

3.3. On international law and the Criminal Court

This part of the background knowledge is not necessary to run a successful simulation. This is additional knowledge that the teacher of the course can choose to incorporate in the form of a lecture or workshop simply to give students a better historical understanding of the ICC. It is important to notice that during the simulation, cases from situations that happened before the founding of ICC are discussed as if they were under ICC jurisdiction, in other words as if they had happened today.

International law

National law is a set of rules which regulates the behaviour of persons and is ultimately enforced by the state. Legal norms differ from social and ethical norms in terms of enforceability: the state will guarantee their general observance (including by threat of punishment). In a democratic system, if one does not like a particular legal norm, he/she will be able to convince fellow citizens and politicians to amend it. Until the norm applies, however, he/she will be obliged to follow it or face sanctions.

The mechanism of international law is more ambivalent. The subjects of international law (entities which should follow it) include not only individuals but also states and organisations. While a state with its police force is stronger than any *citizen*, there is obviously no global entity with sufficient military power to force all *states* to follow a norm or punish them in case of violations.

Perhaps closest to being the „world police“ is UN Security Council which has the right to impose economic sanctions and use military power against states that threaten international peace and security.

However, this „police“ is (at least in its current form) inefficient and not particularly fair: the five permanent members – United States, China, Russia, France and United Kingdom – have a veto which essentially means immunity from sanctions for themselves or their allies.

Of course, individual states may also decide to sever economic ties with or attack another state in order to enforce a contract or established norm. In practice, this is an option for the most powerful countries, while smaller states would only harm themselves by such policy.

If so, how can international law work at all? The advocates of international law believe that some legal norms do not necessarily require enforcement by threat of sanctions. This is based on a notion that human beings are not essentially power-hungry, aggressive and malevolent but

rather peace-loving, just and kind by nature. A peaceful and fair person does not find legal norms to be an unpleasant burden but rather a set of guidelines which he/she is willing to observe. Such persons will then influence their governments to follow international law. As a result, even the most powerful states are bound to act benevolently towards the others.

International Criminal Court

International Criminal Court (ICC) was founded in 1998 and started work in 2002. The Court's activities are based on the Rome Statute which was prepared by 160 states, 33 intergovernmental bodies and 236 non-governmental organisations.

The ICC aims to punish the worst and most inhuman crimes and thereby prevent their repetition. According to the Rome Statute, such crimes include genocide, crimes against humanity, war crimes and aggression. As the parties who adopted the Rome Statute were unable to agree on the definition of aggression, the ICC will not be able to try aggression crimes until at least 2017. Besides the serious nature of those crimes, they are also the ones most likely to involve government members or high officials whom it may be hard to prosecute in their own countries and who should therefore be subject to international trial. ICC's jurisdiction over those types of crimes will only apply in cases where the state affected by the crime cannot or will not prosecute the suspects.

Upon the ICC's creation, a group of states led by Canada and Scandinavian countries sought to give the Court the privilege to prosecute any person committing the crimes under its jurisdiction anywhere in the world. However, resistance from other countries was so strong that the advocates of universal jurisdiction had to accept a compromise. As a result, the Court only has jurisdiction in the following cases:

1. the accused person is a national of a state party of the Rome Statute;
2. the crime was committed on the territory of a state party of the Rome Statute;
3. UN Security Council adopts a decision that certain events should be subjected to ICC's jurisdiction to ensure peace and security.

This means that if a crime was not committed on the territory of a state party or by a national of a state party, the Court may prosecute it only if the UN Security Council provides the Court a mandate on crimes committed on a given territory during a given period. Subject to an application, each state may separately issue to the Court a mandate to investigate crimes committed on its territory or by its nationals.

ICC enthusiasts initially feared that such conditions would render the Court incapable of prosecuting any crimes as countries facing serious conflicts would never voluntarily subordinate to the Court. Those fears were proven unsubstantiated, at least in part. To the surprise of many, the Rome Statute was in early 2000s ratified by a number of countries with a recent history of armed conflict, including Fiji, Sierra Leone, Cambodia, Macedonia and DR Congo.

As of June 2011, the Statute had been ratified by 116 states, including Estonia in 2001. The ICC has so far opened six official investigations regarding events in Uganda, DR Congo, Central African Republic, Sudan's Darfur province, Kenya and Libya. As for Uganda, DR Congo, Central African Republic and Kenya, those states are parties to the Rome Statute and therefore subject to investigation. Sudan and Libya have not ratified the statute and the mandate to investigate crimes on their territories has been provided by the UN Security Council.

3.4. Basic principles of criminal law

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Presumption of innocence

Presumption of innocence is a fundamental principle of criminal law, which is generally accepted in Western countries and many others and is an essential requirement of what we call a fair judicial system.