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Under the Geneva Conventions, as has already been pointed out, States have committed themselves to certain obligations which compel them to exercise criminal jurisdiction over persons responsible for, or suspected of crimes (against genocide, apartheid, torture, etc.). According to some, these obligations relate only to states connected with such criminal cases. The Geneva Convention for war crimes establishes the criterion of universal jurisdiction which carries with it the duty to search - because it is useless establishing the principle of universal jurisdiction unless one carries out a search. And we have seen that in France, where the persons who planned and incited the massacres in Rwanda took refuge, the French judges refused to exercise their jurisdiction. In the absence of a link (or of a strong link, as there actually was a sort of link), the Court had been put into action by a woman of Rwandese origin married to a Frenchman and holding French citizenship.

Therefore, by these conventional systems States have committed themselves to regulations of compulsory competence. And yet States do not even bother to set up substantial and procedural legislation that would allow the exercise of this criminal jurisdiction, they simply refuse. Even Italy, which is considered as one of the most favourable countries towards the need for the repression of the *delicta juris gentium*, even Italy limited its action to the issue of an order of execution. Consequently, regarding conformity to the law within the Geneva framework, for example, but even to the other laws without specific regulations, no judge of a criminal court will apply those regulations without a precise rule which would give him jurisdictional competence. And Italy has not established these regulations.

As a consequence we can see that the internal systems which should work do not work, not because they are not capable of working, and on this I draw your attention to the fact that the internal systems, internal systems of repression, are the most suitable because we must bear in mind that the International Criminal Court will not

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have coercive machinery at its disposal. Unfortunately these remain only in the hands of States, and therefore the States' criminal justice will remain the most suitable, in this respect, to reach this objective.

But the political will is not there, States do not establish legislation which would allow the judges to adjudicate and therefore it is not the judges' fault, but of the governments which do nothing in favour of the adoption of detailed legislation conforming to the international convention. And therefore the way which seems to be the best one, that which has raised many hopes, and I would also say many illusions, is the institution of an International Criminal Court.

I was saying, before, that a lot of progress has certainly been made, if one remembers the early days, when the problem first appeared, - in the first World War, then it was frozen up to 1990, 1991, when it was revived. But we must not have any illusions.

The mobilization that has brought us here, that there is no peace without justice, is certainly the primary motivation and cannot be held back. We must move forward, and not only in view of the diplomatic conference, but also for the meetings of the Preparatory Committee. We must remain mobilized during the Diplomatic Conference because many knots will not be untied by the Preparatory Committee and will be taken back to the Diplomatic Conference. Even then, the next mobilization will be necessary for the Statute, because it will also be possible to achieve the adoption of a Statute at the Diplomatic Conference.

One must act so that not any Statute will be adopted but a certain Statute which will solve problems already mentioned here. Another mobilization will be needed so that the Statute will become operative, because there is the danger that then it will remain on paper and that it may even be used only by the Security Council as an *ad hoc* Court, and this would be a big failure.

One of the major unsolved problems is the interference of the Security Council in the workings of the Court, and I will here limit myself to point out that the issue of aggression is certainly a very delicate problem, considering the competence that the UN Charter attributes to the Security Council. We must always bear in mind that the International Criminal Court, as it has been conceived, and as States want to establish it, is a Court set up not to judge governments but to judge individual persons. Therefore, the competence of the Security Council, which, is not called upon to judge just anyone, because we know that according to Chapter VII the Security Council is not a judge of governments, relates to the re-establishment and maintenance peace, and this is the reason for

which, the two *ad hoc* courts do not examine crimes against peace, because the Security Council should act, in this respect, in an impartial manner.

The other unsolved problem, already referred to is the issue of rationed material competence, particularly the problem of the so-called inherent jurisdiction. This would mean that either the International Criminal Court will be **automatically** competent to prosecute a suspected criminal, or that it will have to be set in motion. And if it is to be set in motion, by whom? This means that the International Criminal Court would prosecute a suspected criminal only if its competence is accepted by one of the states connected with the particular crime. This is the project of the Commission for International Law, and this is still the fundamental problem which is being debated in the Preparatory Committees.

However the biggest problem, and with this I will conclude, is the one of complementarity of the jurisdiction of the International Criminal Court with reference to state jurisdictions. It is naturally obvious that the court's jurisdiction is not expected to be an exclusive jurisdiction, not even for the *delicta iuris gentium*, nor for the massive, systematic type of *delicta iuris gentium*, but the International Criminal Court is expected to operate in a subsidiary relationship to state jurisdictions. Here, therefore, the problem of necessary mobilization comes up again, so that state jurisdictions may continue to function and so that they can be provided with the legislation that we were speaking of: both substantial and procedural. The main problem is knowing when the Court will intervene, and this is the issue being discussed by the Preparatory Committees and on which there is no agreement. When the state involved in a crime, either from the territorial point of view or because its organs are involved, does not carry out its duty the reason for this may be varied: either because it does not want to, or because it is not capable, or due to the collapse of the system. The collapse of the system in Rwanda, and especially in Somalia, perhaps even in the former Yugoslavia were situations which, from this point of view, were easily recognizable. But there are situations where the system has not collapsed at all, where it is even quite strong, and in these cases totalitarian regimes are very powerful and everything works very well from the point of view of the organization of the state, and serious crimes are committed against humanity.

Well, this is the knot that remains to be untied, the one about the complementarity of the Court's jurisdiction in relation to the one about the collaboration between the States and the Court. This

collaboration, it must be stressed, is necessary at all levels, for example in the collection of proof and the search and capture of the suspect. One must here mention also the major problem of the execution of the sentence which brings us back to a structural reason on how international law is exercised and its relationship to internal rights. The direct applicability of the judgement within the states' systems does not exist, it is not even provided for in the Statute of the International Criminal Court, just as it is not provided for in the two statutes of the two *ad hoc* courts, in spite of the fact that it is an authoritative decision, and could have been provided for. Consequently states will actually end up by providing for procedures for the recognition of the judgements of the International Criminal Court, and this naturally constitutes a big risk.

One last observation concerns the issue of judgement by default. This problem is not defined in the same terms as for a state's system. It is rather a problem of *in absentia* than a default in the strict sense of the term, because sometimes, and the possibility is absolutely not pleasant, this hypothesis, the absence of the accused, may depend not so much on the accused himself but on the state, and especially so in cases of crimes against humanity in times of peace. But which state, which government has any interest in handing over an indicted person? Therefore, the problem is always the consent of the states and the true operationability of the consent of the states.