

# TOPIC GUIDES

## PIMUN 2018



# THE INTERNATIONAL CRIMINAL COURT



## Table of Contents

INTRODUCTION LETTER.....	2
ICC Overview: A historical introduction of the committee .....	3
Introduction to International law .....	3
The source of the International Criminal Court: The Rome Statute of the ICC .....	4
Part I – Jurisdiction and structure of the ICC .....	5
A/ Jurisdiction .....	5
B/ Structure.....	6
Part II – Proceedings before the ICC .....	7
A/ Phase 1, From Criminal investigation to the confirmation of charges (Pre-Trial phase – Pre trial Chamber).....	7
B/ Phase 2, Trial Plea.....	8
Part III - The notion of genocide .....	9
A/ What is a genocide?.....	9
B/ How to prove a genocide?.....	10
C/ Cases of Genocides.....	12
D/ Example of an ongoing situation: Al Bashir Case .....	13
Topic: The Rohingya people.....	15
A/ Who are the Rohingyas? .....	15
B/ The Rohingya Crisis .....	15
C/ The United Nations and the Rohingya crisis.....	16
D/ The ICC and the Rohingya crisis.....	16
The scenario for this committee ICC – The Rohingya crisis.....	18



## INTRODUCTION LETTER

Dear Delegates,

First of all, we would like to congratulate you on opening the Study guide and we are hopeful that you are also eager on getting familiarized with its contents in the following days.

It is our pleasure to welcome you to this simulation of the International Criminal Court at PIMUN 2018. We offer you the possibility to enjoy a model ICC without the rainy and freezing weather of The Hague.

This committee does not require any specific knowledge in international criminal law. However, we expect you to have basic knowledge on the common principles of general law: mechanism of proof, the use of legal sources and the use of a specific vocabulary etc.

In addition, in the study guide, you will find the tools you need to make your own research about the topic. Our goal is to inform you of the facts you can link to legal texts. The facts that are not provided in this study guide, the facts you will find on the internet can also be used in the committee, but the source will be verified by the presidency/judges.

Your work will be to defend a specific position. Is Minister Kyaw Swe, minister of home affairs, guilty of the charges made against him? Doing so, you will have to prepare your own strategy, crossing news and legal texts to build strong arguments.

Sincerely yours,

Your Chairs,  
Justine Jadot and Mathieu Grimmeissen

## ICC Overview: A historical introduction of the committee

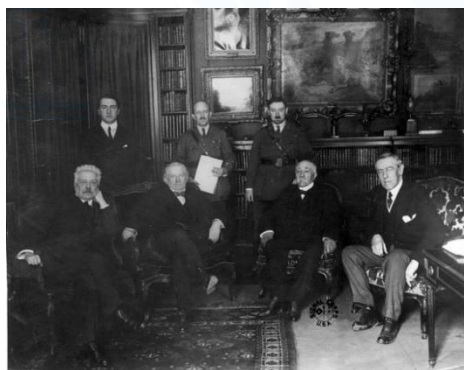
### Introduction to International law

International public law always had a major role regarding international relations. Although nations and populations used force to balance powers for many centuries, traces of international public law have been discovered far back in time, in 1259.BC with the Egyptian-Hittite peace treaty<sup>1</sup>.



Then, thinkers such as Francisco de Vitoria (1483-1546), Francisco Suárez (1548-1617) and Hugo Grotius (1583-1645), studied the importance of International public law and international relations. France and England, becoming what are called “States”, developed the notions and quickly realised the relevant role of International Public Law, since they were forced to cooperate. Since then, states that are party to a treaty are forced to respect it (Pacta Sunt Servanda).

The first World War triggered another evolution in international public law. The victory of the allied powers against central powers led to the creation of the Versailles Treaty (1919). Between International Public Law and Criminal Law, International Criminal Law has been created. The Versailles Treaty stated that an international tribunal shall be created to prosecute the German Emperor and King of Prussia, Wilhelm II<sup>2</sup>.



After the Second World War, the allied powers, renewed their will to prosecute the defeated, with the creation of the Nuremberg Tribunal (1945), this time, creating the notion of “Crimes against humanity”, committed under the third Reich.

