act to follow. Additionally, I thank outgoing Executive Board members Julius Debro, Chris Curtis, Pat Kinkade, Jean Scott and Monica Whitlock for their many contributions to WSC.

Knowing that WSC's success has been based on the voluntary and effective participation of an entire team, I have great expectations for continuing that tradition in working with the Executive Board as we lead the Western Society of Criminology into the new millennium. The Executive Board is enhanced as it welcomes new and/or returning members—Marilyn Brown (University of Hawaii), Angel Ibarra Fuentes (Texas Christian University), Jan Johnston (San Jose State University), Marilyn McShane (Northern Arizona University), Susan Meier (CSU Sacramento), and Deborah Plechner (UC Riverside). Moreover, the WSC leadership team will benefit from the special contributions of Martha-Elin Blomquist, our Vice President and Facilities Chair for the 1999 meeting. Linda Humble, Secretary/Treasurer, has steadfastly and effectively kept this organization on track for a number of years and we are fortunate to receive her support for another year. Additionally, Marilyn McShane will chair the 1999 Program Committee; Angel Ibarra Fuentes will coordinate the book exhibit; Jan Johnston will chair the Awards Committee; Susan Meier will continue to locate sites for future WSC conferences; Marilyn Brown will chair the Nominations Committee and Deborah Plechner, Student Representative, will work with student chapters and coordinate student activities. If you would like to serve on a committee, please contact me at: (707) 778-7279 or E-mail at bbloom@email.sjsu.edu. We have much preparation to do for the upcoming 1999 conference and we welcome your participation. We also encourage your suggestions for nominees to the WSC Executive Board.

Upcoming events include the first volume of the official journal of the WSC, *The Western Criminology Review (WCR)*, which will be available in May. The WCR will provide an overview of the conference proceedings. Its Editor, Pat Jackson, with the assistance of the Editorial Advisory Board and

outside reviewers, has put together a collection of articles that reflect the 1998 conference theme of restorative justice. If you would like information about the WCR mission, submission guidelines, review process and other related matters, you can access the website at <http://wcr.sonoma.edu>.

Finally, mark your calendars for the 1999 WSC Annual Meeting which will be held at the Oakland Marriott Hotel, February 25-28, 1999. Next year's conference theme will be *The Challenges of Crime and Justice in the New Millennium*. We welcome your participation at the conference. In the meantime, the WSC Executive Board will be working on your behalf in carrying forth the organizational business, and we will be looking forward to seeing you when we gather for our 1999 Conference in Oakland.

STUDENT PAPER

Mr. Yacoubian's paper was given the first place Student Award at the 1998 Western Society of Criminology Conference in Newport Beach, CA.

ASSESSING THE EVOLUTION OF INTERNATIONAL CRIMINAL LAW AND PRESCRIBED MECHANISMS DESIGNED TO ENFORCE THE LAWS PROHIBITING GENOCIDE

George S. Yacoubian Jr., Department of Criminal Justice, Temple University, Philadelphia, PA

ABSTRACT

As violations of international criminal law intensify in both breadth and severity, the global community faces the challenge of enacting and enforcing regulations that adequately and expeditiously stifle international criminal enterprises. Thus, international criminal law should become increasingly more consequential to contemporary society. The development of consistently applied international criminal law standards is significant to the stability of the world order.

Part I of this analysis assesses the development of an international criminal code and an international criminal court. Part II appraises the enforceability of the crime of genocide with respect to the Holocaust and the Vietnam War. Part III considers the future direction of international criminal law.

INTERNATIONAL CRIMINAL LAW

Social control is predicated on the assumption that law-abiding citizens will be protected from law-violators via [successful] criminal prosecution and eventual punishment. The importance of social control is no less meaningful when discussing violations of international criminal law. Indeed, the obligation to develop adequate enforcement mechanisms is perhaps more essential internationally because of the comprehensive and threatening nature of the crimes. The consequences of genocide, for example, are clearly more ominous than any single violation of domestic statutory law.

The absence of a supreme international law-giving authority has often been used as a reason for denying the existence of an 'international criminal law.' As Schwarzenberger (1950: 295) stated over four decades ago, "international criminal law that is meant to be applied to the world powers...presupposes an international authority which is superior to these States." Schwarzenberger (1950) maintained that 'international criminal law' was an irresolvable contradiction because the most powerful territories could not be guided or controlled by universal legislation. In that the most powerful states could not be governed by a universal jurisprudence, international criminal law was an unattainable ideal. The ironic conundrum of the international legal community is how it is possible to know the content of international criminal law without an authoritative entity to clarify norms.

