

THE ILC BACKGROUND GUIDE



The ILC Commissioners shall be debating on **THE ICC HAS NOT ONLY FACED NUMEROUS CHALLENGES THAT HAVE CURTAILED ITS PERFORMANCE BUT ALSO HEAVY CRITICISM FOR BIAS TOWARDS AFRICA, INEFFICIENT ENFORCEMENT MECHANISMS AND A LOW CONVICTION RATE. HAS THE COURT BECOME OBSOLETE OR IS THERE NEED TO HAVE IT IN THE FUTURE?** This background is meant to act as a guide for the Commissioners as they do their research since it offers a basic understanding of the topic at hand. Commissioners are to be guided by it and do further in-depth research on the topic. Therefore, the dais and entire ILC bureau expects to receive well drafted Draft Articles and to witness Commissioners engaging in informed debate.



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TOPIC: *“The ICC is one more utopian tool of global governance that has disappointed. Its funding and staff would be better utilized to strengthen national and regional criminal justice.” (Davenport, 2014)*

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BRIEF HISTORY AND CURRENT SITUATION

The International Criminal Court was established as a first of its kind court under the Rome Statute which granted it the jurisdiction to adjudicate the worst international crimes: genocide, crimes against humanity, war crimes and aggression.¹ However, the ICC’s authority has been challenged by the threat of becoming redundant and given the current state of global affairs, the court must overcome numerous challenges if it is to survive in the long term. The most immediate threat is the looming possibility of a mass exodus by African member states. In early 2017, the African Union backed a non-binding resolution calling for the mass withdrawal of all its ICC participants, while Burundi recently became the first African country to leave the ICC. Kenneth Roth, the executive director of Human Rights Watch, points out that leaders accuse the court’s African focus as being unfair and even “a modern-day form of colonialism.”²

One of the major concerns with the court is in terms of the exercise of its jurisdiction where the Statute of the Court provides it with complimentary jurisdiction. Further, the jurisdiction of the court has been subject to a lot of impediments especially from the

¹ UNGA Rome Statute of the International Criminal Court (last amended 2010) UN Doc A/CONF.183/9 (adopted 17 July 1998, entered into force 1 July 2002). Henceforth Rome Statute or Statute.

² Kenneth Roth, *Africa Attacks the International Criminal Court*. The New York Review, February 6th, 2014. Available at <https://www.nybooks.com/articles/2014/02/06/africa-attacks-international-criminal-court/>

United Nations Security Council which has often passed special resolutions³ under article 16 of the Rome Statute that impeded prompt investigation and prosecution.⁴

Still, most of the challenges are not the court's fault. The court is under pressure for its low conviction rate and over a dozen arrest warrants that have not been enforced. This has created an impression that the court is merely a dog without teeth since it cannot act without the cooperation of the State which proves challenging for pursuing most crimes since they are often committed by individuals in power and in control of governments thus cooperation with the court becomes almost impossible. For instance, the Bashir case his government was unwilling to surrender him and he kept on travelling the African continent with no nation willing to surrender him. Moreover, the issue of effecting arrest warrant exposes a challenge for the court in applying article 27 which removes immunity from senior government officials and 98(1) of the Statute which requires the Court not to issue requests for cooperation that would result in States Parties violating their obligations to provide immunities to senior officials of other States under customary international law. Various legal scholars and the African Union argue that Article 98(1) is an exemption for States Parties not to cooperate in the arrest of persons subject to an arrest warrant of the Court, when such individuals are high-ranking government officials of non-States Parties and should be accorded personal immunities.

Despite the court having failed to meet the expectations of the international community, many insist the ICC is here to stay. It is the only institution that can deliver justice to the victims of the most serious crimes when all other avenues fail. This makes it indispensable in the global fight against impunity.

EXPECTATION FROM THE DIAS

Commissioners while conducting their research and coming up with draft articles are expected to analyze the effectiveness of the court's jurisdiction. Moreover, Commissioners should analyze some of the impediments to the delivery of justice and the impact they have on the objectives of the Court, all through supporting their arguments with the relevant laws and case examples.

DRAFT ARTICLE RULES

The format for drafting a Draft Article is to be communicated by your PILC at your chapter level in advance. However, the Chair of the International Law Commission **MAY** decide to send the Rules for the Draft Articles depending on the need that may arise. That notwithstanding, the Draft Articles should be submitted to the email address herein being (pilc@kenyamodelun.or.ke) two days before the actual day of conference and for the avoidance of doubt the **20th March 2021 by 5pm**. The font type should be **Book**

³ UNSC Res 1422 (12 July 2002) UN Doc S/RES/1422, para 1. and UNSC Res 1497 (1 August 2003) UN Doc S/RES/1497, para 7

⁴ Rome Statute, art 16.

Antiqua, with a **font size of 12**, **spacing of 1.5**. Ideally the Draft Article should consist a minimum of 8 pages with no limit as to the maximum amount of pages.

CLOSING REMARKS

From the dais, we wish you the very best as you embark on your research and hope to see you at the Conference. We are looking forward to a fruitful day full of vigor, fun and most importantly quality debate.