

Introduction to the committee

The International Criminal Court (ICC) is the world's only permanent international court with a mandate to investigate and prosecute individuals who participate in international crimes of genocide, crimes against humanity, and war crimes. The ICC's jurisdiction may expand in 2017 to include the crime of aggression.

A multilateral treaty called the Rome Statute established the ICC. The Rome Statute was adopted in 1998 and the ICC began operations in 2002 once the Rome Statute was ratified by the 60th country. The ICC is an independent institution that is not a part of the United Nations (UN) but cooperates with the UN and its agencies.

By the law of the Rome Statute, the ICC may only investigate and prosecute when a national jurisdiction is "unwilling or unable" to do so themselves, and may only address the gravest crimes. Further, the Rome Statute and other core documents require the ICC to use the highest standards of due process and fair trial.

Introduction to the Chair

Hello Everyone! I, Muhammad Saif, will be serving as the chair for this year's ICC at Discourse MUN. I hope everyone is doing good and is keeping themselves safe. ICC at this year's Discourse MUN would simulate a trial for Barack Obama for his war crimes. I, and the rest of the dias, expect the delegates to have done thorough research. Since Obama has never been tried in ICC due to legal reasons, this committee would run in a very unconventional manner and we expect the delegates to be able to adapt with whatever the committee has to offer. I do not only want thoroughly researched facts, but I am also looking forward to hearing some good analysis and theoretical impacts every now and then. Other than the debate, I expect the delegates to act as mature ambassadors and make sure that everyone around them feels safe and comfortable.

Additional Guidelines:

1. Although the USA is not a member state of ICC, for the purpose of this committee it will however be assumed that it is a member state of ICC.
2. If your allotted country believes that Obama is a war criminal and what he did in your country or in some other country was unfair, and you think that if possible, your country would most definitely file a case against him, we expect you to submit us a formal legal request to hold Obama's trial instead of a position paper. The legal request can be formatted in any format deemed appropriate by the delegate. A simple formal letter would do as well. However, if you believe your country does not hold such a stance or is neutral in their opinion, you would have to submit the regular position paper.
3. We do not want any pre-written documentation other than the above-mentioned legal requests and position papers. The committee will have its own modified version of a draft resolution and the format would be shared inside the committee room.

Proceedings of the court

Jurisdiction

The Court may exercise jurisdiction in a situation where genocide, crimes against humanity, or war crimes were committed on or after 1 July 2002 and:

- the crimes were committed by a State Party national, or in the territory of a State Party, or in a state that has accepted the jurisdiction of the Court
- the crimes were referred to the ICC Prosecutor by the United Nations Security Council (UNSC) pursuant to a resolution adopted under Chapter VII of the UN charter.

As of 17 July 2018, a situation in which an act of aggression would appear to have occurred could be referred to the Court by the Security Council, acting under Chapter VII of the United Nations Charter, irrespective as to whether it involves States Parties or non-States Parties.

In the absence of a UNSC referral of an act of aggression, the Prosecutor may initiate an investigation on her own initiative or upon request from a State Party. The Prosecutor shall first ascertain whether the Security Council has made a determination of an act of aggression committed by the State concerned. Where no such determination has been made within six months after the date of notification to the UNSC by the Prosecutor of the situation, the Prosecutor may nonetheless proceed with the investigation, provided that the Pre-Trial Division has authorized the commencement of the investigation. Also, under these circumstances, the Court shall not exercise its jurisdiction regarding a crime of aggression when committed by a national or on the territory of a State Party that has not ratified or accepted these amendments.

Complementarity

The ICC is intended to complement, not to replace, national criminal systems; it prosecutes cases only when States do not are unwilling or unable to do so genuinely.

Cooperation

As a judicial institution, the ICC does not have its own police force or enforcement body; thus, it relies on cooperation with countries worldwide for support, particularly for making arrests, transferring arrested persons to the ICC detention centre in The Hague, freezing suspects' assets, and enforcing sentences.

