

ODUMUNC 2009 Issue Brief
Sixth Committee (Legal)
Report of the
International Criminal Court
Ben Lamb



17 July 2008 marked the 10-year anniversary of the inception of the International Criminal Court, a body independent of, but integrated with, the United Nations Organization.

Introduction

The International Criminal Court is an independent court designed to be a permanent body to hear charges of genocide, war crimes, and crimes against humanity. It was conceived in a document known as the Rome Statute, which was drafted 17 July 1998 and entered into force in 2002. The court exercises jurisdiction over individuals in states which have ratified the Rome Statute, and over cases referred to it by the UN Security Council. 108 states have currently ratified the statute; 40 more have signed, but not ratified it. Notably, neither China, Russia, India, nor the United States have joined.

Background

The International Criminal Court is headquartered in The Hague, Netherlands. It should not be confused with the International Court of Justice, a UN institution also located in The Hague. It was designed to be a permanent solution to the creation of *ad hoc* international war crimes tribunals. Such *ad hoc* tribunals had been created to seek justice in the aftermath of the genocide in Rwanda (1994) and the atrocities committed in the Balkans during the breakup of Yugoslavia in the 1990s. The Court was originally intended to be able to exercise universal jurisdiction. However, objections to this by the United States led to the ICC's jurisdiction being limited to: people committing relevant crimes who are from states that are parties to the Rome Statute; people committing relevant crimes in the territory of states that are parties to the Rome Statute; cases referred to the court by the UN Security Council. The court is also limited to prosecuting crimes that occurred after the Rome Statute came into effect in 2002, or after a state party ratified the Rome Statute, whichever comes later. The Rome Statute also provides definitions of genocide, Crimes Against Humanity, and war crimes. Some states have argued that these definitions go beyond what had been previously accepted as definitions in customary international law, or that they are too vague or are missing important points. See country positions for more information.

Current situation

Currently, the ICC is prosecuting cases relating to situations in four states: Uganda, the Democratic Republic of Congo, the Central African Republic, and Darfur in the Sudan. In 2003 the Ugandan government authorized the ICC prosecutor to investigate the situation in northern Uganda. The leaders of rebel group known as the "Lord's Resistance Army" stand accused of war crimes and crimes against humanity including attacking civilians, rape, pillage, recruiting child soldiers, murder, and enslavement. None of the rebel leaders indicted have yet been arrested; however, two of the five accused have died since being indicted. In Congo, four different members of rebel groups have been indicted, and three have been arrested. The trial of Thomas Lubanga, the first person ever put on trial by the ICC, has been halted due to issues of

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evidence collection by the prosecution. The ICC has detained the former vice-president of the Democratic Republic of the Congo, Jean-Pierre Bemba, at the behest of the government of the Central African Republic, for crimes against humanity allegedly committed in the CAR. Bemba is accused of brining his Congolese paramilitary group into the CAR in order to suppress a rebel movement in Bangui, the CAR capital. The UN Security Council has referred the case of the humanitarian crisis in the Sudan to the ICC, which has issued arrest warrants for Sudanese minister Ahmad Muhammad Harun and militia leader Ali Kushayab on charges of war crimes and crimes against humanity.

Role of the United Nations

On the 10th anniversary of the Rome Statute, the UN General Assembly issued A/RES/62/12 detailing the progress of the ICC to date and its relationship with the United Nations. There exists between the UN and the ICC a Relationship Agreement that provides for the working relationship between the two bodies, allowing them to cooperate in areas that are mutually beneficial. Additionally the ICC has established a liaison office with UN Headquarters in New York, which allows for frequent contact between the two agencies and easy consultation between the UN Secretary-General and the ICC. Additionally, because of the design of the Rome Statute, the United Nations Security Council is able to refer cases to the ICC. This ability is intended to supersede the UN's previous role in creating *ad hoc* war crimes tribunals, as it did for crimes committed in Rwanda and Yugoslavia (mentioned above). Certain non-legislative functions of the ICC are conducted in New York allowing for proximity to UN Headquarters.

Country positions

Almost all of the states in Europe and Latin America are parties to the ICC, as are many countries in Africa and the majority of the English-speaking world. Only a few Asian countries are members: Jordan, Armenia, Afghanistan, Tajikistan, Mongolia, Cambodia, South Korea and Japan. Notably, several major powers have taken positions against the ICC: Russia, China, the United States, Israel, and India. India has stated that it as the Rome Statute does not specifically mention the use of nuclear weapons as a war crime, it sends a dangerous signal to the community of nations. China has stated that it believes the definition of war crimes in the Rome Statute is much broader than what it been previously defined under customary international law. The United States' position on the subject is varied. Although an original signatory to the Rome Statute, it subsequently "unsigned" the document in 2002. The United States has been instrumental in previous prosecutions of war crimes, such as the Nuremberg Trials at the end of the Second World War, and is based on principles compatible with the ICC such as due process, the rule of law and the importance of fair, independent courts. However, it is unlikely that the United States could ratify the Rome Statute without modifying its constitution, as was necessary for Ireland. The ICC's due process does not include the American constitutional guarantee of a trial by jury, as it would be extremely difficult to assemble an fair international jury capable of rendering an informed verdict in such a case. Additionally, certain right-wing elements within

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the United States feel that the ICC would significantly infringe US sovereignty, as theoretically the ICC could prosecute US citizens who committed crimes on US soil, a domain otherwise exclusively reserved to the United States' court systems.

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Recommended Reading

UN A/RES/62/12, "Report of the International Criminal Court."

<http://daccessdds.un.org/doc/UNDOC/GEN/N07/464/49/PDF/N0746449.pdf?OpenElement>

Negotiated Relationship Agreement between the International Criminal Court and the United Nations.

http://www.icc-cpi.int/library/asp/ICC-ASP-3-Res1_English.pdf

Rome Statute of the International Criminal Court.

http://untreaty.un.org/cod/icc/statute/99_corr/cstatute.htm

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William A Schabas, *An Introduction to the International Criminal Court* (2nd ed.), Cambridge University Press (2004).

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Bruce Broomhall, *International Justice and the International Criminal Court: Between Sovereignty and the Rule of Law*. Oxford University Press (2003).

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"The Limits of the International Criminal Court: Justice or Expediency in Sudan?" *The Economist*, web version of 17 July 2008 print edition.

http://www.economist.com/opinion/displaystory.cfm?story_id=11750485