

**Forum:** Legal committee

**Issue:** Increasing the participation of ICC and ICJ in response mechanisms against conflict and genocide

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## 1. Introduction to the committee

Legal, also known as C6, is the Sixth Committee of the General Assembly of the United Nations which is the main forum for legal situations and issues regarding international laws in terms of war, diplomacy, economic relations, human rights, etc. As it was stated in the Charter of the United Nations, specifically in the 13th article, the General Assembly has full authority to "initiate studies and make recommendations for the purpose of (a) promoting international co-operation in the political field and encouraging the progressive development of international law and its codification."<sup>1</sup> Since it is one of the main bodies of the UN, all member states of the United Nations can attend negotiations and are expected to give maximum contribution.

The most general topics discussed in the sessions of the C6 are the promotion of justice and international law, accountability and internal United Nations justice matters, drug control, crime prevention, and combating global terrorism. During the sessions, delegates are expected to find solutions to increase the participation of the International Criminal Court (ICC) and International Court of Justice (ICJ) in conflicts and genocide.

## 2. Key Terminology

*International law:* the body of legal rules, norms, and standards that apply between sovereign states and other entities that are legally recognized as international actors.

*Jurisdiction:* The domains of authority of ICC and ICJ

*Rome Statute:* The treaty established the jurisdiction and structure of ICC by establishing four core international crimes which are genocide, crimes against humanity, war crimes, and crimes of aggression. After that, in June 1998, a

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<sup>1</sup> [https://legal.un.org/repertory/art13/english/rep\\_supp4\\_vol1\\_art13\\_1a1.pdf](https://legal.un.org/repertory/art13/english/rep_supp4_vol1_art13_1a1.pdf)



conference was assembled in Rome "to finalize and adopt a convention on the establishment of an international criminal court"<sup>2</sup>

*State Party*: Countries that have accepted the Rome Statute.

*Contentious Cases*: Legal issues that occur between countries in ICJ. Both parties must be within the boundaries of jurisdiction.

*Advisory proceedings*: Legal situations that are submitted to ICJ by other UN bodies for advisory opinions.

*Registry*: The administrative sub-unit of ICJ which is responsible for organizing the operations and actions of the Court.

*Binding Judgment*: The decision of ICJ about a contentious case. There is no appeal for his decision.

*Admissibility*: An adverb used to describe whether a case is appropriate to be considered in ICJ based on certain legal rules and procedures.

### 3. Background Information

#### a. How does ICC work

##### i. History

The International Criminal Court is considered as among the greatest platforms for delivering international justice where individuals are held accountable most importantly by prosecuting the crimes of concern to the international community. The establishment of the ICC is the beginning of the long and intricate process shown by the history of ensuring accountability for the gravest crimes. The idea of an international criminal court goes back to the founding of the Nuremberg and Tokyo tribunals in the post-WW2 period, which were tribunals responsible for the prosecution of the Axis leaders for war crimes, crimes against humankind, and genocide. As specialized judicial bodies, these

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<sup>2</sup> Coalition for the International Criminal Court. [Rome Conference - 1998](#)<sup>[usurped]</sup>. Retrieved on 31 January 2008.



courts establish several crucial case-law principles in relation to individual legal responsibility under international law. The Genocide Convention of 1948 even further demonstrated a desire for a long-standing view which was about an international court meant to prosecute the crime of genocide

Contention between nations during the Cold War stopped them from setting up a permanent worldwide criminal court in place. Discussions about the criminal court inside the United Nations and among legal scholars were often kept up, especially during the era of the Cold War. However, the political will was not present to establish such a court. In the wake of the Cold War and the horrors that occurred in Bosnia, and Rwanda, the idea of a permanent international criminal tribunal was reborn. Particularly, the UN Security Council created ICTY- former Yugoslavia (ICTY) in 1993 and ICTR- Rwanda in 1994 demonstrating the feasibility and need for international criminal justice.

