

Committee: Legal Committee

Issue: The issue of countries not signing the Rome Statute of the International Criminal Court

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Position: Co-chair

PERSONAL INTRODUCTION

Dear delegates,

My name is Maria Polychronopoulou and I am an IB1 student at Pierce – The American College of Greece. It is my honor to serve as a Co-Chair in the Legal Committee of the 4th ACGMUN. My MUN experience began last year and since then I have served as a delegate and an ambassador in 7 conferences. Participating in MUN conferences for the past two years has made me more aware of the world around me and it has played a rather significant role in the person I am today.

In the following study guide, you will find information regarding the issue of countries not signing the Rome Statute of the International Criminal Court. I hope this study guide will help you understand the issue and provide you with a strong basis on the topic. I encourage you all to conduct further research, so you can understand the issue in depth. Having said that, if you have any questions or problems regarding the topic, do not hesitate to contact me via email (maria.polychronopoulou@acg.edu), I will be more than happy to answer.

I wish you luck with your preparation and I am looking forward to meeting you all at the conference!

Best regards,

Maria Polychronopoulou

TOPIC INTRODUCTION

The Rome Statute of the International Criminal Court (ICC) was adopted in Rome, Italy on July 17, 1998, and was put into force on July 1, 2002. It is the official treaty that created the ICC and its functions, authority and structure and also established the four core international crimes: genocide, crimes against humanity, war crimes and crimes of aggression. As of November 2019, 123 member states have signed the statute. The ICC has jurisdiction over offenses only if they are committed in the territory of a state-party. More than 70 Member States are still not parties to the Rome Statute, which causes a variety of problems. For example, perpetrators of crimes committed in non-state parties cannot be brought to justice, as the ICC cannot prosecute them.

The ICC has jurisdiction to prosecute individuals only for the aforementioned crimes, only when national courts are unable to do so themselves or when the Security Council requests the court. Usually, that happens when a case does not fall under the ICC's jurisdiction or to defer an investigation. States continue to withdraw from the statute. The Philippines withdrew from the ICC in March 2019. The Russian Federation never actually ratified the statute and its withdrawal led Burundi, the Gambia and other countries to withdraw too. The United States of America first signed the statute and later revoked because the government was afraid that American soldiers would be targeted.

Therefore, the issue at hand is a very urgent one and needs to be discussed in depth as soon as possible, since, by the constant withdrawal of states, the international community is not reaching its goal, which is no other than preventing the aforementioned crimes from happening again and administering justice.

DEFINITION OF KEY TERMS

Crimes against humanity

The term “crimes against humanity” refers to the violation of international law regarding violations of human dignity. Such crimes include murder, enslavement, torture, imprisonment and enforced disappearance.

Genocide

The intentional killing of a large group of people, who usually have the same nationality or belong to the same ethnic group.

War crimes

Any crime committed during war that violates international humanitarian law. Examples of such crimes include the use of child soldiers, taking hostages and rape.

Crime of aggression

A crime of aggression is a specific type of crime where a person plans, initiates, and/or executes an act of aggression using state military force, something that violates the Charter of the United Nations.

Jurisdiction

The power or authority of a court to make legal judgements or to enforce laws.

Ratification

The act of giving formal consent, making a treaty or agreement valid and legally binding.

Tribunal

A special court elected by the government and responsible to examine legal problems.

BACKGROUND INFORMATION

Franco-Prussian War

The Franco-Prussian War, also called the Franco-German war, was a dispute between the Second French Empire, and later the Third French Republic, and the German states led by Prussia. It began on July 19, 1870 and ended on January 28, 1871. It led to the rise of German military power and imperialism. The war was enraged by the Prussian chancellor, Otto von Bismarck, with the aim of creating an expanded German Empire. After the defeat of the Second Empire of France, the Treaty of

Frankfurt was signed on May 10, 1871. Some of the prosecutable actions that took place during the war were hostage-taking, violent destructions of houses and villages, as well as incidents of rape and physical abuse of non-combatants. In 1872, one of the founders of the Red Cross, Gustav Moynier, proposed the establishment of a permanent court in response to the crimes of the war.

