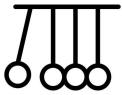


TURKEY'S UNHEARD VOICES

Controversies Surrounding ICC

LAW

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Abstract

The International Criminal Court, established to address and ultimately end crimes such as genocide, war crimes, and crimes against humanity, was conceived as a cornerstone of international justice. However, since its inception, the Court has faced substantial controversies regarding its jurisdiction, perceived biases, effectiveness, and political influence. Critics argue that the Court disproportionately targets certain regions—particularly in Africa—while countries considered “powerful” often escape accountability. Furthermore, ongoing debates surrounding state sovereignty and the ICC’s relationship with the United Nations Security Council continue to challenge its legitimacy and authority. This article explores the ICC, the controversies surrounding it, and the potential future of the Court.

Definition of Key Terms

Rome Statute:

The Rome Statute of the International Criminal Court is the international treaty that established the Court and provides the governing framework for the ICC.

Non bis in idem:

Non bis in idem, which translates literally from Latin as “not twice in the same [thing],” is a legal doctrine stating that no legal action can be instituted twice for the same cause of action. The Rome Statute of the ICC employs a modified version of this principle.

United Nations Security Council (UNSC):

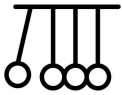
The UNSC is one of the six principal organs of the United Nations (UN). It is responsible for maintaining international peace and security, recommending the admission of new UN members to the General Assembly, and approving amendments to the UN Charter.

Genocide:

Genocide is defined as “the specific intent to destroy, in whole or in part, a national, ethnic, racial, or religious group, by killing its members or by other means: causing serious bodily or mental harm to members of the group; deliberately inflicting conditions of life calculated to bring about the group’s physical destruction in whole or in part; imposing measures intended to prevent births within the group; or forcibly transferring children of the group to another group.”

Crimes against humanity:

Crimes against humanity are serious violations committed as part of a widespread or systematic attack against any civilian population, as defined by the ICC. The Rome Statute enumerates 15 types of such crimes, including murder, rape, imprisonment, enforced disappearances, enslavement, sexual slavery, torture, apartheid, and deportation.

**War crimes:**

War crimes are defined as grave breaches of the Geneva Conventions committed in the context of armed conflict. They include, for instance, the use of child soldiers; the killing or torture of civilians or prisoners of war; and intentionally directing attacks against hospitals, historic monuments, or buildings dedicated to religion, education, art, science, or charitable purposes, according to the ICC.

The crime of aggression:

The crime of aggression refers to the use of armed force by one State against the sovereignty, territorial integrity, or political independence of another State.

The Office of the Prosecutor (OTP):

The OTP (also known as the Prosecution) is one of the Court's main organs. It is responsible for receiving information about crimes, conducting investigations, and prosecuting individuals charged with committing the most serious crimes under the Court's jurisdiction. The OTP is led by the Prosecutor, an independent official elected by the Assembly of States Parties.

The Defence:

The Defence consists of the legal team representing the accused. Its role is to ensure that the accused's rights are fully protected throughout the legal process. The Defence challenges the Prosecution's evidence, presents counter-evidence, and argues for the acquittal or mitigation of the accused, upholding the principle that a person is presumed innocent until proven guilty.

The Legal Representatives of Victims:

The Legal Representatives of Victims are lawyers appointed to represent victims participating in proceedings. Victims before the ICC have the right to express their views and concerns, either individually or collectively, through these representatives. The Legal Representatives ensure that victims' interests are heard and respected during the pre-trial, trial, and reparations phases, without assuming the role of the Prosecution.

Assembly of States Parties (ASP):

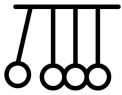
The ASP is the governing body of the ICC. It consists of all countries that have ratified or acceded to the Rome Statute.

ICC Judge:

An ICC judge is an independent, impartial official elected by the Assembly of States Parties to serve on the Court's judicial benches. Judges are responsible for ensuring that proceedings are conducted fairly and in accordance with the Rome Statute.

Arrest warrant:

An arrest warrant at the ICC is a formal order issued by a Pre-Trial Chamber of judges, authorizing the arrest and detention of a person suspected of committing crimes within the Court's jurisdiction (genocide, crimes against humanity, war crimes, or the crime of



aggression). A warrant is issued when the judges are satisfied that there are reasonable grounds to believe the person committed a crime and that arrest is necessary.

