

The International Criminal Court in the Arab World: An International Criminal Law Network (ICLN) Seminar on Effective Anti-Impunity Measures in the Middle East

A February 2005 International Criminal Court (ICC) seminar in Amman, Jordan sought to promote ICC anti-impunity principles throughout the Arab World and encourage acceptance of the court's jurisdiction in a region that has been passive regarding the new court. Governmental, non-governmental and inter-governmental sector participants and facilitators fostered understanding of the ICC and emphasized the consequences of non-ratification of the treaty that created the ICC.

This article discusses the seminar, which was entitled "The ICC and the Arab World," and describes its background, participants and facilitators. It also presents seminar highlights, including the simulation exercise during which the thirty participants conducted a mock ICC proceeding against fictional soldiers charged with crimes against humanity and war crimes for engaging in a 10-day bombing raid purportedly against rebel groups but that killed 300 innocent civilians.

Background

The International Criminal Law Network (ICLN), which is an organization based in The Hague, The Netherlands, organizes global interaction between and among academics, policymakers and legal professionals in international criminal law. The ICLN coordinated the Amman seminar with the following four goals in mind: to promote further theoretical understanding of the general consequences of the ICC; to offer insights into roadblocks to ICC ratification in the Middle East; to offer practical knowledge of the ICC and its operations by means of a simulation exercise; and ultimately, to promote ratification and implementation of the ICC Treaty.

The genesis of the seminar was the Intergovernmental Arab Regional Seminar held in Sana'a, Yemen in January 2004, which had many state sponsors. The Amman seminar built upon the Yemen seminar, and sought further to encourage ratification. Though many countries in the immediate region have signed the ICC Statute, only Jordan has ratified it, which rendered Amman an appropriate seminar venue.

The seminar was held in cooperation with Columbia Law School and was sponsored by the Ministries of Foreign Affairs of Canada, Denmark, Germany, Ireland and Switzerland. Organizers included the International Criminal Law Network (The Netherlands) and the Regional Human Security Centre at the Jordan Institute of Diplomacy (Jordan).

Seminar Participants & Facilitators

The ICLN invited to the seminar representatives from countries in the region that have either expressed positive support towards ratifying the Rome Statute or are generally known to be inclined to ratify. The thirty participants, who hailed from Iraq, Jordan, Oman, Qatar, Syria, United Arab Emirates, and Yemen, were governmental policymakers and parliamentarians, judicial officials, prosecutors, attorneys general, military representatives, international defense lawyers, academics, and diplomats.

Seminar facilitators included international criminal court experts from government, academia, the private sector, the United Nations, and the ICC. Panelists and facilitators included John Holmes (Canadian Ambassador to Jordan), Professor Elizabeth Wilmshurst (Head, International Law Programme, Chatham

House, London, United Kingdom), Mohammed Aziz Shukri, (Professor and Dean, Faculty of International Relations, Kalamoun Private University, Syria, participated via paper); Fatou Bensouda (ICC Deputy Prosecutor), Dr. Amal Al-Yazigi (Deputy Dean, Faculty of International Relations, Kalamoun Private University, Syria), Lt. Col. Alain Couture (Canadian Defence Attache), Nasser Amin (Director General, Arab Centre for Independence of the Judiciary, Egypt), Mikhail Wladimiroff (ICLN President), Roy S. Lee (Professor of International Law at Columbia Law School, Former Executive Secretary of the Rome Conference for an International Criminal Court), Rawan Fadayeel Bahou (Acting Director, Regional Human Security Centre, Jordan), Mohammed Buzubar (Professor of International Criminal Law, Faculty of Law, University of Kuwait, participated via paper), Ibrahim Al Jazi (Member, Jordanian National Committee for Studying the Rome Statute of the ICC, Jordan), George E. Edwards (Professor of Law & Director of the Human Rights Program and the Master in Laws Track in International Human Rights Law, Indiana University School of Law at Indianapolis), Professor Mohammed Olwan (Dean, Faculty of Law, Yarmouk University, Jordan), Colonel Muhannad Ali Ibraheem Hijazi (Jordan), Madelien J.Th. Bierema (ICLN Project Manager, The Netherlands), Farouk Kasrawi, (Board of Directors, Regional Human Security Centre, Jordan Institute of Diplomacy, Amman, Jordan), and Mohamad Abu Roman (Higher Criminal Court, Jordan). Also participating were Thomas Graditzky and Abeer Khraisha (Legal Advisors, International Committee of the Red Cross – ICRC Jordan Delegation).