Leipzig Trials

The next significant call for the creation of an international criminal court was after World War I. From 1921 to 1922, the highest German court held trials for war crimes committed during World War I, as part of the Treaty of Versailles. The accused perpetrators were former members of the German Armed forces. Only twelve perpetrators were prosecuted. The Allied states wanted to arrest the former Kaiser Wilhelm II, as a war criminal, who had found asylum in the Netherlands, thus they notified the Dutch government. They requested his extradition, but the Dutch government refused, as this action would violate the Dutch neutrality they had in such situations. Although the trials were not successful, they were the first attempt to create a prosecution system for violations of International Humanitarian Law. The next attempt was in World War II with the Nuremberg Trials and the Tokyo Tribunals.

Nuremberg Trials and Tokyo Tribunals

After World War II, the Allied governments decided to establish international criminal tribunals, to investigate political and military officials for crimes that happened during the war. France, the Soviet Union, the United States of America and the United Kingdom, the Allied states, set up the International Military Tribunal (IMT), in Nuremberg, Germany, to prosecute war criminals of the European Axis. The trials focused on political, military and judicial leaders of Nazi Germany, who were responsible for the Holocaust or other crimes during the war. The first trial, which was considered the greatest trial in history, was run by Norman Birkett, a British judge. The trial prosecuted 24 leaders of the Third Reich, one of them Adolf Hitler. Another set of trials happened in Tokyo, under the surveillance of Supreme Commander Douglas MacArthur. Mostly Japanese war leaders were under MacArthur's jurisdiction. The establishment of this tribunal was announced on January 19, 1946, and it is called

International Military Tribunal for the Far East (IMTFE). The trials began on May 3, 1946 and lasted almost three years.

Rwanda Genocide

Between April and July 1994, about eight hundred thousand Rwandans were killed. Most of the victims were Tutsi and the perpetrators belong to the ethnic group of Hutus. The majority of Rwandans were Hutus, but the Tutsi dominated the state. In 1959, when the Hutus overthrew the Tutsi monarchy, most of the Tutsi fled to neighboring countries, including Uganda. The crimes (which have been characterized as "atrocities" by many), followed the shootdown of the plane carrying the Rwandan president on April 6, 1994. Apart from the thousands of victims in Rwanda's territory, the genocide has resulted in thousands of other deaths, especially in the Republic of Congo. The aforementioned massacre constitutes the latest and most crucial incident that urged the international community to discuss the creation of the ICC.

On September 20, 2019, the President of the ICC, Chile Eboe-Osuji, visited Kigali, Rwanda. The President tried to persuade Rwanda to sign and ratify the Rome Statute (seeing that the state, as mentioned before, is not a party to the ICC) but he did not succeed. The Security Council established the International Criminal Tribunal for Rwanda, in order to prosecute anyone responsible for the genocide and other severe violations of international humanitarian law. The offices of the Tribunal are in Kigali, Rwanda. Since its establishment in 1995, it has charged 93 individuals with the aforementioned violations. These individuals range from politicians to businessmen and media leaders.

The Rome Conference

The United Nations organized a five-week conference held in Rome with the participation of over 160 delegations. During that time, a major request of the international legal system was fulfilled, since the decision on the establishment of a permanent International Criminal Court was finalized. The aforementioned court would only have jurisdiction to prosecute individuals over the most serious crimes of

international concern. On July 17, 1998, the conference adopted the Statute of the court by 120 votes in favor, 7 against and 21 abstentions.

International Criminal Court

The ICC consists of four organs: The Presidency, the Chambers, the Office of the Prosecutor and the Registry. Each organ has a specific role.

The Presidency is formed by three judges, one of them being the President and the other two the Vice-Presidents. The 18 judges of the court elect the presidency for a three-year term. The presidency is responsible for the function of the court as a whole, except for the office of the Prosecutor and the external relations.

The Chambers carry out specific judicial functions. There are divided into three parts: The Pre-Trial Division, the Trial Division and the Appeals Division. Every judge is placed into a Chamber, according to their qualifications and experience. Each Chamber elects a Presiding judge. Judges, similarly, to the Presidency, serve a three-year term.

The Office of the Prosecutor is an independent organ of the International Criminal Court. The Prosecutor is fully responsible for the administration of the office and its facilities and resources. The Office receives and analyses referrals to conclude which cases and individuals should be investigated.