Another international conference about the permanent international criminal tribunal was set in Rome, Italy in 1998. The ICC conference adopted the Rome Statute on the 17th of July in 1998. The Rome Statute is the treaty that founded the ICC. According to this treaty, the ICC has the mandate, jurisdiction, and structure described herein. The treaty was concluded and went into effect on July 1, 2002, when the required number of parties had ratified the document. The ICC's principal office is in The Hague in the Netherlands, and it operates largely on an autonomous basis compared with the UN. Nonetheless, it has a solid working relationship with it.

## ii. Jurisdiction: four core topics of ICC

Genocide, following the Rome Statute, involves acts that have been committed by intended destruction on the whole or a part of the national, ethnic, racial, or religious groups. Definite setups that establish genocide are murdering members of the group, causing severe bodily or psychological injuries to members of the group, deliberately creating circumstances that could make the group physically dangerous, applying measures meant to stop the births in the group, and taking away children from the group to make them part of another group. The legal conception of genocide came into being through the 1948



Genocide Convention just after the atrocities were committed during World War II.

The crimes of humanity are very serious acts that are perpetrated as part of a widespread or systematic attack targeted against any civilian population, such with the knowledge that it. These crimes include killing, the extermination of nationality, enslavement, deportation or removal of the population in their place, deprivation of physical liberty, torture, rape, sexual slavery, forced prostitution, forced pregnancies, forced sterilization or any other severity equivalent to sexual violence of comparable gravity, persecution against any grouped identity or group, enforced disappearance of persons, the crime of apartheid, Unlike genocide, which is intended against certain groups of people, crimes against humanity can be committed on any innocent civilians and the age, gender, race or religious faith is not limited to wartime.

War crimes are extremely serious offenses under the 1949 Geneva Conventions and other gross breaches of the norms of warfare in international and non-international armed conflict. Besides the above-mentioned ones, the gross violations are defined as Willful unlawful killing, torture, cruel treatment, overwhelming injuries to the body and health, Malicious damage which is not according to military necessity, unlawful infringement on private lives, intentionally directing attacks against the civilian population or civilian objects, and contradicting the relevant rules of international humanitarian law, employing children of under fifteen years old.

The crime of aggression involves the act of planning, preparing, starting, or implementing an act of aggression by a person in a position ultimately holding control over or he/she would be in charge of the political/military action of a state. Avarice refers to armed invasion, military occupation, annexation by using force, bombardment, and blockade. Respectively, the definition and the jurisdiction over the crimes of aggression were slenderized and put into effect afterward in the Kampala Amendments of 2010.

### iii. Procedures in ICC



ICC includes thorough steps to make sure that the proceedings are conducted impartially. It is comprised of a first stage – a preliminary investigation, that can be generally initiated by state parties, the UN Security Council, or the Office of the Prosecutor. Besides the review of the data, the role of the Office of the Prosecutor (OTP) consists of determining if an investigation is needed, including issues of jurisdiction, admission, and justice. In case there is a need for the investigation of the Prosecutor, the Pre-trial Chamber is to be addressed by the Prosecutor, or the investigation is through direct referrals. The investigation will be conducted with data gathering, interacting with witnesses, and liaising with other countries and systems. Upon reaching the specified number of collected data, a warrant or summons may be sent through them. In the pretrial phase, a Pre-trial Chamber reviews the accusations to confirm that the indictments are well-founded. At this stage, one by one, the prosecution and defense will present evidence and arguments until the decision of the jury is reached. Next up, the chamber decides whether to proceed with confirmation or accusation with the grounds presented. It depends on the findings of the investigating team whether the charges are supported or not the case proceeds to trial. In the trial phase, three concurrent judges are in charge of the proceedings without bias. The trial consists of introducing statements, presenting the evidence, calling the witnesses, and closing statements. The defendant is presumed innocent and therefore entitled to self-defense. Legal counsel and witness cross-examination by the defense are enshrined in constitutional guarantees. After presenting their evidence, a judge and his jury decide a verdict. This is the proceeding an in-depth discussion of the facts of the case and the gravity of the offense. In a sentencing hearing, the judge contemplates the mitigating factors of the accused. Sentences may include imprisonment, compensation for survivors, or reparation to those who have been harmed. On the other hand, the defense and the prosecutor may request the court to modify the sentence accordingly. The case is submitted to the Appeals Chamber so that whether its ruling will remain the same or will be changed or even reversed can be resolved. In particular, in cases when new evidence comes up after the judgment or there are some new crucial things the appellant can ask for a review of the judgment or sentence. ICC's main emphasis is on the thorough and



impartial probe in cases of the most serious offenses committed on a global scale.