After the creation of the United Nations (24th of October 1945), the UN established tribunals to solve conflicts around the world. After the war in Bosnia (1993), the International Criminal Tribunal for the Former Yugoslavia has been established. After the genocide in Rwanda, the International Criminal Tribunal for Rwanda (1994) has been established.

The international Community quickly realized the necessity of creating an international jurisdiction instead of creating a specific tribunal for every conflict. Thus, gathering the work from the International Law Commission, the Rome Statute of The International Court has been created (1998).

<sup>1</sup> [https://en.wikipedia.org/wiki/Egyptian%E2%80%93Hittite\\_peace\\_treaty](https://en.wikipedia.org/wiki/Egyptian%E2%80%93Hittite_peace_treaty)

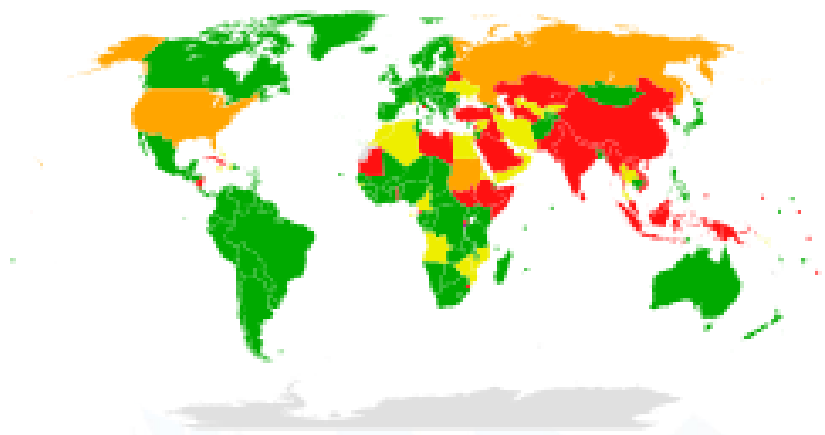
<sup>2</sup> Versailles Treaty Part VII Art.227



## The source of the International Criminal Court: The Rome Statute of the ICC

The Rome Statute of the International Criminal Court has been signed on the 17th of July 1998 at a diplomatic conference in Rome. The treaty entered into force the 1st of July 2002. That means that no crime committed before this date shall be punished.

To this day, 123 states are part of this institution. Those states shall cooperate with the ICC if needed. A non-signatory state cannot be called upon to yield a person to the Court. However, for the purpose of the subject and the committee, we shall consider that the Republic of the Union of Myanmar is party to the statute.



In green: Party

In yellow: Signatory that has not ratified

In orange: Signatory that has announced it does not intend to ratify

In red: Non-state party, non-signatory

The Rome Statute establishes four core international crimes: **genocide** (art.6), **crimes against humanity** (art.7), **war crimes** (art.8), **crime of aggression** (art.8 bis).

The definitions of those notions are given in the Statute, jointly to the documents produced by the International Committee of the Red Cross. For some notions, the Rome Statute directly refers to the Geneva Conventions.



## Part I – Jurisdiction and structure of the ICC

### A/ Jurisdiction

The Rome Statute requires that several criteria exist in a particular case before an individual can be prosecuted by the Court. The Statute contains 3 jurisdictional requirements:

#### **1. Personal and Territorial jurisdiction**

Only crimes committed by individuals on the territory of a State Party or by its national. There is the possibility of a declaration of a State (not party) accepting the jurisdiction of the Court with respect to a crime (committed on the territory of that State or a crime committed by its national).

#### **2. Temporal jurisdiction**

Only crimes committed after the entry into force of its Statute.

For all the States becoming a Party to the Statute after the entry into force of the Statute: crimes committed after the entry into force of the Statute for that State (except: declaration under Art. 12§3: State accepts the jurisdiction even for crimes committed before the entry into of the Statute for that State).

#### **Exceptions: The Security Council powers**

To refer a case to the Court: The SC (acting under Chap VII) may decide to refer a situation to the ICC Prosecutor. The Court will then have jurisdiction with respect to the crimes committed in that situation.

SC Power to defer an investigation or prosecution: The SC (acting under Chap VII) may request the Court to commence or conduct no investigation or prosecution for a period of 12 months (this request may be renewed for same period).