While not a United Nations organization, the Court has a cooperation agreement with the United Nations. When a situation is not within the Court's jurisdiction, the United Nations Security Council can refer the situation to the ICC granting it jurisdiction. This has been done in the situations in Darfur (Sudan) and Libya.

The ICC actively works to build understanding and cooperation in all regions, for example, through seminars and conferences worldwide. The Court cooperates with both States Parties and non-States Parties.

The Court works in particularly close cooperation with its host state, the Netherlands, regarding practical matters such as constructing the Court's new permanent buildings, transferring suspects to the ICC Detention Centre, facilitating their appearances before the Court, and many other matters.

Countries and other entities, including civil society groups such as NGOs, also cooperate with the Court in numerous ways, such as raising awareness of and building support for the Court and its mandate. The Court seeks to increase this ongoing cooperation through such means as seminars and conferences.

Trust Fund for Victims

Though the Trust Fund for Victims is separate from the Court, it was created in 2004 by the Assembly of States Parties, in accordance with article 79 of the Rome Statute. The Fund's mission is to support and implement programs that address harms resulting from genocide, crimes of humanity, and war crimes. To achieve this mission, the TFV has a two-fold mandate: (i) to implement Court-Ordered reparations and (ii) to provide physical, psychological, and material support to victims and their families. By assisting victims to return to a dignified and contributory life within their communities, the TFV contributes to realizing sustainable and long-lasting peace by promoting restorative justice and reconciliation.

Key Definitions

Genocide: It is characterized by the specific intent to destroy in whole or in part a national, ethnic, racial, or religious group by killing its members or by other means: causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group, or forcibly transferring children of the group to another group.

Crimes against Humanity: These are serious violations committed as part of a large-scale attack against any civilian population. The 15 forms of crimes against humanity listed in the Rome Statute include offenses such as murder, rape, imprisonment, enforced disappearances, enslavement – particularly of women and children, sexual slavery, torture, apartheid, and deportation.

War Crimes: War crimes are grave breaches of the Geneva conventions in the context of armed conflict and include, for instance, the use of child soldiers; the killing or torture of persons such as civilians or prisoners of war; intentionally directing attacks against hospitals, historic monuments, or buildings dedicated to religion, education, art, science or charitable purposes.

Crime of Aggression: It is the use of armed force by a State against the sovereignty, integrity, or independence of another State. The definition of this crime was adopted through amending the Rome Statute at the first Review Conference of the Statute in Kampala, Uganda, in 2010.

Individual Criminal Responsibility: this refers to attempting to commit a crime, as well as assisting in, facilitating, aiding or abetting, the commission of a crime. It also includes planning or instigating the commission of a crime. This is confirmed, for example, in the Statute of the International Criminal Court.

Command Responsibility for War crimes: Commanders and other superiors are criminally responsible for war crimes committed by their subordinates if they knew, or had reason to know, that the subordinates were about to commit or were committing such crimes and did not take all necessary and reasonable measures in their power to prevent their commission

Biography of Obama's presidency

In a 2011 speech at the State Department, for example, Obama said U.S. support for universal rights “is not a secondary interest” but a “top priority that must be translated into concrete actions, and supported by all of the diplomatic, economic and strategic tools at [the U.S. government’s] disposal.” During his eight years in office, his administration did sometimes live up to that rhetoric, and it never stooped to the kind of open disdain of human rights concerns that is feared from Trump.

But the truth is, a careful review of Obama’s major human rights decisions shows a mixed record. In fact, he has often treated human rights as a secondary interest — nice to support when the cost was not too high, but nothing like a top priority he championed.