## b. Charter of the United Nations

The United Nations Charter is the basis of the United Nations (UN), which was signed on the 26th of June 1945, in San Francisco the United Nations Conference on International Organization came to the closing stage. This treaty was put into effect emphasizing October 24, 1945, as the date of its entry to force following its ratification by most of the signing states including the five permanent members of the Security Council. The Charter established the UN's purposes and organizational structure, which should provide guarantees of peace and security, cooperation of the nations, and help the members show how to deal with contradictory positions.

The Charter describes the main organs of the UN laying down their functions and composition, namely, the General Assembly, the Security Council, the International Court of Justice (ICJ), the Secretariat, the Economic and Social Council, and the Trusteeship Council. It highlights the principle of the sovereign equality of all member states along with the constructive means of settling disputes and restraining from interfering with domestic affairs. The general acceptance of and willingness to abide by the UN Charter are among its membership's requirements. Aside from this, any state willing and able to carry out its obligations is welcome to become a UN member.

The International Court of Justice, as stated by the charter, is adopted as the chief Justice body of the United Nations where an international dispute. Such procedure is used to resolve legal disputes submitted by states and it makes advisory comments on a request about any legal question done by authorized international organs and bodies. The connection between the United Nations Charter and the International Court of Justice is a necessity and an instrument through which to fulfill the purpose of the United Nations to strengthen the rule of law and justice. The ICJ is just another arm of the United Nations that plays a key role in the settlement of disputes and upholding the rule of law which are the



very two goals of the International Charter, namely peace and security, and cooperation of nations. Besides suggesting methods for the peaceful settlement of disagreements and offering the chance for advisory opinions, the International Court of Justice aims to interpret and apply the tenets of the UN Charter thus helping with a more orderly and just international system.

### c. About ICJ

#### i. History

The historical perspective of the ICJ is the creation of the Permanent Court of Arbitration (PCA) in 1899 at the Hague Peace Conference which was the first. The PCA laid a basis for international arbitration without having any permanent judicial system. Therefore, the notion to set up a court with a more operational character was strengthened, and, in 1920, it resulted in the establishment of the Permanent Court of International Justice (PCIJ) under the auspices of the Council of the League of Nations. In 1922, eight years after the signing of the Covenant of the League of Nations, the PCIJ housed in the Peace Palace in Hague, the Netherlands, performed its first official duties.

The PCLJ became a model for the ICJ and settled many international disputes; thus, it was a major contributor to the formation of international law. Nevertheless, the World War II outbreak, particularly the dissolution of the League of Nations, provided a chance to create the UN's judicial branch within the aforementioned framework.

In 1945 the ICJ was born as the principal judicial organ of the UN, since the conference of the United Nations in San Francisco. The Statute of the ICJ which is part of the UN Charter acts as a binding treaty that was ratified on June 26, 1945, and the Court which was operationalized on April 18, 1946, after replacing the PCIJ. Although the new Court carries the familiar structure and some of the legal principles of its predecessor, unlike the latter it is a part of the UN system, a situation which ensures its higher efficiency.





The ICJ was and is still being accommodated at the Peace Palace, which was donated in 1913 by American philanthropic Andrew Carnegie for the PCA in the first place and later the PCIJ. The ICJ showed the future orientation of judicial efforts by simultaneously taking up the cases and legal theory left behind by the PCIJ.

## ii. Jurisdiction: Contentious cases and advisory opinions

The jurisdiction of the International Court of Justice (ICJ) encompasses two primary functions: determining contentious cases between states on behalf of international organizations and courts through advisory involvement. In contentious cases, the jurisdiction of the ICJ is on the consensual foundation of the states concerned. Jurisdictional consent can be made in several forms, such as through specific agreements that the state enters with another state agreeing to resolve a particular dispute in the ICJ, through treaties and conventions where provision for ICJ jurisdiction is included, as well as through unilateral statements of the state's consent by accepting compulsory ICJ jurisdiction for the sake of any other state that acknowledges the same.