INTERNATIONAL CRIMINAL CODE

In 1947, the General Assembly mandated the International Law Commission (ILC) to codify "Offenses Against the Peace and Security of Mankind" (Ferencz, 1992). In response to that mandate, the ILC did complete a Draft Code of Offenses Against the Peace and Security of Mankind in 1954. The 1954 Draft Code was comprised of thirteen criminal acts, notably concerned with aggression and genocide. The 1954 Draft Code was tabled however, primarily because the term 'aggression' could not be defined. As Ferencz (1992: 377) affirms, "... there was no purpose in trying to reach an agreement about an international criminal code and court as long as the principal international crime, aggression, was not yet defined." For several decades it was easier to commit aggression than it was to define it.

Though the international community was finally able to define aggression in 1974, debates continued over which crimes should be included in a revised international criminal code. While leading states, such as the United States, preferred the focus to be on threats such as terrorism and nuclear proliferation, Third World nations insisted the focus be violations of human rights (Williams, 1986). This debate continued until July 1991, when the ILC completed a redesigned Draft Code of Offenses Against the Peace and Security of Mankind. The 1991 Draft Codemarks the second major attempt by the United Nations in the past forty years to introduce a comprehensive and universal normative framework for international criminal justice. There are twenty-two recognized international crimes: aggression; war crimes; unlawful use of weapons/ unlawful emplacement of weapons; crimes against humanity; genocide; racial discrimination and apartheid; slavery and related crimes; torture; unlawful medical experimentation; piracy; aircraft hijacking; threat and use of force against internationally protected persons; taking of civilian hostages; drug offenses; international traffic in obscene publications; destruction and/or theft of national treasures; environmental protection; theft of nuclear materials; unlawful use of the mails; interference with submarine cables; falsification and counterfeiting; and bribery of foreign public officials. These crimes are so designated because they either constitute offenses against the world community (international), or the commis-

sion of the acts affects the interests of more than one state (transnational).

International criminal laws are considered supreme. The rights and obligations that a state has under international criminal law are superior to any it may possess under domestic law. Despite this guiding standard, the administration of international criminal justice is frequently not pursued when aggressors are leading states. This contradiction is evidenced by the failure of the global community to develop an international criminal court in which to prosecute offenders.

INTERNATIONAL CRIMINAL COURT

The lack of a permanent tribunal to try individuals charged with international crimes is one ingredient that has prevented the creation of a tangible international criminal justice system. While the international community has sought to establish a permanent international criminal court (ICC) since the end of World War I, the goal has yet to be realized (Bassiouni, 1995; Ferencz, 1992; Pella, 1950). As Pella (1950: 68) stated over four decades ago, "... international criminal law can achieve nothing unless there be an international court to apply it." In 1989, the General Assembly requested that the ILC prepare a report on the establishment of an international criminal court for the crime of drug trafficking (Bassiouni, 1995). Though the completed report was not limited to drug trafficking alone, the General Assembly encouraged the ILC to continue its work. From 1992 through 1994, the ILC proceeded to develop and finally adopted a Draft Statute for an international criminal court.

The proposed ICC will be a permanent institution designed to prosecute individuals who commit the most serious crimes of concern to the international community, such as genocide and crimes against humanity. From March to August 1996, several Preparatory Committees were convened to discuss issues of jurisdiction, trigger mechanisms, procedural questions, and the relationship of the Court to the UN Security Council. On December 17, 1996, the General Assembly adopted the resolution on the establishment of an international criminal court by consensus (Wisskirchen, 1997). By the summer of 1998, it is anticipated that an international treaty conference will be convened in Rome, with signature and treaty ratification following shortly thereafter.

Every civilized society is organized with clear laws and courts to determine whether the laws have been violated. These two features are clearly interdependent. The codification of principal crimes against the security of mankind and the creation of an international criminal court is not a simple matter. A serious effort to reconcile divergent legal systems and reach acceptable compromises requires diligence, patience, and the willingness to relinquish jurisdictional power. Though progress has been made in recent years, the question remains as to whether the work completed by the ILC will actually become reality. Geopolitical forces continue to hinder the creation of this entity. This assertion is subsequently examined with respect to the crime of genocide.

GENOCIDE

The enforcement of the crime of genocide has seemed to confirm that international criminal law has been utilized mainly as an instrument of the powerful. This unjust functioning is entirely inconsistent with the premise of international criminal law—a law that should govern and protect the global community, not just one, or several, powerful segments of it. There is not an international criminal law capable of being uniformly applied to all instances of genocidal suffering. To evidence this affirmation, the International Military Tribunal at Nuremberg¹ and the International War Crimes Tribunal are explored below.

