

**ASSIGNMENT INTERNATIONAL CRIMINAL COURT, 2015**



**Cour  
Pénale  
Internationale**

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**International  
Criminal  
Court**

**Return Date:** Thursday 10<sup>th</sup> of September, 2015

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## **PART 1:**

**Question 1: According to the article, an institution like the ICC was necessary for different reasons. Basing your answer on the information in the article, what were three different motivations behind the creation of the ICC ?**

Argument 1: The ICC was also created in a shot to make a statement against criticism of prejudices and (neo)-colonialism.

Argument 2: The ICC is built on the foundations of Transitional Justice. Thereby, the main goal of the ICC is to attain justice in difficult development times of state suppression and (armed) conflicts.

Argument 3: A popular idea was devised that there should be an international justice system which could interpose, punish crimes against humanity and retain peace. This idea procreated the ICC.

**Question 2: What is the connection between the Nuremberg Trials and the Tokyo War Crimes Tribunals on the one hand, and the ICC on the other ? And why does the author include this information about the Nuremberg Trials and the Tokyo War Crimes Tribunals in this article about the ICC ?**

The Nuremberg Trials and the Tokyo War Crimes Tribunals were actually the first real application of International Transitional Justice after the World War Two. The author describes a link;

I actually think there are two connections.

1. There was a also a lot of criticism against these trials; for example; the Allies eliminated themselves from all crimes at the Tokyo tribunal. The ICC actually wanted to answer the criticisms of prejudices and (neo)-colonialism, but the author gives the fact that from the 36 people who were indicted by the ICC since its existence, all of them have been leaders from Africa. From this you can conclude that the choices were biased and arbitrary and that there was neo-imperialism in all of these courts and tribunals.
2. The Nuremberg Trials, The Tokyo War Crimes Tribunal and the ICC had the following in common; They implemented Transitional Justice so they could attain justice in difficult times of transition from conflict and state suppression. Actually, the Nuremberg Trials and the Tokyo War Crimes Tribunal were the first to implement International Transitional Justice.

**Question 3: A: In paragraph 4, regarding the Nuremberg Trials and the Tokyo Tribunals. Would Radhabinod Pal probably agree or disagree with Robert Taft ?**

Radhabinod Pal would agree with Robert Taft.

**B: Explain briefly and clearly in what way they would agree or disagree.**

They would agree that the conviction was motivated by revenge and that the judgement was not fair-minded and neutral.

**Question 4: One criticism of the ICC is that its type of justice does not take some historical factors into account which are related to a specific situation but which can complicate matters. What are three other specific criticisms of the ICC presented in the article ?**

1. Unfair and subjective selection of the indictments. (all 36 African leaders) (Neo-colonialism)
2. The ICC is inefficient, because although its growing budget of \$152 million, it has only convicted two people effectively, out of 36 indictments.
3. The ICC strongly universalizes the problems and uses sublime and vague notions of justice while the complicated facts are being concealed.

(Because the ICC uses the concept of transitional justice which actually is rooted in an ideology of legalism and therein justice is superior to politics. > This is disadvantageous because it strongly proposes that politics have no major role in dealing with cohesive political problems.)

**Question 5: What has happened to the “West’s hopes for a peaceful transition towards democracy” in Cambodia ?**

The West’s hopes were weakened because Prime Minister Hun Sen, from the government of the Cambodian Peoples Party, centralized his power and floated towards a dictatorship.

**Question 6: What does McCargo suggest as a replacement for institutions like the ICC and other international transitional justice bodies ?**

McCargo suggests that in order to deal with a problematic past there should come objective and fair national investigations and that these investigations have to be complemented by executions within domestic court organizations.

## **PART 2:**

### **Question 1: When and why was the ICC established ?**

The ICC was established on 17 July 1998, when more than 120 states adopted the Rome Statute of the ICC. The most important mission of the ICC is to convict criminals who committed very serious crimes in our international society. The ICC wants to prevent that these crimes are being committed and they want to send a clear signal that these criminals will not go unpunished.

The terrible events that took place in the territory of the former Yugoslavia and in Rwanda had a great impact and a leading role on the decision to assemble the conference which established the ICC in Rome in July 1998.

### **Question 2: What is the Rome Statute ?**

On 17 July 1998 more than 120 countries adopted a statute in Rome.

The Rome Statute contains the most important rules and procedures of the ICC and its jurisdiction which the State Parties must follow and respect. The Statute also implies that the ICC is established to prosecute criminals who committed very serious crimes in the national territories of the States Parties and that the States have to accept the jurisdiction of the ICC.

It also contains the mechanisms that describe how the State Parties can collaborate in an effective way with the ICC.

### **Question 3: What are States Parties ?**

The States Parties are the different countries from all the continents that have accepted the rules and procedures of the Rome Statute. Therefore they are represented in the association of States Parties. At least once a year the association of States Parties come together and they discuss and review all important matters relating to the ICC.