When the ICJ performs the function of contentious cases, both the applying states are liable to accept its decisions. Unlike in regular court proceedings where decisions are final and unappealable, parties have two options for adjustment of the judgment, namely by applying for an interpretation or revision due to the emergence of new facts. The authority of the Court is just based on the faith and goodwill of the state that would commit infractions, as it has no direct enforcement power. Compliance of the states is additionally safeguarded by the enforcing pressure exerted by the international society as well as in cases of non-compliance, the possible role of the UN Security Council.

Besides resolving contentious cases to establish legal questions on an advisory basis is also under the mandate of the International Court of Justice. The advisory opinions issued by the Court at the request of United Nations organs (the General Assembly or the Security Council) and specialized agencies are related to the interpretation and application of the Charter or international agreements based on the UN. Although advisory opinions are not binding, they



bring to mind a heavy weight of legal obligations and moral care. Such bodies formulate norms of international behavior, and their decisions come to be seen as the reference standard for the future conduct of states. Advisory opinions provide guidance and contribute to the enrichment of international law, providing resolutions to ambiguities and acting as a cornerstone of a uniform application of legal principles.

The ICJ's jurisdiction indicates that it is an executive organization that fights for the rights and wrongs in international legal rules. As one of the International law's first peacekeeping bodies, the ICJ serves as a meeting point for dispute resolution and impartial determination of international law, thus helping to preserve world Peace and order. Employing its jurisdictional framework the state is enabled to conduct its dispute lawfully and seek justice while at the same time, it functions as a rationale for an orderly and just world order.

#### 4. Timeline of the Events

<b>Date</b>	<b>Event</b>
<b>December 9, 1948</b>	Genocide convention was accepted
<b>May 25, 1993</b>	Establishment of the International Criminal Tribunal
<b>November 8, 1994</b>	Creation of the International Criminal Tribunal for Rwanda (ICTR)
<b>July 17, 1998</b>	The Rome Statute was accepted
<b>July 1, 2002</b>	The Rome Statute came into force and ICC was established
<b>July 29, 1899</b>	The Permanent Court of Arbitration (PCA) was established
<b>December 16, 1920</b>	The Permanent Court of International Justice (PCIJ) was established
<b>January 30, 1922</b>	The first sitting of ICJ was held
<b>June 26, 1945</b>	ICJ was established
<b>April 18, 1946</b>	ICJ started replacing PCIJ by maintaining its actions.



## 5. Major Parties Involved

*Germany:* Germany supports ICC both politically and financially in many aspects. Plus, it has significant effects on other nations in Europe which makes Germany one of the major members of ICC.

*France:* France is another country in Europe which is an influential factor for other countries. It supports ICC and ICJ by providing financial and political help and being a good example of commitment to the law, contributing to the management of both establishments, and providing criminal justice in the world.

*United Kingdom:* The United Kingdom has a very important role in ICC and ICJ since it has an undeniable role in the management of the United Nations Security Council which both establishments are deeply related.

*Brazil:* Brazil is the leading country of ICC in Latin America. It provides another regional aspect for the fight against international crimes.

*United States:* Although the United States accepts the ICJ jurisdiction, it is particularly involved in conflicts depending on its benefits. However, the existence of the United States is one of the key factors in the fight against international crime because of the highly influential position of the country.

## 6. Previous Attempts to Solve the Issue

In this section of the guide, there will be examples of historical events in which ICC and ICJ intervened or did not intervene and its consequences.

- Darfur, Sudan

In 2005, the Security Council of the United Nations decided for the submission of the situation in Darfur, Sudan to the International Criminal Court. Darfur Conflict, which started in the year 2003, is a crisis that involved widespread atrocities such as Mass death, rape, and, displacement of civilians. Among several accomplishments was the beginning of the Ali Muhammad Ali Abd-Al-Rahman



alias Ali Kushayb trial, a leader of the Janjaweed militia, in April of the year 2022. It set the precedence of the first person being prosecuted in ICC court for Darfur crimes. While this is the first kind of justice that the Darfur victims and survivors have been expected to get.

