

Forum: Legal Committee
Issue: The Examination of War Criminals' Cases
Student Officer: Ioulia Sampani
Position: Co-Chair

PERSONAL INTRODUCTION

Dear Delegates,

My name is Ioulia Sampani and it is my honor to serve as the Co-Chair of the Legal Committee in this year's Platon School Model United Nations. Having been an active member of my school's MUN Club for three years I have been provided with the chance to participate in 10 conferences. PSMUN 2016 will be my 3rd PSMUN and my 11th conference overall. This will also be my second time chairing.

I have participated once as a delegate in the Legal Committee making this enough for me to love it. This year's Legal committee topics are demanding but at the same time very interesting. Therefore I would like to urge you all to make an extra research after reading the study guides. This will help you come more prepared and confident to the conference.

My role as the Co-Chair of the Legal Committee is to move you to do your research, form your resolutions and generally understand the topic. This is what I will try to achieve via this study guide. So, I really hope that this study guide will prove helpful to you. As mentioned above "The examination of war criminal cases" is a really demanding topic with lots of aspect to focus on, hence I would like to invite you not to fully rely on this study guide. You are sincerely suggested to research more on the topic, especially to form your ideas concerning your country's policy.

In any case, if you need any help with your preparation or if you have any queries concerning the topic do not hesitate to contact me on my e-mail: jouliet13@gmail.com or my facebook account: Ioulia Sampani

I'm looking forward to meeting you at the conference and I hope we will have an excellent conference consisting of fruitful debates and effective resolutions.

Come prepared,

Best Regards,

Ioulia Sampani

INTRODUCING TOPIC

Today we live in a world full of terror, full of wars and generally full of a variety of crimes. A multitude of innocent people are being killed each and every day as victims of war. The majority of the activities within a war era violate the laws of the international community which renders them crimes. Furthermore, we should not forget the dramatic situation in the Middle East and in Africa where numerous crimes are being committed and a large amount of people are losing their lives day after day. It is a fact that the United Nations' foremost goal is the protection of human rights, the promotion of laws, the retention of peace and above all the cooperation between its member states. Therefore, it is the United Nations' responsibility to investigate the crimes and punish those responsible for them.



Despite the fact that the United Nations possess the authority to set the punishments needed, the examination of a criminal is not always that easy because it tangles with lots of factors. This is why the international community should act methodically and at the same time swiftly in order to face all of its problems. The goal of this year's Legal Committee is to improve the way criminals are being handled and examined with the aim of eradicating extreme criminal actions during war time.

DEFINITION OF KEY-TERMS

Crime

"An action or omission which constitutes an offence and is punishable by law." *Oxford Dictionaries*

Criminal

"A person who has committed a crime." *Oxford Dictionaries*

War

"A state of armed conflict between different countries or different groups within a country" *Oxford Dictionaries*

Massacre

"An indiscriminate and brutal slaughter of many people." *Oxford Dictionaries*

Genocide

“The deliberate killing of a large group of people, especially those of a particular nation or ethnic group.” *Oxford Dictionaries*

Sign & Ratify

When a country signs a treaty it doesn't mean that it expresses its consent to be bound by the treaty it means that it is obliged to refrain, in good faith, from acts that would defeat the object and purpose of the treaty. On the other hand, when a country ratifies a treaty it expresses its consent to be bound by it.

Background Information

As mentioned above, lots of war crimes are committed within a war era on a daily basis. As a result, numerous innocent people are facing respective consequences, losing their lives or their beloved ones, watching their cities burn down and their dreams being destroyed right before their eyes. This is the reason why the United Nations and generally the international community should directly take action against this situation and the inhumane behavior of specific individuals or of larger groups, of people. Nonetheless not all of the rough actions committed by criminals are considered war crimes. There are some specific categories of crimes that are recognized as parts of the relevant list.