INTERNATIONAL MILITARY TRIBUNAL AT NUREMBERG

In the aftermath of World War II, the governments of the victorious Allied nations agreed to establish a special 'international' court at Nuremberg for the purpose of prosecuting some of the major Nazi war criminals. The historical uniqueness of the IMT was prompted by the response of the Allies to the horrific nature of the crimes committed. It was intended that legal responsibility be fixed for the atrocities that were committed under or by the Nazi military and political leadership. After a long and complicated trial, the historic judgments of the court were delivered on September 30th and October 1st, 1946. Of the 22 indicted war criminals at Nuremberg, 19 (86%) were convicted, with a variety of sentences ranging from prison terms to death imposed (Rosenbaum, 1993).

When analyzing the IMT, the question of 'victor's justice' persists. The term 'victor's justice' connotes, "the attempt by the victor to institute a scheme of justice by which the actions, policies, and participants of the losing side may be judged" (Rosenbaum, 1993: 37). Although the IMT is sometimes viewed as camouflaged retribution (Rosenbaum, 1993), it was in fact used to develop a set of legal and moral standards. As such, 'victor's justice' was, and is, more than just the imposition of the conqueror's will. It refers to a higher responsibility incumbent on a law-respecting victor to secure a world based on the ideals of law, morality, and justice.

The IMT made a significant contribution to international criminal law. Clearly however, in order for the 'rule of law' to prevail, it must be applicable to everyone. It is when the 'rule of law' becomes inapplicable to those who initially endorsed it that 'victor's justice' becomes unjustifiable. The value of Nuremberg has indeed been deflated because subsequent developments did not validate it, symbolizing failed international criminal law. This failure is subsequently examined with respect to the International War Crimes Tribunal.

INTERNATIONAL WAR CRIMES TRIBUNAL

No one questions that there was a sustained attack by the United States military that killed thousands of innocent Vietnamese from 1965-1974, and that the killings exemplified a reckless disregard for the lives of the innocent. Civilian war-related deaths in the Vietnam War are estimated at 405,000,

30% of all casualties (Lewy, 1978). The question that remains is whether the actions perpetrated by American soldiers were acts of genocidal proportions, as prohibited by the Convention on the Prevention and Punishment of the Crime of Genocide.²

During the 1960's and 1970's, there were widespread charges that the United States was waging a genocidal war in Vietnam (Duffett, 1968; Sartre, 1968). In response to these allegations, a non-governmental International War Crimes Tribunal (the Russell Tribunal) was convened in Copenhagen in 1966 and Stockholm in 1967 (Duffett, 1968). Unlike the IMT, the Russell Tribunal rendered its judgments while the crimes were taking place. The Tribunal was asked to determine whether the government of the United States had, first, committed acts of aggression in violation of international law, and second, intentionally bombarded targets of a purely civilian character. Citing firsthand reports from soldiers, professors, and scientists, the Tribunal reached two conclusions (Duffett, 1968). First, that the United States had engaged in serious acts of aggression against Vietnam in violation of international law. Second, that the United States was guilty of the deliberate and systematic bombardment of civilian targets.

Sartre (1968) advanced the most persuasive argument on the notion of intent of American soldiers to commit genocide in Vietnam. Pointing out that the memories of the Holocaust were still fresh, and that the government of the United States had not still ratified the Genocide Convention, Sartre (1968) argued that no governments would make the mistake made by Hitler and actually proclaim a genocidal mindset. The dilemma therefore, was whether studying the facts objectively could discover genocidal intentions. Sartre (1968: 79) concluded that the "truth [was] apparent *on the battlefield* in the racism of the American soldiers." The genocidal intent was implicit in the facts, and therefore, was necessarily premeditated.

These episodes of genocidal behavior clearly demonstrate the extent to which human depravity can extend. In an era of human progress, it seems unfathomable that, first, such a brutal phenomenon can be repeated so consistently, and second, that so few perpetrators of genocidal acts have been held accountable for their actions. The mechanisms by which violations of international criminal law are enforced should dictate their global. Unfortunately, for the crime of genocide, they do not.

