

# Martin Institute NEWS

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## A PERMANENT INTERNATIONAL CRIMINAL COURT?

By *Kenneth S. Gallant*

Last summer, representatives of over one hundred nations met in Rome to draft a treaty to establish a permanent International Criminal Court. After intense negotiations, on July 17 the Conference adopted the Rome Statute for the International Criminal Court (ICC).

The ICC is intended to deal with the most serious international crimes—genocide, crimes against humanity, and war crimes. Its Statute also has a mechanism for including the crime of aggression within its jurisdiction, once nations can agree on an appropriate definition for that crime.

The ICC is also intended to be permanent. It is designed to institutionalize efforts of the international community to deter these great crimes, and to hold those who commit them individually responsible.

If and when the Statute is ratified by sixty countries, it will come into effect, and the world will have its first permanent court for the investigation, trial and punishment of individuals who commit serious violations of international criminal law. As of today (mid-February 1999), over seventy nations have signed the Statute, but only one, Senegal, has ratified it. Among the non-signers are the United States and Russia, and the world's two most populous countries, China and India.

This month also marked the beginning of efforts to implement the ICC Statute. The United Nations organized the first meeting of the Preparatory Commission for the International Criminal Court. The Preparatory Commission is charged with preparing drafts of the ICC's Rules of Procedure and Evidence, Elements of Offenses (i.e., of the crimes within the ICC's jurisdiction), and other documents that will be important to the operation of the

ICC. This is being done both to help the ICC begin operation promptly upon the Statute's coming into effect, and to encourage nations to ratify by giving a clear indication of how the ICC is likely to operate.

### *A Bit of Background*

After the genocide and other atrocities of World War II, the first modern international trials for crimes against humanity and for war crimes were held in Nuremberg and Tokyo. These were designed not only to punish Axis leaders who had committed these crimes, but to deter future, similar crimes. University of Idaho alumnus Col. Burton F. Ellis (Law '33) was among the American team of prosecutors at Nuremberg.

These tribunals established that individuals, not just nations, are responsible under international law for the gravest breaches of the basic rules of humanity and the laws of war. This marked a major development in international law. Before these trials, public international law was generally perceived as applying among nation-states, rather than directly to individuals.

Unfortunately, the deterrent effect of the two World War II tribunals dissipated over the course of the next half-century. Mass murder and ethnic cleansing occurred in places as diverse as Cambodia, Sudan, Angola, and what was once known as Yugoslavia.

By the time of the Yugoslav wars of the early 1990's, the international community decided that a new tribunal should be created to deal with issues of genocide, crimes against humanity, and war crimes arising out of those conflicts. In 1993, the United Nations Security Council, acting under Chapter VII of the UN Charter (on Actions with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression) established the International Criminal Tribunal for the Former Yugoslavia (ICTFY). Like the Nuremberg

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## DIRECTOR'S CORNER



In the last two issues I have written of plans for near term growth at Martin. I am pleased to announce that some of those steps have now been taken. Principally, Dr. Rand Lewis has joined the Martin Institute as Associate Director and Program Coordinator. This hire moves us significantly forward by providing the capability to grow at the same time that we consolidate programs previously put in place.

Dr. Lewis, who began November 1, has already moved to consolidate advising of undergraduate students in the International Studies academic major, and to improve the oversight of their overseas experience.

Rand is also getting up to speed with the Borah Symposium committee, as staff director for Borah. This link will achieve a long cherished goal of Boyd Martin and many others in the University community to realize the synergy that has always been possible between Martin and Borah. We expect that the relationship will result in an expansion of Borah programs, and closer ties between Borah programs and on-campus events underwritten by Martin.

Finally, we expect much more rapid progress in our research program, as Rand is able to provide grant and development support.

In other activities, the Martin Fellows are in the middle of a re-organization process, which has allowed each continuing Fellow to re-commit to Martin, and also lays a basis for expansion of the program. We anticipate welcoming in new Fellows from around the campus, and potentially from Washington State University and Boise State. The Fellows are also in the first round of a competitive grant process, which we expect will raise the bar for Martin-supported research and help to generate additional research funds.