On the foreign-policy front, the biggest stain on Obama’s record has been his ineffective response to the widespread slaughter of Syrian civilians by forces under Syrian President Bashar al-Assad, aided by the militaries of Russia, Iran, and Hezbollah. Given chlorine’s legitimate uses, its possession is not banned, but its use as a weapon violates the Chemical Weapons Convention. Obama’s response to the government’s atrocities has been halting and ineffective. It also created a vacuum that allowed for the growth of extremist groups such as the Islamic State and the Nusra Front — now Jabhat Fateh al-Sham — destabilized neighboring countries like Iraq and Lebanon, and triggered a wave of mass displacement. Once the Syrian military tramped across Obama’s “red line” on the use of chemical weapons, the U.S. government helped secure the removal of its chemical weapons arsenal. Obama’s response to the Syrian conflict never seemed to reflect the severity of its regional impact. Obama largely focused on the threat posed by the Islamic State despite the fact that Assad’s military has been responsible for more than 90 percent of civilian casualties in Syria, according to local monitors. The brutality unleashed by the Syrian government has killed hundreds of thousands of civilians.

Elsewhere in the Middle East, Obama rarely lived up to the lofty promise of his 2009 Cairo University speech, where he spoke eloquently of the need to build democracies in the region. Kerry went so far as to say that Egyptian Gen. Abdel Fattah al-Sisi’s coup overthrowing the elected government of President

Mohamed Morsi was “restoring democracy,” and the administration resumed military aid to Egypt after the coup despite the government’s mass killing and arrest of Muslim Brotherhood supporters. Obama supported efforts by the Colombian government to negotiate a peace deal with the FARC guerrillas but made no serious effort to press for meaningful punishments for FARC war crimes or for the Colombian military’s execution of some 3,000 young men whom it dressed up in FARC uniforms and killed to demonstrate progress in the war.

One of Obama’s highest-profile accomplishments was the normalization of relations with Cuba but it allowed other arms sales to proceed while continuing to provide aerial refueling and possibly targeting assistance to coalition bombers. It also worked to build support for a referral down the road of crimes against humanity in North Korea.

Overall, the Obama administration provided strong support for civil society, media freedom, and LGBT rights in Africa. However, the administration largely maintained its blind spot for mounting abuses by Ethiopia, a counterterrorism ally often compared to Rwanda for its development progress despite severe repression. The United States played an instrumental role in the birth of South Sudan by backing southern rebels’ quest for independence from Sudan, but the Obama administration failed to use its leverage as the new country quickly descended into renewed conflict. With respect to Rwanda, the Obama administration walked back the long-standing U.S. tendency to lionize President Paul Kagame despite his record of serious abuses. While the U.S. government agonized over whether to impose an arms embargo on South Sudan — embracing the effort only toward the end of 2016 — President Salva Kiir and rebel leader Riek Machar were paying no price for the atrocities committed by their troops.

In Asia, the administration played an important role in pushing for greater pressure on North Korea to curb its totalitarian repression, encouraging the U.N. Human Rights Council to appoint a commission of inquiry and the U.N. Security Council to hold unprecedented hearings on human rights in the country. The hopes behind his early receipt of the Nobel Peace Prize — that he would lead a new kind of U.S. foreign relations, built to a large extent on defending human rights — were left unfulfilled. That left a shaky foundation for Trump in office. The Obama administration also supported efforts to encourage the new Sri Lankan government to begin a process of accountability for the loss of as many as 40,000 civilian lives in the final months of the conflict with the Tamil Tigers during the prior government of Mahinda Rajapaksa. Obama surprised many observers by embracing Narendra Modi, India’s divisive and nationalistic prime minister. As we look back on Obama’s two terms in office, his administration’s human rights policies and practices have had many positive elements and some real accomplishments.

Obama’s involvement in the middle east

The war in Syria was like a stone thrown into a lake. The initial splash has subsided, but the waves are spreading throughout the region. Where the waves meet the shores of the lake, they splash again into new wars. The wars of the Persian Gulf, the Kurds, and Israel are beginning.

