



Parliamentarians *for Global Action*
Parlamentarios para la Acción Global
Action Mondiale des Parlementaires
برلمانيون من أجل التحرك العالمي

Ukraine and the International Criminal Court

Information on Perceived Challenges

as exchanged during the PGA Roundtable expert sessions
on the ICC under the auspices of the
Human Rights Committee of the Verkhovna Rada

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www.pgaction.org/campaigns/icc/ukraine.html

Challenge 1

Does Rome Statute ratification on the one hand stand in the way of providing justice to the victims of past crimes on the other hand?



No it does not. Both goals are not necessarily interlinked.

Non-retroactive

Rome Statute ratification has a prospective outlook: it provides the ICC with jurisdiction for genocide, crimes against humanity and war crimes committed in the future. A preventative effect of strengthening the international legal toolkit to protect Ukrainian citizens via Rome Statute ratification will enter into effect only three months after depositing the ratification papers to the UN.

No statutes of limitations for international crimes

Rome Statute ratification is not retroactive but for international crimes - which are already defined under the Geneva conventions/UN Charter - there are no statutes of limitation. The ICC is not the only court that can investigate and prosecute international crimes, impunity in the past can be dealt with through other means.

Ad hoc jurisdiction ICC via art 12.3 or ratification Rome Statute

After lodging a Declaration with the ICC Registrar, the government of Ukraine has accepted ad hoc jurisdiction of the ICC for the alleged crimes committed in Kiev between November 2013 and February 2014. Other Parliamentary requests for such ad hoc jurisdiction have not reached the ICC yet. Utilization of ad hoc acceptance of jurisdiction of the ICC entails a greater danger of politicization of the neutral, impartial court, which can be avoided via ratification of the Rome Statute, which gives the ICC unlimited jurisdiction to investigate crimes allegedly committed by all parties, on the full territory and by all nationals of a State Party to the Rome Statute.

Challenge 2

Is the Rome Statute incompatible with the Ukrainian Constitution's clause on sovereignty?



Yes, at the moment it would require a technical amendment to art. 124 of the Constitution - the provision about recognition of the ICC jurisdiction over the territory of Ukraine. The current constitutional reform process provides a good opportunity to make the necessary amendments.

Mr. Vitalii Kupriy, MP Deputy Chair of the Committee on Legislative Support of Law Enforcement: "The ICC is another international incentive to make our national court system even stronger. I cannot imagine what would happen to the Ukrainian legal system if we didn't have the opportunity to appeal to the European Court of Human Rights (ECHR), in that case our legal system would be comparable to that of Kazakhstan. Ukraine is in the bad company of countries like Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Turkmenistan, Uzbekistan and Russia, who have not yet ratified the Rome Statute."

Olexandra Matviichuk, Coordinator of the Human Rights Agenda: "Ratification of the Rome Statute is not only the fulfillment of the conditions that Ukraine accepted to establish the Association Agreement with the EU. It would mean hope for the victims of war crimes to demand investigation in the occupied territories and to pass the guilty into the hands of international justice"

Mr. Victor L. Musiyaka, Deputy Chair of the Constitutional Commission of Ukraine: "There is no opposition to amending art. 124 in the constitutional commission. We have every opportunity today to create constitutional grounds to remove the obstacles to ratify the Rome Statute, as long if we join forces and be united, there will be support on the part of Members of Parliament and the public. The public will react very negatively if we delay this. Everything we have done in the last months was done to honour the public's expectations."

The ICC in a Nutshell

by Mr. Matias Hellman,
External Relations Adviser, ICC Presidency

"The Rome Statute is the founding document of the ICC. It is entirely up to each country to decide whether or not they wish to join this treaty. The ICC was created by States, who negotiated the establishment of the Court during 1995 – 1998 under the auspices of the UN.

The idea to establish the ICC emerged after World War II, but lay dormant during the Cold War era.

The ICC has jurisdiction over the most serious international crimes (genocide, crimes against humanity and war crimes). They are not newly defined crimes in the Rome Statute; the ICC is only a new mechanism to investigate and prosecute these crimes.

The ICC investigates individual responsibility; it cannot hold states responsible, as it is not a human rights court. The ICC exercises jurisdiction in a non-discriminatory way. It is not possible to give the ICC the jurisdiction to just prosecute one person; instead, the ICC Prosecutor will investigate each situation as a whole and will decide independently if someone should be prosecuted.

The ICC is independent. It can only be effective with the cooperation of States Parties, which perform enforcement functions. because the Court does not have a police force of its own. Ukraine has already accepted the cooperation obligations for the 3 months of jurisdiction under the art. 12.3 declaration.

The ICC is a court of last resort: only when a State cannot or will not investigate and/or prosecute can the ICC assume jurisdiction. In most of the 8 countries where the ICC is currently investigating, the alleged crimes were referred to the ICC by the countries themselves.

