

International Criminal Court: A Baha'i Perspective

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The International Criminal Court exists currently as a Treaty, a paper entity.

In the next two to three years a brick and mortar building will be erected in the Hague, Holland. It will house judges, prosecutors, lawyers and researchers.

It will be an entirely new global institution with the power to investigate, indict, prosecute and sentence individuals around the world who commit serious breaches of humanitarian law.

Following the end of World War Two, the victorious allies established two tribunals, at Nuremberg in Germany and Tokyo in Japan. What emerged from the Nuremberg tribunals was a set of laws by which individuals were held to account for their actions. In 1948 the Genocide Convention was established at the UN.

One of its first actions was to call for the creation of a permanent international court. Here the history of the ICC is frozen for a period of nearly fifty years in the era of Cold War politics.

The very year that the Berlin Wall fell Trinidad and Tobago reintroduced the idea of a permanent ICC at the UN General Assembly. Support for such an initiative grew as evidence of crimes of mass violence emerged in first Bosnia and then Rwanda. In 1993 the UN Security Council established the ICTY and a year later the ICTR. Whilst these institutions represented the first efforts since Nuremberg to punish serious violations of human rights, they were both ad hoc and limited to a mandate delineated by territory and time.

In November of 1994 the International Law Commission presented a draft statute to the General Assembly. The following month the General Assembly renewed a mandate of a Preparatory Committee and decided that a diplomatic conference should be held In June and July of 1998 to establish the court treaty.

The treaty conference was held in Rome, where 120 states voted to adopt the Rome Treaty for the ICC. 7 states voted against the treaty, including Libya,

Iran, Israel, China and, to the great regret of many people, the USA. The court will be empowered to investigate, prosecute and punish individuals who commit certain specific and very serious crimes. These are as follows: crimes of genocide (6), as defined by the 1948 Genocide Convention, crimes against humanity (7), including sexual slavery, enforced prostitution, enforced pregnancy and apartheid, and war crimes (8), several of which are provided for in Protocol 2 of the Geneva Conventions, this includes starvation of civilians, use of human shields to give just 2 examples. The court will also have the power to prosecute the crime of aggression, but state parties to the treaty cannot as yet agree on a legal definition of what constitutes aggression.

There are several trigger mechanisms that will allow the court to start an investigation. A state party to the treaty (i.e a state that has ratified the Rome treaty) or the Security Council may refer a case to the court. The court will also have an office of the prosecutor that will have the capacity to initiate investigations on receipt of credible information that an ICC crime has taken place.

The Security Council will however retain the right to invoke powers under Chapter 7 of the UN Charter to defer ICC investigations or prosecutions for a period of 12 months, which can be renewed indefinitely, when an ICC investigation is deemed to be a threat to international peace and security (article 16).

The principle of complementarity is enshrined in the ICC treaty, which means that national legal systems will have precedence in trying those accused of serious violations of humanitarian law. The ICC is intended to act when national judicial systems are either unable or unwilling to act.

The ICC will only have jurisdiction over individuals who are either of the nationality of a state party to the treaty or are on the territory of a state party to the treaty. Obviously the most egregious abusers of human rights are unlikely to ratify the court, but the Security Council will have the power to order court investigations into areas of mass human rights abuse anywhere under the UN charter.

The Rome treaty will not act retrospectively. It will come into effect when 60 states have enacted the legislation to ratify the treaty into their own domestic legal systems - 114 states have signed it and, to date, 21 states have ratified the treaty, and it is anticipated that the necessary 60 ratifications will be reached some time in 2002.

The UK signed the treaty on 30 November 1998 at a ceremony at the UN in New York. On 25 August 2000 the Foreign and Commonwealth Office published draft legislation to enable the UK to enable the ICC into UK law. The Bahá'í community was one of 12 human rights organizations that met with the Minister of State to receive the first copies of the draft bill. The draft bill is currently open for consultation. Human rights organizations have several key concerns about the document e.g. it does not provide for universal jurisdiction for ICC crimes, which may prevent the ability to prosecute non-UK nationals.

Equally controversial is the absence from the draft bill of any inclusion of article 27 of the Rome treaty, which provides that no individual, even a Head of State, can be immune from prosecution. The UK draft bill does not incorporate this section.

Practically, the Bahá'í community worldwide has been a long-standing supporter of the ICC. The BIC New York office was a founding member of the Coalition for the International Criminal Court. Support for the court emanates from the highest authority in the Bahá'í world, the Universal House of Justice. In the Ridvan message for this year it was noted '...attempts at implementing and elaborating the methods of collective security were earnestly made, bringing to mind one of Bahá'u'lláh's prescriptions for maintaining peace; a call was raised for an international criminal court to be established'. Here in the UK, the Office of External Affairs (OEA) sits on the UK Coalition for the ICC and is the facilitator on the interfaith caucus for the ICC, which has met with officials at the Foreign Office. Nationwide, Bahá'í communities have written to hundreds of MPs in support of the court and this has raised our profile with government.

At a recent conference on international law at the Bahá'í conference centre in Depoort an eminent Bahá'í scholar addressed the role of spiritual transformation in the emergence of Bahá'í law. The ICC is not of course, the Supreme Tribunal that is promised in the Bahá'í writings, but its creation represents a surge of movement towards a world where an evermore unified humanity will one day embrace the institutions which Bahá'u'lláh has ordained.

When Shoghi Effendi elucidates upon the Supreme Tribunal he makes clear that in the future world order of Bahá'u'lláh nations will be bound by the tribunal's judgements, whether they voluntarily submit to them or not. I suggest that what the Beloved Guardian is clarifying is that the Supreme Tribunal would have universal jurisdiction. The ICC may prove to be a vital proving ground for advancing the universal jurisdiction of certain global laws, reflecting global norms.

This court will most likely come into being within 24 to 36 months. In pragmatic terms it has the potential to do great service in eroding, and I hope, eradicating the culture of serious violations of human rights. But more than that it will help to give rise to new values, new ideas about human beings and human relationships. It will advance the unity of the human race. We as Bahá'ís recognise also the spiritual origins of justice and that the healing nature of justice ultimately flows from the realm of the Divine. As a community therefore we will continue to work hard for the success of the ICC, never forgetting the spiritual realities that are at its core.

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