Summons to appear:

A summons to appear is a less coercive alternative to an arrest warrant. It is an official court order requiring a suspect to voluntarily appear before the Court at a specified date and time. A summons is issued when the judges believe that the individual will comply with the order without the need for forcible arrest.

Verdict:

A verdict is the formal decision rendered by the judges at the conclusion of a trial. It determines whether the accused is guilty or not guilty of the charges brought against them.

Appeals Chamber:

The Appeals Chamber is a distinct panel of judges within the ICC responsible for adjudicating appeals.

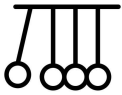
About the International Criminal Court (ICC)

The International Criminal Court (ICC) is a permanent international court that addresses crimes against humanity, genocide, war crimes, and the crime of aggression. It was established on July 1, 2002, and entered into force on March 11, 2003. The Court's founding document is the *Rome Statute*. To date, 124 countries have become parties to the ICC. The principle of *non bis in idem* is applied in ICC proceedings, meaning that if a perpetrator is prosecuted by the state of which they are a national, they will not be tried again by the ICC for the same act. The ICC only has jurisdiction over crimes committed after July 1,

2002—the date the Rome Statute entered into force. The Court is intended to complement, not replace, national criminal justice systems; it intervenes only when states are unwilling or genuinely unable to prosecute serious crimes. The ICC relies heavily on cooperation from countries around the world for critical functions such as making arrests, transferring suspects to the ICC detention centre in The Hague,



freezing assets, and enforcing sentences. While not a United Nations organization, the Court has a cooperation agreement with the UN. When a situation falls outside the ICC's jurisdiction, the United Nations Security Council (UNSC) may refer it to the Court, thereby granting jurisdiction. This has occurred in the cases of Darfur (Sudan) and Libya. The ICC only has jurisdiction over individuals, and only crimes committed within the state borders of the party countries or by a national of a party country. The Court's Rome Statute also has



jurisdiction over four main crimes: genocide, crimes against humanity, war crimes, and crimes of aggression as aforementioned.

The Rome Statute System

The Rome Statute established three separate bodies within the ICC: the Assembly of States Parties, the International Criminal Court itself, which comprises four organs, and the Trust Fund for Victims. The Assembly of States Parties is the body where representatives of States Parties meet to provide management oversight for the Court. Its responsibilities include electing judges and the Prosecutor, as well as approving the ICC's budget. The ICC consists of four organs: the Presidency, Judicial Divisions, the Office of the Prosecutor (OTP), and the Registry. The Presidency manages external relations with States, coordinates judicial matters such as assigning judges, situations, and cases to divisions, and oversees the Registry's administrative work. The Judicial Divisions consist of 18 judges organized into three divisions—Pre-Trial, Trial, and Appeals—who conduct judicial proceedings. The Registry handles non-judicial activities, including security, interpretation, outreach, and support for Defence teams and victims' lawyers. Lastly, the Trust Fund for Victims provides assistance, support, and reparations to victims of crimes committed under the Court's jurisdiction.

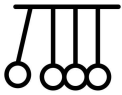
Legal Process of the ICC

After a crime potentially falling under the Court's jurisdiction occurs, a legal process is initiated at the ICC, beginning with preliminary examinations. During this phase, the Office of the Prosecutor must determine whether there is sufficient evidence of crimes of sufficient gravity within the ICC's jurisdiction, whether genuine national proceedings are ongoing, and whether opening an investigation would serve the interests of justice and the victims. If these requirements are not met or if the crime is not confirmed to fall under the ICC's jurisdiction, the Court is unable to proceed with an investigation.

Once the preliminary examinations are passed, evidence is gathered and a suspect identified, the Court moves to the "investigations" phase. Here, the Prosecution requests that ICC judges issue an arrest warrant or a summons to appear. If the requirements for these are not met, the Prosecution may seek confirmation of charges again by presenting new evidence.

Next, the Court enters the "pre-trial stage," where three pre-trial judges confirm the suspect's identity and ensure the suspect understands the charges. After hearing the Prosecution, the Defence, and the Legal Representatives of Victims, the judges decide—usually within 60 days—whether there is sufficient evidence for the case to proceed to trial. If the suspect is not arrested or does not appear, legal submissions can still be made, but hearings cannot begin.