#### **3. Material jurisdiction:**

**Art. 5 §1:** Genocide, Crimes against Humanity, War Crimes, Crime of aggression

## B/ Structure

### 1. Assembly of States Parties (ASP)

It is composed of representatives of the States that have ratified and acceded to the Rome Statute. Each State Party is represented by a representative.

Each State Party has one vote. To the extent possible, decisions should be reached by consensus. If a consensus cannot be reached, decisions are taken by vote (2/3).

### 2. Organs of the Court

**The Presidency:** The President + 2 vice-presidents. Elected by an absolute majority of the Judges of the Court for a three-year renewable term.

**The Judicial Divisions:** consist of 18 judges organized into the Pre-Trial Division, the Trial Division and the Appeals Division.

- Pre-Trial Division: 6 judges -> Pre-Trial Chambers (each of 1 or 3 judge(s)).
- Trial Division -> 7 judges -> Trial Chambers (each of 3 judges)
- Appeals Division -> 5 judges -> Appeals Chamber (each of 5 judges).

**The Office of the Prosecutor** Headed by the Prosecutor: elected by the ASP (9-years term)

**The Registry:** Headed by the Registrar: elected by the judges (absolute majority) – 5-years term





## Part II – Proceedings before the ICC

### A/ Phase 1, From Criminal investigation to the confirmation of charges (Pre-Trial phase – Pre trial Chamber)

- *Criminal investigation and Prosecution:*

Three scenarios may lead the Prosecutor to initiate an investigation: 1) The Prosecutor intends to initiate an investigation on his/her own initiative (proprio motu) 2) A State party refers a situation to the Prosecutor 3) The Security Council of the United Nations may refer a situation to the Prosecutor.

In the event that the Prosecutor acts proprio motu, he/she must first submit to the Pre-Trial Chamber a request for authorization to do so (together with any supporting material collected). The Pre-Trial Chamber will then authorize the start of the investigation if it considers that there is “a reasonable basis” to proceed with the investigation and that the case appears to fall within the jurisdiction of the Court.

The Pre-Trial Chamber may also review the decision of the Prosecutor not to proceed with an investigation or prosecution either on its own initiative, or at the request of the State, or the Security Council.

- *Arrest:*

At any time after the initiation of an investigation, the Pre-Trial Chamber may, at the Prosecutor’s request, issue a warrant of arrests or summons to appear. The Pre-Trial Chamber will issue a warrant of arrest or a “summon to appear” if it is satisfied that there are reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court.

- *Initial appearance and Provisional Detention:*

Upon the surrender of the person to the Court or the appearance of the person before the Court voluntarily, the Pre-Trial Chamber will satisfy itself that the person has been informed of the crime which he/she is alleged to have committed. A person subject to a warrant of arrest may apply for interim release pending trial which is periodically reviewed by the Pre-Trial Chamber.

- *Charges (confirmation of):*

The Prosecutor draws up a “document containing the charges” and submits it to the Pre-Trial Chamber for confirmation.

Within a reasonable time after the person’s surrender or voluntary appearance before the Court, the Pre-Trial Chamber holds a hearing in the presence of the Prosecutor, the person charged and his/her counsel to decide on the confirmation of charges before trial.





At the hearing, the Prosecutor must support the charges with sufficient evidence to establish “substantial grounds” to believe that the person committed the crime charged. The person has the right to object to the charges, challenge the evidence presented by the Prosecutor and present evidence.

The Pre-Trial Chamber will then either confirm the charges or decline to confirm the charges (if it determines that there is insufficient evidence), or it may also adjourn the hearing and request the Prosecutor to consider to either provide further evidence or conduct further investigations or amend a charge because the evidence submitted appears to establish a different crime within the jurisdiction of the Court.

It is the PTC (Pre-Trial Chamber) decision on the confirmation of the charges which will constitute the basis of the prosecutions against the accused - contrary to ICT: there is no indictment; it is a PTC decision which constitutes the case against the accused.

Once the charges have been confirmed, the Presidency shall constitute a Trial Chamber for the trial.

## B/ Phase 2, Trial Plea

At the commencement of the trial, the Trial Chamber will read to the accused the charges previously confirmed by the Pre-Trial Chamber. The Trial Chamber shall satisfy itself that he/she understands the charges against him/her. It is at that stage that the accused may make an admission of guilt.

