Developments in International Criminal Law (Foreword)

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DEVELOPMENTS IN INTERNATIONAL CRIMINAL LAW

FOREWORD

Many of the contributions to this issue of the Journal focus on several recent historic developments in the field of international criminal law. In July of 1998, the Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court (ICC) concluded an intensive five-week session in Rome by adopting a statute for such a court. Although the United States voted against the statute, its vote, as several contributions to this issue make clear, does not signal U.S. opposition to an international criminal court as such, but, rather, concern that certain features of the statute produced by the Rome Conference may undermine the achievement of other international goals that the United States believes are no less critical for world order and the international protection of human rights. The United States has been a firm supporter of the two existing international courts—the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR)—and its support may prove just as crucial to the success of the ICC.

Despite the current U.S. opposition, it appears likely that the ICC will come into existence through the ratification of the statute by sixty states. Once established, such a court could affect the essential constitutive structure of world politics in a myriad of ways, particularly the work of the United Nations Security Council under its Chapter VII jurisdiction. The debates about whether such a court is a "good idea" are no longer relevant. The issues now on the table are how to make the court an effective instrument that will contribute to the maintenance and improvement of world order. One would expect the United States to be an active participant in the process.

The ICC will benefit from the experience of the two ad hoc international criminal Tribunals established by the UN Security Council in recent years, the ICTY and the ICTR. These Tribunals are engaged in establishing an international jurisprudence on the prosecution of individuals for violations of international criminal law. They have addressed not only substantive and procedural law related to such prosecutions, but also many of the logistical problems such international tribunals must face. The jurisprudence produced and lessons learned by these Tribunals will inevitably provide important foundations for the new ICC.

Perhaps even more significant is the fact that the Tribunals and the negotiations in Rome may reflect a dramatic development in the international community regarding the punishment of grave international crimes. While the Nuremberg and Tokyo Tribunals marked an important beginning, only now may we well be witnessing the emergence of consensus in the international community that it accepts the responsibility to prosecute and punish, be it through international or domestic tribunals, persons who commit such crimes.

In its first conviction, the ICTY found Duško Tadić guilty of war crimes and crimes against humanity arising in a noninternational conflict. Even more precedent setting was the Akayesu case, decided on September 2, 1998, by the ICTR. It was the first conviction by an international tribunal for the crime of genocide. It was followed by the conviction of Anto Furundžija for war crimes. The need to contemplate these hideous crimes can never be a cause for celebration. However, international lawyers and broad segments of the world community have long pressed, first, for the criminalization of genocide and crimes against humanity, and, second, for the international application of that law to the