

Criminal Courts: A History and a Future

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Ethics of Development in a Global Environment
June 01, 2003
SUID#: 4831194

“In the prospect of an international criminal court lies the promise of universal justice. That is the simple and soaring hope of this vision. We are close to its

realization. We will do our part to see it through till the end. We ask you...to do yours in our struggle to ensure that no ruler, no State, no junta and no army anywhere can abuse human rights with impunity. Only then will the innocents of distant wars and conflicts know that they, too, may sleep under the cover of justice; that they, too, have rights, and that those who violate thus rights will be punished.”¹

Kofi Annan, UN Secretary-General

Introduction:

Following World War II there was a great cry, calling for the rectification of wrongs done by the Nazi regime. Public consensus demanded that crimes against humanity, particularly genocide, should not go unpunished by the global community.² The United Nations responded by establishing the need for an international criminal court that would recognize the perpetrators, create a record of their crimes, punish them accordingly, and to deter future criminals from similar atrocities. In December of 1948, the UN General Assembly accepted the Convention on the Prevention and Punishment of the Crime of Genocide(CPPCG), which, “Recognizing that at all periods of history genocide has inflicted great losses on humanity; and being convinced that, in order to liberate mankind from such an odious scourge, international co-operation is required.”³ The CPPCG confirmed the need for an international criminal court system that could prosecute gross violators of common law, by drafting a resolution for this very purpose, only to have the resolution shelved because politicians bickered over the details.

Focus on the creation of an international court system would not reappear until after the duration of the cold war in 1989, when, upon request from Trinidad and Tobago, the International Law Commission got permission to [continue this purpose].⁴ The

¹ <http://www.un.org/law/icc/general/overview.htm> pg. 2

² Ibid.

³ Ibid. resolution 260, December 9, 1948

⁴ ibid

“ethnic cleansing” of Muslims in Yugoslavia appeared on the forefront in 1993, resounding the need for action against criminals.⁵ To bring the perpetrators to justice, the ICTY (the International Criminal Tribunal for the Former Yugoslavia) came together, ad hoc, to act as the arm of justice for this problem.⁶ Without an actual international court, the UN commissioned the ad hoc ICTR (the International Criminal Tribunal for Rwanda) to try the perpetrators of the crimes that took place in 1994,⁷ but still this was not enough. The need for a court system where these, and other, trials could bring forth charges against the perpetrators of crimes against humanity remained. The Ad hoc tribunals did serve a marginal purpose, but, because of the statutes commissioning them, there were severe limitations on action.

In response to this need, the Law Commission finally put together a complete draft statute for an international criminal court in 1994, hoping that the General Assembly would ratify the document. However, political channels delayed a vote on the bill, reworking the document until 1998, when the UN finally convened the Rome conference, where 120 states signed on to the draft statutes of the ICC. Unfortunately, the statute did not receive the number of individual ratifications needed, so the ICC statute did not enter into official capacity until July 1, 2002.⁸ The recent ratification of the statute has thus far limited the organization, allowing it to exist more on paper than in reality, but proponents are optimistic for advances in the ICC.

Only recently are the palpable facets of the ICC appearing on the global scale. The seat of the Court is at The Hague in the Netherlands and will be ready for full time

⁵ supra no. 1

⁶ ibid.

⁷ Statute of the International Criminal Tribunal for Rwanda (preamble)

⁸ <http://www.icc-cpi.int/php/show.php?id=faq> (faq's about the ICC)

use sometime between 2007 and 2009.⁹ The court is completely separate from the ad hoc tribunals in Rwanda and in Yugoslavia because, according to the statute, states or individuals can not be tried in the ICC for crimes occurring before the statute ratifying the ICC was in full force.¹⁰ As such, criminals are not subject to trial at the ICC unless their actions took place after July 1, 2002. The actual organs of the court are the judges, the Presidents, the chambers, the office of the Prosecutor, and the registry. Each individual branch has a task specific to the purpose of the court, allowing each branch to focus its energies on specific tasks. The judges are selected from one of two lists, serving on the court for terms of “three, six, and nine years among persons of high moral character, impartiality and integrity who possess the qualifications required in the respective States for appointment to the highest judicial offices.”¹¹ The two lists from which the eighteen judges are chosen, demand that the judge have an “established competence in criminal law and procedures, and the necessary relevant experience, whether as judge, prosecutor, advocate, or in other similar capacity in criminal proceedings,”¹² or have an “established competence in relevant areas of international law, such as international humanitarian law and the law of human rights, and extensive experience in a professional legal capacity which is of relevance to the judicial work of the court.”¹³ The judges are elected by the Assembly of States and Parties but serve in accordance to the wills of the presidents.