- *Trial*

The trial starts with the opening statement by the Prosecutor: The Prosecutor presents what is his/her case against the accused (description of the factual and legal allegations). The Legal Representative for victims may also make an opening statement (in connection with the interests of the victims admitted participating to the proceedings). The Defense may either make an opening statement after the Prosecutor, or later (after the conclusion of the Prosecutor’s presentation of evidence or before the presentation of the Defense evidence).

Except if otherwise decided by the Trial Chamber, the evidence is presented in the following sequence: 1) evidence for the prosecution 2) victims 3) evidence for the defense 4) (prosecution and then defense may call rebuttal evidence) 5) evidence ordered by the Trial Chamber (the Trial Chamber has the power to call any evidence).

The proceedings are mainly oral (witness). When a witness is called, he/she is first examined by the calling party, then cross-examined by the opposite party and finally re-examined by the calling party.

Trial sessions are held in open sessions (fundamental Human Right principle: trial is to be public) but the Trial Chamber may order closed sessions where necessary to protect the witness; for public order or morality; to protect the interest of justice (this may encompass many situations).

After the presentation of all the evidence, the parties will file their closing briefs and present their closing arguments in open court (Prosecutor will say what he/she requests – it may happen that the Prosecutor drops some charges; the defense will present, in a nutshell, its theory to rebut the charges).

After that, the Presiding Judge declares the hearing closed and the TC start deliberating in private on the judgment.



- *Judgment/ “Decision”*

After the closure of the proceedings, the judges will deliberate, i.e. assess the evidence. To do so, the judges may use the transcripts of the proceedings. Where necessary, the judges may use the video or audio of the proceedings. The judgment is pronounced orally in the presence of the accused. The judgment is rendered by a majority of judges. An appeal against decision of acquittal or conviction or against sentence may be filed by both the Prosecutor and the convicted person (but restricted grounds: error of law, error of fact and procedural error).

- *Sentence – enforcement of sentences:*

Once the Trial Chamber finds that the accused is guilty, it can impose imprisonment for a specified number of years, which may not exceed a maximum of thirty years. The Trial Chamber may however impose a term of life imprisonment “when justified by the extreme gravity of the crime and the individual circumstances of the convicted person”. Financial penalties can be imposed – fine/forfeiture of assets derived from the crime. The Trial Chamber can also order a convicted person to pay money for compensation, restitution or rehabilitation for victims.

There is no detention center at the ICC: The Presidency will designate a State for the enforcement of the sentence (after consulting the convicted person and the concerned State – an agreement ICC-State is to be concluded for that purpose). The enforcement of an imprisonment sentence is subject to the supervision of the Court.

## Part III - The notion of genocide

### A/ What is a genocide?

A genocide is intentional action to destroy a people in whole or in part. Five specific enumerated acts committed with the intent to destroy a group as such: Physical extermination of a national, ethnic, racial and religious group.

**Legal texts:** ICTY; ICTR and ICC Statutes.

+ [Convention for the Prevention and Punishment of the Crime of Genocide](#) (9 Dec. 1948, UN General Assembly).

Article II: In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group;

(Art. I) Genocide, whether committed in time of peace or in time of war, is a crime under international law.

## B/ How to prove a genocide?

- *Criminal Acts (Material Elements/actus reus).*

Closed list (5 acts): (1) Killing members of the group (2) Causing serious bodily or mental harm to members of the group (3) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part (4) Imposing measures intended to prevent births within the group (5) Forcibly transferring children of the group to another group.

- *1) Material elements*

- **Killing members of the group - Intentional act (murder) but no premeditation.**

ICC Elements of Crimes: "The term 'killed' is interchangeable with the term "caused death"

- **Causing serious bodily or mental harm to members of the group.**

"Serious bodily harm": "harm that seriously injures the health, causes disfigurement or causes any serious injury to the external, internal organs or senses".

"Serious mental harm": more than minor or temporary impairment of mental faculties (e.g.: infliction of strong fear or terror, intimidation or threat).

« Serious bodily or mental harm »: does not need to be permanent/irremediable.

- **Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.**

ICTR Trial Chamber in the Akayesu case: "methods of destruction by which the perpetrator does not immediately kill the members of the group, but which, ultimately, seek their physical destruction."

