



**Report of the Canadian Parliamentary Delegation respecting
its participation at the 10th Consultative Assembly of
Parliamentarians on the International Criminal Court and the
Rule of Law, and 40th Annual Forum of Parliamentarians for
Global Action (PGA)**

Canadian Section of ParlAmericas

**Kiev, Ukraine
November 16 and 17, 2018**

Report

INTRODUCTION

Mr. Ali Ehsassi, MP, Member of the Canadian Section of ParlAmericas, attended the 40th Annual Forum of Parliamentarians for Global Action held in Kiev, Ukraine, on November 16 and 17. Among the 200 participants in attendance, were 77 members of Parliament from 38 countries around the world. The theme of the 2018 Forum was the International Criminal Court and the Rule of Law. The panels focused on the following topics: the reach of ICC jurisdiction; challenges and opportunities for the universal ratification of the Rome Statute of the ICC; amendments to the Rome Statute; the domestic criminalization and adjudication of international atrocities; question time with the Office of the Prosecutor of the International Criminal Court; consideration of a victims rights approach to international criminal justice; an examination of the 20th anniversary of the Rome Statute and a situation specific session on the Ukraine.

INAUGURATION

On the first day, the Forum convened at Ukraine's Legislature with welcoming remarks offered by Ms. Margareta Cederfelt, MP (Sweden), President of Parliamentarians for Global Action, and the Hon. Andriy Parubiy, MP (Ukraine) Speaker of the Verkhovna Rada. Apart from acknowledging the in-kind support received from the Parliament of Ukraine as host of the event, it was noted that the Assembly had been made possible due to the support of the European Union, and the Governments of the Netherlands, Switzerland, Estonia, Liechtenstein, and the Oak Foundation. In addition to core support had been provided by Sweden (Sida) and Denmark (Ministry of Foreign Affairs).

KEY NOTE ADDRESSES

The first keynote speech was presented by H.E. O-Gon Kwon, the President of the Assembly of State Parties to the Rome Statute of the ICC. Having previously served as a judge and Vice-President of the International Criminal Tribunal for Yugoslavia, the principal thrust of his address was to examine the extent to which attitudes regarding the efficacy and effectiveness of the ICC have evolved over the past twenty years. Whereas in the early days many countries doubted that the ICC would ever prosecute any national leader, expectations now are that the court should never permit any world leader to evade prosecution for having committed egregious crimes. He also touched on the principle of complementarity to highlight the imperative for all countries to prosecute cases in their democratic courts, and thereby underscored how important it was for each country to actively promote legislation on crimes against humanity so as not to become a safe haven for fugitives from international justice or suspected international criminals. As such, H.E. Kwon emphasized that the ICC should only be viewed as a court of last resort.

The second keynote speaker was H.E. Judge Marc Perrin de Brichambaut, currently serving as the Vice-President of the International Criminal Court, and the former Head of Delegation of France to the Rome Diplomatic Conference on the ICC held in 1998. H.E. Brichambaut detailed the extent to which it is crucial that the ICC engage in detailed

examinations to ensure that any case the ICC pursues is deemed a success. He also noted that it is imperative that the ICC maintain its credibility not only by successfully pursuing its cases, but to also bear in mind that in instances when the ICC fails to present a compelling prosecution, that cases be dismissed. He then detailed not only how 26 cases have been brought to the ICC, but that 11 cases are currently under review. Finally, H.E. Brichambaut noted that it was auspicious that earlier in the day the Extraordinary Chambers in the Courts of Cambodia (ECCC) had rendered a guilty verdict against two senior Khmer Rouge leaders found guilty of genocide, almost forty years after having committed the crimes in Cambodia.

FIRST DAY

The first panel was chaired by Ms. Barbara Lochbihler MEP (Germany) and the Vice Chairperson of the Human Rights Subcommittee of the European Parliament, and focused on the reach of ICC jurisdiction and the protective mandate of the Rome statute for the prevention and repression of the most serious international crimes. Panelists included the Hon. Ahmed Mahloof, MP (Maldives), Dip. Carla Pitiot (Argentina), Secretary of the Commission on General Legislation, and Mr. Ehsassi. Hon. Ahmed Mahloof recounted the challenges that stood in the way of the Maldives adopting the Rome Statute and arguments that were utilized to eventually facilitate his country's ratification of the Statute in 2011. Mr. Ehsassi's remarks initially focused on how Canada played a pivotal role in establishing the International Criminal Court by among others chairing a coalition of states called the like-Minded Group; generating support for an independent and effective ICC through public statements and extensive lobbying; contributing to a United Nations Trust fund to enable lesser developed countries participate in ICC negotiations; and helping fund non-governmental organizations from developing nations so that the ICC process could benefit from their unique perspectives. He also recounted how in July 2000 Canada became the first country to enact the Crimes Against Humanity and War Crimes Act to implement the Rome Statute into Canadian domestic law. Finally, he focused his remarks on more recent developments around the world that could possibly lead to claims being pursued against the Syrian Government for crimes it has committed against its own citizens since 2011.

