



About Burma and the International Criminal Court

The International Criminal Court (ICC)

In 1998, the United Nations General Assembly convened a diplomatic conference in Rome, Italy to “finalize and adopt a convention on the establishment of an international criminal court”. The meeting resulted in a treaty, or “Rome Statute”, which was adopted by a vote of 120 to 7. Among other things, the statute established the functions, jurisdiction and structure of an International Criminal Court to punish individuals who commit war crimes, crimes against humanity, and genocide. The treaty stated that when 60 countries ratified the measure, it would come into force, which happened on July 1st, 2002. Therefore, the Court can prosecute actions that take place after this date.

How Countries or Individuals Come Under the Authority/Jurisdiction of the ICC

There are three ways in which a country (or individual) can be referred to the ICC. First, the prosecutor of the international criminal court can initiate investigations on any country that is a signatory to the Rome Statute. Second, a country that ratified the Rome Statute can ask the ICC prosecutor to investigate and prosecute cases within its borders. Third, if a country is not a signatory, the UN Security Council can give the ICC prosecutor jurisdiction over crimes that take place in a particular country – this is what is meant by “referring” a country to the International Criminal Court. (Also, it is important to note that the UNSC does not refer a particular individual – such as Than Shwe – to the ICC. It refers countries or situations in countries).

In order for the UN Security Council (UNSC) to refer a country to the ICC, the Security Council seeks to determine the two necessary conditions for referral: whether war crimes, crimes against humanity or genocide are being committed and whether there is a system of impunity present in the country. So far, the Court has taken action only on one country which is not a signatory to the Rome Statute – Sudan. In 2005, the UN Security Council voted to refer the situation in Darfur, Sudan to the International Criminal Court.

How Burma Could be Referred to the International Criminal Court

Since Burma is not party to the Rome Statute, the ICC prosecutor cannot on his own initiate an investigation on Burma. The UN Security Council must vote to give the prosecutor jurisdiction. This means that at least 9 of the 15 countries on the Council must vote “yes” and additionally there can be no veto from the five permanent members of the Council – Russia, China, US, France, and the UK.

Referrals in Practice

In practice, before the UNSC refers any country to the ICC, it is likely to vote to create a Commission of Inquiry to study the situation to determine if the crimes are being committed and if a system of impunity is present and make a recommendation to the UNSC. For example, before the UNSC referred the situation

in Darfur to the International Criminal Court, it asked the UN Secretary General to carry out a "Commission of Inquiry" to study the situation there and report back within 6 months. The Commission on Sudan determined war crimes and crimes against humanity but not genocide were being committed and that a system of impunity was present. The Commission then recommended that the UN Security Council refer Sudan to the ICC, which the UN Security Council then did. Since Burma is not a signatory to the Rome Statute, it is likely that a similar process would take place. This means that campaigners will need to build enough support to get 9 votes and no vetoes simply to create a Commission of Inquiry.

What Crimes Are Prosecutable Under the ICC?

The Rome Statute details three areas of crimes that are prosecutable - War Crimes, Crimes Against Humanity, and Genocide. It is important to note that the evidence necessary to establish genocide is very difficult to find. For example, the Commission of Inquiry into Darfur did NOT find that genocide was taking place there, even though it is often cited that over 200,000 people have died as a result of the conflict. The subsequent investigation by the ICC prosecutor did find that genocide is taking place in Sudan. In part due to this reason, we are at present not seeking action on genocide related to Burma, but it does not mean that genocide is not taking place and like Sudan, may come up when it reaches the ICC prosecutor.

What is Our Plan?

We will ask individual members and supporters throughout the United States to contact their Congressional representatives to encourage them to sign on to a "dear colleague" letter. The language and addressee of this letter have not been finalized yet, and the public campaign has not been officially launched - you will be notified when this happens. The aim of the letter will be to encourage the United States to advocate for a referral of Burma to the ICC at the United Nations, particularly as a permanent member of the UN Security Council. Concurrently, by publicizing the criminality of Burma's regime throughout this process, Than Shwe and his cronies will come to be branded as despised war criminals, which will make it more difficult for members of the UN Security Council to veto a referral of Burma when the Council votes.

Please take the first step in this campaign by signing the enclosed petition.

Also, by adding your contact information to the enclosed attendee sheet, or by signing up for USCB's email listserv on our homepage, you will be notified immediately when our full ICC campaign is underway.