War Crimes and Criminals

According to the International Criminal Court (ICC) war crimes are considered to be serious violations of the Geneva Convention and other grave inroads of the international law. Furthermore, illegal are also characterized operations not acceptable in the middle of an international armed conflict or even in a non-international one, according to the Rome Statute. These crimes are named unlawful, especially when it comes to them being part of a plan or policy or when they are committed on a large scale. Such war crimes include:

- **Murder, Genocide, Massacre**

All of the above belong to the category of massive killings. First of all a murder is an illegal action committed mainly by individuals who are considered to be criminals. Such



actions are being observed all over the world, but the International Criminal Court cannot investigate each murder separately; this is actually the job of the national courts. The criminals the ICC is dealing with are massive killers who tend to kill numerous victims all over

the world or criminals who have committed lots of crimes including murder. An example could be Joseph Kony, the alleged Commander-in-Chief of the Lord's Resistance Army (LRA), who was accused of twenty-one war crimes including murder. Another grave war crime is the massacre, as defined above as a massacre, is an indiscriminate and brutal slaughter of many people. To be more specific, a massacre is the massive killing of a group of people independently of their race or religion. Such crimes are considered to be those committed by the members of the Islamic State of Iraq and al-Sham (ISIS), who invade in other countries and kill innocent people in order to make the international community scared of them. Last but not least the most abusive war crime is the genocide. Genocide is used to define the killing of a large group of people with the same race or religion and generally those who have something in common. For example, the Jewish Genocide committed by the Nazis during the World War II or the Rwandan Genocide of the Tutsi population by the Hutus can be considered such war crimes.

- **The destruction of structures of utmost importance**

When talking about war crimes we cannot forget the destruction of buildings of utmost importance. Such buildings are dedicated to religion, education, art, science or charitable purposes. The most important types of buildings are in any case historical monuments and hospitals. Historical monuments represent the history of a place, offer the citizens knowledge and memories of their country's leaders and achievements which means that by destroying these structures the criminals remove them in a way the right to education. On the other hand, hospitals offer the society health and wellbeing. And above all one should not forget that when one refers to a hospital it is not only about the building, but also the countless pauper patients in it and all the doctors and nurses working hard to help their fellow citizens. An example of this war crime is Ahmad Al Faqi Al Mahdi who was accused on the 26th of September 2015 of the destruction of cultural heritage in Mali while the Islamic State ruins or destroys dozens of ancient monuments in the Middle East.

- **Indecent Assault**

Some war crimes that fall under this category are rape, sexual slavery, forced pregnancy and any other form of sexual violence. Over the past two decades, the international community has developed its system concerning crimes of sexual and gender-based violence. General discussions about the topic have led to the fact that this issue mostly concerns women and girls. However, during the past years such crimes against men and boys are starting to be recognized by the International Criminal Court as well. Such crimes are obviously violating the right of the victims to privacy and to safety. Furthermore, sexual abuse can cause permanent psychological and physical problems as well as unwanted problems such as forced pregnancy.

Important war criminals' cases

Having analyzed the main war crimes, we should now focus on the criminals. A criminal is a person who commits a war crime as defined above. According to the ICC during the past years numerous criminal cases have been examined, while there are still some open cases and others that have not been investigated yet. This study guide focuses on four of the most famous and known ones which are the following: the Nuremberg trials, the Bosnian Genocide, the Bashar al-Assad case and the case of Joseph Kony.

- **The Nuremberg Trials**

The Nuremberg trials took place in 1945 and 1946 following World War II and had as their goal to punish all those responsible for the Jewish Genocide and other atrocities during the war. All of the defendants were Nazis, parts of the German military or organization that at that time followed the instructions of Adolf Hitler and his deputies. Because of the fact that Hitler, the Nazi's highest authority and the person to blame the most for the Holocaust, committed suicide in the final days of the war, his supporters had to be punished for his crimes. However, there are lots of criminals who have never been tried. Some of them left the country to live abroad while others moved to the United States. To take the story from the beginning, after the war had finished some of those responsible for the crimes were put on trial. Nuremberg, Germany, was the place chosen for these trials to take place. The judges were from the Allied powers, namely Great Britain, France, The Soviet Union and the United States. Twelve Nazis were sentenced to death, while most of the defendants admitted to the crimes they had committed. However, many of them claimed that they were just following orders of a higher authority. At the end, those individuals who participated directly in the crimes faced the most severe sentences while others who played a key-role in the Holocaust such as government members and business executives received short prison sentences or no punishment at all. Nevertheless the trials continued to take place even after those years. For example in 1962 Adolf Eichmann was found guilty and executed.

