

Committee: Security Council

Topic: Question of reform of the International Criminal Court (ICC)

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Summary

The International Criminal Court is based in The Hague and was created by the 1998 Rome Statute coming into force in 2002. The International Criminal Court is a separate court to the International Court of Justice (ICJ) and is not a part of the UN family of organisations. The ICC is primarily responsible for investigating and putting on trial individuals who have been accused of some of the most horrific and atrocious crimes in the world. Crimes such as genocide, war crimes and crimes against humanity.

In coming years, the crime of aggression will also come under the jurisdiction of the court.

Furthermore, the aim of the court is to work in addition to national courts and legal systems but not to replace them. The ICC only tries a case where a national court system has not been willing or able to bring an individual to justice. The ICC is a court of last resort.

Although 124 states are signed up to the Rome Statute, some countries are not bound by the full requirements of the court. These include the USA, China, India, and Israel. Furthermore, in October 2016, the ICC received a substantial blow as South Africa, Burundi and the Gambia announced that they were withdrawing from the Rome Statute, and it is thought that more African countries may follow. This is due to a critical perception among African countries that the ICC is biased against Africans. Many investigations and trials carried out by the ICC have been on Africans. Moreover, arrest warrants have only ever been issued against Africans. Due to this some African governments believe that this makes the ICC appear to be an overruling colonial organisation.

A more recent blow to the ICC was in 2016 when Russia removed its signature from the Rome Statute, as it is believed that Russia would receive punishment over the annexation of Crimea and its presence in the Syrian Civil war.

Another key and controversial area of the ICC is that the ICC could breach state sovereignty by prosecuting citizens of states that have not signed or ratified the Rome Statute.

Definition of Key Terms:

Rome Statute – The Rome Statute of the International Criminal Court is the treaty that established the International Criminal Court. It was devised at a diplomatic conference in Rome on the 17th of July 1998 and officially came into power on the 1st of July 2002.

Crime of Aggression - "the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State"

Despots – A ruler or other person who holds absolute power and control. Typically uses their power in an oppressive and cruel manner.

Annexation – "Concept in international law relating to the forcible acquisition of one state's territory by another state and is generally held to be an illegal act."

Genocide – "The deliberate killing of a large number of people from a particular nation or ethnic group with the aim of destroying that nation or group"

State sovereignty – Is a political entity that is represented by one centralised government that has sovereignty over a geographical area.

Background Information

The creation of the International Criminal Court can be traced back to the Post World War 2 Nuremberg trial when it was established that an individual can be accountable for international crimes and that it can be applied throughout the governmental hierarchy or military chain of command. Furthermore, the ICC roots can also be found when the General Assembly adopted the "Convention on the Prevention and Punishment of the crime of Genocide" in 1948.

Emphasises on creating an International Criminal Court can also be evident when the UN Security Council established an ad hoc International Criminal Tribunal for Rwanda and the former Yugoslavia to hold individuals accountable for the atrocities committed in the genocides in the years 1993 and 1994.

The International Criminal Court (ICC) is a permanent court that replaces the tribunals that have been used to prosecute suspected war criminals and despots. The standing nature of the ICC is meant to ensure that all tyrants who may wish to consider committing crimes will be deterred from doing so.

Over the years, perceptions have grown that the ICC has not fulfilled the expectations set out by its founders. For example, the court's proceedings are inefficient and lengthy. The majority of those accused are still at large, including Omar al-Bashir, the former president of Sudan who was only sentenced to two years in prison for his role in the coup. Some €1.5 billion has been spent, and there have very few convictions for the core international crimes.

The vision of the ICC is to present a new approach to global justice based upon the centrality of human rights. However, it soon became evident that sovereign state self-interest would undermine the court's liberal intentions. The reliability and succession of the court can also be debated even before its existence as when the Rome statute was voted upon, 21 member states abstained and seven voted against it thus showing that right from the start its "International scope" was highly doubted.

On the other hand, the ICC is engulfed by controversial beliefs. For example, the most common criticism of the Court is that it is a perfect recipe for the intrusion into the affairs of sovereign states and that it is a political and bias western tool.

Key ICC cases

- The ICC successfully prosecuted the Congolese warlord Thomas Lubanga for illegally recruiting and deploying Child soldiers in the years 2002 and 2003. The ICC sentenced him to 14 years.
- The case against Kenya's President Kenyatta in 2014 for five counts of crimes against humanity allegedly committed during the 2007-2008 post-election violence in Kenya was withdrawn.
- The case against the Ivory Coast's former President Laurent Gbagbo on crimes against humanity including murder, rape, other forms of sexual violence, persecution and inhumane acts was acquitted.

Furthermore, the ICC faces several international concerns. Firstly, the United States played a crucial role in the establishment of the Rome Statute that produced the ICC. However, leaders of the United States strongly believe that the ICC has no legal jurisdiction, authority, or legitimacy over the USA. As a result of this, the United States is not a signed member.

Secondly, China is not a signatory to the ICC. China has very few overseas military commitments and thus sees the jurisdiction of the ICC over its military as being non effective. Furthermore, China is very reluctant to sign to the ICC due to its involvement and thus significant investigation over the situation of Tibet as well as some of its controversial internal policies.

