

Security Council

CIMUN

Topic 1: Ensuring the fair investigation, prosecution, and judicial
accountability of all parties under the ICC

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Introduction

The International Criminal Court is the first of its kind; a permanent international court which aims to investigate, prosecute and try individuals who have committed crimes which pose serious international threats. The 4 main crimes for which individuals are tried on the ICC are: genocide, crimes against humanity, crimes of aggression and war crimes. The ICC's primary mission is to prevent criminals who have committed crimes which pose an international threat from facing impunity in their countries of origin, and thus working towards preventing such heinous crimes from occurring in the future.

Key Terms

The ICC: An abbreviation used to refer to the International Criminal Court

Genocide: The mass murder of a group of individuals who are all members of a specific ethnic, racial, national, or religious group which is done with the intent of wiping out said group of individuals.

Crime against humanity: According to the ICC, a crime against humanity can be defined as one which is "committed as part of a widespread or systematic attack directed against any civilian population" (Britannica). There are 15 crimes against humanity which are explicitly identified in the Rome Statute treaty, consisting of crimes such as: enslavement, persecution, enforced disappearance, torture, imprisonment, murder, extermination, rape, apartheid, deportation, sexual slavery, and more.

War Crime: An act carried out during war which violates the internationally-established rules of war. A war crime can consist of: the use of child soldiers, the kidnapping and torture of POWs (prisoners of war) - whether they be civilians or soldiers, or the intentional directing of attacks towards buildings dedicated to charitable purposes (i.e. science, education, art, religion, etc.).

Crime of aggression: A crime in which an individual engages in the planning, initiation, or execution of an act of aggression which violates the United Nations Charter by using state

military force resources. Crimes of aggression are categorized by severity in judging the character, gravity and scale of the committed crime.

Personal immunity: A protection from prosecution which is often granted to individuals in positions of high power, as a result of the importance which they have in their government.

Background Information

Overview

It was on the 17th of July, 1998, that the International Criminal Court was founded, after 120 states supported the adoption of a founding treaty, recognised as the Rome Statute of the International Criminal Court. Since being set into action in 2002, the ICC has since been presented with 28 cases which have collectively resulted in:

- 35 arrest warrants
- 17 detainees at the ICC detention center
- 8 convictions
- 4 acquittals

Today, the ICC has expanded to include various sub-programmes which all collaborate effectively to ensure the ICC's independence from governmental judicial systems and overall reliability. The ICC has a victim and witness protection programme which utilised operational and procedural protective means to ensure the safety of civilians who have been affected by a crime. In accordance with the Rome Statute's policy, the ICC engages in outreach programmes to communicate directly with the civilians of affected communities in order to gain outside perspective and allow civilians to gain an increased sense of ownership over the case at hand. In addition, to certify that prosecution is independent from any governmental judiciary systems, the ICC has an independent Office of the Prosecutor, in which selected prosecutors are responsible for executing preliminary examinations and investigations. The prosecutor is the only individual who is capable of presenting cases to the Court.

An important feature of the ICC to take note of, is the fact that under the 'principle of complementarity' policy, the ICC relies on individual nations to identify, arrest, and appropriately prosecute/extradite suspected persons for external prosecution at the ICC. The

ICC has no real jurisdiction over the identification of individuals involved in the 4 crimes which the ICC is responsible for investigating. It is only under special circumstances, such as a nation not possessing the resources needed to investigate and prosecute - or plainly refusing to prosecute suspected individuals, that the ICC is able to exercise its jurisdiction and interfere with national judicial systems.

The ICC's credibility and ability to remain neutral has also been questioned and been subject to immense speculation, after thus far only having prosecuted individuals of origin to African member states.

Timeline

February, 1995: The Coalition for the International Criminal Court was founded, dedicating themselves to being activists for the development of a safe, fair, and independent ICC.

17th of July, 1998: The Rome Statute of the International Criminal Court treaty was adopted by 120 supporting states, signifying the establishment of the ICC.

1st of July, 2002: The ICC was officially put into effect, after receiving ratification from 60 states.

June 2010: Amendments were made to the Statute of Rome, defining Crimes of Aggression to be offenses prosecutable by the ICC.

2016: Russia, Cambodia, South Africa, and Burundi withdrew from the ICC - all (apart from Russia) out of disapproval of the fact that 9 out of the 10 judicial cases which the ICC was involved in at the time were based in African countries.

Major Countries and Organizations Involved

States Parties: The ICC is funded by all of its member states. Currently, there are 123 states parties who have ratified the Rome Statute and show continued support for the ICC through monetary funding on a regular basis. Of the States Parties: 25 are Western European and others, 28 are Latin American and Caribbean, 18 are Eastern European, 19 are Asia-Pacific, and 33 are African states. A list of the 123 states parties can be found [here](#).¹ Today, states parties are responsible for providing the ICC with monetary assistance and judicial resources in order to ensure the ICC remains a functional and independent organization.

Coalition for the International Criminal Court: The Coalition for the International Criminal Court is a NGO which was founded in February of 1995. Since then, the organization has grown to amass the support and collaboration of over 2,500 other organizations worldwide, which all work as the Coalition for the International Criminal Court to continue reinforcing the organization's mission.