- **The Bashar al-Assad Case**

The case of Bashar al-Assad is one of the most recent and fruitful cases of the past years. The issue started when a group of Syrian citizens started a rebellion against Assad's government. He refused to meet the protesters' demands and decided to crush the dissent instead of tolerating it. This



conflict between protesters and government later turned into an armed conflict which caused a lot of disorder in the nation and drew the attention of the Russian Federation and Iraq. During this conflict there was a chemical attack in a part of the country. Bashar al-Assad was later accused of starting this attack in order to face the protesters. He denied committing this crime and said that there was no proof of this accusation.

It was later when he took part in an agreement with the Russian Federation and the United States of America to destroy Syria's chemical weapons' arsenal which helped him in order to be left off. The fact that Bashar al-Assad never went to the ICC could raise some questions.

- **The Bosnian Genocide**

In April 1992 Bosnia-Herzegovina declared its independence from Yugoslavia. In the following years Bosnian-Serb forces targeted both Bosnian and Croatian civilians, committing numerous crimes and causing the death of some 100.000 (80% Bosnians) people by 1995. This genocide was characterized as the worst act of genocide following the Jewish Genocide during World War II where 6 million people died. Nevertheless the international community did not focus much on this situation resulting to the little action to prevent the crimes committed against Bosnians and Croats, while they were occurring. However in May 1993, the UN Security Council created the International Criminal Tribunal at The Hague. The ICTY later accused Slobodan Milosevic and Radovan Karadzic, among others of crimes against humanity and the violation of the Geneva Convention.



- **The case of Joseph Kony**

The problem arose when President Yoweri Museveni and his National Resistance Movement took power of the Ugandan government and installed a “no-party” political system. That caused the reaction of some rebel groups including the Lord's Resistance Army (LRA), led by Joseph Kony.

During the conflict the members of the protesters committed a series of war crimes including massacres of civilians, torture, mutilation, the recruitment of child soldiers, rape and the destruction of civilian property. Joseph Kony who was the leader of this army was later brought to the ICC together with some other top leaders of the LRA and was accused of 12 counts of crimes against humanity and 21 counts of war crimes.

International Criminal Court and Rome Statute

The International Criminal Court (ICC) is the first, treaty based, international criminal court established to help investigate the most serious crimes in the international community. The ICC is situated in The Hague, Netherlands and is an independent organization, not part of the United Nations and governed by the Rome Statute. Despite the fact that the court's expenses are funded by States it also receives funds from governments, international organizations and individuals. The international community has tried to create a permanent international court for a long time and finally in the 20th century it became a reality. Following the Nuremberg and Tokyo trials which addressed a lot of war crimes and the International Criminal Tribunal for the

former Yugoslavia and for Rwanda that proved to be insufficient it was worldwide decided that a permanent international court was needed. On the 17th of July 1998 when 120 States adopted the Rome Statute, the legal basis for the creation of the ICC, it was official that the Rome Statute was going to enter into force; and that's what happened on the 1st of July 2002, after 60 countries had ratified it.

The Structure of the International Criminal Court (ICC)

The Court consists of four main organs, the Presidency, the judicial divisions, the office of the prosecutor and the registry and their duties are as follows:

- *Presidency*



The Presidency is generally in charge of the court with only two exceptions. First of all the Presidency does not administer the Office of the Prosecutor and secondly it is not responsible for some functions assigned to it by the Rome Statute. The Presidency consists of three Judges of the court, elected by their fellow Judges for three-year mandates. The

current Presidency consists of Judge Silvia Alejandra Fernandez De Gurmendi, the President of the court, Judge Joyce Aluoch, the First Vice-President and Judge Kuniko Ozaki, the Second Vice-President.

- *Judicial Divisions*

The Judicial Divisions consist of eighteen judges separated in the Pre-Trial Division, the Trial-Division and the Appeals Division according to their qualifications and experience. Each Division is responsible for the proceedings of the Court in different stages and is formed in order to qualify concerning the expertise in criminal law and procedure as well as the international law.

- *Office of the Prosecutor*

The Office of the Prosecutor receives referrals and general information on the crimes to be investigated by the Court, examines them and conducts investigations and prosecutions before the court. The current Office' Head Prosecutor is Mrs. Fatou Bensouda, who was elected by the Member States for a nine-year mandate.