Seminar Highlights

Papers and Panels. Highlights of the seminar included vocal plenary and break-out sessions on a wide range of ICC topics, including: the ICC prosecution policy; irrelevance of official capacity in ICC prosecutions; judicial assistance under the ICC; sentencing and application of national penalties; the principle of complementarity and the conditions for the exercise of jurisdiction; implications for military strategy; rights of the accused and other internationally recognized human rights in the ICC statute; the ICC and victims; command responsibility; and, peacekeepers and the ICC. Furthermore, attention was paid to crimes under the ICC, most notably war crimes and crimes against humanity.

Simulation Exercise. Of particular interest at the seminar was a simulation exercise in which participants conducted an animated mock ICC proceeding involving fictional characters and events leading to an ICC prosecution of soldiers on war crimes and crimes against humanity charges. The simulation gave participants a hands-on opportunity to work with the ICC Statute and other ICC Rules in resolving a hypothetical case.

The simulation case involved armed conflict between the central government of a fictional country (“Sweetland”) and rebels, a failed peace agreement, deployed UN peace-keepers from “Whiteland” and “Blueland” who were attacked in Sweetland by unidentified persons, and Whiteland and Blueland retaliatory bombing of purported insurgent headquarters in Sweetland causing death to 300 adult and child Sweetland civilians. Whiteland and Blueland soldier pilots of the bomb-dropping planes appeared before the ICC to answer for their alleged crimes

Simulation participants were divided into four groups as judges, prosecutors, defense counsel, and victims’ counsel. Each group was assigned a role in resolving two major issues, the first of which was whether the case against the Whiteland and Blueland soldiers was admissible before the ICC, which involved assessing whether the ICC had jurisdiction and whether the ICC could exercise that jurisdiction. Assuming that the case was admissible, the participants then sought to determine whether the soldiers were guilty of crimes against humanity under article 7 of the ICC Statute or guilty of war crimes under article 8.

Additional issues involved reparations to the victims and other penalties, such as imprisonment for any convicted soldiers.

ICC Deputy Prosecutor Fatou Bensouda, coaching the participants playing the role of prosecutors, teamed up with the role-playing victims to mount a case against the soldiers. Mikhail Wladimiroff, who in real life defended Dusko Tadic before the International Criminal Tribunal for the former Yugoslavia, rebutted the charges by raising technical and substantive points to defend the Whiteland and Blueland soldiers. The mock judges, coached by Professor Amal Al-Yazigi (Deputy Dean, Faculty of International Relations, Kalamoun Private University, Syria) and Professor George E. Edwards (Indiana University School of Law at Indianapolis, U.S.A.), maintained control over the "courtroom" proceedings, ruled on all preliminary substantive and procedural motions, and rendered final verdicts on all crimes against humanities and war crimes charges.

The consensus among participants was that the simulation exercise, drafted by Professor Lee with an "answer key outline" drafted by Professor Edwards, offered an excellent opportunity to gain exposure to how the ICC will function when it becomes fully operational with formal charges being laid and answered, followed by trials.

Conclusion

The ICC in the Arab World Seminar, which was held 14-16 February 2005 at the Radisson SAS Hotel in Amman, Jordan, successfully introduced the ICC to government officials, academics, ngos, diplomats and others in the Arab World. The seminar provided an excellent opportunity to exchange ideas on the purposes and efficacy of the ICC and to generate and reconfirm support for the new court. With informed panelists drawn from the UN, the ICC, government, academia and private practice, seminar participants walked away with broadened insights into an international institution that some in the Arab World view with skepticism. The educational nature of the seminar cannot be underestimated, as the thirty community leaders returned to their respective countries armed with increased knowledge about the ICC and the need for ending impunity for international crimes that abound throughout the globe, including in the Middle East. The seminar was a major step forward in impressing upon Arab leaders the importance of concerted efforts to support the ICC's permanent international criminal jurisdiction over perpetrators of the most serious international crimes. A narrative of personal seminar observations prepared by Ms. Madelien J.Th. Bierema can be found at www.icln.net, along with a copy of the simulation exercise and sample answer key outline.

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