



The Hague International Model United Nations

Forum: General Assembly 6 (Legal)

Issue: The question of prosecuting heads of state or government for crimes against humanity

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Introduction

According to the Rome Statute of the International Criminal Court (ICC), crimes against humanity are defined as widespread, systematic attacks directed against any civilian population. Such crimes include but are not limited to, murder, extermination, enslavement, forcible transfer of location, deprivation of physical liberty, torture, rape, and more. Crimes against humanity can be committed by heads of state or government as part of state policy, or be perpetuated by individuals acting on behalf of government authorities (Rome Statute of the ICC, Art. 7, Art. 27). The customary international law provides heads of state immunity, which shields them from facing prosecution in foreign national courts. However, this does not protect leaders from prosecution in domestic states and prosecution by the ICC for international crimes including genocide (Liu #127). Nonetheless, within both domestic and international settings, there is a gap between legal principles of justice and the practical enforceability of prosecutions.

The Rome Statute is an international treaty that founded the governing framework of the ICC in 1998, and came into force in July 2002, following the necessary ratification from 60 states. Currently, 124 countries are state parties to the Statute, allowing the Court jurisdiction over genocide, crimes against humanity, war crimes, and as of 2010, crimes of aggression. In addition to jurisdiction, the Statute addresses issues of applicability and admissibility of law, investigations, prosecution, trials, penalties and international judicial assistance (“ICC history – The Road to Rome”, Coalition for the ICC). The establishment of the Court marked a significant change in international law, presenting a development in prioritizing accountability and justice over diplomatic protections.

With the establishment of the ICC, the international court has transitioned international law from absolute to restrictive immunity in prosecuting heads of state. However, with respect to state sovereignty and non-interference, there are significant challenges in breaking through the immunity of the highest political figures responsible for crimes against humanity. This highlights the conflict between striving for justice and the need to maintain international political stability. More so, in cases of political resistance and lack of state cooperation with other nations and the ICC. Other issues emerge from inconsistency in recognizing the definition of crimes against humanity, the impact of corruption in granting immunity, possible consequences on domestic stability, witness protection and evidence gathering, and international cooperation in the trials (Sterio). This paper will further investigate the development of the issue, the role of the ICC and major cases which present the issues listed below.

Definition of Key Terms

Crimes against humanity

Widespread or systematic attacks directed against civilian populations, such as murder, deportation, unrightful imprisonment, enslavement, torture, rape, sexual slavery, and more (Rome Statute of the ICC, Art. 7).

Prosecution

The legal act or process of accusing and charging an individual or group of persons for a crime, and presenting the case in a criminal trial against the defendant (“Legal Terms Glossary”, U.S. Attorney’s Office).

Defendants

Individuals or groups of persons being accused of breaking the law (“Legal Terms Glossary”, U.S. Attorney’s Office).

Sovereignty

Full right and independence of the governing body over itself, without interference of outside sources (“Legal Information Institute”, Cornell Law).

Heads of state

Individuals who are the highest public representatives of sovereign states, such as the monarchs. Heads of state may or may not hold positions in the government (“Legal Information Institute”, Cornell Law).

Heads of government

Individuals who occupy the highest or second highest office in a government of a sovereign state, holding practical political power and leading the parliament (“Legal Information Institute”, Cornell Law).

Immunity to prosecution

State of individuals being resistant or protected from legal processes, such as arrests.

Ensuring they can perform their responsibilities without fear of legal consequences (“Legal Information Institute”, Cornell Law).

Jurisdiction

Refers to official power to make legal decisions and judgments (“Legal Information Institute”, Cornell Law).

Background Information

As international crimes, crimes against humanity date back to World War I. For much time before, the prosecution of individuals for then-called atrocity crimes was monopolized by nation-states. The term crimes against humanity was first used in 1915 in a joint statement from Great Britain, France and Russia, condemning the Ottoman Empire’s actions against the Armenian population. The condemnation, referred to ‘as crimes of Turkey against humanity and civilization’ was a response to the Armenian Genocide, with an estimated 1.5 million civilians massacred, deported and marched to death. The joint statement marked a significant development in international law, as one of the first attempts to define and condemn violations against foreign civilians (Moir).