The second panel was chaired by Ms. Svitlana Zalischuk MP (Ukraine) and Member of the Foreign Affairs Committee and focused on a situation specific session on Ukraine and current legislative developments and obstacles regarding the ratification and implementation of the Rome Statute. Panelist included an official from the Ukrainian Ministry of Justice, a Ukrainian MP who also serves as a Member of the Parliamentary Assembly of the Council of Europe, and the head of the Ukrainian Centre for Civil Liberties. The speakers highlighted how public misperceptions as to how Ukrainian soldiers could inadvertently be implicated by the Rome Statute has made it challenging for more Ukrainians to be supportive of their country's ratification of the Rome Statute. Nonetheless the speakers also explained how a broad national coalition has embarked on a public campaign to encourage more Ukrainians to recognize the merits of having their country ratify the Rome Statute. Finally, Rep. James McGovern of Rep. Randy Hultgren of the U.S. Congress addressed attendees via a video message to recognize that Ukraine faces human rights challenges given actions perpetrated by the Russian Government in

Eastern Ukraine. Also highlighted were challenges faced by the media in reporting on atrocities taking place in areas of Ukraine subjected to war.

The third panel was chaired by Mark Pritchard, MP (United Kingdom) and focused on the challenges and opportunities for the universal ratification of the Rome Statute of the ICC. The first panelist the Hon. Kula Segaran, MP (Malaysia) and recently appointed the Minister of Human Resources of his country, announced the imminent accession of his country to the Rome Statute. The second speaker, Rep Gary C. Alejano (the Philippines) offered a spirited presentation to recount the many ways in which his country's current president is restricting the rule of law in his country. In particular, he focused his comments on the questionable manner in which the Filipino Government is currently waging a war against drug lords. Finally, Hon. Azey Guliyev MP (Azerbaijan) shared his perspective as to the many international threats his country faced and how it was important for international institutions to uphold the rule of law throughout the world.

In the evening all participants were invited to Defender of Democracy Awards. The first recipient was the Hon. Ahmed Mahloof (the Maldives) given his role as an outspoken advocate for the rule of law in his country. Mr. Mahloof has been arrested more than 25 times for his efforts since 2010 and endured months of imprisonment. The second recipient was Oleg Sentsov, a Ukrainian film director who has been under arrest in Crimea since 2014 and been unjustly sentenced to 20 years in prison for vocally opposing the illegal and forced annexation of parts of Ukraine by Russia.

SECOND DAY

The first panel on the second day of the Forum was chaired by Ms. Petra Bayr MP (Austria) and focused on the ICC's expanding jurisdiction over war crimes in non-international armed conflicts and activating the ICC's jurisdiction on the crime of aggression. In 1998 when the Statute of the ICC was adopted by the Diplomatic Conference in Rome, the court was given jurisdiction over the crimes of genocide, crimes against humanity and war crimes, as well as the crime of aggression. However, although it was agreed that the Court should have jurisdiction over the crime of aggression, no agreement was reached on the definition of this crime. The panelists considered developments that paved the way for Parties to the Rome Statute to agree in late 2017 to activate jurisdiction over the fourth core crime of aggression after 10 days of intense negotiations. H.E. Ambassador Christian Wenaweser, Permanent Representative of Liechtenstein to the United Nations, recounted his efforts in leading the Princeton Process since 2004 to build consensus on defining the crime of aggression and setting out the conditions pursuant to which the Court would be permitted to exercise jurisdiction with respect to this crime. By 2010, amendments were adopted by consensus at the Rome Statute Review Conference held in Kampala, Uganda. To date, 36 countries have adopted the Kampala amendments. Another key speaker on this panel was Professor Noah Weisbord of the Faculty of Law of Queens University who provided an overview of the special jurisdictional regime created for the crime of aggression. According to Professor Weisbord, state responsibility alone would fail to effectively leverage the force of international law, and therefore the codification of the crime, the rule of law is strengthened by making leaders personally responsible for the wars they initiate. In addition, it was noted that the new definition agreed to for the crime of aggression better

captures the sociological dimensions of modern war. It also empowers legislatures, the judiciary and citizens to make principal determinations on whether a war is to be deemed legal or illegal.