The modern Middle East has rarely been peaceful. But today, its wars have a new shape. A few years ago, they were in the heartland of Syria. Now, they are on the periphery — Yemen, Qatar, Turkey, and soon, Israel. These are the wars after the Syrian war — and they flowed naturally from it, and from U.S. policy.

The Obama administration believed that the United States was too involved in the Middle East. That idea was not completely wrong: fundamentally, Asia and Europe are more important to the United States than the Persian Gulf. But it was wrong to believe that less U.S. involvement would bring more peace. The role of U.S. power — everywhere — is to reassure our friends and deter our enemies. We often focus too much on the deterrence role, but the reassuring role is often just as important. If we were not there to reassure, our friends would find it necessary to act in ways contrary to our interests.

In Europe, the purpose of NATO was as much to reassure Western Europe as it was to deter the USSR. In Asia, our alliances with Japan and South Korea keep their nervousness about China and North Korea within tolerable limits. In the Persian Gulf, we backed up Saudi Arabia against Iran.

The reason we do this is not that we are nice guys. It's because we don't want Germany, Japan, South Korea, and Saudi Arabia to become nuclear powers to protect themselves. And we don't want that because we believe that, on the whole, we're safer if the spread of nuclear weapons is limited.

When the United States withdraws, we expect our allies to start taking out insurance policies on their own, and our adversaries to become more aggressive. That is what we have seen in the Middle East. As the Obama administration withdrew, Saudi Arabia grew nervous, and Iran advanced.

The result of that advance was the war in Syria. Of course, even before Iran was involved, the Arab Spring brought revolt to Syria. But it was Iran that made the struggle what it became — a war meant to spread Iranian power.

Today, the Saudis are engaged in wars on several fronts. At its rear, it struggles to pacify Yemen. On its flank, it blockades Qatar. A blockage, classically, is an act of war. These are the acts of a new leadership seeking to control its neighbors out of fear for its region.

The same is true, in a lesser way, of Turkey, which fears the Syrian war has brought new assertiveness to the Kurds. And so Ankara wages war on the Kurds, both inside Turkey and on its borders.

And then there is Israel. If Iran controls Syria, as it now does, Lebanon cannot be free — and if Lebanon is dominated by Iran's Hezbollah, Israel will face a greater threat.

That day is not far away. The recent Israel airstrikes in Syria, the Iranian military presence in Syria, and the growth of Hezbollah's military capabilities in the Syrian war tell us that the next war on the edges of the Middle East will likely be waged against Israel.

These wars are the result of antagonisms that began long before 2008. But old hatreds alone do not make wars, an opportunity is also required. And the withdrawal of the United States created that opportunity. So welcome the Middle East to the wars after the war — the wars of Barack Obama.

Iraq:

Citing a humanitarian crisis and potential threats to American interests, Obama ordered airstrikes to begin in Iraq in August, becoming the fourth president in a row to order airstrikes there. The Iraqi government, outmatched by ISIS fighters taking over broad swaths of land, welcomed the strikes.

The campaign broadened in September when Obama announced he would begin targeting ISIS specifically. Instead of seeking specific authorization from lawmakers, Obama said he would rely on a Congressional authorization from 2001 that allowed the President to go after al Qaeda.

The Guardian has analysed the 400,000 documents, the biggest leak in US military history, and found 15,000 previously unreported civilian deaths. The logs show how US authorities failed to investigate hundreds of reports of abuse, torture, rape, and murder by Iraqi police and soldiers whose conduct appears to be systematic and generally unpunished. If the files released through WikiLeaks pointed to clear violations of the UN Convention Against Torture the Obama administration had an obligation to investigate them.

The logs paint a disturbing picture of the relationship between the US and Iraqi forces. Nowak said that UN human rights agreements obliged states to criminalise every form of torture, whether directly or indirectly, and to investigate any allegations of abuse.