DISCUSSION

The IMT demonstrated that international criminal justice could, and should, be imposed to frustrate the use of violence. Though critics maintain that Nuremberg was a mask for retribution, crimes of war and crimes against humanity and peace are unquestionably acts deleterious to the stability of the international community. While Nuremberg established that the 'rule of law' should always prevail over the use of violence, the failure of the global community to respond to *all* contemporary violations of international criminal law symbolizes that international criminal law has not yet fully evolved. If geopolitical forces continue to determine which offenders will be prosecuted, then international criminal law is destined only to be a substantive fantasy.

Genocide is an indignity to the world community—an inhuman onslaught against civilization (Yacoubian, 1997). Despite the recognition that the crime of genocide is prohibited by international criminal law, genocidal events continue to be committed before the passive eyes of the international community. The universal failure to take effective action against genocide has made a mockery of the most sacred values of civilization. That today genocidal perpetrators still live, unprosecuted by the international legal community, should be an indignity to any that value a peaceful global existence. The mitigation, if not the elimination, of these problems devolves upon the further development of international criminal law. Unfortunately, a specter of traditional, political forces may continue to thwart the initiation of effective relief, indefinitely postponing the redemption of these hopes. Until all that violate the law are brought before it—an example of genuine international criminal law—the international community must face the realization that global victimization cannot elicit commensurate universal jurisprudence.

FOOTNOTES

¹ The International Military Tribunal at Nuremberg was established pursuant to Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, August 8, 1945, 82 U.N.T.S. 279 [hereinafter IMT].

² Convention on the Prevention and Punishment of the Crime of Genocide, December 9, 1948, 78 U.N.T.S. 277 [hereinafter Genocide Convention].

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RESEARCH NOTE

Western Society of Criminology members Barbara Owen (CSU Fresno), Barbara Bloom (SJSU), Jill Rosenbaum (CSU Fullerton), and Libby Deschenes (CSULB) have been conducting an Office of Criminal Justice Planning (OCJP) sponsored study entitled *Modeling Gender-Specific Services in Juvenile Justice: Policy and Program Recommendations*. This research project consists of three major components. First is a literature and policy review which summarizes issues relating to girls and young women at-risk or involved with the juvenile justice system, research findings concerning risk and resiliency factors, promising program components and a summary of federal and state policy initiatives. Second is an anal-

ysis of data collected from a statewide survey of juvenile justice practitioners, which identifies available resources for girls and young women; and third is a report summarizing the results of a series of interviews and focus groups conducted with young women and professionals serving this population. The final report will provide recommendations regarding existing services, improving and expanding services to girls and young women, and increasing gender parity in programs serving juveniles. If you would like further information about this project, please contact Barbara Bloom at (707) 778-7270 or E-mail at bloom@sonoma.edu.

WSC AWARDS 1998



RECIPIENTS OF THE WESTERN SOCIETY OF CRIMINOLOGY FELLOW AWARDS 1997-98

David Huizinga, D. Kim Rossmo, Alice McGrath, and
Mark Umbreit

RECIPIENTS OF THE WESTERN SOCIETY OF CRIMINOLOGY AWARDS 1997-1998

The Paul Tappan Award: For Outstanding Contributions to
the Field of Criminology

Travis Hirschi

The Joseph D. Lohman Award: For Outstanding Service to the
Western Society of Criminology

Inger Sagatun-Edwards

The June Morrison-Tom Gitchoff Founders Award:
For Significant Improvement of the Quality of Justice

James I. Cook

President's Award: For Contributions to the Field of
Criminology and Positive Influence on the Current
President's Career

Malcolm W. Klein

Special Recognition

Edgar Boyko



ACKNOWLEDGMENT OF SPONSORS

The Executive Board of the Western Society of Criminology, on behalf of itself and all of the members of the association, wishes to express thanks and appreciation to all of the individuals and groups who supported the 1998 annual conference in Newport Beach with their sponsorship of different events. We realize that without your ongoing support of our or-

ganization, we would not be able to maintain a reasonable dues structure while still providing the membership with a newsletter and an exciting and intellectually engaging annual program.

Our heartfelt thanks are extended to all of our sponsors: Dean Michael Harter, School of Health and Human Services, California State University, Sacramento; Sage Publications; Keith Boyum, Chair, Division of Political Science and Criminal Justice, California State University, Fullerton; Ron Vogel, Chair, Department of Criminal Justice, California State University, Long Beach; Robert Nash Parker, Director, Robert Presley Center for Crime and Justice Studies, University of California, Riverside; Dean Morton O. Schapiro, School of Letters, Arts, and Sciences, University of Southern California; Malcolm W. Klein, Director, Social Science Research Institute, University of Southern California; Henry Pontell, Department of Criminology, Law and Society, School of Social Ecology, University of California, Irvine; and Simon and Schuster.