⁹ <http://www.icc-cpi.int/php/show.php?id=history> (ICC webpage, history of the ICC)

¹⁰ *ibid.*

¹¹ <http://www.icc-cpi.int/php/show.php?id=organs> (ICC webpage, organs of the court)

¹² *ibid.*

¹³ *ibid.*

The presidents are elected by a majority of the judges to a term of three years, during which they will be the administrative branch of the court.¹⁴ The President and his two vice-presidents (called the First and Second Vice-Presidents) work closely with the judges and the office of prosecution to determine the course of action that will be taken.¹⁵ The presidents have liberties that other branches of the ICC do not, being able to suggest an increase in the number of judges when and where necessary, and organizing each aspect of the Court other than the office of the prosecutor.

The office of the prosecutor, and the Chambers concern themselves with the formal aspects of the trial. Chambers is responsible for a Pre-Trial division, a Trial Division, and an Appeals Division, all parts of which organize the process of the trial. The Office of the Prosecutor is considered separate from this branch because the chambers must remain impartial to the case, and there will be a conflict of interests between the two parties. Consequently, the Office of the Prosecutor is an independent organ of the ICC, responsible for acquiring and analyzing referrals and information about the crimes committed.¹⁶ Though it is an independent office, the prosecutor must remain within the jurisdiction of the ICC, starting an investigation only when there is probable cause to believe that crimes against humanity have been, or are being, committed.¹⁷

The registry of the ICC is responsible for the non-legal aspects of the court, running the day-to-day operations so that the other branches may better do theirs. The Registrar is the head administrative authority in non-legal issues, elected by a majority of

¹⁴ *ibid*

¹⁵ *ibid.*

¹⁶ *ibid.*

¹⁷ *ibid.*

the judges on the court, and subject to the orders of the Presidents. Though it is not of high esteem in a legal sense, it is intricate to the actions of the court.

The purpose of the ICC is to promote peace and justice, removing the impunity with which administrators committed crimes, and creating disincentives for future perpetrators of such heinous acts. Leaders acted above the law distributing resources, attention, and, most importantly, justice in an inequitable manner. The word genocide, coined in the early 20th century, is now a common part of our vocabulary, as these crimes and others are now perpetrated continually. There has never been an international court that could properly function as a branch of justice for individual perpetrators (the ICJ is a court that deals only in state to state cases, not individuals),¹⁸ but with the addition of the ICC that problem no longer exists. In the past, crimes against humanity, such as genocide, often went unpunished because there was no one above the state, but the ICC creates an entity that can and will monitor the state. Individuals can not live with impunity, because “crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced.”¹⁹ The Draft code of Crimes against the Peace and Security of Mankind established the international laws that hold men accountable for their crimes, but there was never a body capable of enforcement. Consequently the idea of an international criminal court arose to eliminate/deter conflicts, improve on the shortcomings of “ad hoc tribunals,” and to establish justice where justice is unable to act.²⁰

¹⁸ supra no. 1 pg. 3

¹⁹ The Judgment at Nuremberg Tribunal - ibid

²⁰ supra no. 1. pg. 3

Why Cases Arise and How They are Dealt with:

Almost forty years separated the culmination of the Nuremberg trials and the next time an international tribunal had the responsibility of trying individuals accused of crimes against humanity, far too long for injustice to go unpunished. Nuremberg was the first time there was a strong public outcry for an international organization to try and convict individuals for crimes committed in war. Recognizing the mistakes of post WWI prosecution, when the allies left Germany and the other losers to sort out their own justice for their own leaders, the Allies decided to continue with what is termed “victor’s justice”.²¹ The controversy to victors justice lies in the dilemma, that, by law, defendants are entitled to an impartial and fair trial, but a trial conducted by either party would be biased. Loser’s Justice, implemented at the end of WWI, produced horrible results, leaving many of the perpetrators free, and some in office. Victors justice was said to be unfair because it would promote a bias in the opposite direction, persecuting even the innocent during the search for justice. WWII was the first time that victors justice was applied to a situation, which is when the victors of a war decide the fate off the losing parties.²² Nuremberg was an intelligent answer to these demands, as it focused on establishing a record of the injustices done by the Nazi party, trying the individuals impartially, and convicting them accordingly.

