
Introduction

This past century has seen some of the worst atrocities in the history of humanity. In too many cases, these crimes have been committed with impunity, which has only encouraged others to flout the laws of humanity.

States representative of the international community met in order to negotiate and agree upon the establishment of a treaty based International Criminal Court to help end impunity and the gross violations of international humanitarian law.

The International Criminal Court (ICC), governed by the Rome Statute, is the first permanent, treaty based, international criminal court established to help end impunity for the perpetrators of the most serious crimes of concern to the international community.

The ICC is an independent international organization, and is not part of the United Nations system. Its seat is at The Hague in the Netherlands. Although the Court's expenses are funded primarily by States Parties, it also receives voluntary contributions from governments, international organizations, individuals, corporations and other entities.

The international community has long aspired to the creation of a permanent international court, and, in the 20th century, it reached consensus on definitions of genocide, crimes against humanity and war crimes. The Nuremberg and Tokyo trials addressed war crimes, crimes against peace, and crimes against humanity committed during the Second World War.

In the 1990s after the end of the Cold War, tribunals like the International Criminal Tribunal for the former Yugoslavia and for Rwanda were the result of consensus that impunity is unacceptable. However, because they were established to try crimes committed only within a specific time-frame and during a specific conflict, there was general agreement that an independent, permanent criminal court was needed.

On 17 July 1998, the international community reached an historic milestone when 120 States adopted the Rome Statute, the legal basis for establishing the permanent International Criminal Court.

The Rome Statute entered into force on 1 July 2002 after ratification by 60 countries.

Based in the Hague, The Netherlands, the International Criminal Court is the first ever permanent international institution, with jurisdiction to prosecute individuals responsible for the most serious

crimes of international concern: genocide, crimes against humanity and war crimes. The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to it.

The jurisdiction of the ICC will be complementary to national courts, which means that the Court will only act when countries themselves are unable or unwilling to investigate or prosecute.

The jurisdiction and functioning of the court is governed by the provisions of the Rome Statute. The ICC also has strong protections for due process, procedural safeguards to protect it from abuse, and furthers victims' rights and gender justice under international law.

The International Criminal Court complements national courts so that they retain jurisdiction to try genocide, crimes against humanity and war crimes.

If a case is being considered by a country with jurisdiction over it, then the ICC cannot act unless the country is unwilling or unable genuinely to investigate or prosecute.

A country may be determined to be "unwilling" if it is clearly shielding someone from responsibility for ICC crimes. A country may be "unable" when its legal system has collapsed.

The Rome Statute is different to other human rights conventions, as it created an international organization. Thus it is difficult to create and sustain such an organization if parties can pick and choose as to which aspects they wish to be subject to.

PRIMARY CASE

Situación in Darfur, Sudan

The Prosecutor v. Omar Hassan Ahmad Al Bashir (“Omar Al Bashir”)

Background information¹

There are reasonable grounds to believe that Omar Al Bashir bears personal responsibility as an indirect co-perpetrator, or as an indirect perpetrator, under article 25 of the Rome Statute for:

- Five counts of crimes against humanity:
 - o Murder - Article 7(1)(a);
 - o Extermination - Article 7(1)(b);
 - o Forcible transfer - Article 7(1)(d);
 - o Torture - Article 7(1)(f);
 - o Rape - Article 7(1)(g);

¹ <http://www.icc-cpi.int/NR/rdonlyres/08B26814-F2B1-4195-8076-B4D4026099EC/281528/CISAlBashirENG1.pdf>

- Two counts of war crimes:
 - o Intentionally directing attacks against a civilian population or against individual civilians not taking direct part in hostilities - article 8(2)(e)(i);
 - o Pillaging - Article 8(2)(e)(v).

Considering the reasons expressed above, the International Criminal Court issued an arrest warrant against Omar Al Bashir dated March 4th 2009². The warrant of arrest allows a suspect to be taken into custody and surrendered to the Court, but does not prejudice the final decision on the guilt of the suspect.

The suspect remains at large at the moment.

The facts considered by the ICC are the following:

- From March 2003 to at least 14 July 2008, a protracted armed conflict not of an international character existed in Darfur between the Government of Sudan (GoS) and several organized armed groups, in particular the Sudanese Liberation Movement/Army ("SLM/A") and the Justice and Equality Movement ("JEM").
- Soon after the April 2003 attack on the El Fasher airport, Omar Al Bashir and other high-ranking Sudanese political and military leaders of the GoS agreed upon a common plan to carry out a counter-insurgency campaign against the SLM/A, the JEM and other armed groups opposing the Government of Sudan in Darfur.
- A center component of that campaign was the illegitimate attack on part of the civilian population of Darfur - belonging largely to the Fur, Masalit and Zaghawa groups - who were perceived to be close to the organized armed groups opposing the Government of Sudan in Darfur.
- The campaign was conducted through GoS forces, including the Sudanese Armed Forces and its allied Militia, the Sudanese Police Forces, the National Intelligence and Security Service ("NISS") and the Humanitarian Aid Commission ("HAC"). It lasted at least until the date of the filing of the Prosecution Application on 14 July 2008.
- During the campaign, GoS forces allegedly committed crimes against humanity within the meaning of article 7(1)(a), (b), (d), (f) and (g) of the Statute and war crimes within the meaning of article 8 (2)(e)(i) and article 8 (2)(e)(v) of the Statute.