At the trial stage, before three Trial judges at the ICC, the Prosecution must prove the guilt of the suspect beyond a reasonable doubt. The judges carefully consider all evidence



presented during the trial before issuing a verdict. If the accused is found guilty, the judges impose a sentence, which can be up to 30 years of imprisonment or, in exceptional circumstances, a life sentence. Verdicts are subject to appeal by both the Defence and the Prosecutor. Additionally, judges have the authority to order reparations for victims of the crimes. If the evidence is insufficient to support a conviction, the case is closed and the accused is released. Acquittals, like convictions, may also be appealed by either the Defence or the Prosecutor.

At the appeals stage, both the Prosecutor and the Defence have the right to appeal a Trial Chamber's decision regarding the verdict as well as the sentence imposed. Victims and the convicted person may also appeal an order for reparations. Appeals are heard by five judges of the Appeals Chamber, who are entirely different from the judges who delivered the original verdict.

The Appeals Chamber has the authority to uphold, amend, or reverse the decision under appeal. Its judgment is final unless the Chamber determines that a re-trial before the Trial Chamber is necessary.

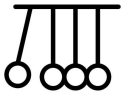
Sentences imposed by the ICC are served in states that have agreed to enforce ICC sentences through formal agreements. If, upon appeal, a verdict of guilt is not upheld, the convicted person may be released.

Throughout all stages of the proceedings, the suspect has the right to receive information in a language he or she fully understands. Therefore, ICC proceedings are conducted in multiple languages, supported by teams of interpreters and translators.

Controversies Surrounding the ICC

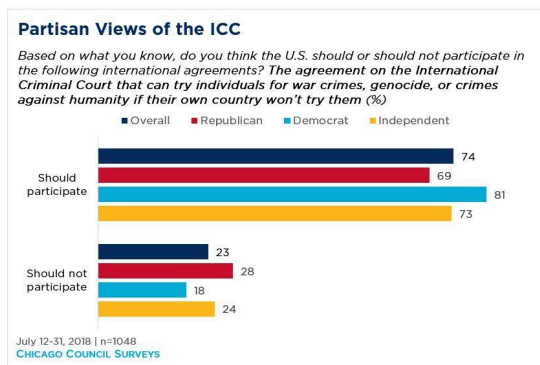
Throughout the years, the ICC has been in existence to solve humanitarian issues and criminal acts; however, developments in recent years have shown that the Court simply has not met most expectations, which can be inferred from the rise of questions and worries among the people.

Since its inception, the ICC has gathered significant concerns from critics all over regarding its legitimacy, efficiency, effectiveness, and whether or not the Court is biased. One of the top issues causing these concerns is the Court's overall focus on African states, which has spurred not only criticism but also genuine withdrawals from the Rome Statute. For the past two decades the ICC has been in effect, the Court has repeatedly come under fire for predominantly prosecuting Africans and turning a blind eye to criminal acts taking place outside of Africa. Out of the thirteen situations currently under investigation, ten of them are focused on African countries. The leaders of these countries have criticized this evident bias for subjecting them to disproportionate persecution. For example, Burundi, which withdrew from the Rome Statute in 2017, accused the ICC of being a political instrument and a weapon used by the West to enslave other States. Other nations within Africa, such as South Africa and Gambia, have also made similar claims, expressing their wish to leave the ICC. The



Court's evident bias, which can be seen through the excessive prosecution of people from African states, quite literally proves its opposition to the principles of internationality and universality, which should be features of an international court. In short, the ICC's opposition towards internationality sparks concerns for critics regarding legitimacy and unbiasedness, along with undermining the legitimacy of the Court.

With that being said, another significant reason why the ICC is deemed controversial is that the referral procedure triggering the Court's jurisdiction has also sparked accusations of illegitimacy. The forms of referrals received from the UNSC and those received from State



Parties have raised the most concerns. The authority of the UNSC to issue referrals has come under significant attack, as three of its five permanent members (Russia, China, and the United States) have not signed the Rome Statute. However, they possess veto powers and therefore have the power to decide when the ICC may investigate, despite not submitting to the ICC's jurisdiction themselves. State Party self-referrals also cause rising concerns, as they are open to abuse by states seeking to distract

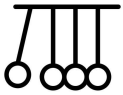
the world and the Court from their crimes and use the ICC as a tool for denying resistance and promoting their political issues. Experts are confident that this may be the case regarding the ongoing investigations in the Democratic Republic of the Congo (DRC), Uganda, and the Central African Republic, where the states have accused rebels of criminal behavior.