The victorious blocks, the West and the Soviets, had the opportunity to dole out justice as they saw befit the situation. Both parties were responsible for bringing attention to individuals in their sphere of influence who may have committed war crimes

²¹ Class lecture, Global Politics of Human Rights by: Terry Karl, lecture 8

²² *ibid.*

or crimes against humanity.²³ In response, the Military Governor of the American Zone enacted military tribunals as the preferred method of justice, allowing the U.S. War Department to select the judges for the trial, while lawyers were chosen separately.²⁴ A list of some of the Nuremberg trials follows:

<p>#1 <u>The Doctors (or Medical) Case</u> Twenty-three Nazi physicians charged with conducting inhuman experiments on German civilians and nationals of other countries. The experiments ranged from studying the effects of high altitude and malaria to sterilization. Dec. 9, 1946 - Aug. 20, 1947 Result: Sixteen defendants convicted (including seven sentenced to death), seven acquitted.</p>
<p>#2 Milch Case Former German Field Marshall Erhard Milch charged with murder and cruel treatment of POWs, and with participation in experiments dealing with effects of high altitude and freezing. Jan. 2, 1947 - Apr. 16, 1947 Result: Convicted and sentenced to life in prison.</p>
<p>#3 <u>The Justice (or Judges) Case</u> Nine members of the Reich Ministry of Justice and seven members of the People's and Special Courts charged with using their power as prosecutors and judges to commit war crimes and crimes against humanity. (This trial inspired the movie <i>Judgment at Nuremberg</i>.) Mar. 5, 1947 - Dec. 4, 1947 Result: 10 defendants convicted, 4 acquitted (one defendant died before verdict and a mistrial was declared in one case).</p>
<p>#4 The Pohl/WVHA Case Oswald Pohl and seventeen other members of WVHA (Economic and Administrative Office) charged with war crimes against POWs in concentration camps which WVHA controlled after spring of 1942. Apr. 8, 1947 - Nov. 3, 1947</p>

²³ <http://www.law.umkc.edu/faculty/projects/ftrials/nuremberg/subsequenttrials.html>

²⁴ *ibid.*

Result: 15 defendants convicted, 3 acquitted. Three defendants were sentenced to death, the rest to prison terms.

²⁵**

In doing so, the United States determined which individuals should be reprimanded/banned from government, while also giving individuals the opportunity to cleanse themselves of any accusations. Though many individual members of the Nazi regime were sentenced to prison, or to death, many individuals did succeed in clearing their name.

The next time a tribunal came together was in 1993 at the culmination of the atrocities performed by Slobodan Milosevic and his fellow administrators against ethnic Muslims in the former Yugoslavia. It was not the first time since WWII that a leader/despot had murdered his own people but it was the first time that the international diplomacy network had been able to organize a trial to judge the people responsible for these deaths. The killing fields of Cambodia, where Khmer Rouge purportedly killed millions of his people. Stalin's labor camps in Siberia where tens of millions of Soviets died in the Purges, massacres throughout the Americas, particularly in El Salvador and Guatemala had all gone unpunished. But the international community could not stand by any longer as their fellow man had their basic human rights abused and eliminated in the most horrific manners.

The International Criminal Tribunal for the Former Yugoslavia (ICTY) was organized to set an example for future offenders who might one day try to commit crimes. It was there for many reasons, the most clear of which are delineated in the statute commissioning the ICTY. This statute was to make sure that the tribunal kept:

²⁵ table courtesy of

<http://www.law.umkc.edu/faculty/projects/ftrials/nuremberg/subsequenttrials.html>

In harmony with the purpose of its founding resolution, the ICTY's mission is fourfold:

- to bring to justice persons allegedly responsible for violations of international humanitarian law
- to render justice to the victims
- to deter further crimes
- to contribute to the restoration of peace by promoting reconciliation in the former Yugoslavia.

1. Subject-matter :

The Tribunal's authority is to prosecute and try four clusters of offences:

- Grave breaches of the 1949 Geneva Conventions.
- Violations of the laws or customs of war.
- Genocide.
- Crimes against humanity.

2. Geographic and Temporal:

Any of the crimes as above listed, committed on the territory of the former Yugoslavia since 1991.

3. Personal :

Only over natural persons and not over organisations, political parties, administrative entities or other legal subjects.

Vis-à-vis national courts

The ICTY and national courts have concurrent jurisdiction over serious violations of international humanitarian law committed in the former Yugoslavia. However, the ICTY can claim primacy over national courts, and may take over national investigations and proceedings at any stage if this proves to be in the interest of international justice.

Courtesy, ICTY at a Glance

<http://www.un.org/icty/>²⁶

Again, an international court was taking responsibility for the callous actions against an entire ethnicity, but the tribunal, as all tribunals do, had its drawbacks. The jurisdiction of the court did not extend to prosecute anything outside of the above mentioned violations, including time frames and locations. People often criticize the international tribunals because they address only the crimes committed during a specific period of time, not the entire period of abuse. Though this did place some restrictions on the freedoms of the court, it did not severely limit the ability of the court to put forth a strong

²⁶ ICTY website <http://www.un.org/icty/>

agenda, prosecuting those individuals who facilitated and planned much of the propaganda, military action, and crimes committed over the two year time span.