The first issue of the Martin Journal of Conflict Resolution was published on the Martin Institute Web site last month ([www.martin.uidaho.edu](http://www.martin.uidaho.edu)). The honor goes to a paper by Dr. Jay O'Laughlin, an MI Fellow, and Dr. John Schumaker, U.S. Department of the Interior, on the use of alternative dispute resolution by federal agencies involved with environmental issues.

*Rand Lewis*

## NEW ASSOCIATE DIRECTOR CHOSEN

The Martin Institute is pleased to welcome Dr. Rand Lewis as its new Associate Director and Program Coordinator. Dr. Lewis joined the Institute in November and will coordinate both the International Studies academic program and the Borah Foundation's annual symposium as well as working to develop funding sources for research and other Institute activities.

A Moscow, Idaho native, Dr. Lewis received his bachelor's degree in History from the University of Idaho in 1973. He spent 28 years in military service, retiring in 1996 as a Foreign Area Officer in western Europe, Chief of the Host Nation Support Branch, and Principal U.S. Army Negotiator with the German Ministry of Defense. He developed programs with nations associated with NATO and the Partnership for Peace Initiative. His office was responsible for negotiating reductions in NATO forces and re-alignment of NATO's mission following the end of the Cold War. He spent six years in Germany and has traveled



extensively throughout Western and Central Europe, the Middle East and North Africa.

While in the military Rand earned a Ph.D. in European History from the University of Idaho and taught courses at Duquesne University, Wright State University, and Embry-Riddle University before returning to Idaho in October of 1996. Since then he has been Adjunct Professor of

History at both Washington State University and the University of Idaho. He has written several academic papers and three books, dealing primarily with the Neo-Nazi movement and with German Unification.

We appreciate the expertise Dr. Lewis will bring to the Martin Institute programs, and hope that any of you visiting the UI campus will take time to come by and get acquainted.



(A Permanent International Criminal Court? cont.)

*The notion of a permanent international criminal court has been debated nearly since the Nuremberg trials themselves.*

and Tokyo tribunals, this is an ad hoc court, aimed at bringing to justice persons who have committed serious violations of international humanitarian law in a specific place (the area that used to make up Yugoslavia) at a specific time (since January 1, 1991).

The next year, 1994, brought the Rwandan genocide. The Security Council again created an ad hoc tribunal, the International Criminal Tribunal for Rwanda (ICTR), to bring to justice the leading perpetrators of the atrocities there.

Both ICTFY and ICTR continue in operation today. They have a mixed record. On the positive side, they both have obtained jurisdiction of some alleged violators of international humanitarian law, held trials, and sentenced those found guilty. A recent case in ICTR marks the first international court conviction explicitly for genocide. (The prosecutions of the major war criminals in Nuremberg were for crimes against humanity rather than genocide denominated as such.) The procedural guarantees for defendants in both courts are significantly expanded from those in the Nuremberg and Tokyo tribunals. There is some evidence that the occurrence of individual atrocities in the Former Yugoslavia declined after the creation of ICTFY.

On the negative side, ICTFY has had difficulty prosecuting many of those suspected or accused of crimes, especially military and political leaders. Blame for this has widely been placed on the current government of Yugoslavia (that is, Serbia and Montenegro),

but the government of Croatia has in some cases also resisted prosecution of Croats by the court. Prosecutions in ICTR have also been much slower than might have been hoped.

### ***Demand for a Permanent ICC***

The notion of a permanent international criminal court has been debated nearly since the Nuremberg trials themselves. The International Law Commission of the United Nations has worked on the project of defining crimes under international law and on the idea of an international criminal court for decades.

Essentially, demand for a permanent international criminal court has come from those nations, activists, and academics (including this author) that believe the rule of law can help deter atrocities committed in violent conflict. They see a superstructure of law, applying both to nations and individuals, as necessary to an overall reduction in the level of organized violence in the world.