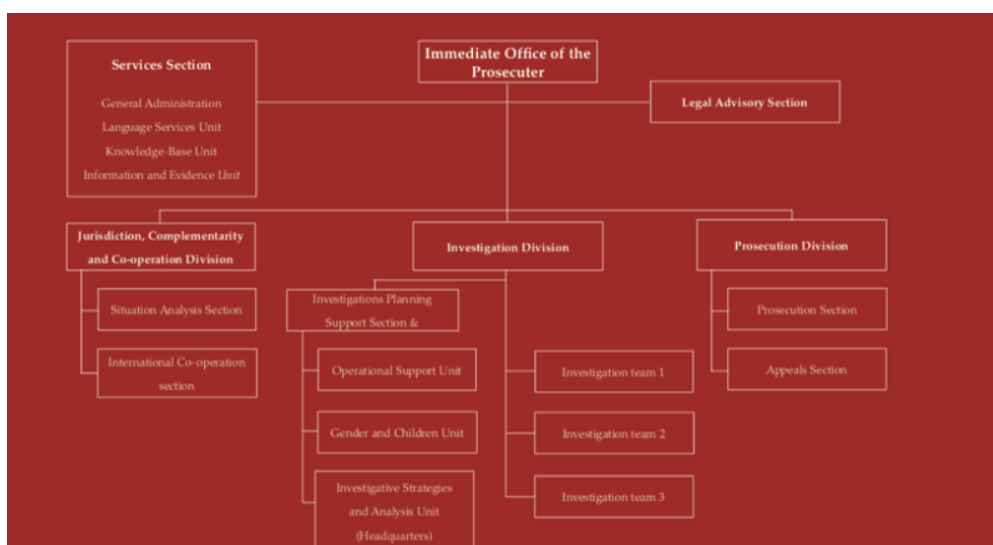


Figure 1 The investigation process of the Office of the Prosecutor

Lastly, the Registry is responsible for the non-judicial aspects of the court. This specific organ must remain objective at all times. It provides services such as court records, translation and legal aid to the other organs.

The difference between the International Criminal Court (ICC) and the International Court of Justice (ICJ)

The International Court of Justice (ICJ) is responsible for settling disputes between states, and not prosecuting individuals. It also provides advice on international legal issues when asked to do so. The ICJ consists of 15 judges instead of 18, which are elected from the UN General Assembly and the UN Security Council. Furthermore, the ICJ does not have a prosecutor, as the country that appeals to it is referred to as the Applicant party. In order for a case to be taken to the ICJ, both states must agree. If one does not, the case will not be taken to the Court. The ICJ is one of the six principal organs of the United Nations.

Member- states obligations

Every country can be a state-party of the ICC if they wish to. They have a minor role in the procedures of the court. It is mandatory for every state to fully cooperate with the court for any investigation and/or prosecution. The state-parties of the Statute of the ICC can submit agreements on specific articles or witness relocation. In the case that they wish to withdraw, they are obliged to notify the Secretariat of their decision. The country will be officially excluded from the court two years after the notification.

The reasons for a country to sign and ratify the Statute are to strengthen the domestic criminal justice systems, prevent future atrocities and crimes, reinforce equality of all before the law and to help the international community to end impunity (freedom from punishment).

During the past years, states have started to withdraw from the Court. In 2016, South Africa, Burundi and the Gambia submitted withdrawal notifications. South Africa and the Gambia withdrew their notifications later on. Kenya, Namibia and Uganda have also threatened to withdraw from the court. African countries were

great supporters of the court at the beginning, but they believe that they were targeted by the court. Generally, states tend to express their wish to withdraw from the Rome Statute when they become involved in war situations or events of political instability, which constitute conditions that can endanger national leaders or officials.

There are various problems raised from countries not signing the Rome statute or withdrawing from it. Firstly, victims of crimes that were committed in non-party territories will never find justice. Secondly, it is a step down to every goal the United Nations tries to achieve since countries show that they are not willing to help. Also, if More Economically Developed Countries (MEDCs), like the Russian Federation and the United States of America, are not parties to the Rome Statute, and since they are implicated in situations that fit the aforementioned criteria, such as their involvement in the ongoing war in Syria and the situation with the Taliban in Afghanistan, they create an uncontrollable environment, where perpetrators are not prosecuted, undermining the international law and other legal affairs.

The UN Charter allows the Security Council to decide on a range of measures. Thus, it plays a key role in responding to crimes of aggression. It can interact in many ways with the court's jurisdiction. The Security Council can address the court for some issues concerning international crimes. In that case, the court can prosecute any individual regardless of the territories in which the crime was committed.