ICC Elements of crimes "The term 'conditions of life' may include, but is not necessarily restricted to, deliberate deprivation of resources indispensable for survival, such as food or medical services, or systematic expulsion from homes."

- **Imposing measures intended to prevent births within the group**

Preventing the biological reproduction of the group.

E.g.: sexual mutilation, sterilization, forced birth control, separation of the genders or prohibition of marriages.

- **Forcibly transferring children of the group to another group.**

ICTR case-law (Akayesu): the objective of the crime is not only to sanction a direct act of forcible physical transfer, but also to sanction acts of threats or trauma which would lead to the forcible transfer of children from one group to another.

ICC Elements of crimes: "Forcibly" - physical force - threat of force or coercion - E.g.: fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment.



“Children”: person under the age of 18 years old “The perpetrator knew, or should have known, that the person or persons were under the age of 18 years”.

ICC Elements of crimes: “should have known”: Behavior/Physical appearance.

- *2) Mental elements: special intent*

Special Intent is special intent to destroy in whole or in part a protected group as such that distinguishes genocide from other crimes.

- **“Intent to destroy”**

Offender is culpable because he knew or should have known that the act committed would destroy, in whole or in part, a group.

Personal motive/other motivations than the destruction of the group does not preclude from also having the specific intent to commit genocide.

How to show intent?

From the words and deeds of the accused (e.g.: video footage of speeches) - Circumstantial evidence: - scale of atrocities committed, - general nature of the atrocities committed in a region or a country, - deliberately and systematically targeting victims on account of their membership of a particular group, while excluding the members of other groups, - number of group members affected, - physical targeting of the group or their property, - use of derogatory language towards members of the targeted group, - weapon employed and the extent of bodily injury, - methodical way of planning, - systematic manner of killing - relative proportionate scale of the actual or attempted destruction of a group.

- **Destroy: “physical or biological destruction of all or part of the group”.**

(Krstic AC): “An enterprise attacking only the cultural or sociological characteristics of a human group in order to annihilate these elements which give to that group its own identity distinct from the rest of the community would not fall under the definition of genocide.”

Plan or Policy? No, But the existence of a genocidal plan/policy is a strong evidence of the specific intent.

- **“in whole or in part”**

A substantial part of the group. No numerical threshold.

- **“a national, ethnical, racial or religious group as such”**

“Group as such”: crime committed to individuals because they belong to a specific group. Victim of the crime is the group itself (not the individual).

- **Protected Groups**

“national, ethnical, racial and religious groups”: determination on a case-by-case basis by reference to the objective particulars of a given social or historical context, and by subjective perceptions of the perpetrators.



## C/ Cases of Genocides

### *Bosnia-Herzegovina:*

During the conflict (1992-95), an estimated 100,000 people were killed; 80% of the civilians killed were Bosnian Muslims (Bosniaks). In July 1995, Bosnian Serb forces killed as many as 8,000 Bosniaks from Srebrenica. It was the largest massacre in Europe since the Holocaust.

### *Burma:*

Long considered one of the world's most persecuted peoples, the Muslim Rohingya have no legal status in Burma and face severe discrimination, abuse, and escalating violence.

### *Cambodia :*

Between 1975 and 1979, the Khmer Rouge perpetrated one of the great crimes of the 20th century. Some two million people died under this radical Communist regime that ruled Cambodia through a cruel and ruthless system of forced labor, persecution, and execution aimed at bringing about an agrarian utopia. The regime's actions took the lives of one quarter to one third of Cambodia's population in the "Killing Fields," one of the largest cases of mass slaughter since the Holocaust.

### *Democratic Republic of Congo :*

The Democratic Republic of the Congo (known as Zaire until 1997) has suffered two wars since 1996. The first war (1996), began as a direct result of the 1994 Rwandan genocide. The second began in 1998 and involved the armed forces of at least seven countries and multiple militias.

### *Rwanda :*

Between April and July 1994, at least 500,000 Tutsi were killed when a Hutu extremist-led government launched a plan to murder the country's entire Tutsi minority and any others who opposed the government's policies.