Both elements—individual responsibility and international prosecution—are vital to this vision. Justice requires individual accountability for these great wrongs. From a utilitarian point of view, individual criminal responsibility is vital to curbing genocide and other terrors of modern conflict, because in the end it is individuals, rather than the abstract entities called nation-states, that organize, direct, and commit these atrocities. International prosecution is required to demonstrate that these acts are condemned by the

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## MARTIN INSTITUTE CONDUCTS NEGOTIATION WORKSHOP FOR IDAHO SCHOOL ADMINISTRATORS

Curtis Brettin, MI Mediation Coordinator, conducted a workshop on negotiation for school administrators in Post Falls, Idaho on February 26. The workshop was one in a series of three "drive in" workshops for administrators located in the five northern counties of Idaho. Two additional trainers, Kathy Canfield-Davis and Jim Coleman, joined Curt. Kathy is the Education/Outreach Coordinator for the University of Idaho Water Resources Research Institute and a former school superintendent in Post Falls. Jim Coleman is president of J-U-B Engineers and the major sponsor for environmental negotiation conferences held the last two years in Boise (see "Breaking the Impasse," MI Newsletter, December 1997). Both reside in Coeur d'Alene and are familiar with issues related to education in the area.

The title of the workshop was Getting Beyond Compromise: The Mutual Gains Negotiation Approach for School Administrators, and there were about 25-30 participants.

The overall theme was a pro-active approach to conflict resolution. Participants were exposed to the mutual gains approach to negotiation, which has five key elements: 1. Know your best alternative to a negotiated agreement (BATNA) 2. Focus on interests, not positions 3. Invent options for mutual gain 4. Insist on objective criteria 5. Separate the people from the problem

The approach is suitable for resolving disputes on a continuum from parent-teacher conflicts to teacher contract negotiations. The training objective was to provide administrators with tools to identify and resolve conflicts before they escalate, thus saving time and resources. As a whole, the training team provided a wide array of new techniques to the participants for dealing with conflict and some ideas on the importance of establishing a protocol or system to handle recurring disputes in their schools.



(A Permanent International Criminal Court? cont.)

entire international community, not merely a single nation.

Among the nations most strongly supporting the idea of an international criminal court have been members of the European Union. These countries are familiar with the idea of international courts and authorities being given power to affect the lives of individuals. Many of their citizens and leaders have been in the forefront of the creation of international institutions designed to reduce the risk of a repetition of the horrors of the two World Wars.

Additionally a number of smaller countries, especially in the Caribbean, have sought to include in the jurisdiction of the ICC such transnational crimes as international drug trafficking and money laundering. These nations have been greatly affected by such crimes, yet have been unable to combat them effectively because of limited resources and the strength of international criminal organizations. While these nations were not successful in including drug trafficking and money laundering in the current ICC Statute, their efforts were important in spurring the round of negotiations that created the Statute.

### **Objections to the Court**

As noted above, several of the largest and most powerful nations have refused to sign the ICC Statute as currently drafted. These include three of the permanent members of the UN Security Council—the United States, Russia, and China. While the reasons for refusal vary, many members of these governments fear loss of national power to an international institution. Each of these nations has veto power over action by the Security Council.

As the ICC Statute is drafted, they would not have such power over the actions of the Prosecutor or Judges in the ICC. While the Security Council will have the authority to refer matters to the Prosecutor for investigation, it will not

have the authority to prevent the Prosecutor, under the supervision of judges, from initiating investigations.

The United States especially wanted controls placed upon the freedom of the Prosecutor to initiate investigations and prosecutions. Some members of the current administration and of the Senate are afraid that United States soldiers will become targets of politically motivated prosecutions.

Other critics believe that the sovereignty of democratic nation-states is the best guaranty of human rights protection. They argue that no international organization will in fact be given the power to interfere in the conduct of warfare, except at times that are politically opportune for the most powerful. Any justice that the ICC dispenses, they fear, will be inherently biased and will contribute to cynicism about more realistic possibilities for international law and cooperation.

