

## Debating . . .

# Is the International Criminal Court an effective means of upholding order and justice?

The ICC has proved to be a highly controversial international organization. While it has been hailed by some as an essential guarantee for justice and human rights, others view it as a deeply flawed body, even, sometimes, as a threat to international order and peace.

## YES

**Strengthening international humanitarian law.** The ICC has codified norms and principles of international humanitarian law that have been widely accepted since the Nuremberg and Tokyo trials, in the process providing the most authoritative and detailed definitions of genocide, crimes against humanity and war crimes currently available. By comparison with the system of *ad hoc* tribunals, the ICC brings a much needed coherence to the process of enforcement, and also, by keeping Security Council interference to a minimum, (potentially) prevents the P-5 from exempting themselves from their responsibilities.

**Tackling the global justice gap.** The global justice gap condemns millions of people to abuse and oppression either because of the repressive policies of their own governments or because of their government's unwillingness or inability to prevent gross human rights violations. The ICC has been designed specifically to address this problem, providing the basis for external intervention when internal remedies are unavailable. This task is nevertheless being put in jeopardy by a collection of powerful countries that are unwilling fully to sign up to the ICC, either because they want to protect their own military freedom of manoeuvre, or in order to shield allies from criticism. This amounts to a serious failure of global leadership.

**Deterring future atrocities.** The aim of the ICC is not merely to prosecute crimes that have been committed since its inception in 2002, but also to shape the future behaviour of political and military leaders throughout the world. In this view, atrocities occur, in part, because leaders believe that their actions will go unpunished. The significance of the trials of heads of government is that they demonstrate that this may not be the case in future. No leader is now above international humanitarian law. The fear of possible legal proceedings by the ICC may, indeed, have been instrumental in persuading leaders of the Lord's Resistance Army in Uganda to attend peace talks in 2007.

## NO

**Threat to sovereignty and national security.** The most common criticism of the Court is that it is a recipe for intrusions into the affairs of sovereign states. The ICC threatens state sovereignty because its jurisdiction extends, potentially, to citizens of states that have not ratified the Rome Statute. This happens if their alleged crime was committed in a state that has accepted the jurisdiction of the Court, or when a situation has been referred to the ICC by the UN Security Council. This issue is of particular concern in the USA, because, as the world's sole remaining superpower, the USA deploys its military to 'hot spots' more often than other countries.

**Unhelpful obsession with individual culpability.** By highlighting the criminal responsibilities of individuals rather than states, the ICC contributes to a worrying trend to use international law to further moral campaigns of various kinds. Not only are questions of personal culpability for humanitarian crimes highly complex, but once international law is used as a vehicle for advancing global justice, its parameters become potentially unlimited. Moreover, by prioritizing individual culpability and criminal prosecution over wider concerns, the ICC may damage the prospects of peace and political settlement, as, arguably, occurred over the indictment of President Bashir of Sudan.

**A political tool of the West.** The ICC has been criticized for having a western or Eurocentric bias. In the first place, it is based on western values and legal traditions that are grounded in ideas of human rights, which are rejected in parts of Asia and the Muslim world, thus demonstrating the absence of a global moral consensus. Second, the ICC is sometimes seen to be disproportionately influenced by EU member states, all of whom have ratified the Rome Statute. Third, the cases brought before the ICC overwhelmingly relate to events that have occurred in the developing world. The ICC is therefore seen to perpetuate an image of poor countries as chaotic and barbaric.