Of the defendants on trial at the ICTY, past or present, the most famous (at least in the Western world) is Slobodan Milosevic, former President of Yugoslavia, and principle motivator in the “ethnic cleansings.”²⁷ The charges brought against Milosevic are as follows:

- two counts of genocide and complicity in genocide under Article 4 of the Statute;
- 10 counts of crimes against humanity involving persecution, extermination, murder, imprisonment, torture, deportation and inhumane acts (forcible transfers) under Article 5 of the Statute;
- eight counts of grave breaches of the Geneva Conventions of 1949 involving willful killing, unlawful confinement, torture, willfully causing great suffering, unlawful deportation or transfer, and extensive destruction and appropriation of property under Article 2 of the Statute;
- nine counts of violations of the laws or customs of war involving *inter alia* attacks on civilians, unlawful destruction, plunder of property and cruel treatment under Article 3 of the Statute.

-Courtesy the ICTY **MILOSEVIC Case (IT-02-54) "Kosovo, Croatia, Bosnia and Herzegovina"**²⁸

Unfortunately Milosevic is not the only man who committed these atrocities. Myriad other members of his administration took part in the genocides, and many of these men have already been convicted of their involvement. 39 men have already been sentenced, and over fifty others await their trial in front of the ICTY.²⁹ These trials must be heard, and they must be publicized, because the tribunal is there to bring violators of international humanitarian law to justice, to find a just outcome for the victims (as just as possible), to restore peace, and to deter any further violators.³⁰

²⁷ ICTY website, <http://www.un.org/icty/glance/milosevic.htm>

²⁸ ICTY <http://www.un.org/icty/glance/>

²⁹ ICTY *ibid.*

³⁰ ICTY *ibid.*

One of the methods currently utilized to publicize these trials is the constant flow of news emerging from the courtroom. The tribunal has allowed international journalists, as well as court appointed reporters, to follow the course of the trials as a means of keeping the public informed. Generally, as a result, press releases go public on the ICTY website, informing those who are interested, about the trial. This is not an extremely widespread form of publicizing the events in the court, but it provides the public necessary information while saving the court any unnecessary disgrace.

One year later, the UN could no longer ignore the reports that were coming out of Rwanda, about the intertribal genocide happening there. The stories that emerged were absolutely horrific, telling of tales where groups of Hutus would go around their town with machetes, or with sticks that had nails stuck through the end of them, from house to house, searching their rival tribe, the Tutsis, so as to massacre the men, women, and the children.

The story of this intertribal warfare begins long before the late 20th century, as tribal differences emerged as early as the mid 19th century, but with the recent change in authority, a true genocide was at work. Over the course of 7 months, nearly one million Tutsis were killed, while many more fled as refugees to the surrounding countries.

When international institutions finally did decide to act on behalf of the greater good, there were too many difficulties in the process that hindered a full, and equal, justice. Again, there was still no ICC, in fact, the 1994 draft of the proposal was still in the works when the UN finally acknowledged the severity of the situation in Rwanda, so yet another International Criminal Tribunal, the ICTR, was set to form. The United

Nations commissioned the tribunal, and in the statutes made it clear that, because of the uniqueness of the situation, that there should be:

Article 6: Individual Criminal Responsibility

1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in Articles 2 to 4 of the present Statute, shall be individually responsible for the crime.
2. The official position of any accused person, whether as Head of state or government or as a responsible government official, shall not relieve such person of criminal responsibility nor mitigate punishment.
3. The fact that any of the acts referred to in Articles 2 to 4 of the present Statute was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.
4. The fact that an accused person acted pursuant to an order of a government or of a superior shall not relieve him or her of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal for Rwanda determines that justice so requires.

Article 7: Territorial and Temporal Jurisdiction

The territorial jurisdiction of the International Tribunal for Rwanda shall extend to the territory of Rwanda including its land surface and airspace as well as to the territory of neighbouring States in respect of serious violations of international humanitarian law committed by Rwandan citizens. The temporal jurisdiction of the International Tribunal for Rwanda shall extend to a period beginning on 1 January 1994 and ending on 31 December 1994.

Article 8: Concurrent Jurisdiction

1. The International Tribunal for Rwanda and national courts shall have concurrent jurisdiction to prosecute persons for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens for such violations committed in the territory of the neighbouring States, between 1 January 1994 and 31 December 1994.

2. The International Tribunal for Rwanda shall have the primacy over the national courts of all States. At any stage of the procedure, the International Tribunal for Rwanda may formally request national courts to defer to its competence in accordance with the present Statute and the Rules of Procedure and Evidence of the International Tribunal for Rwanda.

-courtesy, ICTR statutes,

<http://www.ictr.org/wwwroot/ENGLISH/basicdocs/statute.html>³¹

The largest problem emerging from the ICTR is that the genocide of the Tutsi minority was carried out by such a large population. There were only a handful of Hutus who could honestly say that they did not take part in the merciless killing of the Tutsi's. (To "take part in" implies that the individuals were at least they were present at the killing and did nothing.) When this fact is given some thought, and the statutes are then reviewed, it becomes painfully clear that the limitations of the criminal tribunal leaves a true necessity for a permanent court.