Following World War II, the Allied powers (the United Kingdom, Soviet Union, USA, France) sought to prosecute key leaders Nazi Germany for crimes committed during the conflict for newly formalized crimes against humanity (The Nuremberg Trials). The allies founded the International Military Tribunal, specifically the London Charter, which was signed on August 8th, 1945, formally setting the legal framework for the first trials for crimes against humanity of state leaders and high-ranking officials. As the Allied Control Council governed occupied Germany after the war, it justified its jurisdiction to hold the prosecution. The Nuremberg Trials established legal precedents, contributed to the development of unanimous international law, and influenced the adoption of the Universal Declaration of Human Rights in 1948. However, selective prosecution and purposeful oversight of similar crimes committed by

the Allies, and the process being led by victors posed challenges in the validation of the legal frameworks (Rosen).

However, the establishment of the ICC, which now has the jurisdiction of 124 nations, presents evolution and change from the foundational efforts of the Nuremberg Trials, providing an impartial and permanent platform to prosecute individuals, including heads of state or government for crimes against humanity (Moir). Since the establishment, there have been significant cases that marked milestones in international criminal challenges, but also presented complexities faced in prosecuting heads of state or government.

Significant Cases (ICC)

Thomas Lubanga Dyilo

Thomas Lubanga Dyilo was ICC's first convict, as a former warlord. He was found guilty in 2012 of conscription and enlistment of children under the age of 15 (child soldiers), using them to actively participate in hostilities of the Ituri conflict. He was found guilty and sentenced to 14 years by the ICC. This case set a precedent for the Court's ability to hold high-ranking individuals accountable, with a focus on the abuse of power to recruit children as soldiers for crimes against humanity ("Lubanga Case", International Criminal Court).

Jean-Pierre Bemba

Jean-Pierre Bemba is a former vice president of the Democratic Republic of Congo, as well as the commander in chief of the Movement for the Liberation of Congo. He was charged and found guilty of 2 counts of crimes against humanity, murder and rape, and 3 counts of war crimes, murder, rape and pillaging, all committed in the Central African Republic. This case was different from the Lubanga case, as it was confirmed whether Bemba was physically present in the commission of those crimes. However, the charges were re-characterized as 'command responsibility'. This means that as someone in control of an organization, Bemba could still be found guilty of crimes committed by his subordinates, as he failed to prevent or punish such crimes. This case was significant as it affirmed the legal principles that leaders and heads of state can be held criminally responsible for crimes committed by their forces (which are under their effective authority), even if they did not directly participate (Jackson).

Laurent Gbagbo

Laurent Gbagbo, former President of Côte d'Ivoire was acquitted by the ICC in 2019 of all his charges for crimes against humanity during the post-election violence in 2010. This case brought forward the challenges faced by ICC in presenting sufficient evidence to secure convictions against heads of state. This case sparked debates about the impartiality of the ICC, their effectiveness in successful prosecutions, and their provision of justice (Cage).

Omar Al-Bashir

Omar Al-Bashir, former President of Sudan, faced arrest warrants issued by the ICC in 2009 and 2010, being charged with crimes against humanity, war crimes and genocide during the Darfur conflict. This was when the Court issued an arrest against a sitting head of state, challenging their immunity. However, South Africa's refusal to arrest Al-Bashir in 2015 brought forward complexities in enforcing mandates, when diplomatic relationships are prioritized over compliance with criminal justice (Toxopeüs).

Challenges in enforcement

Immunity

The principle of head-of-state immunity shields serving leaders from legal processes in foreign nations and jurisdictions, with respect for sovereignty and equality. However, the ICC challenged the principle in Article 27 of the Rome Statute, denying immunity to heads of state for international crimes (Rome Statute of the ICC, Art. 27).

Domestic persistence & lack of cooperation

Article 87 of the Rome Statute states that failure to comply with requests for cooperation, thereby preventing the Court from exercising its functions, the Court has full right to refer to the Assembly of Parties and Security Council (Rome Statute of the ICC, Art. 87). However, reliance on state cooperation leads to conflicts between national interests and international obligations. An example of this is the Al-Bashir

case, where despite ICC warrants, various states failed to comply and detain him, acting as significant hindrances in justice and the Court's function.

