

NGOs and the International Criminal Court

Events: The International Criminal Court (ICC) came into operation in 2002, when the minimum required 60 states ratified the 1998 Rome Statute. NGOs played an unprecedented role in helping to bring the ICC into existence, doing much to set the international political agenda over the prosecution of genocide, crimes against humanity and war crimes, and participating in drafting the Rome Statute. This was accomplished largely through the Coalition for an International Criminal Court (CICC), formed in 1995, which has come to have a membership of over 2,500 NGOs worldwide. Some 235 NGOs attended the Rome Conference, larger ones such as Amnesty International and Human Rights Watch sending more delegates than most countries, and with the World Federalist Movement's delegation of 60 experts exceeding even the largest government delegation. Once the Rome Statute was approved, the CICC mounted a huge lobbying campaign designed to pressure UN member states into signing and ratifying the treaty. By May 2013, 139 countries had signed the treaty, 122 having also ratified it. NGOs also play a significant and ongoing role in supporting the workings of the Court. Amongst other things, they provide support for victims and witnesses in giving evidence and submit legal analyses and policy arguments through so-called *Amicus Curiae* ('Friend of the Court') briefs.

Significance: The uniquely influential role played by NGOs in the establishment of the ICC can be explained in at least three ways. First, the CICC was highly effective in bringing together and coordinating diverse NGOs with different goals and focus areas (such as gender justice, victims, children), enabling them to act in a cohesive manner to achieve set ends. Second, NGO influence was closely linked to their expertise and, sometimes, political skills. Governments were keen to utilize reports and documents prepared by NGOs, benefiting both from their legal expertise and their ability to supply services, including translating and interpreting services. During the Rome Conference's five weeks of negotiations, the CICC not only ensured that government delegates were adequately informed, but also helped to broker compromises when difficulties emerged. Third, NGOs took full advantage of the UN's willingness, dating back to the early 1990s, to encourage non-governmental as well as governmental participation in global policy-making. Over this issue, policy was therefore made through a process of international cooperation, structured



around diverse global networks of NGOs in collaboration with governments and the UN.

Some commentators have viewed the establishment of the ICC as a crucial stage in the emergence of global civil society, marking the point in which NGOs, acting as the 'conscience of humanity', were first able to place constraints on the state-centric politics of old. Certainly, the CICC had injected an urgency into the campaign for an ICC just as the support of governments started to falter, the creation of *ad hoc* UN-backed tribunals for former Yugoslavia and Rwanda having created a fear that the ICC might come for them one day. Moreover, the ICC moves significantly beyond the principles enshrined in the International Court of Justice, in that the ICC may, potentially, breach state sovereignty by prosecuting citizens of states that have not ratified the Rome Statute. The notion that NGOs are in the process of superseding states is, nevertheless, misleading. Although NGOs undoubtedly provided much-needed encouragement for states to sign and ratify the Rome Statute, they did not, and could not, force reluctant governments to act against their perceived interests. The simple fact is that humanitarian sensibilities have not only underpinned the growth of NGOs, but also, in many cases, led to adjustments in state behaviour. Finally, for all the energies expended in the establishment of the ICC, its impact continues to be restricted, not least by the refusal of many of the world's most powerful states, including the USA, China, India and Russia, to sign the Rome Statute.