### **The Next Steps**

Three major questions will be answered in the next few years:

First, will the Preparatory Commission provide Rules of Evidence and Procedure and other documents for the ICC that will convince nations that the Court is likely to be both workable and fair?

Second, will sixty nations be persuaded to ratify the ICC Statute and bring the Court into existence?

Third, will the great powers join in the ICC, or will a Court without the participation of those powers have any practical ability to bring prosecutions and deter crimes against humanity?

The last decades of the twentieth century have shown that the slogan "Never Again" is still an unfulfilled aspiration. The answers to these questions will go far to determining whether it is fulfilled in the next century.

## **SPRING 2000 BORAH TOPIC CHOSEN**

In spring of 2000 the annual Borah Foundation program at the University of Idaho will be entitled "Natural Resource Conflicts in the 21st Century." The topic will consider conflicts surrounding use of the earth's common resources, including land, water, air and all living organisms. The topic involves the resource needs and attitudes of developed and developing countries, as well as conflicts between those seeking low-tech versus high-tech approaches to interacting with resources. It also involves population, energy, lifestyle, and ideological considerations and has the potential to involve a wide range of disciplines and programs within the university.

The program will take place during the week of April 17-21, 2000, with exact times and locations to be announced in our fall newsletter. There will be three evening sessions, one with a keynote speaker, and two

evening debates on contentious issues in the northwest: 1) Columbia River system management and salmon; and 2) timber harvest on northwest public lands. The keynote address will present a broad international perspective on the issues while the debates will focus on regional issues and put them in a broad context.

The Borah Committee has also asked faculty members from UI and other local colleges and universities to propose 1-credit mini-courses dealing with the same topic to be taught during the spring semester of 2000. These will allow students with an interest in natural resource conflicts to look at an issue in more detail.

Watch the Martin Institute home page during fall 1999 for more detail as the program develops.

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## BORAH SYMPOSIUM FOCUSES ON NORTHERN IRELAND

The 1998-99 Borah Symposium was held September 14-18, 1998, on the subject of the conflict in Northern Ireland. The Symposium sponsored a two-part program composed of a week-long course for students, and evening presentations for the public.

The program was delivered by five scholars from the University of Ulster and Lancaster University. The team was lead by Seamus Dunn, the Director of the Centre for the Study of Conflict (CSC) at the University of Ulster. The other team members were Grace Fraser, Thomas Fraser, and Valerie Morgan, also from the CSC, and Feargal Cochrane, formerly of the CSC and now a member of the Richardson Institute at the University of Lancaster. The class and public sessions covered the major aspects of "the problems" in Northern Ireland and revealed the layers of complexity that make understanding the situation so difficult and the evolution of a peace accord so remarkable.

The five classes met for three hours each of the five weekdays from September 14 to 18. The titles of the five classes were "Northern Ireland: The General and Historical Background," "Politics and Parties: Constituencies of the Conflict," "The Institutions of a Divided Society," "The People of Northern Ireland, and "Symbols, Displays, Iconography." The sixty-five students who enrolled in the course came from academic programs across campus and included undergraduate and graduate students and members of the larger community. The class sessions were also integrated into Ellen Kittell's course in English History and Alan Rose's course on the European Union.

The three public sessions were entitled "A Long History: The Northern Ireland Conflict," "Education in a Divided Society," and "Politics, Culture, and Recent Events." The public sessions were each composed of presentations by two members of the team. These sessions involved students, faculty, members of the local community, and Professor Richard Moore and his Political Science students from Lewis-Clark State College.

The Borah Committee was chaired by Professor Ray Dacey of the College of Business & Economics. Prof. Dacey is a Martin Fellow and a member of the Martin Institute Advisory Board.

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## COEUR D'ALENE BASIN PROJECT UPDATE

In the July, 1998 newsletter we reported our participation as consultant to the Idaho Water Resources Research Institute (IWRRI) in connection with their dispute resolution work in Northern Idaho. IWRRI received a grant from the Environmental Protection Agency to investigate the use of a community-based environmental process in the Coeur d'Alene Basin. In addition to conducting preliminary interviews with various stakeholders, a chronology of milestone events and activities related to the environment of the Basin has been compiled.