- *Registry*

Last but not least the Registry is responsible for the non-judicial matters of the Court. The Registrar is in charge of the Registry and is the Principal administrative officer of the court. However, the Registrar works under the authority of the Court's President. The Registrar is at the time Mr. Herman von Hebel, who was elected by the judges for a five-year mandate.

TIMELINE OF IMPORTANT INCIDENTS

Date	Description of event
September 1, 1939 – September 2, 1945	World War II begins World War II ends
20 th November 1945-1 st October 1946	Nuremberg Trials begins Nuremberg Trials ends
1947-1991	The date of the Cold War.
1994	Over the course of 100 days in 1994 over 800.000 Rwandans were killed and therefore we call it the Rwandan Genocide.
1992-1995	The Bosnian War including the Bosnian Genocide.
1 st July 2002	The Rome Statute and at the same time the International Criminal Court enter into force.
26 th January 2011	The protests against Bashar al-Assad begin and continue until today.

MAJOR PARTIES INVOLVED IN THE ISSUE

International Criminal Court (ICC)

As mentioned above, the International Criminal Court (ICC) is the court responsible for the investigation of the most severe war crimes committed by evil criminals. Having detailed the history and the structure of the court we should now refer to the criticisms against it. After the examination of the first eight cases of the ICC some complaints showed up from member states of the African Union, reporting that there have been insufficient checks and balances on the authority of the ICC Prosecutor and Judges. Specifically those states have accused the ICC of being biased and of heavily punishing small, weak states' people while ignoring the crimes committed by individuals in more developed countries. They also do not consider the fact that all of the so far investigated cases have accused African states to be a coincidence. However, the International Criminal court denied any involvement in such discriminations and sincerely urged all of the concerned countries to submit amendments to the Rome Statute so that it can meet their expectations.



Interpol



INTERPOL

Interpol is the largest police organization in the world possessing 190 member states. Its goal is to help law enforcement agencies to combat any form of crime. An agreement between the International Criminal Court (ICC) and the International Criminal Police Organization (Interpol) was signed in Lyon on the 7th of September 2012 by the Deputy Prosecutor, Serge Brammertz, and the Executive Director of Police Services, Jean-Michel Louboutin. This agreement established cooperation on the fields of crime prevention and criminal justice. According to the agreement, the two parties will have the opportunity to exchange criminal analysis and police information and to cooperate in order to find solutions to the dramatic crimes by searching together for suspects. Nevertheless, the agreement offers the ICC access to the Interpol databases and telecommunications network. Therefore we can say without a doubt that this was one of the most important steps made in order to face any problem that has arose.

Russian Federation

The Russian Federation is one of the pioneers of the international law, as Russia was one of the states that participated in the organization of the Nuremberg and Tokyo trials. However, the Russian Federation has not ratified the Rome Statute due to several political and legal obstacles. First of all, its biggest concern is the criminalization of aggression, which is to be included in the Rome Statute by 2017. Furthermore as far as the legal sector is concerned, there are several differences between the Constitution of the Russian Federation and the Rome Statute. This means that in order for the Russian Federation to be cooperating with the International Criminal Court, either the Rome Statute should be amended, or the Russian Constitution should change in accordance to the Rome Statute. Russia recognizes the basic principles of the ICC as part of their legislation as well. Despite the fact that the meaning of crimes against humanity was introduced in the Nuremberg trial, the Russian Federation has made several interventions for which it didn't face any consequences.

United States of America (USA)

The cooperation between the International Criminal Court and the United States of America has a really unfortunate prehistory. Starting from the point when the United States was under the authority of Clinton, the US Government was forever opposing the creation of the International Criminal Court. Furthermore, the US participated actively in negotiations against the ICC and when lots of countries refused to participate in the formation of such a court the US tried to weaken the court even more. Following the Clinton Administration, the Bush Administration tried to continue the actions of its predecessor. Coming into force in 2001 exactly the time when the ICC

had neared implementation, Bush adopted a really active opposition. At the same time, Washington began to negotiate agreements with other countries in order to make allies. In this way, the US was in no danger of prosecution by the court. On the other hand, Obama and his assistants have a completely different view of the topic. His administration is cooperating with the bodies of the ICC and supports the prosecutions of the court. Nevertheless, Washington is still not willing to join the ICC.