MAJOR COUNTRIES AND ORGANISATIONS INVOLVED

United States of America

The United States of America (USA) are not a party to the International Criminal Court. They were part of the negotiations regarding the creation of the court. During the voting procedure on July 17, 1998, USA was one of the seven countries that voted against the Rome Statute, alongside Libya, Yemen, Iraq, Israel, China and Qatar. In 2000, Bill Clinton, who was president at the time, signed the Statute but never submitted it to the Senate for ratification. In 2002, President Bush notified the UN that they did not intend to ratify the Statute. After that, he led a campaign against the International Criminal Court, expressing his concerns that the court would be

politically driven against the USA's citizens. Later, the USA became more supportive of the International Criminal Court. The Security Council requested the ICC prosecutor to investigate crimes in Sudan in 2005 and USA did not veto that. Additionally, USA voted in favor of the UNSC referral to the court of the situation in Libya in 2011. The current president Donald Trump stated that the "United States will provide no support or recognition to the International Criminal Court. As far as America is concerned the ICC has no jurisdiction, no legitimacy and no authority". They announced that they will deny Visas to ICC members who are investigating the US troops in Afghanistan for war crimes.

Russian Federation

From the discussions in 1998 until 2016, Russia supported the International Criminal Court. In 2016, President Vladimir Putin announced Russia's withdrawal. The Russian Federation had signed the statute but never ratified it, which means that it had the obligation to cooperate with the court, when necessary, while not being part of its jurisdiction. A few days before the withdrawal, the ICC's lead prosecutor announced that the conflict between the Russian Federation and Ukraine developed into an international armed conflict and that the ICC must intervene in the occupation of Crimea and Sevastopol. The ICC did so, and on November 14, 2018 it announced its findings, namely that crimes falling within the court's jurisdiction have been committed within the Crimean territories of Ukraine. The state was also accused of war crimes during their intervention in Syria and that may have triggered their support in the court.

Israel

Israel never ratified the Rome Statute, although they supported the court in the beginning. The years of conflict with Palestine and the numerous accusations of war crimes kept Israel from ratifying the Statute. Palestine has submitted evidence of war crimes from the Israeli army to the court, but the court has only recognized the problem and the need to address it. In 2016, an ICC delegation visited Israel and started an investigation of some officials in the Israeli Army.

Libya

Libya is not a state-party in the ICC. However, it is an example of the Security Council's ability to refer particular cases to the Court, due to the ongoing civil war. In such cases, the state has to cooperate with the ICC, even though they are not members of it. The UNSC requested the ICC to investigate alleged crimes against humanity. The investigations opened in March 2011 and the court directly arrested the Commander in chief, but the arrest was withdrawn the same year due to his death. On June 7, 2012, four ICC staff members were detained in Zintan, Libya, while they were on a mission authorized by ICC judges and approved by the Libyan government. Since then, the ICC's prosecutions of Libya's political figures are in progress.

China

China is not a state-party of the Rome Statute. The state does not agree with the International Criminal Court's tolerance towards political influence and the fact that any prosecutor can start an investigation. China has also expressed concerns about the court's power to judge whether a state can prosecute its own officials. Finally, since China has veto power (meaning that they can block the adoption of a draft resolution) they support that the International Criminal Court's jurisdiction weakens the UNSC. Their concerns apply to the fact that the Court can prosecute individuals of non-parties if requested by the UNSC, without taking into consideration if the country is a P5 state or not.

Philippines

In 2018, President Rodrigo Duterte notified the Secretary-General that the Philippines will leave the International Criminal Court. On March 19, 2019, the withdrawal became official. The decision of the president was triggered after the announcement of an ICC prosecutor, in early 2018, who would examine the extrajudicial killings that have taken place during Duterte's "war on drugs". This would have led to the prosecution of Duterte for committing alleged crimes against humanity. Even though the Philippines withdrew, the court can still prosecute individuals who committed crimes from November 1, 2011 until March 16, 2019.

TIMELINE OF EVENTS

Date	Description of event
July 19, 1870	The Franco-Prussian War starts.
January 28, 1871	The Franco-Prussian War ends.
May 10, 1871	The Treaty of Frankfurt is signed.
1921-1922	The Leipzig Trials take place.
January 19, 1946	The establishment of the International Military Tribunal for the Far East was announced.
May 3, 1946	The trials for IMTF began.
April 6, 1994	The plane that carried the Rwandan president was shot down. The Rwanda genocide began.
July 17, 1998	The Rome Statute was adopted.
July 1, 2002	The International Criminal Court was put into force.
March 19, 2019	The withdrawal of the Philippines became official.
September 20, 2019	The President of the ICC visited Kigali, Rwanda, to persuade them to sign and ratify the Statute.

