Symposium: The International Criminal Court: Consenses and Debate on the International Adjudication of Genocide, Crimes against Humanity, War Crimes, and Aggression--Introduction

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Introduction

Our Mission

Each year, the Cornell International Law Journal (CILJ) holds a Symposium to address a current, important topic of international law. This issue contains a collection of addresses, articles, and essays stemming from the CILJ's 1999 Symposium, entitled The International Criminal Court: Consensus and Debate on the International Adjudication of Genocide, Crimes Against Humanity, War Crimes, and Aggression.

The CILJ's Board of Editors believes that this Symposium and the publication of its proceedings is of considerable academic value. By assembling those intimately involved with the drafting of the Rome Statute and the current debate over the creation of the ICC, the CILJ provided an open, informal forum for discussion. It is our hope that the ideas and theories put forth at this Symposium may work to change the perception of many individuals within the public and within government as to the viability of the ICC.

The International Criminal Court

The drive to establish an international criminal court began in the wake of World War II and in the shadow of the Nürnberg and Tokyo War Crimes Tribunals. This drive has gained considerable momentum in the past few years as the United Nations established ad hoc tribunals to consider alleged crimes committed during conflicts in Rwanda and the former Yugoslavia. In the summer of 1998, the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court signed the Rome Statute of the International Criminal Court. This treaty authorizes the establishment of an international criminal court located at The Hague in the Netherlands.

The 1999 Symposium

The CILJ's 1999 Symposium was held at Cornell Law School in Ithaca, New York on March 5-6, 1999, in the midst of a driving snowstorm. Despite the participants' widely divergent viewpoints, the Symposium successfully explored how the ICC advances the goal of individual accountability for crimes under international law. It also discussed the future success of the ICC in light of the United States' objections to the broad jurisdictional powers of the court. Finally, the Symposium addressed the role of the Preparatory Commission's (PrepCom) work on drafting the procedural rules of the court, defining Elements of Crimes within the court's jurisdiction, and selecting the court's prosecutors and judges.

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Mr. Philippe Kirsch, Q.C. and chairman of the United Nation’s Diplomatic Conference on the Establishment of an International Criminal Court’s primary deliberative body, the Committee of the Whole, delivered the Keynote address. Professor M. Cherif Bassiouni, Chairman of the Conference’s Drafting Committee, delivered the luncheon address. Interspersed between these events were three panels, in which the participants were able to discuss and challenge each other’s viewpoints in a forum designed for such debate.

Symposium Participants

The Symposium brought together key participants in the deliberations designing the Rome Statute of the International Criminal Court. Mr. Philippe Kirsch chaired the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court’s primary deliberative body, the Committee of the Whole. Professor M. Cherif Bassiouni, Professor of Law at DePaul University, chaired the Drafting Committee for the Rome Statute.

The Symposium also featured representatives of several countries, including the Honorable David Scheffer, the State Department’s Ambassador-at-Large for war crimes issues and head of the U.S. Delegation in Rome; Mr. Didier Pfirter, Counselor, Legal Counsel, Switzerland Permanent Mission to the United Nations; Mr. Narinder Singh, First Secretary, Legal Counsel, India Permanent Mission to the United Nations; and Lt. Colonel William Lietzau, Deputy Legal Counsel to the Chairman of the Joint Chiefs of Staff of the United States of America.

The CILJ was also pleased to present Mr. Richard Dicker, Director of Human Rights Watch; Professor Diane Orentlicher of American University’s Washington College of Law; and Professor Ruth Wedgwood of Yale Law School. Professor Michael Scharf of the New England School of Law, though unable to attend the Symposium, also contributed to this issue.

Panel Descriptions

The Symposium panels created a forum for the participants to discuss important facets of the Rome Statute and ICC. The panels were divided into three subject areas: jurisdiction, institutional arrangements, and the role of the ICC.

First Panel: Acquisition of Jurisdiction - Triggering Mechanisms & Crimes

The first panel focused on the contentious issue of jurisdiction, specifically considering matters of personal and subject matter jurisdiction, and the manner in which the exercise of ICC jurisdiction would impact traditional notions of state sovereignty. The panel highlighted issues regarding the triggering mechanisms of the ICC and further, the panelists examined the Elements of the Crimes of genocide, war crimes, and crimes against
humanity as defined in the Rome Statute as compared to the definition of these crimes in other treaties or international conventions.

Second Panel: From Paper to Practice - Institutional Arrangements & Preparatory Work
The second panel examined the institutional arrangements and preparatory work necessary to establish a functioning ICC. The panel touched upon the work of the PrepCom in defining the crime of aggression, adopting the Rules of Procedure and Evidence, and selecting judges and prosecutors. The panelists also considered whether the Court's budget will be paid from the United Nation's general operating budget or from contributions from the Assembly of State Parties; the ICC's relationship with the United Nations General Assembly and Security Council; and the extent of state ratification of the Rome Statute.