Evidence

In any case, the prosecution requires rigorous evidence standards, as guilt must be proven beyond a reasonable doubt. The gathering of admissible evidence is impeded by political interference, as seen in the case of Gbagbo ("Office of the Prosecutor", International Criminal Court). Reliance on cooperation from national jurisdictions calls for independent mechanisms for investigation, capable of withstanding political pressure for impartial evidence collection, in cases of absolute confidence of guilt.

Impartiality of the ICC

The ICC's impartiality for its legitimacy has been questioned, especially when the nationality or ethnicity of the prosecutors, judges and juries are brought into the scene by critics. For example, the Court has a history of varied approaches to situations involving major powers, including alleged crimes against humanity in Afghanistan, involving the U.S. military. The issue of prosecuting heads of state or government for crimes against humanity becomes exacerbated, as the biggest legal body in interfering for such cases, becomes partial to its own legal standards and decision-making processes (Meron #359-369).

Limits to the ICC

The absence of universal memberships, especially from key countries, including China, Israel, India, Russia and the United States, poses a challenge to the Court's effectiveness with a lack of global jurisdiction. The gap is widened as China, the U.S.A. and Russia hold veto power in the Security Council, allowing them authority, and limiting the Court and the UN in enforcing justice and criminal law uniformly. This prevents the ICC from having enough to execute and enforce its power. Other limits include low conviction rates, as it took them 16 years to convict less than 10 suspects, an exclusive persistent focus on African countries, and a general lack of resources (Wong).

Major Countries and Organizations Involved

UN and International Involvement: The United Nations and other international bodies have engaged in addressing crimes against humanity by developing frameworks through treaties, resolutions and other programs. Efforts include aiming to improve accountability, fighting for justice for victims, and establishing legal norms to ensure fair prosecutions of all individuals (Eboe-Osuji). These can be seen in documents, such as:

- Convention of the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, 26 November 1968 (2391)
- Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 29 November 1985 (40/34)
- Resolution Referring to the Situation in Darfur to the International Criminal Court, 31 March (S/RES/1593(2005))
- Resolution Concerning Accountability and Sanctions for Human Rights Violations in South Sudan, 3 March 2015 (S/RES/22606(2015))

African Union: The majority of the ICC trials have been held against African nations and heads of state. Many critics have argued the legitimacy of ICC's 'inappropriate' focus on Africa and the African Union, on moral, legal and sociological grounds. Out of 32 cases that ICC has dealt with, 21 have appeared before the Court, and out of 10 verdicts in 16 years, 10 have been individuals from Africa (Klobucista and Ferragamo).

South Africa: South Africa ratified the Rome Statute in 2000, but came under scrutiny when it failed to arrest Sudanese president Al-Bashir, despite ICC warrants. The incident sparked major legal and political debate, leading to a decision by the South African government to initiate withdrawal from the ICC in 2016, a decision later reversed (Roux).

Sudan: Sudan is not a member of the ICC and has rejected the Court's jurisdiction, particularly in response to arrest warrants against the former President Al-Bashir. Sudan has defied international cooperation with the ICC, maintaining Al-Bashir's freedom ("World confronts an 'ugly and inescapable truth' in Darfur, says ICC Prosecutor", United Nations).

Syria: Syria has not signed or ratified the Rome Statute and has opposed foreign interventions in its civil conflict, in respect to its sovereignty. Even with numerous reports of crimes against humanity, Syria has been protected from ICC prosecution by its allies in the UN Security Council, notably Russia and China, who hold veto powers, preventing referrals to the court.

India: India has expressed reservations about the ICC, particularly the right of the ICC to refer cases to the UN Security Council (and vice versa), arguing that it compromises the impartiality of the court. India has been vocal about its perspective on non-intervention, advocating for more respect for national sovereignty for all nations (Bais).

Germany: Germany was one of the first to ratify the Rome Statute in 2000. Germany has actively engaged in the enforcement of international law. For example, by arresting Rwandan genocide suspect in 2010, Onesphore Rwabukombe, subsequently attempting to convict and prosecute him (Bauer).