China

In spite of the fact that China is most of the times willing to help resolving international justice matters there are some specific times that China opposes the ICC and is not willing to participate in its actions. This happens due to several issues. First of all, the way the ICC works goes against the historical belief of the Chinese government that there should be no international interference in the internal affairs of a state. Secondly, China is an ally with some of the countries that are targeted for an ICC involvement, such as Sudan, Syria and Libya. Last but not least we should not forget the veto power that China possesses and can use against the ICC referrals. Some believe that China cannot be a trustworthy ally in this domain, as its allies are some of the countries that are accused of committing war crimes. For example, while lots of European countries were trying to find a matching punishment for the actions of Bashar al-Assad in Syria, China had already made an agreement with Syria and was helping Assad deal with his country's problems. On the other hand, China was one of the countries that helped the most in the past in order to establish an international law by helping to organize the tribunals for Rwanda and the former Yugoslavia. Moreover, in February 2011, China surprisingly voted in favor of a referral for Muammar Qaddafi which raised a lot of questions. All in all, China supports justice in international levels but not under the era of the International Criminal Court.

Countries that have signed and ratified the Rome Statute

Here are some of the UN member states that have both signed and ratified the Rome Statute and are therefore part of the ICC.

Albania, Andorra, Argentina, Australia, Austria, Bangladesh, Belgium, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Burkina Faso, Canada, Central African Republic, Chad, Chile, Colombia, Democratic Republic of the Congo, Costa Rica, Cote d'Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Ecuador, Estonia, Finland, France, Georgia, Germany, Ghana, Greece, Guatemala, Honduras, Hungary, Iceland, Ireland, Italy, Japan, Jordan, Kenya, South Korea, Latvia, Lithuania, Luxemburg, Mali, Mexico, Moldova, Mongolia, Montenegro, the Netherlands, New Zealand, Nigeria, Norway, Palestine, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Serbia, South Africa, Spain, Sweden, Switzerland, Tunisia, Uganda, United Kingdom, Uruguay, Venezuela.

POSSIBLE SOLUTIONS

Now that we have analyzed the background information it is time for the Legal Committee of Platon School Model United Nations to take some action and find effective as well as realistic solutions to this crucial issue. In order to be more specific about the topic, I would like to mention that the issue is about finding effective ways in order to ensure that the criminals are treated fairly according to the crimes they have committed. Moreover, the international community needs to make sure that all criminals are caught and then punished accordingly.

First of all, the most important step in order to solve the issue was obviously the creation of the International Criminal Court, which is specialized in solving issues of international importance as well as ensuring that justice abounds the world. However, there are lots of countries and especially key countries of the world, for example the United States of America and the Russian Federation, which have not fulfilled the conditions in order to cooperate with the International Criminal Court, which include both signing and ratifying the Rome Statute, while there are other key countries like China that have not done any of the above. This problem could be solved by urging those countries to submit amendments to the Rome Statute and participate in negotiation, in order to reach a consensus for all of the countries' policies.

In recent years, several complaints have been heard in conferences about the attention that the United Nations Security Council (UNSC) pays to this crucial matter. Although the UNSC has made an effort to resolve the issue by passing one really important resolution concerning the issue, namely UN Security Council Resolution 1593, some more action should be taken by this organ of the UN as it is the only organ that can pass compulsory resolutions for all member states.



Furthermore another solution could be also to urge other police organizations to help resolve the issue as the Interpol itself is not in the position to capture and punish the criminals all over the world. Therefore, it should cooperate with other organizations and find a way to coexist. These are some of the measures that can be adopted but there are still lots of sectors that need to be covered like the type of the punishments that the criminals receive, the way in which justice is being issued and most of all the cases that are still open and need to be closed. Therefore, as I mentioned in my personal introduction, you are not advised to rely fully on this Study Guide, but make some more research on the issue and find more solutions on your own.

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Appendix

For the full list of countries have signed and ratified the Rome Statute please follow this link: https://www.icc-cpi.int/en_menus/asp/states%20parties/Pages/the%20states%20parties%20to%20the%20rome%20statute.aspx