RELEVANT RESOLUTIONS, TREATIES AND EVENTS

Convention on the Prevention and Punishment of the Crime of Genocide ¹

The Convention on the Prevention and Punishment of the Crime of Genocide was the first attempt to deal with the crime of genocide. It was the first human rights treaty adopted by the United Nations' General Assembly on December 9, 1948. After the crimes of World War II, it established the obligation of member states to prevent and punish those who committed the crime of genocide. These obligations are considered as part of the International law, and hence all States must comply with them, regardless of whether they have ratified the convention.

¹ "Prevention and Punishment of the Crime of Genocide." *OHCHR*, www.ohchr.org/en/professionalinterest/pages/crimeofgenocide.aspx.

ICC-ASP/17/Res.5

Strengthening the International Criminal Court and the Assembly of States Parties ²

During the 13th plenary meeting of the International Criminal Court, the court concluded to a resolution that urged all member states that have not yet ratified the treaty to do so, in order to promote universality. It refers to the cooperation of all member states and other international organizations and bodies to implement a stronger legal framework. The resolution promotes the ongoing dialogues of the ICC with the Security Council since that is the only way to prosecute individuals of non-state-parties. Lastly, it focuses on the elections of the judges, in order to improve the criteria that someone must meet to be a candidate.

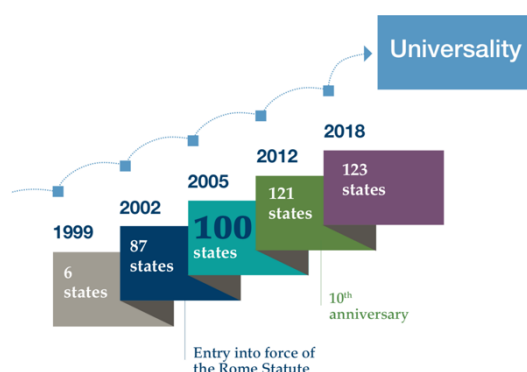


Figure 2 The progress of the state-parties throughout the years

PREVIOUS ATTEMPTS TO SOLVE THE ISSUE

Generally, the only actual attempt to solve the issue was the Kampala Review Conference. All the other resolutions that the ICC has submitted, improve the jurisdiction of the ICC to some extent, but without making the Rome Statute more beneficial for the states that have not ratified it.

Kampala Review Conference³

The Review Conference of the Rome Statute took place from May 31 to June 11, 2010, in Kampala, Uganda. Before the conference, the issue of crimes of aggression seemed to be the most controversial. The member states agreed upon a resolution, which defined the aforementioned crime and stated how both the ICC and the UN

² "International Criminal Court." *International Criminal Court*, web.archive.org/web/20110616100534/www.icc-cpi.int/iccdocs/asp_docs/Resolutions/RC-Res.5-ENG.pdf.

³ *Review Conference*, asp.icc-cpi.int/en_menus/asp/reviewconference/Pages/review_conference.aspx.

Security Council would prosecute it. They also proposed the revision of Article 124, which allows the member states not to have their officials prosecuted by the court for war crimes that happened during a seven-year period after the ratification. Lastly, the amendment of Article 8 was proposed, in order to criminalize the use of certain weapons in the context of armed conflict.

POSSIBLE SOLUTIONS

First of all, another review conference about the Rome Statute should be arranged, since the purpose of the first one was specifically to tackle the issue and the countries made some considerable propositions, such as to define the crime of aggression and inserting a sub-clause to Article 8, defining the use of weapons with microbial agents and toxins as a war crime.

Moreover, according to the Kampala conference, the ICC must arrange a conference every five years. The ICC could place UN officials or ambassadors on missions to countries that have not signed the Rome Statute, in order to persuade them and discuss any possible disagreements on the Court's Jurisdiction. All states should be open to any discussion for their cooperation with the ICC.

Lastly, the ICC could reconsider some parts of the Statute that are controversial for some member-states and are keeping them from signing the Statute. Generally, both the International Criminal Court and states should cooperate and be open-minded to any proposal they receive, so as to make some progress and solve the issue.

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