United States of America: Signed the Rome Statute in 2000, but never ratified it and formally withdrew its signature in 2002. The USA has expressed its concerns over the ICC's jurisdiction and claims against American personnel. The USA passed the American Service-Members' Protection Act (ASPA) in 2002, prohibiting cooperation with the ICC and restricting military assistance to countries that are parties to the Statute (Sadat and Drumbl).

Russian Federation: Signed the Rome Statute in 2000, but announced its decision not to ratify the treaty in 2016, due to the court's approaches in investigations involving Russia. ICC issued an arrest warrant for Russia's President, Putin, in 2023, in response to which Russia reaffirmed its stance against the ICC, emphasizing its non-recognition of the Court's jurisdiction ("Russia/Ukraine: ICC arrest warrants for senior Russian officials 'a crucial step towards justice'", Amnesty International).

Timeline of Events

Date	Description of event
November 20th, 1945	Beginning of Nuremberg Trials: The International Military Tribunal began

	prosecuting Nazi war criminals in Nuremberg Germany, marking the first time in History that the principle of crimes against humanity was applied to hold heads of state and government criminally responsible.
May 3rd, 1946	Beginning of Tokyo Trials: The International Military Tribunal start the trials for Japanese leaders for crimes committed during World War II, establishing frameworks to prosecution in the Asia-Pacific region.
April 11th, 1961	Start of the Eichmann Trial in Israel, asserting that foreign states can prosecute for crimes against humanity regardless of where they are committed.
May 3rd, 1993	Establishment of the ICTY (International Criminal Tribunal for the former Yugoslavia), to prosecute crimes committed during the Yugoslav Wars. First international body to prosecute a sitting head of state for crimes against humanity, Slobodan Milosevic.
July 17, 1998	Adoption of the Rome Statute, a treaty which was established in the International Criminal Court.
April 11, 2002	The Rome Statute entered force, after necessary 60 countries had ratified the treaty.
March 4, 2009	ICC issues arrest warrant for Sudanese President Omar Al-Bashir, the Court's first warrant for a head of state, challenging his immunity.
March 31st, 2010	ICC's first case exercising its jurisdiction and conviction of Thomas Lubanga for recruiting and using child soldiers.
January 25th, 2016	ICC begins trial for Lubanga, marking an end to impunity in this case.
June 11th, 2020	ICTY convicted Ratko Mladic, a former Bosnian Serbian commander, for crimes against humanity and genocide, decades after the crimes were committed.
March 16th, 2022	The ICC issued an arrest warrant for Vladimir Putin, Russia's President, for war crimes and crimes against humanity related to the illegal

deportation of children from Ukraine.

(Bassiouni #1163-1194)

Previous Attempts to Solve the Issue

The establishment of the ICC represents the foundation for all efforts to hold heads of state accountable, being the first permanent international court. While the ICC has successfully prosecuted several heads of state and government, it faces challenges in lack of cooperation with states, limits in its jurisdiction and accusations of impartiality (Moir).

The UN nations have facilitated the establishment of tribunals, such as the ICTY and ICTR (International Criminal Tribunal for Rwanda), to address crimes committed during conflicts in these regions. The Security Council has also referred situations like Sudan and Libya to the ICC, despite them not being parties to the Rome Statute (Pocar). However, the influence of the UN is limited, in being impacted by the Security Council veto power and policies that impact the process of applying international justice.

Possible Solutions

Incentivize and encourage ratification of those nations who are not a party to the Rome Statute, thought cooperation, offering legal support and more.

Develop regional criminal tribunals under the auspices of the UN or Unions (African Union, European Union, etc.), to cooperate alongside the ICC. This allows preferred legal rules and jurisdictions to the regions.

Propose reforms to make the referral process of the UN Security Council to the ICC less politicized, and allow the ICC to be more independent from the power in the UN.

While INTERPOL's (International Police) operation is based on cooperation agreements and communication between nations, it proposes the establishment of another International

Police Unit. Allow the unit to have authorization to detain individuals anywhere in nations that have ratified the Rome Statute if subjected to arrest warrants by the ICC.

Encourage all nations to overturn impunity and immunity rights, for all individuals, including heads of state and government, for crimes against humanity.

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