Third Panel: A Roundtable Discussion - What Role for the International Criminal Court?
The third panel explored the role of the ICC in the international community. The panelists considered the future role of ad hoc tribunals such as the Yugoslav and Rwandan War Crimes Tribunals and the role of domestic amnesty programs such as South Africa's Truth and Reconciliation Commission. Moreover, the panelists attempted to prognosticate on the evolution of the ICC's jurisdiction to include additional crimes such as the crime of terrorism or drug trafficking.

The Symposium Issue's Addresses, Articles, and Essays

Philippe Kirsch, Keynote Address: Ambassador Kirsch offers an overview of the Rome Statute and his thoughts on the future of the ICC.

M. Cherif Bassiouni, Negotiating the Treat of Rome on the Establishment of an International Criminal Court: Professor Bassiouni narrates the process of negotiating the ICC Statute at the Rome Diplomatic Conference of June 15-July 17, 1998, detailing the roles of key groups and individuals. He also highlights the special difficulties faced by the Statute's drafters and notes related problems in Statute's final text.

Richard Dicker, Issues Facing the International Criminal Court's Preparatory Commission: Mr. Dicker focuses on the authority and reach of the ICC. He suggests that to ensure the rights of the accused, the Rules of Procedure and Evidence should limit the power of the prosecutor. However, Mr. Dicker stresses that, in contrast to the U.S. government's position, the jurisdiction of the ICC should be broad. Mr. Dicker's conclusion is that unless the United States government supports the Rome Statute in its current form, the ICC's chances of survival are limited.

William K. Lietzau, Checks and Balances and Elements of Proof: Structural Pillars for the International Criminal Court: Lt. Colonel Lietzau discusses the procedural development of the ICC, focusing on the challenges facing
the PrepCom in developing the elements of crimes and rules of evidence and procedure.

Diane F. Orentlicher, Politics by Other Means: The Law of the International Criminal Court: Professor Orentlicher debates the two major arguments made in opposition to the Rome Statute: (1) that mechanisms for establishing the ICC’s jurisdiction breach principles of treaty law, and (2) that the Rome Statute contemplates an illegal role for the United Nations Security Counsel. Although such arguments may represent valid concerns over the balance of power in the international arena, Professor Orentlicher argues that to the extent that these arguments are framed as legal arguments, they are fundamentally flawed.

Didier Pfirter, The Position of Switzerland with Respect to the ICC Statute and in particular the Elements of Crimes: Mr. Pfirter offers an insider’s view on the process leading to the Rome Statute, elaborating on the disagreements between the U.S. and Swiss Delegations regarding War Crimes and Elements of Crime in the Rome Statute. While maintaining that an Elements of Crime provision is anomalous to the Rome Statute, Mr. Pfirter stresses that cooperation with the United States is necessary to the success of the ICC.

Michael P. Scharf, The Amnesty Exception to the Jurisdiction of the International Criminal Court: Professor Scharf maintains that mediators have traditionally offered amnesty to induce human rights violators to agree to peace and relinquish power. Professor Scharf examines whether or not the provisions of the Rome Statute allow the use of amnesty as a bargaining chip and recognize an “amnesty exception” to the jurisdiction of the ICC. Professor Scharf concludes that the existence of an ICC does not remove amnesty as a bargaining chip.

David J. Scheffer, U.S. Policy and the International Criminal Court: Ambassador Scheffer describes the U.S. position in regard to the Rome Treaty, explaining why the United States was hesitant to support the Treaty after U.S. experiences in international conflicts in general and international tribunals in particular. Ambassador Scheffer raises the concern that the ICC’s jurisdictional structure, by allowing the ICC to exercise jurisdiction over a non-party state, further alienates the United States from contributing to the debate over the ICC.

Ruth Wedgwood, The United States and the International Criminal Court: Achieving a Wider Consensus Through the “Ithaca Package”: Professor Wedgwood focuses on U.S. concerns regarding the ICC, explaining U.S. reservations to the ICC’s jurisdictional structure and its definition of crimes in a historical context. Professor Wedgwood offers a solution to the conflict between the United States and parties to the ICC through the “Ithaca Package,” a list of binding interpretations to the Rome Statute created at the CILJ Symposium. Only through this practical approach, can the ICC effectively operate.
Conclusion
On a cold and snowy pair of days in March, the CILJ assembled the key participants responsible for drafting the Rome Statute creating the ICC. This Symposium issue represents the culmination of that effort: the first extensive look at the legal ramifications surrounding the establishment of the ICC. It is our hope and belief that the ideas and theories developed during this Symposium will set a framework for the PrepCom’s November meeting, and ultimately contribute to a better understanding of the issues surrounding the creation of an international criminal court.
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