Again, the most glaring issue dealing with jurisdiction was that of the time frame. Though the majority of Tutsis were murdered after the tribunal had jurisdiction, it still did not compensate for the gross negligence of ignoring all those who were killed in the years before, and in the time after the jurisdiction had expired.³² Other issues of jurisdiction were also quite troubling, although seldom were they resolved since the International Tribunals had to follow the jurisdiction set forth in the statutes of law.

As a means of resolving these faults, the International Law Commission was finally able to submit a draft proposal to the United Nations in 1994. Four years after the draft had been submitted, in 1998, a Convention met to determine whether or not the ICC would meet approval or disapproval. Meet approval it did, as nearly 120 different government representatives signed the petition to establish the ICC. Unfortunately, the

³¹ ICTR statutes <http://www.ictr.org/wwwroot/ENGLISH/basicdocs/statute.html>

³² ICTR statutes <http://www.ictr.org/wwwroot/ENGLISH/basicdocs/statute.html>

petition also required that 60 countries ratify the petition through general elections, so it did not come into full force until July 1st, 2002.³³ Once the first 60 countries ratified the treaty, more followed. A list of these other countries follows:

As of 10 March 2003, the following 89 countries have ratified or acceded to the ICC Statute: Afghanistan, Albania, Andorra, Antigua and Barbuda, Argentina, Australia, Austria, Barbados, Belgium, Belize, Benin, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Cambodia, Canada, Central African Republic, Colombia, Costa Rica, Croatia, Cyprus, Democratic Republic of Congo, Denmark, Djibouti, Dominica, East Timor, Ecuador, Estonia, Fiji, Finland, France, Gabon, Gambia, Germany, Ghana, Greece, Honduras, Hungary, Iceland, Ireland, Italy, Jordan, Latvia, Lesotho, Liechtenstein, Luxembourg, Republic of Macedonia, Malawi, Mali, Malta, Marshall Islands, Mauritius, Mongolia, Namibia, Nauru, Netherlands, New Zealand, Niger, Nigeria, Norway, Panama, Paraguay, Peru, Poland, Portugal, South Korea, Romania, Saint Vincent and the Grenadines, Samoa, San Marino, Senegal, Serbia and Montenegro, Sierra Leone, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Tajikistan, Tanzania, Trinidad and Tobago, Uganda, United Kingdom, Uruguay, Venezuela, Zambia.³⁴

-courtesy of http://www.wikipedia.org/wiki/International_criminal_court

(Note: The other details, since they have already been explained, will not be repeated so as to avoid redundancy. Also, I was not able to attach a list of the other signatory nations, because the charts are not written on the proper format. However, if one does desire to see which nations have yet to ratify the treaty, as well as the nations who have withdrawn altogether, it is suggested that one go to :

<http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterXVIII/treaty10.asp>).

Why the U.S. is not a party to the ICC (and probably never will be):

³³ History of the ICC from the website <http://www.icc-cpi.int/php/show.php?id=history>

³⁴ http://www.wikipedia.org/wiki/International_criminal_court

Recently the United States reneged on an offer to become a party to the ICC, creating a major uproar in the international community because it is yet another example how the United States ignores international movements. Of particular concern are the underlying motives why the U.S. decided not to join the ICC, the most interesting being accusations of American violations of human rights. Allegations of American action going against international law are not new, as U.S. forces have made assassination attempts, conducted unilateral wars, and often been party to the attacks on innocent civilians.³⁵ Though the United States denies this as the reason for their aversion to the ICC, speculation still remains as to how much influence it had. Until recently, because of the absence of an institution like the ICC, these actions have receded into the background lost in the stream of information, and omitted by administration officials, but now, with NGOs perpetually monitoring governments, such actions are subject to recognition and prosecution. Of course, there are limits to the jurisdiction, and if an event takes place outside the jurisdiction of the ICC's mandates, then little international action is possible to hold the perpetrators accountable for their actions.