Speaking on a BBC's, Nowak, who has spent years investigating allegations of US participation in extraordinary rendition and the abuse of detainees held by coalition forces, said the Obama administration had a legal and moral obligation to fully investigate credible claims of US forces' complicity in torture.

A failure to investigate, Nowak suggested, would be a failure of the Obama government to recognise its obligations under international law. He said the principle of "non-refoulement" prohibited states from transferring detainees to other countries that could pose a risk to their personal safety.

The documents, which cover the period in Iraq from 2004 onwards, have prompted claims that this principle has not been observed. The files contain evidence that US forces were ordered to turn a blind eye to abuses committed by the Iraqi authorities.

Numerous reports of detainee abuse, often supported by medical evidence, describe prisoners shackled, blindfolded, and hung by wrists or ankles and

subjected to whipping, punching, kicking, or electric shocks. Six reports end with a detainee's apparent death.

Nowak said the US had an obligation "whenever they expel, extradite or hand over any detainees to the authorities of another state to assess whether or not these individuals are under specific risk of torture. If this assessment is not done, or authorities hand over detainees knowing there is a serious risk of them being subjected to torture, they violate Article 3 of the UN convention that precludes torture." Nowak said it would be up to the Obama administration to launch an "independent and objective" investigation with a view not only to "bring the perpetrators to justice but also to provide the victims with adequate remedy and reparation".

Syria:

Since the Syrian uprising began in 2011, Americans have regarded the carnage there as essentially a humanitarian disaster. For Obama, contemplating his legacy, the awful death, and destruction that Syria has suffered — the 400,000 deaths, the wholesale wasting of civilian neighborhoods, the wanton use of sarin gas and chlorine gas and barrel bombs, the untold atrocities — has raised the old question of how future generations will judge an American president's passivity or ineffectuality in the face of mass slaughter.

Perhaps Obama has been hoping for a dispensation, since presidential reputations have never suffered much for such sins of omission. With a few notable exceptions, biographies, textbooks, obituaries, and even public memory have dwelled little on George W. Bush's inaction in Darfur, Bill Clinton's floundering over Rwanda, George H.W. Bush's dithering about Bosnia, Jimmy Carter's fecklessness in Cambodia, Gerald Ford's cold realism toward East Timor, or Richard Nixon's complicity in Bangladesh. "Who, after all, speaks today of the annihilation of the Armenians?" Hitler reportedly said in 1939, predicting that the world's amnesia about the Turks' mass killings should allow his armies to proceed in all ruthlessness without fear of judgment. We might think of those words in considering how little attention in our history books is given to our presidents' very limited roles in standing up to atrocities overseas.

And yet now, as Obama's presidency winds down, and a ceasefire begins to take effect in Syria that Washington played no role in negotiating, it's becoming clear that the loss of life and the humanitarian crisis represent just the first of many consequences that historians will have to assess as they ask how the United States, under Obama's leadership, chose to deal, or not to deal, with the Syrian Civil War. And if historians tend to give presidents a pass on failing to arrest slaughter, they are not so generous in evaluating the loss of American influence around the world.

Right now, the apparent loss of that influence seems to loom large. The brutal Russian-backed assault in December crushed the Syrian resistance in its main holdout city, Aleppo, calling into question whether the rebel forces will still be able to carry on any insurrection at all. President Bashar al-Assad is gathering with

the despots of Russia, Turkey, and Iran to draw up the terms of resolution, pointedly excluding the United States and the United Nations. Vladimir Putin seems high in his saddle.

For years, Obama has insisted that Syria isn't of great strategic importance to the United States. But that judgment represents not just a break from decades of geostrategic thinking but a gamble of considerable risk. If Obama is wrong, his miscalculation could have massive implications. Should Russia displace the United States as the region's preeminent great power, it will affect America's access to energy, its ability to fight terrorism, its capacity to ensure Israel's survival, and its relationship with states like Turkey, Iran, and Saudi Arabia.