Thirdly Russia was again a central player in the establishment of the ICC has removed its signature from the Statute amidst fears that Russia will face investigation and punishment into the annexation of Crimea and Russian involvement in the Syrian Civil War.

Finally, one of the major controversial and highly debated points that engulfs the ICC is the number of accusations and centralized focus on African states. The ICC has only successfully convicted African citizens. As a result, many African states view the ICC as a western political tool and a modern-day colonial tool. Burundi became one of the first countries to withdraw its membership due to accusing the ICC of targeting Africans for prosecution.

Major Countries and Organizations Involved

- **International Criminal Court**
- **The State Parties of the Rome statute:** At current 123 countries are part of the Rome Statute however this number is liable to fluctuate due to African nations contemplating removing their signatures from the statute as well as nations such as Russia also deciding to withdraw their signatures from the binding publications of the Rome statute and the ICC.
- **United States:** Although the United States played a central role in the setting up of the Rome statute and as a result the ICC, the United States strongly believes that the ICC has no legitimacy, authority, nor jurisdiction over the United States and that the United States will prosecute international criminals with their own legal system.
- **China:** China is not a signatory to the ICC. Moreover, due to China's increased involvement in Tibet and controversial Internal policies and actions. China is extremely sceptical to allowing the ICC to operate Jurisdiction within its state.
- **India:** India is not a signatory to the ICC as India believes the ICC would threaten Indian sovereignty. Furthermore, India has deep concerns regarding the protection of its troops across its borders as well as the UN peacekeepers that India provides as they are susceptible to possible allegations of human rights violations.
- **Israel:** Israel does not have membership to the ICC. This is due to the Israel-Palestine conflict. However, the ICC has ruled that an investigation is required due to the situation between Israel and Palestine and analysing the possibility of war crimes committed by either side.
- **Russia:** Russia like the United States also played a central role in the establishment of the Rome statute. However, in 2016 Russia withdrew its signature from the Statute amidst rising speculation that Russia would face investigation and punishment for the Annexation of Crimea and Russian involvement in the Syrian Civil War.

Timeline of Events

Date	Description
1998	– Rome Statute is created and signed: The Rome Statute is the treaty that established the International Criminal Court.
2002	– Rome statute is ratified and enters force.
2003	– ICC first Judges and Prosecutors take oath. Situation 1: Uganda. In which the ICC was invited to investigate crimes committed by the Lord's Resistance Army that had been fighting the Ugandan government for years.
2004	– The trust fund for victims is inaugurated. Second ICC deputy Prosecutor takes oath. Situation 2: Democratic Republic of Congo. The investigation is still going on regarding war crimes and alleged crimes against humanity that have occurred in the DRC since July 2002.
2005	– Situation 3: Darfur, Sudan. The situation similar to the DRC is an ongoing investigation by the ICC into potential crimes of genocide, war crimes and crimes against humanity.
2006	– First hearing starts. Pre-trial hearings ensure there is sufficient evidence for the trials to be carried out fairly.
2007	– Situation 4: Central African Republic. The ICC opened the case in 2014 for alleged war crimes and crimes against humanity in the context of renewed violence dating back to 2012.
2008	– ICC Registrar takes oath. 10 th Anniversary of the Rome Statute.
2009	– First trial begins
2010	– Review Conference. Elders visit. Situation 5: Kenya. The ICC investigated alleged crimes against humanity committed in the context of post-election violence in 2007/2008.
2011	– 17 th July: International Criminal Justice Day.
Situation 6:	Libya. In which the ICC investigated potential war crimes and crimes against humanity in Libya from the year 2011.
Situation 7:	Cote d'Ivoire. The ICC investigation analysed possible crimes within the government's court jurisdiction.
2012	– First Verdict. New Prosecutor. Current and continuing Judges.

Relevant UN Treaties and Events

- 1998 Rome Statute: The 1998 Rome Statute is the treaty that established the ICC. Through the Rome statute, the ICC is able to give a voice and face to countless international victims as well as prosecute international criminals in a fair judicial proceeding.
- Article 3 of the European convention on human rights prohibits torture and inhuman or degrading acts of punishment.
- Amendment to article 8 of the Rome Statute of the ICC – Kampala 2010. Article 8 of the European convention on human rights provides a right to respect a person's private and family life, a person's home and a person's correspondence in accordance with law.
- Article 12 states that the ICC may exercise its authority and jurisdiction over a crime if the state is a member of the statute or has accepted the court's legal declaration.
- Article 40 states that judges must remain independent in the performance of their functions and those judges are not to interfere in activities that can obscure their legal functions.
- Article 123 adopts that every seven years the Secretary General of the UN shall hold a review conference to see if any amendments need to be added to the Statute

Possible Solutions

- A main possible solution is to maintain a highly adaptable and efficient leadership team. To maintain a highly tuned and effective leadership the ICC needs to regularly assess those working for it as well as elect new members to the leadership team. By adopting this method, the court will be able to more effectively clarify the legal standards of the court and apply these standards efficiently to legal proceedings and investigations. Another point that could significantly increase the effectiveness of the ICC is producing a new plan between the ICC and its member states. Furthermore, it must be stressed that member states must stand up and support the ICC in its core mission to be judicially independent from external international pressures. As a result, members should aid the ICC by providing resources and documentation/evidence in order for the function of the ICC to be carried out to its maximum operability.

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