American crimes against international law were frequent in the latter half of the 20th century, but without a proper agency to check these actions, the abuses continue. The International War Crimes Tribunal attempted to bring many of these offenses, most of them from the first Gulf War, to the forefront, by formerly accusing the United States of "Crimes against the Peace, War Crimes, Crimes Against Humanity and Other Criminal Acts and High Crimes."³⁶ Though the Criminal Tribunal recognizes American attempts to destabilize Iraq in the 1970s (with the aide of Kurdish forces trained by the CIA), ignore

³⁵ <http://www.deoxy.org/wc/warcrim2.htm>

³⁶ *ibid.*

international claims recognizing Palestinian human rights, aggressive actions in “Grenada in 1983, the bombing of Tripoli and Benghazi in 1986, financing the contra in Nicaragua, UNITA in southern Africa and supporting military dictatorships in Liberia, Chile, El Salvador, Guatemala, and the Philippines,”³⁷ the main purpose of the accusations is to bring charges against the United States for actions taken against the Iraqi people and their government. The charges are:

1. The United States engaged in a pattern of conduct beginning in or before 1989 intended to lead Iraq into provocations justifying U.S. military action against Iraq and permanent U.S. military domination of the Gulf.
2. President Bush from August 2, 1990, intended and acted to prevent any interference with his plan to destroy Iraq economically and militarily.
3. President Bush ordered the destruction of facilities essential to civilian life and economic productivity throughout Iraq. (such as electric power generation and water treatment, pumping and distribution facilities)
4. The United States intentionally bombed and destroyed civilian life, commercial and business districts, schools, hospitals, mosques, churches, shelters, residential areas, historical sites, private vehicles and civilian government offices.
5. The United States intentionally bombed indiscriminately throughout Iraq
6. The United States bombed and destroyed Iraqi military personnel, used excessive force, killed soldiers seeking to surrender and in disorganized individual flight, often unarmed and far from any combat zones and randomly and wantonly killed Iraqi soldiers and destroyed material after the cease fire.
7. the United States used prohibited weapons capable of mass destruction and inflicting indiscriminate death and unnecessary suffering against both military and civilian targets.
9. President Bush ordered U.S. forces to invade Panama, resulting in the deaths of 1,000 to 4,000 Panamanians and the destruction of thousands of private dwellings, public buildings and commercial structures.
10. President Bush obstructed justice and corrupted United Nations functions as a means of securing power to commit crimes against peace and war crimes.
12. The United States waged war on the environment
14. President Bush intentionally deprived the Iraqi people of essential medicines, potable water, food, and other necessities.
16. The United States has violated and condoned violations of human rights, civil liberties, and the U.S. Bill of Rights in the United States, in Kuwait, Saudi Arabia and elsewhere to achieve its purpose of military domination.
17. The United States, having destroyed Iraq's economic base, demands reparations which will permanently impoverish Iraq and threaten its people with famine and epidemic.

³⁷ *ibid.* pg. 3

18. President Bush systematically manipulated, controlled, directed, misinformed and restricted press and media coverage to obtain constant support in the media for his military and political goals.

19. The United States has by force secured a permanent military presence in the Gulf, the control of its oil resources and geopolitical domination of the Arabian Peninsula and Gulf region.

-the International War Crimes Tribunal's Initial Complaint against the United States³⁸

Though these crimes occurred before the ICC came into full force in 2002, it is clear the United States is hiding, or attempting to hide, a long chain of abuses against individuals, nations, and humanity.

Currently there are allegations against the U.S. for actions taking place after the ICC came into full force, presenting a curious situation where, America, purportedly the world leader in justice and equality, does not want to join the ICC for fear that national sovereignty will disappear and American citizens convicted in foreign courts. Recently a German film put forth allegations that American soldiers in Afghanistan were party to war crimes.³⁹ [Massacre in Afghanistan-did the Americans Look On?](#) collects information from various reliable sources around the world that have been public for over half a year, to make a strong case against these American soldiers, but the U.S. State Department simply writes off the information as “completely wrong” and “unfair.”⁴⁰ The documentary, a powerful piece of filmmaking follows the journey of American soldiers after the fall of Konduz, where the Taliban had one final stronghold, and how these soldiers subjected thousands of POWs to methods of torture, and, eventually, slaughter.⁴¹ Reports of these abuses are widespread in Afghanistan and around the world, yet the American media is filtered by the watchful hand of the U.S. government.

³⁸ *ibid.*

³⁹ <http://www.wsws.org/articles/2002/dec2002/docu-d21.shtml>

⁴⁰ *ibid.*

⁴¹ *ibid.*

To join the ICC would be to accept accountability for the thousands of human rights violations that the American government is responsible for, showing Americans the truth and dispelling the myths. Aside from the Afghani incidents, other accusations of American injustice have arisen with the torture of “Al-Qaeda” prisoners at Guantanamo Bay, but information is only slowly being discovered about these events. If the American government ratified the Rome statutes that determine the jurisdiction of the ICC, American soldiers and officials would most definitely be prosecuted and convicted of their crimes. For obvious reasons, the American government does not want this to be the case, tarnishing any claims to charity and justice, while solidifying allegations of torture and violence.

In response to any and all accusations posited against it, the United States composed a letter to the Secretary-General of the UN, Kofi Annan. Excerpts from the letter are available at the website of the Rome Statute for the International Criminal Court.

