

Jurisdiction

Highlighting points of interest within the Rome Statute, each panelist commented on the ICC's jurisdiction. Darryl Robinson explained the complimentary nature of the Court's jurisdiction and the crimes that fall within it. Warren Allmand noted that while the ICC is a huge step forward in that it will have automatic and internal jurisdiction over all Member States, there are shortcomings that still exist. For example, although the Prosecutor, a State Party, and even the Security Council can trigger an investigation, the ICC still remains a court of last resort – as long as the State is investigating, the ICC does not have jurisdiction.

A further jurisdictional shortcoming noted by Mr. Allmand is the fact that the ICC does not have jurisdiction according to the custody of the accused, nor according to the nationality of the victim. Rather, the ICC's jurisdiction is based on the nationality and territory of the accused. Mr. Allmand said that this explains American opposition to the ICC as the USA believes that it should not be subject to international or other laws. That is, the USA finds it unacceptable that an American soldier (or civilian) could be tried in a non-US court. In response Irwin Cotler noted that the complimentary jurisdiction of the ICC was supposed to address this concern of the USA's.

Prof. Cotler noted that the issues of the ICC's jurisdiction can lead to forum shopping – when a perpetrator runs from their crimes and depending on where they run, they can be convicted or acquitted. It was noted that ICC ratification is helping to eliminate this issue by raising national consistency. Mr. Robinson supplied the latest statistics: the Rome Statute needs 60 ratifications to enter into force, and currently there are 21 ratifications and 115 signatures.

Defining Crimes and Elements

Darryl Robinson spoke of the latest news of the Rome Preparatory Commission. On June 30, 2000 the Prep Comm adopted by consensus the Rules of Procedure and Evidence of the Rome Statute. He reads this exciting development to mean that the definitions of the various crimes and their elements are recognized by the world as a whole.

Warren Allmand criticized the defining of the crime elements by the Prep Com as this, in his opinion, weakens the Statute. He sees the ICC as bound by the codification of these definitions whereas usually the courts are empowered by a Statute to decide and define the elements of crimes. On the other hand, Mr. Robinson finds that the definitions update and clarify the language of the law and provide guidance and a consistent framework for prosecution. He notes that defined elements will always be criticized for being too vague and or restrictive, but that as a world statement the Prep Com's work remains impressive.