The next panel examined the domestic criminalization and adjudication of international atrocities, as well as the national prosecution of international crimes. Panelists from Chile, Bolivia, Italy and Ukraine each recounted developments in their respective jurisdictions to ensure the domestic prosecution of international crimes. In addition, Dep. Emilio Carelli (Italy), Member of Foreign Affairs Committee, recounted the role played by Italy since the establishment of the ICC and then proceeded to emphasize how Italy's actions on furthering international human rights have been founded on and anchored in the principles of universality, indivisibility and interdependence.

The third panel on the second day of the forum consisted of a presentation by Mr. Amady Ba, head of the International Cooperation Unit of the Office of the Prosecutor of the International Criminal Court. Mr. Ba provided an overview of case management undertaken by the ICC and revealed that the ICC is currently conducting preliminary examinations in ten cases. It was suggested that that the ICC was likely to issue preliminary findings regarding cases involving Venezuela and Ukraine by December. In addition, Mr. Ba cautioned that when the court issues a warrant for the arrest of suspects, the ICC relies heavily on cooperation with domestic governments to apprehend individuals. It was further noted that of the 465 requests made by the ICC for assistance, host governments have responded favourably and cooperated with respect to 95% of such requests.

The fourth panel on the second day was devoted to considering a victims rights approach to international criminal justice and was focused in particular on the protection of victims of sexual and gender-based violence. Ms. Soledad Buendia, MP (Ecuador) emphasized how the effective participation of victims in legal proceedings pose many challenges. Judge Gberdao Kam, special advisor to the Ministry of Justice of Burkina Faso, and former President of the Trial Chamber of the Extraordinary African Chambers, similarly noted the challenges of ensuring witnesses participate in legal proceedings. In particular, he highlighted the prospect of women who may have to contend with the psychological impact of revisiting traumatic facts. Mr. Markiyana Halabala, legal representative to Euromaiden Victims, on the other hand, underscored the prevalence of sexual violence in war affected regions of Ukraine, in particular in instances involving individuals deprived of liberty and for those having to contend with military checkpoints. Finally, Lord Purvis of Tweed (United Kingdom) focused his remarks on the UN Declaration on Victims adopted 33 years ago and recounted how the United Kingdom has adopted a Victims Charter and a Code of Conduct. After reciting the UK's experience, Lord Purvis encouraged countries to adopt legislation to safeguard the rights of victims, extolled the role of domestic victim's rights commissions, and cited the need for peacekeeping forces to receive sexual violence training.

The last panel of the Forum considered the impact of the ICC on advancing the fight against impunity and the extent to which it has strengthened normative frameworks in light of the 20th anniversary of the Rome Statute. Of particular interest were remarks provided by Mr. Arie Ijzerman, Special Advisor at the Dutch Ministry of Justice and Security. He focused his remarks on the joint initiative for the creation of a new multilateral

treaty for the domestic prosecution of the most serious international crimes (referred to as the MLA Initiative). The Initiative was first launched in 2011 by Belgium, Slovenia and the Netherlands after recognizing that existing treaties dealing with the most egregious international crimes do not contain provisions for mutual legal assistance and extradition. In 2017, a preparatory conference was held on the MLA initiative. More recently, on November 14th 2018 a Preliminary Draft Treaty was presented and the next Preparatory Conference will take place in the Netherlands in March 2019.

A [Kiev Plan of Action on the Universality and Effectiveness of the Rome Statute System Against Impunity](#) was adopted at the conclusion of the Forum.

Respectfully submitted,

Hon. Robert Nault, P.C., MP
Chair
Canadian Section of ParIAmericas

Travel Costs

ASSOCIATION	Canadian Section of ParlAmericas
ACTIVITY	10 th Consultative Assembly of Parliamentarians on the International Criminal Court and the Rule of Law, and 40th Annual Forum of Parliamentarians for Global Action (PGA)
DESTINATION	Kiev, Ukraine
DATES	November 16 and 17, 2018
DELEGATION	
HOUSE OF COMMONS	Mr. Ali Ehsassi, MP
TRANSPORTATION	\$ 1,501.21
ACCOMMODATION	\$ 602.86
HOSPITALITY	\$ 0.00
PER DIEMS	\$ 395.93
OFFICIAL GIFTS	\$ 0.00
MISCELLANEOUS	\$ 0.00
TOTAL	\$ 2,500.00