Equally important are the implications of Obama's Syria policy on Europe's immigration crisis. For decades the continent has struggled, with mixed results, to assimilate Muslim arrivals from the Middle East and Africa, many of whom come bearing sharply alien cultural values. But the new waves of Syrian refugees unleashed by the failure to contain the civil war there has now created a crisis of unparalleled magnitude. Countries from Turkey and Hungary to Germany and France have been thrown into turmoil. Cultural tensions escalated, empowering right-wing nationalist parties across the continent and contributing to Britain's vote to leave the European Union. In the United States this past year, Donald Trump amplified his own pandering to the anti-Mexican sentiment with new worries about an influx of Syrian refugees — stoking anti-immigrant fears. Around the world, it seems, the rise of noxious populist currents can be traced, at least in part, to the deepening of the immigration crises by the Syrian war.

Yet a third result of Obama's ineffectuality lay in the rise of the Islamic State, a terrorist organization even more bloody-minded and bent on conquest than the al Qaeda fragments from which it sprang. Obama obviously did not create the Islamic State, contrary to Donald Trump's absurd campaign-trail slanders. But his administration was laggard in countering its gathering strength. Although the terrorist outfit is on the defensive now, it continues to orchestrate deadly strikes in Europe, and, indirectly, to inspire lone-wolf attacks in the United States, guaranteeing that terrorism will remain a major threat on both continents for years to come.

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Yemen:

The US government is concerned it could be implicated in potential war crimes in Yemen because of its support for a Saudi-led coalition air campaign.

Official documents obtained by Reuters news agency show government lawyers advised the US it might be considered a co-belligerent under international law. The Obama administration has continued to authorise weapons sales to Saudi Arabia despite the warnings last year.

On Saturday, an air strike on a funeral hall in Sanaa killed some 140 people. The coalition denied responsibility for the attack, but Washington said it would review its support to "better align with US principles, values and interests".

US President Barack Obama agreed to provide "logistical and intelligence support" to the coalition after it intervened in the conflict between forces loyal to Yemen's internationally recognised government and those allied to the rebel Houthi movement in March 2015.

The UN humanitarian coordinator for Yemen condemned "the horrific attack" Since then, more than 4,125 civilians have been killed and 7,207 injured, the UN says, with airstrikes believed to have caused about 60% of the deaths.

The documents detailing US government concerns about the civilian casualties and the potential legal implications for US military personnel were obtained by Reuters under the Freedom of Information Act and date from May 2015 to February 2016.

One document quotes a state department official as telling human rights groups in October 2015 that he believed coalition strikes were "not intentionally indiscriminate but rather result from a lack of Saudi experience with dropping munitions and firing missiles".

"The lack of Saudi experience is compounded by the asymmetric situation on the ground where enemy militants are not wearing uniforms and are mixed with civilian populations," the official said. "Weak intelligence likely further compounds the problem," he added.

US officials also compiled a list of "critical infrastructure" that should be spared to enable Yemenis to restart commercial access and deliver humanitarian aid.

An email shows state department officials organised a meeting in January to discuss "options to limit US exposure to LOAC [Law of Armed Conflict] concerns." The Law of Armed Conflict prohibits attacks on civilians and says civilians and civilian objects must be spared from incidental or collateral damage to the maximum extent possible when military objectives are attacked.

Human Rights Watch and Amnesty International said they had documented unlawful air strikes. Reuters reported that another email made specific reference to a 2013 ruling from the war crimes trial of former Liberian leader Charles Taylor, who was found guilty of aiding rebels who committed atrocities in Sierra Leone during its civil war.

The ruling found that "practical assistance, encouragement or moral support" is sufficient to determine liability for war crimes.

In August, Human Rights Watch and Amnesty International said they had documented more than 70 unlawful coalition airstrikes, some of which they

believed might amount to war crimes, and 19 attacks using internationally banned cluster munitions.