### *Sudan and South Sudan :*

Sudan comprises the 15 states formerly known as northern Sudan. The Sudanese government has been responsible for systematic attacks on entire civilian populations during several internal wars since the country's independence in 1956. Today, Sudan's civilian population faces threats from continuing and potential new violence.





## D/ Example of an ongoing situation: Al Bashir Case

The Prosecutor v. Omar Hassan Ahmad Al Bashir

ICC-02/05-01/09

On July 14, 2008, the prosecutor of the International Criminal Court (ICC) requested a warrant of arrest for Sudan's President Omar al-Bashir for: Genocide, Crimes against humanity and war crimes.

The first warrant for arrest for Omar Hassan Ahmad Al Bashir was issued on 4 March 2009, the second on 12 July 2010. In issuing the warrant, Pre-Trial Chamber I, stated that there are reasonable grounds to believe that:

From March, 2003 to at least 14 July 2008, a protracted armed conflict not of an international character existed in Darfur between the Government of Sudan (GoS) and several organized armed groups, in particular the Sudanese Liberation Movement/Army (SLM/A) and the Justice and Equality Movement (JEM).

Soon after the April, 2003 attack on the El Fasher airport, Omar Al Bashir and other high-ranking Sudanese political and military leaders of the GoS agreed upon a common plan to carry out a counter-insurgency campaign against the SLM/A, the JEM and other armed groups opposing the Government of Sudan in Darfur.

A core component of that campaign was the unlawful attack on part of the civilian population of Darfur – belonging largely to the Fur, Masalit and Zaghawa groups – who were perceived to be close to the organized armed groups opposing the Government of Sudan in Darfur. The campaign was conducted through GoS forces, including the Sudanese Armed Forces and their allied Janjaweed militia, the Sudanese Police Forces, the National Intelligence and Security Service (NISS) and the Humanitarian Aid Commission (HAC). It lasted at least until the date of the filing of the Prosecution Application on 14 July 2008.

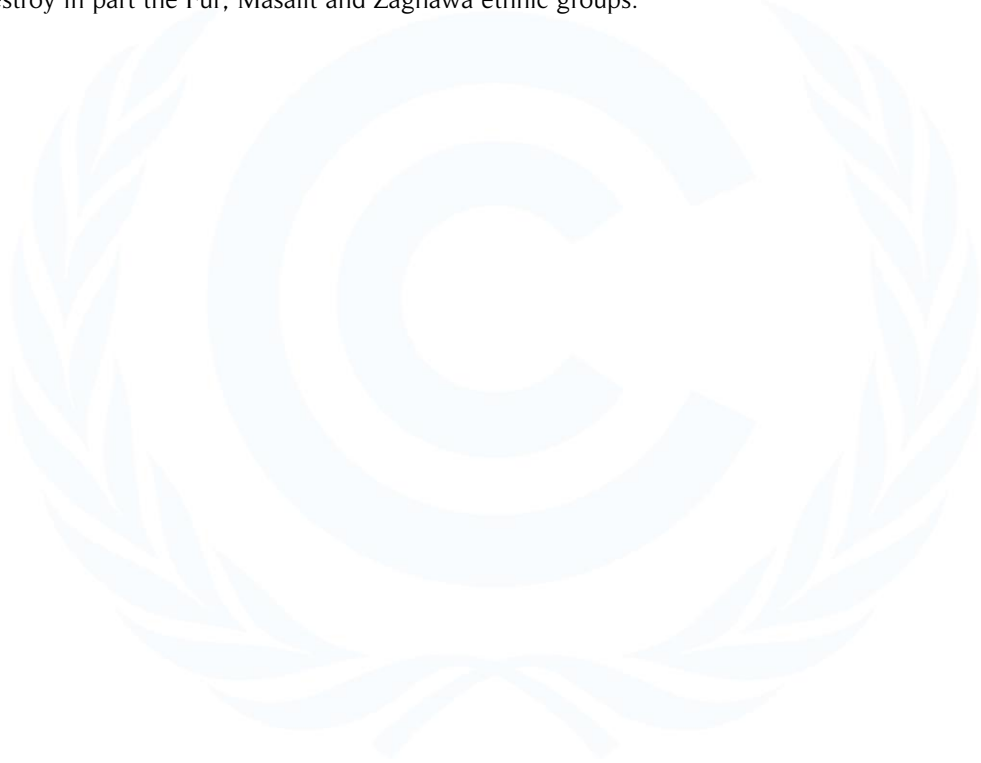
During the campaign, GoS forces allegedly committed crimes against humanity, war crimes, and crimes of genocide, and in particular:

- carried out numerous unlawful attacks, followed by systematic acts of pillage, on towns and villages, mainly inhabited by civilians belonging to the Fur, Masalit and Zaghawa groups;
- subjected thousands of civilians – belonging primarily to the Fur, Masalit and Zaghawa groups – to acts of murder, as well as to acts of extermination;
- subjected thousands of civilian women – belonging primarily to the said groups – to acts of rape;
- subjected hundreds of thousands of civilians – belonging primarily to the said groups – to acts of forcible transfer;
- subjected civilians – belonging primarily to the said groups – to acts of torture; and
- contaminated the wells and water pumps of the towns and villages primarily inhabited by members of the Fur, Masalit and Zaghawa groups that they attacked; and encouraged members of other tribes, which were allied with the GoS, to resettle in the villages and lands previously mainly inhabited by members of the Fur, Masalit and Zaghawa groups.

Pre-Trial Chamber I, also found that there are reasonable grounds to believe that:

- Omar Al Bashir, as the *de jure* and *de facto* President of the State of Sudan and Commander-in-Chief of the Sudanese Armed Forces at all times relevant to the Prosecution Application, played an essential role in coordinating the design and implementation of the common plan; and, in the alternative, that Omar Al Bashir also:
- Played a role that went beyond coordinating the implementation of the said GoS counter-insurgency campaign;
- Was in full control of all branches of the "apparatus" of the State of Sudan, including the Sudanese Armed Forces and their allied Janjaweed militia, the Sudanese Police Forces, the NISS and the HAC; and used such control to secure the implementation of the said GoS counter-insurgency campaign.

Pre-Trial Chamber I, found that there are reasonable grounds to believe that Omar Al Bashir acted with specific intent to destroy in part the Fur, Masalit and Zaghawa ethnic groups.



## Topic: The Rohingya people

### A/ Who are the Rohingyas?

**Amnesty International describes them as “one of the most persecuted minorities in the world”.**

The Rohingya are a stateless Muslim minority in Myanmar's Rakhine State, thought to number about 1 million people.

Myanmar does not recognize them as citizens or one of the 135 recognized ethnic groups in the country.

Myanmar regards them as illegal immigrants, a view rooted in their heritage in East Bengal, now called Bangladesh.

Though many Rohingya have only known life in Myanmar, they are widely viewed as intruders from across the border.

According to Human Rights Watch, laws discriminate against the Rohingya, infringing on their freedom of movement, education and employment.

They are denied land and property rights and ownership, and the land on which they live can be taken away at any given time.

### B/ The Rohingya Crisis



Since August 25, Burmese security forces have been carrying out a power struggle against Rohingya Muslims in the Rakhine State. Over half a million Rohingya *have fled* to neighbouring Bangladesh to escape their precarious situation. The Rohingya, effectively *denied citizenship* under Burmese law, have faced *decades* of repression and discrimination. About 120,000 remain *internally displaced* from waves of violence in 2012 and 2016, in dire



humanitarian conditions. Human Rights Watch researchers are reporting from the field on the crisis and its global impact.

Effectively denied citizenship under the 1982 Citizenship Law, they are one of the largest stateless populations in the world. Restrictions on movement and lack of access to basic health care have led to dire humanitarian conditions for those displaced by earlier waves of violence in 2012 and 2016.

Since late August 2017, more than 671,000 Rohingya Muslims have fled Burma's Rakhine State to escape the military's large-scale campaign. Military and civilian have repeatedly denied that security forces committed abuses during the operations, claims which are contradicted by extensive evidence and witness accounts.

## C/ The United Nations and the Rohingya crisis

The United Nations' foundation is built upon three pillars: **peace and security, development, and human rights**. It works very hard around the world upholding these core principles. Many of the issues confronting the global community today will require a multilateral approach to solve. The United Nations and its member states working together is the only chance for real progress to be made.