Along with these imperfections, the Court's mission and legal system can be seen as diverted. These practical issues hinder the Court's mission by delaying the administration of justice and by preventing the very possibility of seeing justice done in the first place. The legal process of the ICC is extremely slow-moving, and investigations can last for years or even decades. An eye-opening example is the proceedings continuing in Uganda, which began in 2004 and concluded toward the end of 2023. Preventing such delays and slow progress is extremely important for both the victims and even the suspects of the conflict to obtain the justice they deserve. The Court's thirteen ongoing investigations and ten preliminary examinations put significant strain on its workforce of only 900 employees and workers.

Furthermore, the ICC's dependence on the cooperation of Member States to execute warrants and surrender fugitives poses an even greater threat to the Court's effectiveness.

Future of the ICC

As aforementioned, problems regarding bias, effectiveness, and legitimacy within the ICC actively plague the Court's legal process and its ability to properly address international



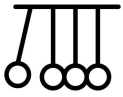
crimes within its jurisdiction. Without a respected base of power, the decisions of the ICC will carry less weight for the individuals and states it seeks to oversee.

To advance the ICC's capacity to handle international crimes and resolve humanitarian issues, the Court's function and composition must be redesigned. To ensure cooperation and international oversight, the Court should collaborate more closely with both non-governmental organizations (NGOs) and intergovernmental organizations to assist national judiciaries in redressing human rights violations, including enhanced communication with states, technical support, and training. Furthermore, as permanent members of the UNSC, the United States, China, and Russia should become signatories to the ICC.

To address criticism regarding the Court's perceived focus on African states, the ICC should strengthen complementarity by improving its contribution to national legal systems. Reinforcing domestic judicial systems would directly respond to concerns that the ICC unfairly targets African states and individuals. By increasing information exchange, providing training, and building institutional frameworks, the ICC could empower national courts to prosecute serious crimes themselves, reducing the reliance of countries like Uganda and the DRC on international intervention to ensure justice is delivered at the national level.

Conclusion

The ICC, an international court established to address serious crimes such as genocide, war crimes, crimes against humanity, and the crime of aggression, aims to hold individuals accountable when national jurisdictions are unwilling or unable to do so. Despite this purpose, the Court faces significant controversies concerning its legitimacy, impartiality, and effectiveness. Critics argue that the ICC's predominant focus on crimes committed within the African continent — with 10 of the 13 ongoing investigations relating to African states — suggests bias, undermining the Court's neutrality. Additionally, the referral mechanisms involving the United Nations Security Council (UNSC) and individual state parties have sparked controversy. Some permanent UNSC members (the P5) have not ratified the Rome Statute, which means these states, while not subject to ICC jurisdiction themselves, hold veto power that can influence whether the Court can investigate certain situations. This situation challenges the ICC's legitimacy and authority. Referrals made by state parties have also raised concerns about potential abuse of power. Furthermore, the slow pace of investigations has drawn criticism from the public, who perceive it as denying justice and freedom to all parties involved. These ongoing challenges underscore the urgent need for reforms to strengthen the ICC's legitimacy, impartiality, and efficiency in delivering true international justice.



Bibliography

1. https://tr.wikipedia.org/wiki/Uluslararası_Ceza_Mahkemesi
2. <https://www.icc-cpi.int/about/how-the-court-works>
3. <https://www.icc-cpi.int/publications/core-legal-texts/rome-statute-international-criminal-court#:~:text=Core%20Legal%20Text,governing%20framework%20for%20the%20Court.>
4. https://en.wikipedia.org/wiki/Non_bis_in_idem#:~:text=Non%20bis%20in%20idem%20
5. https://en.wikipedia.org/wiki/United_Nations_Security_Council#cite_note-6
6. <https://www.culawreview.org/roundtable-1/roundtable-discussion-the-promises-and-problems-of-the-international-criminal-court>
7. <https://www.icc-cpi.int/situations-under-investigations>
8. <https://www.coalitionfortheicc.org/country/burund>
9. <https://www.icc-cpi.int/situations-under-investigations>
10. <https://www.icc-cpi.int/uganda>