The coalition has said its forces have clear instructions not to target populated areas and to avoid civilians and has dismissed previous allegations of civilian deaths as fabricated or exaggerated.

Obama's involvement in Afghanistan:

The U.S. military has systematically covered up or disregarded “abundant and compelling evidence” of war crimes, torture, and unlawful killings in Afghanistan as recently as last year, according to a report by Amnesty International published today in Kabul.

The human rights organization alleges that the U.S. military has routinely failed to properly investigate reports of criminal behavior and, in some instances, tampered with evidence to conceal wrongdoing. On the rare occasions when servicemen are held to account, the report found that the compromised military justice system seldom secured justice for the victims of enforced disappearances, killings, and abuse that included torture.

“President Obama has admitted that ‘we tortured’ people in the past—but this is not the Bush administration, this is torture happening under Obama,” said Joanne Mariner, the author of the report.

While torture and other abuses by the CIA and the military were sanctioned by the Bush administration, Obama entered office vowing to end such practices. There have been a number of prosecutions and punishments of military units that have committed crimes and atrocities in Afghanistan under Obama, but Amnesty says the White House has to do more to ensure his policy changes are respected in the field.

A survivor of one of the most egregious assaults on civilians detailed in the report told The Daily Beast he had been forced to listen to the last gasps and sobs of his dying daughter, who was seven months pregnant, while the Americans threatened to kill anyone who moved. “She was calling out for help, maybe she wanted to share her last words before she left us forever,” said Muhammad Tahir, a civil servant.

Four years after two pregnant women, two criminal justice officials, and a teenage girl were shot dead during a party to mark the birth of a grandson in Khataba Village, Paktia Province, Tahir and his family are still waiting to be interviewed as part of an investigation the U.S. military promised to carry out.

“There is a shocking lack of accountability for the killing of Afghan civilians by U.S. forces, including civilians killed in circumstances that raise concerns about war crimes,” said Mariner. “There is very strong evidence that war crimes were carried out.”

The report, titled “Left in the Dark,” includes detailed investigations of 10 incidents in which at least 140 civilians, including 50 children, were killed in dubious circumstances. In the aftermath of nine of these, eyewitnesses and families report that no one was ever interviewed by the U.S. military.

A Pentagon spokesman did not deny the allegations in the report but reiterated U.S. policy on torture and war crimes. “The Department of Defense does not permit its personnel to engage in acts of torture or cruel, inhuman, or degrading treatment of any person in its custody,” said Maj. Bradlee Avots.

According to the Amnesty report, a Special Forces unit had raided the house on February 12, 2010. Five people were killed, some by sniper fire, some at closer range. When the Americans realized that the pregnant women and children they had killed were unlikely to be insurgents, witnesses said they began to remove the evidence of what they had done.

“When they understood they had hit the wrong place, they started pulling out the bullets from the dead bodies with their hands and their knives,” Tahir recalled. “America, the killer nation, we will never forgive you.”

The day after the assault, ISAF announced that forces had stumbled upon the dead women after a firefight with insurgents. In the following days they would go on to brief the press with a series of lurid but inaccurate stories suggesting that there was evidence of honor killings or execution-style murders.

“The immediate effort to cover up what had been done suggested that they realized it was a crime,” said Mariner. “And the changing story over time definitely suggests a cover-up.”

Amnesty says Tahir’s family is just one of thousands who have waited in vain for justice for their missing, dead, or severely injured loved ones. Foreign forces in Afghanistan have immunity from local prosecution, leaving the U.S. military itself, under the Uniform Code of Military Justice, to investigate and try American troops when they are accused of criminal acts.

Among the most disturbing allegations are claims of forcible disappearance, torture, and extrajudicial killings carried out by a rogue unit in Wardak province from the fall of 2012. “We interviewed a former detainee that had a really horrific story of just raw torture,” Mariner said. “It’s not only the testimony of this former detainee but a lot of bodies were found showing horrendous crimes of torture—people missing body parts and people whose corpses were badly mutilated.”