Of particular interest was the discovery that a "Coeur d'Alene River and Lake Commission" was created by the Idaho State Legislature in 1931. The duties of the Commission were to "...study and investigate ways and means of eliminating from the Coeur d'Alene river and Coeur d'Alene Lake, so far as practical, all industrial wastes which pollute or tend to pollute the same, and to determine and recommend methods of preventing pollution detrimental to vegetation and domestic crops;

to public health or to the health of animals, fish or aquatic life, or detrimental to the use of waters for recreational purposes, and in the performance of such duties, the commission shall have the power to investigate the character of all wastes discharged into or deposited on the banks of said waters."

Nearly 70 years later many of the same issues and problems are still present. The IWRRI/Martin project will determine the feasibility of using community-based dispute resolution to resolve these long-standing issues. One hallmark of community-based environmental protection plans is that they must be locally developed by all interested citizens. Consequently, there is a higher probability that a plan adopted through such a process will be implemented. In the coming months we will continue to contact potential stakeholders to determine the degree to which a community-based environmental protection plan could support the economic, social, cultural, and political needs of the people and communities in the Coeur d'Alene Basin.



## THIRD YEAR FOR DISPUTE RESOLUTION INSTITUTE

*The program also offers specialized courses on topics related to dispute resolution.*

During the week of May 17-21 the Martin Institute will assist the UI College of Law with a weeklong mediation training institute, for the third year. From its beginning in May 1997 as the Idaho ADR Institute, the goal of the program has been to meet the growing demand for high quality dispute resolution courses in the Northwest at a reasonable price. Last year the program was renamed The Northwest Institute for Dispute Resolution to reflect its regional focus, with Professor Maureen Laflin of the UI College of Law as the Director. For the last three years, the Institute has offered at least three courses in mediation and dispute resolution. These courses are open to UI students and the general public.

Each year the Institute features nationally recognized faculty. In the past, instructors came from all over the country: the Straus Institute for Dispute Resolution at Pepperdine University School of Law in Malibu, California, the Woodstock Institute for Negotiation in Woodstock, Vermont, and the University of Texas School of Law in Austin, Texas.

At the core of the annual weeklong program are two forty-hour basic mediation courses, one for civil disputes and one for family. These two courses offer UI students and people interested in mediation a chance

to learn and explore the dynamics, benefits, and skills needed in third-party intervention in the settlement of civil and family disputes. Moreover, these two courses meet the Idaho Supreme Court and Idaho Mediation Association requirements for basic mediation training. The instructors for this year are very familiar with introducing the topic of mediation: the family mediation instructor, Stephan K. Erickson, was a member of the very first 40-hour divorce mediation training team in 1980 and the civil mediation instructor, Sam Imperati, trained the first mediators for the Idaho federal district court roster.

The program also offers specialized courses on topics related to dispute resolution. Past course topics include Negotiation for Business and Contracts, Public Policy Mediation, and an Advanced Mediator's Forum where experienced mediators could learn from one another. Both specialized courses offered this year, Logic and Legal Reasoning and Advanced Legal Writing, feature faculty from the Judicial College in Reno, Nevada and focus on the technical aspects of lawyering and judging.

For additional information or to register contact UI Conferences and Events toll free at 1-88-88-U-IDAHO (888-884-3246) or by e-mail at [conferences@uidaho.edu](mailto:conferences@uidaho.edu).

## MARTIN HOSTS STATE DEPARTMENT TOWN MEETING

On October 19 and 20 the University of Idaho and Washington State University held a joint foreign policy event at which two U.S. diplomats discussed major changes in foreign policy challenges faced by the United States since the end of the Cold War. The sessions were initiated by Martin Director Richard Slaughter through contacts in the State Department. The Foley Institute at WSU coordinated events on that campus. The evening session was opened by WSU President Smith, and UI President Hoover moderated the panel.