There are also reasonable grounds to believe that:

- Omar Al Bashir as President of the State of Sudan and Commander-in-Chief of the Sudanese Armed Forces at all times relevant to the Prosecution Application, played an essential role in coordinating the design and implementation of the common plan.
- And, in the alternative, that Omar Al Bashir also:

² <http://www.icc-cpi.int/iccdocs/doc/doc639078.pdf>

- Played a role that went beyond coordinating the implementation of the said GoS counter - insurgency campaign;
- Was in full control of all branches of the "apparatus" of the State of Sudan, including the Sudanese Armed Forces and their allied *Janjaweed* Militia, the Sudanese Police Forces, the NISS and the HAC;
- Used such control to secure the implementation of the said GoS counter-insurgency campaign.

NOTES

We have denominated the mentioned case as the primary situation to be developed in the committee based on its large content and on the wide discussion that will take place regarding the elements of such. We estimate its duration to be two days or more.

On the other hand, to avoid a prompt solving of the given case and in the eventuality of spare time, we have decided on a second or subsidiary case to be analyzed in the committee.

SECONDARY CASE

Situation in Darfur, Sudan

The Prosecutor v. Bahar Idriss Abu Garda

Background information³

There are reasonable grounds to believe that Abu Garda is criminally responsible as a co-perpetrator or as an indirect co-perpetrator for three war crimes under article 25(3)(a) of the Rome Statute:

- Violence to life in the form of murder, whether committed or attempted, within the meaning of article 8(2)(c)(i) of the Statute;
- Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a peacekeeping mission within the meaning of article 8(2)(e)(iii) of the Statute;
- Pillaging within the meaning of article 8(2)(e)(v) of the Statute.

The facts taken into account by the ICC are the following:

- A protracted armed conflict not of an international character existed in Darfur between the Government of Sudan and several organized armed groups, including the Justice and Equality Movement ("JEM"). In this context, an attack was carried out on 29 September 2007 against the African Union [peacekeeping] Mission in Sudan personnel, installations, material, units and vehicles that were stationed at the Military Group Ste Haskanita ("MGS Haskanita"), Umm Kadada Locality, North Darfur, Sudan.

³ http://www.icc-cpi.int/NR/rdonlyres/0580DFAB-9F64-4F09-B59A-A98F2A62B228/281520/CISAbu_GardaEn1.pdf

- The attack on the MGS Haskanita was allegedly carried out by splinter forces of JEM, under the command of Abu Garda, jointly with the troops belonging to another armed group. The attackers, approximately 1,000 persons armed with anti-aircraft guns, artillery guns and rocket-propelled grenade launchers, allegedly killed twelve and severely wounded eight AMIS soldiers. They allegedly destroyed communication, installations, dormitories, vehicles and other materials and appropriated property belonging to AMIS, including 17 vehicles, refrigerators, computers, cellular phones, military boots and uniforms, fuel, ammunition and money during and after the attack.
- It is alleged that Abu Garda and the other commanders of the troops that participated in such attack agreed on a common plan to attack the MSG Haskanita and that the common plan included the commission of the above-mentioned war crimes.

REQUIRED TEXTS

The following are the texts we consider necessary for an opportune development of the committee. The texts will be named and assigned a website link to ease the process.

- *The Rome Statute of the International Criminal Court*
 - o http://www.icc-cpi.int/NR/rdonlyres/EA9AEFF7-5752-4F84-BE94-0A655EB30E16/0/Rome_Statute_English.pdf
- *International Criminal Court, Rules of Procedure and Evidence.*
 - o http://www.icc-cpi.int/NR/rdonlyres/F1E0AC1C-A3F3-4A3C-B9A7-B3E8B115E886/140164/Rules_of_procedure_and_Evidence_English.pdf
- *Case information sheet – Omar Al Bashir*
 - o <http://www.icc-cpi.int/NR/rdonlyres/08B26814-F2B1-4195-8076-B4D4026099EC/281528/CISAlBashirENG1.pdf>
- *Case information sheet – Bahar Idriss Abu Garda*
 - o http://www.icc-cpi.int/NR/rdonlyres/0580DFAB-9F64-4F09-B59A-A98F2A62B228/281520/CISAbu_GardaEn1.pdf

All the documents mentioned above can be consulted at the International Criminal Court website (<http://www.icc-cpi.int/>).

SUGGESTED TEXTS

To give you a wider experience and increase your performance in the committee we suggest you to consult primarily the legal texts and tools containing the regulation of the ICC located in the link provided below as well as any other texts related to the ICC and the respective cases.

- <http://www.icc-cpi.int/Menu/ICC/Legal+Texts+and+Tools/>

For ample information on the case which will be discussed you can also check their development at the ICC website, Situations and Cases option or by checking the following website links:

- <http://www.icc-cpi.int/menus/icc/situations%20and%20cases/situations/situation%20icc%200205/related%20cases/icc02050109/icc02050109?lan=en-GB> for Omar Al Bashir
- <http://www.icc-cpi.int/Menus/ICC/Situations+and+Cases/Situations/Situation+ICC+0205/Related+Cases/ICC02050209/ICC02050209.htm> for Abu Garda