One of 125 victims and eyewitnesses interviewed by Amnesty in compiling this report was Qandi Agha, 51, an employee at the provincial Ministry of Culture, who says he was captured by U.S. forces who broke into his home and spirited him away to a dark wooden cell. “On the first night,” he said, “the Americans told me they were going to try 14 different types of torture on me. If I survived, they said, they’d let me go.”

He said he suffered electric shocks, beatings, simulated drowning, hanging from the ceiling, partial burial in freezing conditions, and the extraordinary and

degrading torment of having a length of string tied tightly around his penis. "They left the string around my penis for four days. My abdomen was bulging. I wasn't able to pee for those four days," he said.

He was lucky. He says half of the men he was incarcerated with did not survive the ordeal, and he claims to have watched one man be beaten to death by a redheaded American commando.

The U.S. authorities first became aware of allegations against the Special Forces team operating out of Combat Outpost Nerkh in December 2012. The American-led military coalition denied the charges of abuse. But by February 2013, the allegations had become so vehement that the Afghan president, Hamid Karzai, ordered Special Forces to leave the province.

"The U.S. knew about complaints, and that obviously raises concerns as to why this wasn't stopped sooner because the abuses went on. There were people who disappeared as late as February" in 2013, said Mariner.

Amnesty says relying on an internal justice system is not conducive to thorough investigations of alleged crimes; the commanders whose duty it would be to report incidents may be implicated, and there is a heavy reliance on the word of the accused and their colleagues rather than independent witnesses.

The military insists that civilian deaths are investigated whenever allegations of unlawful killing are made. "In accordance with standard practice, the United States has investigated U.S. military personnel and civilian personnel, including contractors, for civilian casualties that are alleged to be not incident to lawful military operations. Investigation results can and have previously led to both criminal convictions, as well as adverse administrative actions," said Avots.

For Tahir, who lost his pregnant daughter, and many more like him, those words will ring hollow.

"We lost five members of the family and about 20 kids became orphans," he said, in a tearful phone interview. "What was our crime? Can the Americans tell us?"

ICC'S Elements of Crime

The ICC has published an extensive guide to the ***Elements of Crimes***, which should be a substantive help for the delegates, and which, according to Art. 21(1)(a) of the

The statute is a document of law applicable before the Chamber. Therein, the Court sets out some general aspects of the charges, some of which the guide will now outline for war crimes:

- The perpetrator killed one or more persons which were protected under one or more of the Geneva Conventions of 1949.
- The perpetrator caused great physical or mental pain, suffering, or serious injury to the body or health of one or more persons.
- The perpetrator destroyed or appropriated certain property. Such property was protected under one or more of the Geneva Conventions of 1949.

- The perpetrator deprived one or more persons of a fair and regular trial by denying judicial guarantees as defined, in particular, in the third and the fourth Geneva Conventions of 1949.
- The perpetrator deported or transferred one or more persons to another State or to another location
- The perpetrator intended civilian objects to be the object of the attack.
- The perpetrator was aware of factual circumstances that established the existence of an armed conflict.
- The perpetrator employed a gas or other analogous substance or device, such that it causes death or serious damage to health in the ordinary course of events, through its asphyxiating or toxic properties

All in all, with such a detailed list of necessary elements of crimes, the ICC provides us with a complex outline of elements that need to be satisfied, in order to deem an individual guilty. This is the applicable law concerning individual liability for War Crimes before the ICC and to its effect advocates will have to construct their

argumentation. All of the necessary general characteristics of War Crimes, as aforementioned in this section as well as more points mentioned within the ***Elements of crime***, must be proven beyond reasonable doubt of the Judges.

For further research:

<https://www.hrw.org/news/2017/01/09/barack-obamas-shaky-legacy-human-rights>

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