The two speakers were Ambassador Mark Hambley, U.S. special representative to the U.N. Commission on Sustainable Development and special negotiator on climate Change, and Anne Harrington, Senior Coordinator for non-proliferation programs. They pointed out ways in which traditional concerns with the policies of states have been supplanted by the effects of the dissolution of the Soviet Union and the policy impacts of ongoing change in environment.

Anne Harrington has spent several years in negotiation with the Russian Government on elimination of chemical and nuclear weapons. This work is part of a larger effort to prevent the leakage of nuclear materials to non-nuclear states and to find suitable work for former Soviet scientists still essentially trapped in the old secret cities with declining living standards and little to do.

Both Harrington and Hambley are also concerned with biological impacts stemming from man's manipulation of the environment. For example, while the last vials of smallpox virus are scheduled to be destroyed this year, global warming has changed the course of rivers in northern Russia in such a way that graves of smallpox victims may be eroded and the virus potentially released. Effects of over-fishing, pollution, ozone depletion, and scarcity of fresh water also generate potentially significant conflict. Thus, the sources of future conflict and the mechanisms needed to deal with them have materially changed during the last decade.



## International Studies: A Truly Interdisciplinary Education

*Our goals for this coming year are to provide the students with maximum support in pursuing their majors and minors in International Studies.*

The International Studies Program, which is administered by the Martin Institute, is an interdisciplinary major at the University of Idaho that culminates in a B.A. within the College of Letters and Sciences. A minor is also offered for those students that want the international background that supports their selected major. Presently, 39 students are enrolled as majors in this program and 12 are carrying the minor. Each student in the major selects an issue concentration from international relations, international economics and business, or global resources and development, depending upon their specific interests and goals. In addition, the students select a regional emphasis that supports their language and cultural education. A number of departments at the University of Idaho provide the courses that support these selections, thereby insuring a truly interdisciplinary education for our students.

Since accepting the responsibility for administering this degree granting program, the Martin Institute has been working to improve the opportunities and service to the students. With the addition of the program coordinator position in the Martin Institute, more emphasis is being placed on advising and coordination of the international studies program. This involvement insures that this program will provide the services that will attract more students and support their efforts of obtaining the appropriate education for the major and minor.

Most recently, an agreement was reached

between the Martin Institute and the International Programs Office that clarifies the procedures for International Studies students completing the study abroad requirement in the major. This agreement insures that the Martin Institute will be directly involved in supporting the student's experience abroad and that the programs selected are appropriate for credit in the International Studies degree program.

The Martin Institute is working to develop a strong working relationship with the different departments on campus that provide the bulk of the instruction for International Studies students. We are actively involved in being valuable contributors to the numbers of students that enroll in the various courses offered by the different departments, thereby supporting those departments in their efforts to maintain reasonable numbers of students in their course programs.

Our goals for this coming year are to provide the students with maximum support in pursuing their majors and minors in International Studies. We will be actively involved in their advising, in helping to select the best study abroad program to meet their needs, and to continually work with the separate departments to ensure that the students are receiving the best interdisciplinary education possible at the University of Idaho. These activities make the Martin Institute one of the truly interdisciplinary administrators of a major degree granting program on the campus.

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***Yes, I would like to help the Martin Institute grow!***

Gift Amount \$ \_\_\_\_\_ Pledge Amount \$ \_\_\_\_\_  
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In memory of Dr. Boyd A. Martin

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## MISSION STATEMENT

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The Martin Institute for Peace Studies and Conflict Resolution is a multi-disciplinary center at the University of Idaho, founded in the belief that war and violence are neither necessary nor inevitable. Its purposes are to encourage education and research to advance peace at all levels, and also to resolve local and regional conflicts with alternatives to confrontation and litigation. Institute scholars seek to understand the major causes of disputes and violence and to provide information, training and assistance for the resolution of conflicts. The institute brings together scholars, students and present and future leaders to develop the knowledge needed for the ongoing and new challenges of establishing peace as a basis for long-range social and economic progress.

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