This being said, a select few, including ex-Sudan President Omar al-Bashir, are still on the flee and have refused to give up themselves to the ICC. Sudan's governing body stands as one of the major obstacles in the process of achieving more progress. This is especially true when the current political upheavals in a country do not support further cooperation. At the end of October 2021, the ousting of the transitional Government triggered the suspension of ICC activities in this state.

- Libya

In 2011 the UN Security Council referred the case in Libya, a year of civil unrest and ensuing combat, to the ICC. The ICC had arrest warrants for the head of Libya Muammar Gaddafi, his son Saif Al Islam Gaddafi, and intelligence chief Abdullah Al Senussi citing them as accountable for crimes against humanity, which contains murder and persecution. While Muammar Gaddafi eventually was put to death during the conflict, the investigation begun by the ICC cemented the community of states' readiness to locate and bring to justice the leaders behind civilian massacres.

- Nicaragua vs. United States (1984).

The Lorded suit of Nicaragua against the United States was a landmark case, where it accused the latter of illegal use of force by its support of the Contras, the rebel groups that were fighting the Nicaraguan government, and mining the harbors of the country. The ICJ held Nicaragua (Nicaragua) was in the right and the United States (U.S.) did not follow international law by helping military and paramilitary activations against Nicaragua (Nic.) The U.S. was commanded to desist from the illegal use of force and pay reparations for violating international laws, though the U.S. openly flouted the decision and left the compulsory jurisdiction of the court.



- Australia vs. Japan (2014)

Australia filed a case against Japan, accusing the latter of continuing its whaling program in the Antarctic that was done under the scientific cover slug. The ICJ has established that there has not been a valid purpose for Japan's whaling program as it contravenes the requirements for scientific research under international law. As a result, the court ordered Japan to stop its whaling activities in the Antarctic. The Japanese complied with the ruling. Such a verdict had been viewed as the welfare of the environment and animal lovers.

- China's Treatment of Uighurs

The Chinese government's treatment of Uighur Muslims in Xinjiang is viewed by many foreign scientists and rights defenders as a crime against humanity and genocide. According to recent reports, the conditions of people being imprisoned in the country are very bad, especially when they are forced to work and executed a systematic reprisal. China remains unparticipating in the status of the concerned Rome Statute and the UN Security Council has never issued a referral case due to the political motivators of China and the latter's immunity as one of the most powerful permanent members of the Security Council.

- The Rwandan Genocide

Rwanda of 1994 is regarded as a significant case where the International Court of Justice (ICJ) did not intervene hence it brought major destruction. In over 100 days, between April and July 1994, radical Hutu militias killed an estimated 800,000 Tutsi and moderate Hutu members of the society. Despite the obvious signs of the threat of an armed conflict, the ICJ did not take measures, largely due to its jurisdictional restrictions because it has mainly jurisdiction over state-to-state resolutions as it does not deal with internal quarrels. There was similarly a wide gap in the political will among the governments of the world to provide much-needed urgent and effectual assistance.



The atrocious event transpired in the greatest possible way, with very tremendous loss of lives, instances of sexual violence, and long-lasting injury to the survivors. Furthermore, the war had also turned out to be a source of instability in the region. Soon the violence spread to nearby countries like the Democratic Republic of the Congo too. In the wake of the ICTR giving the go-ahead, there was considerable delay in procuring the people responsible for applying the system and ensuring the goal of justice was met.

## 7. Possible Solutions

There are some possible solution ideas that delegates are responsible for extending and detailing in their resolution papers. As seen in the previous section of the guide, the limitations on jurisdiction prevent the ICC from ICJ intervening in conflicts. So increasing participation in the Rome Statute, making amendments to jurisdictional procedures, and increasing the range of crimes that are described as four core topics previously would be efficient. Furthermore, contributing to international collaboration, raising public awareness about the missions of ICC and ICJ and any kind of crime against humanity, and increasing the capabilities of investments and possible actions are significant solutions that should be detailed more.

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