Chapter 12

The International Criminal Court

On 17 July 1998, the United Nations Diplomatic Conference held in Rome (Italy) established the International Criminal Court (ICC) by adopting its Statute by a vote of 120 in favour to seven against, with 21 abstentions. The USA, together with China, Israel, Libya, Iraq, Qatar and Yemen, voted against. Russia abstained, although it signed the Statute on 13 September 2000. The USA, Iran and Israel signed the Rome Treaty on 31 December 2000, but the USA withdrew from the Statute on 6 May 2002. France ratified the Rome Statute on 9 June 2000.

With the deposit of the sixtieth instrument of ratification on 11 April 2002, the Rome Statute entered into force on 1 July 2002.1 By the end of 2005, 100 states had ratified the Statute.

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The origins of the ICC

Gustave Moynier, one of the Swiss founders of the International Committee of the Red Cross, felt that the First Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field of 1864, which had been widely ignored during the 1870 Franco-Prussian war, needed a complement: he proposed in 1872 the establishment of an international criminal court to deter violations of the Convention, and to bring to justice anyone responsible for such violations. This proposal was not considered by states. Between the two World Wars, a few scholarly and professional organisations and NGOs initiated and promoted the concept and the creation of an international criminal court. In 1927, during the Paris Congress of the ‘Fédération internationale des ligues des droits de l’homme’, the Austrian League proposed to promote the creation of a ‘Permanent International Court of Moral Justice’, the action of which would ensure an effective and international protection of human rights within the framework of the League of Nations. This proposal was adopted by the Congress and has been included as one of the main demands of the Federation since then.

A first reference to an ‘international penal tribunal’ was made in Article VI of the 1948 Genocide Convention as an alternative to a competent national tribunal:

Persons charged with genocide or any of the other acts enumerated in Article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those contracting parties which shall have accepted its jurisdiction.

The International Law Commission was requested to pay attention to the possibility of establishing a Criminal Chamber of the International Court of Justice. Through the deliberate stalling of Member states, 50 years elapsed before the Court’s Statute was adopted.

In 1950, the General Assembly set up a Special Committee to prepare a Draft Statute for an ICC, which produced a text in 1951, revised in 1953. The text was deferred over the next few years on the pretext that the crime of aggression had not been defined. Among the ‘stalling’ states, the USSR and other Socialist countries were ideologically hostile to ‘bourgeois’ international justice. The issue was only raised again in 1989, at the end of the Cold War, by Trinidad and Tobago in a Special Session of the General