The excerpt reads:

“1. On 6 November 1998, the Secretary-General received from the Government of the United States of America the following communication dated 5 November 1998, relating to the proposed corrections to the Statute circulated on 25 September 1998:

“[...] The United States wishes to note a number of concerns and objections regarding the procedure proposed for the correction of the six authentic texts and certified true copies:

“First, the United States wishes to draw attention to the fact that, in addition to the corrections which the Secretary-General now proposes, other changes had already been made to the text which was actually adopted by the Conference, without any notice or procedure. The text before the Conference was contained in A/CONF.183/C.1/L.76 and Adds. 1-13. The text which was issued as a final document, A/CONF.183/9, is not the same text. Apparently, it was this latter text which was presented for signature on July 18, even though it differed in a number of respects from the text that was adopted only hours before. At least three of these

changes are arguably substantive, including the changes made to Article 12, paragraph 2(b), the change made to Article 93, paragraph 5, and the change made to Article 124. Of these three changes, the Secretary-General now proposes to "re-correct" only Article 124, so that it returns to the original text, but the other changes remain. The United States remains concerned, therefore, that the corrections process should have been based on the text that was actually adopted by the Conference.

" Second, the United States notes that the Secretary-General's communication suggests that it is "established depositary practice" that only signatory States or contracting States may object to a proposed correction. The United States does not seek to object to any of the proposed corrections, or to the additional corrections that were made earlier and without formal notice, although this should not be taken as an endorsement of the merits of any of the corrections proposed. The United States does note, however, that insofar as arguably substantive changes have been made to the original text without any notice or procedure, as noted above in relation to Articles 12 and 93, if any question of interpretation should subsequently arise it should be resolved consistent with A/CONF.183/C.1/L.76, the text that was actually adopted.

"More fundamentally, however, as a matter of general principle and for future reference, the United States objects to any correction procedure, immediately following a diplomatic conference, whereby the views of the vast majority of the Conference participants on the text which they have only just adopted would not be taken into account. The United States does not agree that the course followed by the Secretary-General in July represents "established depositary practice" for the type of circumstances presented here. To the extent that such a procedure has previously been established, it must necessarily rest on the assumption that the Conference itself had an adequate opportunity, in the first instance, to ensure the adoption of a technically correct text. Under the circumstances which have prevailed in some recent conferences, and which will likely recur, in which critical portions of the text are resolved at very late stages and there is no opportunity for the usual technical review by the Drafting Committee, the kind of corrections process which is contemplated here must be open to all."

In accordance with Article 77, paragraph 1 (e) of the 1969 Vienna Convention on the Law of Treaties, the United States requests that this note be communicated to all States which are entitled to become parties to the Convention.⁴²

-courtesy the Rome Statute on the International Criminal Court website

⁴² The Rome Statute of the International Criminal Convention:
[http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterXVIII/treaty10.a
sp](http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterXVIII/treaty10.asp)

This is not the first time that the American government vetoed a bill because it was “weak,” and, as noted earlier, it is not the first time that the American government has gone against world opinion to do as it pleases. The current administration appears to be seeking out excuses wherein it will be able to ignore international attempts at cooperation. Over the past fifty years, the United States has abused the privileges it has to manipulate and intervene are many, and chances are, if more international bodies do not emerge, then this will always be the case.

Currently there are NGO’s and institutions collecting information to decide whether or not Gen. Tommy Franks could be considered guilty for many of the aforementioned crimes, but for more recent crimes of the same nature. In all likelihood, more accusations and more evidence will be found implicating more American officials in crimes of war and crimes against humanity. The ICC is an ideal venue where the actions these men have taken can, and will, be scrutinized away from the American veil of innocence. Fortunately for us, and the rest of the world, the ICC should help eliminate the instances when abuses of power go unnoticed, prosecuting unjust actions.

Regardless, the United States has little reason to be a signatory nation, let alone a nation that ratifies the Rome Statute on the International Criminal Court, because, as of yet, it has felt no real pressure. Only when the global community truly convinces the United States of the errors they are committing, will any progress ensue.

Future Status of the ICC:

Currently, the ICC is in a perpetual state of flux, moving towards the ultimate objective of becoming a strict governing international body by reducing loopholes and increasing influences. The institution gains strength every day, and when the official

headquarters are finished, the time will be ripe for action and improvement. As of right now the institution must accept its role in the limited capacity it holds, because there is little that can be done within the political sphere to give it more power.

The ICC serves a purpose as a complementary judiciary body to national courts, simply assuring itself that each nation is capable of achieving justice.⁴³ At the moment, the only time when the ICC has full jurisdiction over a certain case or situation is when the host nation of the conflict can not investigate or prosecute to the full extent of the law.⁴⁴ Given the past aversion of nations to prosecute their own leaders, and the strong interests of international NGOs, the ICC docket rapidly filling with cases.