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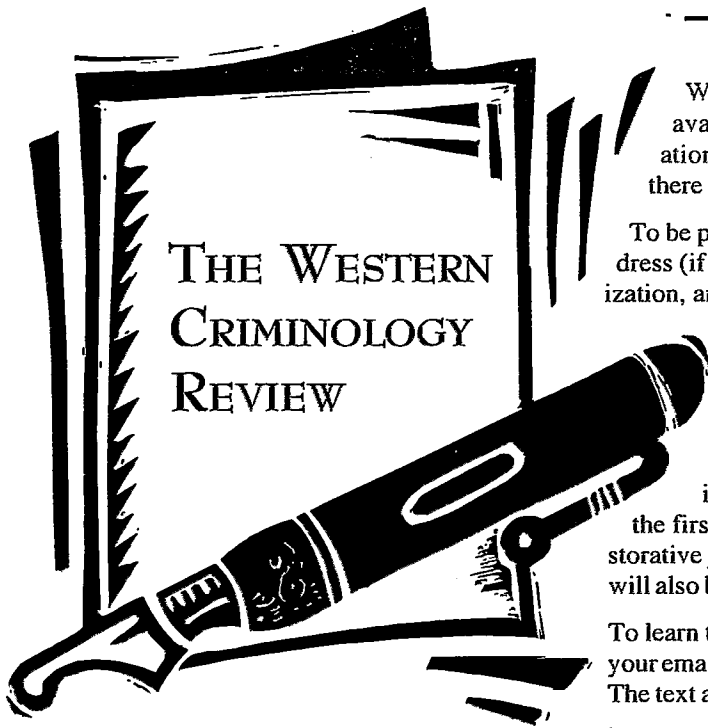
The 1999 Western Society of Criminology (WSC) Annual Meeting is scheduled for February 25-28, 1999 at the Oakland Marriott in Oakland, California. The theme of the conference is *The Challenge of Crime and Justice in the Millennium*. Please contact Marilyn McShane, Program Chair, at Northern Arizona University, Criminal Justice Department, P.O. Box 15005, Flagstaff, AZ 86011-5005; (phone) 520-523-9519 or 520-523-6528; (fax) 520-523-8011; or (E-mail) marilyn.mcshane@nau.edu to submit panel or paper ideas.

The Board is excited about having our program in Oakland. The hotel site is a 15-minute BART ride to and from San Francisco; it's a thoroughly multicultural city with some exciting arts and other projects; The Oakland Museum is a little known gem. The building itself is terrific with many interesting exhibits, including California historical, anthropological and geological-botanical sections; Jack London Square is delightful on a sunny winter day with the flags fluttering, the ships and crew teams passing by almost within reach and the crowds swarming through. It contains an excellent Barnes and Noble bookstore, Yoshi's, one of the country's great jazz clubs, and waterfront restaurants; and finally, there are some very fine restaurants downtown, including Chinese and Vietnamese.

See you in Oakland in 1999!

STUDENTS ON THE GO

Siobhan Hanlon, a Criminology Major at Southern Oregon State College, has been accepted into the Oregon Higher Education System's program call Global Graduates. Siobhan will be spending a term in London doing a practicum at a solicitor's firm that handles defense work for juvenile offenders. The Global Graduates program helps students with the costs of international travel and living abroad while working and getting some academic credit for work. We all wish her well during her term in London.



CALL FOR REVIEWERS

WSC members can help out with the journal by making themselves available to review manuscripts submitted for publications consideration. Although some have indicated that they are willing to review, there is a need for more.

To be placed in the reviewer pool, mail your name, postal address, email address (if you have one), a phone number, a brief biography, areas of specialization, and the type of computer and word processing program(s) you use to Pat Jackson, WCR Editor, Criminal Justice, Sonoma State University, Rohnert Park, CA 94928; or fax it to (707) 664-3920. For web surfers an online form is available at <http://wcr.sonoma.edu/Inquiry.html>. You can email the information to wcr@sonoma.edu.

The first issue of the Western Criminology Review will be released in May. Although the WCR will not always address thematic issues, the first one does. The v1n1 papers relate to the theory and practice of restorative justice. The Proceedings of the 25th Annual Meeting of the WEX will also be included.

To learn the moment that v1n1 come online, join the WCR Listserv. Address your email to LISTSERV@SONOMA.EDU and leave the subject area blank. The text area type SUBSCRIBE WCR-L and send your message.

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