The Netherlands: The Hague, Netherlands acts as the host state for the ICC. The Netherlands has expressed hosting the ICC to be a dutiful way of upholding its constitutional obligation of maintaining international legal order.

Russia: Russia is not a member of the ICC. Despite signing on to the Roman Statute in 2002, and acting as a state party to the ICC, in 2016 Putin decided to withdraw Russian support for the ICC after being notified two days previously that the ICC would be required to become involved in the ongoing war between Russia and Ukraine. As a result, the Russian government became concerned about their use of war tactics in Ukraine being exposed to the ICC and decided to withdraw from the organisation before being exposed.

China: China is not a member of the ICC. Being a state party to the ICC requires that countries participate in the gathering and presentation of evidence, building of cases,

¹ "States Parties - Chronological List." ICC - CPI, asp.icc-cpi.int/en_menus/asp/states%20parties/Pages/states%20parties%20_%20chronological%20list.aspx.

providing of logistical assistance, and prosecution of individuals accused of the 4 crime types covered by the ICC. Dating back since the 1990s, China has been a diplomatic ally of Syria's, having worked to provide weapons to fund and support the Syrian government's side of the Syrian civil war. Having been linked to the use of chemical warfare against its own citizens, Syrian president Bashar al-Assad is not a person who the Chinese government would ideally want to be linked to, were they to join the ICC, as it would also implicate China in the use of war crimes in Syria.

The United States of America: As of today, the USA is not a state party to the Rome Statute. When the Rome Statute had initially been written up, the Statute had been ratified and signed by president Bill Clinton. However, shortly after the ICC was officially established later in June of 2002, US president George W. Bush sent a letter to the UN Secretary-General explaining that the US no longer possessed an interest in supporting the Roman Treaty or the formation of the ICC - in fear that if the US joined the ICC, American soldiers who had committed war crimes would be at risk of prosecution. One notable crossover between the ICC and the USA in recent years, occurred in 2019, when the VISA of an ICC chief prosecutor was revoked after the chief prosecutor had expressed her intent of investigating war crimes by US soldiers during their time in Afghanistan. In response to the international community responding to the decision as a sign that the US is trying to cover up war crimes committed by US soldiers, a US state department spokesperson responded by saying ““The United States will take the necessary steps to protect its sovereignty and to protect our people from unjust investigation and prosecution by the international criminal court,” and that “VISAs will be denied to any ICC officials who are determined to be directly responsible for any ICC effort to conduct a formal investigation of US or allied personnel without the relevant country's consent.”² A statement which has since sprouted more discussion on whether the ICC is a threat to nations' right to sovereignty and national jurisdiction.

² Borger, Julian. "US Revokes ICC Prosecutor's Visa over Afghanistan Inquiry." The Guardian, 5 Apr. 2019, www.theguardian.com/law/2019/apr/05/us-revokes-visa-of-international-criminal-courts-top-prosecutor.

Relevant UN Resolutions and Reports

Rome Statute:

Formulated and adopted in 1998, the Rome Statute served as the founding treaty which signified the establishment of the ICC. Today, the Statute continues to serve as the ICC's guiding legal instrument alongside several other of the ICC's core guiding texts.³

Preparatory Commission for the International Criminal Court:

A series of 10 Diplomatic Conferences hosted by the United Nations from which served the purpose of preparing for the adoption and implementation of the Rome Treaty. The aim of the Preparatory Commission, was to work out the definitions of which crimes would be considered eligible for submission to the ICC, as well as under what conditions the ICC will be able to exercise its jurisdiction in determining a suitable punishment for the presented crime.

Review Conference:

Held in Kampala, Uganda, the Review Conference was held in June of 2010 with the purpose of reviewing the list of crimes prosecutable by the ICC. At the conference, there were 2 primary amendments made to the Rome Statute of the ICC:

- i. The first amendment details that the use of various harmful weapons in non-international settings which have been criminalised in international settings are grounds for prosecution.
- ii. The second amendment defines the term 'crime of aggression' and details that crimes of aggression are also now offences which can be presented to the ICC alongside crimes against humanity, genocide, and war crimes.

Possible Solutions

Delegates should take into account the ways in which non-profit organizations that designate their work towards the fair judicial accountability of the ICC (for example, the Coalition for the International Criminal Court) can be supported by individual states and national governments. This support could be shown in the form of ensuring that the ICC is supplied with proper personnel, judiciary officials and necessary general resources in preparation for when a case appears in front of the court. Encouraging the work of said organizations will

³ "Resource Library: Core ICC texts." International Criminal Court, www.icc-cpi.int/resource-library#coreICCTexts.

prove very important in ensuring the court is able to remain neutral due to their non-denominational nature in not identifying with any one governmental body.