Use of the ICC will increase neutrality and justice in the international court system as well as the national court system around the world. The international system of justice will now have an arena where civil trials can be brought against individuals for international crimes, subjecting, even leaders, to global laws. This is clearly a step up from the UN ICJ(International Court of Justice), which only can prosecute nations for their crimes against other nations. As an international, independent, institution, the ICC will not be subject to much of the politics of the ICJ or of the UN, influenced by members of the court alone.⁴⁵ Under current ICC law, if national courts do not investigate allegations against certain individuals, whether it be because they are “unwilling” (when a nation does not acknowledge, or pursue, a trial, or when it is “shielding” an individual. e.g. a potential case against the U.S.) or simply “unable”

⁴³ supra no. 8 pg. 1

⁴⁴ ibid.

⁴⁵ ibid.

(when the infrastructure of the national judicial system is no longer present, e.g. Iraq).⁴⁶

Perhaps the most appealing aspect for all nations is the strict adherence to procedural safeguards that serves to protect victims' rights and gender justice in international court.

Nationally, the ICC will promote an increase in political awareness, limiting an administration's ability to ignore abuses of human rights. Where past governments could simply ignore claims of injustice, because the ICC will be able to act on these claims where governments refuse to, these claims will not be ignored. Hopefully, by recognizing, and potentially publicizing crimes, future perpetrators may be deterred from unlawful action.

Why the U.S. Should Recognize the ICC:

To ameliorate current international relations, and to possibly improve them in the future, I believe that it is necessary for the United States to become party to the ICC. Doing so would place some risks as well as some benefits to the American people, but it is my opinion that the benefits clearly outweigh the risks. Yes, it would be difficult to join a system where the American Supreme Court is not the final authority on judicial matters concerning American citizens. Yes, this would infringe upon the rights that every American is guaranteed in the Constitution. Yes, the ICC still does need improvements before it can become an effective international governing body of law. But, though these problems are not slight, nor can they be ignored, it would be worse to allow crimes against humanity.

Sentiments after WWII demanded that crimes against humanity never happen again, yet they continue, and will continue, without the proper authorities to check the

⁴⁶ *ibid.*

violence.⁴⁷ There is little reason to believe, given the facts of the second half of the 20th century, that there will never be another crime against humanity, particularly because they continue on today. The crimes may not be in the same scale as that of the Nazi regime, or of the Hutu tribe members, but, without an international judicial body, there probably will. The possibility that these crimes will continue to go on, without any sort of acknowledgement by the United States government, is simply unacceptable. Even if ad hoc tribunals could arise when the occasion arose, they would not be of the same quality as an International Court.

The flaws of an ad hoc system are already painfully clear in the short time they have existed, and the problems do not promise to go away. International tribunals require immense amounts of time, energy, and other resources (including personnel), that often is not available. Whereas the ICC would have a permanent staff and an operating budget, international tribunals are limited by the scope of their statutes and by the available resources at the time.⁴⁸ The presence of the ICC would almost certainly eliminate the need for international tribunals or the drains they put on their national systems.

Another dilemma within national systems exists in their unwillingness to try, or even publicize the crimes of, their leaders, past or present. Aside from being the first and only institution that would be able to try offenders, not offending nations, thus placing the blame where the blame belongs, it also prevents bias within national governments.

Given the already strained relationship existing between the United States and the global community, to ignore yet another cry for justice is to reject all responsibility for past, present, and future actions. The Bush administration is quickly becoming an

⁴⁷ http://www.usaforicc.org/facts_whyneed.html

⁴⁸ *ibid.*

international pariah, finding acceptance only in those states too poor, or too greedy, to demand an ethical decision. It is true that many Americans may have to pay for their past indiscretion, but it is the only just course of action. Americans cannot continue to believe that their actions, and the actions of their country, are above the scope of international scrutiny and prosecution.

The European Union is already setting the pace in terms of International Ethics, creating the ECJ to govern and reprimand the actions of people within its jurisdiction. True, there are many obstacles to the full implementation of this court, but, given the ardor of the European representatives, these obstacles will not last long. When each nation in the European Union accepted their bid to enter into the Socio-Economic bonds of the Union, they also accepted a code of conduct where all members of society can be held accountable for their actions. This system of justice, though not perfect, will establish an important precedent, uniting nations, dispelling myths of national sovereignty, and eliminating the impunity high officials have had in the past.

It is my belief that, however adverse the circumstances, the United States can, and should, be party to the ICC. The current Bush administration is caught up in the traditions of injustice, oblivious to the need for action, oblivious to the principles that founded our nation. Abuses of international human rights can not continue to go on, not anywhere, not by anyone. This is a responsibility all humans have, regardless of their nationality, constitution, or politics.

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