**Question 4:** The ICC is permanent and autonomous, and it brings individuals and not states to trial.

### **Question 5: Why is the date 1 July important for the ICC and its trials ?**

The date 1 July 2002 is very important for the ICC and its trials because the ICC's jurisdiction is time bound. The ICC can only deal with the affairs that have occurred after the entry of the Rome Statute on 1 July 2002.

### **Question 6: The ICC says that it's not targeting African countries in its work. What are three different pieces of evidence to support this statement which are given in the reading ?**

1. Most of the ICC's investigations were started because the African governments have requested so themselves.
2. In the ICC's membership Africa is by far the most represented continent.
3. There are several Africans who have high positions in the different organs of the ICC.

**Question 7: What are the four types of crimes which the ICC can investigate ?**

1. Crimes of genocide.
2. Crimes against humanity.
3. War crimes.
4. Crimes of aggression.

**Question 8: Explain how genocide is different from crimes against humanity.**

Genocide is aimed at exterminating a particular group of people which is based on their religion, race, nationality and ethnicity. Everything possible is done in a structured way to destroy the particular group of people.

Crimes against humanity is a much broader concept in which terrible crimes are committed against the civilian population, but there is no special intention to exterminate a particular group of people.

**PART 3:**

**Questions video 1:**

**1. What crime was Lubanga charged with ?**

The prosecution had convincingly proved that Mr Thomas Lubanga is responsible and guilty for recruiting little children under the age of 15 years into the FPLC. The little boys and girls had to fight alongside his soldiers in eastern-DRC.

**2. FPLC: Forces patriotiques pour la libération du Congo**

**UPC:** Union of Congolese Patriots

**DRC:** Democratic Republic of Congo

**3. What happened with the 15 witnesses mentioned in the video and why?**

The testimony's of at least 15 witnesses have found to have been unreliable. The charges against the accused didn't include sexual violence crimes. The witnesses claim that little girls under the age of fifteen have been sexually abused by the UPC and FPLC commanders. The Judicial Chamber has not found any facts that these crimes have taken place and therefore the accused cannot be held responsible for these sexual crimes.

- 4. At the end of the video, the reporter mentions “the wheels of justice”. What is the context for this and what is the reporter saying?**

Quote reporter; “Many analysts say that the Lubanga judgement is both a boon and a bane for the ICC, on one hand it shows that the court has teeth and it can bite hard, but on the other hand it also shows how slow the “wheels of justice” grind at that court. And the four Kenyan suspects will be looking at both sides of that coin. NTV, Nairobi. ”

So, the reporter means that the court did actually prove that it can act effectively and decisively in order to let justice prevail, but on the other hand the complicated procedure needs a lot of time and patience.

#### **Questions video 2:**

- 1. What were the charges against Kenyatta?**

Mr. Kenyatta was suspected of committing crimes against humanity, because the prosecution claimed that he had a major role in stimulating ethnic confrontations after the elections in 2007, which caused more than a 1000 casualties.

- 2. Why were charges against him dropped?**

The court has decided that the prosecution has failed to provide any adequate evidence against Mr. Kenyatta.

- 3. The first reporter in the video mentions “first” in the context of Kenyatta. What is the fuller context, and why is this important?**

Mr. Kenyatta had the honour of being the first serving head of state who faced charges at the ICC, and yet the charges were dropped against him.

- 4. Why the word “apology” is mentioned ?**

The lawyer of Kenyatta says that Mr. Kenyatta deserves an apology from the court because there wasn't any sufficient evidence against Kenyatta, and yet he was charged with very serious crimes.

5. **What does Tristan McConnell, the second reporter, say about the importance of the dropping of charges against Kenyatta? In his opinion, what message does the dropping of charges send to the public?**

The ICC was initially established to charge people who don't respect the law and rules in their countries and put themselves above the law. In this particular case the ICC accused a serving head of state of committing crimes against humanity, and in the end they dropped the charges and failed to convict the accused. Tristan McConnell says the dropped charges are a very serious blow to the credibility of the ICC, because it gives the impression of a court which cannot execute for what it was established. He also says that since the charges were dropped, there will not be swift justice for the victims, since justice seems very far away.

6. **Who and why does Fatou Bensouda blame for the result of the investigation ?**

Fatou Bensouda blames the Kenyan government for the collapse of the case against Mr. Kenyatta, because the Kenyan government had not fully cooperated with the ICC.

7. **Who is William Ruto? and why is he mentioned here ?**

Uhuru Kenyatta is the president and William Ruto is the vice-president of Kenya. Tristan McConnell says there could arise potential problems in the government itself because Kenya is run by a coalition and both men are accused of crimes against humanity relating to the violence and ethnic confrontations after the elections of 2007.

So, while the case from Kenyatta was withdrawn, William Ruto is still facing these criminal charges and that could cause serious problems in the future.