There has been a lot of debate about the relationship between the ICC and the UNSC, regarding whether or not the SC should be allowed to refer charged individuals to the ICC, and whether said individuals should be allowed to keep personal immunities when being tried by the ICC. The debate mainly stems from the idea that, whilst the UNSC providing high-level governmental officials with personal immunities serves to maintain international peace, said personal immunities can also interfere with the ICC's ability to prosecute accountably. Take the case of former Sudanese president Omar Al-Bashir, who was charged with 5 different counts of crimes against humanity. After uncovering the crimes committed by Al-Bashir, the UNSC held a meeting on March 31st, 2005, during which Resolution 1593 was adopted, which permitted all states parties of the ICC the ability to arrest Al-Bashir, in spite of the personal immunity which he had in being a governmental Head of State. Resolution 1593 was cause for a lot of controversy, because it erased Al-Bashir's right to a feature of customary international law - a right which the UNSC should ideally have also advocated for in the interest of preventing major international conflict. The main arguments presented regarded whether the ICC should have the power to waive Al-Bashir's immunity whilst acting under the UN Charter against the Head of State of one of its own states parties.

Many speculators have argued that confusion regarding the efficacy of the ICC in relation to its extent of jurisdiction can be attributed to the fact that whilst the Rome Statute's Preamble declares that: 'these are serious crimes which threaten the peace, security and well-being of the world,'⁴ the terms 'peace' and 'justice' are not explicitly defined. Thus, there is presented an opportunity for disparity from person-to-person regarding the legitimate meaning of what 'peace' and 'justice' really are - and therefore what the ICC is truly granted jurisdiction over.

Finally, delegates should take note of the importance which the funding required by all state parties to the ICC has in influencing any geographical prejudices which the ICC may have.

⁴ "The International Criminal Court: Limits, Potential and Conditions for the Promotion of Justice and Peace." Taylor & Francis, 24 2013, www.tandfonline.com/doi/full/10.1080/01436597.2013.800737.

After receiving backlash for investigating a disproportionate number of cases in nations that are members of the African Union, experts began speculating as to whether state parties which are members of the African Union were seen as ‘easy targets’ by the ICC, as a result of not being able to provide as significant of a quality of judicial and monetary funding to the ICC in comparison to that of other European state parties. Delegates should discuss to what extent the ICC’s mission of establishing international justice and peace is reliant on the monetary funding received from its state parties.

A resolution should address the ways by which the ICC can act as a culmination of intelligence from all over the globe, and exercising jurisdiction to ensure neutrality and fairness to all involved parties, whilst still respecting each country’s right to judicial sovereignty and independence.

Bibliography

"About the International Criminal Court." Icc-Cpi.Int, 2019, www.icc-cpi.int/about.

"How the Court Works." Icc-Cpi.Int, 2019, www.icc-cpi.int/about/how-the-court-works.

"States Parties - Chronological List." Icc-Cpi.Int, 2019, asp.icc-cpi.int/en_menus/asp/states%20parties/Pages/states%20parties%20_%20chronologica1%20list.aspx. Accessed 2 Aug. 2019.

"Resource Library." International Criminal Court, www.icc-cpi.int/resource-library#coreICCtexts.

Understanding the International Criminal Court. 2013, www.icc-cpi.int/iccdocs/pids/publications/uicceng.pdf.

Zaken, Ministerie van Buitenlandse. "International Legal Organisations - International Organisations - Government.NL." Wwv.Government.NL, 13 Oct. 2011, www.government.nl/topics/international-organisations/international-legal-organisations#:~:text=The%20Netherlands%20is%20the%20host. Accessed 8 Aug. 2020.

"Guide to the Report of the Preparatory Commission." legal.un.org/icc/prepcomm/report/prepreport.htm.

"UN General Assembly - Report of the International Criminal Court." Welcome to the United Nations, Rome Statute of the International Criminal Court, www.un.org/en/ga/62/plenary/icc/bkg.shtml.

Borger, Julian. "US Revokes ICC Prosecutor's Visa over Afghanistan Inquiry." The Guardian, 5 Apr. 2019, www.theguardian.com/law/2019/apr/05/us-revokes-visa-of-international-criminal-courts-top-prosecutor.

"ICC Underlines Impartiality, Reiterates Commitment to Cooperation with the African Union." International Criminal Court, 29 May 2013,
www.icc-cpi.int/Pages/item.aspx?name=pr908.

"The International Criminal Court: Limits, Potential and Conditions for the Promotion of Justice and Peace." Taylor & Francis, 24 2013,
www.tandfonline.com/doi/full/10.1080/01436597.2013.800737.

"The International Criminal Court: Limits, Potential and Conditions for the Promotion of Justice and Peace." Taylor & Francis, 24 2013,
www.tandfonline.com/doi/full/10.1080/01436597.2013.800737.

"Six Countries That Aren't Part of the ICC." Nomad Capitalist, 26 Dec. 2019,
nomadcapitalist.com/2018/08/29/countries-arent-part-of-icc/.

"United States." Coalition for the International Criminal Court,
www.coalitionfortheicc.org/country/united-states.

"Why the ICC Won't Get It Right – The Legal Nature of UN Security Council Referrals and Al-Bashir Immunities." EJIL: Talk! – Blog of the European Journal of International Law,
www.ejiltalk.org/why-the-icc-wont-get-it-right-the-legal-nature-of-un-security-council-referrals-and-al-bashir-immunities/.