Almost all European countries have joined the ICC, as well as the vast majority of Latin American and Caribbean States, and most African countries. Asia is where the biggest membership gaps are.

Joining the ICC system is an expression of solidarity with victims and a step towards a more secure future, both nationally as well as globally."



Матіас Хельман

Віктор

Challenge 3

Is Rome Statute ratification an obstacle for the Peace negotiations with Russia?



No, on the contrary, it can be supportive to the peace process. ICC ratification – a process of 3 months after depositing the ratification file at the UN- provides an ideal timeframe for peace negotiators. The ICC is neutral, it will not target anybody in particular, if so desired it can just target persons on both sides with an individual responsibility for breaking the law regarding the most heinous crimes. Furthermore the ICC cannot launch a case against a particular country, it can only investigate individual responsibility for allegedly committed crimes.

Chairperson of the Foreign Affairs Committee, Ms. Hanna Hopko, MP (Ukraine):

"The Foreign Affairs committee has sent letters to the Speaker and the President. The Rome Statute provides no danger to Ukrainian military, on the contrary, it could be our way out of the mess. The Rome Statute will provide Ukraine with more tools and we welcomed President Poroshenko's March statement in which he promised to do everything for swift Rome Statute ratification."

Russia and the ICC

President Putin gave instructions to ratify the Rome Statute in 2003. Which didn't happen, but it's paradoxical to fear for Russian negative consequences of ICC ratification. Russia has signed the Rome Statute. Because of its prospective outreach, Rome Statute ratification is fully compatible with the Minsk 2 Agreements.

Crime of Aggression

The Rome Statute currently does not provide the ICC with jurisdiction over the 'Crime of Aggression'. Only after 30 ratifications of the so-called Kampala amendments can this become a reality, scheduled for 2017 earliest. At the moment the Kampala amendments are ratified by 23/24 State Parties only. Only when both Ukraine and Russia would be party to the amended Rome Statute, could the ICC gain the jurisdiction on this crime – after 2017.

PGA Treasurer Ms. Margareta Cederfelt, MP (Sweden), "Ukraine should not delay Rome Statute ratification, for it has a strong preventative effect on avoiding crimes being perpetrated against women and children. It is our responsibility as parliamentarians to secure circumstances for women and children."

Challenge 4

Are delays in Rome Statute ratification a missed opportunity for justice?



Yes, as Hon. Nemyria has put it:

"Delayed justice is no justice, the more you delay, the more you lose the opportunity to provide justice. The more you delay, the weaker you are. We need to move from words to deliverables now, sooner rather than later. By not ratifying the Rome Statute, Ukraine is deprived of the full set of tools to use to protect its citizens: next to military and intelligence tools, international legal tools are underestimated."

Ms. Ana Gomes, MEP (Portugal): "It's not the man on the street that is going to make Rome Statute ratification happen, but it is you: the professionals in politics, in civil society and academia. Political will is crucial and in case this is wavering, I will bring this message back to Brussels, for we expect Ukraine to deliver on its promises."

Ukraine expressed its intention of ratifying the Rome Statute 15 years ago by signing the Rome Statute in 2000 and it assumed responsibility to do so in September 2014 by the ratification of the Association Agreements with the European Union which contain two clauses (Title III, art. 24.3 and Title II, art. 8) on the ratification and domestic implementation of the Rome Statute of the ICC by Ukraine. Ukraine has to date not yet ratified the Rome Statute.

Prof. Alex Whiting, Harvard Law School and former Chief of Investigation and Prosecution at the ICC-OTP:

"Usually governments resist Rome Statute ratification, because they fear that at the moment when the Rome Statute will be ratified, the leadership of the country will be arrested and taken to The Hague. In the case of Ukraine, I can assure you: This will not happen. The ICC only prosecutes clear cases of mass atrocity, and furthermore:

- * The ICC will only prosecute when there is proof of the existence of a policy to commit the crimes (genocide, war crimes or crimes against humanity);
- * The ICC focuses only on crimes, which are committed intentionally, it is not always a crime when civilians are killed in a war;
- * ICC will only prosecute if there is evidence, not just based on hearsay;
- * ICC will only act if there are no national prosecutions, it cannot act if nationals do it;
- * Procedural safeguards, checks and balances, judges have to approve everything the prosecutor does;
- * Court has limited resources, it is not looking for work, it has enough work."



“The ratification and implementation of the Rome Statute provides additional opportunities for the Ukrainian judiciary. It will strengthen the rule of law; and ensure fair trial on the crimes against humanity and war crimes through access to the International Criminal Court.”

- Hanna Hopko,
Chair of the Foreign Affairs Committee



Parliamentarians for Global Action (PGA) is a non-profit, non-partisan international network of over 1,200 committed legislators, in more than 140 elected parliaments, which informs and mobilizes parliamentarians in all regions of the world to advocate for human rights and the rule of law, democracy, human security, non-discrimination, and gender equality.

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