**The Rohingya "crisis"** is one issue requiring greater attention. The term genocide is not often used in connection with this matter; it has been labeled as ethnic cleansing. Earlier this year, U.S. ambassador to the UN, Nikki Haley, did draw attention to the plight of the Rohingya by saying the Myanmar government's denial of ethnic cleansing was "*preposterous*." Moreover, the UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, said late last year that the atrocities waged against the Rohingya may be tantamount **to the crime of genocide**. He further stated that he would not be surprised if **Prime Minister Aung San Suu Kyi** had charges imposed against her for the crime of genocide.

According to the UN, the Rohingya are the world's most persecuted minority.

The human rights violations perpetrated by the government even extends to the denial of food and healthcare services to the Rohingya people evidenced by The New York Times columnist Nicholas Kristof in his most recent column titled, "**I Saw a Genocide in Slow Motion**." The denial of these necessities of life should prompt greater outrage at the highest levels of government.

The UN's independent investigator, Yanghee Lee, has called upon China and Russia to oppose the Myanmar government's violations of human rights. She has stated publicly that it is her hope to see the international community work with China and Russia to condemn these actions. **As two of the five members on the UN Security Council acting against Myanmar requires their backing.**

The U.S. Holocaust Museum **revoked** the Elie Wiesel human rights award presented to Aung San Suu Kyi in 2012.

## D/ The ICC and the Rohingya crisis

The prosecutor of the international criminal court has asked it to rule on whether it has jurisdiction over the deportations of Rohingya people from Myanmar to Bangladesh, a possible **crime against humanity**.

A ruling affirming jurisdiction could pave the way for an **investigation** into the deportation of many thousands of Rohingya, though Myanmar is unlikely to cooperate.

In a filing published on Monday, the court prosecutor, **Fatou Bensouda**, listed the well-documented mistreatment of Rohingya and cited the UN special envoy for human rights who described it as bearing the "**hallmarks of genocide**".

She argued that although Myanmar was not a member of the court, the fact that part of the alleged crime took place on the territory of Bangladesh, which is a member, meant **the court could seek powers of jurisdiction**.



“The prosecution seeks ... to verify that the court has territorial jurisdiction when persons are deported from the territory of a state which is not a party to the statute directly into the territory of a state which is a party to the Statute,” the filing says.

“This is not an abstract question but a concrete one, affecting whether the court may exercise jurisdiction ... to investigate and, if necessary, prosecute.”

Bensouda argued that, given the cross-border nature of the crime of deportation, a ruling in favor of **ICC jurisdiction** would be in line with established legal principles.

But she acknowledged uncertainty around the definition of the crime of deportation and limits of the court’s jurisdiction.

Her request is the first of its kind filed at the court. She asked the court to **call a hearing** so that her arguments could be considered, as well as those of other interested parties.

The magistrate assigned to consider the request, Congolese judge Antoine Kesia-Mbe Mindua, will have considerable leeway in determining how to proceed.

Myanmar, rejects that charge, saying its forces have been waging a legitimate campaign against Rohingya who attacked government forces.



## The scenario for this committee ICC – The Rohingya crisis



“textbook example of ethnic cleansing”. This is what The High Commissioner for Human Rights said about the crisis. Many NGOs such as Amnesty International stood up and elevated the crisis to the United Nations’ agendas.

Amnesty International claimed that the Government of Myanmar violated the 6th and the 7th articles of the Rome Statute of the International Criminal Court. Article 6 specifies the definition of genocide. Article 7 lists elements that define a crime against humanity.

Analyzing the Rohingya crisis, the international community realized the violation of these two articles with: unlawful killings, sexual violence, torture, deportation and deprivations of necessary conditions for survival. All these acts targeting a specific ethnic group of the population. Consequently, the Security Council voted a resolution urging the government in Myanmar to stop the “genocide” against the Rohingyas and deferring the crisis to the International Criminal Court.

This resolution sponsored by France and United-Kingdom, quickly received a global approbation of the Council with 14 votes in favour, The People’s Republic of China abstaining.

The International Criminal Court registered the demand of the Security Council and investigated about a potential genocide in this region. Lt. General **Kyaw Swe**, minister of Home affairs shall be the one prosecuted by the ICC. Giving orders and responsible for the myanmar’s security forces that perpetrated the violations of Rome Statute of the International Criminal Court.

